



Primary Health Lists

The Tribunal Procedure Rules (First-tier Tribunal) (Health, Education and Social Care) Rules 2008

Appeal Number: PHL/15531

Between

Mrs Natasia O'Brien
(GDC registration number 114852)

Appellant

and

NHS England (successor to Hampshire Primary Care Trust)

Respondent

The panel

Mr Brayne, Judge

Ms Bennett, Dental Member

Ms Wortham

Representation

Counsel for the PCT: Mr Mylonas QC

For Mrs O'Brien: Mr Lynn

DETERMINATION AND REASONS

The Appeal

1. By notice dated 29 October 2012 Mrs O'Brien appeals against the decision of the Hampshire Primary Care Trust (the PCT) dated 4 October 2012 to remove her name from its Dental Performers List (DPL).
2. The Respondent's decision was made on the grounds of efficiency, under Regulations 10(3) and (4) (a) of the National Health Service (Performers' List) Regulations 2004, as amended (referred to below as the 2004 Regulations), which were in force at the time of the decision.

The legal framework for removal (at the time of the decision)

3. Regulation 10(3) of the 2004 Regulations provides as follows:

The Primary Care Trust may remove a performer from its performers list where any of the conditions set out in paragraph (4) is satisfied.

4. Regulation 10(4)(a) sets out the test for removal on grounds of efficiency:

continued inclusion of that performer in the Primary Care Trust performers list would be prejudicial to the efficiency of the services which those included in the relevant performers list perform ("an efficiency case").

5. Regulation 12 states that the PCT, in an efficiency case, may,

instead of deciding to remove a performer from its performers list, decide to remove the performer contingently.

Background to the Respondent's decision

6. Mrs O'Brien was admitted to the DPL as a vocational trainee in 2007. She was employed as a vocational trainee at Fordingbridge practice from August 2007 to July 2008. From 1 August 2008 she was included unconditionally on the DPL.
7. She was then employed by the following practices:
 - 1) St Ann's, Salisbury, September to October 2008. The reason given via her solicitors (to a Contractor Performance Panel (CPP) in May 2010 for leaving that practice was that Mrs O'Brien had concerns about the practice, which she had reported, upon which her contract was terminated.
 - 2) Serenity Practice, Fareham, December 2008 to April 2009; the reasons given to the above CPP for leaving that practice was a shortage of work; reasons indicated during the PCT investigation was termination following complaints and a failure to follow advice to improve clinical performance.
 - 3) Kerry Crescent Practice, Calne, April 2009 to February 2010, which her solicitor at the above CPP said she left because of the length of the commute; the practice told the PCT that they terminated Mrs O'Brien's employment because of concerns over her performance, including ethical concerns.
 - 4) Eclipse Dental Studio, Lee-on-Solent, March to May 2010. The Eclipse Practice notified the PCT it had concerns about Mrs O'Brien on 14 May 2010 and provided written evidence in support, including letters from

three dental nurses, on 18 May 2010. The practice terminated Mrs O'Brien's employment with three months notice.

8. As a result of the information received from Eclipse, on 19 May 2010 a PCT Contractor Performance Panel (CPP) suspended Mrs O'Brien pending investigation of concerns relating to clinical abilities and professionalism. Following an oral hearing on 20 May 2010 a CPP confirmed that decision and determined that a full investigation was required.
9. On 27 August 2010 a CPP contingently removed Mrs O'Brien, a decision which allowed her to remain on the DPL subject to 10 conditions.
10. Following the contingent removal decision Mrs O'Brien was taken on as an associate at a non-NHS practices, the Barn Dental Practice, Salisbury, by Mr Gallagher (March to September 2011), and then at an NHS practice, IDH, Banbury, under the supervision of Mr Downes. Both Mr Gallagher and Mr Downes were witnesses in the present appeal. Her employment was in each case terminated by the practice. The circumstances, as perceived by the witnesses and by Mrs O'Brien, are described below.
11. While practising at the Barn and then at IDH, Mrs O'Brien sought to have the conditions varied or removed. Between 1 October 2010 and 6 May 2011 a number of variations were made to these conditions, following requests from Mrs O'Brien. On 27 January 2012 a CPP refused to lift the remaining conditions, particularly the requirement to work under supervision.
12. Mrs O'Brien appealed against that refusal to the First-tier Tribunal. Before that appeal was heard, a CPP was convened to consider additional information received by the PCT.
13. The CPP met on 23 May 2012 and recommended removal. Mrs O'Brien elected an oral hearing. Following an oral hearing on 1 October 2012 the CPP made the decision to remove Mrs O'Brien from its DPL on efficiency grounds. It is this decision, dated 4 October 2013, which is now appealed.

The grounds of appeal

14. The notice of appeal dated 19 October 2012 and drafted by Mr De Bono, of counsel, sets out three grounds which are summarised as follows:
 - 1) The decision was disproportionate. Mrs O'Brien had admitted that she required ongoing supervision and was prepared to work with the PCT to address admitted shortcomings in her practice, but where there was no evidence of direct clinical risk to patients any inefficiencies for which she was responsible could be addressed by contingent removal.
 - 2) The PCT had failed properly to consider how the inefficiency found might be addressed by contingent removal. Removal was a last resort and should not be ordered where contingent removal was possible.
 - 3) The PCT, having failed to involve NCAS and having wrongly identified the costs of an NCAS investigation as payable by the PCT, should have attached more weight to this error in its reasoning.
15. The appeal appeared therefore to be on the basis that removal should have been contingent. However it became apparent on the basis of questions put to PCT witnesses by Mr Lynn on the second day of the hearing that it was in fact Mrs O'Brien's case that she should be restored to the DPL

unconditionally, and only if she was not successful in that respect should we consider contingent removal. We asked Mr Lynn if that was the outcome sought, and he confirmed that unconditional restoration to the DPL was sought.

16. The grounds of appeal are amended accordingly.

The grounds for the Respondent's decision

17. These are found in paragraphs 18 to 27 of the Response of 22 November 2012 drafted by the PCT's solicitors and are summarised as follows:

- 1) a) and b) The decision was not disproportionate. The Panel had borne in mind the alternative of conditional removal but had identified a "consistent and persistent lack of insight on the part of Mrs O'Brien ... and [a] continued denial of the complaints made against her despite evidence to the contrary" and had "concluded that Mrs O'Brien is not remediable and that she should be removed from the PCT's DPL." The PCT referred to "ample opportunity" during the period of conditional removal to demonstrate remediability and had failed to do so, and supervisor reports received since the decision further demonstrated unchanged behaviour and insight and serious concerns about clinical skills. "There is no proportionate or reasonable set of conditions which could adequately address the inefficiency."
- c) The PCT had taken the advice of NCAS and the decision not to involve NCAS was not taken on the basis of the costs to the PCT of an NCAS assessment. The relevant costs were those relating to remediation, and as Mrs O'Brien was thought to lack sufficient funds only the PCT could meet these costs.

18. We raised with Mr Mylonas at the outset of the hearing whether in addition it was the PCT's case, as stated in the response, that it considered Mrs O'Brien to be "irremediable". He confirmed that this was indeed the PCT's position. The Tribunal is, accordingly, now asked by the PCT not only to consider the evidence for removal on efficiency grounds but also on suitability grounds.

The PCT's case for removal

19. The PCT relies in its response to the appeal on its letter of 4 October 2012 to Mrs O'Brien setting out the reasons for the decision to remove Mrs O'Brien from the DPL. In the case summary of 29 November 2012 the PCT summarised and, in light of more recent information, extended these. The PCT's case, as clarified at the beginning of the hearing, is that removal remains justified on the following grounds:

- 1) Lack of insight into (a) acceptance of previous complaints and (b) effective working relationships.
- 2) Denial of or refusal to acknowledge criticisms or complaints raised by Mr Gallagher [during her employment by Mr Gallagher at the Barn Dental Practice from March 2011 to October 2011].
- 3) Failure to engage the Deanery in relation to progressing the behavioural assessment [of Dr King, consultant psychiatrist]

- 4) Failure to comply with the requirement to develop a patient satisfaction survey, and misleading the PCT in claims made that the survey carried out while at the Barn Dental Practice complied with condition 11 then in place.
 - 5) Lack of evidence of remediation through the remediation plan in place to support Mrs O'Brien [during the period of contingent removal].
 - 6) Clinical supervisor reports received since the decision further demonstrating unchanged behaviour and insight despite PCT action against Mrs O'Brien [imposition of conditions].
20. In summary the PCT states that "there is no proportionate or reasonable set of conditions which could adequately address the inefficiencies resulting from the [above] grounds."

Mrs O'Brien's case that she should not be removed

21. Mrs O'Brien's case as set out in her case summary is that the PCT had accepted that she had complied with conditions 1 – 4 of the contingent removal decision; she had identified a mentor; she successfully completed and paid for a six month remedial course at Kings College, London, in August 2011. The PCT had agreed to a variation to condition 12 as to who should provide clinical practice and performance reports. She had sought a variation to condition 5, which specified the level of supervision required, as this condition was a barrier to obtaining employment. She referred to the history of negotiations with the PCT, and the appeal, subsequently withdrawn, relating to her desire to have this condition removed.
22. She denied the assertion in the PCT's case summary that a remediation plan had been in place to support her.

Our powers on appeal

23. Although the decision was made under the 2004 decisions and by the PCT, on April 1 2013 the National Commissioning Board (which is to be known as NHS England) took over the functions of the PCT and new regulations came into force. Under the National Health Service (Performers Lists)(England) Regulations 2013 (the 2013 Regulations) Schedule 2 paragraph 2 a decision of a PCT made before April 1 2013 is to be treated as a decision of the Board. As such, under paragraph 9(2) of the Schedule 2, the First-tier Tribunal must refer to the 2013 Regulations in determining this appeal. In reality this makes no difference, as the same criteria apply as under the 2004 Regulations.
24. As the paperwork and oral evidence referred to the decisions and actions of the Hampshire PCT we use that term in describing that evidence, which we hope makes our analysis easier to follow. In describing the legal framework we refer to the duties and powers as being those of the Board.
25. A decision to remove a practitioner on any of the grounds provided under the 2013 Regulations is subject to appeal to the First-tier Tribunal.
26. The powers of the Tribunal are prescribed in Regulation 17 of the 2013 Regulations,:
- (1) A Practitioner may appeal (by way of redetermination) to the First-tier Tribunal against a decision of the Board as mentioned on paragraph (2)*

(2) A decision of the Board referred to in paragraph (1) is a decision to-

.....

(d) remove a Practitioner from a performers list under regulation 11(1)(c), 14 (3) or (5).....

(3) On appeal, the First-tier Tribunal may make any decision which the Board could have made.

27. Part of Mrs O'Brien's statement of issues concerns allegations of failure to adhere to procedures for reviewing conditions attached to contingent removal. In light of Regulation 17(3) we are not charged with the task of carrying out an enquiry or review into the PCT's handling of this case. We must consider what the correct decision should now be. We therefore look at the entirety of the relevant evidence afresh, and we do not have to form a judgement as to whether the PCT's procedures leading to the decision under appeal were properly carried out.

The hearing`

28. The hearing was listed for three days, commencing Monday 25 March 2013. At the end of the three days, we had heard from all the PCT witnesses and two of Mrs O'Brien's witnesses (Professor Dunne and Mr Wray). Mr Mylonas thought cross examination of Mrs O'Brien would take at least a day, and of Mr Lynn up to a full day. We agreed that a further three days were required and adjourned to resume the hearing on Monday June 17 2013.

29. Mr Tony Lynn is a witness for Mrs O'Brien, in his capacity as her mentor during the period when she was subject to conditions. He informed the Tribunal that he had also agreed to act as Mrs O'Brien's representative. We informed him that we felt this put him into a difficult conflict of roles, and he told us that he understood this and nevertheless wished to undertake the role of representative. We accepted this and, apart from when he himself gave evidence, he represented Mrs O'Brien.

30. We have outlined the PCT's case for removal. We asked Mr Mylonas at the outset whether the Board wished us to consider clinical competence. He did not. It was, he told us, not part of the Board's case that Mrs O'Brien is unsuitable on clinical grounds, nor that the case on efficiency requires us to make findings relating to clinical competence. With the parties' agreement we did not take evidence which we considered related solely to matters of clinical competence. However, Mrs O'Brien's approach to dealing with concerns relating to her clinical competence were agreed to be very important, and therefore in our discussion of the evidence there is reference to clinical issues. We determined not to make findings of fact, in these circumstances, on any question of clinical competence.

31. We also attempted to ensure that Mr Lynn's cross examination of PCT witnesses did not dwell on why the PCT had not approached the decisions it made in a different fashion, pointing out that the Tribunal's task on appeal was to review the available evidence and make the decision we concluded was the correct decision, not to determine whether the PCT was at fault in its procedures.

32. Arrangements had been made with the Tribunal for one of the PCT witnesses to give evidence via video link. This occurred on the first afternoon of the

hearing, when we received Mr Gallagher's evidence via video link. We are grateful to him for making himself available from Spain.

33. We were unsure whether the appellant was correctly addressed as Dr O'Brien or Mrs O'Brien. She does not appear to have a medical qualification or an academic qualification at doctorate level. She told us that either title is acceptable. We have referred to her as Mrs O'Brien for accuracy, but we make no criticism of her use of the courtesy title "Doctor. We have taken the same approach in respect of all dentists referred to in this decision.

The evidence

34. Statements or reports were provided for the nine witnesses relied on by the respondent and the four (including Mrs O'Brien herself) for Mrs O'Brien. For some witnesses there was more than one statement, because of the original appeal against refusal to remove the conditions, and also to respond to evidence not seen until after the initial statement(s) had been written.
35. It was agreed that, other than identifying one or two matters which had arisen since the statement was drafted, or flagging up key points, the need for examination in chief did not arise, and the witnesses could be cross examined. After cross examination, the Tribunal members took the opportunity to ask any questions they thought appropriate, and the witness was then available for re-examination.
36. Most of the documents we were asked to consider appeared as exhibits to witness statements. The PCT also produced copies of investigation reports prepared before both the decisions on contingent removal and refusal to vary conditions, and the removal decision now under appeal. Mrs O'Brien was unable, for reasons of expense, to call her expert medical witness, Dr Denman, but we had the benefit of her report.
37. Mr Mylonas said that he would be asking the Tribunal to hear Mrs O'Brien's evidence on oath, as it was the PCT's case that she is a liar. We determined in the circumstances that all witnesses should be sworn or affirmed.
38. A detailed note was taken of each witness's oral evidence. Because, as the evidence and cross examination unfolded, it became clear that the core of the Board's case is that Mrs O'Brien does not tell the truth, we consider it appropriate to set out in more detail the actual evidence received in order to examine the allegations that she is untruthful.

The Board's witnesses

39. *Ms Grundy* is clinical manager and dental nurse at the Barn dental practice. She worked as Mrs O'Brien's dental nurse once or twice a week on alternate weeks. Her evidence is relevant in respect of the PCT's case that concerns were raised with Mrs O'Brien about her treatment of patients while she was employed at this practice. In her statement she said that a number of patients had complained informally, for example about inadequate explanation of treatment plans, and two had raised written complaints.
40. She gave oral evidence about complaints made by some seven or eight patients that Mrs O'Brien had not explained treatment plans adequately or had been dismissive about concerns. There had been two written complaints. Mrs Grundy had no personal knowledge of whether Mr Gallagher, owner of

the practice, had raised these with Mrs O'Brien, but she was certain that she had passed on all concerns to him.

41. She said there was complaints file, but accepted that this had not been put into evidence. She was aware of three complaints relating to Mrs O'Brien, and that one of them had been satisfactorily resolved. She had in addition been aware of a larger number of patients than would normally be expected – some seven or eight - telling the practice that they did not want to be treated by Mrs O'Brien and/or saying they felt uncomfortable with their treatment plan.
42. *Ms Whitfield* is a dentist who works as an associate dentist at the Barn, and worked there while Mrs O'Brien was employed there. In her witness statement she listed a number of patients who, she says, raised concerns.
43. She confirmed in her oral evidence that Mr Gallagher had never put her under any pressure to choose treatment which conferred a financial advantage to her or the practice. She was not aware of the contractual terms which applied to Mrs O'Brien. For herself she would not have accepted terms which allowed financial benefit to interfere with clinical judgements of patient need.
44. *Ms Haslikova* is the dental nurse who worked with Mrs O'Brien during her time at the IDH practice. Her evidence relates to the allegation that Mrs O'Brien does not tell the truth about important matters and to Mrs O'Brien's alleged inability to relate to colleagues appropriately.
45. In her statement she said the reason Mrs O'Brien had given for leaving her previous practice had been falling out with a trainee nurse. "[Mrs O'Brien] told me that because everyone was related to everyone else, when a problem arose that they had all stood by the trainee nurse and that she left the practice."
46. She said she noticed Mrs O'Brien's failure to use matrix bands, which she had reported to Mr Downes, Mrs O'Brien's clinical supervisor.
47. She described a number of patients who asked to be treated by a different dentist. She had reported these matters to Mr Downes, and had not raised them with Mrs O'Brien directly. She had reported to Mr Downes and Mr Abbott, practice manager, in June that she felt uncomfortable working with Mrs O'Brien, and in September 2012 that unless something was done she would look for another job. She also reported that Mrs O'Brien's timekeeping was poor, both before starting work and when returning from the lunch break.
48. She gave evidence that Mrs O'Brien appeared to have difficulty fitting matrix bands and in more cases than not would do fillings "freehand". She accepted under cross examination that there are some occasions when a freehand approach is appropriate, such as when an occlusal filling was needed. Referring to a particular instance described in her statement, she confirmed under cross examination that on one occasion she was sure of her recollection that Mrs O'Brien had said in the notes that she used a matrix band, but in reality had not done so.
49. As part of his questioning of the witness, Mr Lynn gave what amounted to evidence, saying that the records to him indicated that it was possible that a matrix band had in fact been used, but fitted wrongly. In Mr Lynn's opinion the restoration was of very poor quality as a result. Ms Haslikova remained sure of her recollection that no matrix band had been used. She remembered

the particular patient, a strikingly tall man, and also remembered passing her concern immediately to Mr Downes.

50. Ms Haslikova gave evidence of another informal patient complaint which resulted in the patient not wanting her child to be seen by Mrs O'Brien. She could not confirm whether complaints were passed on to Mr Downes.
51. Ms Haslikova was cross examined about what she had said in her statement about frequent lateness by Mrs O'Brien. She said on one occasion after lunch Mrs O'Brien had come back late and Mrs O'Brien said she had been stopped in the street by someone doing a public opinion survey about electricity; as a result Mr Downes had seen her first patient. She said that Mrs O'Brien frequently arrived back from lunch at 2 pm, which meant she was not ready to see her patients at the booked time of 2 pm. She said the reasons given for Mrs O'Brien's frequent late arrivals in the morning were traffic problems, but that she was not aware of discussions about starting at 9.15 instead of 9 am.
52. Ms Haslikova said she got on well with Mrs O'Brien on a personal basis but in the end had refused to work with her because of concerns about the way she treated patients, in particular the unwillingness to use matrix bands. She accepted the suggestion from Mr Lynn that Mrs O'Brien was good at talking to patients, and denied that she had not been supportive of Mrs O'Brien's idea of producing patient information leaflets, though she also said that she agreed she would show Mrs O'Brien the leaflets the practice currently used.
53. Ms Haslikova referred during cross examination to an incident described in her statement where she had put a wrong date on the request for lab work, with the result that the patient attended an appointment when the work was not ready. Ms Haslikova said she accepted primary responsibility, but had felt aggrieved that Mrs O'Brien did not accept her share of the responsibility, as it was Mrs O'Brien who had the final responsibility to check the paperwork. She was annoyed at Mrs O'Brien criticising her for this, and denied the suggestion in cross examination that she had shouted at Mrs O'Brien, saying she never shouted. Ms Haslikova said that what annoyed her was that Mrs O'Brien pinned all the blame onto her when the responsibility for the mistake was shared.
54. *Mr Gallagher* was Mrs O'Brien's employer and as such supervised her at the Barn from March to September 2011, though not for PCT purposes. His evidence is principally relevant to the PCT's allegation that Mrs O'Brien was aware of his concerns during as well as after this employment.
55. His oral evidence was given via video link. The essence of his evidence is that, soon after employing Mrs O'Brien, he began to have concerns, which he raised with her.
56. In examination Mr Gallagher denied that the contract of employment with Mrs O'Brien put her under pressure to offer treatments – in particular Cerec crowns – in conflict with her own clinical judgement. He said that he reviewed her performance with her approximately every two weeks, at lunch time. A document exhibited to his statement was an agenda for such a meeting at the end of July 2011. He said he had a clear recollection of these meetings, and that they were somewhat repetitive in that the same clinical issues came up for discussion each time. He was clear in his recollection that issues discussed in the meetings included patient concerns which required action to

placate them. He said that while some associates generated more complaints than others, none in his experience had generated as many as Mrs O'Brien. However, he said, it was clear that the discussions he had with her led to no improvement, evidenced by a continuation of the same level of complaints from patients and staff. An example he cited was of poor crown preparation.

57. Mr Gallagher accepted that there was evidence of improvement in relation to one item on the agenda for 28 July 2011, which was Mrs O'Brien's failure to take home the on-call mobile phone. She did not, in the short time she remained at the practice after this, repeat this failure.
58. Mr Gallagher also discussed the circumstances of his termination of Mrs O'Brien's employment. He said that despite telling her of his intention to do so during a review meeting in August 2011, he was surprised that she continued to want to work at the practice during the three months notice period.
59. It was put to Mr Gallagher by Mr Mylonas that Mrs O'Brien said she had not been told about certain specific patient complaints while at the practice, but had first been informed in a letter sent in February 2012 (after she had left). Mr Gallagher said he was clear in his recollection that she had been told of these complaints while at The Barn.
60. Under cross examination Mr Gallagher explained what he said he knew about Mrs O'Brien's reasons for conditions having been imposed on her practice when she was employed by the practice. He had been aware that Mrs O'Brien had been required to undertake a remedial course at King's College. Mr Lynn read out to Mr Gallagher terms from Mrs O'Brien's contract of employment, which was not in the bundles; Mr Gallagher accepted that the terms included reference to the financial advantages to the individual dentist, as well as to the practice, of use of Cerec crowns but said that there was no disadvantage to the patient in using crowns which the practice could manufacture in-house, having purchased the equipment: indeed it resulted in quicker completion of treatment. He denied that this interfered with clinical judgement.
61. In cross examination he regretted that he had not formally minuted his review meetings with Mrs O'Brien. A copy of what Mr Lynn said was Mrs O'Brien's own diary was shown to him (though it was not originally in the bundle). This was followed by questions of what happened after a complaint or concern was raised in such a meeting. Mr Gallagher said invariably any remedial work on Mrs O'Brien's patients had to be done by someone else, as the patient would refuse to be treated again by Mrs O'Brien. The complaints were typically about pain, poor explanations, and the way the patient had been treated. He accepted that he had cancelled some of the review meetings, but was confident that about eight, in total, had taken place during her employment with him.
62. He said that when he took on Mrs O'Brien he had expected the same standard of work which other qualified associates could be relied on to provide. This included working unsupervised for part of the week. He had not immediately realised that this confidence was not warranted. Asked if he felt the quality of Mrs O'Brien's dentistry was so bad that he ought to report her to the GDC, he said he had thought of doing this, but did not want to. He thought she was obtaining help by attending Kings College, and he was not willing to judge her as unsuitable for all dental work, but was clear in his

conclusion that she could not maintain the standards which he wished to uphold in his own practice.

63. He said he had provided all documents he had been asked for in relation to the GDC and PCT investigations, and could not comment on a request for copies of the practice's complaints record. He referred to 15 patients about whom he had concerns and whom he had mentioned in his statement. He was asked by Mr Lynn what discussion had taken place in relation to these, given that some concerns had only arisen just before Mrs O'Brien left the practice, giving her no chance for her to demonstrate appropriate remedial action. He replied that that was a matter for Mrs O'Brien.
64. Mr Gallagher was asked about the circumstances in which he sent an email for Mrs O'Brien to Mrs O'Brien's husband. Mr Lynn said that Mrs O'Brien would say she had never herself received that email. Mr Gallagher replied that as Mrs O'Brien had written to him from that address the reply was sent accordingly.
65. The Tribunal sought clarification with Mrs O'Brien as to which complaints on Mr Gallagher's list she said she had not been aware of at the time of her employment. She said all except one. The issue involved a previous associate telling a patient her wisdom teeth should be removed. Mrs O'Brien had reached the conclusion that this was not warranted. The patient complained about this change of advice, but Mr Gallagher confirmed the advice given by Mrs O'Brien on this occasion was not inappropriate.
66. Mr Gallagher agreed that he would rather not be involved in the GDC investigation into Mrs O'Brien. He ran a small private practice and the issue for him was that he no longer wished to employ Mrs O'Brien.
67. He confirmed that he had no personal experience of Mrs O'Brien being dishonest with him. His concern was of her repeated failure to improve her performance.
68. Mr Gallagher told the Tribunal that he had offered Mrs O'Brien the opportunity to go through the dental records on the 15 cases raised by Mr Gallagher in his letter of 15 February 2012. Neither she nor Mr Lynn had taken up this offer.
69. *Ms Howard* has been area manager for IDH since May 2007. IDH owned the Banbury practice where Mrs O'Brien worked. Her evidence covered the process by which Mrs O'Brien was recruited, and was relevant to the Board's case that concerns were reported to her about Mrs O'Brien's practice, and Mrs O'Brien's behaviour in relation to the raising of those concerns. Further she gave evidence of the company being misled and not being kept informed by Mrs O'Brien.
70. *Ms Howard* said she took responsibility for the Banbury practice in July 2012 and that Mrs O'Brien had been recruited on 21 May 2012. She said that she did not meet Mrs O'Brien until the middle of August 2012, and at that time Mr Downes commented to her about the amount of time Mrs O'Brien was having off, which Mr Downes had been told was associated with divorce proceedings. Mr Abbott, practice manager, had telephoned her on 26 September 2012 speaking of his "grave concerns" concerning Mrs O'Brien. She produced correspondence addressed to Mrs O'Brien confirming that Mr Abbott had spoken to Mrs O'Brien about timekeeping on 9 August 2012 and 10 September 2012. She further stated that she had learned from Mr Abbott on

8 October 2012 that the PCT had copied Mr Abbott into the letter which informed Mrs O'Brien of the decision of the panel to remove her from the DPL; she stated that she, along with managers in the company, noted that Mrs O'Brien had not informed anyone in the company of the outcome, in breach of her associate agreement with IDH. As a result she had been dismissed without notice. Further she stated that Mrs O'Brien had told the company about the [Tribunal] hearing between 15 and 17 October 2012 into the conditions imposed on her, but had not told anyone that it was cancelled and, in addition, she had not attended work on those days.

71. In oral evidence she confirmed that the date on which Mrs O'Brien had been dismissed was 18 October 2012. She referred to the notice of that meeting and confirmed that during the meeting Mrs O'Brien had stated that she herself had only picked up the letter from the PCT [confirming its decision to remove her from the DPL] on 17 October, that she did not know of the PCT's decision until then, and that she had been planning to tell IDH.
72. Ms Howard said that she herself did not know what Mrs O'Brien had said about whether she had been terminated at any of her previous practices, but it was an expectation that recruits would be honest and give full disclosure. This was necessary, amongst other things, for patient safety.
73. The witness was cross examined as to the true reasons for dismissing Mrs O'Brien. It was put to her that the contract stated that a dentist would be removed if subject to contingent removal or removal from the DPL. She replied that the contract also required the performer to keep the company up to date in relation to any investigations, hearings etc, and said that the first the company knew about the issue with the PCT hearings was the letter received from the PCT [in October 2012] not from Mrs O'Brien herself.
74. She confirmed to Mr Lynn that, prior to the dismissal decision; the practice had concerns about Mrs O'Brien's clinical practice and had arranged to bring in a clinical support manager to observe Mrs O'Brien in the surgery. The visit had been arranged for 18 October 2012. She said that she herself had not discussed the lateness issue with Mrs O'Brien, which was a responsibility of the practice manager Mr Abbott.
75. Mr Lynn put it to the witness that Mrs O'Brien had not herself been able to access the letter from the PCT, sent on 5 October 2012, because of her circumstances. She collected the letter, which was recorded delivery, from the post office on 17 October. Ms Howard said she was not aware of this. She confirmed that she understood Mr Abbott had not himself approached Mrs O'Brien when he became aware of the PCT decision, for the reason that he believed it was for Mrs O'Brien to keep the practice informed.
76. It was put to the witness that a contract of employment, containing duties such as the requirements to keep the practice informed of such matters, could easily be put in a drawer and the contents forgotten. The witness replied that common sense, regardless of contractual duty, would prevail and a professional would understand the need to inform her employer of such an event as being removed from a performer list.
77. It was put to the witness by Mr Lynn that Mrs O'Brien's case was that she had had a previous discussion with Mr Abbott and Mr Downes about the contents of the letter from the PCT, and that Mr Abbott and Mr Downes were therefore

aware of its contents, and Mrs O'Brien had not failed in her duty to disclose the PCT's decision.

78. In response to the Tribunal's questions, Ms Howard said that she had been informed by the practice manager, Mr Abbott, of Mrs O'Brien's failure to respond to feedback, which was why he had formally reported it. He had said he had grave concerns about patient safety, wanted to know what the next steps were and was enquiring into what support could be brought in to the practice. However, Ms Howard had not had conversations with Mr Downes, Mrs O'Brien's supervisor, about the detailed concerns which he had mentioned to Mr Abbott. She had known from Mr Downes that he was supervising Mrs O'Brien and at that time he found it difficult to get her to accept responsibility or advice.
79. *Dr King* is an occupational psychologist registered with the Health and Care Professions Council. Since 2001, the date of her appointment as a behavioural assessor with NCAS, she has carried out assessments of the sort carried out in respect of Mrs O'Brien about three times a month. She was instructed by the PCT on 15 March 2012, for the purpose of trying to understand whether or not concerns which had been raised could in any way be explained by personality or style of behaviour. This would enable an understanding of what might lie behind those concerns and then work to take place with Mrs O'Brien to find appropriate routes to address those concerns, as well as to inform the PCT as to whether there would be any remaining causes for concern. The assessment would help inform any decision about a suitable placement.
80. Dr King's report is dated 14 April 2012. It starts by reciting Mrs O'Brien's training and employment history as a dentist. It notes that at the time Mrs O'Brien was receiving support from the Deanery. The Deanery had suggested Mrs O'Brien undergo a behavioural assessment and the PCT had requested that the assessment explore behavioural issues that might affect employment, patient interests, patient dignity and choices, cooperation with others, trustworthiness, and ability to respond to feedback. The report, in the overview, describes Mrs O'Brien as caring, dedicated, well-intentioned and very hard-working. "She was adamant that she did not consider herself to be insensitive and that she did not recognise any element of the concerns raised about her." Dr King described in the report, based on Mrs O'Brien's language and reported behaviours, a "marked lack of sensitivity or empathy particularly toward some colleagues at different times throughout her training and her employment". Mrs O'Brien's psychometric profile showed problems managing her personal and professional boundaries, with self-monitoring, and difficulty with awareness of her impact on others. She showed a tendency to rationalise and blame others for difficulties. It was difficult to gauge how much she genuinely understood and accepted concerns or how motivated she really was to address these. "The contradiction between her self-perception and the evidence raised by the PCT ... raises significant concerns about her level of insight and willingness to engage in a programme of change." The report goes on to say that Mrs O'Brien "appears to be in significant psychological denial". Problems would continue unless she was willing to accept the need to change and to find the right support to achieve this. "The balance and weight of evidence from this behavioural assessment suggests that an unsupervised placement or placements in general dental practice are contraindicated at this

stage until she has had access to a suitable programme of support". Although Dr King stated that judgements about probity were outside the scope of the assessment, "her defensive reaction to [a particular] allegation also reinforce the perception of dishonesty or even manipulation."

81. In her oral evidence Dr King said she asked Mrs O'Brien in a number of different ways if she recognised any of the concerns [contained in the PCT's letter of 13 July 2010 which conveyed the reasons for the decision on contingent removal, which accompanied her instructions]. She always got the same answer. She said she was not surprised that Mrs O'Brien had obtained good feedback in patient questionnaires as it was not inconsistent with the findings that different groups would have different perceptions of the practitioner.
82. Mr Lynn put it to Dr King that he had himself given Mrs O'Brien professional advice, and she had been receptive. Dr King was then asked about the possibility of progress being made despite not having followed the recommendations in her report. She said in answer to these questions that she could only comment on what Mrs O'Brien had said to her, and was unable to speculate, but that she had concluded that the issues were deep-seated and her concerns were serious. She would have concerns about her recommendations being entirely ignored, and Mrs O'Brien not being supported as recommended to ensure that any improvement was sustained. She said that, based on Mrs O'Brien's history and her marked personality traits, she was concerned whether those patterns of behaviour would change in a sustained way without skilled help. This did not mean every single recommendation had to be followed.
83. Dr King acknowledged the evidence that Mrs O'Brien had been keen to get help, but reiterated that the problem, all along, appeared to be that blame was ascribed to others. She had not taken on board the impact of her behaviour on others.
84. She was questioned about the report, drawn up two years earlier for the Deanery, by [psychologist] Dr Phelps. Dr King said she could only comment on the circumstances and information relevant at the time of her own assessment, which included the fact that further concerns had arisen. She acknowledged that there was some consistency between her own report and that of Dr Phelps, in that both concluded that Mrs O'Brien needed help. She saw her own report as a basis for discussion between Mrs O'Brien, the Deanery and the PCT, to work out which recommendations should be put into effect. It was important that Mrs O'Brien work with a skilled individual, which meant skilled in psychological therapies, to work closely with her to help her understand what was driving the patterns of behaviour.
85. Mrs O'Brien had commissioned her own psychiatric assessment from Dr Denman, and Mr Lynn questioned Dr King about the contents of Dr Denman's report. Dr King pointed out the professional and methodological differences between a psychological and a psychiatric assessment. Questioned about Dr Denman's view that the costs of Dr King's recommendations were excessive, Dr King said she had not costed them, and her recommendations were based on clinical not financial considerations. She could not comment on whether the cost was reasonable for Mrs O'Brien or the PCT to pay.

86. In re-examination, Dr King was asked to comment on Mrs O'Brien's attendance at the King's College course, which had preceded Dr King's assessment. Dr King was aware of the support provided by Professor Dunne. Dr King's concern was that despite the support, Mrs O'Brien appeared to be still strongly of the view that she had not done anything wrong.
87. Dr King was questioned in relation to anything she might say differently or in addition, now that she was aware of events which had occurred after her assessment, in particular Mrs O'Brien's placement at IDH. Dr King said she could not judge the effect of the support received at Kings, but this supervisor's view, as put in the question from Mr Mylonas, coincided with Dr King's own view, which was that there was a strong pattern of claiming other people were at fault. Any insights gained at Kings appeared not to be lasting. She said that Mrs O'Brien did not appear to be aware at the time, of the impact she had on other people or to appreciate the impact of her behaviour. She had great difficulty imagining what she would do differently.
88. Dr King was asked to comment on matters reported in Dr Denman's report. She disagreed with the accuracy of statements that Mrs O'Brien had told Dr Denman that she (Dr King) had been prevailed upon by the PCT to take a particular view, that confidentiality had been promised and then breached, that she had recommended that Mrs O'Brien have a clinical psychologist sitting alongside her while she worked, that she had described Mrs O'Brien as having poor communication skills as a result of being bilingual, that she had opened the conversation with Mrs O'Brien by describing her as an intelligent woman, or that she had formed any form of conclusion before the assessment. It was put to her that in her witness statement Mrs O'Brien claimed that Dr King had said at the start of the interview that she had an opinion and would not be changing it. She was clear that she had not and would not ever say anything like that.
89. Dr King was referred to the follow up after the assessment, which took place after the report was sent to Mrs O'Brien and before the report was sent to the PCT. There had been a telephone conversation lasting at least an hour and a half, during which Mrs O'Brien raised no concerns about the contents of the report. There were no complaints at that time that Dr King had approached the task with less than an open mind. Mrs O'Brien was given the opportunity to add comments before the report was sent to the PCT, though she was told that it was unlikely that her comments would result in Dr King changing her opinions. Dr King agreed, however, that she had discussed with Mrs O'Brien that she appears to be overly concerned about patients and strongly altruistic, but had never described, as alleged by Mrs O'Brien to Dr Denman, that she cared too much and that this was an affliction for doctors not dentists. Dr King referred to the e-mails (which were produced in the hearing bundles) which confirmed that Mrs O'Brien had opportunity to comment on judgements made, and the fact that the e-mails contained no criticism of the conduct of the assessment or the content of the report
90. Dr King expressed great concern at the way the process of assessment had been reported to Dr Denman and described in Mrs O'Brien statement. She had spent many hours together with Mrs O'Brien, and now what was said had been recast in ways that "simply did not happen". This gave cause for concern about learning from the assessment and future change. At the time

Mrs O'Brien had appeared to be wanting to understand, but now Dr King wondered whether that was in fact happening.

91. However Dr King did not think that Mrs O'Brien, during the assessment, was deliberately misleading her. She felt that what Mrs O'Brien was saying was her genuine view about events, but within those accounts there were inconsistencies and contradictions which Mrs O'Brien may not be aware of. Psychometric test results showed a marked inconsistency with what Mrs O'Brien said, indicating a possible lack of self-awareness.
92. Questioned about what Mr Downes had said in his witness statement, about information about Mrs O'Brien's past having been withheld when she was appointed to his practice, and, further, what he said there about the result of the PCT hearing not being mentioned by Mrs O'Brien, Dr King said she could not herself comment about concerns over honesty, but she did note such expressions of concern seemed to have been a persistent and longstanding pattern of behaviour, reported by many people in many circumstances, and was a significant cause for concern; it made her very wary about prospects the remediation, without skilled support as recommended by Dr King, would stop this pattern. This gave Dr King grave concern about insight and ability to change, both of which were needed for remediation to be effective. She would not support a return by Mrs O'Brien to unsupervised practice.
93. Questioned by the Tribunal, Dr King stated that at the time of her assessment she felt Mrs O'Brien was remediable, subject to recommendations in the report and further discussions with the Deanery and PCT. She was now very concerned by what she had heard about what had happened subsequently and the way her own findings were being portrayed. She was now more wary about saying this practitioner was remediable, and felt it was questionable whether it was worthwhile investing in wholesale remediation, as opposed to looking at where Mrs O'Brien skills might be better placed. Appropriate behaviours from a health professional had not been demonstrated in a sustained way which was compatible with practice. A great deal had already been attempted, but the key ingredient of insight was missing.
94. *Mr Downes'* evidence is relevant to the PCT case that Mrs O'Brien is untruthful and fails to respond appropriately to feedback. He provided two witness statements as well as giving oral evidence.
95. He works at the practice in Banbury 3.5 days per week. There are two surgeries, his own and that of the associate. Mrs O'Brien was recruited by the company, IDH, and allocated to Banbury because Mr Downes was identified as available and suitable to provide supervision. The practice manager had been informed that Mrs O'Brien was working under conditions arising from a single complaint made by a nurse that was subsequently supported by the rest of the practice's dental team. Everyone at the practice had been related to each other, and it had seemed (to Mrs O'Brien) that there had been a conspiracy against her. Mr Downes said he had accepted the plausibility of this information, and had not been involved in the selection process. He was also on holiday when Mrs O'Brien started.
96. He was aware that Mr Lynn was acting as mentor. Approximately one week after Mrs O'Brien started at the practice, he had met Mr Lynn. Mr Lynn had given him the impression that the conditions on Mrs O'Brien's practice had been imposed "based on a set of coordinated complaints written by a dental

team who were closely related to each other." Mr Lynn had, he said, encouraged Mr Downes to write a reference to support her claim that she no longer needed supervision. He did so, being under the impression that it was only a matter of time before the conditions were lifted. At the time he was happy with Mrs O'Brien's work and she seemed to get on well with patients and others. Her dental notes were comprehensive.

97. He said that regular slots were set aside for case based discussion, but over time he felt it better to discuss matters as they arose. The two surgeries were very close to each other.
98. In July 2012 Mr Downes received a letter from the GDC concerning an investigation, and enclosing copies of the PCT documentation setting out its concerns. The extent of the concerns had caused surprise, as Mrs O'Brien had only told him that difficulties had arisen in one practice. When he had spoken to Mrs O'Brien after receiving this documentation, she did not seem overly concerned by the fact that Mr Downes, as supervisor, felt he had been misled.
99. When Mrs O'Brien had been at the practice for some two or three months, the dental nurse had raised concerns about Mrs O'Brien's bonding with patients, her frequent failure to use matrix bands, and inadequate explanations of treatment to patients. Mr Downes said he had reviewed Mrs O'Brien's treatment of 13 patients and these reviews had raised concerns set out in the statements and exhibits.
100. As well as clinical issues, the practice had problems with Mrs O'Brien's timekeeping. She was regularly late for work, and was given a written warning. Poor timekeeping included returning late from lunch, which delayed the start of the afternoon surgery.
101. Mr Downes said his greatest concern was having been misled. "She was perfectly willing to discuss the shortcomings of her previous employers and colleagues, but neglected to mention the fact that her employment was terminated on numerous occasions.... The nature of her leaving her previous practice... is a good example. I was told that Mr Gallagher was trying to cause trouble for her purely in response to her requests for her final month's wages. At no point was it mentioned that her employment had in fact been terminated months earlier because of persistent issues with her performance.... Overall, I was left with the impression that the facts were being manipulated to create an impression of a grand conspiracy being waged against her, with little indication that she appreciated her own role in how her employment history had unfolded."
102. In his first witness statement Mr Downes noted that Mrs O'Brien did not approach either himself or the practice manager to discuss the outcome of the hearing with the PCT on 5 October 2012. When eventually confronted by the practice manager, he said she had claimed to have only received the details of the outcome on 17 October 2012. Having read Mrs O'Brien's witness statement and that of Mr Lynn in relation to these matters, Mr Downes produced a second witness statement refuting some of the contents of those witness statements. Mrs O'Brien was wrong to say that the practice had a policy to temporise crowns using composite material. Mrs O'Brien had said that she had obtained the verdict of the PCT hearing on the evening of 5 October 2012 and had discussed this with Mr Downes on 9 October 2012.

This was false. Mrs O'Brien did not mention the outcome and, as stated in his report to the PCT, had "carried on working as if nothing had happened". Mr Downes also refuted the assertion by Mr Lynn in his statement relating to a lack of materials at the practice. All of those materials referred to by Mr Lynn were freely available. He also noted that criticisms of Mr Lynn and Mrs O'Brien against the practice nurse had not been raised while Mrs O'Brien was employed at the practice, only subsequently.

103. In cross examination Mr Downes confirmed that when Mrs O'Brien started she was unsupervised, because he was on holiday, and also she was unsupervised on the day and a half per week when he was not practising alongside Mrs O'Brien. He confirmed that he did not observe Mrs O'Brien's actual practice, but got feedback from nurses, and had observed the crown impressions made by Mrs O'Brien, which were satisfactory. In the early days he did not feel that Mrs O'Brien was dishonest. He was not surprised that a patient survey carried out by Mrs O'Brien produced positive results. However he was not aware of the survey. He had not checked his PCT reports with Mrs O'Brien before sending them, but all the contents had been discussed and the contents would not have been surprising. He agreed that he had told the PCT that Mrs O'Brien responded positively to feedback and advice.
104. Questioned about how he felt following the letter from the GDC, he said he had described the letter in his statement as "eye opening" because the history contradicted what Mr Lynn and Mrs O'Brien had told him. They had said that there was a coordinated set of letters of complaint from practices that had not previously said they had problems with Mrs O'Brien. He felt there was a significant discrepancy between that explanation and the contents of the documentation sent by the GDC. He noted that Mrs O'Brien had not mentioned that she had been sacked by Mr Gallagher, and had said that the disagreement with the practice arose out of the dispute over payments. She said that the practice was struggling, which was why she left.
105. Asked by Mr Lynn why he did not ignore the history and allow Mrs O'Brien to start with a clean sheet, Mr Downes said that was his original intention, but it was now apparent that she had given him misleading information about her history. He accepted that he had previously said Mrs O'Brien could work unsupervised, but felt that it was naive of him to have agreed to do so after three days working with her, but he had stated this opinion based on the explanation of the history and the reasons for the conditions which were presented to him at the time.
106. Mr Lynn at this point asked a question preceded by evidence of his own. He put it to Mr Downes that it was his, Mr Lynn's, personal opinion, both at the time when he spoke to Mr Downes, and now, that much of the evidence that was put together to support the contingent removal had been flawed, that Mrs O'Brien was hard done by, and that he, Mr Lynn, did not agree with the way Mrs O'Brien had been treated. Mr Downes replied by confirming his recollection, stated above, of what Mr Lynn had told him about Mrs O'Brien's circumstances.
107. Mr Downes explained to Mr Lynn that in his report to the PCT at 10 weeks, recommending continued period of supervision, he felt that there were matters which were not putting patients at clinical risk but which nevertheless he would expect an associate dentist normally to manage without supervision.

He gave examples relating to prescription of Duraphat paste to a child and a decision concerning root canal treatment. He confirmed that at week 12 he had said that Mrs O'Brien was responding to advice but needed a considerable amount.

108. Mr Downes was asked about his evidence that Mrs O'Brien had said she was taken aback that his reports to the PCT were not overwhelmingly positive. He said that he had discussed his concerns with her before writing reports and she should not have been surprised.
109. Mr Lynn questioned Mr Downes about when the decision of the PCT to remove Mrs O'Brien from the performers list first became known to the practice and when it was first discussed with Mrs O'Brien. He said he had received an e-mail 5 October, a Friday evening, and had had no chance to discuss it with Mrs O'Brien until the following Tuesday. As noted in his second witness statement, he confirmed that he did not agree that a meeting had taken place around this time between Mrs O'Brien, himself and Mr Abbott, practice manager, where Mrs O'Brien told them the outcome of the PCT meeting. He was surprised to hear that Mrs O'Brien now said she only found out a week later what the outcome of the hearing was. He and Mr Abbott had expected her, given the gravity of the decision, to approach them immediately to discuss the consequences of the PCT decision. He told the Tribunal that knowing the decision was appealable, and removal would not come into effect immediately, he expected Mrs O'Brien to want to discuss how this decision would affect her employment.
110. He agreed with Mr Lynn that clinical competence on its own was not enough reason to terminate the contract. He had in any event not himself made or been party to the decision to terminate her employment.
111. Mr Lynn asked about his view, in his witness statement, that Mr Lynn's role had not been helpful. Mr Downes replied that what Mr Lynn had told him, that the problems with which the PCT was concerned stemmed from simply one nurse's complaints, backed up by members of her family and a campaign to obtain complaints from previous practices, had turned out to be far from the full story. For Mr Lynn then to ask him to write a reference to say that Mrs O'Brien could work unsupervised, despite knowing the full story, was not helpful. Mr Lynn put it to Mr Downes that he, Mr Lynn, had seen the evidence, which Mr Downes had not.
112. He told Mr Lynn that his advice to Mrs O'Brien had been to focus more on having a period of successful supervised practice rather than focusing on overturning the condition requiring supervision. This was more helpful to her than discrediting the practitioners with whom she had worked previously.
113. Mr Downes told Mr Lynn that he did not know until after the October 2012 PCT hearing that the hearing was considering a recommendation to remove from the performers list. He had been led to believe the sole issue was removal of the condition of supervision.
114. Mr Downes told the Tribunal in response to its own questions that there were examples where advice was given which Mrs O'Brien failed to follow through. He said that when he raised the criticism, Mrs O'Brien would tend to deflect the conversation.

115. In re-examination Mr Downes was asked about the observation by Dr Denman that Mrs O'Brien said that her current supervisor had no concerns about her practice. Mr Downes said that by September 2012 Mrs O'Brien would have been aware of concerns which he had raised with her.
116. He also confirmed in re-examination that Mr Lynn had not raised directly with him the absence of certain materials in the practice, as raised in Mr Lynn's witness statement.
117. *Mrs Copage* was Mrs O'Brien's case manager with the PCT. Her evidence is relevant to the allegations from Mrs O'Brien that the PCT acted in bad faith, and also to the costs involved in remediation to date. Her statement included reference to fraud enquiries relating to Mrs O'Brien. These were not pursued because she had not worked at previous practices long enough to provide trend information.
118. In oral evidence she said that she had experience of several hundred performance reviews. Of 3,500 individuals on the PCT lists, at any time some 4% would be "on our radar". Of these, some 15% would be at the higher end in terms of complexity. She said that in her experience remediation was not achieved unless the individual accepted failings and worked with the organisation. In 2010, when the original conditions were imposed, the PCT was led to believe that Mrs O'Brien accepted the need for remediation and accepted that there were shortcomings which Mrs O'Brien would work with and overcome. The last two years, however, had demonstrated that Mrs O'Brien did not accept that she had any failings and that she had not successfully worked on overcoming any shortcomings previously identified. In her solicitor's letter of July 2010, Mrs O'Brien was said to recognise and acknowledge that serious concerns had been raised, and that she needed support and training, took seriously the criticisms regarding the level of knowledge and needed supervision. Mrs Copage had seen no evidence that she had acted accordingly and what had happened in the last 6 to 9 months was a repetition of what the PCT had seen in 2010, namely a denial of problems and a continuation of the same behaviour.
119. Mrs Copage said that an associate dentist on qualification would earn about £40,000. Based on the witness's estimate of cost incurred by the PCT to date, together with remediation and an NCAS assessment, costs of remediation would cover three years of salary for a dentist. Even after such expenditure, the PCT did not believe this would lead to a successful remediation. In her experience, following the identification of the issues and an agreement on how to address them, a practitioner would begin to progress, develop a comfortable relationship with the PCT, and see a lifting of conditions within 12 months. Mrs O'Brien's case had been ongoing for three years and she did not even agree that there was a problem. She felt that the evidence that Mrs O'Brien had deliberately withheld from Mr Downes and IDH the outcome of the PCT hearing on 1 October 2012, and that she had lied about when she received notification, as well as fabricating a story about having spoken to Mr Downes, all pointed to a lack of integrity. She was aware from correspondence from Mrs O'Brien's solicitors that Mrs O'Brien had received notification of the outcome, and to claim in her witness statement that she was not aware of it until just before the meeting at which she was sacked was untrue.

120. Mrs Copage produced for the Tribunal a statement of estimated costs to date, not including tribunal proceedings, together with an estimate of future costs of remediation. Costs to date amounted to £48,005, though on cross examination about the cost of mentoring it was agreed that the figure was £150 too high. Total costs including future remediation, taking into account the above reduction, were in excess of £156,000.
121. Mrs Copage was cross examined about fraud enquiries. These had been mentioned in the contingent removal decision. The PCT had determined there was insufficient data to either prove or disprove the allegation.
122. She was cross examined about a patient survey conducted by Mrs O'Brien while employed at the Barn practice in 2011. Correspondence on this subject between Mrs O'Brien and Mrs Copage is exhibited to her statement. The condition was that the patient questionnaire had to be developed in consultation with the PCT. However the PCT learned that the one used by Mrs O'Brien was developed by Mrs Grundy, conducted as part of the practice's annual survey, covered only four of Mrs O'Brien's patients, and did not satisfy the condition of being developed in consultation with the PCT.
123. It was put to the witness that Mrs O'Brien had written for advice on the questionnaire on 13 June 2012, a letter which Mrs Copage said she had not received. She said the first letter she had received was on the 26 July, and that correspondence made no reference to an earlier letter. The communication of 26 July, which was by e-mail, asked whether the attached questionnaire would be suitable in relation to the condition to develop and carry out a patient survey. However at the PCT panel on 1 October, the results of the questionnaire had been presented and it had become apparent that some of the included questionnaires had been completed before the request for advice had been sent. Mrs Copage acknowledged that she did not reply to the request until 10 September, stating that this was because solicitors had become involved and the PCT needed to obtain their agreement to communicate directly with their client. When questioned at the PCT hearing as to why she had carried out the survey before obtaining a response to her request for advice on developing the survey, Mrs O'Brien had said that she did not know that she had to approach the PCT before she administered it.
124. Mr Lynn put it to the witness that he himself had advised Mrs O'Brien that in the absence of a response to the request of 12 June, and in the absence of an understanding of what was meant by "develop with the PCT", that she should go ahead with the questionnaire. Mrs Copage said that the concern was that the absence of agreement on the methodology prevented the PCT ensuring that Mrs O'Brien did not herself select which patients received the questionnaire, and that questionnaires were truly anonymous, rather than, as had been the case with the questions used by Mrs O'Brien, anonymous only if the patient so chose. She noted that the questionnaires actually had patient names on them.
125. Mr Lynn put it to the witness that there was no attempted deception, as the dates on the questionnaires made it obvious that they were completed before Mrs O'Brien's letter of 26 July. Mrs Copage said that her problem was that the letter requesting advice did not say that the survey had in fact already been completed.

126. In cross examination, Mrs Copage said that the PCT had tried to set up a meeting with Mrs O'Brien on receipt of the behavioural report from Dr King, in order to discuss the next steps. Mr Lynn asked the question why, given that Mrs O'Brien was in full-time practice, she would want to be put into a training practice as recommended. Mrs Copage replied that the PCT had agreed to support her as far as possible while working with the Deanery to identify a suitable placement, and indeed the Deanery had requested the assessment in order to inform what placement would be best. At the time of the referral Mrs O'Brien did not have a job. Discussion was therefore necessary even though the PCT accepted that Mrs O'Brien subsequently had a job.
127. She was asked how realistic it was for Mrs O'Brien to obtain a training position now. She agreed that the PCT would not be able to "magic up" a placement. She recalled the Deanery phoning her, somewhat angrily, after being told by Mrs O'Brien that the PCT had said the Deanery would find her a placement, which it could not do. She remembered this phone call, and confirmed that she had never said the Deanery was responsible for finding her a placement.
128. Mr Lynn put it to the witness that, contrary to the information in front of the panel on 1 October 2012, Mrs O'Brien had not been sacked from every previous practice. She had not been sacked from her vocational trainee practice, and had raised concerns about certain issues in the Salisbury practice, then been sacked a week later.
129. Mrs Copage said that that where the PCT believed remediation was possible an action plan would be developed. A practitioner would be supported to return to practice while protecting patients from risk.
130. The tribunal asked Mrs Copage to comment on the chronology of its decision-making. It appeared that the panel discussion on 23 May 2012 decided on removal before the witness had contacted Mrs O'Brien to discuss development of the survey. In reply, Mrs Copage said that the panel had only proposed removal in May and the final decision was not taken until October. During that time it was important to continue to work with Mrs O'Brien and try to support her. Mrs O'Brien had been informed of the proposed removal in the letter of 25 June 2012.
131. The final PCT witness was *Ms Easterby-Smith*. This witness is the dental advisor for the former PCT. Her evidence is relevant to matters arising in the course of the PCT's investigations and panel decisions. She produced two witness statements. The first confirms the history up to, and including, the sixth panel in January 2012, which considered the conditions attached to Mrs O'Brien's inclusion. The second statement describes further steps taken to investigate the PCT's concerns.
132. In cross examination it was put to Ms Easterby-Smith that she had not seen or produced actual patient complaint files relating to Mrs O'Brien. She agreed. However, Mr Lynn clarified to the tribunal that the question did not suggest that Mrs O'Brien's case was that no concerns had been raised in previous employment.
133. The details of the cross examination of this witness are not recorded here, because the witness was essentially being asked to comment on matters such as employability when subject to conditions.

Mrs O'Brien's witnesses

134. Mrs O'Brien's first witness was *Mr Philip Wray*, a partner, together with Mr Lynn, in a mixed NHS and private dental practice in Hampshire. He wrote a letter dated 15 February 2013, which appears to be addressed to the GDC. The witness said he could not comment on Mrs O'Brien's clinical practice, but he had no awareness of any deficiencies. She had attended his practice as an observer one afternoon a week since the middle of October 2012, together with Mr Lynn. On occasion, as well as observing, she had spoken appropriately to patients. Her manner was exemplary.
135. In cross examination he was referred to the comment in his letter that Mrs O'Brien "has freely explained the matters to me" as to why she had been the subject of concern regarding performance with the Hampshire PCT. He confirmed however that he was not aware that Mrs O'Brien had been sacked from all of her five previous practices, understanding from Mr Lynn and Mrs O'Brien that she had left. He was led to believe by Mr Lynn that she had left IDH because the practice was no longer willing to supervise Mrs O'Brien because she was under investigation, not that she had been sacked. It would, he said, be surprising to learn now that she had been sacked from this practice. However in relation to Mrs O'Brien's visits to his practice he had not noticed such qualities that would warrant sacking from previous practices.
136. He confirmed that he had not been told that a previous practice performance panel found that Mrs O'Brien had misled them.
137. Re-examined by Mr Lynn, Mr Wray confirmed that Mr Lynn had shown him, in the middle of 2012, a file containing details of PCT hearings and evidence of complaints from practices in which Mrs O'Brien had previously worked. He said that nothing that he had considered showed that she had been sacked from previous employment, though he was aware that Mrs O'Brien had left two previous practices for plausible reasons regarding the withholding of monies, or problems of supervision. Mr Wray told the Tribunal that he was also aware of previous employment: in one Mrs O'Brien had had to leave because there was insufficient dental work, and in another Mrs O'Brien had raised issues that concerned her and that led to her contract being terminated.
138. Mrs O'Brien's second witness was *Professor Dunne*. Professor Dunne is the Head of Primary Dental Care at the Dental Institute at King's College London. Mrs O'Brien attended remedial training at the Institute for three days a week starting 1 March 2011. He wrote four reports, an initial report, an interim report dated 24 May 2011, a final report dated 22 August 2011 and an undated supplementary report covering the period which ended 19 February 2013.
139. In his first report Professor Dunne listed a number of problems which had been reported to him. He had noted that Mrs O'Brien thought the problems were all due to other people, but she admitted certain clinical deficiencies. He had formed initial conclusions that Mrs O'Brien did not understand why she annoyed other people, had poor interpersonal skills, displayed excessive confidence, did not listen to advice, and lacked knowledge and skills in some areas of routine treatment. He had advised her to obtain a psychological assessment, and this had identified no major issues.

140. The interim report described excellent attendance and timekeeping and a positive attitude to training. She had good relationships with tutors, colleagues and patients and her performance and confidence had improved significantly. She had developed insights into her initial problems.
141. He noted that Mrs O'Brien had "experienced difficulties early in the programme as a result of her predicament and, I believe, domestic issues. However, these had been overcome and she is now cheerful and positive".
142. In his final report in August 2011 he said he was delighted to report that Mrs O'Brien completed successfully the programme, and listed the areas covered. Relationships and attitude had been positive, and she was now operating at least at the level he would expect of a general dental practitioner of her experience. She was now more open to constructive criticism, positive, eager to take advice, professional and was no longer overconfident. She was a good team worker, respected colleagues and patients, had excellent record-keeping and dealt with minor complaints appropriately; she was still a little too quick to criticise colleagues. She had developed full insight into her initial problems.
143. In the third report Professor Dunne referred to work undertaken by Mrs O'Brien after she finished the course in August 2011. She worked for two months as a locum radiologist, and then went on to work at the IDH practice in Banbury. In January 2013 she had commenced unpaid work, one day per week, as an honorary assistant clinical teacher, where she assisted experienced clinical teachers in supervision of clinical training of dental undergraduate students. Timekeeping and attendance were good, she had made a useful contribution to the clinical training, and had undertaken assessments of patients of suitability for various waiting lists. She had also treated walk-in patients with dental problems.
144. Questioned by Mr Lynn, Professor Dunne said that he believed, as stated in his final report, that Mrs O'Brien was capable of independent practice. The purpose of the remedial programme was to remediate in terms of clinical activities, and any issues of communication and professionalism were secondary objectives. She did not need, on the evidence before him, a further period of vocational training.
145. On cross examination, Professor Dunne said that he did not know that Mrs O'Brien had been sacked from the Barn practice. He had a vague recollection of there being a problem of outstanding money, but he was confident that she had also mentioned that the practice had raised clinical matters. He said that if the practice had sacked her, his assessment of the importance of that development would depend on his knowledge of that practice. It would not necessarily cause him to believe that further investigation was required before he confirmed his opinion as to Mrs O'Brien's fitness to practice. He was aware that the PCT was investigating, and did not see it as his job to investigate. He took into account the opinions of those who worked alongside Mrs O'Brien at Kings College and he reached his own conclusions.
146. Professor Dunne was aware that Mrs O'Brien had been sacked from some of her previous posts. Asked if the fact that she had been sacked from every job she had held, except her vocational trainee position, gave cause for concern, he said he remained confident with her current and post remediation

clinical ability, but pointed out that, in all his reports, he refers to other matters including interpersonal skills, her willingness to criticise others and her annoying of people. He believed that this has been a major factor in the losses of employment, but also prior to remediation he believed clinical matters were also relevant. He described Mrs O'Brien as having "a self-destruct mechanism", upon which the remediation programme could have no real impact, which was one reason he asked her to attend a psychological assessment before he would begin the program. However that assessment gave no cause concern.

147. Professor Dunne was asked if he was aware of Dr King's assessment, and confirmed that he was, and that Mrs O'Brien had verbally communicated the contents of that report. That report had shown up a number of psychological issues. He confirmed that he recollected that Mrs O'Brien had said that she felt "closed down" by Dr King and that it was not a fair assessment.
148. Questioned by the Tribunal, Professor Dunne said that he had assumed that Mrs O'Brien's history was one of a series of relatively minor problems being blown out of all proportion because she had upset someone; that was the interpretation on what Mrs O'Brien had been telling him. The actual clinical evidence was relatively minor; he had heard Mr Downes give evidence, and he had stated that Mrs O'Brien's clinical practice was neither dangerous nor likely to lead to unnecessary treatment.
149. Mrs O'Brien's third witness was *Mr Lynn*, who, as noted, was also acting as her advocate and had previously undertaken the role of mentor. Mr Lynn had provided a witness statement in relation to the appeal against the refusal to amend conditions, a supplementary witness statement in relation to the present appeal, and at the direction of the Tribunal, a second supplementary statement to deal with matters arising in the evidence heard in the three March 2013 hearing dates.
150. His evidence is of relevance in two ways. He has first hand knowledge of a part of the Mrs O'Brien's history. Also, as an experienced dental practitioner and former mentor to Mrs O'Brien, as well as present supporter and friend, he wished to give his opinion on matters of her clinical competence, performance and integrity.
151. Mr Lynn told us he has 49 years experience as a qualified dentist, over 30 of which involved partnership in the practice he set up. He has provided expert witness opinions on numerous occasions since 2006 in General Dental Council (GDC) proceedings. He is chair of the local dental committee. He has provided advice to the Hampshire Family Practitioner Committee and its successor bodies, including Hampshire PCT.
152. At the invitation of the PCT, Mr Lynn agreed to act as mentor to Mrs O'Brien, and met her in that capacity in April 2011, May 2011, July 2011 and, finally, in September 2011. After that date he continued to provide informal support and, in the present proceedings, advocacy. Although the exact details were not provided, following the change of role Mrs O'Brien and Mr Lynn confirmed that contact was virtually daily for the purpose of discussing events and issues. Mr Lynn confirmed in his closing submissions that the professional relationship has now become a personal friendship.

153. Much of his evidence concerns procedural matters and, if accepted, would result in adverse findings of how the PCT conducted its investigations and procedures. However as this Tribunal must now make the decision it considers correct, unless an alleged procedural unfairness affects our assessment of Mrs O'Brien's suitability or the efficiency of her continued inclusion on the DPL, the evidence need not be recited. It is clear that he provided considerable advice to Mrs O'Brien as to how she should deal with the investigations. Where relevant the particular issues are discussed in the section on our findings below, but we can note here that he advised Mrs O'Brien in relation to seeking to have the conditions on supervision relaxed. Mr Lynn referred to being informed by Mrs O'Brien in February 2012 of allegations about treatment of 15 patients, raised in a letter she received from Mr Gallagher. Mr Lynn advised Mrs O'Brien that she did not need to inform the PCT as the complaints did not relate to NHS practice, and the letter had in any event been copied to the PCT.
154. The original suspension and subsequent contingent removal decisions had been triggered by concerns raised by Mrs O'Brien's time at the Eclipse practice. Mr Lynn said in his first witness statement that he had talked to her in mentoring sessions about the issues leading to her suspension, and had found her answers to be straightforward and frequently at odds with what had been alleged. At some point during the mentoring period he asked her to provide the paperwork provided to the panel. His analysis of the evidence from the Eclipse practice was that there was evidence of collusion in the allegations. He also offered his own, more favourable, interpretation as to the probity or clinical correctness of Mrs O'Brien's behaviour in relation to specific allegations. He referred to the decision of the GDC Interim Orders Committee, which had considered allegations arising out of the PCT investigations, and which had issued only an unpublished warning letter. In his first witness statement he concluded by saying that he saw no need to retain the requirement that Mrs O'Brien have a workplace supervisor, as required by the contingent removal conditions.
155. The first supplementary witness statement is dated February 2013 and was prepared for the present appeal against removal.
156. Mr Lynn confirmed in that statement that his official role as mentor ended in March 2012 but he continued in an unofficial unpaid role, and as such asked for the opportunity to observe Mrs O'Brien at work at IDH in Banbury. On June 7 2012, he was told by Mr Downes and the practice staff that she had settled well and no problems were identified, but her appointments book was not full. He was not impressed with the facilities at the practice. He made two further visits (undated) where he spoke to Mrs O'Brien's dental nurse, and to the receptionist, but not to Mr Downes. He advised Mrs O'Brien after the visit on the need to use certain materials which, he said, were not available in the practice. He gave some advice as to technique which he said she received well and subsequently acted on.
157. He observed that prior to using local anaesthetic, she bent the needle, which was a practice he was previously unaware of, but which subsequent research suggested was a viable method. He said this gave him insight into an allegation at the Eclipse practice that she had bent needles [because of inappropriate technique] there.

158. Subsequently Mrs O'Brien had reported that, acting on his advice to use a full mouth impression for crown work, the dental nurse had not been impressed and had reacted by "slamming down" the trays. He advised Mrs O'Brien that, as a clinician, the decision was hers and the nurse would have to accept it.
159. Mr Lynn was impressed by Mrs O'Brien's clinical performance and note keeping. He made criticisms of the behaviour of the dental nurse and discussed with Mrs O'Brien how these should be handled.
160. Mrs O'Brien was, under the contingent removal conditions, required to carry out a patient satisfaction survey, developed together with the PCT. He asked her how this was progressing. She told him she had written to the PCT (date not identified) to enquire if she could use the practice's questionnaire, and, when she did not receive a reply, he advised her to contact Mrs Copage again. He agreed with Mrs O'Brien that there would be no issue with collecting data prior to gaining PCT approval.
161. During Mrs O'Brien's time at Banbury, Mr Lynn was only aware of one patient complaint against her. She had dealt with it appropriately.
162. In February 2012 Mrs O'Brien forwarded to Mr Lynn a copy of a letter from Mr Gallagher listing a number of issues relating to patients seen by Mrs O'Brien. After talking about these patients with Mrs O'Brien he could identify nothing of a serious nature and advised Mrs O'Brien to contact Mr Gallagher with a view to looking at the patient records, should it prove necessary. These records were subsequently revealed in the course of these proceedings and, in his opinion, they confirmed his view.
163. The witness statement concluded with the opinion that, following frequent meetings with Mrs O'Brien and email and phone contact, she had frequently asked for, and acted on, his advice, and he had no doubt that she had gained considerable insight.
164. Mr Lynn's second supplementary witness statement was written in April 2013, and dealt with matters raised in the course of the PCT witnesses' evidence. Any reference to documents, in so far as relevant to the issues we have to determine, will be referred to below. There is no additional first-hand evidence of relevant matters.
165. Additional evidence in chief and cross examination of Mr Lynn lasted for most of one day.
166. Mr Lynn referred to the letter Mr Gallagher had sent Mrs O'Brien in February 2012 listing 15 patients whose treatment concerned Mr Gallagher. He referred to the fact that at this time Mrs O'Brien's marriage was breaking up and she had responsibility for four children. He formed the view that the reason Mr Gallagher had raised these concerns was to divert attention from Mrs O'Brien's request that she be paid for her final month's work at the practice.
167. He referred to Mr Downes' criticisms of him in oral evidence (see above). Mr Downes had said Mr Lynn clearly shared Mrs O'Brien's view that she had done nothing wrong. Mr Lynn confirmed that this was his view.
168. He referred to the evidence of Mrs O'Brien's witness, Mr Wray. Mr Wray had said in evidence that he did not know that Mrs O'Brien had been

sacked from previous practices. Mr Lynn's recollection was that he had informed Mr Wray of this. He accepted that he had not put this to Mr Wray when Mr Wray was giving his evidence.

169. In cross examination Mr Lynn confirmed he had had no training as a mentor. He was, however, aware of the importance, as an experienced expert witness, of his opinions being based on rigorous and balanced consideration of evidence. He considered his role to be to look at problems arising in the workplace, future prospects, personal matters, what he called "the wider picture". He had not seen it as necessary when he took on the role of mentor to obtain the PCT's decision letter explaining its reasons for contingent removal and had not seen this until September 2011, approximately. In retrospect he should have obtained it earlier. He had in the early stages been particularly concerned that Mrs O'Brien had been subject to fraud investigation, and after she told him she had not behaved fraudulently he eventually ascertained that the investigation had been dropped. He felt that the clinical allegations "did not look right" and, when he eventually asked for sight of the full paperwork surrounding the contingent removal and suspension decisions, concluded that it was not very impressive.
170. Mr Mylonas asked Mr Lynn if his reliance on what Mrs O'Brien had told him had been appropriate, in light of the central allegation in the PCT's finding that Mrs O'Brien had deliberately misled the panel in May 2010 (as set out in its decision letter of July 2010). Mrs O'Brien had claimed to have an unblemished record, that the concerns of the Eclipse practice were the result of a family conspiracy, and that she had never had any problems in her career. Her previous employers had all provided evidence to the panel contradicting these assertions. Mr Lynn said in reply that his role was forward looking and he was concerned to advise her in relation to the fraud issue.
171. Mr Mylonas put it to Mr Lynn that by September 2011 he would have been aware that every previous practice had provided evidence of complaints about Mrs O'Brien. Mr Lynn stated that in his view the word 'complaint' referred to formal written patient complaints. He had found no evidence of such complaints being registered in any complaints log.
172. Mr Lynn was asked if he had asked Mrs O'Brien why she had told the panel that she had an unblemished record, in light of known concerns. He said he had asked her why she had not told the panel in May 2010 about any complaints. She had said that this had been an extremely stressful time for her. The hearing had been arranged with only 24 hours notice and she had had very little time to discuss it with her defence union representative or her solicitor. She now accepted that she had got this wrong.
173. Mr Mylonas put it to Mr Lynn that before the hearing Mrs O'Brien had had time to obtain testimonials, and that at the hearing she was represented by a solicitor and supported by a defence union representative. He asked Mr Lynn if, during his mentoring sessions, he had explored with Mrs O'Brien why she had failed to tell the panel about these complaints. Mr Lynn said that Mrs O'Brien had told him she had forgotten the complaints, and none of the complaints had been drawn to her attention at the time. He had himself formed the view that the level of complaints at that time appeared no worse than he had seen in respect of other practitioners. However when pressed he

agreed that he did not think Mrs O'Brien would have forgotten every complaint made about her. He went on to differentiate between complaints requiring a written response and the involvement of a protection society, and unsubstantiated complaints such as "Mrs Smith has said she does not want to see [this dentist] again," He said it would depend how the word 'complaint' was defined.

174. Asked if he was troubled by the fact that concerns had been expressed and complaints made by all of Mrs O'Brien's previous practices, Mr Lynn said that what there had been a lot of other reasons why she had left those positions.

175. Mr Lynn first met Mrs O'Brien in April 2011. He was asked if, at that first meeting, he had enquired about the problems which had preceded the hearing in May 2010. He was also asked whether the absence of a reference to such a discussion in his first report as mentor meant she had not mentioned those previous complaints. Mr Lynn said his task as mentor was to be forward looking.

176. Mr Lynn was then referred to his second report, in which, in May 2011, he said Mrs O'Brien was progressing well. He was asked how this was compatible with the evidence of Mr Gallagher [her employer at the Barn practice] that there had been problems within weeks of her arrival in March. Mr Lynn said he had looked at Mrs O'Brien's own log for that period and noted problems with a nurse at the practice, and with the use of the Cerec machine, and with treatment plans set up by her predecessor, so it was not problem-free, but was progressing as well as could be expected in a two day a week private practice. Asked why he did not try to speak to other staff or Mr Gallagher, he said Mr Gallagher would have approached him if there was a problem. He had subsequently seen the patient records and these had also been independently examined, and by and large the treatments had been appropriate. He was not aware of Mr Gallagher's unhappiness with her work, and Mr Gallagher in a letter to the GDC had referred to differences in the way he and Mrs O'Brien worked. There was nothing concrete in the complaints he made against her, and no formal complaints. If there had been, Mrs O'Brien would have told him. Mrs O'Brien's own log did not reveal such concerns, and he believed she was truthfully telling him about any problems.

177. Mr Lynn was asked about the fact that he had provided supportive mentoring reports and supportive evidence to the Tribunal based solely on Mrs O'Brien's own accounts. He said that his understanding was that mentoring is a one to one process.

178. Mr Lynn was asked about the conclusion in his report that Mrs O'Brien had good insight into the reasons she had moved on from previous practices, given that he did not know that she was the subject of complaints from all of those practices, and was asked whether, now that he was aware of those complaints, this was not a fully informed conclusion. He agreed that at the time he wrote that opinion Mrs O'Brien had not told him about the complaints, but he felt she had good insight into why she had moved on. The reasons [he now knew] that she had been asked to leave had more to do with other aspects of things [at the practices], such as having insufficient patients, or threatening to resign, or that the practice wanted her surgery for other dentists.

179. Mr Lynn said he could not be sure, after the lapse of time, whether in July 2011 Mrs O'Brien had told him that the decision to move on was not entirely hers in all of those practices and that she had been sacked. "I don't recall if I understood from her that she had been sacked or voluntarily moved on." He had subsequently talked to her at length about her reasons for leaving. However he knew that she had been sacked from the Eclipse practice from an early stage because of the oral hearing.
180. Mr Lynn confirmed that, as a mentor, he expected Mrs O'Brien to volunteer information about problems as they arose. Mr Mylonas asked him about his meeting with Mrs O'Brien on 19 September 2011. It was then that he discovered that she had been asked to leave the Barn. He agreed that this was a serious setback. He was aware at that time of lack of sufficient patients and problems over use of the Cerec machine. Mrs O'Brien had told him at this time that she did not know why she had been sacked. Possibly it was connected to the fact that she had mentioned concerns to the practice about an aspect of the storage of their emergency drugs.
181. Mr Lynn was referred to the document entitled "Performance Review Agenda" given to Mrs O'Brien by Mr Gallagher on 28 July 2011 (on which Mr Gallagher had been previously cross examined – see above). He was sure she had not shown this to him during that meeting on 19 September 2011, and was not sure if she had mentioned it. He agreed that the first heading was unambiguously about patient complaints. He agreed that if she had told him about any such complaints he would have talked to her about them and mentioned them in his report. However as she had already left the practice by the time of this meeting, he did not think he would expect to have been informed, unless she had been the subject of several complaints. He had been aware of only one complaint. Also, Mrs O'Brien had never discussed the performance review document with Mr Gallagher, but if she had he would have expected her to discuss it with him. He disputed whether there had been "numerous complaints" [the first heading of the agenda] as Mrs O'Brien's log revealed only two. He did not feel as mentor it was his job to drill down into what she told him. In retrospect he probably should have. He also agreed with hindsight that he probably should have contacted Mr Gallagher when he learned that Mrs O'Brien had been terminated. He did not feel he had been lied to, or that she had deliberately concealed the performance review agenda of 28 July 2011, and any failure was his own.
182. Mr Lynn was asked about an email to Mrs O'Brien from Mr David Matthews, Commercial Manager at the Barn, on 4 October 2012. This email refers to conversations with Mrs O'Brien about patient complaints, going back over previous months. The email confirmed that the matters had been discussed with Mrs O'Brien recently. Mr Lynn did not think that Mrs O'Brien had brought it to his attention before he saw it in the course of the first appeal, probably in the New Year [2012].
183. Mr Lynn agreed that at this point [September 2011] he had no direct knowledge of Mrs O'Brien's clinical practice, as this was not required of him as mentor. He had not spoken to anyone at either the Barn or her previous practices. In terms of past allegations, he was more concerned at helping her to address the fraud allegation than to enquire into her reasons for leaving previous practices. He was asked if, in these circumstances, it was premature to offer an opinion to the PCT that Mrs O'Brien could safely work

unsupervised. He said that as an experienced practice principal, he had interviewed and employed practitioners on the basis of talking to them, not observing them, and in his discussions with Mrs O'Brien he knew as much as he did with many of the people he had employed. He felt that she had not withheld anything from him. However at this stage he had only met her five times, and later, when he saw the PCT papers relating to her contingent removal, he questioned her about her past history.

184. Mr Lynn was asked why, in his first witness statement, he felt able to form a balanced objective view that Mrs O'Brien could work unsupervised, when this was after he became aware of her history and Mr Gallagher's concerns about 15 patients at the Barn and without himself having spoken to Mr Gallagher, seen the patient records, or observed Mrs O'Brien in practice. He replied that the condition to have workplace supervision made it very difficult to find work. He said that he had not by then been able to get hold of the clinical records of the 15 patients. He agreed that he himself made no attempt to obtain these records, and that Mr Gallagher had written to Mrs O'Brien to offer her the opportunity to inspect them.
185. Mr Lynn said that Mr Gallagher's letter had been written four or five months after Mrs O'Brien had left the practice, and after she had written to him asking to be paid for the last month's work. He believed Mr Gallagher had trawled through his records to find a reason to justify his refusal to pay her this money. Having gone through Mrs O'Brien's explanations of her work with these 15 patients he saw no reason to see the records before forming the opinion that she could work without workplace supervision. When he eventually saw the records they supported his assessment that there was nothing much to the concerns.
186. Mr Lynn was asked why his first witness statement, in support of the removal of the workplace supervision condition, made no mention of Mrs O'Brien having been sacked from any of her previous placements. He said he saw no need to mention this. His reason for supporting her application was that it was virtually impossible to find work with this condition in place. It would prevent her getting back into practice, and that was what she needed. He had not mentioned that there had been complaints by employers because there were no more patient complaints than would be expected with other assistant dentists. At the time [of this witness statement] he was not aware that Mrs O'Brien had any other reason to leave the Barn than the issues with the Cerec machine and the lack of sufficient patients.
187. Mr Lynn was then cross examined on his second supplemental witness statement, made after the oral evidence to the Tribunal of the PCT witnesses in March 2013. He had said there that it was only after leaving the Barn that Mrs O'Brien became aware of any criticisms of her work. Referring to the email exchange about patient complaints between Mrs O'Brien and Mr Matthews in October 2011, Mr Mylonas asked Mr Lynn if he still believed she had not been informed of any concerns until the following February. He said that, based on Mrs O'Brien's own log diary and his discussions with her, he did not see any evidence of criticisms. He was aware of only one complaint of which the PCT had been informed. He had subsequently asked for the complaints log from the practice and learned of one other patient complaint, so there was not a history of complaints.

188. However, reminded of the email from Mr Matthews, to which Mrs O'Brien had responded, Mr Lynn accepted that he would not have written in his statement that it was only after she left the practice that she became aware of any criticisms. He would now word it differently. He would say that she had not been made aware of significant or substantial criticisms.
189. Asked if he felt Mrs O'Brien was candid in mentoring sessions, Mr Lynn said she was candid about all clinical matters. He had seen nothing to suggest she was dishonest about treatments she provided at the Barn. He was not aware of clinical problems being drawn to her attention while she was working at the Barn, only afterwards. He was referred to the agenda drawn up for discussion and dated July 28 2011, which contained headings about clinical concerns, and said that until Mrs O'Brien had discussed these with Mr Gallagher and knew what the problems were, no discussion with him was called for. Although he now knew that, at the time he met with her in September, she had filled in the performance review agenda form, when asked whether it was appropriate that she had not shared the information with him, he replied that she had not discussed it with Mr Gallagher. Mrs O'Brien had not held back from discussing freely with him matters arising from patient treatments, and he was able to have free and frank discussions with her about clinical issues.
190. In the second supplementary witness statement Mr Lynn had referred to his first, and only, meeting with Mr Downes at IDH, on June 7, 2012. He was reminded of Mr Downes' evidence that at that meeting Mr Lynn had given Mr Downes a one-sided account of Mrs O'Brien's history at Eclipse, and had not mentioned any problems with her previous history, including sackings. Mr Lynn said he could not recall what he said, but he felt that Mrs O'Brien had been unfairly treated. He had said that she deserved a new start. He did not believe, and would not have said, that all the problems at Eclipse arose from the opinion of one nurse. However he agreed that, whilst acting as Mrs O'Brien's advocate, he had not put it to Mr Downes in cross examination that that was not what he had said.
191. After meeting Mr Downes in June 2012 Mr Lynn said he did not attempt to contact him again. He said his role was by that time unofficial, though Mr Mylonas pointed out that in his witness statement Mr Lynn had said that when his role as mentor ceased he carried on informally in that capacity. He said he had spoken to staff, seen the results of the patient survey, and everything was positive.
192. Mr Lynn was further questioned about Mr Gallagher's letter of 15 February detailing concerns with treatment of 15 named patients. He accepted that he did not ask Mrs O'Brien, when she showed him the letter, if this was the first she had heard of such concerns. He was asked for his comment on the fact that the letter referred to recent communication between Mr Gallagher and Mrs O'Brien. He said he was probably wrong to jump to the conclusion that this was a reference to a dispute about payment.
193. Mr Lynn was questioned about the view in his second supplementary witness statement that Mrs O'Brien had gained "considerable insight". He said that this insight was into what had happened to her and how she came to be where she is today.

194. Mr Lynn was questioned about Mr Downes' evidence, consistent with an email he had sent to Mrs Copage, that he felt intimidated by a phone call from Mr Lynn following the removal decision in October 2012. Mr Downes had given detailed reasons for feeling this was an attempt to intimidate him. Mr Lynn said that he wanted Mr Downes to appreciate that if he had had the full picture he would have formed a different view. He felt it had been a friendly conversation and that he had not intimidated Mr Downes.
195. Mr Lynn accepted that the account he had given Mr Downes on June 7 2012 had been a partial picture, as he felt Mrs O'Brien should start with a clean sheet with her workplace supervisor. He had not told him about previous complaints or dismissals. He wanted Mr Downes to know that it was misfortune that had brought her to the situation she was in. He had felt after reading the information about Eclipse that there had been collusion. Asked about Mr Downes' complaint about having been given a partial picture, Mr Lynn said he accepted that he may have been wrong to have had that conversation. He wanted to help Mrs O'Brien to settle into the practice.
196. Mr Mylonas questioned Mr Lynn about the opinions of Mr Downes expressed in his final report as workplace supervisor. He had stated there that Mr Lynn had damaged attempts to persuade Mrs O'Brien to deal with the reality of her situation. He had made no effort to speak directly to any of her previous primary care employers. Mr Lynn replied that he was not in a position to do this, though he accepted he could have obtained the relevant phone numbers. However he thought his primary responsibility related to getting direct evidence of Mrs O'Brien's clinical practice in view of the forthcoming appeal into the workplace supervision condition, and that he owed no responsibilities to anyone else. He wanted to satisfy himself as to her clinical abilities in order to help her to get a position closer to where she lived. He had explored issues of trustworthiness and found her responsive to criticism and advice.
197. He agreed that, in relation to his opinion that Mrs O'Brien was suitable to work unsupervised,, he had not talked to any employers, obtained any documentation, and was reliant on what Mrs O'Brien had told him. He did not consider that she had withheld anything relevant to an assessment of her insight, and had not subsequently identified anything of real importance which would cause him to change is view.
198. Mr Lynn was finally cross examined in relation to Mrs O'Brien's evidence in her most recent witness statement that the PCT had funded another practitioner's NCAS assessment and mentoring. Mr Mylonas, from personal knowledge, knew the name of the practitioner in question, and asked Mr Lynn about the support, as chair of the local dental committee, he had given that practitioner compared to that given to Mrs O'Brien. He had attended part only of one day out of a two week hearing. Mr Lynn said the hearing was on the Isle of Wight, he had not known how long to put on his parking ticket before catching the ferry, and had had to leave the hearing in the early afternoon.
199. It was put to Mr Lynn that he had lost objectivity in the present case some time ago. He had ignored evidence from dental practitioners, overwhelming evidence that Mrs O'Brien had lied to him and that she had failed to show insight. Mr Lynn replied that his assessment of Mrs O'Brien

was fair and rigorous and objective and reasonable. He had not been asked to investigate the matter or take evidence from other practitioners. His opinion was based on information received.

Evidence of Mrs O'Brien

200. Mrs O'Brien's case is that she should be restored unconditionally to the DPL. Questioned as to whether she would alternatively argue for conditional restoration to the DPL, she submitted that she would and would consider support from her mentor as a suitable condition. The Board's case, in Mr Mylonas' closing submissions, is that removal should be confirmed, and that Mrs O'Brien is unsuitable because of the lies she has told during PCT and Tribunal proceedings, and no remediation is possible. It is in that context that her evidence is now summarised.
201. In her first statement, dated May 2012, Mrs O'Brien said she agreed to all the conditions in the contingent removal decision of 13 July 2012. She stated that she had carried out, and submitted to the PCT, a patient satisfaction survey undertaken at the Barn in May and June 2011 as required in condition 11. She had successfully completed a remedial course at Kings College in August 2011. She referred to her honorary position at the Kings College Dental Institute as a clinical teacher from February 2012.
202. She said she left the Barn in October 2011, but did not explain the reasons. She referred to the fraud allegations having been closed because they had not been able to be substantiated.
203. She said that in February 2012 she received a letter from Mr Gallagher which set out concerns about treatment and care provided to patients between March and April 2011, stating that this was the first time any concerns about her practice there had been raised, despite her having regular meetings with Mr Gallagher to discuss any issues. As soon as she became aware of the allegations she discussed them with Mr Lynn. Although there had been an earlier written complaint, Mr Lynn advised her that there was no need for her personally to report this complaint.
204. Mrs O'Brien's first supplementary witness statement is not dated but was submitted in accordance with directions and would have been made in, or around, February 2013.
205. She said that her employment at IDH Banbury was terminated immediately after her removal from the DPL was confirmed on October 18 2012. She set out her reasons for accepting work at this practice, despite the long commute. She said that she would usually arrive at 8.30 am but would telephone when she knew there was a chance of being late. She had received a warning letter regarding lateness in September 2012.
206. She described her dental nurse as taking over discussions, making treatment difficult to manage, and said that she discussed this issue with Mr Lynn. The nurse was not interested in discussing matters when she tried to follow Mr Lynn's advice. The nurse did not respond well to Mrs O'Brien's using the fact that she is bilingual to communicate with central European patients.
207. She arranged for Mr Lynn to observe her at work, and took account of his feedback in relation to a number of issues including body posture, use of a

certain kind of tray, use of tapered burs and retraction cords (which she said the practice did not have) and temporary dressings.

208. Every day both she and Mr Downes were at the practice they had case-based discussions and in addition, on Mr Lynn's advice, set up a weekly meeting. She did not see Mr Downes' reports to the PCT until September 2012 and was not aware of the issues mentioned in them. When she tried to speak to Mr Downes on 28 September 2012, she said he seemed put out. He had said she should agree to the PCT's investigation findings, but she said she could not do that in relation to the fraud allegations, which had now been disproved. She accepted that there had been discussions with Mr Downes about her use of local anaesthetic on children, and that Mr Downes' advice was contrary to that of Mr Lynn.
209. She said she received the PCT's decision to remove her from the DPL by email late evening 5 October 2012, and discussed this openly with Mr Downes at the earliest opportunity which was in the staff room on Tuesday 9 October. She said that Mr Abbott was also present in the room at the time.
210. She said that during her time at IDH she had received only one written complaint, which was resolved the next day to the patient's satisfaction.
211. While at IDH she had been keen to carry out patient satisfaction questionnaires in order to satisfy condition 11, so she could reassure the PCT of her fitness to practise and improve her clinical abilities. She sent letters to the PCT in June, July and August 2012 and finally obtained consent to use the IDH form on 10 September 2012. 68 questionnaires were submitted for analysis once consent had been granted. She felt it was a shame that the PCT had rejected the information provided, which was not in the spirit of the work undertaken to try to reassure them of her fitness to practise. She had told the CPP that she would have been happy to undertake further patient satisfaction questionnaires if the PCT was dissatisfied.
212. She referred to Dr King's report and the CPP's observation that she had not raised any objections as to the contents or accuracy of this report. As advised by Dr King, she had telephoned to discuss the report, but Dr King's first words had been that she wasn't changing the contents and so her feelings or feedback on contents were never considered at any stage. The conversation with Dr King had related to how her parents had brought her up. She felt Dr King's opinions were unfair and biased on this issue.
213. She said she had discussed all treatments and proposed treatments with Mr Gallagher during case based discussions twice a week, and she was aware of the need for his guidance on Cerec crowns. What Mr Gallagher referred to now as criticisms may at the time have been advice or suggestions. Her diary notes confirmed this.
214. She referred to Mr Gallagher's "form requesting information on poor treatment", which had been given to her in passing, and she had completed in anticipation of the next meeting on 11 August 2011. However Mr Gallagher had cancelled that meeting and subsequent meetings. He had had no interest in reviewing her treatments or proposed treatments after 28 July 2011.
215. She described work, courses attended and observations undertaken to keep her knowledge and skills up to date despite not being in dental practice since leaving the Banbury practice.

216. She concluded by saying the process since May 2010 had been financially and personally stressful, and had led to her husband's health declining and to divorce proceedings.
217. The second supplementary witness statement is dated April 2013 and allowed Mrs O'Brien to respond to matters raised during the hearing of the PCT's evidence. She provides detailed clinical comments on matters of clinical concern raised in the PCT witnesses' statements and oral evidence, where this was considered.
218. She says she does not agree with Mr Gallagher's evidence that complaints were discussed during the fortnightly meetings. She felt that these were discussions of clinical issues, not complaints. She says that at her dismissal meeting on 6 October 2011 she was given a summary sheet dated 8 September 2011 which she had not been given an opportunity to discuss. She was at a loss to see how she could have been more engaged at the Barn. She stated that she corrected a factual error in an email from Mr Matthews, who had been mistaken to say there was a mention of reducing work hours. She said she was unaware of any correspondence the practice had sent to Mr O'Brien.
219. Mrs O'Brien stated that the concerns set out in Mr Gallagher's letter of 7 February 2012 had not been raised previously and it was strange that he raised them at that later time, after receiving repeated requests from her relating to payment for work completed in September 2011.
220. Mrs O'Brien disputed Ms Haslikova's evidence that she had discussed her past with her, and thought Ms Haslikova would have been given the information by Mr Abbott.
221. She was not aware of any complaint made to her about the problem with local anaesthetic mentioned in Ms Haslikova's evidence.
222. Ms Haslikova had made the wrong assumption when seeing her arrive at the surgery with a McDonald's bag. She had simply been clearing out her car. She had only been late on three occasions in the morning because of traffic accidents and once after lunch after being asked to talk to an EDF representative. She was not aware of any patient being kept waiting.
223. Ms Haslikova had been wrong about the date being written on a lab docket. Ms Haslikova had taken the docket before Mrs O'Brien had written a date down. Ms Haslikova had later shouted at Mrs O'Brien about this matter.
224. She said she was not aware of any concerns raised by Ms Haslikova. Mr Abbotts had not mentioned these to her, and Mr Downes had not raised concerns other than local anaesthetics on children, matrix bands, and BPE scores. She had taken advice from the British Peridontology Society website about BPE scores, and agreed with Mr Downes to undertake full six pocket charting where BPE scores were 3 or 4. Her original findings were supported. She explained that she did use matrix bands except in certain stated circumstances where they were not appropriate.
225. She confirmed that not only was she unaware of the concerns raised by Ms Haslikova to Mr Abbotts, set out in his letter to Ms Howard, and the need for an action plan described in Ms Howard's oral evidence, but also she had had no communication in writing about concerns raised. She would not

have withheld information about the CPP decision to remove her from the DPL, though she was not aware that it was grounds for dismissal.

226. She said she had discussed her removal from the DPL on 12 October with Mr Downes and could not understand why he did not remember this. The reason she had not come to work on the days of the cancelled hearing was that she had booked those days out as holiday. She enclosed what she described as her minutes of the IDH dismissal hearing.
227. She felt she may have misjudged Dr King, but having been told Dr King would only correct factual errors, she saw no point in discussing anything she thought was incorrect, as Dr King would not change her opinion. Matters had been made worse by the fact that Mr O'Brien had accessed Dr King's report, owing to it being sent to Mrs O'Brien's Hotmail account unsecured. This was due to document access difficulties.
228. There had been no failure to disclose previous employment history to Mr Wray: she had satisfactorily completed her vocational trainee stage; she had resigned from St Anne's dental practice (although her employer also terminated the employment); she had resigned from the Oakley Dental Practice.
229. She had asked Mr Abbott to comment to the Tribunal on what happened in relation to informing the practice about the CPP verdict in October 2012. He had politely refused to be involved.
230. Mrs O'Brien said she had sent the Barn patient satisfaction surveys to the PCT after consulting Mr Gallagher. The results had been sent to Mrs Copage both in September 2011 and again in February 2012. With hindsight she realised that sending the results of the questionnaire to Mrs Copage at these times could not satisfy the condition of developing the questionnaire with the PCT, but it would have been helpful if the PCT had told her. However it was not stated anywhere in condition 11 that the questionnaires could not be submitted after consent from the PCT had been granted. She understood the words "develop [with the PCT]" to mean "work" with the PCT, not to mean "approved" by the PCT. The PCT had not made this clear. She appreciated that data collection was largely completed before the questionnaire was agreed with the PCT, but this did not alter the results or the spirit in which the work was undertaken. Patients had been advised not to sign the questionnaires, though they could do so if they felt strongly that they wished to. Given the time the PCT often took to respond to her letters, she could be forgiven for thinking these questionnaires and the methodology were acceptable to the PCT. She would have been happy to complete another patient satisfaction questionnaire if the PCT felt that approval was indeed necessary. At the time she thought she understood what was required, and there was communication between Mrs Copage and Gordons, her solicitors, about wording and amendment of conditions. The PCT, in changing the meaning of conditions without communicating this, made it difficult to understand what was to be required, including not explaining that "develop" meant requiring approval or permission.
231. Mr Gallagher's clinical views, according to Ms Easterby-Smith, were in opposition to those of Professor Dunne, but her view was that the latter had observed her work directly while Mr Gallagher had not.

232. She had taken on board all criticisms made in former practices. The defence union and Mr Lynn had reassured her that she had satisfied the remaining PCT conditions. She had tried to fulfil Dr King's recommendations, but they were costly.
233. Mrs O'Brien included with the exhibits to her witness statement, an email she sent to Mr Downes after the March hearing.
234. Mr Mylonas started the cross-examination of Mrs O'Brien by stating that the primary case of the PCT was that she had deliberately and dishonestly misled the people she had worked with, the PCT and the Tribunal, and that she lacked insight into her dishonesty.
235. Mr Mylonas referred her to the letter from the PCT of July 2010 and noted that Mrs O'Brien had told the panel that she had never been the subject of a complaint. She replied that at the suspension hearing in May 2010 she had been asked about formal patient complaints only, which she understood to be written complaints. It was put to her that she had not been asked if there were any written formal patients complaints, that the question had not been put in that way. Mrs O'Brien said her recollections were different and that "you do not have a verbatim transcript". She said the hearing lasted 2½ hours, rather than one hour, and that she had been quizzed by 10 panel members, all asking her questions, not giving her the chance to finish answers. She said she had forgotten to mention one patient complaint but, with the help of a solicitor, Ms Taylor, she had provided evidence in written submissions after the hearing.
236. Mr Mylonas asked her why these issues were not expressed at the time. In particular, he put to her that her specialist solicitors, Gordons, who were present at the hearing, never made any representation to say that their written notes did not accord with the serious criticisms levelled in the decision letter at Mrs O'Brien. She agreed that no such representations had been made.
237. Asked about the reference in the July 2010 decision letter to her statement to the May hearing that she had an unblemished work record, she said she had said this because there had been no formal written complaints, and she believed this to be true. She said she had answered the questions put to her at the suspension hearing concerning her employment history, and issues arising in the vocational training and subsequent places of work. She had not seen these as issues and problems, but as normal in the development of a professional career.
238. Mr Mylonas put to her that she had had problems in every practice, including the last one where she had been sacked, and that she should have thought this was relevant. She replied that she had not had problems with regards to patient safety, and had answered questions in relation to each of the other workplaces as asked.
239. Mr Mylonas put it to her that she had first of all been asked about her work history, and had volunteered the information that she had not been the subject of any complaints, had an unblemished work record and had never experienced problems. The answers given to the hearing were therefore misleading. She replied that she had given honest answers to the hearing, but the events that occurred three years ago.

240. She said that she had not felt able to answer questions fully, that before one question was answered, another question was raised; that she was given a list of the allegations only 10 minutes before coming into the room. She understood the purpose of the hearing as relating to patient safety, and was not aware of any patient complaints.
241. Mr Mylonas then talked her through the PCT's evidence in relation to complaints raised at all but one of the practices where she had worked, starting with her vocational training practice in Fordingbridge. One of her trainers, Mr Bloor, in an interview by the PCT, had mentioned verbal and written complaints. Mrs O'Brien said she knew about the complaints, which were about patients not being happy to be told they had gum disease. She agreed that these constituted verbal complaints and that she had been made aware of them. It was put to her that in a previous answer to Mr Mylonas she had said that there had been no patient events, and had answered this by saying that she had had no written complaints. She was referred to an e-mail sent to her on 3 March 2008 which included mention of verbal and/or written complaints to be explored with Mrs O'Brien. Indeed in a previous e-mail of 28 February 2008, she herself had referred to letters of complaint. In reply, she told Mr Mylonas that there were no letters of complaint. She knew there was an issue and she was keen to deal with it when it was brought to her attention. She said that a verbal complaint is unsatisfactory compared to a written complaint.
242. She was asked about conversations with Mrs Gannon, her second vocational trainer. Mrs O'Brien said they had several tutorials where Mrs Gannon became very frustrated with her because she could not get her concerns across to Mrs O'Brien. She said she had eventually clarified things with Mr Bloor, who said that five or six patients were unhappy about being told they had gum disease. She expressed the view that this was because her predecessor had not relayed information to patients about gum disease.
243. Mr Mylonas asked her about Mrs Gannon's concerns that people could not be stopped from passing vocational training and that, after the experience with Mrs O'Brien, she had stopped taking trainees. It was clear that Mrs Gannon was raising complaints and discussing them with Mrs O'Brien. Mrs O'Brien said she had wanted to address the issues raised by Mrs Gannon, but Mrs Gannon had been frustrated in her ability to relay what the issues were. It was put to Mrs O'Brien that this was the first time she had mentioned problems at Fordingbridge, even though Mrs Gannon had said that she had had raised the issue of complaints in her tutorials with Mrs O'Brien. Mrs O'Brien said that she was not suggesting that Mrs Gannon was mistaken, but what Mrs Gannon had been trying to convey at the time was not clear, despite numerous sessions. She had not been told about complaints.
244. Mr Mylonas repeated the question, saying that it was clear that complaints had been raised in tutorials and that she had been asked to reflect on them, and Mrs O'Brien agreed that this was the case.
245. Mrs O'Brien was referred to a letter from her solicitors sent after the May 2010 hearing, in which they said that Mrs O'Brien would like to apologise sincerely for her failure to give full instructions about her employment history to date. It was put to Mrs O'Brien that the non-disclosure about the problems at Fordingbridge and subsequent serial sackings were not the sort of detail

that would be forgotten when giving instructions to a solicitor. Mrs O'Brien said that she had not had time to discuss these as the focus at the May 2010 hearing was on the issues at the Eclipse Practice. It was put to Mrs O'Brien that the letter did not suggest that the way the questions had been posed by the panel in May 2010 had been as narrow and specific as Mrs O'Brien was now suggesting. She agreed with that. It was put to Mrs O'Brien that the letter had identified the matters which Mrs O'Brien wished to continue to challenge, but that it also confirmed that Mrs O'Brien recognised serious concerns had been raised about her practice and that these needed to be addressed. The solicitors' letter made no reference to, or criticism of, highly specific questions being put to Mrs O'Brien by the panel, now being raised by Mrs O'Brien in her oral testimony to the Tribunal. She replied that she was acting on the advice of the defence union and solicitors at the time. Mr Mylonas put to Mrs O'Brien that, although she now raised very serious allegations about the way the panel in May 2010 carried out its investigation, she had never raised these with her solicitors at the time, or they would have mentioned them in their response to the PCT.

246. At this point in proceedings, Mrs O'Brien was advised by the Tribunal that, although she had chosen to refer to conversations with her solicitors, she had done so without the benefit of legal advice, and did not have an obligation give evidence about the communications between herself and her solicitors.

247. She then stated that it was not advice from Gordon's solicitors that had prevented her from raising at an earlier stage the criticisms she now made of the panel's process. She repeated that everyone had been so keen to ask questions, the allegations had been very wide ranging, and she had been keen to answer every question fully, so it was a tiring time for everyone.

248. At this point Mr Mylonas referred Mrs O'Brien to the hearing record. He pointed out that, contrary to her assertion that there was a large number of people all asking questions from the panel, there were actually only three panel members present, and in addition four persons present from Mrs O'Brien's own team, there to support her, and four other persons in attendance. Mr Mylonas pointed out that the hearing opened with Mrs O'Brien's own solicitor providing background information, including Mrs O'Brien's history. Mrs O'Brien would have known when her solicitor was giving the panel her reasons for her leaving practices, that it was inaccurate, and that in fact she had been sacked from several. Mrs O'Brien had made no attempt to mention this fact at any point, as was shown in the minutes. Mrs O'Brien said this was because there was no time, her solicitor had only asked her about her background since qualifying, where she had worked, the time she worked, but not the ins and outs of specific practices. It was pointed out to Mrs O'Brien that her solicitor had given the panel Mrs O'Brien's stated reasons for leaving these practices, which she could only have known from talking to Mrs O'Brien. The reasons recorded in the minutes for leaving the Salisbury, Fareham and Wiltshire practices were not all true. Mrs O'Brien replied that they were true in so far as the reasons given contributed to the reasons for leaving, but in hindsight she could have given more information. She said that, at the time she spoke to her solicitor, they were focusing on what would be happening in the hearing.

249. Mrs O'Brien was asked specifically if she agreed that she had been let go by those three practices. Her answer was that she had had concerns about

cross infection issues at Salisbury but accepted that she had been terminated. There had been a lack of work in Fareham but she accepted that the practice had let her go. Asked about the Wiltshire practice she accepted that she had been given three months notice. She said this was after being told she was not doing enough amalgams on children or enough root fillings. Asked if that meant she had been let go by all three practices, she said "in a sense you could say that". She accepted that she had not told her solicitor that she had been let go, and when asked whether she had given her solicitor an untruthful explanation, she said it "would appear that way", but it had not been her intention though she could have been more candid, she supposed.

250. She was reminded of her earlier answer, that she thought the questions at the May 2010 hearing related to formal written complaints. She accepted that this was not confirmed by the transcript and that the questions were not narrow in this way.
251. Mrs O'Brien was asked about the five practices listed in the opening remarks of her solicitor to the panel. She was referred to a copy of her CV in the papers which showed employment at another practice, the Oakley practice, which had not been mentioned in the employment history given to the CPP in May 2010. She was asked why she had not mentioned it to her solicitor when setting out her history. She said that she would hazard a guess that it was because they were pushed for time [before the hearing] and that was why it did not get mentioned. Mrs O'Brien says she had not been let go from Oakley, but she had issues with the quality of dental care. She was not aware of any complaints against her at that practice. She was asked why, with a history of repeated terminations of employment, she had not mentioned at the PCT hearing the only practice where she had not been terminated,. She said it had slipped her mind. She had only been working there one and a half days a week, and at the time of briefing her solicitor she had just been thinking about Eclipse.
252. Mrs O'Brien was referred to the CV she had submitted to Eclipse. Although she had been working at the Oakley practice from May to September 2009 and this application was submitted in March 2010, the Oakley practice was omitted in that CV. Mrs O'Brien said that she had revised her CV and she did not know why there was no reference to the Oakley practice.
253. Mrs O'Brien was asked why in her witness statement of May 2012 she had said that she had left the Barn, but had not mentioned the fact that she had been terminated. She accepted that this was the case, and that neither she nor Mr Lynn mentioned this fact until Mr Gallagher's own statement was produced, making it clear that she had been sacked. She said she was unaware she had to clarify the point. She was asked why in the same witness statement she referred to the letter of February 2012 being the first time that any concerns about her practice had been raised despite regular meetings with Mr Gallagher. She replied that this was the first time the list of names was provided. She did not mean to say that she had not had discussions with Mr Gallagher.
254. She said she spoke to her mentor on an almost daily basis, and agreed it was important to keep him informed about complaints.

255. She was referred to Mr Gallagher's witness statement. Mr Gallagher had said that within weeks of Mrs O'Brien joining the practice he had become aware of issues of clinical concern, that complaints were received weekly, that Mrs O'Brien was aware of them, that patients were leaving the practice because of this, and that Mrs O'Brien had agreed to meet every week with him to discuss complaints. He had referred to correspondence between himself, Mrs O'Brien and Mr O'Brien. Mr Mylonas put it to Mrs O'Brien that, in light of this evidence of Mr Gallagher communicating his concerns to her, it must have been clear when she received the performance review agenda of 28 July 2011 that Mr Gallagher had received complaints about her. She agreed, when asked for a yes or no answer, that it was clear there were complaints and concerns about her practice. She agreed that, in so much as matters were raised on this form, it was not the first time concerns had been raised. However she said she had not been lying in her witness statement, as she had had no specifics about what was being referred to on the form. With hindsight she said she should have phrased it better in her witness statement.
256. Mrs O'Brien said she had raised this form [the performance review agenda for 28 July 2011] with Mr Lynn, but she could not say exactly when. She had been hoping to speak to Mr Gallagher about the matters which concerned him. It was put to her that, despite saying she spoke to Mr Lynn on an almost daily basis and that it was important to keep him updated, Mr Lynn, in his written reports, made no mention of this important document until the following year, and had told the Tribunal that he was not aware of it until 2012. She said that she had discussed it with her mentor but did not know when she had discussed it.
257. It was put to Mrs O'Brien that Mr Lynn had had a review meeting with her on 19 September 2011, in which he became aware that Mrs O'Brien had been sacked by Mr Gallagher, but in his report of this meeting there was no mention of the performance review agenda of 28 July. She was asked if she had deliberately withheld it and kept Mr Lynn in the dark about her history of complaints. She said she did not believe she would have done so, and had been very candid with her mentor. Her recollection was that she had always spoken to him about events at the time they unfolded. However she wanted to discuss things with Mr Gallagher, so she may not have had a discussion with Mr Lynn about this agenda at this time.
258. Mr Mylonas put it to Mrs O'Brien that, although she was fired from the Barn on 28 August 2011, Mr Lynn had said that he did not become aware of this fact until 19 September 2011. Mrs O'Brien said she thought she did disclose it to Mr Lynn earlier, and indeed she must have done so, because she had asked him for a reference. This would have been sometime between 28 August and 4 September. She thought she would have telephoned Mr Lynn.
259. She was asked if, given that both her own and Mr Lynn's witness statements were initially silent about termination at the Barn, it had been an agreement on their part not to disclose this fact and let someone else refer to it. She denied this.
260. She was referred to the circumstances of this termination from the Barn. There had been an earlier meeting on 28 August terminating her on 3

months notice, but on 3 October 2011, Mr Matthews had written to her to invite her to the meeting on 6 October, at which she was then required to leave immediately. Mr Matthew's e-mail to Mrs O'Brien on 3 October had stated the following: "As I mentioned on the phone, we have had complaints from four sets of patients about recent treatment received funding and each now wish to leave the practice, namely [in the tribunal copy of the actual names are tippexed out] ". Mr Mylonas pointed out that in her witness statements, Mrs O'Brien had said no concerns were raised with her until February 2012. Mr Mylonas put it to her that she would have been aware from this e-mail, and, from the conversations referred to in it, of complaints. In fact, she had replied to this e-mail querying the accuracy of other matters, and had not disputed these references to previous discussions about patient complaints. She replied that she did not have the names of the patients, had intended to discuss the complaints at the meeting on 6 October, but was given no information or opportunity. She did agree, however, that she was aware of concerns, as evidenced by this e-mail.

261. The following section of the email from Mr Matthews was read out to Mrs O'Brien: "you will know from recent conversations with him, that Alistair had questions of your dentistry and is giving you advice and chances to improve over the months that you have been here..." She replied that the issues had been just about Cerec provision. It was put to her that this could not be true, since Mr Matthews' e-mail referred to named patients and concerns. She said this was not something to be written about in an e-mail. She agreed that her witness statement could have been better phrased when she said that February 2012 was the first time that any concerns about her practice had been raised.
262. Mrs O'Brien said she believed she had told Mr Lynn immediately about the four patients identified, via their initials, in Mr Matthews' e-mail.
263. Mrs O'Brien was referred to an e-mail from Mr Gallagher to Mr O'Brien dated 21 December 2011, which included detailed discussion of Mrs O'Brien's claim for unpaid work, and an offer of settlement from Mr Gallagher of £500. The e-mail referred to "yesterday's e-mail". It was put to Mrs O'Brien that her husband had been negotiating on her behalf only the day before. Mrs O'Brien said that she had no knowledge of this correspondence, or of the proposed settlement, or that it had been rejected by her husband.
264. Mrs O'Brien was referred to the very positive reference which Mr Lynn had written for her in October 2011. This made no mention of her having been let go by all but two of the practices she had worked in. She said that she had told Mr Lynn about being let go by those practices and that the reference was written by Mr Lynn in that knowledge. She had not deceived Mr Lynn by telling him that there had been no problems with her practice. She had been perfectly honest with Mr Lynn about what was going on at the Barn because she regularly sought his advice. She was sure she would have mentioned the four patients whose names were raised by Mr Matthews on 3 October 2011.
265. She was asked if she could comment on the fact that Mr Lynn had provided a number of written reports which summarise the information received from Mrs O'Brien and that none of them mentioned any patient complaints. She was asked whether she had told Mr Lynn and he had not

recorded them, which would be a serious breach of his duty, or whether she had not told him. She answered that she had not been told of any other complaints. She was aware of one complaint, received in writing, shared with Mr Lynn. It was put to her that the performance review agenda referred to complaints in the plural, and that Mr Lynn, in that case, must have deliberately omitted mention of such failings. She said that she had discussed the review form with Mr Lynn as soon as it became clear that she was not going to be able to discuss it with Mr Gallagher. Asked if Mr Lynn was mistaken or not telling the truth about when he became aware of those complaints, she said Mr Lynn had spoken from his recollection.

266. It was put to Mrs O'Brien that, in Mr Lynn's report of 19 September 2011, he made reference to Mrs O'Brien being asked to leave the practice because she was not making sufficient use of a Cerec machine and not generating enough income. The next report, on 6 January 2012, made no mention of Mrs O'Brien reporting any problems relating to practice at the Barn or to the performance review agenda. Again, in his report of 28 March 2012, there was no mention of any of these issues. Mrs O'Brien accepted that she should have checked Mr Lynn's report, that she was sure she had discussed the contents of the letter of 7 February 2012 from Mr Gallagher. She denied that she had withheld evidence from Mr Lynn because she feared losing an ally if she flagged up her failings.

267. She was questioned about Mr Downes' evidence. She denied that she had had a conversation with Mr Downes about her work history and why she had left previous practices, saying Mr Downes had not probed this. She said she had told Mr Abbott about her history, and this may have been passed on to Mr Downes. She and Mr Downes had discussed difficulties in obtaining payment after leaving the Barn practice, something of which Mr Downes also had experience in the past. Mr Mylonas pointed Mrs O'Brien to Mr Downes' specific recollection that he did have a conversation with Mrs O'Brien about her employment history. She then said she could not recollect "where we discussed my employment history". It was put to her that the account given by Mr Downes, of concerns fabricated by Mr Gallagher because of a dispute about payment, was very similar to that set out by Mrs O'Brien in her witness statement,. She agreed that it would appear to be the case that she had herself told Mr Downes about her employment history. The tribunal asked her if she meant by that answer that she had had a conversation with Mr Downes, she agreed that she had done so.

268. Mrs O'Brien was questioned about her timekeeping at IDH. She had been late on three occasions in the morning, twice because of an accident and once because of roadwork's, and once after lunch when she had been caught up answering questions from an EDF representative, who would not let her go and she did not want to be rude. She was referred to Mr Abbott's e-mail to Ms Howard, in which Mr Abbott said there had already been two conversations with Mrs O'Brien about timekeeping, which had not resulted in improvement. She was referred to the wording "consistently late". She said that she had asked the practice to provide her with a time log, which was not forthcoming, and she did not believe she was consistently late. She was asked about the reference in the e-mail to being "once again" 12 minutes late. The reason, she said, was a broken down lorry on the day the e-mail was sent. She said she had given this explanation to Mr Abbott, and did not know

why the e-mail referred to a lack of explanation. Despite having given an explanation, she did not wish to challenge the warning.

269. Mr Mylonas referred Mrs O'Brien again to Mr Downes' evidence about what she had told him about her reasons for leaving the Barn. He asked if she accepted that at that time, September/October 2011, she demonstrated no insight into her own failings in relation to previous employments. She answers "yes I suppose so".
270. Mrs O'Brien was then questioned about when she disclosed to Mr Downes the October 2012 decision to remove her from the DPL. She said she was clear that the conversation had occurred on Tuesday, 9 October 2012. Mr Downes had approached her. Mr Mylonas pointed out that Mr Downes, in his report of October 2012, had said that Mrs O'Brien had made no attempt to inform the practice until confronted by Mr Abbott on 18 October. Mrs O'Brien had then told him that she had not received details of the verdict until 17 October. Mrs O'Brien denied this, and said that Mr Downes had asked her the day after the oral hearing how it had gone. At this point she did not know the outcome and had said it had gone as well as could be expected. But she said she had got the e-mail from the PCT late in the day on 5 October, and the first opportunity to speak to Mr Downes was on 9 October. She said that the e-mail told her that it had not gone well, that she had lost her performance number, and that it could be the subject of an appeal. She had told Mr Downes at this meeting that the hearing for mid-October, into the removal of the condition for workplace supervision, had been vacated. Asked by Mr Downes if she could continue working during this interim period, she had told him that she could.
271. Mrs O'Brien went on to say that she had told Mr Downes that she had been informed in the e-mail that she was to expect a letter in the post. She said she was not sure if this would have the same content as the letter attached to the email, but she had said to Mr Downes that as soon as she had the letter she would show him. In fact she did not receive the letter, because it was sent recorded delivery, until 17 October, the day before her dismissal meeting.
272. She was asked about her reasons for sending an e-mail to Mr Downes after his testimony to the Tribunal in March 2013, and replied that she had not been asking him to change his view, as she had not expected him to be recalled, but she wanted him to try to remember the conversation which had taken place on October 9 2012.
273. Mrs O'Brien was asked about the fact that she had said, in her oral testimony above, that she had spoken to Mr Downes at the first opportunity following notification of the outcome of the hearing in October 2012, but, in her witness statement, she had said that Mr Downes had instigated the conversation. Furthermore, in the e-mail to Mr Downes she sent after he had given his oral evidence to the Tribunal, she had referred to the conversation happening on 12 October and being "a passing conversation". Mr Mylonas pointed out that the e-mail sending the attached letter of decision of the PCT panel to Mrs O'Brien on 5 October had made no mention of a further letter to follow. It had provided full details of the hearing and had been signed off by the chair of the panel, and had referred to a summary of her rights, including right of appeal. Mrs O'Brien said she accepted this, and that it was the same

letter she received in the post later, but said that she might have worried [at the time] that it would not be the same letter, and she would not want to give the wrong information to Mr Downes. She said she now knew it sounded silly.

274. It was put to her that, in her e-mail to Mr Downes after his oral evidence, it was not true to say to him that she had been told to expect further details. She replied that she was not aware that the letter attached to the e-mail would be the only letter. She then referred to Mrs Copage's e-mail which said that there would be a password coming under separate cover to enable her to open the letter. She said that when she told Mr Downes that her hearing had been unsuccessful, she was expecting another letter and had thought the email about the password meant a separate letter was coming.

275. It was pointed out to Mrs O'Brien that the e-mail containing a password had been sent one minute after the e-mail containing the attachment, and that in order to know the outcome Mrs O'Brien would have had to open the e-mail containing that password. She was wrong, therefore, to tell Mr Downes in the e-mail she sent him after the hearing that she was expecting another letter. In response she said she had been foolish to expect another letter, but did not want to give Mr Downes misleading information. She referred to the fact that she did indeed receive a letter the following week. She said, from memory, that she thought there would be a subsequent letter because Mrs Copage had told her, adding "don't quote me on that". From memory she thought there was a separate e-mail or reference to the fact that the letter would be posted. She said she had received the e-mail very late on a Friday evening. She was waiting to receive the subsequent letter in the post, and if she had then had any confusion about it she would have been able to call her solicitor to ask for advice. She had not spoken to her solicitor or the defence union before speaking to Mr Downes on 9 October. She did not see a reason to bother her solicitor over the weekend.

276. It was pointed out to Mrs O'Brien that, contrary to this answer, there was an e-mail from the defence union dated 8 October 2012, addressed to the Tribunal, saying that her solicitors had received instructions to withdraw the original appeal. This could only have been written on the basis of a discussion between Mrs O'Brien and her solicitors over that weekend. She was asked if she accepted that between receipt of the e-mail with the panel decision and the date of her claimed conversation with Mr Downes, she had indeed spoken to her solicitors. She replied "it would seem so, I must have done".

277. Mr Mylonas pointed out that as there was sufficient opportunity to instruct her solicitors to withdraw the appeal, there was opportunity to clarify whether any more information about the panel outcome was to be expected. Mrs O'Brien agreed she could have clarified this but did not remember having done so.

278. Mrs O'Brien had produced, exhibited to her second supplementary witness statement, a document dated 18 October 2012 headed "IDH dismissal hearing". She told the tribunal that she drafted this statement the day she got home from the dismissal hearing. In this account, Mr Mylonas pointed out, Mrs O'Brien had said that she had been given the outcome of the panel hearing verbally on the telephone. Mrs O'Brien said she did not now know what she was referring to. Mr Mylonas put it to her that this indicated

that she was claiming in this account that she had received a verbal account about the outcome, but that the first written information was received on 17 October. This was, he put it to Mrs O'Brien, a lie. In response Mrs O'Brien said that perhaps the phone call had taken place with her defence union representative.

279. Mrs O'Brien agreed that in this account, which she claimed was contemporaneous, she had said that she had not received notification until 17 October, whereas in reality she had received it on 5 October. She agreed that she should have written in her account that she meant she had not received a letter in the post until 17 October, which was what she meant.
280. Mrs O'Brien speculated that the phone call referred to in the contemporaneous account may have been to a defence union representative about the Tribunal hearing. However Mr Mylonas pointed out that her own record made no mention of the phone call referring to that matter, and suggested Mrs O'Brien was trying to create the impression of not being aware of the verdict until she received a hard copy. She denied this.
281. It was put to Mrs O'Brien that, in her criticisms of the practice at IDH, including the unavailability of certain materials, her evidence had been contradicted by Mr Downes. She said that she had been told the materials were not available, Mr Lynn had advised her to get them, and she had been given authorisation to place an order by Mr Abbott. She agreed that it would have been appropriate to talk to Mr Downes about the unavailability of these important materials. Given the importance of tapered burs, she agreed, with hindsight, she should have spoken to Mr Downes. It was suggested to Mrs O'Brien that the first time she raised these concerns about unavailable materials at the practice was after she had had an unfavourable report from Mr Downes. This pattern of being critical of practices when she was criticised herself had, Mr Mylonas suggested, also occurred at the Barn. She said she did not think so.
282. Mrs O'Brien was asked to comment on some of the matters she was reported as having told Dr Denman. She had complained about the way the PCT hearing in May 2010 had been held, giving the impression that she had been handling a difficult hearing with little support. Mr Mylonas put it to her that she had been supported by her solicitor, her defence union representative, and her husband. She answered that these people were there in a supportive role, but could not help her to answer questions.
283. Asked why she had told Dr Denman (in September 2012) that the PCT allegations were unfounded, Mrs O'Brien said that at that time she had not seen Mr Downes' reports. She was reminded by Mr Mylonas that she would, by this point, have seen Mr Downes' 14 week report of August 2012. That report referred to the forthcoming hearings of the PCT and Tribunal, and recorded that Mr Downes had tried to speak to Mrs O'Brien about her priorities, her ability to work in any practice, his concern that she had fallen out with all of her previous practices, and that she now continued to maintain that the original judgement of the PCT was unfair and not based on genuine patient complaints. Mr Mylonas put it to her that Mr Downes was trying to make clear his opinion that Mrs O'Brien had a problem dealing with past events, but Mrs O'Brien had not mentioned any of this to Dr Denman. Mrs O'Brien replied that she could not recall exactly when she had seen Mr

Downes' 14 week report, but when asked why she had not told Dr Denman that her current workplace supervisor had told her she had problems with past issues, she said "I don't suppose I did clarify that with Dr Denman".

284. Mrs O'Brien was also referred to what she had said to Dr Denman about the absence of full confidentiality of Dr King's report. She replied that the report had been hacked by her husband because it had been sent without password protection. She said Dr King had not sought her prior consent when sending it unprotected, though she accepted she had told Dr King she could not manage to open it with the password.

285. Mrs O'Brien was referred to Dr Denman mentioning that Mrs O'Brien had told her that Dr King had recommended a clinical psychologist sitting with her while she worked, and accepted that this recommendation was not to be found in Dr King's report. She said it might have come up in conversation with Dr King. However Mr Mylonas put it to Mrs O'Brien that such a recommendation could not have been made, given the need for patient confidentiality, and she replied that she had not considered that. She was asked about the reference, in Dr Denman's report, to Dr King referring to difficulties with communication because of Mrs O'Brien being bilingual. Mr Mylonas pointed out that Mrs O'Brien's English was flawless and that there was no mention of such a problem in Dr King's report. Mrs O'Brien said she was sure that this was a matter which Dr King had raised in discussion.

286. It was put to Mrs O'Brien that she had told Dr Denman that things had gone well at the Barn until, having raised concerns about storage of materials, she was suddenly given three months notice, and that concerns about the quality of her work were only raised by Mr Gallagher after she had asked him for payment. It was put to her that she had left because of problems identified by Mr Gallagher and confirmed in Mr Matthews' email of 3 October 2011. Mrs O'Brien replied that these problems had never been fully discussed. She was reminded by Mr Mylonas of the fact that Mr Matthews' email referred to four patients, and to discussions about complaints over previous months, and that none of this had been mentioned to Dr Denman. She replied that she could have phrased it better.

287. It was put to her that she had told Dr Denman that she had asked Mr Gallagher for the patient notes following his letter detailing concerns about 15 patients, and that these notes had not been forthcoming. Mr Mylonas reminded her of the offer from Mr Gallagher in his letter detailing these concerns to allow her to view the notes by arrangement. Asked if Mr Gallagher had in any way obstructed her access to these notes she said it had been very difficult to get access to the notes. Asked to specify on what dates she had asked for the notes and in what way Mr Gallagher had refused access, she said she did not think he refused access. She thought she wrote asking for access and did not get a reply, so it was not until the notes were disclosed in the proceedings that she had a chance to respond to them. Mr Mylonas put it to her that the letter she had said she had written to Mr Gallagher had never been disclosed. Mrs O'Brien said she would check her emails.

288. It was put to Mrs O'Brien that she had misled Dr Denman by saying that there had been no discussion with Mr Gallagher about issues arising under Mr Gallagher's performance review agenda for 28 July 2011. She was

reminded of the contents of the email from Mr Matthews referring to discussions of patient complaints between Mrs O'Brien and Mr Gallagher and the reference to four specific patient complaints [see above]. She answered that she had not had notice of what had gone wrong, or what the issues were. Asked if she should have provided more information to Dr Denman she said that maybe she should have done so. Asked if she should have provided an honest account, she said with hindsight it may have been a very good idea.

289. She was referred to the parts of Dr Denman's report which set out how, according to Mrs O'Brien, Dr King had conducted the interview with Mrs O'Brien. [This is set out in the summary above of Dr King's evidence.] She was also referred to her witness statement where she had described Dr King's interview with her, and had said she had been prevented from providing feedback about Dr King's report. It was put to her that this was not consistent with Dr King's email specifically inviting correction of factual errors and the offer to append, unedited, any comments about other matters to the report. Mrs O'Brien said she had not sent any comments. She had hoped to do that by telephone, but Dr King had not seemed amenable. With hindsight she should have written to say what parts she disagreed with. She thought if she made critical comments in writing these would not be well received. Having now heard Dr King's oral evidence, she felt Dr King would have been more open to debating things than she perceived her to be in the telephone conversation. At the time she perceived Dr King as not willing to be open. It had been a difficult time for her and maybe she had not been as receptive to things as she would have liked to be.

290. Mrs O'Brien's testimony continued on the sixth day of the hearing.

291. She was asked about her record of her dismissal meeting with Mr Abbott, referred to above. She was asked why she had not disclosed this note previously. She had received Mr Downes' final report, which gave his version of what she had said at that dismissal meeting, on 3 November 2012. Mr Downes had stated in his report that Mrs O'Brien had not spoken to him about the panel decision to remove her from the DPL until October 17 2012. She agreed that she had been very surprised to read this. It was put to her that this would have prompted her, at that time, to look at her contemporaneous note, and she would have sent this note to her solicitor. Additionally she had made no mention of any contemporaneous note in an email to her solicitor dealing with the dismissal, sent on 2 November 2013. She replied that she had told her solicitor about this record, and that it would have been prudent to send it to her, but she could not be sure when she had that conversation. She believed it was on the day she was dismissed. Mr Mylonas put it to her that this was not consistent with her solicitor emailing two weeks later to ask for clarification of when she first told the IDH practice about the PCT decision. She replied that she had disclosed the record to her solicitor.

292. Mr Mylonas then said it was surprising that she had variously given different dates for when she had informed Mr Downes: 8, 9 and 12 October. If she had a contemporaneous note to refer to, these discrepancies would not have arisen. He put it to her that she had in fact created this note after hearing Mr Downes' evidence, otherwise it would have been referred to in the emails with her solicitor, and in the papers disclosed to the Tribunal. Mrs O'Brien denied this.

293. Mrs O'Brien was referred to her letter to Mrs Copage dated 2 September 2011 in which she had said she had proven that she had met the required professional and personal standard. It was a letter written four days after Mr Gallagher had given her notice, and in the knowledge that she had been sacked from all her other practices except Oakley, as well as having received notification of concerns about patient complaints from Mr Gallagher in the performance review agenda. It was put to her that she should have mentioned "a spot of bother" at the Barn. She agreed this might have been prudent. She would not however agree that she was lying; with hindsight it was something she should have addressed. She thought she was right to say she had proven her clinical abilities through successful completion of the Kings Course and the undertaking of the MJDF qualification at the Royal College of Surgeons. Her main concern in the letter to Mrs Copage was to get a resolution of the fraud allegations and to demonstrate her efforts to improve.
294. She was asked about the patient satisfaction survey when she had been at the Barn, which she claimed to have sent to the PCT prior to undertaking the survey for their approval. The PCT had said they had never received it. She was asked if she accepted that this survey was not a survey of her patients, but a survey carried out by the clinical manager at the Barn on an annual basis, and that it included only four of her patients. She agreed it was an annual practice survey and she did not know if it would satisfy condition 11 of the contingent removal. She said she had asked permission from Mr Gallagher to use it. She had acted naively. She should have chased it up having had no response from the PCT. It might have been clear, with hindsight, that this did not comply with the requirement to develop the survey with the PCT. She agreed it went no way towards satisfaction of condition 11.
295. It was put to Mrs O'Brien that Mr Gallagher denied that Mrs O'Brien had played any part in developing the survey, as claimed in Mrs O'Brien's most recent witness statement, after Mr Gallagher had given evidence. Mr Gallagher had not been challenged on this evidence and she had never previously asserted that he had told her she could use the survey. She answered that Mr Gallagher was mistaken. It would have been bad manners to use it without asking him.
296. Mrs O'Brien was questioned about Mrs Copage's evidence relating to approval of the questionnaires used at IDH. She said she had sent a letter to Mrs Copage in June 2012 asking for confirmation of the suitability of the questionnaires, and had had no reply. She agreed that in her email of July 26 2012 she made no mention of this earlier letter. She said she had a copy somewhere of this earlier letter. It was put to her that Mrs Copage's evidence had been clear, both in her statement and in her oral evidence, that she had not received this letter, and Mrs O'Brien had never provided a copy. Mrs O'Brien said there were a lot of things going on in her life at the time. She had taken advice from the defence union about the best way to communicate with the PCT, and not to respond more than every week or so.
297. Mrs O'Brien was referred to the contents of her email of 26 July 2012 to Mrs Copage, in which she was talking about developing the questionnaire and implementing it if Mrs Copage agreed. Mrs O'Brien confirmed that this meant she was saying she would carry out the survey if Mrs Copage was happy with it. Yet it was now known that the data had been collected before

this letter. She replied that she started to collect the data as condition 11 was time sensitive, and she did not see the harm in starting. The IDH questionnaire had been developed together with the Oxfordshire PCT. She knew correspondence with Hampshire took many months and was keen to do the work within the time frame. She had told the PCT at the October 1 2012 hearing that she would redo the questionnaire if required. The Tribunal asked her if it was valid to give the same patients a different questionnaire, and Mrs O'Brien said there had been a surprisingly good response so she could be confident of getting a further sample.

298. She agreed with Mr Mylonas that she should have told Mrs Copage in her letter of 26 July 2012 that she had already started to collect the data, with hindsight. She agreed that she had started to collect the data before the first letter to Mrs Copage [June 2012, which Mrs Copage said she did not receive].

299. Mrs O'Brien agreed that it was remiss of her not to mention to Mr Lynn that she had started work on this survey. There were a lot of things going on in her life at the time. She was living in a refuge, and not able to use computers properly as she would have wished. She agreed, nevertheless, that she should have said she had already started to collect the information in her letter to Mrs Copage on 26 July 2012. She had not felt it would become an issue. She felt that even if the data did not satisfy condition 11, it could provide evidence of how well her service was perceived.

300. It was put to Mrs O'Brien that Mrs Copage had given guidance on the format of the questionnaire and that it was not acceptable as drafted, and yet she had still presented the data to the panel in October 2012. She said that Mrs Copage's letter of 10 September about the questionnaire did not indicate a problem with the form being implemented, so long as patients did not have to sign it and other matters being addressed. So she submitted the data to the panel on the basis that the questionnaire had been approved. It was her belief that the questionnaire satisfied the requirements of Mrs Copage's letter of 10 September 2012. Despite the patients having in many cases signed the questionnaire, she had given them the option of not doing so and she had complied with the anonymity requirement.

301. The Tribunal asked Mrs O'Brien if she could show examples from her personal development plan, the most recent example of which was dated February 2012, of where she had reflected on all the feedback she had had from various practices. She pointed the Tribunal to a patient treatment where she had been informed she had overfilled one of the roots which showed, she said, that she had accepted feedback. She was asked if she could point to evidence of reflection on the range of negative feedback from the various practices which had let her go. She said she did not know how to fill in a PDP and had not addressed all the feedback. She had not known specifically what she needed to change. She was asked about her reflection on feedback that she was over-diagnosing periodontal disease. The Tribunal itself had no view on whether that was the case, but wanted to know how she had responded to such feedback from her supervisor. She said she had worked out with Mr Downes what should be done, and after a time the rates of disease had come down,

302. In re-examination Mrs O'Brien confirmed to the Tribunal that in May 2010 she believed, she had an unblemished work record. When asked if she

would answer in the same way now, Mrs O'Brien said she would not as issues had now been raised.

303. Mr Lynn asked Mrs O'Brien about attempts to obtain cognitive behaviour therapy, as recommended by Dr King. She set out efforts she had made and said she was now training to be a CBT coach, and in the course of the training would receive four sessions of CBT herself.

Findings

304. The decision under appeal was made under the 2004 Regulations. The Tribunal's decision is now governed by the 2013 Regulations, but the criteria have not changed. Under Regulation 14 the Board can remove a practitioner from a performers list on either efficiency or suitability grounds (14(3)(b) and 14(3)(d) respectively. The criteria for exercising this discretionary power are set out in Regulation 15(1) and (2) in cases of suitability and 15(5) and (6) in an efficiency case. Both cases require the Tribunal to consider information relating to investigations or proceedings relating to the practitioner, the nature of any events giving rise to questions of suitability or efficiency, the time which has elapsed since those events, the actions, including penalties, of any other regulatory body, how those events relate to the practitioner's performance of [dental] services, and the likely risk to patients or to public finances.
305. The PCT case was initially an efficiency case. Mr Mylonas' closing submissions confirmed that it was now primarily a suitability case. We decided it would be appropriate to look at this issue first. If we disagreed with the Board on suitability, we would then consider the Board's case that Mrs O'Brien should not be restored to the DPL for efficiency reasons.
306. We have set out the evidence in this case in detail, because it is an unusual case. The core allegation of the Board is, now, that Mrs O'Brien does not tell the truth, and that as integrity is crucial to a performer's professional duties, a person who repeatedly lies is not suitable to be included on the list. In order to determine this core allegation we need to examine a sufficient number of those allegations in order to make findings of whether there have been any lies, and if so to what extent and how they interrelate.
307. Our finding is that these allegations have been proved with remarkable clarity.
308. The role of Mr Lynn was considered at some length, as was the weight which we should attach to his opinion regarding Mrs O'Brien's suitability. As we find she has lied to the PCT and lied to a number of individuals, including Mr Lynn himself, and lied to the Tribunal, however much weight we attach to Mr Lynn's professional opinion, it would not outweigh such an adverse finding, which goes to the root of the integrity required of a practitioner.
309. We do accept Mr Lynn's submission that as a lay representative, he could not have put Mrs O'Brien's case to witnesses on matters where the evidence required challenge in the systematic way an experienced lawyer is expected to do. However the Board's case remains unusually strong, even if such failures on the part of a lay representative are ignored. In any event we would question aspects of Mr Lynn's professional judgement in this case. He has rightly identified the need for dispassionate and rigorous analysis of the facts, and we acknowledge his extensive and highly relevant professional

experience. At the same time he gave evidence that he saw his task as supporting and advancing Mrs O'Brien's interests, that he did not enquire into past failures as his role was forward looking. There are many occasions where, in our opinion, he should have admitted during cross examination that he failed to probe in adequate, or sometimes any, depth the information Mrs O'Brien was supplying him. His reliance on her account of clinical issues, and his willingness to form and state an opinion based on that alone, without seeing the clinical notes, without speaking to those who, at least after the event, he now knows to have had and to have communicated very real concerns, show a failure to apply rigorous standards of independent professional judgement. Put simply, we find that Mr Lynn got far too close to identifying with Mrs O'Brien's view of matters, and, we find, was too willing to accept her distortion of information. We entirely disagree with his attempts to distinguish between complaints and formal written complaints. As mentor, and as a person who wishes to have his opinion accepted as that of an expert, he owed it to Mrs O'Brien and to the Tribunal to take the concerns of many other practitioners more seriously before forming an opinion. He was misguided to accept at face value the information provided by Mrs O'Brien. He was also unhelpful to her in advising her as to how she should interpret the very clear conditions on developing patient questionnaires. He was wrong to accept unquestioningly the allegation that Mr Gallagher had in some way trawled his records to find fault with Mrs O'Brien because she was in dispute with him about past payments.

310. The evidence that there were complaints raised by all practices in which Mrs O'Brien worked, save Oakley practice (where for reasons which are entirely unsatisfactory no information was provided by Mrs O'Brien), and of concerns raised at the Barn and IDH, put him on the clearest notice possible that all was not well.
311. We think Mr Lynn has been misled into believing Mrs O'Brien's version of events, that there had been what amounts to a conspiracy against her. He then allowed his own uninformed view of the facts to influence others, in particular Mr Downes. We accept in every respect the evidence of Mr Downes that Mr Lynn misled him into thinking there was very little of substance to Mrs O'Brien's past employment problems. We do not agree that it was for Mr Lynn to choose, in his version of events, the forward-looking information he wished to present, and to give a partial and misleading account of past problems.
312. Where Mrs O'Brien withheld information from him, as in for example, , the clearly established failure to tell him straight away of the true reasons she was sacked from the Barn, or of the existence of Mr Gallagher's performance review agenda, this provides some excuse for his not mentioning such matters in reports, though he now finds himself contradicted by Mrs O'Brien who says she did reveal this information to him.
313. As a result Mr Lynn cannot provide us with an opinion on Mrs O'Brien's suitability to which we can attach weight.
314. Mr Wray and Professor Dunne's evidence, by contrast, carries some weight. Professor Dunne has observed Mrs O'Brien's clinical skills skills, and Mr Wray had liaised with her when she visited the practice. However both gave evidence that they did not receive the full account of Mrs O'Brien's past.

Mr Lynn cannot rectify that evidence by saying he is now sure he did mention this to Mr Wray. Mr Wray's evidence as to what he knew is recorded above and is clear, detailed and void of ambiguity.

315. We accept each and every allegation put in the written closing submissions and oral submissions of Mr Mylonas. Having set out the evidence in detail above, we can identify a large number of occasions where Mrs O'Brien's versions of events are both inconsistent and contradicted. Under skilled cross examination she has had to admit on several occasions that with hindsight she could have or should have provided fuller information. In reality what she should have provided was true information. She was even at one point willing to admit that she should have been honest with Dr Denman. It is clear that Mrs O'Brien substantially misled Dr Denman about what Dr King had said. We can see no reason for believing that, contrary to Dr King's oral evidence, her emails, and the contents of her report, Dr King showed immediate bias, prejudgement, or lack of interest in what Mrs O'Brien had to say. We cannot accept that Mrs O'Brien can legitimately make these sweeping allegations yet failed to raise any concerns when invited to make comments which would be attached to the report before submission. She has also made what we regard as wholly untenable criticisms about the lack of confidentiality in this report. She accepts that it was sent with password protection, and only on her reporting that she could not open it, was it sent again unprotected. We simply do not believe that Dr King sent it unprotected without Mrs O'Brien's consent.
316. We find it so unlikely as to be incredible that Mrs O'Brien's account of her sacking meeting with Mr Abbott was written on the same day, yet not produced in evidence until after Mr Downes' gave his oral evidence in March 2013 and was not referred to in emails from her solicitor, written shortly after the actual events, in which enquiries about that meeting were being made. As Mr Mylonas pointed out, this document would have been the first point of reference when her solicitor asked her to explain why Mr Downes was saying that she had not spoken to him. In any event, the various accounts she has given, including being given the result by phone, being told there would be a following letter, and even the different dates on which she spoke to Mr Downes, show such inconsistencies that they cannot all be true. We accept Mr Downes' version. It was revealing that Mr Lynn put in cross examination of Ms Howard a version of events – that Mrs O'Brien had not known the outcome of the panel meeting until getting the decision in the post on 17 October 2012 – which was inconsistent with Mrs O'Brien's witness statement, purported contemporaneous record, and her oral evidence, but consistent with Mr Downes' account in his report, statement and oral evidence.
317. Mrs O'Brien – and on this instance Mr Lynn – showed astonishing lack of judgement in our view in telling the Tribunal that Mr Gallagher had trawled his records to produce the list of 15 patients about whom he had concerns as a way of dealing with Mrs O'Brien's claim that she should be paid for work completed. This flies in the face of the evidence, which Mrs O'Brien says she did not know about, that on her behalf Mr O'Brien was negotiating a settlement of that dispute. It flies in the face of the clear evidence, shown in the headings – starting with the words 'Patient complaints' – on a performance review agenda months before the letter of February 2012, that she knew Mr Gallagher had concerns about her performance long before she

was sacked. Mr Gallagher was a reluctant witness, but we have no reason to consider him untruthful in his account of having raised concerns in discussion with Mrs O'Brien. This is consistent with the review agenda which refers, at that time, to complaints, which must have occurred in order to form a review heading. In any event, the idea that Mr O'Brien never told her about these payment discussions, when he himself had been involved in meetings on her behalf, and had written a related, helpful and supportive email for her the day before, about which she was aware, lacks credibility.

318. We are at a loss to understand Mrs O'Brien's reasoning in relation to the requirement to work with the PCT to develop a questionnaire. She may have received advice from Mr Lynn that the IDH questionnaire would be satisfactory – unhelpful advice in our view, given the clear requirement in the conditions for Mrs O'Brien to develop the questionnaire with the PCT – but this cannot excuse her writing a letter to the PCT after she had collected the data, implying that she had not started and was expecting to administer the questionnaire once methodology had been approved. The obvious intention behind the way the letter was phrased was to mislead Mrs Copage. In that respect it is of no relevance to our findings that she did, or did not, send a letter in June 2012. It was already too late, as she collected the data from May onwards. In any event, since there is no other reference to that letter in later letters, no copy produced, and no reason to disbelieve Mrs Copage, we think it more likely than not, that Mrs O'Brien has not told the truth about a letter in June.
319. We are astonished that Mrs O'Brien chose to tell us, at the end of her evidence, that she is herself training to be a cognitive behaviour therapy provider, and to give this as a reason for demonstrating progress in meeting the recommendations of Dr King. This in our view reveals an alarming lack of insight. To undertake the changes clearly indicated in Dr King's report there would have to be an acceptance of the reasons why Mrs O'Brien is in the position she is in today. She has been the subject of concerns and complaints in all practices on which independent evidence is available. Any acceptance of any fault on her part, as is shown in her responses to cross examination, has been grudging and unconvincing. She still maintains that in May 2010 her record was unblemished, providing a wholly unsatisfactory explanation for how she arrives at this conclusion. Clearly it was very blemished. Though she was not sacked in her vocational training practice, there was clear evidence that her trainer had been very concerned with her performance and was making enquiries into why everyone completing a vocational training year should automatically pass. She was then let go, for whatever reason, by all but one of her subsequent practices. It is, in our view, evidence of self-delusion that both in May 2010, and now, Mrs O'Brien maintains that no formal written complaints would be the same as having an unblemished record.
320. Even on matters of little importance we note the inconsistencies in Mrs O'Brien's evidence. Reasons for lateness at IDH were inconsistent: at times it was two sets of roadwork's and one accident, at another time it was a broken down lorry, at others just three sets of roadwork's. While it is normal to forget, it is also appropriate to say so, rather than give as the clear truth the version that has most recently come to mind. We think the truth is that she was often late, which is why she was given a written warning.

321. We agree with the conclusions of the PCT that Mrs O'Brien has found cause to criticise others in response to almost every criticism of her own practice. She variously said that her VT trainer was frustrated with her but never could explain why, that standards were poor in practices where she worked, that materials were missing, that she had problems with the attitude of a nurse, that practitioners did not tell her their concerns, that there was a conspiracy against her, that Dr King was primed in advance against her and, when asked why she did not tell the truth at the first PCT hearing, that she was not given an opportunity to answer questions. Other attempts to ensure blame is cast anywhere but in her direction can be identified in the summary of the cross examination above. Any acceptance of fault on her own part was limited to grudging and belated recognition that with hindsight, she might have provided more information, or what she said could have been better phrased. Mr Mylonas commented at the end of his summing up that he had not, in 25 years at the Bar, had a case where it was so easy to identify the lies. It is true that though Mrs O'Brien has, in our view, lied consistently, she is not actually very good at it.
322. We cannot accept that Mrs O'Brien's failure to reveal her employment in the Oakley practice was accidental. She had, when it suited her, a very clear grasp of the facts. What lies behind her failure to disclose this employment when applying to the Eclipse practice, and to the May 2010 panel hearing, is unknown. It is a paradox that is the only practice after her training practice where, on her evidence, she has not been let go.
323. Mrs O'Brien clearly attempted to mislead the Tribunal about the nature of questions put to her at the May 2010 panel hearing. There was no narrow focus on written complaints, as she maintained until referred to the record of the proceedings. We are of the view that it suited her to look for an excuse for not telling the truth to the panel, which was that she had been subject to many criticisms and had been let go from all previous practices other than the training practice. Similarly she was willing to attribute her failings to there being ten people all asking her questions and not giving her time to answer, which is contradicted by the make up of the panel and the record of the proceedings. She gave her solicitor a misleading account of her past history, claiming that she was focusing only on the Eclipse allegations. She failed to correct the errors her solicitor unwittingly made when describing that history to the panel.
324. We make these findings notwithstanding evidence that she is not a danger to patients, that her clinical skills are not in issue here, that she has diligently pursued opportunities to develop her expertise and maintain those clinical skills. We also accept that times have been very hard for her, for both personal and professional reasons. We have had clear evidence in support of both her character and insight. We have reservations about the role played by Mr Lynn, but we do not doubt the integrity and professional judgements of all witnesses who spoke or wrote in support of Mrs O'Brien.
325. However it is only this Tribunal which has had the opportunity to examine the full history, to establish the extent of the contradictions and inconsistencies of the accounts given by Mrs O'Brien about that history, and to form a balanced and informed view about her integrity and truthfulness. Our finding is that Mrs O'Brien has systematically avoided revealing more about her employment history than she has to at any moment, thereby

misleading employers, the PCT, and, if she had been believed, the Tribunal. It is impossible to determine if, at the time she describes an event – for example her reasons for not understanding Mrs Gannon’s criticisms, her claim that she informed the IDH practice about the PCT decision, her belief that she had the PCT’s approval to use questionnaires – she actually believes that account. This Tribunal has had the benefit of clear and reliable evidence showing that Mrs O’Brien is not willing to provide truthful information unless confronted with the unambiguous evidence of inconsistencies, at which point her response is either to blame others or, reluctantly, to admit that with hindsight she could have revealed more. She has been prepared to make sometimes startling allegations against other professionals – Dr King (prejudiced), Mr Gallagher (trawling for evidence to provide cover for non-payment), Mr Downes (failure to provide basic materials), Mrs Gannon (inability to communicate concerns), the Eclipse practice (a family conspiracy), Ms Haslikova (shouting at her and slamming down trays), Mr Gallagher (impeding access to patient records) – and this appears to be a consistent pattern of how she chooses to deal with difficult situations. These are not the responses of a professional. In fact, together with her repeated attempts to mislead colleagues over many years, they render her unsuitable for professional practice as an NHS dentist in primary care.

Conclusions

326. The outcome now sought by the PCT is removal on grounds of unsuitability. Mrs O’Brien submits that unconditional restoration to the DPL is appropriate, failing which conditional removal.

327. Removal on grounds of unsuitability requires us to take into consideration the matters set out in Regulation 11(2), which in the present case include: the nature of any investigation or incident; the length of time which has now elapsed; action taken by a regulatory or professional body; relevance of any incident or investigation to performance of a primary service; and risk to patients or public finances. In addition we are to consider the circumstances surrounding removal, contingent removal and suspensions of the performer.

328. We find Mrs O’Brien to be unsuitable to remain on the DPL. She lacks integrity and insight. She has little regard for truth. She deals with adversity by blaming others. She does so plausibly and manages, at least at first, to appear plausible. This way of dealing with criticism or professional setbacks renders it impossible to provide any remediation, as it is not possible for those who might want to help her to know if she accepts responsibility or will later lie about or deny such criticism. We note in particular, that Dr King, having set out remediation steps which might have worked at the time, amended her view once she had heard Mrs O’Brien’s account of her interview and follow-up, presented in evidence to the Tribunal. This was, in our view, a mendacious and malevolent account of the interview and subsequent phone call with Dr King, which led to Dr King expressing significant concerns about whether Mrs O’Brien could engage with remediation. We endorse those concerns. In terms of the criteria set out under Regulation 11(2) our findings are that Mrs O’Brien’s ability to provide dental services is impaired by her lack of professionalism.

Decision

329. Mrs O'Brien is unsuitable to be included on the Board's performers list.

330. The appeal is dismissed.

Tribunal Judge Hugh Brayne

12 July 2013

