**Primary Health Lists**

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

**James Spence**

**V**
**Hampshire and Isle of Wight PCT**

**[2012]PHL 15515**

**DECISION**

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| Judge | Nancy Hillier |
| Professional Member | Zoeb Kapadia |
| Independent member | Colin Barnes |

The PCT were represented by Mr Mylonas QC
The Appellant was represented by Mr McGee of Counsel.

Heard on the Isle of Wight at Newport County Court on 18 and 19 and 25 – 28 February and 1 March 2013 and at Pocock Street in London on 8 and 9 May 2013.

## Appeal

1. Mr Spence appeals against the decision of the PCT Contractor Performance Panel made on 23 July 2012 to remove him from its Dental Performers List on the grounds of 'efficiency' pursuant to the NHS (Performers' List) Regulations 2004 Regs 10(3) and 10(4)(a). During the course of the hearing the PCT ceased to exist. All references made to the PCT therefore now include the replacing body under NHS England.

## Forensic Background

2. On the first day of the hearing a member of the press was present and the panel made an order restricting publication in any form of media of

information which could lead to the identification of any of Mr Spence's patients. That order is continued below.

3. On the first day of the hearing Mr Mylonas QC applied to the panel to admit a statement from Mr Ross McDowall, Mr Robinson's successor at Queen Alexander Hospital (QAH). Mr McGee opposed the admission of the evidence on the basis that the PCT had had plenty of time to obtain and disclose a statement from Mr McDowall, who had been in post since October 2012 and it would be unfair to admit the statement. Mr Mylonas QC submitted that the statement had been provided because Mr McDowall had made a complaint about Mr Spence to Lt Col McKenzie in early February 2013 and therefore it was highly relevant to the current situation. He apologised for the lateness of its submission, but explained that it had been prepared over the weekend preceding the case hearing.
4. The panel considered the submissions made on behalf of both parties and decided that the evidence was potentially highly relevant to consideration of the issues in the case. We applied the overriding objective to achieve fairness and justice between the parties and decided that if the evidence were excluded there would be no evidence of Mr Spence's relationship with Mr Robinson's successor which could be unfair to Mr Spence since he had referred to Mr McDowall in his statement. We also concluded that it was important that Mr McGee should not have to cross examine any witness to whom the evidence may be relevant without time to consider the items of correspondence sent by his client to Mr McDowall and to consider information about second opinions on patients. We therefore decided to adjourn after the evidence of Mrs Lammiman heard on 19 February (whose evidence was not affected by the late statement), until 25 February to allow Mr McGee to take instructions and consider the new evidence before moving to cross examine further witnesses.
5. At the close of evidence Mr McGee made an application for the case to be adjourned for a period of 6 months in order to receive evidence about whether Mr Spence could sustain the changes which he had made. Mr Mylonas QC opposed the application on the basis that there was sufficient evidence before the panel for us to make a decision and that there would be significant disproportionate additional cost and potential additional witnesses.
6. The panel took time to consider the application. We carefully weighed up the competing submissions and the overriding objective. We were satisfied that there was sufficient evidence on which to base a decision in this case, and to achieve fairness and justice between the parties. We were also satisfied that the delay and additional cost would be potentially prejudicial to the PCT and would be disproportionate in the circumstances of the case. We refused the application for an adjournment.
7. The panel heard the oral evidence of Mrs Lammiman, (Specialist Orthodondist) Mr Manek, (Consultant Oral Surgeon) Mrs P, (Mother of a patient) Mrs L, (Mother of a patient) Mrs Tortora (Dental Nurse by telephone from Australia), Mr Robinson, (Consultant Orthodontist),Lt Col McKenzie, (Consultant Oral and Maxillofacial Surgeon) Mrs Chapman, (Senior Dental officer) Mrs Morris, (Head of Primary Care) Mrs Copage, (Associate Director of Revalidation, Performance and support) Mr Mellor,(Oral and Maxillofacial Surgeon) Mr Zaki, (Consultant Oral and

Maxillofacial Surgeon). Mr Partridge (NCAS Programme supervisor), Mr McDowall (Consultant orthodontist), Mr Nimmo, (Mr Spence's business adviser) Mrs Simmonds, (Dental nurse), Mr Spence (Appellant) and Mrs Webley (orthodontist). We were asked to provide anonymity to certain adult PCT witnesses. No reason other than "fairness" and the fact that their identity might lead to identification of a child patient was given. We considered the request but could not see any justification for redacting the names of adult witnesses.

8. As part of the case management process the PCT were encouraged to refine the bundles and the findings sought, and to concentrate on the main evidence supporting the allegations.

**Background**

9. Mr Spence is a dentist practising on the Isle of Wight. He has a special interest in children's dentistry and orthodontics, and is one of the largest providers of children's dentistry on the island. The island has a population of over 139,000 and there are about 70 dentists.
10. In 2009, at a time when Mr Spence was in a contractual dispute with the PCT, the PCT Contractor Performance Reference Panel commissioned Dr John Partridge to provide an independent review of Mr Spence and to investigate allegations of unnecessary referrals, unnecessary complaints against colleagues and bullying behaviour. On 29 June 2009 Mr Spence was informed of the PCT intention to contingently remove him from the list but an oral hearing did not take place until 11 January 2010.
11. The PCT also made a referral in 2009 to the GDC which was concluded by the Professional Conduct Committee deciding that Mr Spence's conduct in respect of 'slipshod record keeping' was not sufficiently serious to justify a finding of professional misconduct. Following an interim report the PCT Performance Screening Group proposed that Mr Spence be contingently removed from the Performers list and the PCT made a referral to NCAS which commenced an assessment on 3 September 2010
12. On 30 November 2010 Mrs Lammiman made a referral to the GDC concerning Mr Spence's alleged conduct towards her and patients.
13. The NCAS final report was produced on 21 January 2011 which highlighted several areas requiring remediation, including relationships with and communications with other professionals. The GDC dismissed the clinical complaints about Mr Spence and gave him advice. On 27 May 2011 the PCT agreed a draft plan of NCAS remediation support. This was followed on 8 June 2011 by the GDC imposing an interim order requiring, amongst others actions, Mr Spence to agree the NCAS action plan, abide by the action plan and keep a complaints log.
14. On 1 October 2011 the NCAS action plan started. On 23 November 2011 the PCT and Mr Robinson raised issues of alleged non compliance and continued excessive correspondence by Mr Spence. On 25 November the GDC interim conditions were renewed. On 29 November Mr Robinson raised further concerns that some referrals from Mr Spence were being refused by orthodontists. Mr Spence sought to introduce an NHS orthodontist into the practice, Mrs Webley, and on 2 December 2011 he complained to the PCT that Mrs Webley had been refused a performer

number.

15. On 23 May 2012 the PCT Contractor Performance Panel (CPP) met to consider the PCT proposed removal of Mr Spence from the Dental Performers' List on the ground of efficiency. Mr Spence requested an oral hearing, which was conducted on 17 July 2012 on the basis of submissions. The PCT notified Mr Spence of its confirmed decision to remove him from the Dental Performers' List on the ground of efficiency on 23 July 2012. It is this decision which is the subject of the appeal.

**Issues**

16. The PCT identified three key areas of the appellant's practice which they allege prejudice the efficient running of the Dental Performers' List:
    a. The volume of correspondence produced by the appellant which they state is extraordinary and unreasonable;
    b. The method and style of Mr Spence's communication;
    c. Mr Spence had not in reality successfully completed the NCAS remediation programme or reached the NCAS milestones because he had failed to truly engage with the process and had failed to put his apparent learning into practice.

**Evidence**

<u>Volume of correspondence/ method and style/effect on colleagues</u>

17. Mrs Morris explained that Mr Spence had been in a contractual dispute with the PCT in 2006/7 which had resulted in a substantial amount of correspondence. She stated that Mr Spence's' file was 23cm thick covering 2008-2010 . In addition to the contractual dispute Mr Spence had also written a great deal of correspondence about the single orthodontic service, including criticism of the waiting list, some of the providers and the administration. Mrs Morris said that on occasions her team received several letters in one day, for example on 25 March 2009 (6) and 26 March 2009 (3). She felt that the volume of correspondence had impacted on the administration and that whilst Mr Spence was quick to criticise others he was very tardy in addressing some of the PCT correspondence, for example in relation to clinical governance issues.
18. Questioned by Mr McGee, Mrs Morris said that the Spence correspondence from 2006 to 2010 measured 41cm, which she said was indicative of the extent of the problem. She said "When you look at the individual letters the effect is lost". She agreed that some of the content included the appeal and legitimate queries but said that overall, the correspondence was "excessive". She said "The volume was such we found it difficult to keep track. The work with Mr Spence was more time than our job of managing contracts." She felt that 75% of his correspondence was unnecessary, and that "When he doesn't like what he hears he keeps going anyway." She pointed out that Mr Spence's response to a questionnaire sent in August 2008 was not received by the

PCT until late May the following year, backdated to July 2008, which was before the request was actually sent. Mr Spence denied dishonesty in relation to filling in the questionnaire but accepted when challenged by Mr Mylonas QC that he had been lazy and should have filled in the questionnaire promptly.

19. Mrs Morris ceased dealings with Mr Spence in late 2011 but was aware that there were continued correspondence issues. She stated: "I feel it has been a war of attrition; Mr Spence does not agree with the contract framework or its implementation. He seems opposed to the Central Orthodontic Service; this may be driven by his own expressed wish to hold an orthodontic contract. In his correspondence he implies that everyone is colluding against him and he suggests that there is a lack of apparent power of dentists on the island".
20. Mrs Copage gave evidence that there were over 3900 pieces of correspondence which had been brought to the hearing at Mr Spence's request and which filled 32 lever arch files. She accepted that some of the documentation was routine but said that even if you added all the documentation from all the other dentists on the island "…it is nothing like this". She said that she could not say how many items of correspondence were inappropriate, but that some of the items were "vexatious" because even when his queries were answered he continued to complain. She felt that despite the final NCAS report there had been no change in Mr Spence, who had challenged 15 treatment plans in 2012. She felt that in a time of declining resources Mr Spence had been very time consuming and far in excess of any other provider.
21. Mrs Copage denied that there had been any unreasonable conduct by the PCT in refusing to place Mrs Webley on the list. Mrs Copage said she had been offered the opportunity to submit a portfolio in lieu of a vocational training certificate, but as she had declined to do so she could not be put on the NHS list.
22. Mrs Webley said that the conditions expected by the PCT would mean that she would virtually have to retrain. She said she has a thriving private practice and had only offered to help as a favour because Mr Spence was concerned about NHS provision on the island.
23. Mr Mylonas QC suggested to Mr Spence that his complaint about the PCT's treatment of Mrs Webley was an example of further time wasting and unnecessary complaint, and that the accusation that the PCT had been discriminatory was serious. Mr Spence replied "I could have been nicer. Even if I ask for an x ray I don't get it."
24. Mrs Copage said that the PCT had considered imposing conditions on Mr Spence but had decided against it because despite the PCT involvement and NCAS there had been no change. She said :"We don't think there are any conditions which would address the efficiency issues. Our other worry is that if he cannot develop relationships the health and wellbeing of those who work with him will be affected. We are also concerned that those who pull out [of working with him] on patient choice which could mean patients have to travel". Mrs Copage said that the PCT had hoped that the introduction of Mr McDowall would mean a fresh start but she felt that the position had remained entrenched. The PCT budget had been affected by the £25,000-£35,000 cost of the NCAS report and the subsequent

remediation programme. She said "There is a limit as to what can be paid". The panel gave her time to consider the possible conditions which had been put forward by Mr McGee; namely monitored interactions with colleagues, monitoring and reviewing his communications and meetings with colleagues to discuss issues of concern. Mrs Copage felt that the possible conditions described by Mr McGee were similar to those imposed by the GDC "…which didn't achieve anything". She stressed that any conditions would need to be SMART: specific, measurable, achievable realistic and time limited.

25. Mr MacKenzie gave evidence that since his appointment at Queen Alexandra Hospital (QAH) he had had regular correspondence from Mr Spence. He could see that Mr Spence's views about extraction of second molars were at odds with the views of colleagues. He made it clear in 2009 that until there was empirical evidence of a need to change current practice he did not believe that "… the practise of removing second molars warranted any further discussion". Despite this Mr Spence had persisted with correspondence, and introduced criticism of the department into his letters. Mr MacKenzie felt that the "constant bombardment" of correspondence to the department was having a detrimental effect on the clinicians in the service. He agreed with Mr McGee that complaints were to be expected but he felt that these were out of the ordinary.
26. Mr McGee suggested to Mr MacKenzie that Mr Spence's views on second molar extraction were not outlandish. Mr MacKenzie opined "Intuitively it would seem a great plan but the reality doesn't bear that out. You need space at the front, not the back, and if the lower wisdom teeth don't behave as expected you may have to extract them after all." He agreed with Mr McGee that once he had responded to Mr Spence on the topic in a comprehensive manner there had been no further correspondence on that issue and that some of the correspondence was on legitimate issues of concern to a GDP.
27. On 20 November 2011 Mr MacKenzie invited Mr Spence to attend a clinical governance meeting. Mr Spence agreed to attend the first meeting as an observer. Mr MacKenzie said that the 8 March 2012 meeting would be suitable, since he (Mr MacKenzie) was away in February. However Mr Spence attended the February meeting and, as a result of Mr Spence's reported conduct at the meeting, the invitation to the March meeting was withdrawn.
28. Mr Spence denied that he had behaved confrontationally at the meeting. He said that he felt he was persona non grata but that things had changed now with the opportunity for patients to go to the mainland for treatment.
29. Mr Spence denied that he had fabricated a complaint sent to the PCT on 13 October 2011 when he alleged "possible systemic neglect by a training practice". Advised by Mrs Copage and Ms Crane to refer the matter to the GDC he had referred the matter to Mr MacKenzie asking for "urgent peer review". He stated that there was an issue about repeat general anaesthetics and radiographs. Mr Mylonas QC challenged Mr Spence on the grounds that he had refused to supply details of the alleged practice and had instead sent 2 redacted patient records which did not allow Mr MacKenzie to identify the alleged perpetrators of neglect. Mr Spence stated that he had wanted to 'peer review' with Mr Mackenzie, who had

refused, and that he had not actually known the identity of the consultant involved. Mr Mylonas QC asked him why the complaint "dried up" as soon as Mr Spence was invited to the clinical governance meeting to which he responded "This is more morbidity than mortality". He denied that he had made up the allegations of incompetence and risks to patients.

30. Mr Mackenzie felt that things had deteriorated when Mr McDowall had taken over from Mr Robinson because Mr Spence had continued to request reviews of Mr Robinson's treatment which was putting excessive pressure on the new consultant. He said that Mr Spence should "stand back" and give Mr McDowall the opportunity to work. He was concerned that a consultant of Mr McDowall's quality could move on. He accepted that the triage which Mr Robinson had undertaken was not strictly the role of a consultant and told the panel that this aspect of the orthodontic provision would move to Southampton with effect from April 2013.
31. Mr Spence said that having heard Mr Mackenzie's evidence he had realised that he should have told patients to wait, and said that with improved information about waiting list administration and the new 'hotline' he felt that the situation would resolve.
32. Mr Mellor stated that soon after his appointment at QAH it became evident that "….Mr Spence corresponded with …the department…more than any other dentist on the Isle of Wight." "…the subjects he wrote about fell into two categories; the failings he perceived to be in the administration of the service including the wider NHS, and his desire to extract second molar teeth." He said that Mr Spence did not appear to understand the limitations imposed by budgets and the need to prioritise funds. In addition, he described Mr Spence as having "…an obsession with the concept that removing second molar teeth will allow normal eruption of the third molar (wisdom teeth) if the second molars are removed at an early stage." In Mr Mellor's opinion the amount of correspondence and the constant requests for OPG's and X-Rays places a strain on the service. He stated: "It places an unnecessary stress on staff to read and deal with repeat correspondence on issues that have been previously concluded."
33. Mr Mellor agreed with Mr McGee that on occasions he had not replied to Mr Spence. He explained that he had answered letters on similar topics before and simply didn't have time to keep doing so. He said "My priority was to treat patients".
34. Mr Robinson had worked on the Isle of Wight as a consultant one day per week from 1994 until 2012. He stated that until 2006 he had little contact with Mr Spence. In that year Mr Robinson created the Isle of Wight Orthodontic Service which involved a central referral point with triage and assessment to be carried out by 3 orthodontists. There would also be a single waiting list for the island. It had initially been envisaged that an administrator would be recruited to manage the referral process but none had been appointed and Mr Robinson had taken the role on. The role has now been passed to Southampton, but he was continuing work on the treatment list until May 2013.
35. Mr Robinson wrote to Mr Spence on 25 November 2010, complaining about the quality and quantity of recent communications and about repeated requests for radiographs which he felt were for a research project and were unnecessary. He concluded by stating that all future

communications would be closely monitored and any letters which he felt failed to meet a professional standard would be returned. Mr Spence gave evidence that the OPG's could be emailed rather than sent on disc, which has a financial implication, and denied that he had been requesting historic x rays for research purposes.

36. Mr Robinson wrote to Mr Spence on 6 December 2010. He referred to his earlier correspondence and raised two further issues. Firstly, new patient referrals and outcomes where he pointed out that Mr Spence's referral discharge rate was 46% compared to 19% for other referrers. He commented that if the discharge rate were to fall to more "normal" level then waiting lists would also fall. Mr McGee pointed out that patients could be discharged for several reasons, including failure to attend, the appointment system not working or patients who simply decided they did not want treatment. He asked Mr Robinson how many of the 187 discharged referrals referred to by Mr Robinson could be due to reasons other than inappropriate referrals by Mr Spence. Mr Robinson replied that he did not know, but "…maybe 60 were inappropriate".
37. Mr Mylonas QC stated "You have always known the correspondence was seen as excessive?" and Mr Spence replied "Yes. I had to write the letters." He said that he felt that he was the person with experience of post removal stability. "I'm not an orthodontist but I do know what happens." He went on to state that the letters had declined as he went through the NCAS process, and that OPG requests had never been a problem until Mr Robinson had said they could not be sent out. He said "We thought he was wrong and we would show he was in breach". Mr Mylonas QC pointed out that one of the x ray requests was for a patient who was dead. Mr Spence agreed that he had requested this because she had been in his "audit" of what happened when you take second molars out. He said that in hindsight he wished he had not asked for the x ray, as he knew Mrs Lammiman had said she found the requests hectoring and she was refusing to treat his patients. He said that his behaviour counselling had assisted with this and that he had not asked Mrs Lammiman for any OPG's since that time.
38. Secondly, in respect of additional communications. Mr Robinson claimed that in 2009 there had been 283 additional items of correspondence sent to him alone and that in 2010 over 100 hours of time had been spent responding to Mr Spence's communications. He concluded: "…I think that nearly 600 additional communications received over the last two years to be excessive by any reasonable practitioner standards. I fail to understand the motivation behind much of the correspondence and request you seriously consider the impact of your unreasonable behaviour on both patients and staff." Mr Spence also referred to what he described as misleading statements and criticisms which he believed to be "vexatious" in nature.
39. Mr McGee suggested to Mr Robinson that some of the letters referred to new patients. Mr Robinson denied this and stated that they were about patients he had seen. He said that some patients had no letters, others had up to 30, and that the problem increased from 2007 to 2010/11, reducing after the NCAS referral "…when he knew he was being monitored."

40. The December 2010 letter was followed up on April 4th 2011. Mr Robinson recorded an improvement in discharge rates but again voiced concern about ongoing levels of correspondence. He stated that by the end of March 2011 he had received an additional 120 items of correspondence, compared to the 11 communications in total received from the other Island dentists. He describes the level of correspondence as harassment and bullying and states that it is "unwanted, unwelcome and unpleasant". Mr McGee asked Mr Robinson what percentage of the 1143 additional correspondence items over the 5 year period was inappropriate. Mr Robinson replied that he could not give a percentage figure but had pointed to recurring themes.
41. Mr Robinson gave notice to the PCT in March 2012 and has handed over consultancy to Mr McDowall. He states that he left the post as a result of Mr Spence's behaviour which he feels "…has directly affected clinical care and my personal wellbeing over the last five years."
42. Mr Spence gave evidence that he felt that Mr Robinson had been involved in the withdrawal of the invitation to speak at the clinical governance meeting because Mr Robinson had sent an email to Julie Cheek on 11 January 2011 which he felt had invited criticism of himself and stating "The more the merrier".
43. Mrs Chapman, Mr Robinson's assistant, gave evidence that in respect of patient BF the patient's mother had become confused and distressed by the apparent difference of opinion between Mr Robinson and Mr Spence about the treatment plan. She had written to Mr Spence to explain that the mother was upset and had been surprised when he replied that he had treated the matter as a complaint and had referred the matter to an "independent consultant" and maintained that the patient had had suboptimal advice.
44. Mr Spence gave evidence that in fact the referral was to Mr Nimmo, his business consultant. He said that the patient was 17 and couldn't make up her mind. He said that the hospital guidance was not agreed and that he had later apologised to the patient's mother. He said "There are clinical issues. I don't think that the pre molars should be extracted." He accepted that he did not agree with Mr Robinson's treatment plan, but stressed that when the guidance had come out he had tried to get it changed. The panel asked Mr Spence why he continued to burden patients with confusion on this issue. Mr Spence replied that there were others who shared his views. He said: "I will stop saying it. It needs to be looked at academically. I can't get anyone to discuss it locally so that's what I will do".
45. Mrs Chapman had spoken to DDU and had been reassured that her letter was not a complaint, but it had preyed on her mind. She said "I was pretty put out and worried". Mr Spence agreed that it would have been easier to simply apologise and that his response "...could have been done in a more gentle way". He said that the letter was a "one off" and that he felt he worked well with Mrs Chapman. He said that he was embarrassed that she felt intimidated, and that he should have discussed the matter with Glenn Fox.
46. Mrs Chapman stated that it was clear to her that Mr Spence regularly questioned Mr Robinson's treatment plans, had shared his concerns with patients and had caused some patients to lose faith in their plan. She feels

that the challenge to treatment plans had caused additional work for her and some delay to patient treatment. She said there was a constant stream of correspondence from Mr Spence which she did not get from other dentists. She said: "The impression one gets is that he is obsessed. It's a pattern of proposed treatment plans coming from Mr Spence" She said that she feels intimidated by Mr Spence because he queries her work. Mr McGee suggested that Mr Spence does not query everything: "He queries clinical issues and in the cases you have raised they were reasonable". Mrs Chapman agreed that in some cases they were.

47. Mr Mylonas QC pointed out to Mr Spence that there were other examples of him putting parents in the middle of his dispute with Mr Robinson. He had asked for a second opinion in the case of OC and when the PCT arranged one had written to the parents stating that he "…was not best pleased." Mr Spence agreed that the parents would not be reassured and could have been worried. Mr Mylonas QC described the letter as "poorly judged and upsetting" to which Mr Spence replied "I can see how they might be upset, yes".
48. Mrs Lammiman's statement recorded that historically Mr Spence had referred patients to her, however following his removal from an emergency weekend dental rota run by IDENT, she felt that that his letters and complaints about her had increased. She agreed that the fact that when Mr Spence's wife had left him in 2004 and had gone to work for Mr Lammiman had not helped the relationship. She also agreed that Mr Lochner worked for her husband and that the agreement had been terminated by Mr Lammiman, but not by Mr Spence. When Mr McGee suggested that there was very bad blood between Mr Lammiman and Mr Spence she replied: "I'm not aware of it." Mr McGee persisted and asked "They fell out?" and Mrs Lammiman responded "It was a professional matter. I am not a party. I can't comment".
49. Mr Spence gave evidence that he had accepted vicarious liability for the actions of Mr Lochner. He said that Mr Lochner had been very ill shortly after the complaint was raised and had been in hospital. He explained that he was unwilling to engage with Mr Lammiman's investigation because of this. Mr Mylonas QC pointed out that Mr Spence had described the allegations as lies in correspondence to Mrs Hughes, when in fact he knew them to be true. Mr Spence explained that the lie he was referring to was that Mr Lammiman had represented that Mr Spence did not take responsibility when he in fact had done so. He said that IDENT and Mr Lammiman had put him under pressure to discipline Mr Lochner which he felt unable to do as Mr Lochner was ill. He said "I hadn't done anything wrong. They wanted me to resign. It was utterly wrong. I refused to sack Ian.". Mr Spence also complained that Mr Lammiman had told colleagues that the GDC had seriously admonished him when this was not the case, although he had been given a warning.
50. Mrs Lammiman stated that in 2005 Mr Spence had come to her practice and told her that he wished to move patients to Mr Lochner. She said that she told him that he would have to inform the patients. She continued: "He stood up to me and raised his voice. My staff heard it. I threatened to call the police". She denied being irritated by the fact that Mr Spence had said that he was going to move patients to Mr Lochner, because she eventually

moved her patients to a centralised waiting list anyway. She would not have done so if she was worried about suffering any financial loss. She said that the more provision there would be for children the better.

51. Mr Spence said that when he visited Mrs Lammiman it was the first time he realised there was a problem with their relationship, and that he thought she did not want to lose patients to Mr Lochner. He said "She seemed to get upset about Ian Lochner. I didn't behave badly. When she got upset I left"
52. Mrs Lammiman denied criticising Mr Lochner and said that after that visit she had started to note Mr Spence's behaviour. She felt that Mr Spence was telling patients that she had caused gum infection when wires had come out of appliances. Mr McGee suggested that Mr Spence had suggested that they discuss matters and had tried to build bridges. Mrs Lammiman replied that in her view 'Peer review' was not appropriate because Mr Spence is not a specialist orthodontist: "He's a general dentist" and that she did not feel that he was trying to build bridges.
53. In the end Mrs Lammiman had decided that she could no longer treat Mr Spence's patients and she did not accept referrals from him from September 2010. She felt that this meant that waiting times for his patients would be increased. She had made a formal referral to the GDC in November 2010 in respect of his conduct towards her, his unwarranted criticisms of her, her concerns about safeguarding and his treatment of patients. Mr McGee suggested that Mrs Lammiman had tried to encourage patients to complain about Mr Spence in order to undermine him, which she denied. She said that the referral to the GDC was necessary because issues had to be raised and she had not taken the matter lightly.
54. Mr Zaki stated that any individual who challenges the system "…to the extent that Mr Spence does will place an additional burden on the system" He explained that this was due to the individual sense of foreboding when staff see the manilla letters from Mr Spence, the effect on the administration of the additional burden and the effect on clinical time when additional appointments are needed to give reassurance to patients confused about their treatment plans. He agreed with Mr McGee that it is appropriate for a GDP to question a treatment plan where there are legitimate reasons.
55. Mr Zaki gave evidence that he had 20 years experience of Mr Spence. He had corresponded with Mr Spence and referred him to NICE guidance but "…he didn't appear to take any notice." He continued:"I felt frustrated when I got his letters, which had a major effect on the Max-fax staff. They were diverted from more pressing work." Mr Zaki did feel that there was an opportunity for change if Mr Spence started to accept the treatment plans. He stated :"It would require a fundamental change in attitude but if so I would be happy to be part of that".
56. Mr Manek gave evidence that he had worked on Saturdays when Mr Spence was working for IDENT. Staff had raised concerns about the use by IDENT of the equipment and he had taken some photographs of the state of the room. These were subsequently sent out without his knowledge and Mr Spence had complained to Mr Mellor about the surreptitious photography. In the letter Mr Spence said " I boxed a bit at

school, and although now a golfer I can still throw a punch. If he wants to fight we could arrange a match and give the proceeds to charity". Mr Manek felt that this was an aggressive threat and was unprofessional. He did not make a complaint at the time. In later unrelated correspondence to Mr Spence he had used the phrase "Chinese whispers" and had been threatened with a formal complaint if he did not apologise. Mr Manek said that he would not want to be in the same room as Mr Spence.

57. Mr Spence gave evidence that he tried to be straightforward with colleagues. He said that he had written to Mr Mellor because he was responsible for Mr Manek and he wanted him to talk to him. He said that at the time it was meant as a joke and that since then he has realised that other people's perception of what he says is important. He said "With hindsight I wish I had done it in a more gentle way".
58. Helen Tortora worked as a nurse in the practice from 2004 and 2007. She went on to qualify as an orthodontic nurse and worked for Mrs Lammiman before emigrating to Australia. She gave evidence that in her view Mr Spence could be intimidating. She said that rather than use parents as passive support Mr Spence would tell them to be quiet and would not let them hold their child's hand. In her view Mr Spence came across as forceful and abrupt.
59. Mr Spence gave evidence that he tried to be gentle with all patients and was aware that as "a big guy" with "a big voice" some may see him as intimidating. He used parents as passive support because if they actively participate the situation it can deteriorate. On one occasion Mr Spence had thrown a chart when she had made a mistake, and she believed that he made nurses feel stupid and inadequate. Mrs Tortora gave examples of Mr Spence asking other nurses to assist her when the task was very straightforward and that on one occasion, when she had felt unwell, she had been told that Mr Spence had said loudly through a tannoy that it must be her 'time of the month'. She said that she was mortified.
60. Mr Spence denied that he had made the comments which were alleged to have been heard over the tannoy, He said it was not something he would say and denied Mr Mylonas QC's assertion that he is boorish and a bully. He said that he had excellent staff retention rates, and that he had asked staff if they wished to come to the tribunal. He said that Miss Simmonds and Mr Nimmo were willing but the others were reluctant. He said that he wouldn't push them into making a statement.
61. Mrs Tortora described a domiciliary visit where Mr Spence had put the central locking down in the car and had told her that he would like to start seeing her socially. She said that he had released the central locking and she had got out of the car. She had told another nurse and they had gone to the practice manager's house. The practice manager had said "Oh no, he's done it again. I'll talk to him". The following day Mr Spence had apologised to her and said she'd got the wrong end of the stick. Mr Spence agreed that Barbara had spoken to him about Mrs Tortora, and he had explained that she had misunderstood him. He was trying to encourage her to socialise with the staff, not with himself, he said.
62. Mrs P gave evidence about her children J, aged 9 or 10 and L aged 14, who had seen both Mr Robinson and Mr Spence. She said that Mr Spence had told her that it was possible to remove different teeth to the ones Mr

Robinson had said. She stated: “I didn’t have a clue what was going on. We felt we were caught up in an argument between the two of them. I still don’t really understand it. Mrs Chapman had gone through everything in depth and I was 100% with the orthodontist. I was absolutely sure but then confused.”

63. Mrs L gave evidence about Mr Spence treating her son, O, who is 17. She felt that her son had been put off his dental treatment by Mr Spence, who had bullied them into treatment at the practice rather than at hospital. She described Mr Spence as intimidating and denied that Mrs Lammiman or the PCT had put her up to complain.
64. Mr Spence said that he had explained that there was a small risk from general anaesthetic but had not mentioned death or dying – “it’s ridiculous, you wouldn’t say that” – and denied bullying O or Mrs L.
65. Mr McDowall is the new consultant orthodontist who has taken over Mr Robinson’s role with effect from mid November. He works an average of 12 hours per week on the island on the basis of 8 hours in week 1 and 16 hours in week 2. He had made a log of contacts from Mr Spence which demonstrated that he had spent about 12 hours in his own time and the administrative time he was contracted to in Portsmouth, dealing with matters raised by Mr Spence.
66. Mr McDowall provided the panel with a table and medical records in order to illustrate his dealings with Mr Spence. He told us that there had been 11 cases where Mr Spence had questioned Mr Robinson’s advice and asked for second opinions. Of those eleven he was able to confirm that there were no obvious concerns about ten cases.
67. He explained that he was taking on about 150 cases mid way through treatment, although Mr Robinson had stayed on to assist for a transitional period. In addition to the existing cases he is also seeing new patients. He said that he had several letters about waiting lists, and despite sending replies outlining the position, which he described as “settler” letters, Mr Spence had persisted in writing to him. He said “When I got the two subsequent letters I thought ‘crikey, this is going to be relentless’.” He said that he had tried to show Mr Spence that he was working on the problem.
68. Mr McDowall explained that with the workload and the need to deal with complex cases he did not have time to “peer review” Mr Robinson’s cases with Mr Spence. He said the main difficulty, in addition to queries about waiting lists, was the questioning of extraction patterns and requests for OPG’s. Mr Spence appeared not to accept the consultants’ opinions, and to improve the situation the querying of waiting lists, extraction plans and requests for OPG’s “would have to stop”. He said that he would engage in a formal process of discussion but would be anxious about it. He described morale as “low” and said that seeing patients unnecessarily was not in the patients’ interests, or his own.
69. Mr Spence gave evidence that he had about 700 children on his list in 2004, a figure which grew to over 1700 by June 2005 and now stands at over 2300. He explained that the increase in provision reflected his expertise with children and made him uniquely placed to see the difficulties regarding waiting lists and treatment plans.
70. Miss Simmonds, a dental nurse working with Mr Spence for the past 3 years gave evidence that she had been one of Mr Spence’s patients as a

child and now trusts him to treat her children. She stated that Mr Spence is very good with children and confirmed that Mr Spence in her view has tried to discuss issues with colleagues "…to no avail". She said that she usually reads the letters which are sent and had been aware of the NCAS assessment but had not read it.

71. Mr Nimmo gave evidence on behalf of Mr Spence. He is a self employed business manager who has worked with Mr Spence for 8 years. Cross examined by Mr Mylonas QC he accepted that he had no experience in dentistry or assessing dentistry. He had not read the NCAS assessment in full nor had he gone through it with Mr Spence. When shown the letter sent regarding Mr Manek, Mr Nimmo said he had seen letters in a business context which were "…just as punchy". He agreed that the letter shown to him by Mr Mylonas QC was rude.
72. In his view the correspondence sent by Mr Spence in respect of over 2000 children was not excessive. Mr Nimmo types correspondence for Mr Spence, but other matters are handwritten. Mr Nimmo exhibited a "Vital Signs" at a Glance Contract Report dated September 2012 which demonstrated the high number of children seen by Mr Spence in his practice.

The NCAS report and milestones.

73. The NCAS action plan resulted in four final reports from Glen Fox (behavioural coach), Sue Crane (educational mentor), Wyndham Collins (Appraiser) and Murray Wallace (Clinical supervisor).
74. Dr Fox reported that she had met with Mr Spence on 7 occasions as part of the NCAS action plan. She described Mr Spence as initially angry and distrustful of the process, spending a great deal of time explaining his professional disagreement with some consultants and that he felt he was being unfairly singled out. She described that as the sessions progressed, particularly after the conclusion of the GDC hearing in May 2012, Mr Spence increasingly engaged in exploration of his interpersonal style, and had become more committed to achieving consensus through mediation if possible. She reports: "While I think it is fair to say that he can be challenging and defensive at times, as well as being strongly committed to his own view and occasionally dismissive of those who disagree with him, these qualities are not, in my view, either abnormal or likely to prevent him from being an effective professional, although they can make him difficult to manage. While he dislikes criticism (as do many high achievers) he does not refuse to discuss his development needs and it would be inaccurate to accuse him of lacking insight into both his strengths and imperfections. His readiness and capacity to introspect positively, in particular, has grown over the sessions. As for his flaws, these seem to me to be within normal parameters and I am not aware from a behavioural perspective of any reason why he should be a risk to his patients or why his practice should be further investigated or restricted."
75. Sue Crane, the Educational Mentor under the action plan reported that Mr Spence had met the educational objectives stated in the NCAS plan. She comments that in the reflective overview of the NCAS process which Mr

Spence submitted in September 2012, he successfully identified key areas of learning, and described the document as "…a thorough, honest and moving piece of work, which gives significant evidence of [his] development and insight gained over the past year." She confirmed that all objectives had been met.

76. Wyndham Collins, the NCAS appraiser, met Mr Spence in January and October 2012, and had several telephone conversations with him. Mr Collins concludes his final report with the words: "In my opinion James has not only written a PDP (Personal Development Plan), but has been able to action the majority of it in just 9 months.
77. Mr Spence's Clinical Supervisor, MJ Wallace, a Dental practitioner with over 40 years experience, undertook 8 sessions with Mr Spence. He states that although at times he felt like he was "treading on broken glass" in the early meetings, it had been a very hard year for Mr Spence and by the end of the process he could conclude: "I am sure he has changed and now looks forward to keeping the process developing in the future."
78. Mr Spence gave evidence that he had participated fully in the action plan and had tried to pursue mediation and discussion of concerns with the PCT, Mr Robinson and Mrs Lammiman, without success. He exhibited examples of his reflective writing and logs. He said that he accepted the criticisms raised by the NCAS report and put himself into the remediation process.
79. Mr Mylonas QC suggested to Mr Spence that his reflective writing logs demonstrated that even after the NCAS process he had continued to criticise others and that much of the material in the logs was incorrect. In the case of JN Mr Mylonas QC pointed out that the log incorrectly stated that the OPG had not been sent and that the extraction plan was a possible plan rather than an erroneous extraction plan. Mr Spence replied that no alternative plan of non extraction had been given to the patient which was his main complaint. He accepted that the log contained inaccuracies and was misleading but stated "It's an internal reflective log. It's going nowhere else. It would need correcting". He also accepted that other logs "Could be better" and were "misleading" He denied that he had simply used the logs to try to find fault with Mr Robinson and others.
80. Dr Partridge had been involved in the 2009 assessment of Mr Spence and became NCAS programme supervisor for Mr Spence's action plan on 27 March 2012. He concluded that Mr Spence had not provided, by the end of November 2012, "…any evidence to the PCT of progress against his compliance with the NCAS action plan. He seems to have relied on his 'supporters' to undertake this on his behalf. This does raise the question of his engagement in the remediation plan, which is limited, and of the realistic prospect of any change being made in the future." In his oral evidence Dr Partridge described Mr Spence as very forceful, and said he was keen to change practise to suit his own view of what dentistry should be.
81. During his evidence at Pocock Street Mr Spence suggested that Mr McDowall had actually overruled Mr Robinson. Mr Mylonas QC pointed out that in fact all that had happened with patient OC was that Mr Robinson had changed a treatment plan because of parental wishes not to have surgery. Mr Spence agreed that he was wrong and that the letters sent

about this patient “Could have been phrased better”. Mr Spence said that before his divorce and the difficulties with the Lammimans things were fine. He had not seen how his behaviour and demeanour after that had impacted on people and hearing the evidence from Mr MacKenzie and Mr McDowall in particular had been a learning experience.

82. Mr Spence gave evidence that some of his correspondence was, in hindsight, not appropriate. He said that for the future things had changed. Patients can phone a waiting list hotline and can go to the mainland for treatment. He had introduced a log to check correspondence is appropriate and that he had not had any concerns about recent treatment. He said “I don’t want to lose the contract. I went to state school. I enjoy treating children on the NHS. I have a good relationship with Mr Hickey and [I know that] patients like Mr McDowall. The extraction percentage is lower and I have approached Portsmouth about a PHD. There’s no point in trying to discuss my ideas, people won’t……. I have upset too many people by doing this. Waiting lists have reduced and the management has changed”. Mr Spence said that he would agree to monitored meetings with colleagues and correspondence logs, and would abide by contractual terms relating for example to CRB checks. He said “There is no war”.

**Submissions**

83. Mr McGee submitted that the starting point should be for the panel to take into consideration the very good patient and parent testimonials about Mr Spence which he said demonstrated that Mr Spence is highly valued and working in a very large practice with a significant number of children. He stated that much of the evidence was about how things used to be and urged us to conclude that there was no current prejudice to efficiency. He gave as an example the letter relating to Mr Manek, sent in 2003, and pointed out that most of the difficulties had occurred at a time of very strained personal relationships between 2005 and 2012.
84. Mr McGee stated that Mr Spence had been in practice for over 30 years and had worked successfully with other professionals. The key problems, he said, had been brought about by “bad blood” in the community, and in particular between Mr Spence and Mr Robinson and Mr Spence and the Lammimans. He pointed to the fact that Mr Spence’s ex wife had gone to work with Mr Lammiman and that there had been further conflict over the incident with Mr Lochnar. Mr McGee stressed that Mr Spence had taken responsibility for the actions of his employee from the outset and had been very upset when the warning from the GDC was referred to by Mr Lammiman as a “serious reprimand” and had been used to oust Mr Spence from IDENT.
85. Mr McGee submitted that the panel should exercise caution when looking at the evidence of Mrs Lammiman, given the background of personal animosity in the case, and urged the panel to consider the fact that Mr Spence had tried to build bridges but his attempts had been rebuffed.
86. Equally, Mr McGee submitted that the relationship between Mr Robinson and Mr Spence was very poor, that Mr Robinson was intransigent and was not open to discuss issues which could properly be raised in respect of

patients. He stated that the tables produced by Mr Robinson "didn't mean anything" because they lacked analysis and balance. He cited the evidence given by Mr Robinson of 1143 additional, unnecessary, items of correspondence between October 2007 and October 2012 as flawed because there were 980 new referrals during the period, the items included matters relating to existing patients, and it could not be said that less than one item of correspondence per patient was unreasonable. He stressed that Mr Robinson had been unable to give a percentage of letters which were unacceptable in tone or content and reminded the panel that in the case of OC the 29 letters sent to achieve a non extraction plan was entirely appropriate. Other examples included letters pointing out problems with appointments, legitimate requests for OPG's and a striking example of patient AG where Mr Spence had correctly identified that the patient's OPG had been misread.

87. Mr McGee further submitted that Mrs Lammiman had been unable to state how much of Mr Spence's correspondence was inappropriate, and that Miss Morris's evidence demonstrated that at the end of the day the PCT could only point to about a lever arch file of correspondence as a possible legitimate source of complaint. He said: "Content is vital. Mr Spence appealed his contract, which was appropriate, he asked for the algorithm used to work out funding, which was appropriate, and Mrs Copage has included witness statements, press cuttings and documents from these proceedings in the files of documents which are alleged to be inappropriate- documents which didn't even come from Mr Spence".
88. Mr McGee also stated that Mrs Lammiman was the only colleague who refused to work with Mr Spence, and that he is able to work professionally with many others.
89. Mr McGee stressed that the NCAS supervision report demonstrated that Mr Spence had engaged with the process and had worked hard to address his shortcomings. He pointed out the reflective logs which Mr Spence had exhibited were written for the cathartic process of addressing some of the issues, not for these proceedings. He said "It's been a hard process" and accepted that it had been difficult for Mr Spence.
90. Mr McGee's primary position was that the PCT had not proved its case on efficiency. He submitted that if the panel made findings against Mr Spence there were workable conditions which could be imposed. He stated: "The children of the Isle of Wight should not be deprived of his services. He's learnt and changed. He deserves a chance".
91. Mr Mylonas QC said that it was very surprising that Mr Spence had produced so few parental and professional testimonials given that he had worked on the Isle of Wight since 1980, and in his current practice for 12 years, with 2500 patients of whom 2300 are children. He submitted that Mr Spence could have called his practice manager and other colleagues to give evidence on his behalf but had not done so.
92. He submitted that Mr Spence has a reputation as a "nasty piece of work" who behaved inappropriately towards colleagues and was a bully. He cited the correspondence to Mr Manek in 2003 where Mr Spence offered to have a fight to sort the matter out and made veiled threats of complaint – "not yet a formal complaint" while demanding an apology. He opined that Mr Spence had lied about the nature of the correspondence being "jokey"

and that this was an example of a lie, and was one of many. Mr Mylonas QC stated: “He lies on oath, to his colleagues and to the PCT”.

93. Mr Mylonas QC confirmed during the course of the hearing that no specific finding of misconduct was sought in respect of the alleged conduct with Mrs Tortora. He submitted that this was a gentle advance which Mr Spence could have admitted. He had apologised to Mrs Tortora but denied his conduct to others, which was further evidence of lies. Other examples of lies included letters alleging malpractice by others which were not pursued despite Mrs Copage suggesting a GDC referral and Mr McKenzie asking for details so that he can investigate the allegations that a young woman’s mouth had been allowed to deteriorate. Mr Mylonas QC stated that as soon as he was invited to a clinical governance meeting Mr Spence dropped the allegations, having failed to take a single step to allow anyone to have details. He submitted that Mr Spence had lied about what had happened when he had visited Mrs Lammiman to discuss moving patients to Mr Lochner, had lied about what had happened with Ms Tortora and had failed to call his practice manager, Barbara Newberry, to refute the allegation that Mrs Tortora had made a complaint to her at the time and had sought to mislead the panel by alleging that Mr McDowell had treated a patient who Mr Robinson had said did not qualify for treatment. Further examples were that the reflective logs produced by Mr Spence which Mr Mylonas QC described as “wholly misrepresentative, self serving and inaccurate”, the backdated response to Caroline Morris and lies about Chris Lammiman.
94. Mr Mylonas QC conceded that some of the correspondence examined during the hearing was reasonable, but stated that the majority was not. He cited the request for 11 reviews by Mr McDowell of Mr Robinson’s opinion, where no different action had been taken. There had been, he said, a relentless querying of decisions and a refusal to provide information when it was reasonably requested. This had been prejudicial to the PCT’s efficiency and would continue to be so in the future.
95. Mr Mylonas QC further submitted that there was ample evidence of consistent abusive and bullying letters and behaviour, including to Mr Manek in 2003, Mrs Morris in 2008, Mrs Chapman in 2011, Ms Hetherington in 2012 and the Lammimans in 2005 and 2008.
96. In respect of the NCAS remediation Mr Mylonas QC submitted that Mr Spence had not approached the remediation with an open mind and that the report of Glenn Fox demonstrated that Mr Spence wanted to change the behaviour of others rather than address his own shortcomings. He submitted that notwithstanding what he had told mentors as part of the remediation programme Mr Spence had continued to raise petty issues and to blame others.
97. Mr Mylonas QC concluded that conditions were not appropriate in this case because Mr Spence had demonstrate by his past behaviour that he would not respond and that there would be a disproportionate use of resources to monitor conditions. He said that removal is a last resort but the PCT had “…poured resources in” without success and “…can’t compel people to engage with him. He’s alienated virtually everyone and shown he hasn’t changed and won’t change”.

**Findings on issues relating to efficiency.**

Volume of correspondence /method and style/effect on colleagues

98. There can be no doubt that Mr Spence generated a great deal of correspondence, as the 32 bundles laid out in the hearing room demonstrated. That of itself is not enough however, because if all the correspondence was necessary and reasonable there could be no criticism of Mr Spence. The panel took into account the fact that he is one of the largest NHS providers for children on the island and that he is therefore more likely to enter into correspondence simply because of the number of patients he treats. We also bore in mind that the PCT evidence included documents which could not be described as unnecessary correspondence, for example the documentation relating to the contractual dispute and statements in these proceedings. We did not find it helpful to measure the documents by the centimetre or filing cabinet, nor did we find the PCT evidence that they could not state what percentage of the material fell into the category of unnecessary and/ or unreasonable. We did not find it helpful to trawl through individual items of correspondence, agreeing entirely with Mrs Morris's view that "When you look at the individual letters the effect is lost".
99. The panel found the most useful evidence on this area to be the view of professionals and administrators as to their perception of the volume of correspondence and the themes of that correspondence. For example, Mrs Morris said that the sheer volume of the documents made it difficult to keep track and the administrative time dealing with Mr Spence had at times outweighed the time spent on the primary role of managing contracts. We accepted her evidence on this point as accurate and unbiased.
100. The panel found that there had indeed been a war of attrition which had been waged by Mr Spence. He knew that others found his correspondence badgering and unnecessary, yet he persisted with it regardless. We are satisfied on the evidence that Mr Spence took no regard of the letters from Mr Robinson because he disagreed fundamentally with Mr Robinson's approach to extractions; he disregarded the advice and decisions of Consultants such as Mr MacKenzie. He thereby wasted PCT time dealing with unnecessary complaints. Mr Mackenzie had made it perfectly clear to Mr Spence that he and his colleagues did not agree with Mr Spence's views on second molar extraction and that the matter did not warrant further discussion until there was empirical evidence to contradict it. We found Mr Mackenzie to be a professional man who gave balanced and thoughtful evidence and we accept that his evidence of a continued "bombardment" by Mr Spence.
101. We also find in respect of the PCT that Mr Spence wasted time by pursuing a complaint about Mrs Webley, falsely alleging discrimination when the PCT had acted in a very straightforward manner with her. The fact that Mrs Webley chose not to submit a portfolio was a matter for her,

and there was simply no need for Mr Spence to raise this, and many other matters. We were unimpressed by Mr Spence's response that he "could have been nicer" in respect of the Mrs Webley correspondence. He was clearly so aggrieved that he didn't get OPG's when he wanted them and in the format that he wanted that he would take up any cudgel to attempt to beat the PCT without exercising professional caution or judgment about the appropriateness of his actions.

102. We were not satisfied on the evidence that Mr Spence had behaved inappropriately at the clinical governance meeting. Mr Mackenzie was not present and had to rely on the hearsay views of colleagues whose evidence we have not heard. It is most unfortunate that the opportunity was lost because Mr MacKenzie had provided a forum for Mr Spence to discuss his ideas at a time when he felt that nobody was listening to him.

103. We find that Mr Spence continued to raise unnecessary queries in respect of Mr Robinson's treatment plans even when Mr McDowall had started in post. The burden on the new consultant of these requests for review, taken on top of his taking on new patients and those who were mid way through their treatment was unfair and an unnecessary burden on his time. We also find that Mr Spence should have realised the effect that his actions would have, but that until he actually saw Mr Mackenzie give evidence and Mr McDowell explain the effect of the letters about waiting lists continuing after he had sent a "settler", and the effect of review requests, he had ignored the consequences and carried on regardless. We find that this has been a constant feature of Mr Spence's actions ever the past 8 or so years- he simply will not take no for an answer and continues trying to impose his views, mainly through his correspondence, on others.

104. We also accepted the evidence of Mr Mellor and Mr Zaki, who again we found to give unbiased and well reasoned evidence. Their views and experience echoed that of Mr MacKenzie in many respects, including the inability of Mr Spence to accept the expert view on extractions and to make unnecessary requests for OPG's.

105. We accept that some of the OPG's which were sent to Mr Spence were suboptimal, and that some of the print outs sent were of little value to him because they were unintelligible. We also accept that it is important to avoid repeat x- rays in the interests of patient health. We have decided that Mr Spence did not always need the OPG's he requested for treatment of current patients and that many of his requests, including the case where he requested OPG's for a dead person, were connected with his audit of cases in respect of second molar extraction outcomes. Mr Mellor said that Mr Spence could not understand the need to work within budgets and prioritise resources and we find that this is a clear example of such behaviour.

106. We find that the relationship between Mr Robinson and Mr Spence was very poor, and that this fundamentally boiled down to a disagreement about managing cases on the Isle of Wight and the fact that Mr Robinson had somewhat unusually taken on an administrative role in addition to his consultancy. We find that Mr Spence was genuinely concerned about the effect on his patients of significant waiting lists.

107. We were unimpressed by the email correspondence from Mr Robinson

apparently garnering support against Mr Spence, making comments about his personality and the reasoning behind his actions. We find that some of his criticisms of Mr Spence, for example about writing on the front of a pro forma or replying to typed correspondence by handwriting on it to be pedantic. We also found Mr Robinson to have an entrenched view of the role of consultant and GDP and to refuse to be in any way flexible or to engage in any form of dialogue or mediation even when the NCAS remediation process was underway. We do not know Mr Robinson's reason for leaving his post, but we were not satisfied on his evidence that it was due to Mr Spence or his correspondence.

108. We do find however that some of the correspondence sent to Mr Robinson and to others about him was unnecessary and vexatious. We find that Mr Spence knew that Mr Robinson's treatment plans were subject to review but felt that Mr Robinson's extraction policy, which differed from his own views in particular about second molars, could be challenged at every turn. This unfortunately also involved patients and their families, with Mr Spence criticising Mr Robinson in a way which we find was unprofessional. We are satisfied that the constant challenge to extraction policy – which had been agreed by Consultant surgeons at QAH- left some patients and their parents confused and upset.

109. We find that Mr Spence should have been aware of the distress he was causing for example in the cases of BF and OL and desisted from his conduct but he did not. Indeed, when Mrs Chapman quite reasonably told him about the distress he had caused to one patient he simply responded by intimidation. We find that his use of Mr Nimmo, a man who has no dental background or knowledge, to produce a "report" into the affair to be "bully boy" tactics as submitted by Mr Mylonas QC. We were unimpressed by the fact that Mr Nimmo had agreed unquestioningly to take on the role or report writer in such circumstances.

110. We find that the professional relationship decline with Mrs Lammiman was inevitably linked to Mr Spence's ex wife working for Mr Lammiman following their separation and the dispute about IDENT when Mr Spence and Mr Spence clearly disagreed about the way Mr Lochner should be disciplined. We were very surprised by Mrs Lammiman's comment that she was unaware of the ill feeling between her husband and Mr Spence and found her responses on the issue to be disingenuous. We find that she is fully aware of the difficulties between the two men and that her evidence about Mr Spence needs to be treated with great caution as a result. We do not criticise her for her refusal to work with Mr Spence given their history and the ongoing GDC matters resulting from her referral.

111. We were not satisfied that Mrs Lammiman had been threatened by Mr Spence when he visited her to say that he was transferring patients to Mr Lochner. We find that she was angry about his suggestion and that as soon as this became apparent he left. We accept that her anger may not have been due to any financial motivation or her particular desire to retain those patients and was in fact much more likely to be to do with the history between Mr Lammiman and Mr Spence.

112. We find that the tone of some of Mr Spence's correspondence has been unprofessional and bullying. His use of the Nimmo "report" and his threats to Mrs Morris that she could be sued for substantial damages and

an accusation that her attitude was poor; her reply to him “is risible” and his demand that she withdraw statements she has made and a reminder that “I am right more often than I am wrong” display an uncaring and unthinking attitude that colleagues should simply not have to bear.

113. The panel found that the additional burden placed on Mr McDowall remained, on balance, prejudicial to efficiency and demonstrated that Mr Spence was still struggling to put his NCAS learning into practice. Mr McDowall had had only one letter from another dentist but had received 36 from Mr Spence. The most recent letters were apparently sent after the hearing had commenced, which the PCT alleged showed that Mr Spence was not able to moderate his behaviour and desist from communications even in the sure knowledge that the panel would be considering whether he had put the NCAS remediation learning into effect. When these were examined with Mr McDowell it emerged that 6 of the 36 items of correspondence were about waiting times, which was a concern now addressed by a waiting list hotline and additional resources. Mr Spence had agreed that with hindsight the letters would not now be sent, and in the adjournment from February to May the unchallenged evidence was that there had only been 5 or 6 letters, which were mainly referrals. Further, letters about CC, RM, cancelled appointments and retainers being sent through the post were also, we find, appropriate items of correspondence, as was some of the more recent correspondence.

114. We find that the justifications used in the past by Mr Spence of the communications being in the interests of patients were not always born out as he is, or should be, aware. Mr Spence knows that there is a significant waiting list for IoW orthodontic patients and that writing letters about it to consultants or getting the patients to communicate with them has had a negative effect because it takes time to answer each query. That time could more profitably be spent seeing patients and reducing waiting lists or to relieve Mr McDowall of the significant burden which replies have taken from his personal time. Despite this, Mr Spence continued to write about waiting times and took no notice of a letter sent on four occasions by Mr McDowall, described by Mr McDowall as “a settler” to demonstrate that he was working on the problem. When a further 2 letters arrived Mr McDowall described his feelings thus: “I was trying to get some space to work. When the 2 subsequent letters arrived I thought ‘crikey – this is going to be relentless’”. Mr McGee suggested that the letters were sent as a result of poor communication, namely that Mr Spence did not know that Mr McDowall was treating current patients and seeing 10 new patients per week. We conclude that this was a longstanding issue which had not initially changed when Mr McDowall took over from Mr Robinson, but there was evidence before us that matters had improved.

115. Mr Spence stated that he had only realised that Mr McDowall was concentrating on existing patients during the course of the hearing and that following his understanding of the position he would desist from enquiries about waiting list patients. The panel found that Mr Spence should have been aware of the effect that his correspondence could have had given the NCAS assessment and the plan of remediation. It was in our view clear that he had not given sufficient thought to the effect that his correspondence would have on Mr McDowall or the patients in his care.

116. Mr Spence had sent over 82 letters to Mr McDowall and others including Mrs Chapman, Mr Mellor, Mr Robinson and the IoW Orthodontic service between 22 October 2012 and February and had made at least 27 referrals regarding patients.

117. 11 of the referrals had been made to Mr McDowall, effectively requesting 2nd opinions in respect of Mr Robinson's patients. Mr McDowall had felt compelled to see the patients in order to form an independent view of their needs. He was clear that in 10 of the cases on the papers he had "no grave concerns". Each review would mean seeing the patient for a 15 minute appointment, which could otherwise have been given to a patient on the waiting list.

118. Mr Spence suggested that some of the cases could be peer reviewed. Mr McDowall made it clear that he was willing to discuss matters with GDP's at training events but that he does not have the time to sit down with individual dentists to discuss issues. He accepted that some of the questions Mr Spence asked were reasonable questions to ask in the right context but that his refusal to accept opinions and raising the same matters "time and again" was not reasonable. In his view the referrals appeared to be "more of the same" and were overall likely to be what he regarded as unreasonable referrals.

119. Mr McGee suggested that the case of FA was an example of a reasonable request. Mr McDowall said that this was in fact a case of an unreasonable request. He said "There is a review appointment which Mr Spence knows about so why does he want me to look at the x ray now and give an opinion now when I will be seeing FA in 3 months." The panel agrees with Mr McDowall that this case – raised as an example of a reasonable request – demonstrates the opposite, and in fact shows Mr Spence making a request which he knew or should have known was a waste of Mr McDowall's time.

120. The panel found that the referrals in respect of several other patients were also likely to be without justification. The referral in respect of SA had initially caused Mr McDowall to be concerned about serious harm. When he looked at the notes he formed the view that the care given was appropriate and that no apparent harm had been done but because the prospect of serious harm had been raised he felt that he must see him. Similarly, he had brought forward the review of JA even though he could not see any difficulty with the plan advanced for this young patient by Mr Robinson only 2 months earlier, stating "There's nothing wrong with his view as far as I can see".

121. The panel found that Mr McDowall has acted conscientiously and appropriately throughout and agreed with his concern that raising unnecessary requests for second opinions can cause significant problems. He said : "I would review them whatever. I'm worried about the patients. They get confused when they are in receipt of different views from Mr Robinson and Mr Spence. I can't see them all but will do what I can. What if there is one which is a reasonable request where his judgement is right? Some of his judgement is right although the majority is wrong. I will have to see them all and we don't have capacity. I have to be able to rely on the judgement of the primary carer".

122. We are not satisfied on the evidence that Mr Spence lied about Mr

Lochner. We find that he accepted responsibility for the actions of his employee in an appropriate manner. We make no comment or finding in respect of his dismissal from IDENT save to say that the manner of his removal clearly led to difficulties between Mr Spence and Mr Lammiman. We also make no finding as to the propriety of the letter threatening legal action against IDENT. We are satisfied that Spence had taken advice and did no more that many others would have done in his situation.

123. We also do not make any findings in relation to matters which may yet be heard by the GDC since that is an entirely different forum with different matters to consider.

124. We find that the correspondence concerning Mr Manek, including the threat of report on the "Chinese whispers" comment, was unprofessional but we are not satisfied that it was meant as an aggressive threat. Mr Manek did not make any complaint of it at the time – nearly ten years ago and there has been no further incident between the two men.

125. The PCT sought a finding in effect that Mr Spence had told a series of lies and had been less than straightforward in his dealings with the PCT. In the case of the Clinical Governance questionnaire we are satisfied that Mr Spence backdated the document because he erroneously thought it related to another document which he was being pressed to respond to.

126. We are not satisfied that Mr Spence lied about the incident with Mrs Tortora. The two of them gave a very similar version of events, the key issue being whether Mr Spence had made a pass at her and had then lied about it or whether Mr Spence was actually encouraging her to socialise with colleagues. We find that Mr Spence was concerned about her not attending the Christmas event on religious grounds and are satisfied that he was encouraging her to socialise with him and the other staff members. We also find that she believed that he was making a pass, and that there was a very unfortunate misunderstanding as a result. We are also not satisfied to the relevant standard that Mr Spence made the alleged derogatory comment about Mrs Tortora which her colleague said had been overheard on the tannoy.

127. We are satisfied that some of the reflective logs written by Mr Spence were misleading, inaccurate and self serving and that his making of a complaint about unnamed dentists engaging in dangerous practice was unprofessional. We don't believe that that was linked in any way to the clinical governance meeting but was in fact a further example of Mr Spence trying to prove a point about x rays and extraction rates. In both of these respects we find that Mr Spence should have behaved in a more professional and detached manner, but we do not make the finding sought by the PCT that he is fundamentally dishonest.

<u>The NCAS report and milestones.</u>

128. We were satisfied on the evidence that the NCAS remediation reports were produced by four very experience professionals who had undertaken significant work with Mr Spence and we found their reports to be properly analytical, balanced and professional. We did not see them as "supporters" as alluded to by Mr Partridge.

129. We were also satisfied that there had been an improvement in Mr

Spence's behaviour and understanding which had taken some time to manifest but was now much more evident. We accepted his admissions, albeit late in the day, as genuine and his desire to change as well motivated. We find that his insight, whilst by no means complete, has improved very significantly over the past 12 months and even during the course of the hearing.

Future conduct

130. The panel carefully considered whether the change in personnel and circumstances within the Isle of Wight meant that in future any past issues and problems would be resolved. This related particularly to the fact that Mrs Lammiman no longer accepts referrals from Mr Spence , Mr Robinson has been replaced by Mr Ross McDowall, the waiting list administration has been changed and patients are being seen on the mainland..
131. Mr Spence made several concessions during his evidence, including agreement that he had acted badly, exhibited poor judgment, made misleading comments and had pursued matters when it was clear others did not accept his point of view. We find that these were genuine admissions and show a degree of insight hitherto unseen. This must be balanced against his past conduct when we assess the likelihood of a repeated pattern of unacceptable and unprofessional behaviour.
132. We have of course considered the decision of the performer panel. To the extent that we disagree with the panel we do so on the basis of the evidence we have heard, since we can give little weight to a decision made on unchallenged evidence and submissions alone.

**Tribunal decision with reasons**

133. We took into account the written material contained in the bundles of documents. Additional documents were produced during the hearing without any objection by the parties, save for the witness statement of Mr McDowall. The documents adduced were relevant and the panel admitted each one into evidence. The additional documentation was listed by agreement of the parties and was considered by us. In total there were 9 lever arch files of documents. We also took into account the oral evidence and the submissions made on behalf of both parties.
134. We considered our powers under Regulation 15 of the NHS (Performers List) Regulations 2004 and reminded ourselves that the appeal is a redetermination of the case. Under Rule 15(3) we are able to make any decision the PCT could have made. This would include restoring to the list, removal or contingent removal. The PCT based its case against Mr Spence on a finding of 'inefficiency' under Regulation10 (4)(a ). This states that the PCT (and the First Tier Tribunal) may remove the performer where his continued inclusion in the Performers List would be prejudicial to the efficiency of the services which those included in the relevant Performers List perform. It is for the PCT to satisfy the panel that the case is proved on the evidence before us on the balance of probabilities.
135. Regulation 11(5-7) sets out the matters to which we must have regard when considering removal under 10(4)(a). These include amongst other

things the nature of the incident(s) which were prejudicial to efficiency, the length of time since the last incident occurred and the time since any investigation was concluded, any action taken by a regulatory body, and any risk to patients. Under Regulation 11(7) we must also take into account the overall effect of any relevant incidents.

136. Contingent removal is possible under Regulation 12. If contingent removal is imposed we must impose conditions to remove the inefficiency.

137. We took into account the guidance on efficiency contained in 'Primary Medical Performers Lists Delivering Quality in Primary Care 2004' at para 7.4:

> ***"Efficiency"***
> *These grounds may be used when the inclusion of the doctor on the PCT's list could be "prejudicial to the efficiency of the service" that is performed. Broadly speaking, these are issues of competence and quality of performance. They may relate to everyday work, inadequate capability, poor clinical performance, bad practice, repeated wasteful use of resources that local mechanisms have been unable to address, or actions or activities that have added significantly to the burdens of others in the NHS (including other doctors).*

138. Mr Mylonas QC referred us to the 2009 FHSAA in **Brompton v North Yorkshire and York Primary Care Trust** where the panel stated:

> *163. The Panel also takes the view that the words 'would be prejudicial' looks to the future provision of services. In this context the Panel finds that past events are an important guide to likely future events. The Panel finds that no material evidence has been adduced to show that there have been any significant changes in circumstances that would show the concerns raised in this appeal have been ameliorated. In this respect the Panel also notes that the date and the passage of time since the incidents is a mandatory consideration in coming to a decision.*

139. In this case there are no allegations of lack of competence or poor clinical performance, although there are criticisms of patient care. What is in question is an allegation of repeated wasteful use of resources that the parties have been unable to address satisfactorily and allegations that Mr Spence's actions or activities have added significantly to the burdens of others in the NHS including other dentists.

The nature of incidents which are prejudicial to efficiency. - Regulation 11(6)(a)

140. The panel decided that Mr McDowall's evidence encapsulated the real issue with Mr Spence's judgement. Some of the correspondence sent by Mr Spence, when looked at on an individual basis, was justified and

appropriate. Some of the clinical matters Mr Spence raises are legitimate concerns and matters which should be looked into. Unfortunately, the main experience of colleagues and consultants over time has been that a large proportion of correspondence and requests for 2nd opinions has been unjustified, which means that they cannot rely on his judgement and have wasted a good deal of time and resources in responding to unnecessary queries and requests for second opinions.

141. We concluded that although individual instances of conduct may be justified, for example some requests for OPG's or 2nd opinions, when we looked at the circumstances as a whole Mr Spence's conduct has been prejudicial to the service. He has repeatedly caused time and effort to be spent unnecessarily, has disrupted the efficient administration of the waiting list and has caused unnecessary confusion and anxiety to patients and their parents by his repeated challenge to the opinions of those, like Mr Robinson, whose views on extractions and orthodontic practise he does not share.

Overall findings as to efficiency and learning from the NCAS report.

142. In the light of the findings above the PCT has satisfied us on the balance of probabilities that the volume of correspondence sent by Mr Spence to the PCT and to his colleagues was and remained at the time of the hearing unreasonable, that it was frequently unnecessary and repetitive and sometimes aggressive and bullying in nature. However, we concluded that Mr Spence had successfully completed the NCAS remediation programme and had tried to engage with the process and be frank with his assessors. We found that he had started to put what he had learned into practice.

143. We find that the nature of these incidents, whilst not necessarily serious in themselves, taken cumulatively have been and are a serious burden on the efficiency of the PCT, other performers on the list and secondary care dental services.

Conditions to remove inefficiency

144. Mr McDowall was asked by Mr McGee whether he would be happy to meet with Mr McDowall in order to discuss "issues" and to "peer review" cases of concern, and whether he would be prepared to assist by keeping a log of correspondence. He said "I would do it. I have my reservations. It could create scope for conflict and other challenges" and he made it clear that he would only engage in a formal process. The panel concluded that Mr McDowall was entirely justified to be apprehensive about meeting Mr Spence should he persist in trying to impose his views about molar extraction, waiting lists and the incompetence of others. We found that to require Mr McDowall to keep a log of correspondence would be an unjustified use of scarce resources. We did not accept Mr McGee's submissions that little time would be taken and that such a log would be reasonable because Mr Robinson had kept a log. We were satisfied that to require a member of the PCT to keep a log would be to continue the unacceptable burden on PCT efficiency.

145. Ms Copage gave evidence that any conditions imposed to avoid the PCT efficiency being compromised would need to conform to the SMART model. We found that her evidence was useful in considering whether the efficiency issues could be adequately addressed by conditions

The length of time since the last incident occurred and the time since any investigation was concluded.

146. This matter has been ongoing for several years. Unfortunately, despite letters from consultants setting out their concerns, direct action taken to avoid contact with Mr Spence (e.g. Mrs Lammiman refusing to accept Mr Spence's patients) and the NCAS assessment and remediation process, Mr Spence continued with his excessive correspondence, requests for second opinions and OPG's and quest to impose his views on the extraction of second molars. This behaviour was taken forward to Mr McDowall, even continuing once this hearing had begun. However, there has been a process of remediation via NCAS which was satisfactory and we find that had started to secure actual behavioural change and promote some insight.

147. We find that there has been a significant change in circumstances over the past few months, brought about mainly by external factors but also by Mr Spence learning from the remediation process. Mr Robinson is in the process of handing over to Mr McDowell, the administration of the waiting list has been changed, there has been improved communication in respect of OPG's. Perhaps most significant was Mr Spence's reaction to Mr McDowell's evidence. We concluded that Mr Spence had genuinely taken on board the effect that his behaviour was having and had shown remorse and insight as a result. He had taken immediate steps to ensure his working relationship with the new consultant was satisfactory and had monitored referrals and requests himself. He had also recognised that it is more appropriate to challenge the opinions of others by academic research and had decided to channel his energy into pursuit of a PHD.

Any action taken by a regulatory body.

148. The GDC proceedings have not been concluded and no findings have been made in the current proceedings. Mr Spence remains subject to interim conditions.

Any risk to patients.

149. We have concluded that there could be a risk of harm to patients if the behaviour outlined above continues. Patients who are upset about the challenge to their treatment plans could simply give up in despair and not have work done which is in their interests. Equally, patients who wait longer to see an orthodontist like Mr McDowall because he is seeing patients referred by Mr Spence because he does not agree with Mr Robinson's treatment plan, may suffer as a result of delay.

The overall effect of the relevant incidents.

150. We find that the overall effect of the incidents we have found proved, spreading out over a number of years and involving several people have been sufficient to prejudice the PCT's efficiency.

Is contingent removal appropriate?

151. We have concluded that the effect of the conduct we have found proved is sufficient to justify removal, but that immediate removal would be disproportionate in the circumstances of this case. Mr Spence plays a very important role in the lives of many of the children on the Isle of Wight and has always sought to promote their interests, albeit in a very inappropriate manner on occasions. If that role can be maintained in circumstances which do not prejudice the efficiency of the body replacing the PCT and without risk to patients the result would be proportionate, fair and just.

152. We have therefore considered whether it is appropriate to address the inefficiency by the imposition of conditions at this stage. In his closing submissions Mr Mylonas QC stated that the time when conditions may have addressed the inefficiency had passed and that there was now no alternative to removal from the list. He also submitted that the burden on the PCT of monitoring conditions and taking action if those conditions were not adhered to would be a further, unacceptable, burden on resources. We disagree. We find that the changes in the circumstances of orthodontic provision on the Isle of Wight, including a waiting list hotline which means there is much less need for Mr Spence to become involved in discussions about waiting times, additional consultants and a changed referral system, taken with the apparent recognition by Mr Spence of his need to change mean that there is a real opportunity to address the issues and to protect against future prejudice to efficiency.

Conditions

153. The panel made it clear to the parties that we would not finalise any conditions which we felt were appropriate without giving them the opportunity to make representations. We received their written comments which we considered carefully.

154. The Respondent suggested amendments, most of which were agreed by Mr Spence.

155. In respect of condition 2 Mr Spence gave evidence that he would confine his discussion of second molar extraction to an academic thesis to be developed through a university rather than raising it with patients or colleagues. For the avoidance of doubt he must of course be able to discuss his theories with the academic staff who are supervising his thesis.

156. We have concluded that the following conditions would be SMART and appropriate in the circumstances of this case:

A -To promote engagement Mr Spence should:

- 1. Fully comply with contractual conditions.

- 2. Comply with QAH extraction policy and NICE guidance and not discuss his own theories regarding second molar extraction with patients, save in exceptional circumstances and with the written approval of his mentor.
- 3. Refrain from criticising colleagues to patients and act in a professional manner when explaining options.
- 4. Attend CPD events and keep a log of his attendance.
- 5. Seek a mentor through Health Education (Wessex) and approved by the Dental Dean (if possible an orthodontic consultant independent of the Isle of Wight) and enter into a mentoring relationship no later than 1 September 2013. Mr Spence should use the mentor to discuss any clinical, procedural or administrative matter that Mr Spence may feel challenged by before engaging the with the second party either verbally or through any form of correspondence. He should bear the cost of the mentoring relationship if any.
- 6. To communicate with Mr McDowall on professional matters as a general rule in writing save in emergency situations.

- 7.Request a formal meeting with Mr McDowell to establish Mr McDowell's expectations of him once the GDC proceedings have concluded to attend any future meetings requested by Mr McDowell

B- To monitor behaviour Mr Spence should:

1. Keep a log and copies (redacted of identifying personal information) of all correspondence and referrals that he sends out including details of patient identifier, the addressee, content, justification of content and any discussion he has had with his mentor or other colleagues regarding the letter;
2. Keep a log and reflection of his discussions and meetings with his mentor.
3. Submit the logs and copies he is required to keep to NHS England AT at least every 3 months and/or within 7 days of written request so that NHS England AT can satisfy itself as to attendance at CPD events, the tone and volume of the correspondence and referrals made.

To assess compliance:

1. To attend a 6 monthly meeting with NHS England AT to review logs, complaints, and compliance with contractual terms, to be reviewed no later than December 2014

**Order**

Mr Spence is contingently removed from the Performers' List subject to the following conditions:
To promote engagement Mr Spence should:

- 1. Fully comply with contractual conditions.
- 2. Comply with QAH extraction policy and NICE guidance and not discuss his own theories regarding second molar extraction with patients, save in exceptional circumstances and with the written approval of his mentor.
- 3. Refrain from criticising colleagues to patients and act in a professional manner when explaining options.
- 4. Attend CPD events and keep a log of his attendance.
- 5. Seek a mentor through Health Education (Wessex) and approved by the Dental Dean (if possible an orthodontic consultant independent of the Isle of Wight)and enter into a mentoring relationship no later than 1 September 2013. Mr Spence should use the mentor to discuss any clinical, procedural or administrative matter that Mr Spence may feel challenged by before engaging the with the second party either verbally or through any form of correspondence. He should bear the cost of the mentoring relationship if any.
- 6. To communicate with Mr McDowall on professional matters as a general rule in writing save in emergency situations.

- 7.Request a formal meeting with Mr McDowell to establish Mr McDowell's expectations of him once the GDC proceedings have concluded to attend any future meetings requested by Mr McDowell

B- To monitor behaviour Mr Spence should:

4. Keep a log and copies (redacted of identifying personal information) of all correspondence and referrals that he sends out including details of patient identifier, the addressee, content, justification of content and any discussion he has had with his mentor or other colleagues regarding the letter;
5. Keep a log and reflection of his discussions and meetings with his mentor.
6. Submit the logs and copies he is required to keep to NHS England AT least every 3 months and/or within 7 days of written request so that NHS England AT can satisfy itself as to attendance at CPD events, the tone and volume of the correspondence and referrals made.

To assess compliance:

2. To attend a 6 monthly meeting with NHS England AT to review logs, complaints, and compliance with contractual terms, to be reviewed no later than December 2014

No person shall publish in any media anything which would identify the patients referred to in this decision.


HHJ Nancy Hillier

28 July 2013