The First-tier Tribunal
(Health, Education and Social Care Chamber)
Primary Health Lists

Appeal Number: **PHL/15410**

In the matter of THE NATIONAL HEALTH SERVICE ACTS
And in the matter of THE NATIONAL HEALTH SERVICE (PERFORMERS LIST) REGULATIONS 2004

Before :
Siobhan Goodrich
Dr John Chope
Mrs Jenny Purkis

Hearing: 21st, 22nd March and 25th May 2012
At the Care Standards Tribunal, Pocock Street

Between

Mr RAJESH NARENDRANATH
(GDC Registration Number 83942)

Appellant

and

SOUTH STAFFORDSHIRE PRIMARY CARE TRUST

Respondent

DETERMINATION AND REASONS

Representation
For the Appellant: Mr Jon DeBono, Counsel, instructed by the MDU
For the Respondent: Mr John Morris of the PCT

The Appeal
1. Mr Narendranath appeals against the decision of the South Staffordshire Primary Care Trust (hereafter referred to as "the PCT") made on 5th July 2011 to

remove his name from its Performers' List. The decision, made under paragraph 10 (4) (a) and (c) of the National Health Service (Performers' List) Regulations 2004 ("the Regulations") was that that Mr Narendranath is unsuitable to be included therein.

2. We were invited to refer to Mr Narendranath as Mr Nath and we do so.

A brief overview

3. As will be seen hereafter the decision by the PCT concerned Mr Nath's response to the investigation by a number of bodies between 2008 and 2011 into the complaint made by a patient in September 2007. Pursuant to the parties' agreement and the directions made by Judge Burrows the adequacy of clinical treatment provided to the patient is not a matter that need concern us.

The PCT decision

4. The reasons for the decision were essentially as follows:
   a) The PCT Committee considered that Mr Nath's failure to comply with the recommendations made by the Health Care commission in 2008, the warning by the General Dental Council in 2008 and the Parliamentary Health Services Ombudsman in 2011 within the required timescales amounted to serious failings.
   b) It noted that the failure to comply with the PHSO recommendations arose after Mr Nath had received a positive report in relation to training undertaken, indicating that his pattern of behaviour had not fundamentally changed.
   c) It did not consider that Mr Nath's letter to the Patient dated 4th July 2011 constituted an adequate apology.
   d) The late submission of this letter raised concerns as to why this had not been done before.
   e) The PCT Committee decided that in the light of the serious failings, the nature of the issues, the length of time since the issues have been ongoing and the involvement of other bodies, Mr Nath's name should be removed from the Performers List on the grounds of unsuitability.

The Notice of Appeal

5. The Appellant contends that :
   a) The decision was disproportionate. The Appellant's failure to comply in time with the recommendations of the Healthcare Commission, the GDC and the PHSO does not render him so unsuitable as to justify his removal.
   b) The PCT was wrong to conclude that the Appellant's pattern of behaviour "had not fundamentally changed."
   c) The PCT was wrong to conclude that the Appellant had not yet adequately apologised to the complainant.

THE HEARING

Our approach to the evidence

6. The nature of the appeal under the NHS regulations is by way of redetermination**:** it is open to this panel in its redetermination to make any decision that would have been available to the PCT. Our task is not that of review of the panel decision but to make our own in the light of the evidence before us which includes evidence as to what had happened since the PCT decision was

made.

The Burden and Standard of Proof.

7. We directed ourselves that the PCT bore the burden of proof. In so far as any facts in issue the civil standard of proof applies.

The Evidence

8. We heard evidence from Mrs Lynne Deavin on behalf of the PCT. We heard evidence from Professor Dunne, Mr Nath and Mrs Maskew on behalf of the Appellant. We also received the written evidence from Mrs Marsden and Dr Harvey of the Dental Defence Union (DDU) as well as the report of Dr Revely, consultant psychiatrist dated 20th September 2011. The evidence before us is contained in three bundles. We will refer to divider and page numbers across bundles 1 and 2 and refer to Bundle 3 specifically as appropriate.

9. It is unnecessary to summarise the evidence of all the witnesses since it is set out in their statements/reports which stood as evidence in chief. When making our findings and conclusions we will refer to the key parts of the written and oral evidence.

Submissions.

10. We received comprehensive written submissions from the PCT and both oral and written submissions from Mr De Bono on behalf of the Appellant. We do not attempt to set out each and every matter upon which the parties relied. The key features of the respective positions of the parties may be summarised as set out below.

The Respondent's case

11. The Respondent's position is that the only appropriate disposal is removal of Mr Nath's name from the list on the grounds of unsuitability. It is accepted that it is open to the Tribunal to consider whether the relevant facts and matters could be viewed as an inefficiency case under regulation 10 (3) (c).

12. Amongst other matters the PCT in its skeleton invited the Tribunal to consider the following:

    a) The PCT's case is not focussed on what happened at the September 2007 consultation but is concerned with the Appellant's repeated failures to reflect over subsequent years.

    b) A central question is why, if in October 2011 Mr Nath was able to recognise many instances of "unprofessional", "wrong" "inappropriate" and "entirely inadequate" conduct over three years, was he totally unable to recognise and address this conduct at any time before removal proceedings were commenced in June 2011?

    c) The PCT does not accept that Mr Nath's recently expressed understanding of his past poor behaviour is genuine and so cannot conclude that repetition of this behaviour is unlikely.

    d) It is accepted in principle that a previously unsuitable performer may demonstrate a change in attitude. However, caution must be exercised in the

case of a performer who claims to have reflected and reformed their approach only after removal is proposed.

e) Courses designed to help practitioners deal with complaints would not address the attitude of a performer who is prepared to show such persistent disregard for high profile agencies, including his own regulator.

f) Suitability is to be given its ordinary every day meaning. It is not accepted that there is a "higher threshold" for such a finding.

The Appellant's case

13. The essence of Mr Nath's position is that:

a) It is accepted on behalf of Mr Nath that the matters complained of in this case could, if not remediated, justify his removal from the PCT's performers list on grounds of suitability.

b) It was not until the report of the PHSO that Mr Nath's eyes were finally opened fully to what he had done. He had been gradually coming to the understanding that it was his behaviour that was at fault all along, although he had found this extremely hard to accept.

c) Mr Nath now wholly and unreservedly accepts that his response to the complaint and all that followed was inappropriate and wrong. He has fundamentally changed, he realises the error of his ways and there is no danger of repetition. In those circumstances it is wrong to regard him as unsuitable for inclusion in the PCT's performers' list.

d) The panel can be satisfied that the laying of the PHSO's report before Parliament was not simply a mark of the seriousness of this case (which it was) but also that it was part of the solution in finally and unequivocally demonstrating to Mr Nath the seriousness of his wrongdoing.

e) There is before the panel evidence of a sustained programme of remediation including:

i. Work with Professor Dunne.
ii. Work with the Interactive Studies Unit at Birmingham University,
iii. Attendance at course at the Eastman Postgraduate Centre on 5th September 2011 "Successfully Handling Complaints"; and University Hospital, Stoke on Trent, 15th February 2012 "Complaints and Conflicts Management"

f) Most important of all Mr Nath now realises, as explained in his statement and Dr Reveley's report, that he was in the wrong rather than being the wronged party.

g) The Tribunal panel can be satisfied that Mr Nath's behaviour has changed and that therefore in all the circumstances and taking into account the significantly greater evidence that is now available, Mr Nath is not unsuitable for inclusion on the PCT's list.

h) In the light of all the evidence the reasonable, fair and proportionate response is that of contingent removal.

The National Health Service (Performers List) Regulations 2004

14. Regulation 11 sets out the criteria for removal in relation to unsuitability, fraud and efficiency.

15. Regulation 11(1) of the 2004 Regulations (unsuitability) provides that in addition to the matters specified therein the PCT shall in reaching its decision, "take into consideration the matters set out in paragraph (2) which list the matters as follows:

(a) the nature of any offence, investigation or incident;

(b) the length of the time since any such offence, incident, conviction or investigation:

(c) any action taken or penalty imposed by any licensing, regulatory or other body, the police or the courts as a result of any such offence, incident or investigation;

(d) The relevance of any offence, incident or investigation to his performing relevant primary services and any likely risk to patients or to public finances;

(e) whether any offence was a sexual offence ...

(f) whether he has previously failed to supply information, make a declaration or comply with an undertaking required on inclusion in a list;

(g) whether the performer has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from any list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or the equivalent body for such action;...

16. Under Regulation 11(5) and (6) the matters to be considered when considering removal on efficiency grounds are as follows:

a. The nature of any incident which was prejudicial to the efficiency of the services, which the performer performed;

b. the length of the time since the last incident occurred and since any investigation into it was concluded;

c. any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident;

d. the nature of the incident and whether there is a likely risk to patients;

e. whether the performer has ever failed to comply with a request to undertake an assessment by the NPSA[now NCAS];

f. whether he has previously failed to supply information, make a declaration or comply with an undertaking required on inclusion in a list;

g. whether he has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from any list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or the equivalent body for such action;...

The Guidance.

17. The Secretary of State's advice for Primary Care Trusts on list management "Delivering Quality in Primary Care" provides some background as to the purpose of the Performers List Regulations. Although written in the context of the medical profession it provides general guidance as to the approach to unsuitability and inefficiency.

"2.1 The NHS (Performers Lists) Regulations provide a framework within which PCTs can take action if a medical performer's personal and/or professional conduct, competence or performance gives cause for concern.
2.2 Protection of patients should be the overriding consideration when considering whether a performer should be admitted to a list, suspended or removed from a list, whether restrictions should be placed on a performer's position on a list, or whether the performer should be excluded from all lists (disqualification).

The Guidance includes non-specific examples of where suitability may be a grounds for removal from a list, see paragraph 7.10.

"Suitability"
7.10 "Suitability" as a ground for action could be relied on where:
• It is a consequence of a decision taken by others (for example, by a court, by a professional body, or the contents of a reference)
• There is a lack of tangible evidence of a doctor's ability to undertake the performer role (for example, satisfactory qualifications and experience, essential qualities)
7.11 The term is used with its everyday meaning and so provides PCTs with a broad area of discretion. Suitability and efficiency grounds may overlap and in many cases a PCT may find itself able to take action against a doctor under either ground. It is unlikely that a PCT would be accused of acting wrongly by using efficiency grounds to remove a doctor who had been convicted of serious violence, or by using unsuitability as a ground for removing a doctor who had defrauded the NHS."

See also paragraph 17.12:

"Discretionary Removal on Suitability Grounds – Regulation 11(1) and 11(2)

17.12 If a PCT is considering removing a doctor because it believes him to be unsuitable, it will also need to take into account any information it has received relating to criminal, professional or other investigations, proceedings and penalties; and any information held by the FHSAA(SHA) [now HESC] about any past or current investigations involving or relating to the doctor.
17.13 In reaching a decision the PCT should take the following into account:
• Whether there are any criminal offences to be considered
• Any penalty imposed as a result of any criminal conviction, or the outcome of any GMC or

other investigation
• The relevance of any criminal offence or any GMC or other investigation and the likely risk to patients
• Any sexual offences
• Whether any criminal offence was a sexual offence to which Part 1 of the Sexual Offences Act 1997 applies, or would have applied had the offence been committed in England and Wales.

Paragraph 17.12 explains the absence of the option of contingent removal in a suitability case:

"17.12 Contingent removal cannot be imposed in a "suitability" case. The effect of the law is that a doctor is either suitable or unsuitable. There are no degrees of suitability. So a PCT must remove a doctor from its performer list if it decides that he fails to meet the suitability criteria in full."

18. It was agreed that whether the facts and matters before us are to be properly characterised as "unsuitability" or "inefficiency" is an essentially a matter of judgement rather than an issue of fact (*see, for example, GMC v Biswas*). The burden of persuading us that Mr Nath is unsuitable rests on the PCT. It is agreed that if Mr Nath were found to be unsuitable the issue of removal contingent upon his compliance with conditions cannot arise as a matter of law: there is no power to direct contingent removal in an unsuitability case. The power to remove if either unsuitability or efficiency grounds are established is, however, discretionary and must be informed by consideration of the matters set out in Regulation 11 as well as the principle of proportionality.

19. For these reasons and because of the overlap between the two grounds we decided that we should keep an open mind as to whether this was an unsuitability or efficiency case. Indeed it should be said that it was the Tribunal that asked the PCT to consider its position in this regard.

20. It needs also to be recognised that the concept of "unsuitability" is not a fixity. Even if the conclusion of the PCT panel was correct as at 5th July 2011 we must consider the more extensive evidence that is today before us and make the decision anew. The concept of remediation involves *current* evaluation. This is consistent with the whole schema of the primary and secondary legislation. Indeed this is illustrated by the fact that any practitioner who is removed (whether on the grounds of unsuitability or inefficiency) can apply for inclusion on a performers list at some future date. This applies in any given case and even where a direction in respect of national disqualification is made although the Tribunal, in such cases, will give a direction as to the minimum period of time that must elapse before such an application can be made.

21. In our view the principle of proportionality requires that if appropriate conditions can reasonably be devised to provide sufficient protection to patient well being and the public interest that is the course that should be adopted. Whilst by virtue of the legislation this is a course that may only be adopted in a case that can properly characterised as an efficiency case it is well known that there can, in any given case, be the overlap between the two grounds.

22. In our view one useful way of examining the concept of unsuitability and the

issue of overlap is to consider whether sufficient remediation has been or can be achieved within the foreseeable future. In this sort of situation it may be just, proportionate and fair to view the matter as one of efficiency.

Our consideration of the background evidence

23. The Appellant qualified as a BDS from the University of Kerala in India in 1997 and then worked in worked in hospital posts until 1999. Mr Nath then came to the UK and obtained his MDent Sci (restorative dentistry) from the Leeds Dental Institute. In 2002 he passed the MFDS diplomas from the Royal Colleges of Edinburgh and Ireland. Thereafter he held a series of hospital posts in East Grinstead, Belfast and Halifax. Between October 2004 and December 2005 he worked as a Dental Officer at the Hanley Health Centre in Stoke on Trent.

24. Between December 2004 and October 2005 he worked as an associate in general dental practice for JD Hull Associates. In January 2006 he acquired the Stone Family Dental Practice which he ran as a sole practitioner. His name was included in the PCT list on 8th May 2006.

25. In September 2007 the patient made a verbal complaint about Mr Nath at the practice.

26. It was agreed long ago between the parties that it was unnecessary to trouble the Tribunal with resolution as to what, in fact, occurred that day. That being so we make it clear that in so far as we recite the accounts concerning the appointment we have not made any findings as to the truth of what was said.

27. On 7th September 2007 the patient saw Mr Nath. She made a verbal complaint that day. The practice wrote a letter in standard form to her that day and provided her with the complaints procedure.

28. On 13th September Mr Nath wrote to the patient. Having set out his account he said that he would be unable to help her any further but would provide her records to a new dentist. From his perspective the patient had made comments about being kept waiting weeks for an appointment which were not true. The patient had alleged that he had deliberately caused damage to her mouth when trying to take an x ray. He accepted that the positioning of the x ray equipment could prove quite bulky and uncomfortable to some but using an x ray only takes an instant. Without an x ray he could not treat her. The patient had said that he was not competent and had made rude comments.

29. In a statement dated 29th September 2007 the patient set out her perspective. She became a patient of Mr Nath in March 2007. She had had a dentist based outside of the area because of the shortage of NHS dentists in Stone. She was vulnerable as she had recently undergone chemo and radiotherapy for cancer and suffered from remitting multiple sclerosis. At an earlier appointment she had requested a scale and polish because her mouth had suffered terribly during chemotherapy but Mr Nath refused. From June onwards she suffered pain. Mr Nath said there was nothing he could do for her because he could not identify the source and offered a referral. He later telephoned and said that he would take some precise

x rays. During the x ray procedure on 7th September she was in pain and involuntarily pulled back. Mr Nath said angrily that she would have to leave as he could not treat her. He refused to treat her and went to his computer. She told him he had poor social skills and he told her to leave the premises. He said she had to find a new dentist because he did not want her on his books. When she received the letter from the practice on 7th September she felt the tables had been turned because it was Mr Nath who was dissatisfied with her. She had left because he refused to treat her. The letter dated 13th September made it looked as if Mr Nath was the wronged party. She was in his hands both literally and professionally. He was her only dentist throughout her time of difficulty and called in him for expertise at a time when she was vulnerable and in pain.

30. On 30th October 2007 in response to the PCT Mr Nath wrote that he noted that the patient had made no mention in her letter of how rude, insulting and aggressive she was towards him *[5/50].* His practice operated a strict zero tolerance policy. He then said:

> *"She has complained about me to the PCT!! Who shall I complain to against this patient? I feel that I also have the right to work in an environment without being threatened, harassed or insulted. I have consulted with my defence union about this and according to them there is a prima facie case against this person for defamation of character and I am seriously considering taking this matter to court.*
>
> *If she is not satisfied with my response please feel free to refer her to the health care commission.*
> *Please also do me the courtesy of at least trying to spell my name properly, I am not called Nash"*

The Healthcare Commission

31. The Healthcare Commission conducted and independent review of the complaint made by the patient with the assistance of an independent clinical adviser, Dr Peter Oliver.

32. Mr Nath wrote a letter dated 3rd March 2008 to the HC which provided his response to points raised by that body. So far as an apology was concerned this was in the style "I can only apologise if the patients feels..." [5/87]

33. Having addressed the issues involved in relation to the treatment provided between March and September 2007 in some detail the complaint was upheld. On 18th April 2008 the HC wrote to the practice and recommended that a further written response be sent to the patient. It was said that the response should include information on 13 points which included apologies in relation to 5 identified issues and assurances concerning systems and improvement. [5/55-68]

34. No response was received from Mr Nath.

35. On 18th August 2008 Mr Nath wrote to the patient saying that he reiterated all the points he had made in his previous correspondence. He said that his practice adhered to good practice procedures and that he was still waiting for an apology from the patient for her rude and insulting behaviour [5/72].

36. On 29th August 2008 the patient wrote to the HC and informed them of Mr Nath's reply. She said that his practices, procedures and attitudes did not respect her vulnerability and that Dr Nath was, and continues to be, rude.[5/73]

37. On 18th September 2008 the HC wrote to Mr Nath restating the recommendations and expressing concern [5/71]. A copy of the letter was sent to Dr Harvey, Mr Nath's DDU representative. A response was required by 26th September 2008.

38. Mr Nath did not respond.

39. On 25th November 2008 Mrs Deavin wrote to Mr Nath and requested evidence to show compliance with recommendations of the HC including the letter of apology. According to Mr Nath's witness statement Breach and remedial notices were issued that day and on 7th May 2009 [4/5].

40. On 4th June 2009 Mr Nath wrote to the PCT [5/75].He enclosed evidence of the zero tolerance policy and the complaints policy as requested but made it clear that he did not consider than any apology was due save to himself. He considered that his human rights has been breached because the investigation had been one sided. He said that what he had leant and put in place was that he would never allow a second chance for anyone to abuse him or his staff. He was prepared to go the European Court of Human Rights to defend his right to feel safe and respected in his work place. It appears from this letter that Mr Nath was still in contact with his DDU representative.

41. On 23rd July 2009 Mrs Deavin again wrote to M Nath. She provided him with a document on which he could set out his response to the recommendations. She strongly advised Mr Nath to comply with the HC recommendations otherwise the PCT would need to consider if further action was required. She also said that the PCT was not in a position to investigate his allegation of abuse as they had not received any evidence from him [5/80].

42. In August 2009 Mr Nath wrote comments on the document in which, amongst other matters, he said that an apology relating to the management of the patient's abscesses had been sent twice. So far as the pain and distress caused on 7th September was concerned and the patient's experience of an uncaring attitude he said "this is pure allegation."

The General Dental Council

43. The PCT referred the patient's complaint to the GDC. Dr Nath's advisors wrote to the GDC in April 2010 setting out his position which was that he had addressed the issue regarding his management of the patient's treatment in his letter of March 2008 and this had included apologies for his poor attitude: the unexpected presence of an additional dental nurse; pain caused when inserting the sensor; and poor complaint handling. These apologies had been reiterated in his letter to the patient in August 2008.

44. The Investigation Committee of the GDC wrote to Mr Nath in May 2010 and

said that it was extremely concerned to note that the patient had still not received a letter of apology. It issued a warning which included "... *Mr Nath is also warned in future to follow the recommendations of professional bodies when issued with them."*

The Parliamentary Health Service Ombudsman

45. The patient complained to the PHSO on July 2010 because Mr Nath had not provided her with the apologies that the HC had recommended he make. The PHSO conducted an investigation. She also obtained independent advice from a dental practitioner. Mr Nath met with the PHSO investigator on 23rd January 2011. The patient and Mr Nath were both given the opportunity to comment on the draft report and their responses were taken into account.

46. The independent adviser to the PSHO concluded that the HC recommendations were appropriate and proportionate to the issues in the complaint.

47. In his response to the draft PSHO report Mr Nath maintained his position that he had apologised and his letter sent by his advisers constituted an apology. He also said that he would not pay the patient any compensation.

48. In her final report dated March 2011 the PHSO noted that so far as the HC were concerned Mr Nath had maintained that he could not add anymore to his original response to resolve the complaint and questioned the clinical advice that the HC had received. [para 30 at 5/99].

49. The PSHO upheld the complaint of maladministration and recommended that within one month Mr Nath should provide to the patient :

- A full acknowledgement and apology for the failings identified in the PHSO report;
- The apologies recommended by the HC
- The sum of £500 as compensation for the feelings of shock and offence suffered as a consequence of the maladministration and the inconvenience of bringing her complaint to the Ombudsman when it could and should have been resolved much sooner.

50. The Ombudsman then said this at para 48:
"This complaint should have been very simple and straightforward to resolve. However Mr Nath's failure to apologise has prolonged the complaints process and with it the frustration and upset caused by [the patient]. I hope that this report will draw what has been a long and complex complaints process to a close."

51. In the light of Mr Nath's response to her draft report the Ombudsman also decided to share the findings of her report with the GDC. She considered that:
"Mr Nath's unwillingness to comply with recommendations of professional bodies raised concerns about his fitness to practice, sufficient to constitute a risk to the health and safety of patients."

Events after the PHSO report

52. The PCT sent the PHSO report to Mr Nath under cover of letter dated 11th

April 2011. The PCT advised Mr Nath that it took these mattes very seriously and expressed concerns that Mr Nath had indicated that he did not intend to comply with the Ombudsman's recommendations. Mr Nath was urged to do so and take advice. Confirmation that he had responded to the Ombudsman was requested by 3rd May 2011 with copies of the evidence of compliance with the recommendations in respect of acknowledgment, apologies and compensation.

53. Mr Nath did not respond by 3rd May 2011. The office of the PSHO informed the PCT that Mr Nath had advised the PSHO that his defence representative was away until 20th May 2011. No response was provided by Mr Nath or his advisers thereafter.

54. On 8th June 2011 the PHSO laid her report before parliament noting that it is very unusual for someone providing an NHS service to ignore her recommendations. It was the first time since taking office in 2002 that she had had to lay a report before parliament in such circumstances. In a press release the PSHO said *"For anyone who provides an NHS service to ignore recommendations arising from the NHS complaints system is a serious matter. I hope that making this story public provides the catalyst for the dentist to provide the long overdue remedy to [the patient]."*

55. The evidence of Dr Harvey, which we accept, is that on 10th June 2012 he emailed Mr Nath asking him to confirm what steps he was willing to take following the PHSO's recommendations. Mr Nath replied by email that day that he was happy to do "whatever was needed to make everyone satisfied."

The NCAS Remedial Action Plan.

56. During part of the course of the events set out above Mr Nath, at the request of the PCT, had been following a National Clinical Assessment Service ('NCAS') informed remedial action plan that was (and still is) overseen by West Midlands Deanery [5/16-37]. As we understand it the original referral to NCAS took place in June 2008. The NCAS assessment itself was finalised in May 2009.

57. It is common ground that this complete remedial action plan involved matters unrelated the complaint of the patient. It is a simple fact that the plan has involved attention to both clinical and behavioural aspects of Mr Nath's practice. The Behavioural Assessment was undertaken in December 2008. We noted that the assessments performed included an NEO-PI-R personality questionnaire, a Hogan Development Study ((concerned with identifying self defeating behaviours in pressurised conditions), and in depth interview and background information made available by NCAS.

58. The NCAS report states:
"The behavioural assessment suggested that Dr Narendranath is psychologically equipped to modify his practice. However, his apparent reluctance to comply with the requirements of third parties (such as the referring body and the HCC) may indicate a potential challenge to remediation. There are also indications that Dr Narendranath sometimes makes statements that are not substantiated by the evidence... This could present a problem in relation to the monitoring and supervision of a remediation programme."
It suggested that the prognosis for remediation was positive. We noted the following

in particular:

- The behavioural assessment suggested that others may see [Mr Nath] as behaving in a "cold, calculating and blunt" manner which Mr Nath agreed with although he indicated that he had started to "think more from the patient's perspective and show a more human touch."
- The psychometric data suggested that convincing Mr Nath may involve him challenging or questioning guidelines or instructions. It was considered that, once convinced, Mr Nath is likely to be supportive and committed to an agreed direction.
- Mr Nath acknowledged that on reflection that he is aware that he has become embroiled in a battle of egos- "[The PCTs] and mine" [3.2 page 40]
- Throughout the discussion he expressed an openness to doing things differently if so instructed. [3.2 page 42]
- In relation to the HC investigation: despite obvious distress he described himself as remaining philosophical and prepared to do "whatever is necessary to clear my name".

The Report of Professor Skelton dated 6th October 2010.

59. In this [3.2 50 et seq] Professor Skelton sets out Mr Nath's account of the patient complaint. At the first meeting in May 2010 Mr Nath said he felt that he was, to all intents and purposes "past the anger".

60. At a meeting on 7th July 2010 role play was undertaken which went fairly well. It was said "what we have evidence for is that [Mr Nath] is capable of performing at this level when requested to do so. We have no evidence that he would be able to sustain this level when, for example, he was tired ... and a difficult patient or colleague arrived." In this respect Professor Skelton hoped to offer a further meeting to talk through the deeper issues of anger management with him. However towards the end of the meeting Mr Nath suggested that Professor Skelton visit his practice. Although this was agreed at a notional cost Mr Nath indicated later that he had no funds to support this.

61. Mr Nath underwent a full remedial programme at Kings College London Dental Institute (hereafter "Kings") between September 2010 and March 2011.

The PCT Performance Decision Making Group

62. The PCT Performance Decision Making Group met on 20th May 2011. They considered the matter in the context of the NCAS remedial programme and Mr Nath's reported progress. They decided to refer the matter to the Performance Management Group for consideration of removal and also for further referral to the GDC.

63. On 2nd June 2011 Mr Nath was given notice of the hearing on 5th July 2011.

The PCT Hearing

64. At the PCT hearing held on 5th July Mr Nath was represented by Dr Harvey of the DDU. Dr Harvey asked Mr Nath whether in retrospect he should have been calmer in his response to the recommendations and submitted appropriate responses. Mr Nath said he had been seriously upset and did not know what more

he could have done. He had apologised repeatedly, he had engaged with the patient, all apologies had been written with the exception of one and he had expected an apology from the patient herself following her behaviour.

65. Asked if a letter had now been sent to the patient regarding the HC recommendations Mr Nath confirmed that he had written that week and submitted at the hearing a copy of a typed letter to the complainant dated 4th July 2011.

66. Asked what he had learnt at Kings, Mr Nath said that he had learned a lot in that he recognised his own shortcomings, had learned to take a step back and had been able to handle an in house complaint that was resolved satisfactorily. It was important not to respond when mentally upset – to calm down and take step back. In addition he had learned the importance of involving the Dental Defence Union at an early stage.

67. Mr Nath said also that:
   a) He was no longer single handed, had a part time performer working at the practice and had received BDA Good Practice accreditation in March 2011.
   b) He had completed the first stage (of the behavioural programme) with Professor Skelton who was to come to the practice but this had not been arranged due to lack of time.
   c) He felt he had complied with the HC recommendations. He had had the complaints policy reviewed and had sent a letter of apology to the patient. This was the letter dated 3rd March 2008 which was addressed to the HC with a copy to the patient.
   d) He was under the impression that he had resolved matters.
   e) He had let matters slip but this was due to family circumstances which involved travel to India.
   f) He has not sorted out matters when the PHSO became involved because he had been discussing it with the Dental Defence Union. He had several personal issues including a stay in hospital himself so the matter slipped again.
   g) He had met with the PSHO (investigator) at the practice. It was not the case that he had been trying to convince the PSHO that he was right. He had queried whether both sides of the story were being looked at as he felt that he was not getting a fair trial.

68. Asked by the PCT Committee why he had now responded to the recommendation, Mr Nath said that he had decided some time ago to respond to the PSHO and had been in discussion with his representative. He had experienced problems in his personal life but he had decided to agree to make the payment about 2 or 3 weeks ago.

69. At the PCT hearing Mr Harvey explained that:
   a) He had drafted the letter (dated 4th July) on behalf of Mr Nath but had not felt it right to send it when Committee arrangements were being convened. A copy of the letter would be sent to the PSHO who would decide if it suitably reflected the recommendations.
   b) Professor Dunne was willing to take Mr Nath on as a clinical teacher or to provide him with a reference for a more local dental school.
   c) Fundamentally Mr Nath had a belief that the process was unfair to him and

that the patient also had a responsibility. He now accepted that personal feelings had to be overridden by professional responsibility.

70. Mr Nath said in evidence that he had been informed of the decision at the hearing on 5th July 2011.

71. After the hearing the PCT received a letter from the patient dated 13th July 2011 [5/125] in which stated that on 8th July she had received a letter from Mr Nath which she enclosed. It was a lengthy handwritten letter dated 14th June 2011 [5/126 et seq]. She said "up to today I have not received either the "official apology" or the cheque that is referred to in his letter as requested by the Ombudsman"

72. On 3rd August 2011 Mr Nath wrote to the PSHO acknowledging that he was in the wrong and unequivocally accepting her criticism.

Professor Dunne's evidence.

73. In his report dated 20th September 2011Professor Dunne related that:
   a) Mr Nath underwent part of his remedial training programme at Kings which lasted for 6 months involving 2 days a week. It concluded on 16th March 2011.
   b) When Mr Nath first attended the Professor and his colleagues found Mr Nath to be over confident and possessing a superior, mildly aggressive attitude to those he considered to be his subordinates such as dental nursing staff. Elements of this attitude extended to secretarial staff and patients.
   c) These deficiencies (and others not related to his relationships with patients) were discussed with Mr Nath by his teachers, assisted by a psychologist. Throughout the programme his relationships with patients and others were closely monitored.

74. Professor Dunne considered that by the end of the remedial programme Mr Nath had addressed these issues.

75. In his oral evidence Professor Dunne explained that the remedial programme is customised to the needs of each dentist. After 2 months Mr Nath was still overconfident, tending to talk at people and had difficulties coming to terms with his limitations. He explained that the elements of the programme covered interaction with colleagues and patients, consent and complaint handling but it was a relatively minor part of the programme which was largely devoted to clinical performance. There had, however, been a great deal of emphasis on getting Mr Nath to take responsibility for problems across the board.

76. Professor Dunne described how at the concluding interview in March 2011 Mr Nath had become very emotional and he found this revealing. His overall feeling by that time was that Mr Nath was a different dentist. He asked by Mr Debono if Mr Nath could have been "jumping through hoops"? Professor Dunne said that whilst it was entirely possible that he could be unwittingly hoodwinked, his views were based on the reports of 15 individuals, including the views of staff and patients, all of whom were of the view that Mr Nath now accepted responsibility. He thought there had ultimately been a great change in Mr Nath but it had taken a long time to get there. This could have been due to that fact that Mr Nath was only able to attend part time. Professor Dunne's view in March 2011 was that the programme was not quite

complete and that Mr Nath would benefit from continued contact with Kings. He therefore offered to Mr Nath that he should return to Kings for one day a week but this did not happen at that stage.

77. Professor Dunne was very surprised to learn of Mr Nath's response to the PHSO report because his view had been that Mr Nath fully understood and accepted his previous limitations. Mr Nath had not contacted him at all at this time or since. If in March 2011 he had been asked to predict Mr Nath's response to the PSHO report, he would have fully expected that Mr Nath would respond appropriately. He did not consider that subsequent events disproved his conclusions although he acknowledged that there was still clearly a problem.

78. Professor Dunne said that he would accept the opportunity to carry out an assessment to discover the cause of Mr Nath's intransigence. He was asked by Mr DeBono whether he felt able to make any assessment today knowing that Mr Nath had initially refused to comply with the PHSO recommendations but had subsequently apologised. Professor Dunne said that he could not give a prediction based on insufficient evidence. He would need an extensive interview with Mr Nath. It was not his assessment that Mr Nath was irremediable but this view was based on the information available to him in March 2011.

79. In answer to Mr Morris Professor Dunne said that:
    a) Mr Nath had mentioned his engagement with the PSHO only in passing.
    b) The involvement of the GDC and the HC report were not raised in any conversation that he could recall although it may have been raised with others.
    c) To say that Mr Nath had been invited to become a "clinical teacher" at Kings for one day a week might infer more than he had suggested to Mr Nath. The offer was that he work in shadow to another at Kings, but being allowed to contribute.
    d) This was not the sort of offer he usually made but it reflected his residual concern. He had felt that as a single handed practitioner Mr Nath would benefit from further camaraderie and support that such further training could provide.
    e) He expected Mr Nath to pursue this offer on his own initiative. Mr Nath had not been in contact since March 2011.
    f) This was the first occasion in his experience that a dentist who has completed a remedial pathway has got into difficulties through their own fault. He had experience of another dentist who experienced great difficulties but it transpired that this was due to neurological difficulties.
    g) He agreed that the circumstances in which Mr Nath and others are now placed were unusual.
    h) He had been involved in remedial training for 25 years and all the dentists involved had all returned to practice, some with restrictions which have been later removed. Two dentists had gone on to obtain higher degrees.

80. In re-examination Professor Dunne said that Mr Nath had never reached the point of complete remediation. He had completed the standard remediation programme when others have fallen by the wayside.

81. In answer to the questions from members of the Tribunal Professor Dunne said:
    a) Mr Nath was resistant to criticism initially and considered that everything was someone else's fault.
    b) When Mr Nath became emotional in their final meeting the matters disclosed concerned his mother's illness.
    c) The difficulties involving patient interaction and Mr Nath's inability to accept his role in the difficulties in which he found himself had been addressed by the end of the programme.
    d) Mr Nath would have been very wise to have discussed the ongoing issues concerning the patient with him. It may have been discussed with others but it was not referred to in any of the reports from his colleagues. This ongoing problem would not have caused any concern about treading on eggshells because the programme cannot be run "without breaking eggs."
    e) The programme undertaken was modular. The clinical skills programme involved all aspects of conservative dentistry and involved 1 to 1 supervision with close observation by all members of the team. Normally the programme lasts three months but Mr Nath's course lasted for six. The second half of the course involved a great deal of supervised clinical activity and the observation of patient interactions.
    f) His advice to Mr Nath at the end of the course was that he could return to Kings for in day a week: he should not work as a single handed practitioner and he was recommended to maintain contact with one of the elected mentors at Kings, Dr Gill.
    g) He did not believe that Mr Nath had maintained contact with Dr Gill.
    h) In the first period of the programme Mr Nath did not accept that he had done anything wrong. Over time he came to understand, often with some emotion, his weaknesses and his responsibility.
    i) What happened subsequently came as a complete shock to him (Professor Dunne).
    j) Psychological and personality issues are present in almost every referral. Kings is very used to this and guiding the practitioner within limitations. Mr Nath had had counselling with Dr Lackii. The sessions were confidential but there was a general report each week. Some reports alluded to a lack of acceptance of areas on weakness but later reports alluded to the opposite.

82. In re-examination it was suggested that Mr Nath's plan was to return to Kings after a period of placement in the PCT area. Professor Dunne was unaware of this.

Mr Nath's evidence

83. The statement made by Mr Nath in these proceedings set out very fully his account as to his current insight into his response to the complaint process [4/1-9]. In particular, Mr Nath said that:
    a) He was deeply shocked by the PSHO findings and that the publication of her report (in parliament) and the attendant publicity on 8th June 2011 marked the turning point when he first truly realised that it was he who had really been at fault and not the patient. He resolved then to change his attitude and behaviour.
    b) He wrote directly to the PSHO on 3rd August 2011 acknowledging he was wrong and unequivocally accepting her criticism.

c) He sets out he personal circumstances. He said that he now feels able to admit that he originally found it extremely difficult to accept the criticisms that were made of him. He wrongly perceived himself to be the victim of injustice.
d) Having reflected on the episode carefully he is now able to acknowledge that that he did not offer the full extent of the apologies that had been recommended but allowed himself to become entrenched so that the matter escalated and he found it difficult to retract from that position. He has leant a difficult and valuable lesson that he will take forward to his future practice. He will not repeat his error. He is fully committed to remedying that deficiencies demonstrated in this case and undertook a course entitled "Successfully Handling Complaints" in September 2012 and another on "Complaints and Conflicts Management".
e) With reference to Kings, he does not think that at the end of the course he had yet fully appreciated the shortcomings in his handling of the patient's 2007 complaint. Nevertheless the course and the advice he received from Professor Dunne put him in a position where, once the PHSO's report was published he was able to appreciate why it was he who had been in the wrong.
f) He has also worked with Professor Skelton at the Interactive Studies Unit at the University of Birmingham on areas such as communication with patients and responding and handling complaints, Professor Skelton's senior tutor observed him in his practice on 4th October 2011 and gave positive feedback.
g) Overall the difficult process had enabled him to learn that he needs to change and he has adapted and modified his behaviour. He referred to the Petition for him to stay at the practice.

84. Although the issue of why Mr Nath had waited until 4th July 2011 to write to the patient was a matter raised in the PCT hearing and was part of the decision letter, Mr Nath's statement did not deal with this at all. In the course of his evidence in chief it became apparent that Mr Nath's account was that he had in fact completed and sent the handwritten letter [5/126] to the patient on or about 17th June. Since a reply had not been received a copy had been posted again, this time by recorded delivery and a member of his staff also posted it through the patient's door just to make sure. He referred to having evidence at the practice that would support this.

85. Mr Nath said that he did not tell the PCT committee about his handwritten letter because he found it difficult to air his personal pain. He had not felt able to explain this to the committee. At the time he did not think it would make any difference as he had already judged himself. He had passed judgement on himself and all the allegations were true. He was not fit to practice.

86. In his evidence before us Mr Nath had made several references to being able to produce supporting evidence. Given the potential significance of the handwritten letter and the importance of the overall issues at stake the Tribunal adjourned the proceedings to enable best evidence to be adduced.

87. In our view the handwritten letter is mainly significant because it very clearly demonstrates that as at July 2011 Mr Nath, despite the explicit observations of the PSHO in her report of March 2011, had no insight at all into the needs of the patient. Although it is true that he "apologised profusely and abjectly for the distress caused

to you by my poor behaviour" the handwritten letter was wholly inappropriate. It was very mainly all about Mr Nath and his feelings. In our view it was manipulative because it sought to provoke feelings of compassion for him by exploiting that which he knew about the patient's vulnerability. It was manipulative also because it sought to evoke sympathy in relation to his family circumstances. It presented a series of excuses as to why he had not apologised in the first instance. It skipped over why he had not apologised after the HC report and then proceeded to explain why he had not responded to the PSHO report by reference to the health of his parents and the condition of his nephew who "is not expected to live very long". He said that he was not "saying all this to gain her sympathy but was just telling her what he had not put in any official letter."

88. The handwritten letter does not persuade us that Mr Nath had absorbed much about professionalism or communication with patients during his intensive remediation programme. It is also somewhat at odds with Mr Nath's account at the PCT hearing which was still that the patient bore responsibility. It is notable that he was still saying on 5th July that he had done all that he could when he apologised to the patient in the letter dated 3rd March 2008. The basis of the representations on 5th July was that Mr Nath had changed, but much of what he said at the panel hearing showed that he had not really changed at all.

89. In our view, in overall context, the date the handwritten letter was actually written and whether it was written over a period of three days or over a period of a number of weeks, as is suggested by the evidence of Mrs Maskew, is not important. We do accept that the typewritten letter of apology dated 4th July 2011which sent by recorded delivery after the hearing was not successfully delivered when first posted [see 5/134-135]. We consider this is consistent with Mrs Marsden's evidence concerning her recollection of the need to resend an important letter to the patient at about this time.

90. Although it is possible that letters sent to the patient *prior* to the hearing may have got lost in the post it is improbable that two such letters were sent by post and one hand delivered but none reached their destination. Mr Nath said that the original handwritten letter was returned to him. We consider it likely that Mr Nath's evidence about the sequence of letters was driven by the need to explain the fact that the envelope sent to the patient on 7th July contained the original letter. We consider it most unlikely that the patient's account given on 13th July that she had not received any letter until 8th July is unreliable. We accept her evidence as set out in her witness statement dated 3rd May 2012. We consider it probable that the handwritten letter was only sent after the hearing because of the criticism that was made at the hearing about the formal typed letter dated 4th July 2011.

91. In our view what the evidence tends to show that Mr Nath is able to put forward and convince himself of that which suits his case. Indeed this aspect chimes in the behavioural assessment on 2008/2009 when the author states that there were indications that Mr Nath sometimes makes statements which are not substantiated by the evidence which "could present a problem in relation to the supervision and monitoring of a remediation problem." In the context of all the evidence before us that statement was somewhat prophetic.

92. The overwhelming impact of all the evidence is that, even as at 5th July 2011, Mr Nath had no real insight into the impact of his behaviour or as to his professional responsibility even though he had recently completed a six month programme at Kings. The difficulty for the Appellant is that his failure to respond to the PSHO report which received in mid April 2011 when he had only just finished his course at Kings is inexplicable.

93. The explanation advanced before us is that Mr Nath has been unable to accept responsibility in the past because when the incident happened on 7th September 2007 he had just received distressing news about his mother having collapsed in India. He said in the context of all the pressures upon him the image of his mother lying on the floor in distress disempowered him and prevented him from acting professionally. Whilst this might provide some explanation as to why the consultation went badly on 7th September 2007 we do not accept that his account provides an adequate explanation for why he continued to complain vociferously that he had been treated abusively by the patient and was unfairly treated by the HC, the PCT and the PSHO or why he failed to pay the compensation recommended by the PSHO. If as Mr Nath says, his mother told him in about mid May 2011 that he should apologise to the patient it is difficult indeed to understand why he did not do so. At the very least he could not have sent the recommended sum in compensation. The overwhelming impression created by Mr Nath's evidence is that his account is manipulative and comes about in order to obscure the true facts. We find that the probable reality is that right up until 5th July 2011 he still did not really agree with the process undertaken by the various bodies involved and was unable to recognise the needs of the patient. In our view although the handwritten letter may well have been in existence prior to 5th July Mr Nath was not being frank in his evidence about when it had been sent.

94. The real issue however is whether we accept that Mr Nath has acquired sufficient insight since 5th July 2011 and has changed his attitude and response to regulation. This requires an assessment of past and present insight. It also requires us to assess the weight that can be attached to the various strands of evidence that are capable of informing that issue. It requires an assessment of the weight that can be attached to Mr Nath's evidence that he has fundamentally changed and/or can change further.

95. We have considered the patient petition and other evidence of patient satisfaction put forward. We noted that a large number of patients have made comments on the petition that Mr Nath is a very good dentist and provides an excellent service. The weight which we attach to such evidence is somewhat undermined by the fact that there is no evidence on the face of the petition that the signatories were aware of the reasons why Mr Nath faces removal. Indeed the banner and explanation on the petition is misleading because it suggested that the PCT may not renew the practice NHS contract. Mr Nath said that patients were aware of the real issues because he had placed a copy of the report of the PSHO in the waiting room but in our view this begs the question as to why the basis of the petition request was not transparent.

96. The only evidence before us from fellow professionals is from those involved in Mr Nath's training.

97. We noted that despite the recommendation of Professor Dunne Mr Nath did not cease to be a single handed practitioner. He did engage another dentist to work on his days off. It may very well be that finances were part of this but the impression we have is that Mr Nath did not truly and willingly embrace this particular piece of advice. We noted also that after his course had ended Mr Nath did not keep in contact with Kings or his elected mentor Mr Gill although the latter was advised by the Professor.

98. Mt Nath was in contact with Mr Gilmour who was his local mentor but it is significant in our view that he did not tell Mr Gilmour about the PSHO report. He said that he did not do so because Mr Gilmour would have told him "to get it sorted and not to be stupid." We find that Mr Nath did not want to receive advice that he should apologise even from his mentor.

99. On Mr Nath's evidence he was guided by his mother who told him in May 2011 to apologise to the patient. Even on his own case he did not do so until very late in the day. He also said that the publication PHSO report finally opened his eyes to what he had done but this is inconsistent with his failure to respond to the recommendations. In our view the delay between April and July was due to his lack of insight and the intransigence that Mr Nath still displayed, as reflected in that which he said at the PCT hearing.

100. We should make it plain that it is our view that the quality of the typed apology dated 4th July 2011 itself is not key. The true gravamen of this case is that Mr Nath's lack of insight was such he failed to recognise the needs of the patient after 7th September 2007 and was quite unable to respond to the recommendations of the HC, the GDC and the PHSO over a period of some three years.

101. Having seen and heard Mr Nath give evidence over a period of hours, and making every reasonable allowance for the difficulties in giving evidence, we are unable to accept that Mr Nath had fundamentally changed or is currently able to change. His evidence about what he had learnt was largely formulaic. When asked what lessons he had learnt he essentially repeated that which he had said to the PCT panel. There is, in our experience, a difference between repeating that which you have been taught and actually being able to apply it in practice. We acknowledge that Mr Nath gave us an example of a complaint that had been resolved satisfactorily but in the context of his personality traits, his response to the regulatory process in between 2008 and 2011, and his lack of insight we do not consider that this provides sufficient reassurance. Asked what assurance he could give that such events such as occurred would not occur again he relied upon the fact he now has a good practice manager. Reliance on systems or another person to control the evident difficulty that Mr Nath has shown in the past is not, in our view, a sufficient basis to conclude that his own attitude has truly changed.

Our consideration in respect of "unsuitability" and "efficiency"

102. The issue is whether the overall effect of our findings, taking into account the matters set out in paragraph 11(2) of the Regulations, is such that it should lead us to reach the view that Mr Nath is unsuitable to be a primary care performer of services on the Respondent's list or that his inclusion on the list is likely to be prejudicial to

the efficiency of services. We noted that paragraph 11(7) which governs any decision to remove irrespective of the ground relied on, requires the PCT to take into account *"the overall effect of any relevant incidents and offences relating to the performer of which it is aware, whichever condition it relies on."*

103. We are entirely mindful that the events that unfolded between 2007 and 2011 related to a single complaint. This is however simplistic in the context of the repeated disregard of the recommendations of various bodies over a period of years.

104. The Appellant accepts that he was unsuitable in the past but contends that by reason of his current insight and his efforts to remediate the risk of recurrence is low. He invites the Tribunal to consider this as an efficiency case.

105. In our view it is highly significant that despite the fact that whilst Mr Nath was undergoing a remedial training course, which included communication with patients and patient complaint handling, he maintained his intransigence in his dealings the PHSO and thereafter. He did so even though the GDC had issued him with a warning that he should follow the recommendations of professional bodies when issued to him. In our view it is somewhat of an understatement to say that the behaviour of Mr Nath was at the extreme end of the spectrum that may be encountered when a practitioner is unable to deal adequately with a complaint. In our view it requires a very extreme degree of intransigence to repeatedly ignore the recommendations made to the extent that occurred in this case. This is not a case of a practitioner being overwhelmed by the processes involved and having no means to access help, support and guidance. He had these in abundance.

106. We recognise that as at the time of the PCT panel hearing Mr Nath still plainly felt a sense of injustice and still felt that conclusions had been drawn without his side of the story having been heard. The reality is that both the HC and the PSHO had accounts from both sides and formed a view which was informed by independent advice from dental experts. In his evidence Mr Nath said that he fully acknowledged his complete responsibility but we consider that this apparent acceptance is driven by the exigencies of these proceedings.

107. Mr Nath did not speak to anyone at Kings about this complaint. He had no insight into the fact that a wide range of bodies had become involved precisely because of his inability to recognise his shortcomings and apologise in an appropriate way. This is not, in our view, a case where someone lacks insight simply because of a deficit of knowledge or understanding. We have little doubt that significant attention had been paid in the remedial programme to the need to respect the patient's perspective, listen to others and accept advice but to little or no avail.

108. We noted that Dr Revely considered that Mr Nath now has insight and was willing to learn. We considered her report very carefully because, within its obvious limitations as fully acknowledged by Mr DeBono, it is one of the stands of evidence that is capable of assisting the Tribunal in its own assessment. Having seen and heard Mr Nath give evidence and having considered all the other evidence in detail, we formed the clear view that beneath the veil of his claimed insight lay a deeply entrenched attitude and resistance to true self reflection and change. We consider that his acceptance of his failures was driven by self protection rather than genuine

reflection. Although he said that he accepted responsibility for all that had occurred we found his own evidence as to why he had acted as he did was unsatisfactory. It sought to engender sympathy. In our view he still lacks the attributes of true insight and self reflection today.

109. We do not accept that any family difficulties and the stresses under which Mr Nath was under provide an adequate explanation for his repeated failure to heed the advice and recommendations of a number of bodies. The kindest construction for many parts of Mr Nath's evidence is that he has endeavoured to convince himself on many matters in the hope that he can in turn convince us. We do not consider that he is a reliable historian and witness.

110. We have considered the evidence of Professor Dunne most carefully as well as the reports before us in relation to the progress made in a training setting or under observation, including the most recent report from a visit by a member of Professor Skelton's unit on 4th October 2011 [6/22]. We have come to the clear conclusion, despite all the efforts that have been made, that Mr Nath lacks any true insight. His lack of insight and his personality is such that it is unlikely that he will be able to carry through consistently that which he has been re-taught. We consider that Dr Nath's continued practice, even if subject to further retraining and other conditions, poses a clear risk to patient wellbeing and the public interest in the efficiency in primary care services in the NHS. We consider that the risk of recurrence is real.

111. Notwithstanding the evidence of Professor Dunne and others, we have little or no confidence that the personality characteristics that lie at the heart of why events unfolded as they did can be adequately addressed by the continuation of training plus or minus any provision as to mentorship.

112. We considered whether there were any other conditions which would contain the risk of recurrence and so protect the public interests engaged. We considered whether a restriction on Mr Nath's practice so that he may only work as an as an employee in the primary care sitting would adequately address the risks. We concluded that this would not be adequate to protect patient and the public interest in the NHS from the risk of recurrence because the core issue underpinning that which happened in this case lies in Mr Nath's personality characteristics.

113. In our view Mr Nath's response to the serial attempts by a number of regulators to encourage resolution was due to deep-seated personality characteristics which include intransigence. Over a period of years he was given successive opportunities to demonstrate he was able to accept the views of other dentists, learn from what had happened, apologise and move on. We have considered whether there was something about this particular complaint that somehow blinded Mr Nath to the need to act professionally. Even if this was the case, his continual failure to respond to the recommendations of national bodies over such a prolonged period gives us no confidence that this situation would not recur. His whole approach has been governed by deep-seated personality characteristics that he has been unable to master over a prolonged period. We see no real prospect that the characteristics which underpin Mr Nath's attitude and insight can be adequately addressed in the foreseeable future. We came to the clear conclusion that he is unsuitable to be included in the performers list of the Respondent PCT.

114. The PCT has satisfied us that Mr Nath is unsuitable to be included within its performers list. The decision to remove is still a discretionary one and must be exercised proportionately.

115. We consider that Dr Nath's attitude poses a clear risk to the public interest. The particular risks engaged are those of patient safety and well being as well as the maintenance of confidence in the ability of those who perform NHS primary services to provide an appropriate service and in the NHS itself.

116. By reason of the evidence placed before us we are generally aware of the circumstances of Dr Nath's private and family life. It is inappropriate to recite personal details herein but we have taken them fully into account. Plainly any decision to remove Dr Nath will have very profound effects on his ability to earn his living in his chosen profession and upon his personal and family life. He would be able to apply to work as a dentist in a hospital setting but we recognise that it may very well be difficult for him to obtain such employment.

117. The overall effect of the matters before us is that, despite public resources having been applied to retraining, a wide range of regulatory bodies over a number of years have failed to make any significant or sufficient impression upon Mr Nath as to the need to put the needs of the patient interest first and above his pride. We have little or no confidence that he has truly changed in fundamental respects. It is necessary to protect patients from exposure to a practitioner who even now lacks true insight into the impact of his behaviour and his failure to take responsibility. It is also necessary to protect the PCT from the responsibility of seeking to manage a practitioner who has repeatedly failed to truly engage with the advice and recommendations given to him by a wide range of national bodies.

118. Having balanced the effect of any decision upon the Appellant against the risks to patient safety and the public interest in the National Health Service we consider that it is reasonable, necessary and proportionate to direct that Mr Narendranath's name is removed from the performers list maintained by the Respondent on the grounds of unsuitability.

119. Lest our conclusion in relation to unsuitability is wrong, we have considered the issue of the appropriate outcome on the basis of the Appellant's admitted inefficiency. We refer to the publish interests identified above. We recognise a countervailing public interest in the retention of a dentist in the NHS if suitable conditions can be devised to adequately contain risk. Having balanced the risks to the patient safety and well being and the public interest against the Appellant's own interests, we consider that removal is the necessary and proportionate response under this alternative ground. The conditions of practice placed before us very largely reflect that which has already been in place as part of the remedial programme. They have been ineffective in securing real change in Mr Nath's attitude because he lacks true insight, as demonstrated by his refusal to accept the PHSO recommendations until driven to do so by the threat of removal. The core reason that underpins his response to regulation, and his inability to derive lasting benefit from the significant efforts that have been applied, lies in his personality. In the absence of any or any adequate insight we do not consider that the matters mooted as formal

conditions, or any other conditions, would be workable or practicable to adequately contain the risks posed by Mr Nath's continued inclusion in the Respondent's performers list. Further, in our view the very nature of the personality traits which provide the real explanation for Mr Nath's response to this complaint, cannot be adequately addressed by any conditions.

Conclusion on the Appeal.

120. The appeal is dismissed. We direct that the Appellant's name is removed from the performers list of the Respondent PCT under paragraph 10 (4) (c) of the Regulations on the grounds that the Appellant is unsuitable to be included therein.

121. We direct that, pursuant to regulation 16 of the 2004 Regulations the PCT shall notify the Secretary of State, the Scottish Executive, the National Assembly of Wales, the Northern Ireland Executive and the Registrar of the General Dental Council of this decision.

Rights of Review and/or Appeal.

122. The parties are hereby notified of the right to appeal this decision under section 11 of the Tribunals Courts and Enforcement Act 2007. The parties also have the right to seek a review under section 9 of the Act. Pursuant to paragraph 46 of the Tribunal Procedure (First- tier Tribunal) Health, Education and Social Care Chamber) Rules 2008 (SI 2008/2699) a person seeking permission to appeal must make a written application to the Tribunal no later than 28 days after the date that this decision was sent to the person making the application for review and/or permission to appeal.

National Disqualification

123. We did not hear submissions on this potential order pending our decision on the appeal. As a matter of law the power to make such an order arises independently of any application by the Respondent. Obviously the Appellant is entitled to make representations and the Respondent may wish to be heard.

Directions

124. It is directed that:

i. The Appellant shall submit written representations on the issue of national disqualification by 4pm on Friday 31st August 2012. If the Respondent wishes to make representations on the issue of national disqualification it shall do so by the same date.

ii. Both parties are directed to inform the Tribunals Service by 4pm on Friday 7th September 2012 whether they seek an oral hearing of this issue.

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Siobhan Goodrich

Judge of the First-tier Tribunal

20th July 2012

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