[2012] UKFTT 728 (HESC)

FIRST TIER TRIBUNAL PHL No 15446

HEALTH EDUCATION AND SOCIAL CARE CHAMBER

PRIMARY HEALTH LISTS

DR ANDREAS STRIEBICH Appellant

and

SOUTHAMPTON CITY PCT Respondent

Tribunal
John Burrow – Judge
Ms Ursula Bennet – Specialist Member
Ms Catherine Wortham – Lay Member

1. This matter was heard at Pocock Street on 25-28 June 2012; 26 and 27 July 2012; and 8 and 9 October 2012. The case concerned an appeal under Regulation 15 of the NHS (Performers List) Regulations 2004 by Dr Striebich against his removal from the dental performers list (DPL) by the Southampton City PCT (the PCT) on the grounds of inefficiency. The Southampton City PCT was represented by the SHIP Cluster PCTs, the organisation which now deals with DPL issues for the Southampton City PCT and other PCTs in the area. The PCT was represented by Michael Mylonas QC, instructed by Weightmans. Dr Striebich appeared unrepresented. He gave evidenced himself and called no witnesses. Dr Striebich's written and spoken English is very good. A number of measures were implemented throughout the proceedings to ensure he fully understood the process of the hearing. The PCT called Mandy Copage (Associate Director of Revalidation, Performance and Support, Hampshire PCT), Mr Flett (Dental Practice

Advisor SHIP Cluster PCTs) and Angus Henderson (then Interim Clinical Director at NHS Grampian).

2. The first bundle ran to some 695 pages containing inter alia appeal and response, schedule of findings, documentation submitted by the PCT and by Dr Striebich, and witness statements from Manda Copage and William Flett. The second bundle ran from p 696-1257 and contained Dr Striebich's appeal form, directions, emails, correspondence and other documentation including patient records from Aspire Dental Practice. These two bundles were produced prior to the commencement of the hearing.
3. The third bundle – p. 1258-1273 - contained Southampton City NHS Dental Panel and Reference Panel meeting notes and correspondence. The fourth bundle – p 1274 -1439 – contained an Associate Agreement contract, Dr Striebich's CV and further documentation submitted by him. The fifth bundle (pages 1440 – 1834), and the sixth bundle (pages 1835 – 1854), contained correspondence and documentation submitted by Dr Striebich. These bundles, numbered 4 – 6 were agreed and we admitted them, subject to relevance and weight. The seventh bundle (pages 1855 – 1927) contained documentation and correspondence submitted by Dr Striebich. Some of this material was admitted by the PCT and some was not. There was a reasonably large amount of material containing considerable detail. It was not possible in the time available to consider each document individually and the entire bundle was admitted subject to later scrutiny, to relevance and to appropriate weight.
4. The eighth bundle, not paginated, contained nine sets of patient notes from Strathisla Dental Practice, a spread sheet of patient waiting times at Strathisla, and screen grabs of patient waiting times at Strathisla. It was served prior to the final two days of the hearing. Dr Striebich requested an adjournment of the final two days to consider this material further but it was limited in extent and some of it had been served separately sometime before. He had ample time to consider it. In addition to these bundles there was an unpaginated bundle of assorted documentation submitted during the hearing including a chronology, the decision of the GDC investigating committee to refer Dr Striebich's case to the GDC Professional Conduct Committee, a list of Dr Striebich's patients, a document concerning "Handling Removals from the Dental Performers List", a "Legal Framework Note", Southampton City PCT Complaints Policy and Procedure, extracts from 2004 Regulations and 2004 Guidance Document on National Disqualification and closing submissions on behalf of Southampton PCT with notes of extracts of evidence.
5. We considered all the documentary evidence, the oral evidence given at the hearing, and the closing submissions by the two parties. We considered the relevant provisions of the 2004 NHS (Performers List) Regulations and the 2004 "Primary Medical Performers Lists Delivering Quality in Primary Care" guidance document.

Facts

6. Dr Striebich qualified as a dentist in Germany in 1993 and first practiced in 1994. He practiced in Germany and Holland for a number of years and in 2008 he moved to the UK. He joined the Southampton City PCT dental performers list on 16 June 2008. While in the UK he first practiced at a number of dental practices in the Southampton area, including Aspire and Chandlers Ford. In 2009 and 2010 the Southampton City PCT was notified of two complaints by patients SM and KS against Dr Striebich.
7. Patient SM was a difficult patient who required a significant amount of dental treatment and who appeared to have little faith in dentists. Dr Striebich wrote to the PCT about patient SM on 8 November 2009. He considered this correspondence to be part of a process of information gathering which would assist him in determining which treatment could be offered patient SM on the NHS and where the border should be between NHS and private treatment. The PCT however became concerned about Dr Striebich's clinical skills and about his apparent lack of understanding of both NHS regulations and GDS contractual requirements and commenced consideration of remedial and/or list action against Dr Striebich. During this process they indicated at one stage that contingent removal for 6 months with further training and support might be necessary.
8. However before this process could be completed Dr Striebich was interviewed on 26 March 2010 for a salaried post with Grampian PCT at their Strathisla Community Dental Practice, in Keith, Scotland. He was offered the post and he commenced at the practice on 5th July 2010. A number of concerns arose early in his employment there and he was suspended on 17 August 2010. A Management Report dated 11 November 2010, compiled by a senior manager in the salaried dental service set out their case for disciplinary action. Dr Striebich was dismissed from his post at Strathisla by NHS Grampian in December 2010.
9. The Management Report was sent to the Southampton City PCT by NHS Grampian and reviewed by the Southampton City PCT Reference Panel on 21st June 2011, following which the PCT gave Dr Striebich notice of proposed removal from the DPL. Dr Striebich submitted a written response on 25th August 2011. A hearing of the Southampton City Dental Reference Panel took place on 19th October 2011 at which Dr Striebich attended and made representations. The Panel considered the two complaints received by them in 2009/10 and the Grampian Management Report. The Panel removed him from the DPL under Regulation 10(4)(a) on efficiency grounds.
10. In a letter dated 26th October 2011, Southampton City PCT notified Dr Striebich of his removal from the DPL. A number of grounds were given, including lack of knowledge of NHS regulations, and GDS contractual requirements, lack of knowledge of clinical examination, treatment planning, endodontic treatment and prosthetic treatment, lack of knowledge of NHS patient charges and exemption/remission regulations and patient

complaints. The decision letter suggested he had not addressed the core issues before the Panel on 19th October 2011, had not taken remedial steps and had not shown insight. There was also reference to a failure to inform the PCT that he had been dismissed by NHS Grampian.

11. On 23rd November 2011, Dr Striebich appealed that decision pursuant to Regulation 15 of the 2004 Regulations to the First Tier Tribunal (FTT). His grounds of appeal were that Dr Slater, who had chaired the Reference Panel hearing on 19th October 2011, was not a doctor and was guilty of "title fraud". He denied lacking knowledge of clinical examination, treatment planning, endodontic treatment and prosthetic treatment. He said he had dealt with the allegations concerning NHS Regulations, GDS contractual requirements, NHS patient charges and exemption/remission regulations during the Referral Panel meeting on 19th October 2011, and that he had responded to the patient complaints in writing. He said he had responded to the Grampian Management Report to Laurie Stewart, and enclosed a number of leaflets on informed consent and other topics.
12. On 19th January 2012, the SHIP Cluster (acting on behalf of Southampton City PCT) served a schedule of findings which, inter alia, set out the grounds for their allegation of efficiency. They said there was evidence of the following issues: -

   a) Dr Striebich lacks the clinical skills to:
      i) undertake treatment planning
      ii) undertake endodontic treatment (this ground now abandoned)
      iii) undertake prosthetic treatment (this ground now abandoned)

   b) Dr Striebich is unable to develop effective working relationships with the dental team which had the ability to impact on patient safety and effective care.

   c) Dr Striebich is unable to communicate effectively with patients.

   d) Dr Striebich lacks the knowledge of NHS and GDS Regulations that are required to perform NHS primary dental services.

   e) Dr Striebich does not acknowledge his failings and his lack of insight and obsessive behaviour indicate that remediation would not be successful.

<u>Evidence</u>

13. Two of the allegations were abandoned by the PCT because of lack of evidence. These were the allegations concerning endodontic and prosthetic treatment. We found, on the evidence as it was presented to us, that a number of other allegations were not made out. There were a number of unsatisfactory aspects to the case. In our view the complaints to Southampton City PCT by SM and KS were not appropriately dealt with by them during the appeal to the FTT. The complainants were not called to give evidence before us

despite their evidence being challenged in a number of respects by Dr Striebich. We generally accepted his evidence on these issues.

14. Further it appears that the complaints were not investigated properly by the PCT, or dealt with appropriately at the meetings of the Dental Reference Panel. This was conceded by the PCT. Further we noted that the PCT did not consider them of sufficient severity when they considered them in 2010 to warrant removal from the DPL. They were considering contingent removal for a limited period with training and support and took no action for almost a year until they received the Grampian Management Report in 2011.
15. We concluded that these two complaints seen in the light of Dr Striebich's evidence did not amount to satisfactory evidence of inefficiency. We attached no weight to them and drew no adverse inferences against Dr Striebich from them. Similarly the process of removal from the DPL. The PCT again conceded that the process of removal was flawed and we drew no adverse inference from Dr Striebich's removal from the DPL.
16. A second difficulty in the case was the Grampian Management report, some of which was evidentially unsatisfactory in our view. The allegations were not fully or adequately investigated by Grampian prior to Dr Striebich's dismissal. It was alleged by Grampian that Dr Striebich willfully refused to engage in their disciplinary process, but it was Dr Striebich's case that the reason he refused to engage was that Grampian failed or refused to provide him with full details of the allegations against him. Grampian sought to argue that at least initially they were in a fact finding process (rather than a full disciplinary process) and they wanted Dr Striebich to attend meetings with them to facilitate that process.
17. However it was apparent that a number of allegations existed from the earliest stages and we concluded that these should have been fully put to Dr Striebich at the start of the process. In our view it was unrealistic for Grampian to suspend Dr Striebich and then look to him as part of a fact finding process without informing him of the allegations against him. It was conceded by the PCT that the Grampian process was flawed. For all these reasons we did not draw any adverse inference against Dr Striebich from his refusal to engage in the Grampian disciplinary process or from the fact of his dismissal by Grampian.
18. Furthermore many of the witnesses named in the Grampian Report were not called to give evidence before us. These witnesses named in the Report included nurses and employees at Strathisla Practice who described being severely upset, in some cases reduced to tears, by the actions of Dr Striebich in the surgery. Their detailed statements were included as part of the Grampian Report. Dr Striebich did not request their presence as witnesses in person prior to the commencement of the hearings, but after the initial hearing was adjourned on 28 June 2012 and about a week before the adjourned

date of 26 July 2012 he changed his mind and requested the presence of some Grampian witnesses. He did not specify which actual witnesses he required.

19. A request was made by the PCT for 2 nurses from Strathisla and Angus Henderson to appear but the nurses refused. They could not cope with being cross examined by Dr Striebich, who had taken a big toll on them in the Strathisla investigation. Mr Henderson did agree to give evidence and he appeared by video link and was cross examined by Dr Striebich. Some of his evidence corroborated in important respects the evidence of dental nurse Laura Stewart, one of those upset by Dr Striebich. Since the Strathisla practice and the residence of the witnesses were in Scotland (and therefore outside the jurisdiction of the HESC 2008 Rules) it was not possible to issue enforceable witness summons to compel their appearance.
20. Because of this lacuna we concluded that it would not be appropriate to rely on the evidence of the Grampian witnesses except where they appeared before us and were cross examined (for example the evidence of Mr Henderson) or where there was corroboration or support of their evidence (for example the evidence of nurse Laura Stewart) or where the evidence was supported in some way by Dr Striebich himself (for example nurse Holly Stewart). Dr Striebich submitted a 46 page detailed response to the Grampian Report in which he considered often line by line the witness statements of the nurses and the employees at Strathisla and many aspects of the statements were not challenged by him.
21. A further matter concerned time keeping at Strathisla. Evidence in the form of a spread sheet and screen grabs was served in bundle 8 concerning this issue. We considered it carefully and concluded that while some lateness in the commencement and duration of appointments was shown, it was apparent that many appointments commenced and concluded on time or in a time period less than that allocated. The picture was mixed. Further as Dr Striebich said, it was not clear from the material we saw what or who caused the lateness where it did occur. We did not feel it was appropriate to rely on the evidence of staff and nurses at Strathisla on this issue for the reasons set out above. Much of this evidence was contested by Dr Striebich. For all these reasons we did not rely on, or draw adverse inferences about time keeping at Strathisla.
22. We did not draw any adverse inference from clinical issues at Strathisla such as hand washing, sheathing needles and x-ray procedures. Although there were initial concerns, there had been improvements during Dr Striebich's time there.

We considered there were 4 areas where the evidence amounted to evidence of inefficiency.

<u>Working relationships</u>

23. Dr Striebich qualified in dentistry in 1993. In May 1994 he began work as a locum dentist in Germany. He worked in four practices up to July 1996. In the first of these, the principle was unhappy and he was asked to leave after 7 months. Dr Striebich said that it was about quickness and money and that his interaction with a patient or two was not the "best worded" it could have been. He also said the principle had not wanted him to use rubber dams for fillings. He said a patient had been fearful of him, but that he had been fearful of the patient. He said it had been a blunder and was a learning experience for him. He was asked what he had learnt, but it was many years ago and he could not say.
24. In the second practice his work as a locum was again terminated by the owner. He disagreed again with the owner over the use of rubber dams. Further he said the owner instructed him not to do large fillings but to do crowns instead. Dr Striebich disagreed, believing the owner just wanted to sell more crowns. He was there for two months.
25. In the third practice his work as a locum was again terminated by the employer. He said the main reason was his relationship with two dental nurses. One was lovely to work with but the other was hard going and they didn't get on. He said she was a bit nasty, a bit beastly. He said he found it difficult getting on with people; working together with the nurse in a small room is like a marriage. Sometimes he was told they liked to work with me, other times they just do the job, there is a spark of dislike. He said it doesn't take much for people to have had enough of him. He was asked what he had learnt from this and he said the nurse was not meant to work with him. He was asked if there was anything about his own manner or communication which made the nurse beastly to him. He said he was regretful he lost the sympathy but he could not change it. He said her personality didn't fit with his, although he respected her. He was at that practice for four months.
26. In the fourth practice, again the employer ended his employment. Dr Striebich said one of the things he was unhappy with was that he wanted Dr Striebich to have 8 crowns made for a patient. The patient did not feel comfortable with him. He was made to wait too long and became impatient with Dr Striebich and this was why he lost the job. He was asked what he learnt from this but he said simply the patient was not meant for him. He was asked if he had learnt anything from the fact he had been dismissed from all four jobs. He just replied that at the time he was concerned with the DDM degree. He said he took life as it is. He said there is regret for any spark, but no lingering bad feeling.
27. In the period April 2000 to April 2006 he had a number of locum positions in Germany and the Netherlands. He said they ended for various reasons, including the practice closing, and a proposed buyout failing, and changes in staff requirements. He said the practice in Holland had been badly run.
28. From December 2006 to June 2008 he returned to Germany and worked with a German dentist. He said the rewards were not equally distributed with the owner making much

more than him. He said he was expected to sell expensive treatment, in respect of which he felt uncomfortable. He said his employment was terminated because he was not bringing in enough income.

29. In 2008 he moved to the U.K. and worked at the Trafalgar Practice for four months. He said he was 'let go' by the employer because he did not do enough Units of Dental Activity (UDAs). He was asked if it was his or the practice's fault and he said the issue was that treatment planning needed to be built around UDAs not UDAs built around treatment planning. He said the remuneration system for UDAs was ok but the possibility was there to abuse the system. He said it was not possible to achieve the UDAs without gaming and he was rejected because he would not game. He did not accept there was a way of completing the required UDAs without giving poorer treatment. He was at the practice for five months. In his evidence in chief he said he could reapply to the practice but he had to show he was a high UDA earner.
30. He next worked at Chandlers Ford Practice but he was politely dismissed by the owner after two months. He said one nurse broke down in tears because he was too much for her. A second nurse was passive and not the nurse for him. She was unhappy with him and was crying as well. He said, 'I thought it was not my day.' He was asked whether because he had been dismissed from so many jobs, he reflected on whether there was anything wrong with his practise. He said he had character traits of tenseness and stubbornness. He was diligent and firm in his principles and not giving in. He said it may be difficult for a person to cope with him. He was asked if there were problems with the way he practised. He said he would do everything exactly as printed in the text books which he followed faithfully. He said he has difficulty adapting to a passive nurse, although he said he could get along with a mature nurse.
31. He then worked at Aspire Dental Practice, starting in September 2009. Just three weeks later the practice manager spoke to him regarding patient complaints about waiting times, some of which were above 1 ½ hours. She was concerned that he undertook treatment lasting 30 minutes on patients who had been booked in for 10 minutes. Dr Striebich agreed to stop doing it.

32. He was asked if he should apologise to patients who were kept waiting. He did not accept this saying with him patients know they have a service which is not rushed. He would not keep time if it meant patients were not treated properly. He was asked if he was taking too long at Aspire – longer than other dentists. He said there were many things wrong at Aspire including old equipment. He was asked if he questioned his own practice and said if a patient goes to a dentist with a serious problem he wants a proper repair, not rushed work. The practice manager had been concerned about delays of up to 1 ½ hours but Dr Striebich said the practice manager was wrong.

33. Dr Striebich said he was not lazy, just diligent, and patient safety was first. He did book in fewer patients on the advice of the owner. In his evidence in chief, Dr Striebich said when he asked the practice manager for a reference she said she was happy to offer him a job and sent a new contract. He was asked whether, after he left Aspire, he had a time keeping problem, but he did not accept this, merely that he had a 'loose attitude' to time keeping. He said he left Aspire because of disagreements with the owner over payments and because he wanted to move to Grampian.
34. Dr Striebich started at Strathisla Surgery in NHS Grampian on 5 July 2010. Angus Henderson, Interim Clinical Director at the practice, who gave evidence at the hearing, said he was surprised at the number of issues which developed quickly, including concerns about Dr Striebich's relationship with staff. He was on annual leave when Dr Striebich started but received a concerned email from a nurse manager while he was away. He said this had never happened before and he felt he needed to address matters quickly. He said he never came across this level of difficulty with nurses before. He described one incident on 12 August 2010 in which he saw nurse Laura Stewart run from Dr Striebich's surgery in tears saying, "I can't take any more of this". He said, 'This seemed to be another episode of the 'discussions' that Dr Striebich had with the patient and nurse and Andreas had upset her again". Mr Henderson's concerns persisted about staff relationships in spite of making efforts to get Dr Striebich to change. On 5 August 2010 Mr Henderson asked Dr Striebich to sign a set of action points. He said he did this because he had little confidence that all their efforts were effecting behaviour change in Dr Striebich and felt a signed document was important.
35. Mr Henderson met Dr Striebich at Spynie Surgery in the afternoon of 12 August 2010 and discussed interpersonal relationships with staff and patients. He said Dr Striebich seemed surprised that there were interpersonal problems. Dr Striebich said he gave the patient attention at all times, accepted the importance of working as a team, gave respect to each other and the patient is the 'principle person'. Dr Striebich said at that meeting that he told Mr Henderson that if he had the support of the management team the nurses would respect him. In cross examination he accepted he does sometimes talk too much, but he says there was a lack of communication, lack of teams which were properly "run in", and a lack of team work. He said he was aware of winning the 'hearts and minds of the nurses,' which suggested to Mr Henderson that Dr Striebich was aware of difficulties with interpersonal relationships within the practice.
36. In cross examination Mr Henderson said he would be surprised if Dr Striebich was not aware of the nurses being upset prior to his suspension. Dr Striebich said he was aware the atmosphere was not right. He said the nurses were not listening properly and gave evasive answers. He did not put serious weight on it.
37. Laura Stewart said Dr Striebich had upset her because he made nurses feel stupid, and spent time giving the nurses unnecessary and repetitive motivational talks on matters

such as cameras. He caused stress to the nurses. She had earlier tried to explain to Dr Striebich about the way he spoke to the nurses and said "quick, quick, quick" to them. He spoke abruptly to patients. She was looking for another job.

38. Dr Striebich said that he agreed she had seen him talking too much. He said Laura Stewart is kind and nice and very good with people. Her personality is pleasant, her Keith accent invited sympathy and trust of many people in the area. He said he felt misunderstood by Laura Stewart. He said he did not know that she had been so upset. He accepted patients found him unnerving, although he never meant to be. He admitted he said "quick, quick, quick" to nurses.
39. A second nurse Holly Stewart worked with Dr Striebich at Strathisla. On one occasion on 12 August 2010 Holly abruptly left the surgery. Holly Stewart said Dr Striebich persisted in talking at her including giving an unnecessary motivational talks. He was intense and wouldn't let her talk. He "freaked her out" and made her cry. Later he followed her and asked about the incident but she did not want to talk to him about it. She thought he was bullying her.
40. Dr Striebich said of this incident in his response that he noticed the atmosphere was a bit tense and he did not know why. He learnt that she went to Ian Pollock and started to cry. He said, "I am really sorry about her upset feeling. This is not what I wanted. What I wanted is good teamwork. He tried two times later in the day to speak to her about the bad start in the morning. He said on 12.8.10 he wanted an open answer from Holly Stewart. He said harmony is a must for treating patients and hidden emotional burdens are not helpful. He wanted to clear the air. She has mentioned bullying. He disagreed. Her first response was, "I do not remember." He said this cannot be correct. Healthcare requires harmony and trust. He said her second response, which was "I do not want to talk about it ", was right. He respected this response. He regarded the matter as closed.
41. In his evidence in chief Dr Striebich said it was untrue he bullied Holly Stewart. She left him suddenly from the surgery in the morning and he tried to get hold of her and ask why. It had made him tense and he wanted to clear the air. After speaking to her she said she could not remember and then she did not want to talk to me. Afterwards the atmosphere was clearer. He admitted he overwhelmed Holly. He was flustered dealing with so many different nurses. The next day he spoke to Holly again saying the strictest person in the surgery is the patient.
42. In his evidence in chief Dr Striebich said dealing with 12 different nurses at the practice made it impracticable to work together as a team. The nurses had concealed information and he was often unaware of unhappiness about the situation. He said in this country people are polite to your face, but there's a different atmosphere behind your back. His way of doing things was open and direct, but not impolite. He said he might explain something to the nurses in a way that was over lengthy, but this was slight and he received exaggerated criticism for it. He admitted saying 'quick, quick, quick' to them. It was not meant with a lack of respect. He said he can do things differently, be more

patient and gentle, if he knows of the problem. He admitted he sometimes failed to take the nurses' opinions into account, but he sometimes did and was happy to learn.

43. He accepted he gave introductory talks to nurses. He thought it was appropriate at the time, but he wouldn't do it now. He accepted the nurses were overwhelmed, but he said they took it wrong. He was too fast with nurses who needed time, and must be patient.
44. He said the clinical lead needs to be obeyed, but if he was wrong, Dr Striebich lived by the rules and accepted them, and it was appropriate to enquire. He was too rash and too open. However he said the nurses were rash with him, and hadn't let him know what was bothering them. He accepted the nurses had their pride and were easily hurt, but they missed his good intentions. In his letters of 15 August 2010, Dr Striebich said he has to be kind and soft spoken with the nurses all the time, but he prefers to speak in a direct way with mutual respect. Nurses can speak out if they see faults. He would like to explain their errors to them in a polite but very clear way with direct criticism, but avoid bad feelings.

<u>Informed Consent</u>

47. Angus Henderson became concerned about lack of informed consent in Dr Striebich's practice reported by nurses and receptionists and met him on 5th August 2010 at the surgery to discuss that and other issues. He explained the rationale behind the issue and what was expected and drew up an action plan, which included that "patients must be provided with a treatment plan and a quote for the fee for the proposed treatment. The treatment plan and procedure must be fully explained to the patient to be able to give informed consent. This is a mandatory requirement for all dentists". Dr Striebich agreed the action plan and signed it.
48. Mr Henderson said that concerns about patient consent persisted and he met Dr Striebich on 12 August 2010 and discussed the issue again, saying patients should not be surprised by any aspect of the treatment they will receive or have received. He said Dr Striebich seemed clear on this at the time.
49. However concerns persisted about informed consent. Mr Henderson met Dr Striebich again on 16 August 2010 to discuss this and other issues. He emphasised informed consent is an essential requirement for all clinicians. Dr Striebich said during the meeting that he made use of the trust of the patient and he did not abuse it. A similar phrase was used by Dr Striebich in his letter of 15th August 2010 to Mr Henderson, responding to the concerns raised. Mr Henderson was concerned that Dr Striebich assumed that as a patient is present in the surgery and he is the 'doctor' that he has consent to go ahead as he sees fit and that it is a matter of trust. Mr Henderson explained again the expectations about informed consent and suggested that a training session with

himself might be useful. Mr Henderson said in evidence that he was less and less confident that the message of informed consent was getting through to Dr Striebich.

50. In cross examination of Mr Henderson, Dr Striebich said patients were fully informed of the treatment, and its risks and benefits, and alternative treatment. Dr Striebich raised the issue of whether the patient has understood the information given about treatment and said some patients understand easier than others. Also he said written treatment plans were not available to him.

51. In his letters of 15.5.10, 26.8.10 and 16.9.10 Dr Striebich said he accepted informed consent is an essential requirement for dental treatment. He also said, "I make use of the trust of the patient and I do not abuse it." He said he described treatment in a balanced way to the patient. He said he had looked at various sources on informed consent, including the Oxford Handbook of Clinical Dentistry. He said he now intended to obtain written consent, possibly using FP 17 forms (used in England) which can be adapted for use in NHS Grampian. He said benefits, disadvantages, risks and alternatives must be explained. The right of patients to decide for themselves must be respected at all times. He emphasised patients must be given information in a way they can understand.

52. In his response of 18 January 2011 he said he was aware of the inherent difficulty of obtaining informed consent at all times, and that key problems were how much information should be given to the patient, and how well it had been understood. He said making use of the trust of the patient and not abusing it is a "fundamental solution" although this may not be enough, and he referred to individualised informed consent leaflets and written treatment plans. He said patients who trust a dentist may agree after receiving information that the dentist goes ahead in a reasonable way. Informed consent can be worked out to some extent in writing, but a signature is only an indication and spoken communication is decisive. He said he followed standard textbooks and additional guidelines.

53. Dr Striebich submitted a document headed "Informed Consent to Dental Treatment". Much of this was about the use of rubber dams. It also included examples of written consent and treatment planning forms. Dr Striebich also submitted a further version of "Informed Consent to Dental Treatment" referred to as "draft version 26.9.11" (p.505). In that document he said it was a legal requirement that patients must be informed properly about the proposed dental treatment, and the patient must agree, having understood the information given. Informed consent must be documented in the patient's chart.

54. The document went on to say consent to treatment without explanation of the proposed treatment, was not sufficient. He referred to this as the "old fashioned way". He said the principle of the dentist making use of the trust of the patient is put into question, but he then went on to say trust and skill continues to play an important part. Dr Striebich then raised the issue of the amount of detail which needs to be given and whether the patient

has understood the information which may be influenced by the age, health, education and emotional state of the patient. He said the old fashioned way may still be correct in certain situations. He has set up a web site containing informed consent leaflets.

55. At Dr Striebich's request, nine sets of patient notes were obtained from Strathisla Surgery. They were all patients Dr Striebich had treated, and were admitted to show examples of entries in the written notes relating to informed consent. Dr Striebich wanted to use the patients' notes for a secondary purpose also, to show he had carried out correct clinical treatment. As part of this secondary purpose Dr Striebich requested copies of x-rays of treatment given. It was apparent that only some x-rays were available, and Strathisla was asked to provide the x-rays if available. This was to meet Dr Striebich's persistent requests and was not at the request of the Tribunal who did not see their relevance to the informed consent issue. When the material was served those examples which included the x-rays confirmed the opinion of the panel that they had no relevance to the issue of informed consent. In so far as the clinical appropriateness of the treatment undertaken by Dr Striebich (considered as a separate issue as to whether he had obtained informed consent for that treatment) the panel drew no adverse findings in respect of any of the patients whose notes were disclosed.

56. Strathisla Patients

A) Patient 32001119

The patient notes showed the patient was informed about both proposed extraction and root canal treatment (RCT). The patient is recorded as wanting the tooth repaired if possible. He was reported by the nurse as saying of Dr Striebich that he would not shut up and get on with the treatment. Dr Striebich said the criticism was unfounded.

B) Patient 32000986

The patient was a 12 year old child. In relation to this patient, Dr Striebich said informed consent and trust cannot be separated. In the entry for 30.7.10, the patient notes show an examination was carried out. There was no mention of information being given, or consent to treatment being obtained. Dr Striebich said so long as the mother was informed of treatment and brings the child in for the next appointment, this is sufficient. He said this was not written in the patient's notes, but was spoken.

In the entry for 13.8.10 the notes show the patient was informed about the use of a rubber dam, but the patient did not want it, and he did the treatment without it. In cross examination and under questioning by the panel he said he did not get informed consent from the patient, who was a 12 year old child. He gave himself 6 out of 10 for the informed consent process, with room for improvement. He did not explain all the details of the treatment.

C) Patient 13004994

The patient notes show the patient was in pain and a tooth was removed. There is no written record of the patient being given information about treatment options, or the

patient making a choice about preferred treatment. Dr Striebich said treatment had been discussed orally, and that the patient appeared to accept the need for extraction. Dr Striebich said the patient was not disagreeing and therefore had given implied consent. Dr Striebich was not happy that the nurse put glasses on the patient while he was talking and had written this down in his own handwritten notes on the day.

D) Patient 32000499

15.7.10 – The patient notes say the patient was informed about root canal treatment on the tooth LL7. There is also reference in the notes that root canal treatment works most of the time, but not always, that the patient was informed that a simple filling without RCT could lead to an abscess and that extraction would also be a possible solution. Dr Striebich said all this had been told to the patient. There is no record in the notes of the patient's response to the information provided and no record of a choice being agreed with the patient. Dr Striebich said it was clear to him she wanted the tooth out and that she 'must have' expressly said this or he wouldn't have done it. Dr Striebich said he had given the patient the treatment options, although he had not mentioned a surgical extraction. He said in American textbooks there is no mention of 'surgical' extraction, merely 'simple' or 'complicated' extraction. Dr Striebich said 'between the lines' of the patient notes he had given the patient information. He gave himself a grading of 80% in obtaining informed consent in this case.

E) Patient 32000465

The patient notes for 26.7.10 show a cracked filling was replaced, but there is no record of information being given to the patient or of a discussion of treatment options or the choice of the patient relative to consent to treatment. Dr Striebich said the patient specifically agreed to the filling being replaced. He said there was an element of trust and there was no question of extracting the tooth. Although a check-up was done on this day, Dr Striebich was asked why discussion seemed to have only been undertaken in relation to treatment for one tooth, and there was no record of obtaining consent for an overall treatment plan. Dr Striebich said he asked for NHS treatment plan forms but didn't get them. Also he made a further appointment for the patient when more treatment could be discussed.

In the patient notes for 13.8.10 there is reference to the patient being informed about root canal treatment, which is said to work most of the time, but not always. Dr Striebich said despite the absence of a written record, the treatment would have been discussed with the patient. He said the patient was always happy for him to continue, and this was implied consent, although it was not recorded in the notes. Dr Striebich said the patient gave oral consent to a root canal treatment, although there is no written record of this in the notes.

F) Patient 32000399

The patient notes for 7.7.10 show a crown had fallen off and the patient was informed about treatment options which were extraction, new crown, or a big occlusal filling. The notes record that the patient wanted to have the tooth repaired. The patient notes for 27.7.10 indicate the patient wanted the tooth repaired if possible, which was carried out by Dr Striebich.

G) Patient 32000860

The patient was a 7 year old child who attended with her mother. The notes for 6.7.10 do not show any discussion of treatment with the patient or parent. Dr Striebich said the child came in with her mother and there was an expectation that he look after the teeth of the daughter. Although the child had a badly decayed tooth for which an extraction would have been an option, Dr Striebich said he did not discuss the possibility of extracting the tooth as it was straightforward to repair it and extraction would be traumatic for the patient. It was put to him that the parent had a right to be given all the available options so she could make an informed choice, rather than Dr Striebich deciding to withhold certain options. Dr Striebich conceded there was a weakness in his informed consent procedure at this point. He accepted he had made the choice for the patient and her mother, and there was room for improvement.

Dr Striebich said he discussed treatment with the mother although he accepted there was no record of it in the notes. He suggested the mother might be nodding, and that therefore implied agreement was given.

In cross examination, Dr Striebich said he had the express consent of the mother, although he did not discuss the use of a rubber dam. He said there was some room for improvement in obtaining informed consent with this patient and he would make it clearer in future. On page 471 of Dr Striebich's bundle, the nurse said neither the child nor the parent knew what was happening. Dr Striebich said this was exaggerated. He had made it clear in outline. In questioning by the panel Dr Striebich said consent could be expressed in a non-verbal way.

H) Patient 32001445

The patient notes say the patient was in pain, with two teeth much decayed. In relation to one tooth, the lower right 8, Dr Striebich said it would have been wrong to extract lower right 8 so the patient was only offered "reasonable choices". The record shows that the patient was asked if he wanted a lower right molar repaired or to have it extracted. Although this was a check-up visit there was no record of any other informed consent discussion for treatment planning.

I) Patient 9001081

The patient notes for 30.7.10 say the patient was informed about treatment options of a new prescription, minor oral surgery or removal of a tooth. The notes say the patient wanted extraction, which was carried out by Dr Striebich.

57. In cross examination Dr Striebich said the important thing in obtaining informed consent was that the patient understood what the treatment plan was. He said it could be difficult to determine how well the patient has understood, and pain, anxiety, age and understanding of medical terms may reduce the level of understanding. In questioning by the panel he said if a patient was in pain or in an emergency the informed consent process could be shortened. Similarly with a child patient, where it was borderline whether informed consent was necessary. He said elective treatment did need full informed consent and he would expect a signature.
58. He said German text books say it's not necessary to give full details, merely a rough outline of the treatment, for instance the size of a dose of medication. He said there is an 'element of trust' by the patient in the dentist. When asked by a member of the panel if he did not think explicit consent was required for a dentist to carry out treatment of any kind in a patients mouth he said this was necessary but only in outline. He was asked what he would do differently about the informed consent process. He again referred to the 'element of trust' and said he would focus on giving more information.
59. He said he had set up a web site on informed consent which patients could access. This would focus on giving a lot more information about treatment plans, alternative options and risks. He would give more consideration as to whether the patient had understood the information. In submissions, Dr Striebich said that valid informed consent must be split into information giving and information understood. However Dr Striebich made no mention of the importance of patient choice or the need for a patient to give explicit consent as a part of the informed consent process.

<u>Responding to authority.</u>

Dr Slater

60. Dr Slater chaired the PCT Reference Panel which removed Dr Striebich after an oral hearing on 19 October 2011. He was a non-executive director of the PCT and was a doctor of philosophy. A non-executive director was required to chair hearings of the Reference Panel. After the hearing Dr Striebich challenged Dr Slater's use of the title Doctor, calling him a title fraudster. He believed Dr Slater was claiming to be a medical doctor. On 3 November 2011 he asked the PCT for sight of Dr Slater's academic certificate, his PhD certificate, the name and address of his employer and the names and addresses of the professional bodies he was a member of.
61. He checked the British Library for Dr Slater's PhD thesis, and asked Stuart Ward the PCT Medical Director for a copy. In reply Dr Ward sent a straightforward letter explaining that Dr Slater was not a medical doctor but a doctor of philosophy and was entitled to use the

title "Dr". He said it was unnecessary for Dr Striebich to see evidence of qualifications. Dr Striebich called this response "chilling" and accused Dr Ward of protecting a title fraudster.

62. Despite the explanation from Dr Ward, Dr Striebich continued to press the case against Dr Slater. He contacted Taunton College seeking a copy of Dr Slater's thesis, again alleging Dr Slater was a title fraudster and continued to contact the PCT, still referring to Dr Slater as a title fraudster. Dr Striebich also contacted Professor Jonathan Montgomery of the PCT on 1 December 2011 again accusing Dr Slater of being a title fraudster.
63. He also wrote to Ray Watkins, the Consultant in Dental Public Health at NHS Grampian about the investigation into his employment there. Mr Watkins said the matter was being processed by the local management. Dr Striebich subsequently reported Mr Watkins to the GDC for investigation.
64. On 23 December 2011 the PCT cluster asked Dr Striebich to cease corresponding with them about his removal as he had now appealed to the First Tier Tribunal and the matter was being dealt with by them. On the same day the PCT again said Dr Slater was entitled to use the title "Dr", was a non-executive director and the governance arrangements require a non-executive director to chair the Panel. Dr Striebich continued to allege Dr Slater was a title fraudster, even including the allegation in his appeal form to the FTT as his ground of appeal.
65. Angus Henderson interviewed and hired Dr Striebich for the post at Strathisla and met him several times during his employment there and was involved in his dismissal. Dr Striebich reported him to the GDC to investigate his fitness to practice, alleging he had failed to use a rubber dam. Dr Striebich then corresponded with Luke Melia a case worker at the GDC about his referral of Mr Henderson. Mr Melia notified Dr Striebich that the GDC has assessed his complaint against Angus Henderson but had concluded that it could not amount to an allegation of impaired fitness to practice.
66. Dr Striebich did not accept this determination and maintained the judgment was wrong. On 29 November 2011 in an email to Mr Melia, he accused Peter Blakebrough Head of Fitness to Practice at the GDC, of personally arranging for Mr Melia to make a mistake in a letter to Dr Striebich "against Mr Melia's personal attitude". The correspondence with Mr Melia continued for some time, requesting on a number of occasions an investigation into Angus Henderson and Ray Watkins, despite this having already been rejected by him.
67. Dr Striebich then wrote on 30.11.11 to Neil Marshall the Director of Regulation at the GDC, again asking the GDC to investigate the Fitness to Practice of Angus Henderson and Ray Watkins, despite the letter from Mr Melia rejecting that request. Dr Striebich made further submissions about rubber dams to Neil Marshall. He said "I expect you Neil Marshall to get all this sorted". He sent a similar letter to Mike Brown of the GDC.
68. On 1 February 2012 he wrote to Professor O'Brien, the Chairman of the GDC, again raising concerns about Dr Slater being a title fraudster and about Angus Henderson and Ray Watkins. Professor O'Brien replied on 26 March 2012 and Dr Striebich sent a further letter

to Professor O'Brien criticising him for "failing to see that a rubber dam is used consistently during endodontic treatment". He also subsequently criticised Evelyn Gilvarry the Chief Executive of the GDC for failing to appreciate the importance of rubber dams. He wrote to Mike Brown at the GDC continuing to allege Dr Slater was a title fraudster and pressing for an investigation into Angus Henderson and Ray Watkins.

69. Following Dr Striebich's dismissal from NHS Grampian the GDC Investigation Committee began an investigation into Dr Striebich's fitness to practice. Dr Striebich began correspondence with Peter Blakeborough accusing Vicky Conniss, an employee of the GDC, of intentionally omitting her signature from a letter, and raising various other matters in respect of his case. On 23 November 2011 Mr Blakebrough received 16 emails from Dr Striebich in one morning. Dr Striebich asked for the names and email addresses of the board members of the GDC to raise "important questions" with them.

70. On 14 June 2012 Dr Striebich sent an email to the secretary of the GDC asking her to forward an attached letter and documents for the GDC Council members, about rubber dams. It appears there were some 28 emails forwarded to the GDC at this time by Dr Striebich. Professor O'Brien replied that the GDC does not set standards or issue guidance on clinical matters and does not decide the merits of a particular treatment. For this reason he declined to forward the emails to Council Members.

71. Dr Striebich thereafter referred the GDC to the Council for Health Regulation Excellence (CHRE), offering to send them 28 emails. The CHRE informed Dr Striebich that they had no powers to intervene in the administrative operation of the GDC. Despite this information Dr Striebich then wrote to Harry Clayton the chief executive of the CHRE complaining about the CHRE's refuse to intervene with the GDC.

72. On 11 July 2012 the GDC informed Dr Striebich that they considered his telephone calls and emails had become excessive and unproductive to a level which was inappropriate. They implemented the GDC's "Habitual and Vexatious Contact Policy" limiting the circumstances in which they will respond to Dr Striebich.

73. On 17 July 2012 the GDC Investigating Committee referred Dr Striebich on 37 counts to the GDC Professional Conduct Committee. The hearing is likely to be in May 2013. The notification letter was signed by Vicky Conniss, a caseworker of the GDC. The following day 18.7.12, Dr Striebich wrote to Neil Marshall the Director of Regulation at the GDC accusing him or Ms Gilvarry of causing Vicky Connis to write in a disrespectful way on his orders. He also accused Professor O'Brien of tolerating the use of "Dr" by dentists without a certificate and of failing to see the need for rubber dams.

74. Subsequently Dr Striebich wrote to Professor Jimmy Steele, Clinical Professor of Dental Sciences at Newcastle University, criticising Professor O'Brien for his failure to forward his letters about rubber dams to GDC Council Members. Professor Steele replied saying he was a strong supporter of rubber dams but that Professor O'Brien was right in saying it was

not the GDC's concern. Dr Striebich later wrote to Professor Steele again criticising Professor O'Brien and asking him to look into it again.

75. Despite this assurance, on 17 September 2012 Dr Striebich wrote to the Resuscitation Council criticising Professor O'Brien's response on rubber dams. He sent 8 emails to them. The Council responded to Dr Striebich that the issue was outside their remit. Despite this Dr Striebich responded asking them again to look into the matter.

76. On 6 September 2012 Dr Striebich wrote to Barry Cockcroft, the Chief Dental Officer at the Department of Health, Mr Clayton at the CHRE and Ms Gilvarry at the GDC saying he suspected fraud at the GDC. Barry Cockcroft replied that the GDC was independent of the Government and it was not his role to interfere. Dr Striebich did not accept this and asked for a senior officer at the Department to investigate further.

77. In November 2011 Dr Striebich referred Stuart Ward and Dr Slater to the GMC to investigate them. The allegations were repeated over several emails. The GMC later declined to instigate a fitness to practice investigation into either person. Dr Striebich subsequently continued to correspond with the Investigation Manager of the GMC, requesting investigations into Dr Slater and Dr Ward. The GMC again replied saying the matter was closed.

78. It was put in cross-examination that Dr Striebich had been unreasonable in his pursuit of Dr Slater, despite having had it explained that he is entitled to use 'Dr'. Dr Striebich said he still had doubts as he had not heard from Dr Slater's university about the PhD certificate.

79. It was put to Dr Striebich that he had ignored correspondence from the GDC to say that they did not set clinical standards and could not deal with what he was asking. Dr Striebich did not accept this saying the GDC do publish guidelines on ethical matters. Dr Striebich said the NHS Choices whom he also contacted had claimed the use of rubber dams was not a matter for them, but they have now included it in their guidelines. He took credit for bringing about this change. It was put that Professor Steel supported the GDC in saying it was not a concern for them, yet Dr Striebich persisted with his position that it was. Dr Striebich said Professor O'Brien in refusing to give clear clinical advice, was trying to avoid anyone losing face. Dr Striebich said his technique was right and the GDC should do more.

80. He was asked by the panel on what basis he challenged the views of the senior members of the profession, including Barry Cockcroft and Professor Steele. Dr Striebich said he went to the internet and looked on Google and to the American Dental Association, to his text books and to his own experience.

<u>Failing to report the Grampian dismissal to the PCT</u>

81. Under Regulation 9 (1)(i) of the 2004 NHS (Performers List) Regulations, Dr Striebich is required to inform the Southampton City PCT within 7 days of any investigation into his professional conduct by any licensing, regulatory or other body. Under Regulation 9(1)(j) he must inform the PCT within 7 days of any investigation into his professional conduct in

respect of current or previous employment. Under Regulation 9 (1)(l) Dr Striebich must inform the PCT within 7 days if he becomes the subject of any investigation by another PCT or equivalent body which might lead to his removal from any list or equivalent list. The Southampton City PCT allege Dr Striebich never informed them that he had been dismissed from by the Grampian NHS, which was in breach of the above regulations. They only became aware of the matter when they were sent a copy of the Grampian Management Response in 2011.

82. Dr Striebich denied this saying he sent a copy of a letter from the GDC dated 21 December 2010 (which mentioned the dismissal by Grampian) to Elaine Hughes of Professional Services at the Hampshire and Isle of Wight PPSA. This organisation undertakes some services for Southampton City PCT. His letter to the PPSA was sent as part of Dr Striebich's inquiries about gaining access to his NHS email account. He said he was unaware of the requirements in the 2004 Regulations to inform the PCT of investigations into his conduct.
83. The PCT were not directly informed by Dr Striebich of the dismissal by Grampian NHS.

Consideration by the Tribunal

Findings of fact

84. Employment record – The evidence in respect of Dr Striebich's employment record came largely from Dr Striebich himself, supported by his detailed CV. We accepted this evidence. We also accepted that there had been concerns about Dr Striebich's timekeeping at Aspire Practice, as was evidenced by the letter from Ms Santos. Dr Striebich said her judgement was wrong, but we accepted there were concerns.
85. In respect of the evidence about his working relationship difficulties at Strathisla, we accepted the evidence of Laura Stewart that she was upset. Her evidence was corroborated by Mr Henderson who described her running out of Dr Striebich's surgery in tears. Mr Henderson, who gave evidence to the tribunal and was cross examined by Dr Striebich, was not challenged on this aspect of his evidence. Furthermore Dr Striebich in his response dated 18.1.11 accepted he gave talks about cameras and talked too much to the nurses. He said he could be overbearing and it may be difficult for a person to cope with him.
86. We also accepted the evidence of Holly Stewart that she was upset. Dr Striebich provided support for this evidence since he admitted she had left the surgery unexpectedly and was upset with him, and afterwards refused to speak to him. He said he knew things were a bit tense, and he knew he overwhelmed Holly. He could be over-lengthy with his explanations. He admitted he said quick quick quick to nurses and gave over long introductory talks to nurses. He admitted he sometimes failed to take nurses opinions into account.
87. We did not rely on any other of the accounts or allegations of nurses who had worked with Dr Striebich at Strathisla for the reasons set out above. Dr Striebich suggested the accounts of Laura and Holly were exaggerated, but we noted the earlier examples of nurses being

reduced to tears at Chandler's Ford, and Dr Striebich's own evidence of having had a difficult relationship with nurses in a number of employments. We also bore in mind our own experience of listening to Dr Striebich over several days of evidence. All three members of the panel agreed that it was readily apparent how he might be upsetting to colleagues in the work place because of a combination of character traits including a fixed belief he was right, a failure or refusal to accept he bore responsibility for the poor communication between himself and staff, being overbearing, and being condescending. At one time or another Dr Striebich admitted most of these traits.

88. Informed consent. We accepted the evidence of Mr Henderson that concerns quickly arose at Strasisla about the lack of informed consent in respect of Dr Striebich's patients. Despite the matter being drawn to Dr Striebich's attention on several occasions the concerns persisted until his suspension on 17 August 2010. This evidence was supported by contemporaneous documentation including notes of meetings and emails and it was not challenged in cross examination by Dr Striebich. We accepted it. The panel were further concerned that despite all the discussions and questions on the appropriate process for obtaining valid informed consent, Dr Striebich still focussed on information giving and not on the rights of patients to make an informed choice.
89. After his dismissal, Dr Striebich submitted much documentation which was described by him as concerning the issue of informed consent (in fact much of it was about the use of rubber dams and other issues). We relied on this documentation where it concerned informed consent. We also had regard to the 9 sets of patient notes requested by Dr Striebich. He accepted shortcomings in obtaining informed consent in respect of several of these patients. We accepted and relied on this evidence.
90. Response to challenge by those in authority. We relied on and accepted the evidence shown by the numerous emails and other correspondence sent by and to Dr Striebich on the subject.
91. Failure to inform PCT of dismissal. We relied on the evidence of Dr Striebich coupled with the correspondence with Elaine Hughes at the Hampshire and Isle of Wight PPSA..

Inefficiency and unsuitability

92. We considered our powers under Regulation 15 of the NHS (Performers List) Regulations 2004. We reminded ourselves that the appeal was a redetermination of the case, and that the process of rehearing meant any procedural flaws by the PCTs would be corrected. We also noted that under Rule 15(3) we could make any decision the PCT could have made. This would include restoring to the list, removal or contingent removal.
93. The PCT based its case against Dr Striebich on a finding of 'inefficiency' under Regulation 10 (4)(a). This states that the PCT (and the First Tier Tribunal) may remove the performer in an efficiency case 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.

94. Regulation 11(5), 11(6), 11(7) set out the matters to which we must have regard when considering removal under 10(4)(a). These include the nature of the incident which was 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, any likely risk to patients and whether he has previously failed to supply information, made a declaration or complied with an undertaking required on inclusion in the list, and whether he has been removed from the List. Under Regulation 11(7) we must take into account the overall effect of any relevant incidents.
95. We noted also contingent removal under Regulation 12, and that if contingent removal is imposed we must impose conditions to remove the inefficiency. We noted also removal for unsuitability under Regulation 10(4)(c) where the PCT and the FTT may remove a performer where he is unsuitable to be included in the Performers List. The matters which we must take into account when considering removal for unsuitability are set out in Regulation 11(1), 11(2) and 11(7).
96. We also had regard to the NHS Guidance Document 2004. Paragraph 7.2 states the grounds of efficiency and suitability can overlap, and decisions can be based on more than one ground. Efficiency grounds may be used where there are issues of competency 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 burden of others in the NHS.
97. Suitability can be relied on where there is a lack of tangible evidence of a doctor's ability to undertake the performer role, for example essential qualities. The term is used with its everyday meaning and provides the PCT with a broad area of discretion.

We considered removal under efficiency grounds.

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

Work Relationships

98. We concluded that Dr Striebich's work record was remarkable in several respects. Firstly was the high number of posts where he had been dismissed or 'let go' both in Germany and

the UK. The reasons included an unwillingness to amend behaviour to comply with expectations as described by Angus Henderson in the case of Strathisla and evident in the time keeping issue at Aspire.

99. He did not recognise the need to moderate or change his practise or adapt it in a way to meet practice requirements while still maintaining standards. Instead he repeatedly said he would follow his own procedures, often taken from text books or his university training. He felt it was right for him to refuse or challenge what was being asked of him, if it conflicted or differed from his own practices. He would not contemplate compromise or change. He was right and the practice managers or owners were wrong.

100. Another issue which emerged clearly in our view from the employment record was a failure by Dr Striebich in his relations with patients, staff and nurses. In one practice in Germany he spoke of a patient being afraid of him. He then said he was afraid of the patient, suggesting the failure of the relationship was the patient's fault, not his. There appears to be a persistent pattern of poor relationships with nurses and staff. This happened on occasions in Germany and in the UK. When asked if there was anything he could learn or anything he would change about his practice, apart from some expressed intentions to be nicer, it was apparent that he considered the matter irreparable. "The nurse was not for me," "I am stubborn," "I talk too much," "I am hard to take," " I overwhelmed her", "I cannot change it," " He took life as it is", "he was not giving in". Time and again such comments were made by Dr Striebich, with no accompanying indication of any realisation, or even any anxious consideration that he may be in the wrong, that his errors were deep seated in his personality, or that he could or would make any genuine, sustained, committed effort to change.

101. Even when two nurses ran out of his surgery in Southampton in tears, he showed no signs of having sought to understand what was wrong, or to consider whether there was anything wrong with his practice, or demonstrate any effort to change. He merely said "it was not his day". When the same thing happened a few weeks later at Strathisla he simply expressed surprise and regret that the same thing happened to him again. He claimed he did not know he had upset the nurses at Strathisla and 'blamed' them for not telling him. However he <u>did</u> know about Holly Stewart, and he did know about a difficult atmosphere at Strathisla, but made no concerted or effective attempt to understand why these events had happened.

102. He sought information from Holly Stewart but when she refused to talk about it, that apparently was the end of his efforts to understand the incident, "The matter was closed." This was after the two similar incidents at the Southampton practice just a short time before. He should have made far more effort to understand why he was repeatedly upsetting nurses, but he failed to do so. We found that failure significant, for the reasons set out below in paragraph 103. In his closing remarks he criticised some nurses for being meek and not so good. In other words he was still putting the blame onto nurses for the breakdown in work relationships in his closing address, rather than seeking to make changes in his own practice.

103. The ability to work in a team is essential for the efficient provision of dental services. Dr Striebich has shown a consistent inability to meet this requirement over a number of years, shown most clearly in two practices in the UK where he caused nurses to exit from his surgery in conditions of distress. This, in our view, has a very serious effect on the efficiency of the services he provides. Although he has expressed an intent to treat nurses more 'gently", he has consistently blamed the nurses for the breakdown in work relationships, or considered it inevitable, and he has failed or refused on several occasions to accept responsibility himself, or to seek to understand his role in the breakdown in working relationship or to undertake the kind of rigorous self-analysis and corrective actions which in our view are necessary to bring about change to deep seated personality issues. He lacks insight, shows no evidence of seeking to gain insight, and shows no attempt to undertake the extensive remedial actions which would be necessary.

Complying with Instructions

104. Dr Striebich, over many years has shown himself incapable of accepting instructions from owners or senior staff, or of trying to adapt his practice to accommodate their wishes. He has consistently adopted a position in which he has rejected requests, citing a rigid adherence to his interpretations of text books and other sources. He said he was "difficult to cope with", "he was not giving in", "he was stubborn". He has not attempted to adapt his practice to what is required of him, while preserving patient safety and appears to rigidly adhere to his text books and take no note of recognised and respected dental authorities.

Informed Consent

105. Throughout the documentation and in his evidence to the tribunal, there was much emphasis by him on the provision of information to patients, how to make it intelligible, and on utilising the 'trust' of the patient. There was very little emphasis by him on the importance of giving patients choices and receiving and acting on those choices. In several instances during discussion of the nine sets of patient notes submitted, he appeared to believe that implied consent was sufficient – a nod of the head, the appearance at a subsequent appointment, an absence of disagreement during the course of the treatment, or if the patient appeared happy for him to continue.

106. In conversation with Angus Henderson he spoke of the trust of the patient. Mr Henderson's perception was that Dr Striebich believed consent was being given by the patient merely by attending the surgery and positioning themselves in the dentist chair. We agreed with that analysis. Dr Striebich's references to informed consent were almost always qualified by references to "trust" or "implied consent". This ambiguity and prevarication permeated his evidence and in our view indicated that his commitment to obtaining clear and unambiguous consent of the patient was less than complete.

107. He also appeared to believe that what he called the 'old fashioned' method of obtaining consent (namely by the patient simply trusting the dentist) was sufficient in certain circumstances, such as the treatment of a child. In respect of one child patient he admitted he had failed to put the option of removal of the tooth to the child or the parent and had simply decided to withhold this option as he felt he knew what was best , - namely repair of the tooth. In respect of another child patient he appeared to accept that so long as the mother was informed of the treatment and the child was bought in for a further appointment this was

sufficient informed consent. He himself said his performance in obtaining consent in respect of some of the patients whose notes where considered by the Tribunal was less than optimal – 6 or 7 out of 10 for example.

108. In cross examination, in questioning by the panel, and in his closing remarks he emphasised the providing of information and the patients' (often limited) potential to understand that information. He did not mention the importance of patient choice and of receiving and acting only on the basis of clear consent to an agreed treatment plan.

109. Despite all he has written and said about informed consent he has still, in our view, failed to integrate into his understanding or his practice, the core aspect of the patient's right to choose. Instead he has accentuated one side of the equation – the giving of information. He has accentuated what he regards as the difficulty of patients understanding information. He has accentuated the importance of the patient 'trusting' him. We accept, along with Angus Henderson, that what he means by this is that the patient, by presenting himself at the surgery for treatment, is thereby giving implied consent to treatment.

110. He believes other forms of implied consent are sufficient, including nodding, or a failure to stop the treatment. He believes full informed consent is not necessary in the case of a child patient. He has awarded himself a percentage score for informed consent and is apparently all too ready to forgive himself for scores of 6 or 7 out of 10. He has failed to address the importance of the patient giving express consent to treatment, and the need for treatment to comply with that express consent. He failed to mention this when being questioned by the panel and he failed to mention it in his closing statement. We concluded that his understanding of and full acceptance of key elements of informed consent is still defective.

Response to Authority

111. Dr Striebich started correspondence about Dr Slater soon after the decision letter of the PCT removing him from the Dental Performers List. He received an appropriate explanation from Dr Ward as to the use of the title but persisted in corresponding with many individuals still referring to Dr Slater as a title fraudster. He reported Dr Slater to the GMC who declined to investigate, for the clear reasons stated, but he persisted with his efforts to get an investigation and persisted in his correspondence with others and in referring to Dr Slater as a 'title fraudster'. This in our view was wholly unreasonable and inappropriate on Dr Striebich's part to persist in this way and to continue to use this derogatory term even after receiving a full explanation that it was appropriate for him to use the term "Dr". Dr Striebich even persisted with his suspicions of Dr Slater in his closing address to us.

112. He persisted in accusing Dr Ward of protecting a title fraudster, reporting him to the GMC. Even after a reasoned response by the GMC, rejecting the allegation and explaining why they rejected it, Dr Striebich persisted in his allegations against Dr Ward in ongoing correspondence with many persons. It was in our view wholly unreasonable and inappropriate for Dr Striebich to persist in this manner.

113. He reported Angus Henderson and Ray Watkins to the GDC. The GDC assessed his concerns but determined they could not amount to impairment of fitness to practice. Despite this clear response Dr Striebich continued to seek an investigation of both practitioners, both with the GDC and with other individuals.

114. Dr Striebich requested the GDC to send his information about rubber dams to Council Members. Some 18 emails were sent in a short space of time. Professor O'Brien gave a reasoned response, saying clinical standards and methodology were not matters for the GDC. Dr Striebich did not accept this response but continued corresponding with the GDC and with other eminent dentists, including Professor Steele, criticising the response of Professor O'Brien.

115. Professor Steele agreed that it was not the remit of the GDC, but Dr Striebich continued correspondence seeking to reverse his support for Professor O'Brien. He then reported the GDC to the CHRE, and when they would not support his complaint, he took the matter to the Chief Executive of the CHRE. So persistent and unreasonable was Dr Striebich's communications with the GDC that they had to implement their "Habitual and Vexatious Contact Policy" in respect of him. He has been referred for consideration of his fitness to practise by the GDC. His correspondence has even embraced the Government Chief Dental Officer, whose opinion he has refused to accept.

116. In his closing remarks to the Tribunal he said the authorities were sticking together, that the first was against him so the rest were, and they had their pride. He appeared to be implying some sort of conspiracy among the various authorities against him. In our view by their persistence and scope, the actions of Dr Striebich were unreasonable and inappropriate.

117. We viewed with concern his inappropriate responses to those in authority whom he feels have in some way obstructed him or not complied with his wishes. We regard this as akin to and an extension of his failure or refusal to comply with his employers' wishes. They reflect, in our view, his rigid and unreasonable belief in his own conception of how dentistry should be performed. They show an inability to react appropriately to those in authority. He persisted with these beliefs in his closing address. He has no insight into this aspect of his practice, no ability or desire to reasonably compromise, or accept reasonable explanations when given. In our view this is a serious example of inefficiency in his practice.

B) The length of time since the last incident or investigation occurred – Regulation 11(6)(b).

118. Most of the examples of the inefficiencies mentioned above persisted to August 2010 at Strathisla, when he was suspended from practise. He has apparently not practised in the UK since this time. He has persisted with many of the inefficiencies in his remarks during the hearing.

C) Action taken by regulatory authorities. Regulation 11(6)(c)

119. He has been dismissed by Grampian and removed from the Performers List by Southampton City PCT. As stated earlier we have not drawn adverse inferences from either of these events. He has been considered by the GDC Investigation Committee and has been referred by them to the GDC Disciplinary Committee.

D) Likely risk to patients – Regulation 11(6)(d)

120. In our view a rigid reliance on his own beliefs as to proper dental treatment, without reference to those in authority in the dental profession, along with a failure to obtain informed consent could represent a potential risk to patients.

E) Whether he has failed to provide information, make a declaration or comply with an undertaking required for inclusion in a list – Regulation 11(6)(f)

121. We have concluded that such notification as was given by Dr Striebich to Elaine Hughes at Hampshire and Isle of Wight PPSA was inadequate. The organisations are separate. There was no request to send notification on to the PCT. There is no reason why the PPSA would know of the relevance of the dismissal by Grampian. What is required is clear, direct notification to the PCT and this was not given by Dr Striebich.

F) Overall effect of incidents – Regulation 11(7)

122. In our view the overall effect of the incidents set out above have a severe impact on the efficiency of dental services provided by Dr Striebich.

123. We concluded for all these reasons that the Southampton City PCT were right to remove Dr Striebich from the Dental Performers List under Regulation 10(4)(a). Had the PCT proceeded under 10(4)(c) (suitability) we would have concluded, using the criteria in Regulation 11(1), 11(2), and 11(7) that he was unsuitable also.

124. We do not accept Dr Striebich has shown adequate insight into his inefficiencies which in our view include deep seated personality issues. We also do not accept he has taken adequate remedial steps. He has read text books, done research on the internet, but he has not set in train the far reaching remedial steps which we believe would be necessary to enable him to practise in an efficient manner, co-operatively as part of a team, interacting appropriately with patients and obtaining informed consent. We did not accept there were any conditions we could impose which could remove the inefficiency. He has not shown the insight to realise they are necessary. For these reasons we did not impose a contingent removal.

125. We dismissed Dr Striebich's appeal and removed him from the performers list.

National disqualification

126. We considered national disqualification under Regulation 18A. Under 18A(2) if a performer appeals under Regulation 15 and the FTT decides to remove the appellant, which we have done, the FTT can impose a national disqualification.

127. We had regard to the 2004 Guidance Document. Paragraphs 14.5 and 17.14 suggests national disqualification should be considered if the matter is sufficiently serious. Paragraph 40.4 suggests that a national disqualification can be considered where the reasons for removal were not merely local. Dr Striebich argued that the matters were merely local, concerning incidents limited to Grampian and Southampton. However, in our view, these matters are not merely local. Several inefficiencies manifested themselves in different dental practices and were persistent, such as an inability to work as part of a dental team, and an inability to accept instruction or guidance from employers, senior staff or those who by reputation are leaders of the profession. These were in our view deep seated personality traits which would manifest themselves wherever he practised. For these reasons we imposed a national disqualification. No order is made under Regulation 19 to extend the period before application can be made to review the national disqualification.

John Burrow Judge PHL/HESC

23.11.12.