Case No. 15046

FAMILY HEALTH SERVICE APPEAL AUTHORITY

Mr D Pratt	**Chair**
Dr P Wray	**Professional Member**
Mrs V Barducci	**Member**

BETWEEN:

DR SAYED HOSSAIN FAGHANY
(GDC Reg no. 78378)

Appellant

-and-

NORTH EAST ESSEX PRIMARY CARE TRUST

Respondent

DECISION AND REASONS

1. This is an appeal by Dr Sayed Hossein Faghany (Dr Faghany), a dental practitioner, against the decision of North East Essex Primary Care Trust ("the PCT") contained in its letter dated 12 December 2008, to remove him from its Performers' List ("the List"), pursuant to Regulations 10 (4) (a) and (c) of the NHS (Performers List) Regulations 2004, as amended ("the Regulations")[1] on the ground that inclusion in the List would be prejudicial to the efficiency of the services which those included in the list perform ("an efficiency case") *and* on the ground that Dr Faghany was unsuitable for inclusion on the List ("an unsuitability case").
2. The appeal was heard between 14 and 25 September 2009 at the Aeonian Centre, London. Dr Faghany was represented by Mr Richard Partridge, of Counsel, instructed by Berryman Mawer, solicitors, and the PCT by Mr Richard Booth of Counsel, instructed by Radcliffe LeBrasseurs, solicitors.

DECISION

3. Our unanimous decision is that this appeal is dismissed and we direct that Dr Faghany's name be removed from the Performers' List of the PCT.

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[1] Regulation 10 …
(3)The [PCT] may remove a performer from its performers list where any of the conditions set out in paragraph (4) is satisfied.
(4) The conditions mentioned in paragraph (3) are that –

> (a) his continued inclusion in its performers list would be prejudicial to the efficiency of the services which those included in the relevant performers list perform ("an efficiency case").
> ….
> (c) he is unsuitable to be included in that performers list ("an unsuitability case").

4. We adjourn the decision whether to order that Dr Faghany be nationally disqualified so that the parties may consider their positions in the light of our findings. For that purpose we direct that (if so advised) the parties make any written submissions on that issue to us by no later than 4.30 pm on 8 March 2010. If either party wishes to request an oral hearing of the issue of National Disqualification then they shall do so by the same date.

REASONS

5. The appeal concerns multiple allegations against a dentist. They arise over a period of about 5 years to mid 2008, and involve (among other things) poor clinical skills, misdiagnosis and mistreatment, poor practice management skills, failure to implement health and safety requirements in reasonable time or at all, wrongly charging NHS patients, poor communication skills, dealing with patient complaints in a cavalier or dishonest fashion, failing to provide effective arrangements for out of hours service, intransigence or refusal to co-operate properly with the PCT. Regrettably, a number of allegations involve dishonesty, in Dr Faghany's dealings with some patients, some officers of the PCT, and various bodies (including this Panel) who were considering his explanations for actions such as misprescribing Diazepam.
6. These allegations are set out in a Schedule of Allegations relied upon by the PCT. We have annotated a copy of that Schedule with the denials or admissions tendered by Dr Faghany, and whether we find each to be proved or not. It is attached, marked "A" and should be read together with this decision. We have to stand back from the considerable detail of that document in reaching our overall view of the case.

The relevant legal framework

7. This appeal is brought pursuant to regulation 15 of the Regulations, by virtue of which it proceeds by way of a redetermination of the PCT's decision, and this Panel may make any decision which the PCT could have made.
8. We have set out above Regulation 10 insofar as it relates to the power to remove Dr Faghany from the Performers List. Regulation 11 of the Regulations sets out the criteria for removal in cases of unsuitability and efficiency, and we have had regard to those and to the Department of Health Guidance, while not limiting our consideration of factors to those mentioned in the guidance, and we have considered all the factors urged on us in this appeal.
9. Regulation 12 gives us a discretion to remove Dr Faghany contingently from the Performers List, subjecting him to conditions. This power is limited to the case on efficiency: if we find him to be unsuitable, we have no discretion to remove contingently. Contingent removal requires that we impose such conditions as we may decide with a view to "removing any

prejudice to the efficiency of the services in question”: regulation 12 (2) (a).

10. In our view the burden of satisfying us that the case is proved, lies on the PCT, and we invited the PCT to lead its evidence first.
11. The standard of proof which we have applied is the balance of probabilities, whether a fact or allegation is more likely than not to have occurred, in accordance with the decision of the House of Lords in *Re D* [2008] UKHL 33.The panel recognises that some events are inherently more likely than others. Counsel for both parties also agreed that in considering issues of dishonesty we should adopt (as we do) the 2 stage objective and subjective test set out in *Ghosh –v- R* [1982] EWCA Crim 2*,* namely that *the conduct must be dishonest by the ordinary standards of reasonable and honest people and the practitioner must have himself realised that what he was doing would be regarded as dishonest by those standards of honest people.*

Background

12. Dr Faghany is of Iranian origin and settled originally in Denmark with his wife, where he became a Danish citizen and qualified as a dentist in 1998. He practised there for about 14 months before moving to the UK in August 2000 on account of (as he told us) racially prejudiced conduct by elements of the Danish population.
13. He took a job as an employed dentist at The Toothplace, Colchester, for about 16 months. Then he bought the Mersea Road Practice, Colchester, which he continues to own and where he continues in private practice since the decision of the PCT to remove him from its Performers List. He employs another dentist who carries out the NHS work.
14. Dr Faghany first registered with the GDC in about August 2000 and was included in the Performers List around the end of 2002.
15. In April 2005 Dr Faghany appeared before the General Dental Council, where Serious Professional Misconduct was proved against him in relation to his misprescribing 50 mg of Diazepam to a patient, to take at home prior to attending for dental work, and she collapsed as a result of this overdose. No sanction was imposed. Dr Faghany did not inform the PCT of this adverse finding, as he was obliged to do by the Regulations.
16. On 10 June 2005 Dr Faghany wrote to the PCT threatening to bring a discrimination claim after he was asked to take a language test because of concern about his language ability.
17. In September 2005 the Essex Performance Advisory Group (“EPAG”) began an investigation of Dr Faghany’s practice at the request of the PCT, and Dr Faghany and his representative met with Mr Greenwood and Dr Grew, officers of EPAG. Subsequently EPAG produced an interim report (2 May 2006), a final report (10 June 2008) and a supplementary report (7 November 2008), with various appendices. We have had no regard to these reports which appeared to us to repeat or summarise and to comment on witness evidence which it is our task to evaluate for

ourselves. However we did consider various contemporaneous documents which were annexed to those PAG reports and to which our attention was drawn by the parties.

18. In addition the PCT received a report dated 30 September 2006 from its Clinical Advisor Mr David Murphy, and a further report from Mr Murphy dated 15 May 2007. The Dental Reference Service carried out a practice inspection on 20 April 2007 (Mr David Entwhistle). Meetings were held between Mr Faghany and the PCT (their Ms Kathy Flegg accompanied by Mr Luton on the second occasion) in May 2007 and August 2007 to discuss the PCT's concerns about underperformance of Dr Faghany's contract obligations. Disputes as to the extent of underperformance have continued unresolved and we have taken the view that this Panel and the mechanism of this hearing is not best suited to resolve questions which are properly for a differently constituted body exercising a different jurisdiction of the FHSAA.
19. On 8 August 2008 the PCT wrote to Dr Faghany informing him that it intended to consider his removal from the List, and giving notice that he should make written representations and/or seek an oral hearing by 4 December 2008. He chose the latter, and the PCT convened a Panel to conduct a hearing on 9 December, which was attended by Dr Faghany, and legal representatives. An adjournment was sought but rejected. Live evidence from witnesses for the PCT was not called. Documentary evidence and representations from Counsel for both parties was considered and Dr Faghany gave some evidence at the invitation of the Chair.
20. The Panel appointed by the PCT determined that the case on efficiency was proved and that Dr Faghany was also unsuitable. It concluded he should be removed from the List. By a letter of 12 December 2008 it notified Dr Faghany of its decision and reasons.

The appeal

21. Both the conduct of the hearing and the letter are criticised in the Grounds of Appeal. However the parties rightly agree that in view of the fact that this Panel proceeds by way of a rehearing, the procedural criticisms are not in point so long as (as is the case) the PCT must prove its case afresh, and call evidence to do so at this appeal.
22. At a preliminary hearing on 1 April 2009 the Panel gave Directions for the conduct of the appeal including a timetable for preliminary steps. The documents disclosed by Dr Faghany included very little in the way of patient records or other practice documentation. Some further documentation was produced during the course of the hearing, with our permission and without objection from the PCT.
23. On the hearing of this appeal, the PCT's case was that removal should be ordered both because of Dr Faghany's unsuitability and on the ground of efficiency. In the latter case, inefficiency was so wide-ranging and long-

term that removal rather than contingent removal was the appropriate order.

24. Dr Faghany's case before us was, broadly, that he conceded some allegations and acknowledged some shortcomings, but that he has remedied or is in the process of remedying such shortcomings. Unsuitability was denied. While conceding that an adverse conclusion could be drawn, it was limited to efficiency, for which a contingent removal would be appropriate and proportionate. On a number of specifics, some of his initial denials were said to be on the basis that he had no or inadequate recollection of the patients or events in question. When pressed he explained that he was not able to refresh his memory from records because he had suffered a number of computer crashes which had resulted in loss of records.

<u>Documents</u>

25. The Grounds of Appeal and PCT's Response, together with associated correspondence, were respectively paginated A1 – A7, and R1 –R24. In addition we were provided with (pursuant to directions) a Schedule of Allegations, numbered 1 – 56, and skeleton arguments. By way of documentary evidence, the Panel were provided with 5 lever arch files as follows:

    <u>Bundle A</u> - Essex PAG Reports paginated 1 – 430;
    <u>Bundle B</u> – Miscellaneous Documents, paginated 1 - 343
    <u>Bundle C</u> - Witness Statements, paginated 1 -195
    Some additional material was inserted during the hearing.191 A – D
    <u>Bundle D</u> - Patients' Records, paginated 1 -159 but including
    Substantial additional material inserted during the hearing and lettered to follow page numbers.
    <u>Bundle E</u> - Appellant's further documents, not paginated but indexed 1/ 1-5; 2/ 1-11, 3/1-9; 4/1-18; 5/1-15; and 6/1-5.

    Some additional documents were received by us during the course of the hearing:

    two copy colour photographs of upper front dentition, and one original Personal Dental Treatment Plan for Patient W, dated 15 May 2008.

26. Among the witnesses who provided statements, some were patients and their identity was protected during the hearing and in this decision by allocating letters of the alphabet, in accordance with an index which appears at the front of Bundle C. Some witness statements were agreed at the outset, and those witnesses were not called to give evidence. We set them out below with page reference and relevant allegation numbers:

Patient A	Page C/1	Allegations 1-4
Patient G	Page C/35	Allegation 15
Patient Q	Page C/67	Allegations 26-29
Patient S	Page C/77	Allegation 37
Patient Z	Page C/90	Allegation 56

David Peckham Page C/92 Dental technician [it was agreed by the parties that paragraphs 18 and 36 of his statement should be struck out and disregarded]
Colin Milborn Page C/97 Dental technician
Mary Tompkins Page C/107 PCT Assistant Director (Medicines Management)
Marilyn Quade Page C/125 PCT officer – Consumer Services

27. On 16 September, during the course of the hearing, Mr Partridge further agreed that a number of additional statements might be read by us subject to comment by or on behalf of Dr Faghany. Their contents were not necessarily agreed but he was content that we should consider them. These were:

Patient	Page	Allegation
Patient B	Page C/3	Allegations 5-9
Patient K	Page C/49	Allegation 19
Patient L	Page C/57	Allegation 20
Patient M	Page C/62	Allegation 21
Patient O	Page C/64	Allegation 23 [but see Schedule attached to this decision for part of allegation not pursued]

28. Both parties had been given permission to adduce expert evidence but in fact only the PCT did so, relying on the evidence of Dr David Kramer whose statement is at C/151 and following. At the beginning of the hearing our professional member disclosed that he had been a contemporary of and known Dr Kramer during dental training, but had not had recent contact with him. Neither party raised objection to his continuing to hear this case.

Evidence

29. Generally. The evidence was both extensive and detailed, with cross-reference to documents such as patient records, and it is not practicable or appropriate to set it out fully in this decision. We confine the references in this decision to a summary and set out detail only where appropriate. Nor did we hear the evidence in the order in which the allegations (and therefore the patients) appear in the Schedule of Allegations. In this decision we seek to relate the evidence to each allegation as it appears in the Schedule and therefore witness evidence will be referred to not necessarily in the order heard by us. Witnesses, whose names and addresses were supplied in each case, are identified in this decision by letters of the alphabet, as they were during the hearing.

Evidence for the PCT

Patient A [C/1-2]

30. This evidence concerns the admitted misprescribing of 50 mg Diazepam (a significant overdose) to a female patient for sedation, to relieve anxiety about an intended treatment of a gum problem and a veneer. The witness evidence from this patient was agreed and, save to the extent that

Allegation 1 (c) (i) is not pursued, supports the factual elements of allegations 1 – 4. Patient A took the Diazepam at home as directed by Dr Faghany, who (on her account) had provided no explanation of his sedation technique or alternative method of anxiety control. The prescription is to be found at A/301. It is written by Dr Faghany, as he confirmed when he later gave evidence. It states:

> *"# Diazepam 1 tab 50 mg take it 1 h before treatment"*

Dr Faghany's records of the consultation appear at A/307-8, and again set out the drug prescription of "*Diazepam 50 mg"*

31. Patient A took the Diazepam as instructed and collapsed into unconsciousness [C/1 para 5 and her letter of complaint A/315]. Fortunately her husband was present in their home and an ambulance was called. She was taken to Colchester General Hospital where the overdose was discovered by examination of the medication box, and she was kept under observation until the doctors were satisfied she could be discharged home.
32. The evidence of the PCT's expert, Dr Kramer, on this point, was [C151-2] that a dose of 2 – 5 mg Diazepam may be indicated for a nervous patient depending on the dentist's assessment, and the patient should be warned they may be drowsy and should not drive or operate machinery, and it is best that they are accompanied to the appointment. He pointed out that there was no evidence that this advice had been given. He said that he was not aware of such a high dose as 50 mg ever being given, and that there could have been disastrous consequences if Patient A had been on the way to the surgery when she collapsed. In his opinion it was irresponsible to prescribe this dose.
33. Patient A wrote to Dr Faghany to complain and he replied (refunding a deposit she had paid) stating [A/316] that he was sorry for her "reaction to that medication" and that:

    > *"We have been using that medication for last ten years now from 2 mg to 50 mg oral depending on how nervous patient is. And it is first time I hear that someone has reaction to it…"*

34. Dr Faghany appeared before the Professional Conduct Committee of the General Dental Council, arising from these events. Its determination (April 2006) is at A/319-320. It concluded that there was gross professional negligence and that the unchallenged expert evidence was that not only was this a huge overdose but in some circumstances could have been fatal. It found him guilty of serious professional misconduct, but noted Dr Faghany's contrition and that he had attempted to strengthen his practice procedures regarding the writing of prescriptions, and decided it was sufficient to conclude the matter while expressing strong disapproval of his actions. The PCC also stated that it believed the situation was made more serious and complex by issues of communication with the patient. It stated "*If the patient had been given a clear written treatment plan this would have gone a long way to avoiding the misunderstanding which*

undoubtedly arose". The final paragraph of the PCC determination states that

> "*you should arrange for the procedures [re prescribing] to be the subject of external audit in order to ensure that there are no deficiencies, and to suggest further practice improvements as may be necessary. We strongly advise you to consult your local Dental Practice Adviser about the setting up and conduct of such an audit."*

35. Neither the fact that his conduct was being investigated by his professional body, nor that it had made an adverse finding against him, was declared to the PCT by Dr Faghany as he was obliged to do by Regulation 9 of the NHS (Performers List) Regulations 2004, as amended.

Patient B [C/3-7]

36. Patient B's evidence was also read by us. She had attended The Toothplace "towards the end of 1999" because of pain in a lower left 7 tooth, and complained that it was difficult to understand the dentist, and that he had difficulty grasping what she said. She was told by the dentist that there was nothing wrong with the tooth and he gave no advice as to why it was hurting. Pain persisted and she returned to see him within the following month. She was advised this time that she had an abscess or infection and was prescribed antibiotics. The antibiotics made no difference to her and she was taking paracetamol regularly. She attended her GP in December 2000 (when he prescribed pain relief tablets) and again in January 2001, when he advised she should return to see her dentist. By this time Ms B says the pain relief medication was working for about half an hour at a time and she spent time lying down holding a hot water bottle to her face [paras 29-30]. She consulted another dentist on one occasion and on another went to an A & E Department where she says she was told she was taking excessive amounts of pain relief medication. In due course she asked a dental acquaintance who lives in the Channel Islands to telephone Dr Faghany, which she did shortly before a further appointment in January 2001. At that appointment Dr Faghany extracted the tooth (a difficult and physical process on her account) and told her it was rotten (denied by Dr Faghany). Her swollen face went down about a week later. She has been left affected by the experience and says she now finds it difficult to go to the dentist. When necessary she has attended another dentist since then.
37. The PCT concedes that since Dr Faghany did not start work at The Toothplace until September 2000, it cannot show that Patient B's complaints about the dentist who saw her in 1999 and early 2000 was Dr Faghany. It does not therefore pursue Allegation 6. However we were shown this patient's dental records [D/1 – 2D] which Dr Faghany agrees show occasions from 31 October 2000 to 19 January 2001 when she was seen by him, although he has no recollection of the patient other than receiving the telephone call from the dental acquaintance. On the first occasion he took radiographs. On 2 November 2000 she was seen again

and Dr Faghany noted that radiographs showed abscesses on LL6 and LL7. His plan as noted was that if penicillin did not help, he would perform root canal treatment (“rct”) on both teeth or extract LL7 and do root canal treatment on LL6. He saw Patient B again on 8 and 27 November (when he planned an appointment for two weeks to do rct). He saw her again on 12 December when the teeth were being prepared for crowns, and prescribed more antibiotics. On 14 and 22 December Dr Faghany recorded complaints of constant pain and gave stronger pain killers. On 19 January 2001 he noted receiving the telephone call from the other dentist, and on the same date extracted LL7.

38. The opinion of Dr Kramer (PCT’s expert in general dental practice) on this treatment [C/153] is that if there was peri-apical infection visible on the radiographs (which he has not seen) then root canal treatment would be indicated, if sufficient tooth substance remained. Dr Faghany recorded that rct was required but did not provide it. It was inappropriate, in his view, to repeatedly prescribe antibiotics to control infection rather than treat the cause of the infection. It was also inappropriate to prepare the teeth for crowns prior to doing the root canal treatment required. He told us in evidence that it was important to deal with the disease process prior to restoration. He also told us that rct may on occasion (which he explained in greater detail) precede tooth extraction, but it would never happen after extraction. There was no evidence to support extraction rather than rct, and Dr Faghany had not considered referral for a second opinion.
39. Dr Kramer commented in evidence that this was not the only case where radiographs were unavailable to him. He said that they should be kept indefinitely. If non-digital analogue images were taken they should be stored attached to the patient record card. If digital images were taken, they could be stored on the computer. Standard rct practice was to take a series of radiographs to verify the length and shape of the root, and to check that the dentist had achieved cleaning to the tip of the root.

<u>Patient C</u>

40. This allegation was not pursued and we have considered it withdrawn.

<u>Patient D</u>

41. We heard from Patient D, a middle aged man, whose witness statement also appears at C/16-19. His patient records are copied at D/2H-2I. This case concerns a man who was a regular NHS patient of the practice and was experiencing pain in LR6 and LL7 teeth. He was seen by a female dentist at the Mersea Road practice in November 2003, and had a filling to LL7. The teeth continued to be painful and Patient D then saw Dr Faghany who filled LR6. Pain continued and was so bad that Patient D attended as an emergency on Sunday 21 December. Only Dr Faghany was present. Patient D says he offered to extract both teeth or remove the nerve, which would alleviate the pain, and he elected the latter. He wanted to keep the teeth. Over a period of “at least two hours” (Patient D retracted the assertion at paragraph 13 of his statement that is might have been as long

as 4 hours) Dr Faghany performed the procedure on him and Patient D remembers he showed him what he described as the nerve he had removed. During the procedure, Patient D held the suction tube in place in his mouth at the request of Dr Faghany. It was originally alleged that this was inappropriate and unprofessional, contrary to good dental practice and not in the best interests of his patients. But this was an emergency when Dr Faghany had come into his surgery on a Sunday in response to a call on his mobile telephone, and quite properly the PCT withdrew this allegation during the hearing.

42. Patient D is adamant that Dr Faghany said nothing to him about returning for root canal treatment on the teeth. As far as he was concerned, he had completed the treatment on that emergency Sunday attendance. He was not expecting to arrange a further appointment.
43. However the pain did not improve so on Monday 22 December Patient D got his wife to telephone the surgery to arrange an urgent appointment. It could not be arranged that day but on Tuesday 23 December Mrs D spoke to Dr Faghany's receptionist who informed her that an appointment needed to be made for Patient D to return for root canal treatment. This came as a surprise to Patient D. In the event, Dr Faghany saw him that day. Patient D describes being in awful pain. By now he says "the pain was bad enough for me to want to take out the teeth". A number of injections were given (Patient D says 4 or 5) to numb the mouth without complete success, but Patient D asked Dr Faghany to go ahead anyway. He describes the extraction of the second tooth as "excruciatingly painful". He says he cried when he left the surgery.
44. We were shown the patient records in which Dr Faghany recorded (among other things) that on 21 December 2003, he found infection and gave the option of extraction of the teeth or root canal treatment, and the patient chose the root canal treatment.
45. Patient D says he was he paid £140 to Dr Faghany for his treatment, although Dr Faghany says there is a record of only £112.52 paid. Patient D clearly minded having paid money but instead of obtaining relief had a painful experience which he blamed on Dr Faghany.
46. He subsequently complained to the PCT and was given details of another dentist for future dental care.
47. Dr Kramer was not prepared to be unduly critical of Dr Faghany in relation to his treatment of Mr D. He was willing to spend a lot of time on his case on a Sunday in order to alleviate his pain. The patient seemed not to have appreciated he was having rct but it was very unlikely that Dr Faghany could reasonably have completed treatment on two molars involving rct in this emergency appointment. He felt that either the patient did not hear the information that he should return for completion of the treatment, or it was not explained to him. But it would be very reasonable to say "phone tomorrow and book for completion of the treatment" and to deal with the treatment plan on that later date. The second extraction on the Tuesday

was more disturbing because nobody likes to inflict pain on a patient and it seemed Dr Faghany had failed properly to anaesthetise the tooth.

Patient E [C/23-29]

48. Patient E was a 35 year old woman when she first attended Dr Faghany's surgery in July 2004, because a filling had fallen out and she had noticed a hairline crack in one of the two crowns which she had on her two upper front teeth. She told us in evidence that the problem was purely cosmetic and she was not in discomfort. In broad terms the allegation is that Dr Faghany wrongly advised her that both crowns (including the undamaged one) would have to be replaced when the replacement of both was unnecessary, in order to benefit himself financially, and then failed to treat her competently or to provide reasonably acceptable replacements.
49. We found Patient E to be quite forthright and sometimes combative. She was very definite in her recollection of events, but in our judgement her recollection was sometimes coloured by what she perceived to be an unsatisfactory outcome to the replacement of crowns which were an important part of her appearance.
50. Patient E's dental records appear at D/2J-2Q and further documents were added during the hearing at 2QA-2QD. Her witness statement [para 12] says that Dr Faghany had suggested replacing the crown which was cracked and would also need to re-crown the adjacent front tooth, because "when one of two adjacent crowns needed to be replaced, the other needed to be replaced as well." Patient E told us in evidence that Dr Faghany suggested replacing the "good" crown because it might have been damaged at the same time as the crown which showed a crack. This is disputed by Dr Faghany. She accepted his advice. In cross-examination she also said that Dr Faghany told her that in drilling around one crown he might damage the other. She was adamant that he did not suggest replacing both crowns in order to get a proper match between the two crowns. She recalled a graphic phrase used by Dr Faghany, that he could give her a "Hollywood smile".
51. Patient E was not given a treatment plan. She was not shown colour charts to help choose the colour shade until a later stage when Dr Faghany agreed to replace the permanent crowns with which she was dissatisfied.
52. On the morning of 12 August 2004 Patient E attended for crown preparations. Dr Faghany took impressions and placed two temporary crowns at UR1 and UL1. Ms E told us they looked terrible, and she immediately realised this when she looked in the mirror. In her statement she said they were misshapen, and not a reasonable colour, being vivid white. In evidence to us she also said they were shorter than her old ones and there was "no bite". They looked ridiculous because they were "far apart". She was so upset she cried. She told Dr Faghany she could not leave the crowns like that. Dr Faghany told her he was tired after seeing many patients that morning, and busy. She said he became short-

tempered with her and started to speak quickly. However he told her he was willing to replace them after lunch.

53. Patient E agreed and immediately went to her mother's house where she took two photographs of her teeth which she produced in colour versions of the black and white reproductions annexed to her statement at C/30-31.
54. When she returned after lunch Dr Faghany was in a better mood and apologised for the state of the temporary crowns, which he removed under local anaesthetic, and fitted a new temporary set. Ms E's statement says that the shape was better but the colour was an even more brilliant white. She accepted them as she was going on holiday, after which she returned to have the permanent crowns fitted.
55. The permanent crowns were "dreadful". Her statement says they were massive, convex (bulging outwards) and not flush with the bite. They were also yellow like the teeth of an elderly person who had been a life-long smoker. In evidence she further described them as oversized, yellow, and "sat out" from the line of her teeth. Patient E said they were not acceptable. Dr Faghany agreed to replace them. He did not take new impressions but he did show her a colour chart and they agreed the colour for the replacement crowns. Further temporary crowns were placed.
56. Patient E returned (this appears from the records to have been on 16 September 2004) and a second set of crowns was fitted. These were also unacceptable to Patient E. In her statement she says that although they did not bulge like the previous ones, they protruded considerably, and were still too yellow (although a better colour). Dr Faghany fetched a video camera and started to film her mouth. She told us in evidence that he opened her mouth and held the teeth in place with his finger while doing so. She says he did not ask if he could do this. She found this disrespectful. She described him as agitated.
57. However Dr Faghany "reluctantly" agreed to get a further set of crowns made but said that he would do no more after that as it was costing him money. He took an impression, and more temporary crowns were placed.
58. Before returning to have this third set permanent crowns fitted, Patient E contacted Essex Consumer Services Team [ECST] on 20 October 2004. The note of this conversation made by the ECST officer was produced and marked C/31A – 31B. It is consistent with main thrust of Patient E's complaints. She was encouraged to give the dentist a final opportunity to provide satisfactory crowns.
59. On 9 November 2004 Patient E attended for the last time, and a third set of permanent crowns was fitted. She described these as "a better colour, although wider than my own teeth had been, and there was some overlap with the left tooth. However, as they were an improvement, …. I reluctantly accepted them". In evidence she said that they feel strange because at the top there is no coating so they feel rough and pick up discolouration.
60. Dr Faghany, whose dental notes were normally very brief, wrote a long note of this last attendance at D/2K. Among other things he noted:

"*pat[ient] pleased. It's very difficult to satisfied this pat there was nothing wrong w last crowns but she asked me 2 change it again. I did record it on video, therefore I don't wish 2 c this pat any more. Dtc.*"

He also noted that amalgam fillings to UL6 and UR6 were not completed, giving as the reason "Agreed to postpone treatment". It appears this was a retrospective note.

61. In fact he was declining to see this patient again. In addition to the crowns he had been dealing with fillings to those two teeth and had provided temporary fillings, which Patient E said in evidence had fallen out within a few hours.
62. Patient E went to another dentist, Mr Fox. He identified an abscess at UL1, and needed root canal treatment. and although he initially discussed doing this on the NHS, he subsequently advised he could not do so and in due course Patient E attended another practice where root canal treatment was done on UL1. That practice also advised her that the tooth for which Dr Faghany had provided temporary fillings was dead and would have to be extracted or root canal filled. In the event it was extracted, about which Patient E was upset, and blames Dr Faghany. In evidence to us Patient E said that in fact both upper front teeth have had root canal treatment performed since she left Dr Faghany. However the crowns which were in place today were still the same crowns which he had finally fitted.
63. We examined the photographs of the first temporary crowns. They may not be perfect images of the teeth, but in our judgement, taking into account the experience of our dental professional member, they are within an acceptable range of appearance for temporary crowns and are not obviously ill-fitting. We have not carried out any examination of the patient's mouth but in the course of the hearing we could detect no obvious defect in the crowns she is still wearing.
64. Dr Kramer was asked about the notes taken by Dr Faghany. He said that they fell towards the mid to lower end of the range of competent note taking. For example at D/2K there was a 40 minute appointment on 12 August but no note of what was done. Similarly on 1 September 2004 he had no idea of what was done. It should be possible to print out all the notes held on computer but this had not happened. Moreover the PAG assessors had reported that his old records were being kept in a garden shed. Dentists should have all the records available to them.
65. Dr Kramer told us that if Dr Faghany had told Patient E he was replacing the both crowns because in replacing one he might damage the other with the drill, that would not be an acceptable explanation or reason for replacing both crowns. His report [C/155} tells us that it is unnecessary to replace two crowns where only one is damaged, and it should be possible to match a new crown to an existing one. But some practitioners would advocate replacement of both in order to obtain a better match, more particularly if both crowns had been in function for a long time. He said

that his examination of the photographs indicated that the temporary crowns were slightly shorter than the adjacent teeth and the edges somewhat uneven and they were quite bright, but appeared to match reasonably well with the adjacent teeth. He did not expect temporary crowns to provide optimal quality. He had not examined the patient so could not comment on the quality of her permanent crowns.

66. In evidence Dr Kramer corrected paragraph 17 of his statement, because he now noted that a temporary filling was recorded by Dr Faghany in the notes on 9 November r2004 (D/2K).

<u>Patient F [C/32]</u>

67. Patient F was a NHS patient to Dr Faghany's practice. The allegations concern inappropriate charging, lack of proper explanations, failing to obtain informed consent, proposing unnecessary root canal treatment, and lack of appropriate hygiene and infection precautions.
68. Patient F gave evidence. On 16 August 2004 he presented (after telephone several practices) with toothache at LL7. Dr Faghany carried out an examination which was described by the patient as "very quick, about 3-5 minutes", and advised he needed root canal treatment. A deposit of £30 was required to be paid that day. The total cost was (he said) never discussed with him at any time. No treatment plan was offered. Patient F said no explanation was offered for this treatment. He had never had it before and did not know what it was. Patient F also alleges that he was charged an additional £20 for the consultation.
69. He was given an appointment to return in 2 weeks but he still had the pain, and decided to consult another dentist. On 31 August 2004 wrote a letter of complaint to the practice [D/2ZZ], stating among other things that he had been left feeling very confused and unsure about the treatment suggested. He wrote that he had received no information about it other than to say it was root canal treatment and Dr Faghany required a deposit of £30, and that he had the distinct impression all Dr Faghany was interested in was the money. He had therefore sought a second opinion from another dentist and had been advised all he required was a couple of fillings. He complained that he felt let down not only by Dr Faghany's manner but also by being told he needed root canal treatment when in fact he did not. He asked for his £30 back. Dr Faghany refunded it on 5 September 2004.
70. Patient F was shown copies of the dental records [D/2R – 2Z] . His attention was drawn to D/2V where fees of £5.64 for an examination, and £2.80 for a radiograph are recorded. He said this bore no relation to the fees which he in fact paid (as above). He did not actually remember a radiograph being taken but accepted that Dr Faghany did so, and the copy appears at D/2U. Dr Kramer examined this radiograph and told us in evidence that it was of no diagnostic value in deciding whether the patient needed RCT because it was not fixed properly and therefore could not be developed properly.

71. Patient F's statement also complains about some matters not mentioned in his letter, namely that Dr Faghany did not wear a mask during his oral examination, he could not recall whether he had gloves. However in evidence to us he said he could be sure about this. In his statement he also says that the same person acted as receptionist and dental nurse, but did not wear any uniform, gloves or mask. In evidence he was not very clear about any details concerning the dental nurse.
72. He told us that he felt very unhappy afterwards because of the swiftness of the examination and emphasis on costs and charges, without any explanation.
73. Dr Kramer's witness statement dealt with this patient at paragraph 18 -21. On the question of taking deposits, he said that a patient signs an NHS form which says he may be liable for statutory charges, but no payment should be taken until an examination has been carried out. He noted that Dr Faghany conceded he was asking patients to pay a deposit when they first registered with him, which he now accepted was inappropriate and contrary to the Regulations.
74. Dr Kramer said it was part of a dentist's duty to explain in understandable terms and detail what treatment entails so that a patient could properly consent to it. He told us in evidence that the minimum he would expect a dentist to say to the patient in these particular circumstances was that he had a bitewing x-ray which was of no diagnostic value in deciding whether he needed root canal treatment. If the patient had not previously had rct he should explain it involves removing the nerve contained within the root and cleaning it up and sealing it to stop it getting infected again. He further explained that if the radiograph comes back not of diagnostic quality (in this case because it was not fixed properly so could not be developed properly) it is the practitioner's responsibility to deal with that.

<u>Patient G [C35-37]</u>

75. This evidence was agreed and we read the statement of Patient G. It established the factual allegations at paragraph 15 (1) to (4) of the Schedule (all of which were admitted at the outset), namely that G had an appointment with Dr Faghany at 2.30 on 25 August 2004, but the surgery was shut on arrival, and was still shut when she left at 2.40.pm. There was no notice on the surgery door indicating when it might re-open, or giving other information. She continued to telephone the surgery during the afternoon without reply. The same occurred the following morning. She passed the surgery during the afternoon of 26 August and noticed it was opened. She went in and spoke to the receptionist, who explained that Dr Faghany had gone home because he was unwell, but made no comment when asked why the practice was unstaffed.
76. Patient G was annoyed that she had travelled across Colchester for a wasted appointment without the courtesy of a call from the surgery. She wrote to complain on 1 September 2004, and Dr Faghany replied, stating that "I had some problems with my heart and had to go to hospital. And I was there until 8 pm. I hope you will understand it". He went on to state

"My receptionist tried to call all the pats [sic] that afternoon and cancelled their appointments. Will you please leave us your work number? Just in case. Thank you." However Patient G had been at home and had also provided her mobile telephone number, but there was no record of the surgery having tried to contact her.

77. Dr Kramer's expert opinion on these matters was set out at paragraph 22 of his witness statement. He advised that it was the responsibility of every dental practitioner to make arrangements to contact booked patients to cancel their appointments when an unforeseen absence takes place, and to put in place appropriate arrangements for the treatment of patients presenting in an emergency. Dr Faghany accepted this proposition.

<u>Patient H</u>

78. When this witness was called he was unable to say if the dentist he had seen in early 2000, and who had provided treatment about which he complained in March 2006, was in fact Dr Faghany. Through a professional acquaintance at the PCT this witness was contacted by Mr Greenwood, who undertook the PAG investigation, and had provided a statement to him. The evidence is clear that Dr Faghany was not working at Mersea Road Practice in 2000. This allegation was not pursued and we struck through the entire paragraph and have not considered the evidence relating to it.

<u>Patient I [C/ 40-44]</u>

79. We heard evidence from this female patient in addition to reading her statement. The allegation concerned inadequate assessment, failing to diagnose or inform the patient she had gum disease, providing a denture (wrongly said to be a bridge in the original Schedule of Allegations) that did not fit correctly.
80. Patient I registered as a NHS patient with the Mersea Road practice, where she first saw "a Scandinavian lady" and in September 2002 started seeing Dr Faghany. Her available dental records include some produced during the hearing and are at D/20C – 20AE.
81. Patient I went to see him in 2003 because she wanted some gaps in her teeth filling. She believes she had four gaps on one side of her mouth and two on the other. Patient I recalls that Dr Faghany said he would put a bridge either side of a gap, and that he gave no option about treatment. He did not mention gum disease. However his dental records [D/20R] note the presence of "too much tartar" for which he gave a scale and polish. He took an impression with a tray, on 30 September, and fitted a partial denture on a chrome plate on 27 October 2003. On the same date he carried out bleaching, for which the patient paid £350 in two instalments. On 30 October 2003 he recorded a periodontal examination (but not the findings).
82. On 10 July 2004 he took study casts for a bridge. However on 15 July 2004 the Dental Practice Board wrote to Dr Faghany seeking access to Patient I's records in connection with one of its monitoring exercises. A Dental Officer examined Patient I in September 2004 and found extensive

periodontal disease, and that the patient had lost 7 upper teeth and 3 lower teeth. In view of the these findings, the Dental Officer was not prepared to approve the provision of bridge work and advised that appropriate periodontal treatment should be given and the patient referred to a consultant in restorative dentistry [D/20W].

83. In light of the Dental Officer's findings, Patient I was dissatisfied with her treatment by Dr Faghany and wrote to him on 10 October 2004 [C/44A] asking for an explanation of why Dr Faghany had not informed her that she had gum disease and movement in her teeth, why he bothered to make up a plate to replace the missing teeth when he must have been aware of this problem, and why he had bothered to bleach her teeth. She said she felt that the total she had paid (approximately £500) had been a waste of money. Dr Faghany replied [D/20AB] asserting that he had noticed gum disease on 29 November 2002 and started treatment for it the same day: this is a reference to the entry in his records that he undertook and examination and started "sp1" [scale and polish] and noted "to come again sp2" but the patient did not return at that time. Dr Faghany's letter continued that "we did not begin treatment on your denture until you gum disease was under control". He also said that the bleaching was private treatment and it was Patient I's choice to have it done. Lastly he wrote that the last treatment for gum disease was on 30 October 2003 and she had not visited gain for another 9 months during which time the gum disease had started again.
84. Patient I responded by a letter dated 18 October [D/20AC] expressing bewilderment with his contentions that gum disease was noticed on 29 November 2002 and that perio treatment was planned but not completed, as she was never told about gum disease and never given another appointment for further perio work. She agreed she asked to have her teeth bleached but if she had been told she had gum disease, "*I have enough common sense to know this was a waste of your time and my money! My main concern is getting rid of the gum disease*". In reply [D/20AD] Dr Faghany reiterated that he had told her she had gum disease and that each time he bleached her teeth he was also giving them a scale and polish "to make sure your gums are ok".
85. In evidence Ms I emphasised that she would have picked up straightaway if Dr Faghany had said she had gum disease because then there would have been no point in asking for (and paying for) bleaching. She was obviously taken aback by the suggestion (in Dr Faghany's last letter) that he had done some bleaching work free of charge. Nor did she remember Dr Faghany ever saying she had too much tartar and would need scale and polish sp2 before doing further work. It was put to her that on the date she had her denture fitted the records showed she had sp2 and that NHS period was completed. She said she knew what gingivitis was because a friend had had it.
86. Patient I had not found the denture satisfactory.

87. Dr Kramer's witness statement [C157, paras 24-27] acknowledges that the annotation "needs sp2" [an extended course of debridement commonly called scaling and polishing] made it appear that Dr Faghany was aware that the patient had some periodontal treatment needs. However he failed to carry out any form of proper periodontal examination. It was imperative that a basic periodontal examination (BPE) is carried out at every examination, recording the periodontal pocket depths so that treatment needs can be ascertained and planned, and the progress of any gum disease and effects of any treatment assessed. In evidence, Dr Kramer told us that if a patient such as this came in and said to a dentist she was fed up with the gaps in her teeth, the dentist needed to look at the reason why so many teeth had been lost and then try to treat the disease.
88. In this case (he said in evidence) there had been no proper monitoring of the gum disease. Charting of tissues and gum condition was absent. A normal BPE form, which sets out a printed grid, would have enabled this to be done. The aim of periodontal treatment would be to reduce the pocket to a healthy level (about 2-3 mm). The benefit of any treatment offered could not be assessed without measuring and charting this. You could not tell how effective treatment had been just by looking at the gums.
89. Dr Kramer advised us that it was not appropriate to provide a metal denture in these circumstances because it would be prone to move, and was difficult and costly to make. His attention was drawn to the laboratory order form [D/20L] and he pointed out that someone had written on it: "*Please send a new lower imp[ression]"*.
90. He further advised that strictly speaking it was illegal to supply bleaching material but many dentists have done so for a long time.

<u>Patient J [C/45 48]</u>

91. Ms J's patient records were produced during the course of the hearing and are at D/20AEE – AEF. The allegation concerned the competence of fitting a crown, and Dr Faghany's attempts to remedy any deficiencies.
92. Patient J says she had been a NHS patient of the Mersea Road practice since 1993 but Dr Faghany has disclosed only two pages of records from April 2003. On 30 April 2003 Patient J attended the practice because of a painful UR6 tooth. It was sensitive to hot and cold liquids. She said that Dr Faghany examined her and said she needed a filling on the opposite side of her mouth (although the records say nothing of this). The records state at different points that "SHF" [i.e. Dr Faghany] was the dentist or that Amir Rahbar was the dentist. Dr Faghany's case is that it was not him. She was not given a treatment plan. Two or three weeks later the filling fell out and she attended again, when he refilled the tooth on the left side (the records refer to replacing a lost temporary filling at UR6). Patient J told Dr Faghany that UR6 still hurt and he said he could crown it for her. She was exempt from NHS charges and expected this to be free. However she was contacted by Dr Faghany's receptionist after the treatment was finished and told she would have to pay.

93. Patient J's statement says that the crown impression and temporary crown were done by a female dentist. She had difficulty fitting the permanent crown when this was ready. Dr Faghany took over. The records [D/20AEF] indicate that a dentist called Nazli Mirshahi saw Patient J on 7 May for a 50 minute appointment. Apart from taking a small radiograph no other work is recorded but it is possible that the tooth was prepared for the crown. The record shows that Dr Faghany saw her on 8 May and again on 20 May, 29 May and 1 October 2003. Patient J says he fitted the crown but "crookedly". Patient J said the bite was not correct. Dr Faghany ground it down. She also told him the margin was visible between the crown and the gum. He painted some film on the margin, which wore off within an hour or so.
94. Patient J was not happy with her treatment, particularly the margin where (she believed) food residue would become trapped. Dr Faghany did not propose more work. It was after this that the receptionist telephoned to tell her that she would be charged for the crown. She challenged this (as she explained in evidence) on the basis that she was on Family Credit. Dr Faghany said he would go back for further correction but would have to pay, or could leave and could pay nothing. She could not afford to pay, so went to another dentist and got it redone in the summer of 2005.
95. Patient J said she had difficulty in communicating with Dr Faghany's staff.
96. Patient J's attention was drawn to a note in the record for 29 May that UR6 was too high and was eased and that she was happy, but she said she had never been happy, and this started the moment the crown went in and she could not close her mouth properly.
97. Dr Kramer's witness statement [C/158 paras 28-29] indicated among other things that he had not been provided with the forms FP17 signed by the patient at the time of treatment but if a course of treatment was complete and a new course commenced later, the patient would be liable to pay for the latter course if her circumstances had changed. Patient J told us that her circumstances had changed by the time she returned for remedial work to the crown but as she was simply asking Dr Faghany to put right something which had not been done correctly the first time, she should not be asked to pay.
98. Dr Kramer said it was not usual to see fillings come out from the same tooth repeatedly. If that happens it may mean that there is insufficient tooth and then you had better address that situation.
99. As to the crown, Dr Kramer told us that it ought to fit flush with the tooth. At the junction between the gum and the tooth you should hardly detect anything. If not, the crown is not fit for purpose and plaque gets trapped and decay or inflammation can occur.

Patient K [C/49-56]

100. This is a case where (as Dr Faghany admitted during the evidence) he attempted over a long period of time to provide replacement crowns and a bridge for his patient. Issues of adequate assessment, competence in taking impressions, and communication with the patient, are raised. It

was agreed this witness statement could be read by us subject to comment, and without any admissions as to its accuracy, except where Dr Faghany made express admissions. In the event Dr Faghany admitted that he made numerous unsuccessful attempts to take proper impressions for her crowns and bridge, that he failed to provide a treatment plan, and failed to take impressions correctly of the crowns or the bridge she needed.

101. The events in question occurred mainly during May and June 2003, after which Patient K's husband contacted Ms Quade of the PCT's Consumer Services Department to complain about Dr Faghany.

102. Patient K was having trouble with a crown which kept coming off one of her two upper front teeth. Dr Faghany proposed removing the tooth at UL1 and removing two "good" crowns on the adjacent teeth in order to make a bridge for UL1. He did not mention bleeding gums or dental infection when he removed these crowns. On 21 May 2003 she received a treatment plan which itemised work to be done (total cost £237.68) but not work previously done. On 21 May a study cast was made and a temporary bridge supplied. On 23 May Patient K telephoned to complain that a filling also done by Dr Faghany was too proud and she could not close her mouth properly. On 24 May Dr Faghany saw her to correct the filling and also removed the two temporary crowns and took a second impression. On 4 June Patient K attended again and another impression (the third) was taken.

103. On 16 June Patient K returned to the surgery and was told that this last impression had been returned by the laboratory as unacceptable and she was asked to return the same day at 5 pm, when he took another impression and provided a temporary bridge again. Mrs K told him she needed her teeth by the forthcoming weekend for a social occasion. She says she had difficulty understanding his English. However he telephoned the laboratory and then told her it would not be possible to complete the work until 24 June.

104. When Patient K got into her car after this she saw her teeth for the first time in the mirror. She says the temporary bridge had been inserted crookedly and had large chips in the teeth. She had colour photographs taken [C/56A – 56E] which appear to support this complaint.

105. Patient K was then contacted by the surgery and told that the new bridge had had to be returned to the laboratory because it was no good. The receptionist said Dr Faghany was on holiday that week, but the dental technician had arranged to come to the surgery on a Sunday to ascertain what Dr Faghany was doing wrong and show him how to take impressions correctly. A further appointment would be needed. By this time Patient K had lost confidence in Dr Faghany's ability to take impressions or provide adequate treatment. She describes herself as "upset and fearful".

106. Patient K subsequently attended another dentist, who advised her that she had serious periodontal problems which had not been treated by

Dr Faghany, and that he would have to start again with treatment and a new bridge. This treatment cost Patient K a further £372.

107. Patient K says that she did not always understand what Dr Faghany was saying, because of his accent and quiet speech, but it was his ability to explain things clearly that was the problem.

108. Dr Kramer identifies discrepancies between the evidence of Patient K and the records of Dr Faghany. For example there is no record of attendances on 24 May 2003 (but there is one recorded on 28 May when it was noted that the patient should return for fitting of the bridge, which Dr Kramer suggests may infer a bridge was tried and found to be unsatisfactory), nor of any attendance on 4 June. The records do show that on 16 June the laboratory making the bridge required another impression and the Practice spoke to the patient's husband about this. However, Dr Kramer describes the timing of a second set of impressions (noted in the records) as incongruous, as study models should be made at the planning rather than treatment stage. Dr Kramer says the records do not show that any treatment plan was provided, and in a case of complex restorative treatment such as this, it was essential to do so, otherwise the patient cannot give properly informed consent. Nor was there any form FP14 DC in the records, and it is mandatory to give a copy of this to the patient at the start of the course of treatment.

109. Dr Kramer says it is unsurprising that Patient K did not return to give Dr Faghany the opportunity to complete his treatment, in view of his apparent inability to rectify the problems which arose from his poor impression technique. In evidence he commented that lab technicians (such as Messrs Milborn and Peckham) are usually very good judges of the impressions they receive.

Dental Impressions generally

110. The dental technician in the case of Patient K was a Mr Milborn, who has provided a statement of his experience of executing work for Dr Faghany [C/97-98]. Its contents are agreed. He has been a dental technician for 31 years and has his own business. He describes impressions taken by Dr Faghany as "amongst the worst I have seen. I believe he tries to do them as cheaply as possible". He says Dr Faghany would use only part of the full arch tray which meant the patient's bite would not be clear. He often had to telephone him to tell him the impression was not good enough to work from. He says "Mr Faghany did not seem to have the ability to take a good impression". He also says that he found it difficult to have a telephone conversation with him because of his ability to speak English.

111. Another dental technician of 47 years experience, Mr David Peckham, who also runs his own laboratory, called Essex Denture Centre Ltd., which is the largest laboratory in southern England. He provided a statement which is at C93-96. He did work for Dr Faghany up to September 2005. Since then he no longer receives impressions for crowns and bridges, but continued to receive impressions for dentures. He

observed that “his impressions are so bad that I genuinely question whether or not he is qualified”. The problems with dental appliances made with these impressions was so frequent that Dr Faghany took to sending the patients along to the laboratory to point out where there was a problem and the laboratory would adjust it. Mr Peckham provides some examples of poorly fitting appliances, which include a chrome-cobalt partial upper denture replacing UL1 and UR1 which had been filed down by Dr Faghany so that the incisal edge of the teeth was dangerously sharp and put the patient at risk of cutting their mouth. He also drew attention to the fact that Dr Faghany regularly failed to provide enough information on the accompanying document, such as the shade and colour match.

112. Mr Peckham estimates the failure rate of Dr Faghany’s impressions at 90%. He says he has often provided advice and guidance to vocational trainees to help them understand what is needed to provide a good appliance, but he does not believe Dr Faghany will ever now have the ability to take impressions satisfactorily, because he has learned so many bad habits.

113. Dr Faghany does not dispute this evidence but says he has achieved significant improvements in his capabilities in taking good impressions.

Patients L, M, N, O and P

114. These patients were all members of one family. Patients L and M were respectively the father and mother and the others were their three children. They were in the habit of making co-ordinated appointments and went along to the Mersea Road surgery together. It was agreed that the witness statements of Patients L and M could be read by us, subject to comment and without admission as to the content, save where express admissions were made. We heard evidence from their son Patient N, and from their daughter Patient P.

115. Patient O was a daughter of the family and Dr Faghany made some factual admissions at the outset [see Schedule of Allegations] which might be termed “neutral” as to how satisfactory the treatment she received was. However she was not called and her evidence was not otherwise agreed. The PCT did not pursue the allegations at 23 (d) and (e). These were the paragraphs which carried any sting or adverse inference. We therefore ignore her evidence.

116. Patient L had attended this dental practice for many years. Relations between him and Dr Faghany deteriorated so that on 30 November 2005 he told Dr Faghany he was not happy with him and Dr Faghany said he should find another dentist and removed his name from his list. We read Patient L’s statement at C/57-61. His patient records are at D/20AU – 20AX. He went for a check up in 2005. He complains in his statement that he saw Dr Faghany for a planned filling in about July 2005, but Dr Faghany said he would clean the teeth first, but after he had done so. Patient L detected with his tongue a “noticeable channel” ground into the rear surface of his two front teeth, and extending from the outside

edge of one to the outside edge of the other. He asked Dr Faghany to explain why he had done so, and says that Dr Faghany mumbled an explanation about his teeth being discoloured. When Patient L said his teeth had always been discoloured, he alleges Dr Faghany gave him a different explanation that he thought the discolouration was decay. Dr Faghany then mixed a solution which he applied to this channel "as a sort of filling". It has not subsequently given problems.

117. On 30 November 2005 Patient L needed to return to Dr Faghany to refix a crown which had become loose. When he had finished Patient L told him he thought he should have cleaned up the stump of tooth before recementing the crown. Patient L says Dr Faghany told him trust had been lost and suggested he find another dentist. Dr Faghany made a very long note at D/20AX which commences with the words "he was very rude today and said that he wasn't happy with me. I said if he is not happy with me he should find another dentist…." It is clear from this note that the issue about the two front teeth was also raised by the patient.

118. Patient L wrote a letter of complaint to the PCT on 3 December 2005 and was subsequently contacted by the PAG. His subsequent statement also alleges that Dr Faghani's hygiene and infection control was poor: he would put on a new pair of surgical gloves when seeing the first member of the family, but not change them when dealing with other members of the family, so that all 5 were treated wearing the same gloves. He confirms that Dr Faghany did wear a mask during treatment.

119. Patient L was examined by Dr Mark Shackell, Consultant in Dental Public Health attached to the Essex Public Health Resource Unit, hosted by NHS Mid Essex, at the request of the PAG. His witness statement is at C/99-106, and we also heard evidence from him. Concerns about Dr Faghany were brought to his attention by the Consumer Affairs department in 2003, and he had had a number of contacts with him. He found his speaking voice difficult to follow but accepted that it became easier after talking to him for a while. He also advised that Dr David Murphy carry out an assessment so as to assist Dr Faghany to identify weaknesses and effect improvements. He was a co-author of the PAG reports.

120. Specifically in relation to Patient L, Dr Shackell found that there was a perfectly good reason for cutting the channel of which he complained, namely that his bite was such that the bottom front teeth had worn a line in the lower part of the back of the top front teeth. It was justifiable to treat this by filling the worn area, and in order to do this it was justifiable to make a channel for the foundation of the filling. Patient L says this explanation was never offered and Dr Faghany just went ahead and did it without telling him what was required.

121. Dr Kramer agreed with this assessment but also agreed there was a communication issue. He made the same point about the treatment of Patient M.

122. Patient M is the wife of Patient L. We read her statement [C/62] but did not hear from her in evidence. She complains that in about January 2005 she went with her family to see Dr Faghany and after examining her he advised she needed attention to LL6, but in fact drilled LL5. It is said he also failed to do an adequate assessment, failed to explain the treatment he proposed to do, failed to provide her with a treatment plan, and failed to obtain her informed consent to operate on LL5. Her statement also alleges overfilling of LL5 but at a subsequent appointment Dr Faghany ground some of this away. This patient says nothing about his hygiene and infection control.

123. Dr Kramer points out that “based on the records there is no indication there was ever an intention to provide a filling for LL6. Having not seen the radiographs, I cannot comment on whether the correct tooth was filled or not. The allegation is based on what Patient M understood Dr Faghany to say…. It is important for proposed treatment to be explained clearly and precisely in order for proper consent to treatment to be given.”

124. Patient N is the son of L and M. He is now aged 17 and gave evidence in addition to our reading his statement at C/63-64. He told us that when he attended Dr Faghany periodically with the rest of his family (he was aged only 11 he first started seeing him, and 13 when the family stopped attending this Practice) there was a question of referring him to an orthodontist for a brace to be fitted to this teeth.

125. He said he had brought up the point about Dr Faghany wearing the same pair of surgical gloves to examine all the family members. He described sitting (usually) on his sister’s lap on a chair just inside the surgery door waiting his turn. He faced the dental chair, on the other side of which stood Dr Faghany examining his parents or sisters. He agreed that Dr Faghany did turn away from him occasionally and that he (Patient N) was not looking all the time, but was sure he did not change his gloves. He said “it is quite clear if someone turns round and puts new ones on.” He said he thought there was a work top behind where Dr Faghany stood and would turn round to it for a short time. He did not remember him using a sink and did not recall where it was in the room.

126. Dr Kramer says [C/161] that while the risk of cross infection between close family members is limited and probably no greater than members of the same family using the same crockery or cutlery that has not been autoclaved, it would “probably have been better for Dr Faghany to have changed gloves between patients, even…in the same family.”

127. Patient P was the older sister of Patient N. She gave evidence and we also read her statement at C/65-66. Her complaint concerns an extraction of an upper left wisdom tooth in 2004 after she been away for a while at University. She says that during the extraction a root broke off, but Dr Faghany reassured her that the whole tooth had come out, and the noise she had heard was the noise of the tooth escaping the jaw bone. Patient P is concerned she retains the broken root (which by comparison

with the two roots on the extracted tooth would be about ½ inch long) in her jaw.

128. Patient P produced the tooth, which she had retained since it was removed by Dr Faghany. It clearly had had a root broken off at some point, although it was not possible to say when from looking at it. However Patient P told us she heard a loud crack at the time and that is the way the tooth came out. Two of the remaining roots were somewhat curved.

129. Patient P also alleges that when reloading a toothbrush to clean the teeth of each successive member of the family, Dr Faghany would refill it from the same pot of paste, thus transferring fluids that had been on the brush into the pot. She said “it struck me as gross”. It was suggested to her that Dr Faghany changed the polishing heads on his instrument between patients, but she said he was still using the same pot of paste into which he had dipped the previous brush. She was clear in cross examination that Dr Faghany had reassured her that the root had not been left. She said she did get some swelling and pain in the gum and did not know if this was because of the retained root.

130. Dr Kramer’s expert view on this was that breaking the root of a wisdom tooth during extraction was not of itself substandard. However, an assessment should then be made of the fragment and nature of the fracture to decide whether the retained root should be surgically removed or could be safely left in place. He said “if there is a *possibility* [emphasis added] that the fragment has been displaced into the maxillary sinus, a radiograph should be taken, otherwise there is little benefit”. All details should be noted in the records and the patient informed about the incident and what follow up action was indicated.

131. As to the reloading of a polishing brush from the same pot between family members, he said “there can be no doubt that if he did this he failed to observe appropriate cross infection control methods, although the risk of cross infection would have been minimal”.

Patient Q [C/67-68]

132. This male patient’s witness statement was read by agreement. Unlike many of these patients, we also had a fairly complete set of patient records [D21-39] including forms FP17 some charts for basic periodontal examination (although they are uncompleted). Either at the outset of this hearing or during its course, Dr Faghany admitted all the factual allegations and all the consequential allegations at 29 (a) except for exposing his patient to unnecessary risk, and causing him unnecessary pain and suffering.

133. Patient Q went to see Dr Faghany in early February 2008 because he had a painful abscess at the back of his mouth on the right side. He was advised to take antibiotics before any treatment could be carried out. However Dr Faghany could not find a prescription pad, gave him one or two tablets for the time being and told him to return in a couple of days for a prescription. The patient did so, and was still in “extreme pain” but Dr Faghany still did not have an prescription pads, and advised Patient Q to

go and see his GP to get a prescription for antibiotics. He went directly to his GP surgery, where he was given a prescription although the GP was "not happy" about prescribing in these circumstances. Patient Q's statement emphasises that he remained in pain throughout this period of delay.

134. Dr Kramer's opinion [C/162] is that every dental practitioner should have the facility to write a prescription, or to provide appropriate antibiotics. Indeed the General Dental Services Contracts Regulations, 2005, No 14, stipulate that a practitioner must always be able to issue a prescription, and Dr Faghany appears to have been in breach of this.

Patient R [C/70-72]

135. We heard evidence from Patient R as well as reading her witness statement. Her dental records were at D/40-59D. During the hearing Dr Faghany produced a further sheet [inserted at 59E] which was a screen dump printout from his practice computer.

136. Patient R was a lady who served in the Territorial Army. She first attended the Mersea Road Practice in May 2007 but first saw Dr Faghany on 7 April 2008, when he told her that two upper teeth were decayed and needed extraction, as they were too large for filling. Her recollection is that Dr Faghany told her she would need root canal treatment, which she queried as these were (she believed) her wisdom teeth and she had not needed root canal treatment when she had previously had a wisdom tooth removed. Dr Faghany told her these were not her wisdom teeth and indeed she did not have any wisdom teeth. Patient R said she would need to think about it, and questioned why two rotten teeth had not been picked up on the previous check up and why she had not experienced any pain. She says neither question received a satisfactory answer other than that the teeth had decayed and needed removing. Dr Faghany took an x-ray. She commented in evidence that when she was away with the army, army dentists had always said her teeth were good.

137. Patient R decided to consult another dentist who advised her (on 16 April 2008) that she did have three wisdom teeth in place, and that they were simply a little stained. He cleaned them. He advised that none of her teeth required extraction and there were no signs of decay.

138. Patient R then wrote a letter of complaint to the PCT [C73-74] to which she received a reply from Dr Faghany [C75-76] in which he said he was sorry about any misunderstanding and that she certainly did have 3 wisdom teeth, including the top two and one of the bottom ones. He wrote that he had found areas of concern (early carious lesions) on both upper wisdom teeth and discussed various options with the patient. He asserted that his own preference would have been to carry out fillings at an early stage to properly seal the teeth, but he also offered extraction on a prophylaxis basis as these were wisdom teeth and on one side the tooth was unopposed. He regarded that as a proper and professional option. He professed that he did not know how Patient R had thought he was

going to perform root canal treatment, because that is impossible after an extraction.

139. Patient R told us these explanations were quite different from what she was told at her dental check up. She found it “scary” that she could have undergone unnecessary and painful extractions. She had found another NHS dentist.

140. She denied having wrongly understood references to her teeth as “top 8s” as being references to other teeth than her wisdom teeth. She also denied confusing root canal treatment with scale and polish, because she was familiar with scaling and polishing. She said she did not know where Dr Faghany was proposing to do root canal treatment, but assumed it was going to be on the two teeth he intended to extract, as he did not mention problems elsewhere.

141. A striking piece of information given by Patient R in her live evidence was that she does not have any fillings at all, and is in competition with her sisters as to who will have the first filling.

142. We also examined the available patient records. At D/40 Dr Faghany had charted the presence of 3 wisdom teeth in Patient R’s mouth on 7 April 2008, as well as a missing lower wisdom tooth and a partial eruption of the other lower wisdom tooth. His note says “watch” UR8, in view of a suspicion of caries, and some decay at UL8. It also records options of extraction or scale and polish.

143. Dr Faghany did not take any radiographs to confirm his diagnosis, and Dr Kramer’s opinion states he probably should have done.

144. The records of the dentist who subsequently saw Patient R show that she was requesting a second opinion about UR 7 and not either UR8 or UL8. That dentist did not record the findings of his examination. He did take an OPG radiograph, which Dr Kramer describes as being of no diagnostic value in determining the presence of caries in these teeth.

145. Dr Kramer cannot determine or comment on the conflict of recollection between Patient R and Dr Faghany. He does say that root canal treatment is provided for teeth with infected pulp and not subsequent to extraction; hence it would have been incongruous for him to have said anything about root canal treatment. He does comment that there appears to have been a communication breakdown.

Completion of Complaint Returns [allegation 34]

146. Dr Faghany admitted all the factual matters in allegation 34, which deals with his failure to make returns to the PCT each year of the number of complaints he had received: this is a regulatory requirement. He also admitted the consequential allegations except that he denied his acts or omissions were designed to mislead or unsuitable.

147. The admissions include lying to a PCT officer, Mrs Quade, in April 2003, when she chased him to submit the return for 2002/3, by telling her that no complaints had been made about him. She contacted him several times and even offered to go to the surgery to help him understand the procedure. When Mrs Quade later informed him of the names of some

patients whom she knew had complained about him, he responded by saying “If you know the number of complaints why are you asking me?”. Mrs Quade’s witness statement [C/125-134] was agreed and we read it in its entirety. It sets out a catalogue of frustrating dealings with Dr Faghany, over this and other matters including alleged inappropriate charging of patients, and evidences the conversations alleged above.

148. Ms Quade’s impression over a number of conversations with him by telephone and face to face, is that Dr Faghany does have difficulty in understanding what is said to him and would often be hard to understand himself.

149. She says [paragraph 53] that he had little comprehension of the Regulations.

150. Ms Quade also states [paragraph 91] that Dr Faghany was twice untruthful to her. Once in relation to whether he had received any patient complaints, and on another occasion when he provided a different explanation about his absence from the practice to the one he had given to the patient. This, combined with his lack of language skills and high number of complaints caused her serious concerns about Dr Faghany so that she drew them to the attention of the PCT and the Dental Advisor.

Out of hours and emergency treatment [allegations 37 & 37A]

151. These allegations concern Patients S and T. The factual allegations concerning Patient S are admitted. In summary, they give rise to a failure to provide arrangements for the patient to receive care in Dr Faghany’s absence from his practice.

152. Patient S was about to set out for his appointment on 22 March 2004 when he had a telephone call from the receptionist, telling him that Dr Faghany was ill and there was nobody who could see him. She offered him an appointment for the following day. Meanwhile Patient S’s toothache got worse, so he telephoned an emergency number which the receptionist had given him. There was a voicemail message asking him to leave a message and Dr Faghany would call him back. He did so, leaving his contact details, but received no call.

153. The next day Patient S was again contacted by the receptionist who said that Dr Faghany was unavailable because he had been called out on an emergency, and would not be available for the rest of the day. She said there was nobody else who could see Patient S. She would not allow him to make an appointment for the next day but said he should telephone that day. Patient S explained he was in dreadful pain. Again he telephoned Dr Faghany’s emergency number without response.

154. Patient S wrote to Dr Faghany on 4 April 2004, and his written response, dated 9 April 2004, states that he had had to cancel the appointment on 22 March because he was ill, but made no mention of the reason for cancellation on 23 March. Dr Faghany also said the receptionist should have provided a different emergency number, but Patient S points out that the one she supplied is the one pinned on the surgery door.

155. Patient T’s complaint was reflected in a note made by Mrs Quade of a telephone complaint she received on 3 August 2007, and which is at A/80. The patient had been telephoning Dr Faghany’s surgery since the previous evening, and again during the morning of her telephone complaint and each time she got a voicemail giving his opening hours fro a Friday which were 8.30 am to 1 pm. She then went to the practice and found a note on the door saying he was unable to open that day. The voicemail had given an emergency 0845 telephone number but that did not operate until after 5 pm. She had tried other local dentists but they had taken their emergency quota by 10 am. Her toothache was now so bad despite taking co-codamol that she could not put her teeth together.

156. Dr Faghany made no admissions as to this complaint.

Communications with Patients and others

157. Allegation 38 drew on evidence which arose in the many patient complaints and observations of PCT officers who dealt with Dr Faghany.

Inappropriate Behaviour

158. Dr Faghany made no admission as to Allegations 39 and 40, which were, respectively, making baseless allegations of theft of money against a former employee and practice manager, and giving 2 inconsistent explanations to Mrs Quade for his absence from his practice (Patient S).

159. So far as the allegation against the former practice manager was concerned, this was made in a letter to a patient written on 5 March 2003 [A/99], in which he responded to a complaint about a charge for dental work by saying “I’ sorry that this little amount had upset you, but you don’t know all the history”. He then asserted: “my previous practice manager was hiding some money from me..” and “if they [the previous owner and practice manager] did charged some body, they kept some of it for themselves” and “sometimes when they did charge someone they did not report it, so they could just keep the money. And now when the poor patient is coming for exam, we tell them that they have an outstanding”. He claimed that “They have been hiding over £3,000 from me. They have put a virus into my PC system which makes it difficult for me to find out the precise amount.”

160. In the letter the practice manager was named. He sent a copy of that letter to Mrs Quade at the PCT and to the Essex Consumer Services Team. Dr Faghany has not subsequently produced any evidence to substantiate the allegation.

161. The third allegation (numbered 41A) under this heading is Dr Faghany’s failure to inform the PCT of the adverse finding against him by the GDC (see paragraph 15 above). He admits this. He admits all the consequential allegations at 41A (2) except that his conduct was contrary to good dental practice and designed to mislead.

Inappropriate Allegations against the PCT

162. We were referred to various correspondence and evidence of conversations in which Dr Faghany has accused officers of the PCT of discriminating against him or his employees. The allegation was not

admitted at the outset, but we noted that Dr Faghany substantially admitted the factual basis in cross examination, and has offered no evidence to substantiate discrimination other than his own conviction that he had been dealt with consistently unfairly.

Practice Administration

163. Allegations 43 and 44 were admitted in their entirety, with the exception of the consequential allegation that he was unsuitable by virtue of these matters, which arise from the following. When asked at a meeting on 25 September 2005 with Dr Grew and Mr Greenwood of the PAG to produce various policies and procedures, he was unable to produce a practice leaflet, or a complaints policy, or any other written policies. PAG dental assessors visited his practice between March and September 2007 on some 6 occasions and found the following deficiencies:

Only 1 nurse had completed the required course concerning Hepatitis B;
Only 1 member of staff had a cardio-pulmonary resuscitation certificate;
Old records and radiographs were kept in a locked shed in the back garden;
There was no evidence of maintenance of fire extinguishers;
Local rules for radiation protection were not displayed as required
There was no copy notice to the Health and Safety Executive of the presence of radiographic equipment;
There was no evidence of compressor maintenance or an inspection certificate;
There was no written policy document regarding processing and filing, clinical evaluation and quality assurance relating to the radiographs taken;
There were no emergency drugs on the premises;
There was no mercury spillage kit available.

Contract issues

164. There is an admission to Allegation 45 that there is a dispute over the total amount of alleged underperformance of Dr Faghany's contract obligations with the PCT. For the reasons given in our conclusions, we do not consider this complex matter susceptible of adjudication by us and on the material available would not feel able to do so in any event.

165. However we also note that Dr Faghany threatened to take the dispute to the press.

Text Message Incident

166. Mrs Kathy Flegg is a PCT officer who had dealings with Dr Faghany from time to time. Dr Faghany appears to have had a poor relationship with her. He admits that on 1 April 2008 sent a text message to 2 other local dentists that Mrs Flegg had been injured in a car accident and had been taken to hospital. It was untrue. The reaction of one of the recipients was to ring another PCT officer to express his concern and ask after Mrs Flegg [see letter of Mr Danesh at B 273]. That officer was

unaware of the injury. He asked her to pass on his regards. The reaction of another recipient appears at A/267.

167. It is further alleged that Dr Faghany untruthfully denied that he had sent the offending message. He admits doing so, by his letter to the PCT's Deputy Chief Executive, dated 12 May 2008, in which he wrote:

> "*I received that SMS and as my solicitor have advised me not to contact Mrs Kathy Flegg personally, I forward that SMS to some friends and asked to if it was right".*

168. The bulk of that letter from Dr Faghany was raising criticisms of the PCT for failing to answer his letters, and of Mrs Flegg for failing to make a payment to him of £1,750, which he alleged to be due.

169. This forms the substance of Allegation 46, which is admitted by Dr Faghany, save that he does not admit that his letter of 12 May 2008 was dishonest, and does not admit that his conduct was malicious or intended to cause offence or distress to Mrs Flegg. His case is that is was an April Fool's joke.

NHS (General Dental Services) Regulations 2005

170. Several persistent breaches of Regulations are set out and admitted under Allegation 47. It is not necessary to repeat them here. The only one not admitted as that the deposit of £50 which Dr Faghany admits he required numerous NHS patients to pay him was when registering with his practice as an NHS patient. We heard or read evidence from a number of patients that this was the case. By way of example Patient Y told us this in evidence and produced his bank statements to support it, as the payment was made just after he registered and some time before any dental examination was done.

171. Dr Faghany admits that the charging of deposits (whether then or at any other time) was inappropriate and not in accordance with the Regulations, but he denies that he did so for his own personal financial benefit or that his conduct was designed to mislead.

Co-operation with investigations as required by Reg 51, Part 6, Schedule 3 of the GDS Contracts Regulations 2005

172. Dr Faghany denies Allegation 49. Our attention was drawn to the extensive correspondence between Dr Faghany and the PCT or PAG and the meetings they held from 2005 onwards, and we were asked to infer lack of co-operation. The matters included failure to give full answers or disclosure of records, failure to respond in a timely way or at all, failure to implement recommendations in a timely way or at all, and displaying an obstructive attitude. It was pointed out that the patient records available to us were limited because Dr Faghany had provided limited patient records to the PCT. We could in fact see for ourselves that patient records, including those which are made on computer and are ordinarily easily accessible, were very often not complete. It was therefore difficult to see contemporaneous support for Dr Faghany's treatment choices or explanations of his management of patients. However, for reasons which were never made very clear to us, Dr Faghany was able to produce some

supplementary records relating to particular patients whose management was under scrutiny during the course of the hearing. These pages were added to the records bundle as we went along.

173. Dr Faghany admits [Allegation 50] defective technique for preparing crowns, in particular the taking of impressions. He also admits receiving regular complaints about this from patients and lab technicians. Various patients whose evidence is separately summarised suffered this experience. We also refer to the evidence of Mr Milborn and Mr Peckham summarised at paragraphs 110-113 above.

Patient U [C/80-83]

174. Allegation 51 concerns Patient U, a lady who first registered with Dr Faghany in October 2007. Her dental records are at D/60-106. Although initially not admitted, Dr Faghany made admissions during his evidence and these were formalised during final submissions by admissions as to each paragraph of allegation 51, save for 15 and 16, which were not pursued by the PCT.

175. Patient U previously attended Mr Fox, who advised that she needed root canal treatment to UR6. She attended Dr Faghany on 29 May 2008 with pain in UR6. He took a radiograph and advised she return for crown treatment. On 30 June he placed a temporary crown on UR6 and took impressions. She was lead to believe he had performed root canal treatment on it, and had done work on UR 5 as well as UR 6. She was due to go on holiday abroad and rang before departure on 17 July to tell the dentist she was still having pain in the tooth. He left out a prescription for antibiotics for her which she said “did nothing for me”. She remained in so much pain during her holiday that she could not sleep at night. She returned to the surgery on 28 July 2008 and Dr Faghany replaced the temporary crown. She recalls him telling her that the reason why she had pain was that the gluey filling had been stuck to the nerve. placed a crown at UR6, which felt too big and was uncomfortable. She said it slightly overlapped at the sides. Dr Faghany said it would settle. She remained in pain.

176. She was given a new appointment for 4 August 2008, when a permanent gold crown was placed. Dr Faghany’s notes refer to pain at LR 6 and gum infection, as well as a gold inlay fitted at LR6. At the same appointment he gave a further prescription for antibiotics. Dr Kramer suggests that the reference to LR 6 may have been a mistake for UR6, because she does not appear to have had treatment to LR6.

177. When Patient U telephoned to make her next appointment on 23 September 2008 she was told that Dr Faghany had ceased doing NHS work and gone private. In fact the PCT had written to Dr Faghany in August 2008 to inform him that is was considering removal from the List. She was offered another appointment with Dr Zelda Theron, which she insisted should be that day because she was in agony. Dr Theron took a further radiograph. She made observations about the treatment and gave a course of antibiotics before referring Patient U to Dr Ernst Theron who

performed further assessments and carried out remedial treatment to that tooth and two others. After reviewing the radiographs he told Patient U that no root canal treatment had been carried out to the tooth which Dr Faghany had told her he had done root canal treatment on, and the crown had been placed over untreated decay. However a small piece of instrument had been left in the root canal of another tooth (by, it should be made clear immediately, a previous dentist).

178. Ms U rejected the suggestion in cross examination that she had misunderstood what Dr Faghany said to her, and insisted that being told that the glue was stuck to the nerve was not something you would misunderstand or forget. She agreed that she expected that she would need root canal treatment because of the previous advice she had received from Mr Fox. She told Mr Partridge that she felt mislead, and had been in pain for months and was fed up with no relief despite many visits.

179. We were shown a number of radiographs and colour photographs relating to this witness.

180. Dr Kramer's witness statement set out criticisms of the radiograph and lack of a note that it had been taken (in breach of regulations) [paragraph 51], prescribing antibiotics for the patient without seeing her, or diagnosing the cause of her pain, a failure to provide first stage root canal treatment rather that prescribing antibiotics, and an apparently poor fit achieved for the gold inlay. He said that Dr Faghany should have been aware of the piece of retained instrument but there was no duty to inform the patient that it was there.

181. In evidence Dr Kramer said he regarded this as a disturbing case, involving a patient having been in pain, unrelieved my management, from 19 May, when she attended Dr Faghany for examination, to October 2008, when she was treated by Dr Ernst Theron. It was put to him in cross examination that Dr Faghany took on board the criticism he had made and now agreed he had done the wrong treatment and should have tried to save the nerve. Dr Kramer looked at the radiographs. He said all the Fuji materials are radio-opaque and would show white. He pointed out black areas which infer spaces. Even if such a gap was Glass Einemer filling it would be inappropriate because all standard teaching is that preparation should be to a sound tooth.

182. At the end of Dr Faghany's management the patient had a tooth which was decayed, a badly fitting crown, and ongoing pain. In Dr Kramer's view, this represented a high level of incompetence.

<u>Patient V</u>

183. We did not have a witness statement from Patient V in the evidence bundle, but our attention was drawn to a note taken by Mrs Quade of a telephone complaint on 23 June 2008. This gives rise to Allegation 52, some of which was admitted by Dr Faghany at the outset. Copies of her dental records were produced during the hearing and added to the records bundle at D/154-159.

<u>Patient W [C/84-87]</u>

184. Patient W gave evidence, in addition to our reading her witness statement. We were also referred to dental records at D 106A – 133. She was an NHS patient, and had never previously had private treatment.

185. On her account Dr Faghany failed to obtain her informed consent to the provision of a white filling. White fillings are not provided on the NHS and so she was charged for dental work which (on her account) she expected to be provided on the NHS. When she queried the charges she was being asked to pay, Dr Faghany told her (through his receptionist) to find another dentist, and "banned her" from the surgery. Mrs W is a restrained mature lady and was completely stunned by this.

186. In February 2008 she had pain on the lower right side of her mouth, and saw Dr Faghany. He told her she had an infection and prescribed antibiotics, which abolished the pain for a while but it returned. She saw Dr Faghany again on 9 April 2008, and a further course of antibiotics was prescribed. On 15 May she returned and Dr Faghany provided a dental care plan for root canal treatment D/128/R. She said she had never had root canal treatment before but thought it involved removal of the nerve. On the care plan (a clearer original was seen by us) is written "RCT + comp" beside an arrow from LR7 tooth. The plan also sets out two different sums of money. At the foot of the page is the figure of £44.60. In a box on the right hand side is the figure £145. Patient W queried the amounts with the receptionist and was led to believe that the £145 would be the figure if additional private treatment or a crown were needed. In evidence she was not sure if the conversation was with the receptionist or Dr Faghany. In the end she was reassured that no crown was going to be needed, and therefore assumed that charge would not apply. The £44.60 is in fact a charge for NHS treatment, while the £145 is a charge for proposed private treatment, namely "permanent fillings and sealant restorations".

187. Some restorative work is necessary following root canal treatment, to fill and seal the canal (as Dr Kramer explained). Patient W is clear that she was not given any choice about what kind of filling she should have in order to achieve this. There was never, she asserts, any discussion of what colour or type the filling should be.

188. On 11 June 2008 Patient W had the root canal treatment and paid the balance of the £44.60 which was left after taking account of NHS examination charges she had already paid for the course of treatment. She was then asked for a further payment of £50 "as a deposit". She queried this with the receptionist who asked Dr Faghany to come and explain. He said this was for the permanent filling which had still to be carried out, as Patient W had only a temporary filling in place. She queried why this was, on the basis that she expected a root canal treatment to include a permanent filling without which it is incomplete. Dr Faghany said abruptly, "well don't pay it but find yourself another dentist". She said she did not want to argue and paid the extra £50.

189. Patient W returned for the final time on 15 June 2008, when she had a permanent (white) filling in LR. She told us that Dr Faghany was very rough, and her statement suggests he damaged the adjacent tooth. When she went to the reception area she was asked to pay a balance of £127.40. She asked for an explanation of how this arose, and on being told that it was for private treatment, asked what private treatment she had received, as she thought she had been getting it on the NHS. The receptionist went to speak to Dr Faghany but Patient W says he refused to come to speak to her, and put his message on the receptionist's computer screen. He wrote that the private treatment was the white filling. Patient W says this is the first time it had been mentioned. She told us that since the tooth was at the back of her mouth she would have been happy with a normal silver filling as she had previously had.

190. Via the computer screen Dr Faghany told her she was not to come back and was banned from the practice. She became upset and found the episode very embarrassing: the comings and goings and conversations were happening in a public area, and she told us that other patients were aware she was being banned. As Dr Faghany was offering to waive the balance as quid pro quo for her leaving, she left without paying the £127.40

191. She was too scared to go to another dentist for a while, but found another one, with whom she was happy, a few weeks before this hearing. She received two further letters from Dr Faghany's practice in August 2008. These were produced during the hearing and appear at D/132K and 132K. The first was demanding payment of the outstanding £127.40. We were told it was a "computer generated" letter. The second (following a reply from Patient W) apologised for doing so and confirmed the balance had been cancelled.

192. Patient W's attention was drawn to the fact that the Treatment Plan identifies the two separate sums as for private and NHS work respectively. She did not recall whether they were filled in at the time she was asked to sign the form and in any event had simply signed where asked to do so. She denied being confused. She had looked at the chart of costs displayed on the dentist's wall when raising her query. She agreed that when she first asked for an explanation Dr Faghany had suggested she might find another dentist, but she did not want to do so, nor did she want to leave with the treatment half finished. Patient W told us nobody had ever explained to her the difference between white and silver fillings, nor that the former would have to be private. She denied that Dr Faghany had said to her that an ordinary silver filling would not be appropriate after root canal treatment.

193. Dr Kramer confirmed that Patient W should have been given an option about having a white filling, including a sufficient explanation of what each type of filling involved. The tooth needed restoration after root canal treatment. Options included a metal filling or possibly a composite filling, or best of all, a core filling followed by a crown to hold it all together.

It could have been done on the NHS or not, but if private treatment was proposed, the benefits should be explained clear. None of this appeared to have happened on Patient W's account, and if so, she had not given properly informed consent to the treatment.

194. Dr Kramer also gave his opinion that he had heard nothing to justify barring Patient W from the practice. Somebody should have tried to clarify the misunderstanding which appeared to have arisen, and not simply said that you can't come back.

Patient X

195. Dr Faghany's treatment of Patient X gives rise to Allegation 54. He did not provide a witness statement but a full and apparently careful file note was made by Mrs Quade when he telephoned the PCT to complain on 26 June 2008, and this appears at A/73. He was unhappy that he was asked to pay a deposit of £50 when he registered as a patient with Dr Faghany's practice. He then attended twice for appointments but could not be seen because his information on the practice computer had been lost. On the third occasion he telephoned in advance to check that his appointment the following day would go ahead and was reassured it would. When he turned up, Dr Faghany was not there and he was told there had been a "family emergency".

196. On 25 June 2008 Patient X finally had his treatment and was asked to pay £44.60. He pointed out that he had already paid a deposit of £50 but Dr Faghany said this was not showing up on the computer as his previous details had been lost. Patient X complained about this and Dr Faghany told him to find another dentist and contact the PCT.

Patient Y [C/88-89]

197. Patient Y is another patient who was asked to pay a deposit on registering on 23 July 2007. Dr did not admit this allegation (55). Patient Y was a pleasant, straightforward witness who was a milkman by occupation. He produced his bank statement which was inserted at C/89A-B. It evidences a payment of £50 to Dr Faghany personally on 23 July 2007. He queried the amount, and was told that was "what we do". Although Patient Y initially seems to have thought that he only made one visit to the surgery, examination of his bank statement and some limited documentation produced by Dr Faghany made him realise that he had registered in July and then attended for treatment for toothache in September 2007. He describes a consultation (probably with a dentist who was not Dr Faghany) at which he was initially advised he need root canal treatment to two teeth, then when he declined it for the tooth which was giving him no trouble, the dentist said to his nurse "scrub that" and advised that if he needed root canal treatment he would have to go elsewhere (which the patient found strange). A temporary filling was placed in the troublesome tooth, which fell out the next day.

198. Patient Y was shown documents produced by Dr Faghany: a Practice Record Form Patient Declaration [D/134B] and a Dental Treatment Plan [D/134C]. Both are dated 11 September 2007, and refer to

an examination on that date. Patient Y had signed the former but not the latter. He said he had never seen the Dental Treatment Plan before. It lists proposed NHS treatment giving rise to a charge of £194.

199. Patient Y went elsewhere for his root canal treatment, for which he was charged the NHS fee of £43.60. He telephoned the PCT to complain about the £50 deposit retained by Dr Faghany, and therefore lost to him. When the complaint was passed on, a receptionist from Mersea Road Practice telephoned him to say that the practice would refund the balance of the £50 after deducting the fee for an examination, if he wrote to request it. He told us: "*I did not write to claim back the deposit because I am not good at writing letters*". He has never received a repayment.

200. No other dental records were produced for this patient.

201. Dr Kramer advised that in each such case, charging a deposit before any examination or treatment was contrary to the permitted charging regime under the NHS and improper for a dentist to do.

Patient Z [C/90-91]

202. The witness statement of Patient Z was agreed to be read, subject to comment and weight, as she was unavailable because she was seriously ill. Limited admissions were made at the outset [see Schedule of Allegations]. Some dental records from Dr Faghany were produced and appear at D/135-150A, and additional records from Dr Nazki at D/151-153.

203. Patient Z attended the Mersea Road Practice as an NHS patient from 2003 and was originally seen by a lady dentist but from March 2007 saw Dr Faghany. Over two attendances in March 2007 he started treatment for a broken crown at UR5 (and, the records state, also did root canal treatment – see D/139). She also complained of toothache in the lower left rear teeth on the left: her statement calls this LL8 but Dr Faghany's records refer only to easing LL6 and 7 which were "too high". Dr Faghany said there was nothing wrong with the teeth where she complained of pain and that she should rub toothpaste on the gums last thing at night. She returned in April to have a porcelain bonded crown fitted at UR5, and was charged £100 for this private work, according to Dr Faghany's records.

204. The patient then attended another dentist, Dr Nazki, who expressed concern to her about the amount of necessary dental work which Dr Faghany had not identified, and which was causing her pain. He set out his findings in a letter to the patient dated 4 May 2007 and which is at D/251-2. He found decay at LL7 under the crown, affecting the nerve. Another crowned tooth at UR4 had the same problem. UR5, which Dr Faghany had recently crowned, had (in Dr Nazki's view) an inadequate root filling but there were no radiographic signs of infection. Extensive treatment options were canvassed in the letter, to which he attached an estimate of the cost (£1765).

205. Patient Z complained to the PCT and that was forwarded to Dr Faghany, who replied by letter dated 13 August 2007 [D/148] saying he understood she had asked for copies of her records but that he had sent

her radiographs to his dental protection company and would pass them on as soon as he received them back.

206. No radiographs are in fact available and Dr Kramer has not been able to comment on what they show. But he says there was no proper record of Dr Faghany's examination findings, and no record of the three radiographs. He feels unable to comment on Dr Nazki's findings but if these dental pathologies were present and Dr Faghany failed to diagnose then or offer treatment to the patient, he was in breach of his duty of care to her.

Mary Tompkins

207. We read the witness statement of Ms Tompkins [C/107-111] which was agreed. She is a pharmacist and the PCT's Assistant Director (Medicines Management). Among other things she says the maximum dose of Diazepam recommended by the British National Formulary is 30 mg and a dose of 50 mg is completely outside her experience. She was asked to address Dr Faghany's explanation that he had intended to write "5.0" but omitted the decimal point. She says that would not be normal, and a whole number should be written.

208. She expressed her dismay at the explanation apparently offered by Dr Faghany in writing to his patient on 15 May 2005, that he was in the habit of prescribing doses of between 2 and 50 mg of Diazepam in the following way: "I would not expect someone who believes the dose of 50 mg diazepam to be appropriate… to be allowed to practice under the NHS".

209. She also deals with prescription forms and says she wrote to him in February 2008 seeking an explanation for his running out and why he did not fulfil his prescribing responsibilities or contact the PCT or the patient's GP to seek help. His reply (13 February 2008) is at A/276. He apologised for running out and said that between the computer crashing and new staff "we had our hands full" and somehow his staff forgot to order more prescriptions. He then asked why the GP could not give the patient a free prescription, and he could contact Dr Faghany if he wanted. He also asked why the PCT did not keep some prescription pads at their place: "you have a pretty big place there now". Ms Tompkins noted that he blamed his staff for failing to reorder the pads, and appeared to take no responsibility himself.

Dr Karamjit Singh's dental assessment [C/112-124]

210. We also heard from Dr Karamjit Singh who describes himself in his statement as a general dental practitioner since 1982 and has a practice within the Mid Essex PCT with two part time associates, two part time orthodontist associates and one part time associate oral surgeon. He is a dental assessor for the Essex PAG, who was asked to carry out a forma assessment of his practice in September 2008 and annexed his assessment report dated 7 November 2008. He concluded that there were "such serious shortfalls in Dr Faghany's practice that his continued

availability to NHS patients must be serious questioned, based on the evidence I have seen."

211. Dr Singh gave evidence to us. He said he had commented in his report that he should look at other documents. He told Mr Partridge that he had looked at complaints for 2007 and 2008, and based his conclusions on them. He agreed that the term "gross negligence" used by him at paragraph 12 of his report was strong language but was the truth. He did not have Dr Faghany's records or in many cases formal statements from the complainants. He did have the letters of complaint. A dentist from another practice had forwarded the radiographs for Patient U.

Supplementary points from the evidence of Dr Kramer

212. Dr Kramer gave extensive evidence, and was asked about some general matters which did not solely apply to individual patient treatments. In respect of the findings of lack of equipment and training on the visit by the assessors Mr Davey and Mr Entwhistle on 20 April 2007, he said he found the absence of emergency drugs on the premises as "scary" (A/210). The incidence of medical emergency is relatively small but if and when it happens it is essential to have these life-saving measures available. Among other things you would need an epipen to react to anaphylaxis, and oxygen for a cardiac emergency. If someone were to expire in their absence it would be "almost criminal".

213. These requirements and guidance had been in place for many years, but what concerned him was the apparently slow response of Dr Faghany to remedying the situation even when it was pointed out. The report of the assessors in October 2007 was about 2 ½ years after the incident with the Diazepam and there were still no protocols in place and although Dr Faghany's attention must have been drawn by that incident to the possibility of an emergency occurring, there was nothing done to put the equipment in place.

214. Dr Kramer was also concerned about the continuing incidence of complaints of a similar character right up to 2008. He said no practitioner escapes complaints altogether but each has a duty to make an effort to keep up standards and remedy deficiencies which have been repeatedly exposed. There seemed to be some failing in that regard with Dr Faghany.

215. In answer to further questions from the Panel Dr Kramer was critical of the patient records produced by Dr Faghany. He should make a note of any examination and record findings, including an examination of the hard and soft tissues, and periodontum. He should record the radiographs taken and the justification for doing so, and report the radiographic findings and the radiographs themselves should be kept with the record. The note need only be a one liner. It was very difficult to read Dr Faghany's computer records and they were often incomplete. It is very easy to create a proforma to provide some order to the note taking. Dr Kramer had not seen proper hard tissue charting, although there was reference to some findings in the notes. He had seen only one reference to a basic periodontal examination (BPE). One reference to soft tissue

was checked but there was no note of the findings. He said a BPE examination may be on another proforma page, but all the records were meant to have been supplied. Dr Kramer said he had not seen any other documents including Dental Practice Board or BSA claims for payment.

216. Records should be kept indefinitely if possible. We were dealing with a long period and there had been a learning curve with computers but software had become user friendly.

217. Mrs Marilyn Quade. [C/125-150]

We read this agreed witness statement. Parts of it which are relevant to particular patient complaints have been referred to above, and the matters referred to at paragraphs 147-150 above are general matters.

Dr Faghany's Case and evidence

218. Dr Faghany gave lengthy evidence and the Panel adjourned from time to time during the day and rose early on occasion to spare him stress.

219. It is necessary to say a word about how he spoke. A recurring theme of the criticisms of Dr Faghany was poor communication skills. His first language is Farsi, his second is Danish, and English is his third. He produced two language assessments documents at D/1/4. The first was a Test Report Form from the International English Language Testing System, dated 28 February 2002, which set out the following results:

a. Listening Band 5.5 where Band 5 =Modest user, partial command of language, coping with overall meaning in most situations, though is likely to make many mistakes. Should be able to handle basic communications in his own field.
b. Reading Band 6 where Band 6 = Has general effective command of the language despite some inaccuracies, inappropriacies [sic] and misunderstandings in some situations. Can use and understand fairly complex language, particularly in familiar situations.
c. Writing Band 8 where Band 8 = Very good user. Has fully operational command of the language with only occasional unsystematic inaccuracies and inappropriacies. Misunderstandings may occur in unfamiliar situations. Handles detailed argumentation well.
d. Speaking Band 7 where Band 7 = Good user. Has operational command of the language, though with occasional inaccuracies, inappropriacies and misunderstandings in some situations. Generally handles complex language well and understands detailed reasoning.

220. A more recent certificate from the University of Bath (9 May 2009) gave an overall score of 3.0(out of a maximum of 5) for the Dental Profession English Language Test , where 3 is defined as Advanced Independent User:

e. Can understand the main ideas and details in both concrete and abstract topics, including technical discussion in his/her field;
f. Can communicate with a good degree of fluency, flexibility and accuracy on a wide range of topics, including professional ones;
g. Less usual or unpredictable situations may slow down communication, but not impede it.

221. In our experience over several days, it is the application of the language skills evaluated above which leave something to be desired. Dr Faghany does not always listen or fully understand questions. He is inclined, when puzzled or stressed, to gabble, and/or drop his voice. When he makes the effort, he is clear and comprehensible. The problem is in our judgement as much to do with his personality, which is disinclined to give the time and attention to enquiries which he should, or when he may feel his own standing us under pressure, or his judgement questioned. He often gives the impression that he does not see the need to account for his actions or professional decisions. Many examples of this "attitude" component to his communications arose in the hearing and were also reflected in his treatment of Patient W, or responding to questions with "I have already told you", or in his letter to Ms Marilyn Quade.

222. Dr Faghany's witness statement [C/170-189] was adopted by him and read by us.

Patient A

223. Dr F made admissions concerning his management of this patient, His witness statement [C171] says he advised Patient A that she could be referred to have her tooth removed under sedation elsewhere (by referral) or to have it removed by him, and that advice is documented by his clinical record [A/307]. He says he "would have" advised her not to drive that day and to arrange for someone to bring her to and collect her from the practice.

224. The nub of his case is that he intended to prescribe 5 mg of Diazepam but wrote 50 mg in error, failing to add a decimal point between the numerals 5 and 0. He states that he recognises that 50 mg would not be an appropriate dose. He acknowledged that he repeated the error when writing in response to the patient's complaint. He says his prescribing practice was from 2 mg to 5 mg which he sometimes writes 2.0 or 5.0 mg. He denied lying to the patient in this letter and said he was very stressed and upset at the time that she had suffered a reaction, and this led him to make the further error in the letter.

225. He states that the improvement he introduced after the error came to light was for all such prescriptions written by him to be checked by his dental nurse against a protocol, "which sets out the usual prescribing limits for each drug".

226. In fact the only two protocols produced to us concerning drug dosage [B 196 & 197] were addressed to the patient. One concerned Diazepam. It read:

"Please read the following information regarding your prescription of Diazepam
Make sure the dose on your prescription is no more than 5 mg;
Take the medication 1 hour before you are due to have your treatment;
Do not drive on the day you take the medication; make arrangements for someone to transport you to and from the surgery that day.
Do not have any alcohol whilst taking this medication"

227. These protocols are not dated. Dr Faghany's evidence was that he introduced it shortly after the accident. He also told us that he had only used Diazepam about once since the incident with Patient A and not at all in the last 3 years.

228. In cross-examination Dr F insisted that "*the first time I saw that it was 50 was when I saw the copy of the pharmacist record"* and that he had not seen that record at the time he responded to Patient A's complaint. He was taken to the patient's letter of complaint [A315] dated 10 May 2005, in which she refers to overdosing on 5 x 10 mg Diazepam tablets and states "the doctor at the hospital had told my husband I should have taken 10 mg maximum, not 50 mg…" Dr F responded "*upon receiving that letter I did not know she was taking 50 mg – on the death of my children – I was maybe not reading it."* Later he said that he did not pay attention to what the patient was saying, he thought it was just one tablet she was taking, and his prescription was for one tablet, but he agreed that he should have read the letter carefully before replying to it.

229. He was asked about the content of his letter of response. He agreed he had written that he had used this treatment dose for 10 years. Although he had only qualified in 1998 he had used it as a student before that. The range used then was 2 – 5 mg but he personally had never used 2 mg. it was put to him that his reference to the lower dose in his letter was wholly irrelevant to the complaint, and he agreed, as he did with the suggestion that he wrote this range to try and get himself out of a tight spot. He was asked why, if he thought the complaint related to one 10 mg tablet only, he did not say so, and he said he did not pay attention.

230. Dr F's response to Patient A's complaint and his current explanations were one of three separate examples relied upon by the PCT in cross examination as examples of occasions when he had not been honest or trustworthy.

<u>Patient B</u>

231. Dr F said he did not have the patient records when he made his statement. The only thing he could now remember was being telephoned by Patient B's dentist friend Barbara, having seen the reference to it in the records. In 2000-2001 he used antibiotics when there was an abscess or gingivitis or periodontal disease.

232. Dr F was asked about another criticism, namely the lack of a treatment plan. He said:

"*My practice at the time was we never gave a treatment plan. I did not know such a thing existed to be honest. The only thing she could have was a printout from the computer.*"

Patient D

233. Dr F described his practice when someone like Patient D presented in an emergency. He would tell the patient that he would take the nerve out and rinse the canal and put a root filling in then cover it with a filling or crown. He said he remembered going to the surgery that Sunday and tried to help the patient by starting root canal treatment. He was not sure if he told him he was going to take the nerve out. He was on his own. At the end of the treatment he would probably have said the patient should call back on the following day (when the administrative staff would be present) or we would call them to make another appointment. The root canal treatment was not finished. He was just trying to "release the pain". Dr F's understanding was that he would come back to complete the treatment.

234. As for the next appointment when the two teeth were extracted, Dr F remembered only that he had taken out LR6 and had tried to numb the area around the other one several times, but it was still giving pain. He did not remember the patient asking him to extract the tooth even though it was still giving pain, but he did ask for it to be taken out.

Patient E

235. Dr Faghany could not remember the first consultation with this patient (replacement of the two front crowns) but looked at his notes and said he would not replace an undamaged crown because of any risk of damage when removing the neighbouring crown. He therefore rejected Patient E's account of the reason he gave for doing so. In his practice the justification was that if one was broken it was a good idea to change both at the same time to achieve a match. He said he could not remember how they looked or how old they were.

236. He remembered the patient being unhappy with the temporary crowns and agreeing to replace them after lunch. He thought he had replaced the permanent crowns twice but she says three times. He agreed he had taken a video of her mouth when she was complaining of the colour match and that the crowns were "not nice". He said he told her he was going to take some pictures because they looked fine to him. He took 2 or 3 still photos on a memory card. He did not recall the permanent crowns being a poor fit, just changing them because she was not happy.

237. In cross examination he was taken through his notes about this patient. He denied the reason remembered by Ms E for replacing both crowns, and agreed that would have been unacceptable. But he pointed to the entry for the examination on 15 July 2004 which is:

"Notes: exam u 1#s # crown, pat req treatment"

and suggested that there was a plural reference to cracked or broken upper front incisors, although he agreed that the word "crown" appears in the singular. It was put to him that he had not made any suggestion in his evidence in chief that both front crowns were cracked. In relation to the

reason he was giving for replacing both crowns, it was put to him and he agreed that there is no reference in his notes to matching the shade of the new crowns. He agreed that there would be financial benefit to him in replacing both.

238. Dr Faghany had difficulty in interpreting the notes for subsequent visits. He was asked about 12 August 2004 and said:

> "*I cannot see what I did on that date and my records for that date and 16 August and 19 October and 1 November do not say what happened on those appointments. My notes are very poor. I agree nobody could see what I had done from the records."*

239. He further told us in cross examination that Patient E would not accept the permanent crowns but he did not remember what they looked like or whether they were a poor fit. He said "*she was a pushy person that maybe forced me to make a new one*". He thought he had shown her a colour chart not only for this replacement set but for the original set too. He thought he had taken new impressions "*because we don't keep the old impressions and the lab needs impressions*". Looking at the record at D/2K he said that on 9 November 2004 he made a retrospective note [a lengthy one including that the patient was "pleased" with the outcome but it was difficult to satisfy her, and there was nothing wrong with the previous crowns] about a previous appointment on 12 August. He had done this a few times. His reason for doing it here was probably that on the first occasion he had been running late and didn't have time to put it on the computer. It was put to him that the note "patient pleased" could not fairly describe Patient E's response to the overall outcome and he said that he agreed she was not pleased and that the note might refer to the shade being satisfactory.

240. His attention was drawn to paragraph 37 of his statement in which he says that he would have taken the [video] pictures "to show the before and after treatment and to show the crowns in place". He agreed he had not taken any "before" pictures at all.

<u>Patient F and deposit taking</u>

241. Dr Faghany did not recall this patient but confirmed that his practice had been to require new patients to pay a £50 deposit, telling them that if the treatment was not as costly as that, they would be refunded, or usually they said leave it on the computer against the next treatment. He started doing this because "we lost about £7,000 from patients who had treatment done and never paid us". He had persisted with this practice until he had learned it was incorrect at a meeting at the surgery with the PCT, when the lady had told him he should not do it. He then instructed the practice manager not to ask for deposits any more. We do not know exactly when this meeting occurred: his statement does not mention this discussion as the means by which he discovered he had been wrongly charging deposits. Meetings with Ms Flegg from the PCT appear to have occurred in May and again in September 2007.

242. In relation to this patient complaint Dr Faghany said he always wore a mask and gloves and sometimes changed gloves during treatment of the same patient.

243. Dr Faghany agreed that he did not give this patient a treatment plan and that standards of hygiene were not as good in 2004, because of the absence of uniforms, and sometimes training nurses were not as experienced. It was put to him that root canal treatment was not necessary for this patient and he said he could see from his notes a broken tooth but was not sure how deep it was.

Patient G

244. These allegations concerned a patient who turned up for an appointment to find the surgery closed. Dr Faghany expressed his regret about the incident in his statement. He told us that the arrangements which were supposed to operate in 2004 were that his staff called each patient and rebooked the appointment. He said he had experienced some problems with his heart in the afternoon and rushed to hospital. He asked his practice manager to cancel his patients. She was supposed to stay until 5.30 but obviously had not done so. There was an emergency number on the sign outside the surgery, which he thought was his number.

245. In cross examination he accepted that the responsibility for have effective measures in place was his.

Patient I

246. This patient case concerned a patient who was examined by a Dental Reference Officer, giving rise to criticism that he failed to diagnose and treat gum disease before supplying a denture which did not in fact fit properly. Dr Faghany did not recall anything about the denture fitting or the problems raised, but did recall the young lady. He was taken through the records, and said: "*I was aware of her gum disease that is why I did not recommend a bridge on 20 September 2003*". He had made no note of assessing her gum disease on 8 July 2004. He asserted she had been told twice about her gum disease but may not have paid attention. He said every time he did bleaching he also did a scale and polish. He commented that the patient had not visited his surgery for about 9 months when she was examined by the DRO so her gum disease could have emerged again.

247. In cross examination Dr Faghany could not account for the absence of records from 2000 to 2003 for this patient, which would have been made by her former dentist Mr Green. He denied telling the patient he would provide a bridge. He said he had told her she had gingivitis when justifying a charge made to her. He agreed that no BPE had been done. He admitted she was not happy with her denture when it was provided. He also agreed that he could have done better in the replies he sent to her letter of complaint.

248. Dr Faghany was taken to his notes of the 10 July 2004 and he admitted he had done a study cast on that date despite her poor periodontal condition. He accepted she had gum disease then.

Dr Faghany's evidence about computerised record keeping generally

249. He said he could not remember which system for charting gum disease he was using at the time he was treating Patient I, and gave some general evidence about his record keeping. When he bought the surgery he inherited a computer system called F3 which was old. It crashed at Christmas 2002, and he had to change the system. Then he had a virus. They tried to repair it in February and March 2003, then changed to the Arthur system, which was produced by the same company. It had cost £16,000. It was OK for a couple of years, then there was another crash in 2006. It was the same company but is now owned by Kodak. A third crash occurred at the end of 2007. He said he now used a system called Kodak R4.

250. Dr Faghany said he did back up information, or had asked his practice manager to do so, but she said it took ages because they had to change the disk, and someone had to be at reception, so they only did it about twice in 8-9 months. The Arthur system could not take enough information on CD so they changed to DVDs. The in 2006 when it crashed the engineer changed the backup system to tape. He told Mr Booth that he still had the CDs and DVDs, and had gone back to them in order to try and retrieve records, but "they are coded so I cannot retrieve the information". He said he had loaded the DVDs onto his laptop computer but "some numbers came up which made no sense". However this was not surprising since he said he did not have any of the Kodak software on his laptop with which to open them. His attention was drawn to a number of written requests from the PCT to supply patient records [at B/124, 128 and 129], between February and April 2009. He admitted that he had not asked the Kodak software people to help him retrieve records in that period, but had asked then if they could get information "from my old hard drive" before that, and they could not.

251. He agreed that at B/134 his solicitors had written to the PCT's solicitors saying they would provide documentary evidence of the failure of his hard disk, but his documents did not include such evidence. The documents he had produced were limited to those at E/5/12 (described as "correspondence relating to computer software recovery"). These were:

- an invoice dated 23 January 2007 from Kodak for attending to the server with virus issues,
- an invoice from "The Computer Store", Colchester dated 11 December 2007 for a "diagnostic appraisal" for the failure of the system to boot due to failed hard drive and the supply of a replacement hard drive 80 gig and ROM drive (total price £207.18 incl VAT);
- an email from a Manager at Seagate Services, dated 7 February [2008], informing him that it was not possible to recover anything from his drive and stating: "*Drive was opened before. 2 big rings on top*

surface. One of them is right on the SA. Made picture and copied it to the network. It is a write off."

- a quotation from Kodak for supplying a Kodak digital radiography system and associated training for the sum of £9,691 dated 18 February 2008.

252. The second of these documents did not identify the computer involved. Dr Faghany was asked why, if this related to the practice computer, he had taken it in to a local shop for attention if it was supplied and maintained by Kodak. He said it was because there was a long waiting list for the Kodak engineer so he took it for more urgent attention to a local shop. Then he had found details of the manufacturer (Seagate) on the internet and sent it to them [see third document at preceding paragraph]. We asked Dr Faghany if he knew how it had come about that the hard disk inspected by Seagate had apparently suffered the physical damage of two rings in the surface. He said he did not know how it was damaged. The engineer from Kodak (Jack) had also told him the hard drive had 2 rings on it. This was a visit after Dr Faghany had bought the new hard drive, in order to try and retrieve the data.

253. He told us that for a period in late 2006 and early 2007 they had made notes on paper and also managed to run the old system for a while to rebook appointments and put on clinical notes. When the engineer came they could make it work for a while, before it failed again. However, despite that they had not made backups at that time onto disks or tapes, but only onto the computer itself.

254. Dr Faghany confirmed, when we asked him, that he had a maintenance contract with Kodak which (then) cost £1200 a year. He did not offer any explanation as to why it was not possible to retrieve information from the backup CDs or DVDs with the help of Kodak or other engineers.

255. Dr Faghany said his nurses were the ones who had been responsible for finding records of patients. He said "we" had looked on the tapes for backed up documents. Nobody could read the information so they called in the engineer from Kodak who said there had been a problem with the recording. On the back of the tape cassette there is a lock [presumably a "write protect" tab] and although the tape was inserted and made noises, it was not recording back-up. That meant that the practice had lost notes from the end of 2006 to the end of 2007. The new system had been in place since 2008.

<u>Patient J and difficulties with impressions</u>

256. Dr Faghany had no recollection of this patient. He said he may have painted over the margins but had no independent recollection. He was not sure why he would have charged her, and his notes did not help him much to work out why, but it might have been because of applying a tooth bond. She should not have been charged for easing LR6. In cross examination he abandoned the speculative justification for charging and admitted that it was inappropriate to charge the patient for the treatment

he provided. He accepted that a crown should fit flush without a margin, and also that he did not give the patient a treatment plan.

257. Dr Faghany was asked about taking impressions for crowns. He said he had had a lot of difficulty with these over the years. He had not had much experience in Denmark, where he did a maximum of two, before going into practice here, and it had been a continuing problem, He was invited to agree therefore that when patients complained about poor fit, in the absence of information in his notes it should be assumed they had a good reason. He replied that many fitted well. This did not quite answer the question.

Patient K

258. He said he could recall Patient K. Her gums bled so he could not take a good impression. He could not recall whether he thought his first impressions were inadequate when he had to replace them. He did remember doing “4 or 5 impressions”.

259. He agreed in cross examination that these were impressions he had sent to Mr Milborn who was not impressed by them. He admitted that the pictures did not show a satisfactory temporary bridge, and also that he never gave the patient a treatment plan. He did not remember the lab technician saying he would come and help him how to take impressions. Despite all this he had claimed that his failure rate was no more than 5%.

Family of patients L - P

260. Dr Faghany appreciated that Patient L was the father of the family who complained that he thought he was cleaning his teeth when in fact he was drilling a channel, and asked him why he had at first said they were discoloured and then that they were decayed. He had no independent recollection of the consultation or the explanations he would have given to the patient. In relation to the drilling of the channel, he would not have said it was because the patient’s teeth were discoloured. He would have told him it was for decay.

261. Dr Faghany did not know why some members of this family had misunderstood him for example by misunderstanding which tooth he was treating.

262. As to the evidence of the son, Patient N, about hygiene during polishing and cleaning, Dr Faghany said he never “double dipped” the brush on the cleaning head into the pot of paste. He said they were disposable brushes, but the pot of paste would last all day or most of it. His practice was now different, and he had one pot for each patient. He thought his practice had changed some time after 2005.

263. As to Patient P’s complaints about breaking a root of a wisdom tooth he extracted and leaving it in place without informing her or taking x-rays to establish its position, he said he had no recollection of doing the extraction. He looked at his notes at D/20BV and agreed there was no reference to an extraction. He speculated that a 20 minute appointment on 26 July 2004 might have been the occasion when he did it. He thought he might not have recorded it because he was running late and then forgot it.

He accepted in cross-examination that the extraction of a wisdom tooth can be significant, depending on its position, and said he usually referred them to hospital. He also accepted that it was astonishing there was no record of this procedure.

264. There was no record of any x-ray being taken and the need for x-rays after breaking a root during extraction varied. He did not do it all the time. If he could see all the retained root he would try to remove it separately. If it looked deep he did not touch it and informed the patient, telling them not to brush that area but use a mouthwash, and that it might later be necessary to remove it surgically in hospital.

265. It was difficult to understand which circumstances Dr Faghany said would prompt him to take an x-ray. He said if he was not going to touch it he did not take an x-ray. Then he said if the root was left behind and was not loose, he took an x-ray, and also when a root was difficult to remove.

266. In cross-examination he accepted that he did not provide any treatment plans to this family. He said (in relation to the treatment of Patient L, the father) that he would always tell the patient when he was doing a filling. He had written a very long note about this patient on 30 November 2005 because he was very unhappy to keep him and his family on his list. He thought all these complaints from the family were because he had asked them to find another dentist, "because of what they have done". He explained what he meant by this. He said he had seen them outside his surgery sitting in their car having their lunch.

> "*When they came into my surgery they were smelling of fish and chips and I told them this was not the right thing to do they could have rinsed their mouths out. It is OK if it cannot be avoided but this was unacceptable. I cannot remember whether it was fish and chips or Macdonalds. It was a family I had treated for ages but I said I will treat them this time then they must find another dentist*."

267. This explanation for the end of the patient relationship with the family had never previously been advanced in Dr Faghany's witness statement nor in cross-examination of that family. In his statement Dr Faghany said (paragraph 70) that Patient L's dissatisfaction with the treatment regarding his crown at LL7 gave rise to a discussion in which it was clear that the relationship between patient and dentist had broken down, and he therefore suggested, in his own best interests, that he find another dentist.

268. Dr Faghany could not remember whether he had described his technique for brushing/cleaning teeth before his evidence in chief (it was not put to Patient N) but he had always done this.

Patient R

269. When giving evidence about his treatment of Patient R, Dr Faghany produced a photocopy of a computer screen "dump" which was inserted in the records bundle at D/59E. He said he had not been able to print it out from the computer so had taken a digital photo of the screen and printed

that. It records the fact of (but not the findings of) a Basic Periodontal Examination carried out on this patient on 7 April 2008.

270. He looked at the patient's dental records, beginning on D/40, and in particular the reference to the partial eruption of LL8. He said the advice was "probably" that because it was difficult to fill it would be better to have it extracted. That was routine advice. But the patient did not want an extraction so he just did a scale and polish. He would not have told her she had no wisdom teeth, because she had 3. He was suggesting she have them out. He did not say she should have root canal treatment. The advice was based on his finding of some decay, but he could not remember how deep this was.

271. Dr Faghany had not carried out x-rays according to his records, but it would normally be his practice to do so if he thought the wisdom tooth would be difficult to remove. He admitted he had not provided a treatment plan, but at the time he believed his practice was giving the patient Form FP17 so he assumed it was done.

272. In cross-examination about this patient Dr Faghany said he had produced the extra sheet of records because he could not sleep and could not understand why he had no record of a BPE, so went to his surgery at 3 am and tried to print it out. He agreed that there were some communication problems with this patient. He agreed he was proposing radical treatment but had taken no x-rays. He looked at page D/40 and said the handwriting "need a clear periapical x-ray of UL8" was not his. He accepted from Mr Booth that it was the writing of Dr Singh, the PCT's assessor.

273. This case was revisited during cross-examination about the honesty of his responses to patients generally. He was shown D/59B-C and agreed he had told the patient (in response to a complaint) that he had found early caries lesions and given options of small restorations or extraction. He was then shown his records at D/40 and agreed there was no record of any small restoration being necessary, He said he did not remember if he discussed this with the patient but he did not make a note of it. He agreed that based on his notes there would appear to have been no mention of it. He could only suggest he had had the conversation but made no record of it. It was suggested to him that this was one example of his readiness to give his patients explanations which were not always full or truthful.

Submission of complaint returns and Marilyn Quade allegations

274. Dr Faghany's witness statement (paragraphs 34 – 36) states that he was unaware of the obligation to make returns of complaints and lacked management experience so did not find it easy to bring the information together. He apologised for an inconvenience to the PCT, as he did for any rudeness to Mrs Quade when she telephoned and for any inaccurate information provided. When asked in cross examination why his lie to her and response when she informed him of the names of some

patients who had in fact made complaints, were not “unsuitable” [his sole denial in respect of Allegation 35] he said “I don’t know what to say”.

275. Dr Faghany specifically explained that on the occasion in April 2003 when he told her on the telephone that no complaints had been received about him, it was not a lie because he had been called away from a patient in order to take her call. He was upset that she could not wait and just wanted to get back to his patient. He told Mr Booth that this explanation, which does not appear in his witness statement, about a telephone call 6 years ago, was not itself a lie, and he always knew that is what had happened, but maybe he forgot to tell his solicitor about it.

276. Dr Faghany told us in cross-examination that he accepted the factual allegations made by Mrs Quade. He admitted he had *never* submitted a complaints log. He “did not know” if his manager had done so. He was shown his letter of response to Mrs Quade at A/418, attaching a letter to a patient saying she had not been overcharged. He agreed this was his way of dealing with complaints in 2003. He looked at Mrs Quade’s correspondence at A/422-423 and said he could see she was trying to be helpful and give guidance about complaints in July 2003. He thought Emma (a receptionist) was also doing some recording of complaints, and denied that such recording did not start until Denise Lawrence joined the practice in 2008.

277. He was shown his letter of response to a complaint in which he raised allegations against his first practice manager of theft of money and introducing a virus onto his computer. He said that person was taking money from patients before treatment. He also said it was not a lie that the previous practice owners had put a virus onto the computer, because his engineer had told him it was on the system, and somebody must have put it there because they were not connected to the internet.

278. Dr Faghany said that for over 4 years there had been an issue with the PCT about his treatment and payment and he was sure he was treated less fairly than other dentists. He was asked if this had affected the way he responded to the PCT, and he said he did not think they had tried to help until recently, when Mrs Flegg had been ill and a Mrs Green had taken over.

279. He denied the suggestion that he had stuck his head in the sand rather than listen to PCT suggestions and advice. He was referred to his own letter of 10 June 2005 to the PCT which appears at A/146, (and was written just over a month after the mis-prescription of Diazepam to patient A). It overflows with a sense of grievance. Among other things he wrote:

> *“PCT has miss informed me several times, and has mistreated me so many times that I have lost counting…..*
> *Anyway because of those “errors” both me and Dr Taghavi [an associate at the practice] have suffered some loss here. Money is one side of it. Being mistreated is another side of it. And as you know I have been in contact with the press. And they do love to print this matter.*

So far none of the PSTs have acted wisely in this matter. Maybe this time you have a second tough about it. Right now maybe I'm the only problem you have. But when this matter is printed, maybe some other dentists who also have been mistreated will step forward and claim compensation as well. That's why I'm asking you to have a second though about it and act wisely.

Anyway here are my wishes:

- *Mr Mark Taylor to be resigned, from his hob. So he can find another job which will suit his age and knowledge.*
- *I'm asking for £15,000 to cover my lost and being mistreated. (I'm not asking for more, so we could put this matter behind us ASAP).*
- *Dr Taghavi is asking only for £5,000.00 (He is much nicer than me, you see).*
- *And no more discrimination in future. You should treat me and Dr Taghavi like the other dentists in your area.*

If not, I will give all the details to the press and will sue both PCTs for discrimination….."

It was put to Dr Faghany that he had not truly co-operated with the PCT since then. His answer was "*Yes, but nor have they*". A number of examples of his non-co-operation were then put to him.

280. One such example concerned the finding by the PAG team that his complaints file had no complaints procedure in it, when it visited him on 28 September 2005. His reply was that he was sure he had one but could not put his hand on it. He said he had given this reply because he was anxious not to get Mr Murphy (a dental auditor who seems also to have given him some mentoring help) into trouble.

<u>Out of Hours Emergency Treatment and Patients S and T</u>

281. Dr Faghany relied on his witness statement in relation to Patients S and T (paragraphs 92 – 97). He was extensively cross-examined about the truthfulness of his explanations to Patient S. His attention was drawn to the fact that this patient had received different explanations for his unavailability. Practice staff had told Patient S on 22 March 2004 that Dr Faghany was ill. On 23 March (new appointment) S was told Dr Faghany had been "called away" and would be unavailable all day. In Dr Faghany's statement (paragraph 94) he says he was also very ill the next day (i.e. 23 March) and so the rearranged appointment also had to be cancelled. When asked about these matters by Mr Greenwood in September 2005 he had said he had "personal difficulties" [he was referred to paragraph 42 of the PAG report at A/163]. In December 2008 his solicitors had written giving an explanation that he had child care problems.

282. Dr Faghany said he did not know why different explanations had been given and he made his living from attending the surgery so there was no reason not to be there unless prevented by emergency. He said he was going through a divorce at this time and on 5 occasions went to hospital with heart problems. He said either he was ill or his daughter was

ill. He was looking after his children and had no family here to help. It was put to him that he was just guessing at the reason for his non-attendance on 23 March 2004, and he had made no adequate arrangements for patients whose appointments were cancelled or needed emergency attention.

283. Dr Faghany later told us that the "emergency number" given was his own mobile telephone and it was a mistake to use this on the day he went to hospital, where his mobile would have been switched off. He usually gave the mobile to a dental friend to take emergency calls, when he was unavailable to deal with patients himself.

Communications with patients and others

284. This relates to Dr Faghany's facility with the English language and we have already referred to the documentary evidence (produced by Dr Faghany at paragraph 101 of his witness statement) and our impressions.

285. He accepted in cross examination that his attention had been drawn to communication difficulties as long ago as 2005 by the GDC. He was not at all sure that giving the patients the forms FP17DC or treatment plans helped in communicating the treatment he proposed, but he accepted he should have done it from an earlier stage than he did and more particularly after the GDC made its comments.

Inappropriate Behaviour

286. Dr Faghany dealt with Allegation 39 [unfounded accusation of theft against a former practice manager], Allegation 40 [inconsistent explanations to Mrs Quade about absences from his practice], Allegation 41 [failing to inform the PCT of the findings of the investigation by the GDC] and 41A [ditto in relation to its adverse findings] at paragraphs 102 to 104 of his witness statement.

287. He says he did not make allegations against the former practice manager without foundation, and does not accept it was inappropriate to make the allegation in a letter of response to a patient who was complaining about charges.

288. Dr Faghany's evidence in relation to absences is dealt with above.

289. He accepts he did not notify the PCT as required of either the investigation or conviction by the GDC. He describes this as an honest mistake, as he was not aware of the obligation imposed by the Performers List Regulations. However in evidence to us he said "I also thought the GDC was a bigger organisation and therefore it was not necessary to contact the PCT". This supplementary reason appears to proceed on the assumption that the PCT needed to know.

Inappropriate allegations against the PCT

290. Dr Faghany admitted at paragraph 105 of his witness statements that he had made the allegations of discriminatory practice against the PCT [see above] but said he had genuinely believed that that was the case. He did not accept it was inappropriate to raise these concerns, or that they were without foundation.

Practice Administration

291. Allegations 43 and 44 relate respectively to the want of practice policies, procedures and leaflets, and to the deficient compliance with staff inoculations, training and provision of emergency equipment.

292. Dr Faghany's statement (paragraphs 106-113) admits deficiencies in the administration and management of his practice in 2005 and 2007, but asserts that when matters were brought to his attention he made efforts to improve and address the issues. His statement says he now has a complaints policy and written procedures including those relating to health and safety, s-rays, prescription of antibiotics, and confidentiality. Documents dealing with these were to be found in lever arch file E, and we looked at these. He further asserted that he and all his staff had now had Hepatitis B inoculations, and made efforts to ensure he and his staff were "well up to date with CPD". All had attended a CPR training course. He described the "garden shed" (so described in the PCT documents) where old records and radiographs were stored as secure and locked. Finally, he had purchased a mercury spillage kit and emergency drugs kit and acknowledged they should have been available previously.

293. The appearance of Dr Faghany's practice policies at Section 4 of File E, and the invoices for purchasing various emergency or safety kits at Section 5, prompted some further questions.

294. In E/Section 4, Documents 1 and 6 were signed on 15 October 2008 and the others were undated, so that it was not possible to know when they were introduced. We accepted that the word processing identification at the foot of the documents which gave the name and reference of Dr Faghany's solicitors was simply because they had been emailed to her and saved to her computer before being printed out. However, Dr Faghany said he thought these documents were kept on the practice computer, and the leaflets available at reception were about things like dentures, bleaches and gum disease.

295. Most of the invoices for equipment and the like which were produced in E/Section 5 were dated in October 2008, about 6 weeks before the PCT Panel hearing to consider his removal from the List. In his evidence in chief, he said that October 2008 was the first time he had bought an emergency drugs kit. He claimed, however, that he had always had oxygen and adrenalin in the surgery.

296. In the course of the hearing Dr Faghany made multiple excuses for the absence of records or the failure to refund deposits or problems over appointments, on the basis that he had suffered a series of computer crashes, and the evidence on these aspects of his practice administration are summarised at paragraphs 249 et seq above.

297. Dr Faghany admitted that his practice administration, record keeping and relationship with the PCT had been poor, and needed improvement.

Contract Issues

298. Dr Faghany admits the dispute with the PCT as to whether he has underperformed his contract and if so what is the quantum, but for the

reasons set out above it was not necessary for him to elaborate on this in his evidence.

Text message incident

299. Dr Faghany admitted at the outset of the hearing that he had sent the text informing two other dentists that Kathy Flegg had been injured in a car accident, and that he had subsequently denied having done so. It logically followed that he also admitted that his action was dishonest, inappropriate and unprofessional. He denied that it was malicious or intended to cause offence of distress to Mrs Flegg.

300. His explanation in his witness statement and in evidence to us was that this was a bad April Fool's joke about which he was sorry. He said he had sent it to a friend, and had not meant to upset or harm anyone. He said he had subsequently denied it because he was ashamed of what he had done and did not know how to react.

301. When taxed further in cross examination about this example of admitted dishonesty, he said he had had dealings with Kathy Flegg over the question of underperformance of his contract. That had resulted in him instructing solicitors about proceedings against the PCT concerning a clawback. He had been told by his solicitors not to contact Kathy Flegg. The relationship with her had broken down. He said his failure to respond to the PCT letter asking if he had sent it [D/268] was his "stupid protest, because it took the PCT so long to answer my questions so I would not answer them straightaway". In fact he had not admitted being the author of the text until December 2008.

Patient U

302. Dr Faghany told us that he now appreciated he had approached the treatment of Patient U (criticised by Dr Kramer as showing "a high level of incompetence" in the failure to deal with tooth decay, relieve her pain and provide a crown which fitted) in the wrong way. He had not made this concession until the hearing. He said he was trying to save the nerve even though it was very deep, and to make her an inlay as well. It might have been better to do root canal treatment in the first place and take it from there. He was shown a copy of his notes at D/95 and he said he wrote to the patient on 27 October 2008. He said he probably saw it but did not tell the patient.

303. In cross-examination Dr Faghany accepted his treatment was inappropriate and that this concession extended to all the factual statements in Allegation 51. He said he accepted the findings of the dentist whom she attended after leaving his practice (set out at D/98) and therefore accepted he should have done root canal treatment.

304. He accepted that he had prescribed not just one but two courses of antibiotics for this patient without seeing her (12 July and 4 August 2008). He was challenged about his explanation that he was trying to save the nerve, if it was already infected, as appeared to be the case from the

antibiotic prescriptions given, and he replied yes it did look as though it was infected and he should have done root canal treatment.

Patient W

305. Patient W is the patient allegedly barred for questioning costs. Dr Faghany dealt with this at paragraphs 134-136 of his statement, stating that he had properly advised her of the planned treatment and this was reflected in the documents he created. He expressed regret that she had not appreciated what the treatment (including an element of private treatment for the white filling) was to be, and emphasised that he waived the fee when she queried the charge. However he said their relationship had broken down so he felt unable to continue treating her.

306. In evidence he took us through the handwritten entries he had made on FP17DC at page D/128AA, including the words "RCT + comp" in the middle and the figure of £145 under private treatment. He had given a copy of it to the patient (and indeed she produced it in evidence). He said: "*I would have told Patient W about RCT and after that either having a white filling or NHS amalgam. I told her the white filling would be private and the cost would be almost the same but she would have a white filling instead of the metal filling*". He told us that D/130 was his note of Patient W's complaint. He had gone downstairs to the reception area and she said she was not sure about the cost of treatment, why should she pay privately. He said he had explained again that she could have RCT and a crown on the NHS or RCT with a white filling privately, and the cost would be the same or cheaper than the NHS. She said she was happy with this and would come back to finish the treatment. This account was at variance with the one given us by Patient W.

307. There was a further consultation after which she complained about the price again and why was it private, and why there were two fees. Dr Faghany acknowledged that she wanted to talk to him but said: "at that time I had a patient and was tired and I had explained it already twice. That is why I let her go without payment but did not want to see her again."

308. In cross examination Dr Faghany agreed his notes did not mention white filling but this is what he meant when he wrote "composite". That was also what he meant when he wrote £145 next to the printed description "permanent fillings". In his statement at paragraph 1353 he had not used the term "white filling", but had said "composite filling". The reason why he had suggested a white filling was that there was not much tooth substance left and this would be stronger.

309. Mr Booth asked Dr Faghany if he felt he should have dealt with this patient's complaint differently. He said he accepted that the comments that he had tired of her were unprofessional. He did think he had used enough time on her and his understanding was that she would not pay.

Patients X and Y

310. These were patients who were charged £50, allegedly on registration. Dr Faghany said it was not charged for registering but as a

deposit against future treatment. It was put to him that at the stage it was charged he did not know if there would be any chargeable treatment at all, or if so, whether it would cost as much as that. He said that the practice of which Patient X was complaining as described at A/73 (charge on registration and subsequently three appointments which were not honoured, followed by a refusal to return the balance of a deposit because it was not recorded on the Practice Computer) was not his policy and apologised for the mistake made.

311. In cross examination he was asked if there were other patients who had paid a £50 deposit which could not be found on the computer. Dr Faghany said:

> "*Yes, we had a book as well. Some patients came in and asked for the balance of the money back and I made out a cheque without finding it on the computer. Sometimes we did not know if they were telling the truth*".

Patient Z

312. Dr Faghany addresses the issues arising from his treatment of Patient Z at paragraphs 138-155 of his statement. In his evidence in chief, Dr Faghany regarded the case of Patient Z as a case where he had treated UR5 in March 2007 and then the patient had gone to see another dentist who identified other teeth which required treatment. He was referred to his response [D/148] to Z's letter of complaint and said he was not trying to mislead her, as alleged at Allegation 56.

313. In cross examination, among other things, he was asked if he accepted that Dr Nazki later found it necessary to treat decay in other teeth which Dr Faghany had examined, and whether he accepted he could have done this on the NHS at his surgery. Dr Faghany said "I don't know".

314. He was referred to his response to his initial response to the complaint at A/96, including:

> "*…although I am sure that both Mr Clayton and Mr Nazdi have found something in your mouth, I was not able to identify it and that is with checking my x-rays again. The first tooth, was your wisdom tooth, and would not show on the standard x-rays and when I told you that there was nothing wrong with your mouth, I think that if you remember exactly what I said, it was that there was nothing wrong that I could detect"*

Dr Faghany denied that he was being evasive in this reply, and said he was simply saying he could not find anything. It was unfortunate that the x-rays he took did not cover the areas of those teeth. If they had, he might have seen the decay.

OTHER WITNSESSES FOR THE APPELLANT

315. Dr Faghany called a number of witnesses on his behalf, who were in fact heard before he gave his own evidence.

Ms Denise Lawrence [C/190-191]

316. Ms Lawrence has been Dr Faghany's Practice Manager since 1 April 2008. Prior to that she had no experience as a practice manager, but had done reception work and had been a supervisor in a social club (a bingo hall) for 8 years. She agreed in cross examination that when she started in post she relied heavily on Dr Faghany to let her know what she needed to do or to comply with, and to familiarise herself with the regulations. If he was busy she called the PCT for advice.

317. She described her work routine and content. She was asked about doing cardio-pulmonary resuscitation (CPR) training and fire marshal training and said "we have been doing it in the last few weeks. A few things need to be updated on the fire marshal side". She said the staff had monthly meetings. In cross examination she said that the meetings discussed anything that came up, but the only aspect of charging which had been discussed had been about the bands. She was not aware of patients beings asked for a deposit and this had not happened since she was in post.

318. She was asked about the complaints procedure and explained that if a complaint was received by Dr Faghany he informed her and she responded within 3 days, to the patient or PCT. They then investigated and responded. She kept a log book and each complaint was treated individually. She vaguely remembered a complaint from Patient W, and had dealt with it initially. She said she was not barred, but Dr Faghany had felt he had done as much as he could. She agreed she was the person described by Mrs W who had received the messages on screen from Dr Faghany following her last attendance. She said she did not think it was an appropriate way for a dentist to respond, because the patient had not been happy with the response she had given. She looked at the note made by Mrs Quade about this [A/71] and said it was a correct record of what happened.

319. Ms Lawrence was asked about the loss of patient records and information. She said that when she first started a new system had been installed on 19 March. She said: "*The first 6 months was horrendous with the loss of patients as a result of the old system crashing. Patients would come in with no record of appointments and their records were lost*". She said the situation had now settled. As for backing up the recorded information, she said it was done through Kodak 2 or 3 times a day.

320. In cross-examination, however, she was asked who was the person in the surgery who was best at interrogating the computer. She said she always asked Dr Faghany and if he did not know she phoned Kodak. In relation to the old paper records she said she had seen these in filing cabinets going back over time. These were kept in the shed outside. They were now in the process of being logged onto the computer record but that was a long process.

321. To our surprise she said:

"*I have not been asked to find any patient records for this hearing*" and

"*I have not been asked to find any paper records for this hearing*"

322. Ms Lawrence said she was responsible for the policies including on hygiene but was not directly responsible for their implementation. She looked at the practice policies at E/4 and said she was responsible for all those listed in the index except "dark room instructions", "patient information regarding antibiotics", and the "opening hours notice". She was also responsible for re-ordering and ensuring continuity of supply.

323. She later told us that she did not write these policies herself as many were already in force when she arrived. She was referred to those which carried the date March 2007 and said that they were the current policies but would need updating. The person referred to in the infection control policy was no longer working at the Practice.

324. Ms Lawrence said she had no problems with communication with Dr Faghany, whom she found polite and straightforward.

325. Ms Lawrence was asked about her complaints records and referred to the evidence of a number of patient complaints since her appointment. Not all appeared in her log of complaints. She only logged the complaints of which she was notified either directly or by Dr Faghany.

326. She was also asked why there appeared to have been a flurry of activity in acquiring appliances and so on, in October 2008. She said it must have needed doing. Now that it was done any testing or maintenance would be repeated yearly. She said it was Dr Faghany who asked her to do these things in October 2008. She was not aware at that time that he was facing imminent removal by the PCT. Before then she was not aware of an emergency drugs kit. There was not one there.

327. Ms Lawrence was asked about certificates which had been produced at E/3 in respect of staff training (e.g. radiation protection) and said that two of them related to Danielle Clarke who had left the practice at Christmas 2008. The staff currently consisted of Drs Faghany and Zoggi, herself, two nurses, Joy Bloyce and Danielle Cansell, and a receptionist, Lisa Williams.

328. Mr Partridge returned to the issue of her training, and she said she had asked the PCT about training courses for Practice Managers, but they were heavily subscribed.

<u>Ms Joy Bloyce [C192-193]</u>

329. Ms Bloyce has been Dr Faghany's senior dental nurse since August 2008, having qualified in 2002 and worked in other practices until she joined Mersea Road Practice. She said Dr Faghany was the easiest dentist to work with out of the 20 she had seen altogether. She also worked with Dr Zoghi in the practice and he now did the NHS work.

330. She thought the level of hygiene in this practice was quite good and described herself as "fussy" about that kind of thing. She said the gloves and masks were changed after each patient, and they had some nice new uniforms, which she washed every night. She always cleaned the surgery at the beginning of each day and sluiced through the suction and had instruments out of sight locked in a cupboard.

331. She looked at the index at E/4 and said that she was responsible for these policies. The Practice had recently got the BDJ Good Practice Scheme and was in the process of updating these policies. In cross examination she said she did not know that this Scheme had been available for 4-5 years. Dr Faghany had not given her a reason for raising it and getting the information from the BDJ. He did this a week ago last Monday, The current updating about which she had told the Panel had in fact begun last week on 7 September. A notice in the x-ray room had been up when she arrived in the practice but was not up now "because we are digital".

332. Ms Bloyce was shown the patient information leaflet about Diazepam medication and said she had never seen this before. However she had seen Dr Faghany give patients copies of the leaflet about antibiotics which appears at E/4/9.

333. Ms Bloyce told us she had been on recent courses for CPR and fire. She was responsible for the emergency drug kit which was stored in a cupboard in surgery 1, and there was also a defibrillator and oxygen and first aid kits. Later she told the Panel that she was not aware of any emergency drugs before the kit was supplied in October 2008, and the defibrillator had come last month.

334. When she had arrived she did not know if there was an emergency drugs kit. She had to ask where things were. She was told "in the cupboard". She was aware an emergency drugs kit had been ordered in October 2008 but thought the old one was sent back by Danny Clark. She was asked a number of questions as to whether she had spoken to Dr Faghany this week about the evidence she might be asked about.

335. When asked about the pots of cleansing paste Ms Bloyce said she had introduced the system she was accustomed to, which is to put some paste into a tiny Daphens dish for each patient and then dispose of it.

<u>Dr Hamid Reza Zoghi [C/194-195]</u>

336. Dr Zoghi qualified as a dentist in 2006 at Aarhus University, Denmark, and worked in Denmark in private practice for almost 3 years before coming to look for employment in England in 2008. He joined Dr Faghany as an associate and was included in the Performers List of SW Essex PCT in March 2009. He started work (full time) on 12 March doing the NHS work within the practice, as Dr Faghany was suspended from the List at that time. On a professional basis he found the practice "fine".

337. He described Dr Faghany as very helpful in explaining the NHS Regulations and the forms he would need to deal with. He had not been on a training course about NHS procedures, but Dr Faghany had spent 2 or more weeks explaining the system. Dr Zoghi had no problems using the computer.

338. He told us he filled in form FP17 and the patient signed it. He then did an examination and discussed with the patient the treatment. If agreed, he filled up the FP17 form with the treatment details and if there is a price he puts it down and if the patient agrees he signs and the

treatment then proceeds. As to payment, he said he had a personal PIN number to make claims. He gave the forms to Dr Faghany who entered Dr Zoghi's PIN number for him.

339. Once he started work, Dr Faghany was not working alongside him. He was seeing a few private patients and not working full time; perhaps 2 days a week. Dr Zoghi himself had only been away for one week since he started.

CONSIDERATION AND FINDINGS

340. This case is founded on many different kinds of allegation, and many different patient encounters. The strength of the evidence is bound to vary from allegation to allegation, but in general we found the individual patients to be trying their best to recall events as honestly and accurately as they could. In general, we found Dr Faghany to be an unpersuasive, often evasive and sometimes dishonest witness. He frequently had little or no independent recollection of his treatment of individual patients. This would not necessarily be a criticism where he could refresh his memory from adequate and accurate contemporaneous notes, but the very poor quality and completeness of his notes, or indeed their non-availability, made that difficult and often impossible. In general we preferred the evidence of the witnesses relied on by the PCT, where there was a conflict, save where we have indicated a different conclusion.

341. We found Dr Kramer to be a careful, measured and impressive expert witness, who made a genuine effort to envisage matters from the perspective of Dr Faghany, and was unwilling to be overly critical. In a number of cases his expert opinion was conditional on findings of fact which he recognised to be outside his role. Unless otherwise stated we accept his expert opinion.

342. Our findings relating to the specific allegations raised in the Schedule are annotated in red on that Schedule annexed to this Decision, with which it should be read.

Patient A.

343. We find that Dr Faghany wrote 50 mg on the prescription of Diazepam because he intended to do so. We cannot accept it was a careless writing mistake or that he intended to write “5.0”. The dose of 50 mg appears not only on the prescription but again on the private records card [A/307] and in his subsequent letter of response to the patient [A/316] when he was, or should have been, alerted by her complaint to the fact that she had received an overdose of Diazepam. He was unable to point to any other example of recording a dose of a full number of milligrammes as “x.0”. Indeed in the letter of response to the complaint he wrote “2” and not “2.0” when setting out the claimed range of dose had had given over a period of 10 years.

344. We find that Dr Faghany did not provide Patient A with an explanation of the sedation technique he proposed. Her witness statement is agreed and paragraph 3, if correct, evidences a wholly inadequate

explanation. Nor did he offer alternatives. He is in general somewhat cavalier with his use of drugs, as we have noted in respect of his prescribing of antibiotics.

345. We find that Dr Faghany did act in a manner that could have caused the patient's death. That was the effect of the unchallenged expert evidence offered to the GDC in April 2006 [A/319]. The prescribed dose grossly exceeds the maximum BNF dose. We know (as did Dr Faghany when he was informed of the complaint) that the patient in fact passed out and it was her good fortune that she did so at home when her husband was present and able to get her to hospital promptly. Had she been driving, or on her own, the outcome might have been different.

346. It is one thing to make a mistake, even a serious one. It is another to lie in order to cover it up. We find that Dr Faghany's letter of response to Patient A was untrue, when he wrote that he had been using Diazepam for the last 10 years, from 2 mg to 50 mg. His explanations (see for example paragraph 228 above) were, like his explanation of the misrecording, simply incredible. He said he was trying to provide reassurance to a nervous patient. She was not a nervous patient when he wrote the letter. She was not even a patient. She was a former patient seeking an explanation for a dreadful happening. Dr Faghany may have some limitations in his reading or understanding of English but he is an intelligent, indeed astute man, and we are in no doubt that he understood fully the thrust of her complaint from her letter. If reassurance was what he was seeking to give, it was because she was a potential claimant and not because she was a nervous patient. In cross examination he made the limited admission that his reference to 2 mg was a dose he had never prescribed and was simply to bolster his own case.

347. Dr Faghany's letter of response to Patient A was designed to serve his interests and not those of the patient. Having heard Dr Faghany and considered his evidence carefully, we are in no doubt that it was designed to mislead her. It was also wholly unprofessional, and inappropriate, and contrary to good practice.

348. Dr Faghany has continued to compound his original lie about the overdose. He produced a purported protocol [E/4/12] dealing with the specific prescription of Diazepam. We were supposed to understand it was for the use of patients. We do not understand why it should be necessary to produce anything of this character if (as Dr Faghany says was the case) he stopped prescribing Diazepam when this mishap came to light. It is a bizarre document insofar as it counsels the patient "make sure the dose on your prescription is no more than 5 mg". It was not a document which was recognised by members of his staff. In our view it is a self-serving document created by Dr Faghany in order to help himself by showing that he was taking some sort of steps to guard against future overdoses of Diazepam.

349. This is a long way from the steps he was advised to take by the GDC in its determination in 2005 [A/320], namely to arrange fro his

procedures to be the subject of an external audit on order to ensure there are no deficiencies, and to suggest further practice improvements as may be necessary, and to consult his local Dental Practice Adviser about setting up such an audit. Dr Faghany could give no explanation as to why he did not follow this advice.

350. In our judgement a further consequence of Dr Faghany's unwillingness to admit deceit in relation to his response to the Diazepam overdose or even to admit he had deliberately written a prescription which was outwith the experience of any expert or pharmacist from whom we have heard, is that he failed to notify the PCT that he was being investigated by the GDC or that it had found Serious Professional Misconduct against him. We do not accept his explanation that he was unaware of the obligation to do so. He was advised and represented at the time. His explanation to us that he thought the GDC was a bigger organisation and therefore it was not necessary, is not really consistent with his original explanation. Moreover we have considered this in the context of our findings of deceit in relation to the Diazepam issue generally. We find that the allegations that his failure to notify the PCT of these matters were designed to mislead (at 41 and 41A of the Schedule) are proved.

Patient B

351. Patient B complains about treatment from 1999 to 2001. There is no evidence which can satisfy us that Dr Faghany was the dentist treating her in 1999 or until November 2000. We are satisfied that he was treating her during a period from November 2000 (when she was already in pain because of peri-apical infection) until the removal of her tooth on 19 January 2001 and the removal of stitches on 26 January 2001. We are satisfied that Dr Faghany made the right diagnosis, and seems to have planned appropriate treatment (root canal treatment). However this was not carried out, and we have no satisfactory explanation why not. We find that the persistence of pain from 2 November 2000 to 19 January 2001 without effective relief or treatment for its cause, was evidence of substandard care by Dr Faghany. We accept the opinion of Dr Kramer [C/153 paragraph 7[that Dr Faghany should have provided effective treatment by controlling the cause of the infection rather than repeatedly prescribing antibiotics. We further accept and find that it was inappropriate to prepare the teeth for crowns before attending to the root canal treatments required. We accept Dr Kramer's view on the viability of LL7, namely that it may be that extraction was indicated, but consideration of other options, while noted in the original plan in his notes, were not communicated effectively to the patient. The decision to proceed to an extraction on 19 January 2001 seems to have been a response to taking a telephone call from a dental contact of Patient B's in the Channel Islands.

352. We cannot therefore be satisfied that Allegation 5 is proved. Allegation 6 is not proceeded with. In relation to Allegation 7 the only matter not admitted is (b), which we find proved in relation to the period

between 2 November and 19 January while the patient was under the care of Dr Faghany, as his records demonstrate. On the evidence as a whole we are satisfied that Allegation 8 is proved. We are not satisfied that Allegation 9 (a) is proved: the assessment in November 2000 was probably correct, but was not acted on. We find the balance of Allegation 9 proved in its entirety.

Patient D

353. While the facts of Allegation 11 are admitted (no staff present and asking the patient to hold the suction tube) we find the consequential allegations unproved. On that Sunday, Dr Faghany felt he was able to cope with the patient's emergency dental problem alone.

354. As for Allegation 11A, Dr Kramer was clear that the normal practice when seeing a patient in this kind of emergency on a Sunday would be to perform the emergency stage and then tell the patient to return for completion of the treatment during the normal working week. We agree. We see no reason why Dr Faghany would not have told Patient D to do this. His contemporaneous note [D/2I] records that he discussed the plan with Patient D. We entirely accept that Patient D did not grasp that that was the plan. His subsequent responses and his evidence to us makes this clear. That may have been because he was distracted because of pain, or it may have been because Dr Faghany failed to communicate with him effectively. It is also strictly true that Dr Faghany failed to alleviate the patient's pain, but in these circumstances we conclude that that was through no fault of his. On 23 December he did what the patient required. We are not satisfied that he caused the patient unnecessary pain and suffering. The extractions at the second visit were difficult and against a background of severe pain which was not responding to normal anaesthesia. As to the adequacy of explanations of the costs and implications of the treatment, Patient D's evidence on this [C/16] makes clear that he was originally seen by, and received any explanations from, a female dentist at Dr Faghany's surgery. We are not satisfied that any allegation of shortcomings in the explanations is proved against Dr Faghany. We make our findings set out in the Schedule in the light of these conclusions.

Patient E

355. The only acceptable reasons for removing both front crowns would be to achieve an acceptable colour match (particularly if the crowns had been in place for some time) or if both were damaged at the same time. Dr Faghany first offered us the second of these possible justifications when he was giving his oral evidence to us. It was inconsistent with what he said in his witness statement (to achieve a match) and requires a strained interpretation of the notes which we are unable to accept. We are not confident he can recall what he said to Patient E by way of justification. It is highly unlikely that both crowns were fractured. Patient E was a fastidious patient and had only noticed a crack in one. In our judgement financial reasons are likely to have played a significant and inappropriate

part in mis-assessing the patient's need to have 2 crowns replaced. We also prefer Patient E's recollection of the conversation which occurred (with its reference to a Hollywood smile) at her initial attendance. We conclude that the advice he gave her was misleading and with the intention of benefiting financially.

356. We further find that Dr Faghany failed to carry out an appropriate assessment. Her subsequent dentist had to remove a tooth on which Dr Faghany filled, because it was dead, and had to perform root canal treatment on UL1 which had an abscess. We conclude that Dr Faghany had failed to establish the vitality of teeth he was treating. Further, it was not appropriate to prepare a crown without treating underlying tooth problems at UL1, which on a balance of probabilities he had failed to identify. Our findings on Allegation 12 are set out in the Schedule in the light of these conclusions.

357. We looked carefully at the photographs of the first temporary crowns which were provided to Patient E. There are some imperfections as noted by us earlier in our review of the evidence. We are unable to detect imperfections which are outside the range of what normally be regarded as acceptable for temporary crowns. Patient E had quite fastidious standards and expectations in this regard.

358. Having considered the evidence of Patient E and Dr Faghany carefully, we find that Dr Faghany did not show her a colour chart until he agreed to replace the first set of permanent crowns. We are satisfied he did not take further impressions at that stage but (so long as the original impressions were satisfactory) there would not be a clinical need to do so. We are unable to tell whether the second set of permanent crowns was defective in the way alleged, and so find that unproved. We are satisfied that Dr Faghany's irritation with the patient became apparent and he produced his video camera and took some images of her mouth without there being any therapeutic reason for doing so and without offering any sufficient explanation. We reject the explanation he has later given that he was producing "before and after" photos: this is palpably not the case. He only took one set of photos, and that was after the treatment. It was done for defensive purposes. It follows that he took the images without her informed consent.

359. The only documentary evidence available to us about the temporary filling of which Patient E complaints (see Allegation 13, (17) and (18)) suggests that it lasted until a permanent filling was done by Dr Fox on 2 December 2004. Dr Faghany's own records are poor and it is difficult to see when he did the temporary filling. We cannot be satisfied that it fell out meanwhile or was otherwise unsatisfactory.

360. We note the elaborate and somewhat defensive note which appears in the records on 9 November 2004, as to the difficulty of pleasing Patient E. We note this was the occasion when Patient E returned for completion of her treatment after making her complaint to the Essex Consumer Services team on 20 October. Dr Faghany did not finish off

some of the work, as he himself noted, but his recorded reason “agreed to postpone treatment” is rather disingenuous.

361. We note our specific findings in relation to Allegation 13 on the Schedule, but in our view a potential breach of the patient’s human rights was not explored or developed before us, and in any event we conclude that Patient E could have said no to the taking of images, as it was obvious that Dr Faghany was going to do so (he left the surgery to get his camera) and that it was for the purpose of supporting his belief that the crowns were satisfactory.

Patient F

362. We found Patient F to be a reasonable and persuasive witness, who wrote setting out his complaints very soon after the events to which it refers. Dr Faghany, on the other hand, could not remember him. However, he admits requiring a £30 deposit against intended root canal treatment. We are satisfied that Dr Faghany failed to explain to Patient F what the root canal treatment entailed or why he needed it, and also that another dentist found it was not necessary and all he needed was a filling. That is supported by the letter.

363. We are not, however, satisfied on the evidence we have heard that the dental nurse had no uniform, gloves or mask (or indeed was involved in the treatment of the patient) or that she was a receptionist. We are not satisfied Dr Faghany did not wear a mask when treating Patient F. We bear in mind that other patients from whom we heard confirm he did wear a mask.

364. We think that Dr Faghany’s assessment was probably adequate for what he found and noted, and so we cannot be satisfied his assessment was inadequate. However, we are satisfied that he failed to provide a proper explanation to the patient or provide a treatment plan, or obtain his informed consent. We do not find the other elements of 14 (g) proved.

365. We also find 14 (h) proved in relation to the elements of (a), (b) and (g) which we have found proved.

Patient G

366. Patient G was one of the patients who arrived for appointments to find the surgery closed. Dr Faghany admits the facts. His evidence summarised above suggests that a member of his staff should have contacted the patient and postponed the appointment, and should have been present at the surgery until 5.30. The evidence satisfies us that no such call was made to Patient G. Dr Faghany accepted that he has the responsibility to ensure that a proper system to do this is in place and implemented. He has no actual recollection of why he was absent and his surgery closed without alternative arrangements in place, save to say he was under stress at the time and went to hospital on several occasions with concerns about his heart. We have seen no corroborative evidence of attending hospital on this or any other date, nor evidence of more robust arrangements in place to refer patients to another dentist who was actually available in the event of mishap to Dr Faghany. We also note that his

surgery was not responding to calls on the morning following the abortive appointment, and there is really no consistent explanation for that. We find all those parts of Allegation 15 which were not admitted at the outset to be proved.

Patient H

367. The allegations in respect of Patient H are not pursued and we have struck through this allegation, which is not proved.

Patient I

368. This is the case of the lady who sought help because she had a number of missing teeth, and later underwent examination by a Dental Officer of the DPB, who found extensive periodontal disease (more fully described at D/20W). We are not satisfied that Dr Faghany told Patient I that he would provide a bridge on either side of her mouth, as alleged at 15 (2) of the Schedule. The notes we have seen for this case are more extensive than many of the cases we have considered, but the quality is not very good. They record scale and polish being performed for “too much tartar” at the end of September 2003 and preparation of a partial denture (chrome cobalt plate) in October 2003.

369. We are, however, satisfied on a balance of probabilities that gum disease was then present. While we do not doubt that Dr Faghany found tartar and therefore performed a scale and polish, we are not satisfied that he properly assessed the periodontal condition of this patient before recommending and fitting a denture. He had to concede he did not perform a Basic Periodontal Examination which would or should have reflected findings as to the depth of pockets. That is an integral part of an assessment of periodontal condition. We accept and agree with Dr Kramer’s opinion that the absence of any BPE charting made it impossible for Dr Faghany to monitor any gum disease there may have been. Moreover, we also accept that the fact that the patient presented with such a large number of missing teeth should have put Dr Faghany on notice that there was likely to be some underlying problem which required to be investigated.

370. Had he done an adequate assessment he could not properly have proceeded with the provision of a denture without first controlling the gum disease. If Dr Faghany did appreciate the presence of disease (as he says he did) his management of the patient was substandard for that reason. On balance we find that he did not identify gum disease, and ought to have done. If follows that he did not inform her that she had gum disease, as we find to be the case. We also accept what Patient I told us, namely that she would not have had bleaching done if she had been told she had gum disease. No adequate explanation was given to the patient of the treatment which was required. That too is supported by the contemporaneous correspondence (for example at D/20AB-AD). He admits not providing an appropriate treatment plan.

371. The parties have substituted “denture” for “bridge” at Allegation 17 (4) by agreement. There is however, insufficient evidence to satisfy us that

the fit of the denture was wrong, as opposed to the patient have difficulty accommodating a new device in her mouth. While it does not form the basis of a specific allegation in the Schedule we also accept Dr Kramer's opinion that it was not good practice to provide a denture in the presence of untreated periodontal disease as it would be more likely to move around and cause further food stagnation around the already compromised teeth.

372. In light of these conclusions we have found the matters proved as indicated in the Schedule in red.

Patient J

373. Allegation 18 concerns Dr Faghany's competence in fitting a crown, and his attempts to remedy any deficiencies. We refer to the summary of the PCT case above. We accept and are satisfied by this patient's evidence that the crown was fitted so that the bite was incorrect and leaving a margin of which she was aware and in which foodstuff could lodge. Dr Faghany appeared to accept in his evidence that such a margin should not be left. We accept Dr Kramer's opinion that this is the case, and the crown should fit flush with the gum (see above). Dr Faghany admitted before the end of the hearing that he did paint over the margin and that it was inappropriate to charge Patient J (an NHS patient) for the treatment he provided, but that he did attempt to do so. It was one of several examples of his "pay or leave" approach to some patients when complaints arose.

374. It is also one of many examples where Dr Faghany was unable to provide adequate crowns for patients, often because of his very poor technique for taking impressions.

375. However we are not impressed by the complaint of difficulty in communicating with Dr Faghany's staff. We are unable to see the relevance of this to any outcome of which Patient J complains, and find that not proved. Nor can we be satisfied in this case that Dr Faghany failed to provide an adequate explanation of the treatment required. We are also inclined to conclude as to the risk of infection that no significant additional risk was created.

376. Our findings on specific allegations are set out in the Schedule in red, in light of our conclusions on the evidence.

Patient K

377. We did not hear live evidence from this patient, but in the course of the hearing many of the specific allegations within Allegation 19 were admitted by Dr Faghany. It was another example of unsuccessful attempts (multiple ones in this case) to take proper impressions for crowns or bridges. The evidence is very striking that the laboratory technician was so unimpressed by Dr Faghany's impressions that he had volunteered to come to the surgery to show him how he should do it. This is also another case where there was some untreated disease which should have been identified in a proper assessment. We are satisfied that there was a failure to carry out an adequate assessment, or provide the patient with an

adequate explanation of what was required. In any event Dr Faghany admits failing to provide a treatment plan.

378. Overarching the specifics, in our judgement the treatment was inappropriate because Dr Faghany fitted a permanent bridge too soon after the extraction of the patient's teeth [D/20AP refers to the removal of UL1 at Flagstaff Practice].

379. Based on Dr Kramer's opinion at paragraph 34 of his statement [C/160], which we accept, we cannot be satisfied that Dr Faghany failed to charge the patient appropriately for the treatment she received, although there is a lack of clarity about the charges he did raise and how he recorded them.

380. Subject to that, we find the unadmitted elements of Allegation 19 to be proved.

Patients L - P

381. Patients L – P belonged to the same family: see evidence summarised at paragraph 114 et seq above.

382. We did not hear live evidence from L (the father).but we found Dr Faghany's evidence as to how he came to dismiss this family from his own list of patients (paragraphs 267-268 above) to be very unsatisfactory and inconsistent. We were unable to accept that he was being candid or accurate. We understand that the patient had small cavity(ies) caused not by decay but possibly by abrasion from brushing. It may be treated by cleaning and putting a chemical on it, and glue, then a white filling. Sometimes drilling is done to facilitate the filling. The PCT's own evidence is to the effect that the treatment given to L (making a channel in his teeth) was justifiable, but that this required proper explanation which L says he did not receive. This is not a case where the patient may have been distracted by acute pain. His evidence (which we accept in this regard) of his response after he received the treatment makes it clear that that he was completely nonplussed and outraged to realise what had been done without (as he believed) telling him. On balance we find that Dr Faghany did not provide an adequate explanation and failed to obtain his informed consent to the treatment, and did tell him the treatment was because his teeth were discoloured, then changed his explanation by informing L that his teeth were decayed. If nothing like this happened (as Dr Faghany suggests) it is difficult otherwise to explain how a patient who had come to the practice for a long time should suddenly lose confidence in his dentist and make these very specific allegations.

383. We find that Dr Faghany carried out no BPE and in these circumstances we find he failed to carry out an adequate assessment of L. He admits providing no treatment plan (again).

384. However we are not satisfied that Allegation 20 (e) is proved (failure to do anything about a lower right molar for which Patient L was seeking attention), since Dr Faghany recorded [D/20AW] that he identified a missing filling on 26 July and replaced it on 1 August 2005.

385. We also find Allegation 20 (g) proved subject to the substitution of the word “recemented” for “replaced”: this was done on 31 November 2005.

386. Subject to that, we find the unadmitted elements of Allegation 20 to be proved.

387. We did not hear from Patient M (the mother) and refer to the summary of the case involving her above. We were not satisfied that the factual allegations here were proved, save where Dr Faghany admitted (as he did) 21 (b) and 21 (c) (3). We note that on 8 December 2004 [D20BA] Dr Faghany recorded decay at LL5 and that the patient was to come again for treatment. This contemporaneous note tends to support Dr Faghany's case rather than Patient M's account.

388. We find that in the respects that Dr Faghany has admitted his actions and omissions were inappropriate, unprofessional and contrary to good dental practice. Otherwise we find Allegation 21 (d) unproved.

389. Patient N was very young when the events he describes (failing to change gloves) took place. This is a recollection of events which were fairly stale when he made his statement. The allegation is not repeated or supported by his father and sister who are said to have been present with N on the same occasions when the family visited the dentist. Dr Faghany says his practice is to change gloves between patients and is supported in this by his practice nurse, Joy Bloyce. In this respect at least, the “normal” practice is no different in Denmark to the UK, and on balance we think it is likely he did change gloves. We find Allegation 22 not proved.

390. Patient O is another child of this family and DR Faghany has admitted Allegation 23 (a) – (c) which are factual and do not import any blameworthiness. The PCT does not pursue the balance of the allegations which import blame and in those circumstances we find the Allegation not proved as to the balance, including any sting of fault.

391. Patient P was another daughter of the family (now a teacher) who had a wisdom tooth extracted and alleged that one of its roots broke off during the operation. She brought the tooth with her. We find that the root probably did break during its extraction. We do not adopt the form of words in the charge that Dr Faghany “broke the tooth” because that may carry an inference of blame which is not necessarily the case. Such teeth may break during extraction without fault on the part of the dentist, and we note that Dr Kramer does not support the case that DR Faghany was to blame for the break. We therefore find Allegation 24 (c) (i) not proved.

392. We accept that part of the tooth was left in the patient’s jaw. We agree that Dr Kramer’s evidence [see paragraph 130 above] is strong on the need to carry out a careful assessment and radiograph in these circumstances. We find that had should have done so and therefore that Allegation 24 (c) (ii) is proved. We also find that he failed to advise Patient P if any further action was necessary: whether further action was in fact necessary cannot be know by us at this stage. We do not find that Dr Faghany failed to make his patient dentally fit, but since he did not

establish whether she was at further risk, we find he did expose her to unnecessary risk. In those respects we have found proved, we also find the allegations at 24 (d) proved.

393. We received quite a lot of evidence about Dr Faghany's alleged practice of "double dipping" the brush head attachment into a single pot of paste when cleaning the teeth of the family of patients L – P, and are satisfied that it occurred. Joy Bloyce introduced the use of tiny individual pots when she took up her post. We find that Allegation 25 is proved in its entirety.

394. We have already noted the unsatisfactory nature of the explanation given by Dr Faghany for the first time during his oral evidence, as to why he ceased to treat this family. He had already advanced a different and inconsistent reason in his witness statement. We are unable to believe that he was telling us the truth and although the reason why he ceased to accept the family as his patients was not germane to the specific allegations he faced, we were troubled that he appeared to have ready resort to a "spur of the moment" untruth about this, even when it was not critical.

<u>Patient Q</u>

395. The records for Patient Q were unusually complete, including Forms FP17DC. These records include pre-printed (but uncompleted) chards for full periodontal examinations. This tends to show (a) that Dr Faghany habitually did not perform charting for periodontal examinations and (b) that it is perfectly possible to retrieve these charts from the computer, despite their absence in many other cases.

396. Allegations 26-29 which concern this patient are admitted in their entirety by Dr Faghany, save for 29 (a) (iv) and (v) and we find them proved. We accept the patient's evidence and find that unnecessary pain and suffering was caused to the patient because he was not able to be treated on the first occasion.

<u>Patient R</u>

397. Patient R's account of the conversation when she attended Dr Faghany on 7 April 2008 is at variance with the contemporaneous note by Dr Faghany. He clearly charted [D/40F] that she had 3 wisdom teeth. His notes indicate findings of decay in UL8 and problems in UR8, in the very areas that could be expected in a patient with an over-erupted and unopposed upper molar. He booked her for the extraction of two of her wisdom teeth. Dr Faghany himself cannot therefore have believed she had no wisdom teeth, although we accept (having heard her evidence) that that is what Patient R remembers him telling her. We are not satisfied he told her she needed root canal treatment following the removal of the wisdom teeth. This is simply outwith any dental practice or experience. We think she misunderstood Dr Faghany. But the nature of the misunderstanding reflects alarmingly on the communication skills of Dr Faghany. We therefore find that Dr Faghany did fail to provide a proper explanation of the treatment Patient R required

398. We are also concerned that Dr Faghany advised a new patient on her treatment needs without taking any radiographs to establish the extent of caries. This is not a proper assessment.

399. With the exceptions set out at paragraph 398 above, we find Allegations 30 to 33 proved in their entirety.

Submission of Complaint Returns

400. Dr Faghany admitted Allegations 34 (failure to make a return of complaints in the year 2002/3 and untruthfully telling Mrs Quade that he had received no complaints) and 35, in their entirety, save for whether this amounted to "unsuitable". Similarly he admitted Allegation 36 save for whether his conduct was designed to mislead or was unsuitable. We have listened to his explanations of his conduct with care, and are unable to accept them. Around April 2003 there was no dispute with the PCT over underperformance of his Units of Dental Activity, nor any other reason of which we are aware which might in any sense explain or excuse intransigence, non-co-operation and lying to PCT officers.

401. Dr Faghany says he lacked the management skills to pull the information together. We do not accept that this is a sufficient excuse. There were several opportunities to put things right. Mrs Quade even offered to come to the surgery to show him how to do it. We are left with the impression that he simply resented what he regarded as officialdom trespassing on his time unnecessarily.

402. We noted that his explanation about being irritated at being called away from a patient to take a telephone call from Mrs Quade was not offered in his witness statement or indeed anywhere until he gave evidence at this hearing. We do not accept that it is true. The Panel members were independently satisfied that he made it up in order to provide an excusable or innocent explanation for his response on the telephone to Mrs Quade.

403. We find the outstanding allegations at 34 (e) (ii), 35 (a) (ii) and 36 (c) (ii) and (iii) to be proved.

Out of hours/ emergency treatment

404. Dr Faghany's terms of service required, as he admitted at the outset, that he provide reasonable arrangements to secure that a patient requiring prompt care or treatment will receive it as soon as appropriate from himself or another dentist. His admissions as to the case of Patient S acknowledges that he failed to receive such care, but put in issue whether Dr Faghany made arrangements for him to receive reasonable care: in light of the wording of his terms, this should clearly read as "reasonable" arrangements, and we have considered Allegation 37 (3) (iii) in that light. So far as Patient T was concerned (Allegation 37A), Dr Faghany made no admissions.

405. We refer to the evidence summary above and in particular to Dr Faghany's evidence at paragraphs 282-284, which we found evasive and inconsistent. Three different explanations have been given for his absence from the practice. We are inclined to concur with the suggestion put to him

in cross examination that he simply could not remember and was making up an explanation, or explanations.

406. We have no reason to doubt that Dr Faghany was at some point experiencing personal difficulties and occasional childcare problems. Many professionals experience similar problems. That is why a robust system for redirecting urgent patients needs to be put in place. The only one described to us is the provision of an emergency number which is in fact Dr Faghany's own mobile telephone. When he was taxed about how useful this was if he had fallen ill and was attending hospital, he said he usually gave the phone to another (un-named) dentist but on this occasion was unable to do so, and his phone would have been turned off in hospital. This was the first time Dr Faghany had mentioned this aspect of his emergency cover system. Even if true, this is not an adequate system. But we could not accept that Dr Faghany normally did give his mobile phone to another dentist to receive calls from emergency patients of his.

407. It is clear, and we find, that Patient S was not contacted or offered an alternative appointment, or an alternative contact with another dentist. In the circumstances we find that there were no reasonable or effective arrangements to provide his patients with treatment as soon as was appropriate, and to that extent find Allegation 37 (3) (iii) proved.

408. A clear account of Patient T's complaint was recorded by Mrs Quade. Dr Faghany was unable to offer any explanation as to why on 3 August 2007 his surgery was closed, with a notice on the door saying he was unable to open, and telephone callers received an answer phone response giving an out-of-hours number which was not available until after 5 pm. We have taken into account in considering the likelihood of this closure, our findings in respect of other similar closures, and find each part of allegation 37A to be proved.

Communications with Patients and Others

409. We refer to our finding of our own experience as to Dr Faghany's communication skills set out at paragraph 221 above. We have also taken into account our conclusions about communication failures with a number of patients who have failed to understand what findings he has made on examination, or what treatment he is proposing. These failures of communication in our view are often the explanation for apparent conflicts of evidence between Dr Faghany and his patients, noted above. We accept that in a number of cases it affected the patient's ability to provide informed consent to the treatment undertaken. We have found a number of his written communications with patients to be unprofessional, but this is more to do with the content and underlying purpose of the letters than with the standard of English. However we have taken into account and accept that officers of the PCT have at times found it difficult to understand him or communicate with him. Although Dr Faghany's English is imperfect, and on occasion he expresses himself in a way which is difficult to understand, especially when he talks fast or drops his voice, he is reasonably fluent in using professional language; we do not think his

current standard of communication in English makes him, in itself, unsuitable, nor is it in contravention of the Regulations. We have made the findings noted on the Schedule of Allegations in light of these conclusions.

Inappropriate Behaviour

410. The first group of allegations under this heading (39) concerned the allegations made by him in a letter to a patient that his former practice manager had stolen money from him. Dr Faghany's case is that the allegation is true. He has produced no evidence to support this allegation, and his explanations for the other things he wrote in the same letter (that a virus was deliberately introduced onto his practice computer by the same individual) is an inference based on the flimsiest of evidence. We have to consider whether this allegation was "without foundation" and we have seen no evidential foundation. We find the allegation proved in its entirety. Even if it was true or there was a strong suspicion that it was true, it had no place in a professional written response to a patient's complaint about the charges she had been asked to pay to Dr Faghany. It is one example of how Dr Faghany can develop a firm conviction that he has been hard done by, and allow it to affect his professional conduct.

411. We have already considered the case of Patient S and the different explanations offered to Mrs Quade (whose evidence is agreed) for his absence from the practice. When these were offered, the occasion was very recent and should have been fresh in Dr Faghany's memory. We find Allegation 40 proved in its entirety. So far as unsuitability is concerned was view this incident as part of a pattern of behaviour, rather than in isolation.

412. Allegations 41 and 41A concern his failure to inform the PCT about the GDC investigation and subsequent conviction for Serious Professional Misconduct. He admits the facts and consequential allegations such as breach of Regulations, inappropriate, unsatisfactory and unprofessional behaviour, but his case is that he was unaware of the obligation, and therefore denies it was designed to mislead. We have considered this carefully. We did not find his explanations about this in his own evidence at all convincing. Nor are we able to isolate it from our consideration of his other dealings with the PCT. We also note that Dr Faghany had experienced professional representation at the time of his appearance before the GDC. This was a serious incident, both in terms of the risk to his patient, and the professional consequences for him. He was already the subject of a PAG investigation and had been visited by Mr Greenwood and Dr Grew in September 2005, in the presence of his own representative, by the time he appeared in front of the GDC. We are satisfied that Dr Faghany did not want to make things any worse for himself and that his failure to inform the PCT was in fact designed to mislead it.

Inappropriate Allegations against the PCT

413. Sadly, the history of Dr Faghany's relations with the PCT involves his making a number of inappropriate allegations, as we find. One such

example is the intemperate and threatening letter quoted at paragraph 279 above. It contains an unsubtle threat to cause trouble by going to the press, unless the PCT makes an acceptable (and substantial) payment to him in settlement of his "claim" for compensation for discriminating against him. He repeated in evidence the accusation that the PCT had discriminated against himself or his employees. In June 2005 he threatened to bring discrimination claim against the PCT when it asked if he would take a language test, and he took up the cudgels again on behalf of his associate Dr Taghavi, on the basis of discrimination. Insofar as we can identify evidence relevant to this allegation, we cannot find any evidence to support these persistent allegations. It is true that the PCT had a series of concerns about this practice from a relatively early stage, and these concerns included communication skills, but that was on the basis of well-founded fears on account of the number and nature of patient complaints and their own experience. It was bound to pursue these concerns in the exercise of its statutory duties. There is no foundation which we are able to identify, to justify the suggestion that its actions were motivated by unlawful discriminatory attitudes. We therefore find allegation 42 proved, save that we are unable to see that this particular conduct was in itself contrary to good dental practice or designed to mislead, and therefore find those matters not proved.

414. Dr Faghany admits each and every element of Allegations 43 and 44 save that his actions and omissions were unsuitable (43 (3) (iii). We have concerns about the scope of the deficiencies identified, and their persistence, and on this basis find unsuitability in Allegation 43.

415. More worrying were the failures set out in Allegation 44 and admitted by Dr Faghany, including the absence of an emergency drugs kit until October 2008, despite being told about it long before that. We refer to the extensive evidence on this summarised above (including that of Dr Faghany's employees, which we accept) and share Dr Kramer's response to the emergence of information during the hearing as to when the emergency drugs kit was acquired, as "scary".

416. We have already indicated that we do not consider this forum the appropriate one to reach decisions about whether Dr Faghany has underperformed his contract with the PCT and if so, whether he produced figures which he knew to be incorrect. We therefore make no adjudication on Allegation 45.

Text Message Incident

417. Dr Faghany admits the facts of his bogus text message concerning Kathy Flegg's injury in a car accident, and his dishonest denial of that when he was asked whether he was responsible for it. He admits this was inappropriate and unprofessional but denies it was malicious or intended to cause offence or distress. He says it was an April Fool joke in bad taste, about which he became embarrassed. We refer to his evidence on this matter above. We do not accept he intended it simply as a joke. There was a history of rancour against Mrs Flegg, whom he blamed, at least in

part, for his financial dispute with the PCT. It is wholly foreseeable that one or both of the recipients of the text message would contact the PCT or Mrs Flegg to enquire about her wellbeing (as happened). In our judgement this was intended to cause hurt or distress. It is an example of how Dr Faghany's unshakeable conviction that other people have it in for him, can warp his judgement, and cause him to do irrational things. On any view this conduct was malicious. We find Allegations 46 (2) (iv) and (v) proved.

NHS (General Dental Services) Regulations 2005

418. Dr Faghany admits all the elements of Allegation 47, save for (8) (a) [that he required NHS patients to pay a deposit of £50 when registering with him] and (9) (vi) [that his actions were designed to mislead]. As to the first point, the nuance is that Dr Faghany says his policy was to charge a deposit against intended treatment, but not when they first registered. We have heard from or read the evidence of several NHS patients who state that they were asked to pay a deposit of £50 on registering, and we accept this evidence, including in cases where the payment was made well before any treatment was given: see for example Patient Y, whose bank statement [D/89A] shows a payment made when he registered and long before an examination was done.

419. The deposit is in excess of any charge for Band 1 or Band 2 treatment which is the only treatment likely to arise on a first appointment. It would therefore produce in almost every case a credit in favour of the patient, which should either be repaid (and there did not seem to be a regular system for doing so) or carried over to further treatment. We did not see evidence that he obtained patient consent to carry over any balance as a further deposit against possible future treatment. In the case of Patient Y, despite his raising a complaint with the PCT, the balance after deducting his NHS charge was not refunded to him by Dr Faghany's practice. Instead he was asked to write in claiming it, and because he was not good at writing letters, he never claimed it. This illustrates one of the mischiefs of the system used by Dr Faghany, quite apart from it being contrary to the Regulations. On the evidence available, the only patients who received repayment of sums due to them were those who complained. Far from there being an effective system for monitoring balances of deposits due to patients, we have seen no evidence that such a system existed. In some respects the reverse applied. One patient who had paid a deposit and was then asked to pay the full charge for his NHS treatment was told that the computer showed up no record of the deposit payment. In the matter of taking payment from NHS patients, Dr Faghany has shown a cavalier attitude at best. Even if he was unaware that deposit taking was contrary to the Regulations (an excuse which we cannot accept) his "system" and actions were contrary to straightforward dealing with his NHS patients.

Co-operation with investigations as required by the General Dental Services Contracts Regulations 2005

420. As invited by Counsel, we have reviewed the correspondence between Dr Faghany and the PCT or the PAG. A part of it is referred to in the review of the evidence above. We were also asked to consider the meetings held with Dr Faghany from 2005 onwards. In this respect we have focused on his dealings with PCT officers and with dental professionals who were appointed to assess or provide reports on him. It is inescapable that Dr Faghany has prevaricated or delayed in responding to perfectly proper enquiries in correspondence, given responses which sidestep the question and in turn raise questions or allegations of his own, failed to provide information which he is required to do, or implement changes in the administration of his practice or the provision of health and safety measures, or in effecting improvements to his clinical practice in areas such as record keeping or making impressions. If and when he has made the changes or offered the information, it is often at the last moment and in our judgement either for form's sake (to keep people happy with the minimum) or when his own professional position is in peril (for example when a PCT hearing was pending).

421. Of considerable concern to us in conducting this hearing was the paucity of patient records produced by Dr Faghany. Despite repeated requests from the PCT to produce records relating to those patients who complained of their treatment, many of the records were produced at a very late stage. Many were and remained incomplete. Even during the course of the hearing Dr Faghany was producing additional records in a seemingly random way. We note that Dr Faghany's difficulty in co-operating with the PCT seemed to extend to co-operating with the Directions issued by us some months before the substantive hearing (by failing to produce patient records). It was therefore surprising that his Practice Manager Ms Lawrence told us that she had not been asked to find patient records (see paragraph 321 above). This demonstrates a significant lack of commitment by Dr Faghany to the process of investigation undertaken by the PCT and an astonishing lack of insight into the need to produce evidence and in particular patient records.

422. We find Allegation 49 proved in its entirety.

<u>Crown Technique</u>

423. Dr Faghany admitted the entirety of Allegation 50.We heard multiple examples of his poor technique (in particular the taking of impressions) during the course of the evidence and noted that this was a persistent feature of his clinical failings from the beginning and until he was suspended in consequence of the PCT decision under appeal. He failed to take any opportunity to rectify the shortcomings which were pointed out to him (not least by the lab technicians with whom he worked) or to undertake re-education in any way which effected an adequate improvement. The statements of Mr Peckham and Mr Milborn are truly shocking indictments of basic dental skill. We were directed by Mr Partridge to a more benign view of the quality of his impressions from a different lab technician doing work for him more recently. We remain

unpersuaded that his technique is adequate to provide an acceptable services to NHS patients requiring crowns.

Patient U

424. Dr Faghany admitted all the elements of Allegation 51 save for parts (15) and (16) which were not pursued by the PCT. His management of this patient is an example of the persistence of deficiencies in his recent practice. We accept the opinion of Dr Kramer that the management of this patient represents a high level of incompetence. We also noted that the practice of prescribing more than one course of antibiotics in succession (on this occasion without seeing the patient) still persisted. We were concerned that he appeared to be suggesting at one stage that he was trying to save the nerve in the patient's tooth, but he eventually accepted that this could not have been his intention.

Patient V

425. Dr Faghany did not admit the factual root of Allegation 51. Save that he may not have said that the infection was "of the tooth" we find those matters proved. We have looked at the records produced by Dr Faghany at D/154-159, as well as A/64, in reaching our conclusions.

426. He also denies paragraph (1) of Allegation 52 (saying she needed to pay in advance for her treatment and charging her in the region of £43). Dr Faghany's patient produced a computer printout of the Patient Account for Patient V (D/158-159). It is not clear why this was possible in this case and not others. These and the patient records appear to us to be consistent with Dr Faghany's explanation, that two payments were raised because there were two separate courses of treatment (5 February and 23 June 2008). This could justify a further charge. It appeared one course was finished exactly 2 months before the next. In light of these conclusions we find Allegation 52 (1) not proved.

427. However we note the admission to 52 (5) that he told the patient that the reason for a further payment was that this was a new financial year, which was not true and could not justify the further charge. We therefore find that in this respect the consequential allegations at 52 (7) are proved. This is another example of his casual regard for probity.

Patient W

428. Patient W was the lady who sought explanation of the charges she was being asked to pay, did not understand she had was being provided with a white filling as private treatment, and was told not to come back by Dr Faghany. He admitted only (1), (8) and (9) of Allegation 53. We note that the contemporaneous documents show that Dr Faghany planned to do root canal treatment. His handwriting also refers to "comp" [composite, i.e. a "white" filling] and the charge of £145 is written against the heading "permanent fillings and sealant restoration". This supports his case that his proposed treatment was root canal treatment and a white filling, but does not support his retrospective note made on 16 June 2008 [D/106D], after he told Patient W not to come back, that he had offered her the option of a crown on the NHS or a composite filling done privately. We are not

satisfied that Dr Faghany ever offered Patient W a crown on the NHS. On her account no such offer was made. There is a reasonable clinical justification for the composite filling option, namely that a composite filling is likely to prove a stronger bond to hold the tooth together.

429. But its benefits, and the alternatives, need to be explained before getting a patient to “sign up” to a treatment which is more expensive for her, and is not going to be provided by Dr Faghany on the NHS. We found Patient W to be an honest witness who was doing her best to give an accurate recollection of events. She was plainly baffled and mortified by her experience at the hands of Dr Faghany and we accept that she understood (or misunderstood) that Dr Faghany was going to provide the treatment she described to us as an NHS patient, and therefore for the lower of the two figures written on form FP17DC. We are satisfied that Dr Faghany gave an inadequate, and as it turned out, misunderstood, explanation of the options available, and got this patient to have a composite or white filling when she could have had a silver one. It is unlikely, in our view, that he tried to explain the possible clinical advantage of using a white filling which we identify above. We accept her evidence that if she had appreciated that the latter was available on the NHS and the former was not, she would have opted for a silver one, not least because it was some way back in her mouth.

430. We have been driven to conclude that the financial motive played some part in the conduct of Dr Faghany. He was not unhappy to offer the patient an option which would produce a bigger fee for him. The fact that he later waived part of this fee when telling the patient not to come back does not affect or view of his conduct at the stage when he was planning the treatment.

431. Whatever the cause of the misunderstanding, the patient ought to have received a civil and professional explanation of the charges when she raised a perfectly civil and appropriate query. Instead, Patient W was firstly treated brusquely in the way she has described and which we accept, and on the second occasion was dismissed from the practice she had attended for several years, in a way she found upsetting and humiliating, by way of messages relayed via the receptionist’s computer screen, and in the presence of other waiting patients. Patient W wrote a long letter of complaint which again merited a substantive response. Instead Dr Faghany told the Practice Manager to send her a copy of her records, which she received together with a four line letter (albeit apologising for any distress caused) from the Practice Manager. Any apology must have sounded hollow when Patient W read her records in which Dr Faghany had written a long retrospective note on 16 June 2008 [D/106D] which was unflattering about Patient W and included the following:

> “*I send them mesg that she was informed last week and as I was busy & tired of her I told them not to charge her and tell her to find another dentist. I said that I will send her a letter to her and pct and*

dereg her from our list. ***She looks like those pat that will do every thing to have some free treat****."* [Emphasis added]

432. In the light of our general conclusions we find that all the elements of Allegation 53 are proved except fro (12) (v) (exposing his patient to unnecessary risk).

Patients X and Y

433. Patients X and Y are both patients who were (on their accounts) charged a £50 registration fee.

434. In the case of X there is an apparently full and careful contemporaneous file note of his complaint at A/73. That complaint is consistent with other complaints about charging a fee which we have found proved. Dr Faghany admitted in cross examination that these events could have happened. We find Allegation 54 proved in its entirety.

435. We have briefly considered Patient Y's case above at paragraph 415. His bank statement demonstrates that the £50 payment was made long before any examination was done and also before it could be known whether he would require any treatment. The deposit charged exceeds the prescribed charges for treatment under Bands 1 or 2 at that time, and this treatment is the treatment likely to arise on a first examination. The mischief of having a poor system for recording the payment of these deposits, and no system for repaying the balance after treatment unless the patient asked for it, is addressed above. We have noted that Patient Y never got his refund because he was told he would have to write and claim it, and he is not good at writing letters.

436. In light of our findings as to the several examples of demanding a deposit on registration, it follows that Dr Faghany's original case, namely that no fee was raised before an examination had happened, is untrue. Whether this was a deliberate lie, or the product of a chaotic system in which he gave inadequate instructions to his staff and did not monitor what was happening, it is completely unacceptable, and appears to have gone on for some years. It cannot be known how much money was retained by way of unused balances of these deposits.

437. We find Allegations 54 and 55 proved in their entirety.

438. Dr Faghany admitted parts of Allegation 56 relating to this patient, including that he replaced a broken crown and carried out x-rays, and assured her that nothing was wrong and that the toothache she was experiencing was due to receding gums. He recommended rubbing toothpaste on the gums. Two dentists subsequently found extensive decay requiring work, which he had not identified. Dr Faghany accepts that the pathologies listed by Dr Nazki in his letter were in fact then present, but says the patient had not been to see him for some months and they might have developed in that period. On a balance of probabilities we are satisfied that these pathologies (even if not so fully advanced) should have been evident on a full and competent examination when the patient was seen by Dr Faghany.

439. None of the radiographs taken by Dr Faghany are available and so Dr Kramer has not been able to comment on what they show. No satisfactory explanation has been given by Dr Faghany for not producing them. He asserted in a later letter to the patient that he had sent the x-rays to Dental Protection. In that event they exist, were available, and should have been produced. He has made no attempt to explain what steps he took to recover them. However Dr Kramer also says there was no proper record of Dr Faghany's examination findings, and no record of the three radiographs. We cannot know what these x-rays showed, or whether they included all the oral areas which were indicated for investigation. We accept Dr Kramer's opinion that if these pathologies were present and Dr Faghany failed to diagnose them or offer treatment to the patient, he was in breach of his duty of care to her. In our view this episode demonstrates substandard clinical care.

440. We have considered Dr Faghany's letter of response to the complaint of this patient. He accepts the findings of Dr Nazki (whom he refers to throughout as Mr Nazdi) but says "*I was not able to identify it, and that is without checking my x-rays again".* Thus the unavailability of his x-rays was a prominent part of his explanation and excuse even at that stage. He also said: "*When I told you that there was nothing wrong with your mouth, I think if you remember exactly what I said, it was that there was nothing wrong that I could detect".* This is a nuanced use of English which implies there was nothing to be detected on a normal and competent examination. We are satisfied that this is not the case. In light of our conclusions about Dr Faghany's honesty and probity generally, we have given careful consideration to whether the PCT has proved that his actions in dealing with the complaint were dishonest and designed to mislead. We have concluded that in this case we cannot be so satisfied.

441. We therefore find Allegation 56 to be proved except for (10) (iii) and (iv).

Matters concerning Records and the Practice Computer

442. Dr Faghany's record keeping is at best patchy and inconsistent, at worst so defective that it provides no adequate evidence of examinations, findings, radiographs, and (until more recently) the payment of fees by patients. Moreover he has been unable or unwilling to produce complete records in respect of the named patients whose treatment has been considered by us. We cannot accept that it has not been possible, by the exercise of reasonable diligence, to produce these records, and indeed Dr Faghany did produce significant additional records during the hearing when it suited him to do so.

443. There is abundant evidence that Dr Faghany did not trouble to do Basic Periodontal Examinations of his patients, including those he found to be suffering periodontal problems, or to record them on the standard charts. We regard this as basic. Charting the pockets on successive examinations to monitor the baseline of the condition and the progress of treatment is a necessary part of periodontal management. We note that Dr

Faghany had attended courses on (among other things) periodontal disease. If so, he does not seem to have put teaching into practice.

444. The lack of proper recording of x-rays is criticised by Dr Kramer in relation to a number of cases he examined, and we adopt his criticism. Again, this is basic to a properly conducted dental practice.

445. The system of record retention and storage described to us is also wholly inadequate, and makes it difficult, or sometimes impossible, for Dr Faghany or any other dentist to access a full or continuous dental history of the patient. It is only now, some time into the employment of Ms Lawrence, that some attempt is being made to order and put onto the computer the paper records which are stored in a shed in the garden of the Practice premises.

446. We heard at length about Dr Faghany's difficulties with successive computers [see paragraphs 249-255 above]. We accept that some problems were encountered with a hard disk, and indeed an engineer's invoice supports that. However, the later repetitions, when Dr Faghany chose to take his hard disk to a local computer shop rather than use the Kodak engineer with whom he had a maintenance contract, is illogical, and the finding by the manufacturer [E/5/12/document 3] that the drive door had been opened before and there were 2 big rings on the top surface, one of the m right on the SA, so that the drive was "a write-off" is bizarre and something Dr Faghany was unable to explain.

447. Whether Dr Faghany was the victim of a very unfortunate series of computer failures or not, computer failure is something which every professional undertaking must take into account. It is rudimentary that reliable back-up of data should be provided against the risk that it happens. Dr Faghany made, in our judgement, no proper provision to do this. The efforts which has described to us are amateurish, incompetent and the product of an attitude of mind that it did not really matter. The provider of his computer system is a multi-national computer company which supplies its software to numerous dental practices. In our view Dr Faghany made no serious attempt to obtain and operate adequate and reliable back-up systems through their assistance. Nor has he explained why he did not ask Kodak to retrieve the data which he believed had been stored on DVDs in respect of a computer which had crashed.

Conclusions: (1) Unsuitability and (2) Efficiency

(1) Unsuitability

448. There are a number of factors bearing on the question of whether Dr Faghany is suitable to remain on the Performers List.

Dishonesty

449. Dr Faghany agreed with Mr Booth that it is the duty of every dental practitioner to act honestly at all times, and that any attempt to mislead a patient or those with whom he had professional dealings would be wholly

inconsistent with that duty. He accepted, as he was in our view bound to do, that he had a duty to be trustworthy and to act honestly and fairly.

450. We have found that dishonesty has recurred on a number of occasions over many years of NHS practice. It has occurred in the context of justifying clinical judgements, such as his prescribing error with Patient A, dealing with patient complaints, and dealing with the officers of the PCT. It has occurred in circumstances where the issue is serious such as the Diazepam overdose, and where the issue is apparently minor, such as being chased up by the PCT to make a return of complaints.

451. There is a disturbing theme of ready recourse to a dishonest explanation to deflect criticism or problems, without taking any serious effort to investigate and confront the deficiencies in his practice, both clinical and administrative.

452. He has been given many opportunities over the years to think again. For the purpose of this hearing we have to consider whether his dishonesty, some of which (such as the denial of the distressing text message) is admitted, is the result of deep seated animosities or characteristics on his part, which are likely be a continuing feature of his performance on the List. Sadly, we are driven to the conclusion that Dr F was prepared to persist in lies when giving his evidence to us. His explanations in relation to the Diazepam were incredible. It is one thing to tell a lie out of embarrassment at an apparently incompetent prescribing dosage. But if that is the case it is a long time ago now and he remains unwilling to come clean. We also find that some or all of the inconsistent explanations for the incidents of failure to attend his surgery during normal opening hours or to arrange appropriate out of hours or emergency treatment are untruthful. It is undoubtedly the case that Dr Faghany had family difficulties to cope with when his marriage broke down, but that is not and cannot be a reason for not having arrangements in place to meet the needs of his patients. We cannot be sure which if any of the explanations he has tendered is true. There are other examples of lack of probity set out above, and which we have taken into account.

453. We are driven to the conclusion that Dr F has lied to us and remains willing to lie in his own interests.

Willingness to implement necessary changes or improvements

454. We also find that Dr Faghany has been unwilling to implement advice or help tendered to him. If he has acted on advice it has been tardy and sometimes simply because he is about to face some further scrutiny of his practice. Many of the policies and protocols produced by Dr F at the hearing were undated or carried the date March 2007, long after they should have been introduced. Patient welfare is affected. We agree with Dr Kramer that the absence of an emergency drugs kit in the practice until 20 October 2008, despite being warned that he should have one a long time before that, was "scary". Even after equipment was belatedly acquired, the arrangements for accessing it within the practice suggested

he was willing to comply with the form of the requirement but not the substance: he appears to have treated it as an irksome "box-ticking" exercise.

455. Over several years he was offered help by his PCT in improving his compliance with NHS practice requirements and bringing his service to patients up to standard. For reasons which are not totally clear to us, but may have something to do with his unwillingness to be challenged or corrected, and certainly have much to do with resentment over contractual or financing disputes, he has ignored or responded tardily to many important issues about which he had received advice.

456. This persisting pattern indicates a flawed professional attitude. Where he is working within the constraints of the NHS, it made his relationship with the PCT potentially difficult, and is likely to have contributed to his (admitted) lack of co-operation with PCT officers who were simply carrying out their statutory duties.

The range of failings in clinical skills and practice management

457. The evidence admitted or found proved demonstrates a wide range of deficiencies in his practice. It is difficult to identify core areas of practice where some deficiency has not been identified. The evidence we received as to any degree of improvement was unsatisfactory. For example a letter from a lab technician, stating that he had found Dr Faghany's dental impressions satisfactory since 2005, contrasts with the admitted criticisms of two previous technicians. But there was no independent and coherent evidence of improvement. We note that complaints continued to be received by the PCT at a relatively high rate until June 2008 [see A/73]. This despite his claims for attendance at a number of relevant courses over the years [see for example B/4/ 180 – 284].

458. We have further found that Dr Faghany's communication skills with his patients and in particular in dealing with complaints, is poor. This is not simply, or perhaps at all, a matter of how well he speaks or understands English. It is a matter of his attitude and insight. We refer to our comments at the beginning of the section of this decision dealing with his evidence.

459. We therefore conclude that on grounds of probity, competence (including the operation of his practice) and dealing with patients and the PCT, Dr Faghany is unsuitable to be included in the Performers List.

460. It follows that removal is the only course open, and the question of contingent removal does not arise.

(2) Efficiency and contingent removal

461. The adverse findings we have made [see Schedule] mean, in our judgement, that Dr Faghany's inclusion in the List would prejudice the efficient of the services provided by those on the List. There is inevitably a degree of overlap between the findings we have taken into account in relation to unsuitability and those we have considered in relation to efficiency.

462. In considering efficiency, we have taken into account our findings which relate to clinical competence, compliance with the various Regulations governing NHS dentistry, poor and sometimes incompetent practice administration, Dr Faghany's behaviour towards patient who complained, and his behaviour and attitude towards the PCT and its officers.

463. In the event that we are wrong in our conclusion about unsuitability we have considered the question of a possible contingent removal.

464. It has been urged on us that deficiencies have been addressed and the public can be adequately protected by appropriate conditions so that contingent removal should be considered. Taken individually a number of these deficiencies may seem either minor or remediable. However there are also serious deficiencies and the range is great. We cannot be satisfied he is equipped to remedy these. Moreover we are unable to agree that the deficiencies have been sufficiently addressed or that Dr Faghany has persuaded us that he is self-motivated to maintain any improvements he has achieved and continue to implement improvements. Whenever he faces a crisis such as a hearing or an inspection there is a flurry of activity. But in between times the improvements from a woefully inadequate starting point have been patchy and inadequate.

465. Such change as he has made have been made under the imminent threat of action in these proceedings. We are satisfied that Dr Faghany lacks the insight and self-motivation to achieve and sustain the necessary degree of change and improvement.

466. In our judgement the total picture is too serious to be dealt with by contingent removal and can only be dealt with in a way which sufficiently protects the public by removal from the List. In any event we do not think it would not be practicable to formulate satisfactory conditions which adequately protect the public from the wide range of problems identified by this case, or to police them adequately.

467. Lastly on the question of possible conditions, we take the view that the PCT would have unreasonable burden in monitoring conditions and we bear in mind his history of non-co-operation and the state of relations between officers of the PCT and Dr F. If relations have not broken down completely between Dr Faghany and the PCT as a whole, they have certainly broken down between him and key officers with whom he would have to deal. Moreover it became apparent in the course of this hearing that the PCT as a whole simply does not trust Dr Faghany. It would be wishful thinking that that loss of trust might be repaired.

468. We therefore dismiss this appeal and direct that Dr Faghany be removed from the PCT's Performers' List.

469. We direct that a copy of this decision be sent to the persons or bodies set out at Rule 47 of the Procedural Rules, and in the case of Rule 47 (1) (e) that shall be the Registrar of the General Dental Council. The parties are referred to the accompanying letter setting out their rights of appeal.

National Disqualification

470. We are obliged to consider National Disqualification in light of our findings and conclusions. We are provisionally minded to do so, having regard to the fact that (with the exception of the loss of trust between Dr Faghany and this PCT) the matters which we have found proved against him are not peculiar to this locality, and to the range and seriousness of the deficiencies we have found. We invite the parties to make submissions in writing within 28 days of receiving this decision, as to whether we should make such an order or not. They are of course entitled to an oral hearing should they wish. Any application for an oral hearing should be made at the same time.

Dated 4th February 2010

Signed

Duncan Pratt (Chair of the Panel)