

**IN THE APPEAL OF:-**

**DR M-R KARLSSON (GDC Registration No 75726)**

**Appellant**

**-and-**

**NORTH DEVON PRIMARY CARE TRUST**

**Respondent**

---

**PANEL'S DETERMINATION**

---

**Introduction**

This is an Appeal by Dr M-R Karlsson, the Appellant, against her Contingent Removal from the Dental Performers List (DPL) by the North Devon Primary Care Trust (the Respondent PCT) dated 24<sup>th</sup> May 2006 by a Notice of Appeal dated 12<sup>th</sup> June 2006. This appeal is by way of a re-hearing.

This case has been adjourned on a number of occasions (5) since it was first listed on 12<sup>th</sup> September 2006. The principal reason was because of Dr Karlsson's ill-health. The culmination of much correspondence between the Appellant, the Respondent and the FHSAA, combined with the interim Orders and Directions of this Panel over the last 18 months, has been that both Appellant (in her letter of 22<sup>nd</sup> January 2008 and the Respondent have agreed to have this matter heard on the papers only, with no witnesses or representatives present, as permitted under Rule 38(1) of the FHSAA (Procedure) Rules 2001. This mode of disposal had originally been suggested by the Appellant in June 2006 (pages A196-197) but the Respondent at that time would not agree to it (page A194). Proceeding in this way requires both parties' consent. The Respondent agreed in its position statement of the 10<sup>th</sup> January 2008.

To that end, the Panel has before it, the following:-

- (1) Pages A1–A335 – the Appellant's papers including the report of Mr C.J.R Kettler, the Appellant's expert dental and Orthodontic Practitioner and the reports of Mr C. Hinman, the Respondent's expert dental and orthodontic adviser at pages A74 – A89;
- (2) A letter dated 12<sup>th</sup> July 2007 from Mr U Karlsson, the Appellant's husband, to Mr Kettler;
- (3) The Respondent's papers at pages R1 – R39;

- (4) The Respondent's position statement dated 10<sup>th</sup> January 2008;
- (5) The Respondent's final statement dated 4<sup>th</sup> March 2008;
- (6) The 12<sup>th</sup> March 2008 letter from the Appellant's husband.

It should be noted that the Appellant's husband has Power of Attorney to act for his wife, who remains unwell, but he states that he has taken full instructions from her, in representing her, in writing, for this meeting. The Panel accepts this and that he is her representative for the purpose of this Appeal.

### **The Law**

The Panel directs itself on the law and in particular, that this case is an "efficiency case" as defined under s.49F(1) and (2) of the National Health Service Act 1977 as amended by the Health & Social Care Act 2001 as follows:-

"(1) if it appears to a Health Authority that any of the conditions set out in ss.2 and 2(4) is established in relation to a person included in any of the following prepared by them - ...

- (c) a list of dental practitioners and dental corporations undertaking to provide general dental services, ... they may ... decide to remove him from that list.

(2) the first condition is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide (and such a case is referred to in this group of sections as "an efficiency case")

The Panel further noted that the Panel's powers under Regulation 15(3) of the NHS Performers List Regulations 2004 are that the Panel may make any decision which the PCT could have made at the time of its original decision. This is also shown in s.49(M)(4) of the Acts as stated above:-

"(4) on an appeal, the FHSAA may make any decision which the Health Authority could have made"

Under s.49(F)(1) of the Acts as stated above, the Panel may remove the Appellant from the Dental Performers' List. Alternatively, under s.49(G)(1) and (2)(a) of the Acts, the Panel may contingently remove the Appellant from the Dental Performers' List with conditions. These may be the same conditions as are presently imposed or may be different ones. In order to comply with those conditions, the practitioner's terms of service may also be varied under s.49(G)(4) of the Acts:-

"s.49(G) contingent removal

- (1) In an efficiency case ... the Health Authority may, instead of deciding to remove a practitioner from their list, decide to remove him contingently

- (2) If they so decide, they must impose such conditions as they may decide on his inclusion in the list with a view to:-
  - (a) removing any prejudice to the efficiency of the services in question (in an efficiency case) ...
- (4) The Health Authority may decide to vary the conditions of service of the person concerned for the purposes of or in connection with the imposition of any conditions by virtue of this section”

Further, the Panel reminded itself that it also could remove the conditions if it so wished, so as to remove the contingent removal sanction which would have been the same as if the PCT had not imposed any conditions and/or decided not to contingently remove the Appellant and therefore this would allow the Appellant to return to unrestricted practice. This would mean that the Panel would find that the Appeal would be upheld.

Furthermore, the Panel reminded itself that it has the power to nationally disqualify the Appellant as an additional remit under s.49(N) of the Acts as follows:-

“(1) If the FHSAA removes the practitioner from a list, it may also decide to disqualify him from inclusion in – (a) all lists referred to in s.49(F)(1)(c) prepared by all Health Authorities; (b) all supplementary lists prepared by all Health Authorities and (c) all service lists prepared by Health Authorities under s.28(D)(a) above or under s.8(Z)(a) of the National Health Service (Primary Care) Act 1997 ... or any list corresponding to a services list prepared by any health authority by virtue of Regulations made under s.41 of the Health & Social Care Act 2000 Or only from inclusion in one or more descriptions of such lists prepared by all Health Authorities, the description being specified by the FHSAA in its decision

(2) A decision by the FHSAA to do what is mentioned in ss.1 is referred to in this section as the imposition of a national disqualification”

The Panel reminded itself that the imposition of a national disqualification can only be made *in addition* to any decision to remove the Appellant from the Dental Performers’ List rather than to decide to continue the contingent removal of her.

The Panel also reminded itself of the powers of the Health Authority should it so decide if the Panel decides to allow the contingent removal to continue and as embodied in s.49(M)(5)(a) and (b) which is as follows:-

- “(5) if the FHSAA decides to remove the practitioner contingently –
  - (a) The Health Authority and the practitioner may each apply to the FHSAA for the conditions imposed on the practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked and;
  - (b) The Health Authority may remove him from their list if they determine that he has failed to comply with a condition”

Further, under r.41(4)(a)(b) of the FHSAA (Procedure) Rules 2001, the Panel may direct that the identity of a witness other than the party may if the interests of justice require it, not be disclosed to the public. Also, where in the Panel's opinion if it is strictly necessary some part of the hearing can be held in private. The Panel were sensitive to the fact that the reports of Mr Hinman and Mr Kettler both, in parts, refer to patient's full names. The Panel did not disclose these full names in public and recommends that the reports should hereafter be anonymised by a redaction by the FHSAA unless the documentation is disposed of securely after this hearing.

The Panel reminded itself that the burden of proving the Appeal is on the Appellant and that it is on the balance of probability (civil standard).

The Panel further reminded itself of the fact that Mr Kettler had not examined the patients or seen the record cards, study models, radiographs or documents in relation to the first three cases and yet he commented upon them, albeit in a cautionary way. Nevertheless, the Panel will be aware that the amount of weight it should give to his conclusion on this at his paragraph 74 (page A311) should be proportionate to the level of information upon which he could base any informed comment.

The Panel further reminded itself that it would not have the opportunity to hear witnesses, give evidence or be tested in cross-examination or by questions from the Panel, as this was a hearing on the papers. The Panel gave weight to this factor and was vigilant not to surmise any circumstances, but to keep to the written evidence in the bundle only in its considerations and decisions.

The Panel also reminded itself that, in reaching its decisions, it must pay regard to the principle of proportionality which is, balancing on the one side public protection and the wider public interests, being public confidence in the profession and in the regulatory process as well as the upholding and maintaining of the standards of the profession, against, on the other side, the Appellant's interests both in a fair hearing and in being able to practice whether restricted or unrestricted in her chosen profession.

In reaching its decision, the Panel has read all the documentation and has exercised the principle of proportionality.

#### Additional matters

(1) Dental Protection Limited acted for the Appellant for some time in this Appeal, but have been unable to send legal representation or provide documentary representation to this Hearing since December 2007 because of difficulties experienced by those at Dental Protection Limited in obtaining instruction from the Appellant and in the Appellant and her husband accepting advice (see pages A228 and A240). This situation came to a climax after Dental Protection Limited, at the time on behalf of the Appellant, instructed an expert to meet the allegations set out in the two reports from Mr Hinman;

(2) This expert, Mr C.J.R Kettler, reported on the 27<sup>th</sup> March 2007 (pages A303 to A311). The Appellant's husband, acting on her behalf, took exception to parts of Mr Kettler's report and this is shown at pages A225 to A226; A274 to A276 with a critique of it at pages A313 to A315. In addition, latterly, in his letter of 10<sup>th</sup> February

2008, the Appellant's husband has accused Dental Protection Limited and Mr Kettler of fraudulently producing false and misleading information "*in order to discredit my wife*" (page A226 and page A274);

(3) He has also accused Mr Hinman, Dr Diamond, Mr Robinson PCT Panel Chair, Mr Ralph Shipway of Radcliffe's Le Brasseurs, Solicitors acting for Dental Protection Limited and Mr McLennan and Dr Moore, either together or separately, of discrimination "*bullying*", deliberate and defamatory behaviour in mounting misleading the "*false accusations*" against his wife (pages A268 to A277 and A288 to A296);

(4) In addition, Mr Karlsson berated Mr Kettler in his letter to Mr Kettler dated 12<sup>th</sup> July 2007, where Mr Karlsson accused Mr Kettler of providing false information about the three cases and of "*degrading*" behaviour directed personally to the Appellant;

(5) It is not clear how the Appellant has, generally, approached Mr Kettler's conclusion. However, the Panel notes that Mr Kettler concluded in the Appellant's favour as follows:-

*"I have seen nothing that causes me to believe that Dr Marja Ritta-Karlsson is a danger to her patients who need to be protected from her continuing to practice orthodontics"*

(6) Finally, the Appellant produced references at pages A320, A321, A322 and A327 in support of her good practice.

Thus, in reaching its conclusion today, the Panel also took into account that it must determine if the test of being prejudicial to the efficiency of the provision of dental services includes if a practitioner is a danger to the public, in light of Mr Kettler's conclusion on that matter.

## **History**

Following a hearing on 4<sup>th</sup> April 2006 (this had already been adjourned at the Appellant's request on the 28<sup>th</sup> February 2006) the Respondent's PCT Panel (Performance Review Panel) determined that it intended to contingently remove the Appellant's name from the PCT Dental Performers' List on the grounds of efficiency under ss.49(F)(2) and 49(G)(1) and (2) of the National Health Service Act 1977, as amended by the Health and Social Care Act 2001 (the Acts) and Regulations 12(1) and (2) of the NHS (Performers List) Regulations 2004 (the Performers Regulations). As the Appellant could not attend that hearing on the 4<sup>th</sup> April 2006 due to ill-health, on the 19<sup>th</sup> April 2006 the Respondent PCT wrote to the Appellant informing her of its intention (page A151) and invited her to meet with the PCT to discuss this further. In this letter, the PCT confirmed its recommendation that the Appellant could continue with her general dental work but ceased orthodontic work and would require her to undertake further training in orthodontics.

The PCT's Panel had heard submissions from Dr Alison Diamond, Director of Clinical Governance at the Respondent PCT, who presented the concerns of those involved in the Appellant's case, as Investigating Officer. Initially, the concerns were raised on the 10<sup>th</sup> December 2003 by two Consultants at the North Devon District Hospital in Barnstaple – Dr M.B Moore, Consultant Orthodontist and Mr A.S McLennan, Consultant Oral and Maxillo Facial Surgeon (pages A15 – A19).

These concerns related to three cases in which the Appellant, respectively allegedly, inappropriately referred a patient with inadequate radiography, inappropriately advised extraction contrary to the NICE Guidelines and incorrectly treated a severe malocclusion with incomplete liaison with the Hospital's Orthodontic Department [page A40]. At all times the Appellant was working as an independent contractor at the Northam Dental Centre, Bideford, Devon.

After initially meeting with the Appellant and her representative on the 27<sup>th</sup> February 2004 (pages A47-A49), an action plan had been produced and set out in a letter (page A45) dated 4<sup>th</sup> May 2004. This included the Appellant meeting with Dr Moore at the Hospital to explore the use of the Consultant Orthodontic Service, an Audit to be carried out with the Dental Practice Board (DPB) and latterly called the Business Services Agency (BSA), using the PAR (Peer Assessment Rating) system, the Appellant to attend an appropriate Orthodontic course to promote and develop her expertise and a visit by the Appellant to the Exeter Orthodontic Service.

The Appellant stated in her letter dated 11<sup>th</sup> November 2004 (page A52) that she would not comply with the action points, except she *would* undertake an update in Orthodontics in Spring 2005, but that had not taken place (and still has not).

After the DPB audited the Appellant's work, Mr Chris Hinman (Senior Dental Adviser for Orthodontics at the DPB) reported on an Audit on the three initial cases as well as 10 other cases in two reports, dated respectively, 15<sup>th</sup> and 21<sup>st</sup> December 2005 [pages A74 – A89].

The first report on the three cases expressed concern relating to the Appellant's diagnostic skills, in particular, her inability to assess and appreciate the significance of skeletal discrepancy and its aetiology.

Mr Hinman's second report addressed a sample of 10 completed cases, concluded three as "*highly satisfactory*", three as "*satisfactory but with reservations*", three as "*unsatisfactory*" and one case as "*with missing or inconsistent information*". Again, Mr Hinman concluded that the Appellant did not appear capable of reliably diagnosing more challenging cases. Some minor inaccuracies in his reports were identified and rectified by a witness statement (Mr Hinman's at page R35) and these were known by the PCT Panel which noted that the errors had not invalidated Mr Hinman's conclusions.

After notifying the Appellant by letter on the 19<sup>th</sup> April 2006 (page A151) the PCT met with her husband on 8<sup>th</sup> May 2006 in order to negotiate the recommendations, but Mr Karlsson stated that the Appellant would not be complying with the recommendation.

The PCT determined the Appellant's case finally on the 24<sup>th</sup> May 2006 and notified the Appellant (pages A185 – A187). It adopted the PCT's Performance Review Panel's view which had, in turn, agreed with the findings of the DPB reports dated the 15<sup>th</sup> and 21<sup>st</sup> December 2005, which concluded that the Appellant had a lack of diagnostic skills, an inability to identify cases outside her capabilities, an inability to partake in a multi-disciplinary approach and a lack of communication with the specialist Orthodontist in the practice.

The PCT, in its letter of 24<sup>th</sup> May 2006, stated that this was evidence of the Appellant's continuing practice being prejudicial to the efficiency of General Dental Services under s.49 (F2 of the National Health Services Act 1977, as amended by the Health and Social Care Act 2001).

It concluded that he continued inclusion of the Appellant on the PCT's DPB List would be subject to the following conditions:-

*"You must restrict your practice to General Dental Services; you shall not undertake any orthodontic, or specialist orthodontic practice for in any setting for which inclusion in the PCT's Dental Performers List is required; and*

*You shall successfully complete and pass a BUOLD (Bristol University Open Learning for Dentists) Course in Orthodontics run by the South West Region Dental Post-Graduate Department (Severn and Wessex Deanery) which includes a Clinical Assistantship in a Specialist Orthodontic setting"*

### **The Appellant's Grounds of Appeal**

These are deliberated below because of their complexity – see below

### **The Respondent's case**

This consists of witness statements from:-

Dr Alison Diamond, Clinical Governance Manager and the Respondent's Investigating Officer dated 16/8/06;

Mr Andrew Robinson, the Respondent's Director of Finance and Chair of the PCT Performance Review Panel dated 30/8/06;

Mr Chris Hinman, Senior Dental Adviser in Orthodontics for the DPB, dated 31/8/06

The Respondent has also submitted a final statement dated 4/3/08

In addition, the Panel notes Mr Hinman's responses to the Appellant's husband's points raised on the 28<sup>th</sup> March 2006 by him, in Mr Hinman's letter dated 19/4/06 at pages A329 to A335, which deals with four or possibly five errors in his original reports but primarily revisits all his conclusions on all the cases he reviewed – the first 3 and the next 10.

### **The Grounds of Appeal**

The Panel found it extremely difficult and, at times, impossible to discern what the Appellant's grounds of appeal were in clear and straightforward terms, as the grounds were set out in terms of challenges and comment throughout the Appellant's received papers. The Panel determined that the Appellant's comments in relation to the case could be broken down as follows:-

In relation to the three cases:-

Pages A114 – A119

Pages A137 – A148

Pages A277 – A280

In relation to the ten additional cases:-

Pages A120 – A128

Pages A129 – A136

Pages A281 – A287

In addition, the Panel noted the Appellant's comments on the PARS scores at pages A269 – A274. The Panel noted that Mr Karlsson commented on Mr Kettler's report at pages A274 – A275 and in his letter of the 12<sup>th</sup> July 2007. His letter of 27<sup>th</sup> April 2008 arrived after the Panel's considerations had commenced, so the Panel did not consider it should take the contents of that into account.

For ease of reference, the Panel noted that the Respondent's Review Panel Decision with reasons were at pages A47 – A50 (Case 1, pages A47 to A48, Case 2, pages A48 and Case 3 pages A48 – A49).

Mr Chris Hinman's reports were:-

15<sup>th</sup> December 2005 report pages A75 – A80

21<sup>st</sup> December 2005 report pages A81 – A89

Mr C.J.R Kettler's report of the 27<sup>th</sup> March 2007 was at pages A303 to A311.

Mr Hinman's responses dated the 19<sup>th</sup> April 2006 were at pages A320 to A335.

Therefore, the Panel cross-referred to all these documents in relation to each point/ground of appeal that the Panel could find, raised by the Appellant and, in particular, raised by her husband in his correspondence to the FHSAA. As a result of the detail in this case, the Panel has met in determining the case on two separate dates, the 18<sup>th</sup> March 2008 and the 3<sup>rd</sup> June 2008.

As the Panel discussed the case, it quickly became clear, particularly the very beginning, that it was very difficult to establish which documents referred to which patient. Further, the Panel noted that it had no potential for examining the patients through its professional member, no records and no models. It was noted that the professional member was not a specialist in orthodontics, but nevertheless that he was familiar with what was required and of his remit, particularly in relation to how a dental practitioner interacts with colleagues. Thus, the Panel looked at the evidence, where the points of appeal were valid and where they were not.



As a preliminary matter the Panel noted that the Appellant highlighted as a criticism the positive views expressed to the Appellant herself by Mr Hinman during his audit visit of the 11<sup>th</sup> October 2005 and that these were at variance with the contents of his more negative reports, which were “*biased, disorganised and unprofessional*” (page A6). The Appellant also alleged bias against Dr Diamond on the grounds that her husband was a Dental Practitioner and had practised in the dental practice in which the Appellant also practised. It was contended by the Appellant that, therefore, Dr Diamond had been influenced by that in her investigation of the Appellant. It was noted as a point of fact by the Panel that Dr Diamond had, in fact, not taken any part in the decision making process of the PCT’s Performance Review Panel and withdrew from the meeting during its deliberations and, further, there was no evidence on the papers of any poor practice on her part as a medical practitioner.

The Panel has not had a *formal* application by the Appellant to deal with any bias in this case on those grounds. Therefore, it makes no determination on that, save only that it notes the Appellant’s comments in relation to that aspect as part of her case generally.

In any event, this Panel is not accused of bias by the Appellant which could be the only realistic application in these proceedings (for recusal of any or all of this Panel) as any allegations made by the appellant against a witness, presenting or investigations officer of, or on behalf of, the PCT (Mr Hinman and Dr Diamond) should have been challenged in other jurisdictions and at another earlier, time.

### **The Grounds of Appeal as discerned by the Panel and its determinations on each ground**

#### Patient 1 of 3

The Panel immediately identified a problem in relation to establishing where this patient was referred to in all the papers it had before it. The Respondent’s meeting of 21<sup>st</sup> February 2004 at page A47 referred to “Case 1”. In fact, this patient was the *second* patient in Mr Hinman’s report of the 15<sup>th</sup> December at 2005. This is seen at pages A77 to A78.

As merely a comment at this stage, the Panel was less than impressed at this confused muddle and the almost impossible task the Panel has had in discerning which patient the original hearing was referring to. The Panel can see how the Appellant’s husband has had to grapple with the patient references.

Therefore, to address this difficulty, the Panel started with the patient identified on page A47 as “Case 1”, a 26 year old female with a palatally ectopic canine complicated by hypodontia.

From pages A25 to A26, one can see that Mr McLennan in his letter typed 10<sup>th</sup> September 2003, to the Appellant, outlined reference to an inadequate periapical radiograph, the need to take two more radiographs and the letter also suggested that the patient discuss the treatment options with the Appellant. The Consultant stated that he awaited the Appellant’s reply on that. He highlighted the fact that Dr Moore and himself saw patients regularly for treatment planning with respect to impacted palatal canines and their management was based on a *joint* decision before any treatment was embarked upon (this Panel’s emphasis).

Mr Hinman at page A78 states that the Appellant acted improperly in his view in commencing fixed appliance therapy prior to the Hospital consultation. He stated that it was quite proper and accepted practice for fixed appliances to be fitted by the orthodontist prior to exposure to commence space opening but only *subsequent* to an initial consultation with a surgeon to establish an *agreed* treatment plan. He stated that it was discourteous to refer the patient for surgery at this stage in the treatment and it placed Mr McLennan in a difficult position.

The Panel concluded that it was entirely reasonable to discuss with a patient the treatment plan *before* carrying on with that treatment. The Panel noted that all dentists working on a patient must work as a team. The Panel also concluded that, contrary to the Appellant's contention, Mr McLennan's letter was not arrogant or condescending. It was a letter that was clear, professional and clinically correct, on the information that the panel had before it.

Further, the Panel noted that the x-ray taken by the Appellant will show the *presence* of the tooth, not its *position*. The only way that one can get a true picture would have been by taking two x-rays at different angles, as suggested, by Mr McLennan in his letter at paragraph 4 of page A25. Indeed, Mr Moore and Mr McLennan actually performed two radiographs (an OPT (Rotational Tomogram) radiograph and an anterior occlusal radiograph).

The Panel noted the Appellant's case on Mr Hinman's report on this patient at pages A139 to A143. The Panel adopted the same numerical sequence as the Appellant.

A. The Appellant is not dealing with the point made by Mr Hinman in this point. Mr Hinman refers to the *position* of the crown deteriorating; the Appellant answers to the *condition* of the crown itself. The point has been missed by the Appellant in the Panel's conclusion.

B. Mr Hinman has corrected his error re "*right*" being "*left*" at page A330. Therefore, the criticism he makes refers to the Appellant not having provided sufficient space for the upper left 3. However, it is clear to the Panel that the Appellant addressed this issue by removing the upper left 4 tooth on 13<sup>th</sup> February 2004 (page A116 and page A141) in accordance with her treatment plan of the 22<sup>nd</sup> May 2003. However, Mr Hinman noted at page A331 that the Appellant did not take the opportunity to obtain Mr McLennan's services to perform this extraction, at the same time as her request for exposure and bonding of a bracket. It is the Panel's view that this demonstrated the Appellant's inability to communicate the entire plan of treatment with other dental practitioners. The patient, therefore, could have been saved one episode of surgical intervention.

It should be noted that the point concluded by the Panel under B also relates to the point of the Appellant numbered H.

C. At page A26, Mr McLennan's reply that he would not go ahead with the Appellant's request for surgical bonding had been corrected by Mr Hinman but the tenor behind Mr McLennan's letter remains the same. Therefore, this point is not made out by the Appellant.

D. Mr Hinman emphasises that the centreline was "*markedly*" displaced and the Appellant states that it is "*slight*" (page A140). In light of the patient's lower left c and e having been extracted (page A116) and left 3 and

4 (and 5) being distally inclined (page A117) this could lead to a significant centreline shift and therefore the Panel concludes that Mr Hinman's point is valid.

E. Mr Hinman corrects this point of fact at page A330. The Panel makes no conclusion on this point.

F. Mr McLennan had offered to discuss this matter further with the Appellant (page A25). This was the most appropriate way because even though the Appellant discussed with the patient an option to cover the empty space with a bridge with the possibility of replacing the bridge with an implant in the future, this would have compromised the patient's teeth. The best way forward would have been for the Appellant to liaise with Mr McLennan as invited to in his letter "*I await your reply*" and as stated by Mr Hinman on page A330. Therefore the Panel concludes that the Appellant has not made out this point.

G. The Appellant has misunderstood the point made by Mr Hinman here. The Panel believes that Mr Hinman was referring to the *buccal occlusion* as being the antero-posterior relationship of the teeth on the left hand side, as opposed to irregularities on the surfaces of the teeth, as probably seen on the study casts. Thus, the Panel has concluded that the Appellant has not made out this point.

I.& J. The Panel notes Mr Hinman's apology about his use of certain words but accepts his comments about common and accepted practice for multi-disciplinary treatments between primary and secondary care practitioners (page A331). Thus, the Panel concluded that any patient must have informed consent from all practitioners involved in their case.

K. The Panel noted the Appellant's points on page A143 and Mr Hinman's response at page A331. Notwithstanding the root pattern of the tooth, the Panel concurred with Mr Hinman that it is gratifying to note that a later radiograph had been taken on 13<sup>th</sup> December 2005 (page A143). Therefore, no conclusions need to be made on this patient.

#### Patient 2 of 3 as per the Review Panel at page A48

This patient is found in Mr Hinman's report at pages A78 – A79, the Appellant's papers at pages A117 to A118 and A114 to A148 and Mr Hinman's response at pages A331 to A332. In addition, one sees reference in Mr Kettler's report at pages A278 *et seq.* This is a 22 year old female patient with "*lantern jaw*".

A. The Panel does not consider this to be a ground of appeal. In any event, page A16 shows the Hospital's analysis with which the Panel concurs.

B. The Panel did not have the study casts. In any event, the Panel cannot see a ground of appeal here.

C & D. The Panel noted Mr Hinman's corrections at page A331 but could not see a ground of appeal here.

E. Page A34 is the Hospital's letter to the Appellant of the 29<sup>th</sup> August 2003 which does show reference to the Appellant's request for removal of the patient's "*lower third molars*" and the Panel notes Mr Hinman's comments at page A331 on his original reference on page A79. There is no evidence provided that these lower

wisdom teeth had symptoms or pathology associated with them, which warranted their removal. The removal of these teeth would not have had an impact on the lower jaw's growth. The patient's problem at age 22, was skeletal rather than dental. Thus, if there is any ground of appeal raised here, the Panel does not find it shown by the Appellant.

F. The Panel noted that the NICE (National Institute of Clinical Excellence) Guidelines do not specifically refer to the routine removal of erupted third molars, but it is only a guidance document, as noted by the Appellant at page A27.

G. The Panel has noted Mr Hinman's conclusions on page A79 and his responses at pages A331 and A332, in particular, that he found the Appellant to be "*an extremely articulate and obviously intelligent practitioner*". The Panel notes the Appellant's husband's comments at pages A146 to A147 in relation to the purported reference by Mr Hinman to his wife's lack of English skills.

The Panel cannot see any derisory references in Mr Hinman's documents to the Appellant's language skills in English; rather, the contrary is demonstrated by Mr Hinman.

Further, the Panel noted the Appellant husband's explanation of what the Appellant meant to communicate to Dr Simon Martin of the Respondent on the 18<sup>th</sup> September 2003 in her letter at page A32. The Panel acknowledges that although that is now clarified, it was *not* put in those terms by the Appellant at the time. Thus the Panel must conclude that it concurs with Mr Hinman in his conclusions as to how a right minded, proficient and responsible practitioner, such as Dr Martin and Mr Hinman, would have reasonably drawn their conclusions from that correspondence. To that end, this ground of appeal is not made out by the Appellant.

H. The Panel noted that Mr Hinman had seen the pre and *post* treatment casts (the *post* treatment casts being taken *after* the Appellant's treatment of the patient) at page A332. It noted that Mr Hinman concluded at page A332 that the patient's upper premolar teeth were obviously proclined compared to the pre-treatment condition, whereas the Appellant referred to the Appellant treating the patient by retroclinating her incisors achieving 1 mm of overbite (page A147).

The Panel further noted at pages A118/A79 that Mr Hinman himself had referred originally to the incisors when giving an account of the previous treatment (at the Hospital). Therefore, Mr Hinman's response at page A332 makes no sense in that particular respect.

Assuming this is a typographical error on page A332 by Mr Hinman, as the sense of the whole paragraph refers to *incisors* rather than *premolars*, the Panel notes that the Appellant gives account of achieving an overbite of 1mm by retroclination.

By reason of the examination of the *post* treatment casts by Mr Hinman, the Panel accepts his conclusion that the patient's upper incisors are "obviously" proclined *post* the Appellant's treatment, as compared to *pre* the Appellant's treatment of the patient. The Panel determined that Mr Hinman's conclusions were more contemporaneous to the treatment given by the Appellant, who has not produced any evidence to show

retroclination other than the comment by her husband at page A147. Both the Appellant and the Respondent are in agreement with this point and the Panel does not need to determine upon it.

J & K. The Panel noted the Appellant's responses at pages A147 to A148 to Mr Hinman's concern over the patient's incisors mobility at pages A118/79 and Mr Hinman's response at page A332. The Appellant's husband refers in *passive* language (page A147) to inspections on the 14<sup>th</sup> December 2005 and 24<sup>th</sup> March 2006 but not by whom these were made. The Appellant's husband then refers to the possibility of study casts being examined to observe and confirm the Appellant's treatment of retroclination, but produces no casts for the Panel to study and, in any event, the only proper way to prove it would be by clinical examination, which, as already stated, has been impossible.

Thus, the Panel is not satisfied that the Appellant has proved these points.

Patient 3 of 3, as described in the Respondent's Panel Decision at pages A48 to A49

This patient is also referred to in Mr Hinman's report at pages A115 to A116 and the Appellant's comments at pages A138 and A277 to A278 as well as Mr Hinman's response at pages A329 to A330.

It is clear to the Panel that both parties are in agreement about this patient, although the Panel notes that the Appellant acknowledged that it would have been better not to have got involved, partly because of a lack of background information (page A49).

The Panel further noted at page A39 that the Appellant apologised for her inappropriate intervention in the patient's care under Dr Moore at the Hospital.

The Panel concluded that this was a complex case, recognised by a previous dentist at the same practice 5 years beforehand. The Appellant embarked on the treatment, without taking into account the patient's past dental history and the ongoing reviews at Barnstaple Hospital. Her intervention fitting a fixed appliance was inappropriate for which she apologised.

The Panel concluded, notwithstanding the agreement between Mr Hinman and the Appellant, that the comments made by the Appellant herself at the earlier stages of these proceedings demonstrated a lack of insight and her inability to acknowledge her own limitations.

The Panel further noted that at pages A280 the Appellant's husband concluded that on a review of all the papers, his wife and Mr Hinman were in agreement with all their conclusions, but that Mr Hinman had been inventive, defamatory and degrading to the Appellant in his conclusions.

The Panel cannot see any inventive, defamatory or degrading statements by Mr Hinman towards the Appellant and finds the Appellant's husband's conclusions inconsistent and, in themselves, insulting to Mr Hinman and to the regulatory process.

In coming to its conclusions on these three cases, the Panel has deliberately disregarded the opinions given of Mr Kettler (page A311) as he had no records, study models, radiographs or documentation.

#### The 10 further sample patients

These are to be found at:-

Pages A82 to A87 – Mr Hinman's report

Pages A121 – A127 – the Appellant's comments

Pages A332 to A335 – Mr Hinman's responses

Pages A281 to A286 – the Appellant's further comments

Pages 303 to 311a – Mr Kettler's report

At page A88 there is reference to the breakdown of the coding which is as follows:-

- M. Minor discrepancy
- R. Unsatisfactory
- L. Totally in agreement

#### Patient 1 of 10 – Aka "SB"

There is agreed between the parties that the patient's lower incisors are inclined to the right, but there is some minor disagreement on other positions of the teeth. The Panel considers these minor disagreements to be irrelevant to the overall conclusions drawn on the Appellant's practice by Mr Hinman and is in concurrence with Mr Hinman's conclusion.

#### Patient 2 of 10 – Aka "BC"

Point A raised no point of appeal and the Panel has not determined upon it.

On point B the Panel prefers the evidence of Mr Hinman who reinvestigated the 9<sup>th</sup> November 2004 record and saw no entry relating to inter dental stripping because, overall, he had checked the records twice on this matter and the Appellant produces no copy of that record to prove the Appellant's point.

#### Patient 3 of 10 – Aka "EG"

Point A is not made out because Mr Hinman is referring to molars not incisors. There cannot be a Class II Div 1 referring to molar relationships; only incisor relationships, and the appellant clearly confused the two different measurements in the same statement. In any event, the Panel does not have the study casts before it.

Point B is not made out as the Panel cannot comment on this. It does not have the study casts to make a comparison demonstration. Mr Hinman stated that there was a good result here achieved overall but an extraction would have been more ideal for a better balance of the lower teeth. Mr Kettler stated the same but is

equivocal about the level of overjet and overbite as follows "... *not fully corrected but are well within normal*". The Panel concluded that both experts agree but in a different way.

Point C is not made out by the Appellant as in this case there is a scissor bite and each case has to be judged on its own facts.

Point D. This is admitted by the Appellant as to the 3.2 4.2 entry but there is no entry on the record card. The Panel is satisfied that Mr Hinman's conclusions are correct at pages A83 and A333.

Point E has not been made out by the Appellant as the Panel does not have a copy of the record card to show that the Appellant has made out his case on this point.

Point F has not been made out by the Appellant as there is no evidence of the verbal information referred to at page A122.

In relation to Point G, the Panel is of the view that duplicate record keeping is dangerous and that if the Appellant wished to prove the point then the duplicate should have been produced to the Panel in the documentation before it. In any event, a practitioner is responsible for any lost records of his/her patient's.

In relation to Point H, the Panel does not have the benefit of seeing the patient's records. Furthermore, the patient should not be put into a retainer appliance in this case until the dental practitioner had seen how far all the teeth had moved. Therefore, the reasonable practitioner in this case would probably not claim for work done until the whole treatment was complete in this situation.

Point I was not proved because the Panel accepted Mr Hinman's opinion at page A333 as being reasonable.

In relation to Point J, the Panel has reached the same conclusion as in relation to Point I above.

In relation to Point K, the Appellant's point has not been proved. The Panel agrees with Mr Hinman at page A333 as being a reasonable conclusion.

In relation to Points L and M, the Panel has found that the Appellant's points are proved. Mr Hinman conceded both those points and the Panel accepts that, albeit, that it does not have the notes to establish this.

#### Patient 5 of 10 – aka "HP"

Point A was not proved by the Appellant. The Panel accepts the concurring opinions of Mr Hinman at page A333 and Mr Kettler at page A306, paragraph 24. In relation to Point B, no clear point of appeal has been made out as Mr Hinman does not raise this as a criticism in this report.

In relation to Point C, this has not been proved by the Appellant. The Panel accepts Mr Hinman's explanation of why the results were unsatisfactory at pages A84 and A333 in the absence of the Panel having the study casts to see.

In relation to Point D, the Panel has concluded that no significant appeal point is raised here as Mr Hinman had explained the case as satisfactory at pages A84 and A333.

In relation to Point E, the Panel agrees with Mr Hinman at page A333 with regard to the purpose of his initial report and the Panel does not find Mr Hinman's comments "*condescending*".

In relation to Point F, the Panel notes that whilst the two experts disagree on the quality of the outcome for this patient, it prefers the evidence of Mr Hinman at page A84 and page A333. Mr Hinman's evidence is more compelling and logical in light of the poor planning of this patient's entire dental presentation, going back as far as 2001, taking into account Mr Kettler's opinion on the Appellant's comments and the patient's dental health as shown at page A123 (old notes reference) and A306, at paragraphs 26, 27 and 28. This shows extensive restorative treatments carried out on teeth which were being orthodontically moved and where there was apparent poor dental hygiene, poor caries control and poor orthodontic compliance.

In relation to Point G, the Panel felt that this point of appeal has been made out by the Appellant. The word 'substantial' is now withdrawn by Mr Hinman at page A333 and the Panel accepts this.

In relation to Point H, see point B above.

In relation to Point I, the Panel has concluded that this point is not made out. The Appellant's comments show a lack of knowledge of the Regulations, with which Mr Hinman is familiar as it is within his remit as a matter of course in his job. The Panel accepts Mr Hinman's comments on those Regulations and on this point for those reasons.

In relation to Point J, see Point I above.

In relation to Point K, the Panel has concluded that the Appellant has not proved the point. The Panel concurs with Mr Hinman's views on the interpretation of the Standard of Dental Remuneration of the DPB.

#### Patient 7 of 10 - aka "AR"

In relation to Point A, the Panel concluded that there can be no point of appeal here as there is no criticism in Mr Hinman's original report about this. The Panel wonders why, if there are duplicates, they were not provided to the Panel by the Appellant.

Point B is not made out by the Appellant. The Panel concurs with Mr Hinman's response at page A334 that the records should have shown that impressions were taken *post* treatment and the Appellant has not produced the 28<sup>th</sup> November 2005 impression to show this.



#### Patient 8 of 10 - aka "LS"

In the Panel's clear view, if a patient refuses a treatment plan suggested by a dental practitioner after all various alternative treatments have been discussed with the patient, it is better to refuse to continue with that treatment rather than, as the Appellant did, continue in the face of, for example, poor oral hygiene and tooth decay. In the Panel's view, if the Appellant had referred the patient to the Orthodontic Department at a hospital, this would have been more beneficial to her outcome. Further, in the Panel's view, Mr Hinman and Mr Kettler are in general agreement about this patient. For these reasons, Points A, B, C, D, E, F and G are not found proved. Further, in the Panel's view, in Point E, a lower left 5 can be partially erupted and impacted at the same time. In addition, in relation to Point H, the Appellant has conceded an error and therefore the Panel accepts Mr Hinman's conclusions at pages A87 and A334.

#### Patient 10 of 10 – aka "TR"

In relation to Point A, the standard of equipment is the responsibility of the Dental Practitioner and its failures should be rectified and made safe by that practitioner. In this case there could have been serious health and safety issues for patients if the equipment was producing poor quality radiographs.

In relation to Point B, the Panel has concluded that it is more likely than not that a Class II traction or EOT (extra oral traction (head-gear)) were not used as stated by the Appellant at page A127. There is no record of these treatments and the Panel is not satisfied that Mr Hinman was entitled to presume that a Class II traction or EOT caused the proclination of the lower incisors. There could be a variety of influencing factors that could result in this dental relationship. The Panel was not provided by the Appellant with any study casts to show that the bonded retainer was attached also to the lower incisors.

The Panel noted that Mr Hinman's report on Patient 10 ends in the Panel's bundle at page A87 with no code given by Mr Hinman to the case to show his conclusion. From the Panel's own analysis it is possible that this was the patient coded H (namely missing or inconsistent information). Such a code would not invoke criticism in the Panel's view. However, in any event, the Panel is of the view that there was an inappropriate assumption on the part of Mr Hinman in this discrete matter. Hence, on this point, the Appellant has succeeded in her argument.

Overall, the Panel agrees with Mr Hinman's conclusion at page A88:-

*"In addition, when a practitioner is providing orthodontic treatments of this kind, I think any reasonable body of orthodontic opinion would expect the diagnosis to have been provided with the benefit of a cephalometric analysis to assess skeletal discrepancy and lower incisor position"*

The Panel has noted the overall conclusions of both experts and the Appellant's comments on Mr Hinman's conclusions on pages A88 to A89 and A128 respectively. The Panel noted that Mr Hinman's response document encapsulated between pages A329 and A335 is within quotation marks. It has been signed but has been provided within a letter to Mr Karlsson from Mr Hinman's managers, dated 19<sup>th</sup> April 2006. The Panel

gave this document the same weight as if Mr Hinman had produced his own, signed report, because it was well explained by his managers in the introduction to the letter and, Mr Hinman's comments were in direction quotation marks, indicating that these were his own words to his employers in answer to the case put by the Appellant.

### Conclusion

The Panel has found against the Appellant on most of the points raised in her appeal. Where the Panel found for the Appellant, the Panel was of the view this made no difference to the Panel's overall view that, without restrictions on her practice, the Appellant was and remains unable to provide expert orthodontic services in a safe environment and continues to be unable to properly or accurately diagnose patients in relation to orthodontic services provided. In addition, in the Panel's view, she is also unable safely, accurately or timeously to patients requiring referral, without those restrictions.

### Outcome

The Panel first considered taking no action and decided that this was inappropriate because of the points found against the Appellant from the extensive and detailed analysis made by this Panel of the papers and of the individual patient's treatments and the concerns expressed by Mr Hinman. The Panel considers that public protection of the wider public interest as well as public confidence in the profession demanded that some action needed to be taken in this case.

The Panel then looked at whether the decision of the contingent removal was the appropriate outcome in this case and decided that it was and that it remained so. At this time, the Panel has not been given any information to indicate that there should either be no conditions on the Contingent Removal or that those conditions should be changed, either to be easier on the Appellant or made more onerous for her.

Therefore, the Panel has determined that the original conditions found at page A186 of the Bundle shall continue for a period of two years.

Those conditions for Contingent Removal of the Appellant shall be imposed on her continued inclusion on the PCT's Dental Performers' List under Regulation 12 of the NHS (Performers List) Regulations. Those conditions are as follows:-

- (1) The Appellant must restrict her practice to General Dental Services. She shall not undertake any orthodontic or specialist orthodontic practice in any setting for which inclusion in the PCT's Dental Performer's List is required; and
- (2) She shall successfully complete and pass a BUOLD (Bristol University Open Learning for Dentists) Course in orthodontics run by the South West Region Dental Post Graduate Department (Severn and Wessex Deanery), which includes a clinical assistantship in a specialist orthodontic setting.

- (3) The period of the two years shall begin on the date that the Appellant receives this determination, subject to the Appellant's right of appeal under s.11 of the Tribunals and Inquiries Act 1992.
- (4) The Panel has at all times kept in mind that any sanction imposed in this case must be proportionate and fair and that the purpose of a sanction is not to be punitive but to protect members of the public and in the wider public interest. The Panel has formed the view that the PCT's original decision was well balanced and well reasoned and reflects the evidence that this Panel has read and the conclusions drawn by this Panel. Therefore, the appropriate, necessary and proportionate outcome in this case for all the reasons outlined is the Contingent Removal under Regulation 12 of the Appellant from the NHS Performers List of the North Devon Primary Care Trust, as outlined above.

**SIGNED** .....

**Karen Rea – Chair**

.....

**Dr Philip Wray – Professional Member**

.....

**Mrs Valerie Barducci – Lay Member**

**DATED 30<sup>th</sup> June 2008**

**IN THE APPEAL OF:-**

**DR M-R KARLSSON (GDC Registration No 75726)**

**Appellant**

**-and-**

**NORTH DEVON PRIMARY CARE TRUST**

**Respondent**

---

**PANEL'S DETERMINATION**

---