

12 November 2009

**FILE REF:** 15289

**PRIMARY CARE TRUST:** #

**GDS PROVIDER:** #

**DISPUTE RESOLUTION:** NATIONAL HEALTH SERVICE (GENERAL DENTAL SERVICES CONTRACTS) REGULATIONS 2005

**RE:** DISPUTE RESOLUTION

## **1 Introduction**

- 1.1 The contractor has referred the dispute in relation to its GDS contract for dispute resolution under the provisions of Paragraph 54 of Schedule 3 of the National Health Service (General Dental Services Contracts) Regulations 2005 ("the GDS Regulations").
- 1.2 The Secretary of State for Health has directed that the NHS Litigation Authority exercise the functions of dispute resolution on his behalf. I as an authorised officer of the NHS Litigation Authority have made this determination.

## **2 Application for Dispute Resolution**

- 2.1 By letter dated the 24 July 2009 the contractor applied to the FHS Appeal Unit of the NHS Litigation Authority for dispute resolution.
- 2.2 I have had regard to the following documents made available to me in consideration of this matter to ensure the just, expeditious, economical and final determination of this dispute: -
  - 2.2.1 Letter from the Contractor dated 24 July 2009 together with enclosures;
  - 2.2.2 Letter from the Contractor dated 31 July 2009 together with a copy of the Contract;
  - 2.2.3 Fax letter from the PCT dated 18 August 2009 together with enclosures;
  - 2.2.4 Letter from the PCT dated 27 August 2009;
  - 2.2.5 Letter from the Contractor dated 14 September 2009;
- 2.3 I have been provided with a copy of the GDS Contract between the PCT and the Contractor. The copy provided has not been signed. It is not disputed between the parties that the Contract has been signed. No dispute has been raised in this regard. I shall therefore determine the dispute on the basis that the copy Contract provided to me is the Contract which has been agreed and signed by the PCT and the Contractor.

## **3 Consideration**

- 3.1 The Contractor states that it "took over an existing Contract from a retiring GDP in June 2008." I understand that at the time of signing the Contractor made it known to the PCT that it was unhappy with the "UDA value" and asked that it be reviewed. The Contractor states that it was not made aware at the time that it could have signed the Contract in dispute and was given the impression that the value might be changed. It is accepted that the Contractor signed the GDS Contract and that the Contract was not signed subject to any dispute.

- 3.2 The Contractor states that its "greatest concern is the way in which the matter has been dealt with by the PCT. I have been led to believe the UDA value could be increased to the average of the area. Because of this I have continued to work within the NHS with a limited restricting budget. If the PCT had been honest with me from the beginning I would have re-thought the realistic direction for my Dental Practice."
- 3.3 It is evident from the documentation provided to me that the Contractor "took over" the Practice of a retiring dentist. The Contractor entered into a new GDS Contract with the PCT, which I understand was on the same basis as the arrangement between the PCT and the (now) retired dentist. The PCT stated to the Contractor that the value of the Contract is not negotiable, that it is the current value of the units of dental activity and that they are definitely set for three years of the Contract. The PCT did however acknowledge that this may be subject to change in 2009.
- 3.4 The Contractor, by e-mail dated the 10 April 2008 confirmed to the PCT "All seems ok with the figures" in response to the PCT's request that the Contractor check the figures and get back to the PCT if the Contractor does not agree them. It is clear that there was agreement to the contract value prior to the signature of the Contract.
- 3.5 The Contractor stated by e-mail dated 21 May 2008 that it had been through the Contract and asked for information on "what happens next". The PCT advised that if the Contractor was happy with the Contract, the PCT would arrange for two copies to be signed by the PCT and sent to the Contractor for signature. By e-mail dated 22 May 2008, the Contractor set out changes in the hours of the practice and stated "all else seems fine so please go ahead with the copies".
- 3.6 Variations to the Contract must comply with Schedule 3, paragraph 60 of the National Health Service (General Dental Services Contracts) Regulations 2005 ("the Regulations") which provide that "no amendment or variation shall have effect unless it is writing and signed by or on behalf of the PCT and the Contractor". Although the Contractor may not be satisfied with the "UDA value". The Contractor was made aware of this prior to entering into the arrangements. Any amendments to this must now be agreed between the PCT and the Contractor.
- 3.7 The provisions of Schedule 3, paragraph 60 of the Regulations are set out at clause 287 of the Contract.
- 3.8 It is of note that the PCT has commissioned additional activity over that provided by the (now) retired dentist at a higher average value per unit of dental activity from the Contractor in an effort to increase the Contract value. The PCT states that this is in accordance with its local commissioning.
- 3.9 It is also of note that the PCT awarded the Contractor an improvement grant of £# in March 2009. The PCT states that the Contractor was the only dental practice to receive such a grant in 2008/09 in an effort to assist it in the establishment of the dental practice.
- 3.10 The parties must comply with the provisions of Schedule 3, paragraph 53 of the Regulations which provides that in the case of any dispute arising out of or in connection with the Contract, the Contractor and the PCT must make a very reasonable effort to communicate and cooperate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the NHS Dispute Resolution Procedure.
- 3.11 The Contractor has not been satisfied with the way that the PCT has dealt with its requests to increase the Contract value and the average price per unit of dental activity. I have been provided with considerable correspondence between the parties on this subject. Whilst there is evidence of local correspondence I am unaware of any local formal dispute resolution procedure that has been carried out between the parties prior to the Contractor applying for NHS Dispute Resolution.

3.12 The parties must comply with the Regulations and Clause 287 of the Contract. Any variations to the contract value must be agreed between the parties. Whilst the Contractor considers that the contract value is too low, this was agreed by the Contractor and any variations must be agreed by the PCT. I determine no amendment to the Contract.

**LISA HUGHES**  
**Appeals Manager**