



# Teething trouble

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### Dentistry contract dispute

**As another radical reform of the NHS looms on the horizon, the courts are still suffering the effects of the last dose of legislation. Nicola Marchant and Kate Gomery report on the High Court's first taste of a dentistry contract dispute.**

In the first claim of its kind to hit the High Court, NHS dentist David Tomkins has been awarded £500,000 for breach of contract. The decision, against his local primary care trust (PCT), has addressed fundamental principles underpinning dental contracts in relation to dispute resolution, remuneration, entire agreement clauses and entitlement to payment.

The dispute was triggered by the radical reorganisation of NHS dentistry by the Health and Social Care Act 2003, central to which was the new contract between dentists and their PCT.

Dr Tomkins was keen to broker the deal with his PCT to continue providing NHS care in the area. A contract was signed on 28 March 2006, shortly after the new rules had come into force. At the time, there was only one issue outstanding between the parties, relating to the calculation of 'units of dental activity' (UDAs) that he would be providing.

On 22 March 2006, the parties signed a supplemental agreement based on the standard form agreed between the Department of Health and the British Dental Association. It recorded, among other issues, that they were not in agreement as to the contract value and that they would continue to seek agreement as to that issue. Both parties were aware of the mechanisms available to Dr Tomkins to resolve that disputed issue.

### Trouble ahead

Pursuant to the agreed mechanism for dispute resolution, Dr Tomkins took his case to the local arbitration panel which found against him. Dr Tomkins then appealed to the Family Health Services Appeal Authority (FHSAA). The FHSAA found in his favour and required the PCT to recalculate the UDAs accordingly.

The PCT complied by adding the recalculated UDAs to the value of the contract, an additional £127,000 per annum. However, the PCT then set off against that sum of £100,000 which it had agreed to grant Dr Tomkins in respect of the dental practice whose work he had taken on.

Dr Tomkins was, therefore, in a position whereby, with the additional UDAs from the other practice and from the contribution of his assistant, the annual value of his contract should have increased by £227,000. However, despite providing the additional services as agreed with the PCT from 1 April 2006, he was paid only an additional £27,000 per annum. The difference of £100,000 per year formed the basis of the claim.

In *David Edward Tomkins v Knowsley Primary Care Trust* [2010] EWHC 1194 (QB), the court ruled that Dr Tomkins had a substantial claim for money owed under a contract he had performed for more than four years with the approval of the PCT. Despite the performance, the PCT had sought to argue, on a number of grounds, that there was no valid contract in place.

### Complex arguments

In our view this was always a clear case of breach of contract. The numerous purported defences put forward by the PCT, which the judge described as "ingenious" and "verging on Alice in Wonderland territory", could not detract from the fact that the PCT had paid Dr Tomkins for the provision of dental services (the undisputed sums) for four years under the very same contract they sought to argue was not valid (in respect of the disputed sums).

The evidence of both parties was that there was an agreement with a promise, consideration, and an intention to create legal relations. By ignoring the very basics of contract law, the PCT became embroiled in technical arguments that simply did not hold good in light of the factual basis of the case.

Hickinbottom J dismissed the PCT's complex arguments in turn. At the heart of his judgment lay the simple premise that, on 28 March 2006, the PCT and Dr Tomkins signed a contract and came to a legally binding and effective agreement, agreeing all terms except for the calculation of the UDAs attributable to Dr Tomkins' assistant.

The judgment continued to find that the parties agreed a mechanism for determining that issue, ultimately by reference to the FHSAA. That reference was duly made and the issue was determined. The determination was binding upon the PCT. The PCT had a contractual obligation to pay the claimant the value of:

- the additional UDAs arising from the work from the other practice as contained within the signed contract; and
- the additional UDAs for his assistant as determined by the FHSAA. In failing to pay Dr Tomkins, the PCT was in breach of contract.

Dr Tomkins was awarded damages of £533,205 inclusive of interest and other costs.

### **Taking action**

This judgment demonstrates that dental contracts can be enforced in the civil courts if the PCT has acted unreasonably and failed to comply with the spirit of the contract. The claim raised complex issues of law and, as acknowledged by the Hickinbottom J, the defences raised by the PCT throughout the claim were many and various.

It is important in the current economic climate for dentists to safeguard the contract value and reasonably pursue claims for breach of contract. Ultimately, dentists put in a great deal of time and resource to deliver NHS services in accordance with their contracts. They are entitled to recover payments for work in accordance with what has been agreed and therefore operate in the same manner as any other business.

Often the PCTs raise complex arguments referring to various regulations in support of their decisions not to pay contract values which have been agreed between the parties. However, this case clearly demonstrates that the basics of contract law cannot be ignored and will in fact be enforced by the courts.

Nicola Marchant, who acted as Dr Tomkins' solicitor, is a partner, and Kate Gomery a trainee solicitor, at Manchester firm Pannone LLP.

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