Landmark victory

In an exclusive interview with the Dental Tribune, the profession’s stalwart Eddie Crouch reveals the highs and lows of his court case and explains why it was vital that the Department of Health did not win the appeal.

Dr Eddie Crouch finished 2008 on a high when he prevented the Department of Health overturning its appeal.

If the department had won, it would have given health bosses the right to terminate dentists’ contracts without cause or notice.

The appeal was lodged by the DH, following an earlier ruling, which said primary care trusts (PCTs) were wrong to insert this clause in the NHS dental contracts.

The Court of Appeal upheld the earlier ruling to the delight of Dr Crouch and the dental profession up and down the country.

Dr Crouch has been a vociferous critic of the new dental contract since it was introduced in 2006.

He believes this case ‘highlights so many of the problems arising from the NHS Dental Contracts of 2006. He said: ‘It shows that the rush to implement the contracts in April that year, led to some rapidly and as it turns out, poorly drafted regulations, and the lack of negotiation between the profession and the DH in these issues compounded these problems.’

Dr Crouch believes that the DH decided to appeal against the Judicial Review made in February not because it wanted to clarify the regulations, but because ‘the Department was seeking to regain the power to terminate contracts even when the dentist was fulfilling their side of the agreement’.

He calls this ‘determination for such power’ worrying for ‘every single dentist within the NHS’.

This has confirmed to Dr Crouch how important it was for him to enter into the dispute in the first place.

He calls it ‘reassuring’ that when things happened placed in front of the leading judges in the land, fairness was seen to be upheld.

He hopes it will ‘encourage others to challenge inappropriate powers that PCTs and the Department try to influence’.

However, it has not all been plain sailing and Dr Crouch’s courage in taking on the government, has left him paying thousands of pounds in court costs.

The total cost for the two cases exceeded £80,000 with just over half coming from donations from fellow dentists and orthodontists.

Dr Crouch had hoped to get financial support from the British Dental Association (BDA) however after negotiations, they failed to come to an agreement.

‘The BDA chose never to pay any of my legal bills, and as a result this case has severely drained my savings.’

Dr Crouch said: ‘The BDA chose not to pay any costs because they had no control of the case and asked me to sign a confidentiality agreement before making any offer for the appeal.

‘I chose not to sign the agreement as I wanted to know what the offer amounted to before signing, they said that was not possible, in the end no agreement could be reached.’

The BDA claims that throughout the whole process, it has followed ‘a fair and equitable approach’.

After requests for financial help, the BDA held a meeting with Dr Crouch.

Peter Ward, chief executive of the BDA said: ‘Dr Crouch was not prepared to enter a confidentiality agreement regarding the terms of any assistance.

The BDA felt that having the safeguard of a signed confidentiality agreement was essential, as any arrangement would have involved the BDA sharing its tactical considerations and legal opinions of the case.

However, Dr Crouch rejected this despite the BDA’s offer of further discussions.

Dr Crouch has announced that his lawyers agreed with the DH a neutral cost agreement, as he was concerned that costs might be awarded against him. This was done without the BDA’s knowledge and has prevented any application he may have been able to make for a costs award against the Department of Health.

According to Dr Crouch, the whole case highlights ‘the huge learning curve the profession is on, with dealing with these issues’.

He said: ‘Mistakes were made, both by myself and the BDA, that meant a collective approach with financing the case never happened, and this left me vulnerable to the costs.’

He claims the ‘case would never have been successful without the generosity of many colleagues to assist my legal fees. The BDA for various reasons chose never to pay any of my legal bills, as a result this case has severely drained my savings.’

He added: ‘If such cases are to be better handled in the future, the BDA must make clear to members in what circumstances they will support and indeed fund such action, as individual dentists the risks are heavy with costs.’

He is now calling on the BDA ‘to work with a group of members including myself, to see how such future cases can be better managed’.

Ideally he would like the BDA to set up a separate funding stream from membership subscriptions for cases such as his.

This could be used ‘to deal with the power of the government, who simply use tax payers’ money to stich their large muscles of power’, concluded Dr Crouch.

The case record Dr Eddie Crouch