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In March 2008 the health min-
ister, Ann Keen, announced
that NHS funding for dentistry
would be ‘ring fenced’ from 2009
for a further two years. Some
think this means dentists’ pro-
tected income levels will also be
extended to 2011; unfortunately,
one does not necessarily follow
the other, unless the Government
makes fundamental changes to
the two current Statements of Fi-
nancial Entitlements (SFE).

New SFEs are due later this
year/early 2009, and we’ll have
to wait and see, but don’t be too
surprised if there’s nothing in
them to change the current
timetabling for protected in-
come – I’m assuming there will
be no changes.

We’ll remain as we are at the
moment then, for GDS con-
tracts, Calculated Annual Con-
tract Values (CACVs, based upon
the baseline year) remain only
in force until March 31 2009. Af-
ter this time, CACVs will be re-
placed by Negotiated Annual
Contract Values NACVs. For PDS
Agreements, ‘Calculated An-
nual Agreement Values’ will be
replaced by ‘Negotiated Annual
Agreement Values’.

However, the PDS SFE is not
very clear on the methodology
by which CAAVs are to be re-
placed by NAAVs; it appears to
suggest that NAAVs are to be cal-
culated/agreed very much on
the same basis as in 2006. Per-
haps the new SFE will clarify the
position.

Don’t hold back

The practical tip is to act
NOW, (not at the end of March).
Find out whether your PCT/LHB
intends any significant changes
to your contract/agreement.
Speak to your LDC with a view to
uniformity of approach in the
process. Time is short – you need
to move quickly.

If the PCT/LHB proposes un-
acceptable changes, remember
that the Regulations require
both sides to make ‘every rea-
sonable effort’ to seek to resolve
the dispute. If not, the matter can
be referred for determination by
the NHSLA.

By the time you read this, I ex-
pect that South Birmingham
PCT’s appeal judgement in the
judicial review case brought by
Dr Eddie Crouch will have been
heard. The High Court upheld Dr
Crouch’s application for a review
of the decision of the NHSLA
to uphold a notice clause in his
Agreement which allowed the
PCT to terminate that Agreement
without grounds, and on a date
set out in the notice (as opposed
to the agreement either continu-
ing for its duration or only being
terminable on the specified
grounds of the agreement).

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If the PCT’s appeal, against Dr Crouch’s successful application, is dismissed, then PDS contractors may be in a stronger negotiating position with their PCTs/LHBs.

Pre-contract disputes
On the subject of appeals to the NHSLA, there are still some pre-contract disputes rumbling on, virtually three years down the line.

Tip – there is a ‘time limitation’ on appealing pre-contract disputes to the NHSLA. The referral to the NHSLA must be made within three years from the beginning of the dispute. If you are involved in an ongoing pre-contract dispute, not yet referred to the NHSLA, then your time is rapidly running out!

Tip – now is the time (if you’ve not done it yet – and some have not) – to check that your contract/agreement paperwork is in order. I recently came across a case where the practitioner was unable to provide his PDS Agreement, and maintained that no such written agreement ever existed. If he was right, both he and the PCT were in breach of the Regulations and the ‘contractual’ relationship might have been null and void. This is an extreme case, but does make the point that paperwork is not always in the state we imagine.

Tip – check your GDS Agreement. Ensure that Clause 16 (in the ‘standard’ form agreement) is correctly completed. The GDS Regulations state that ‘a contract must provide for it to subsist until it is terminated in accordance with the terms of the contract or the general law’. There are contracts out there, which are, nonetheless, expressed to expire on the March 31 2009 – this could clearly lead to problems, so it’s worth getting it corrected now.

Tip – recent guidance from the Department of Health (DH) to PCTs suggests that it is possible for there to be ‘fixed term’ GDS contracts. I’m not convinced that’s right, except where the Regulations allow for temporary fixed term contracts in certain limited circumstances.

Tip – if your GDS Contract is incorrectly worded, get it corrected by agreement with the PCT/LHB – if the PCT/LHB won’t co-operate, then be prepared to refer to the NHSLA. Bear in mind the time limits. You don’t want, at the end of March 2009, for the PCT/LHB, to claim that your GDS Contract has terminated!

Tip – PDS contractors should ensure that their PDS Agreement is correct as to term. PDS Agreements carrying on the old pilot scheme arrangements, should terminate no earlier than the end of the term for the original pilot scheme agreement. Orthodontists’ PDS Agreements entered into as from the April 1 2006 are required to have a duration of ‘not less than five years’ (Transitional Provisions Order Article 21).

Tip – PDS Contractors providing mandatory services should review their right, under Part 6 of the PDS Regulations, to ‘convert’ their PDS Agreement to a GDS Contract. Your decision will depend upon your circumstances.

Tip – the formalities include the contractor notifying the PCT/LHB ‘in writing’ at least three months before the date on which it wishes the GDS Contract to be entered into. That notice also requires the contractor to give the date on which they wish the agreement to terminate ‘which must be at least three months after the date of serving the notice’. Might a PCT/LHB try to argue the invalidity of a notice if given less than three months before the expiry of PDS Agreement? Please make sure of your dates.

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