Mr Justice Collins delivered his split verdict in this case at the end of February, finding in Eddie’s favour on one point, but against him on the other. The case has now stimulated comments from the Department of Health (DoH) and the British Dental Association (BDA).

The BDA was ‘delighted’ that Eddie Crouch had won his case against an unreasonable clause inserted into his Personal Dental Services (PDS) agreement with South Birmingham primary care trust (PCT). The PCT had changed the model contract to give it the right to terminate his agreement for no cause at any time and on a period of notice that it could determine.

The BDA supported Dr Crouch’s case because of the consequences losing may have had for all dental contracts. It says it ‘committed significant resources’ in support of this element of the claim and believe that its submissions materially assisted his victory. The BDA did so because it believed not only that the PCT had misinterpreted the regulations, the model contract and the guidance, but that the clause ‘did not reflect the policy intention of the Department of Health’.

The DoH has also issued guidance to PCTs about the case. It said that Mr Crouch had ‘challenged the legality of a clause in his PDS agreement allowing the PCT to terminate the agreement at any time’. The DoH had supported the PCT in Court and continues to maintain that the PCT had always had the right to insert this clause but, in effect, the judge had moved the goalposts, by re-interpreting the PDS regulations.

The DoH says PCTs were ‘required’ to include such a clause allowing them to terminate an agreement without a reason provided they gave notice. There was, of course, no such talk before the contract started when the Department of Health was at pains to reassure dentists that contracts could only be ended by a PCT if there was a good reason. But of course in those days they wanted people to sign up to it.

The BDA did not support Eddie Crouch in his second point, which was lost, that the PCT had a responsibility to hold a public consultation exercise or needs assessment prior to awarding contracts. It took this action on the advice of a QC. The BDA’s Executive Board points to the ‘very significant costs the Association has devoted to legal review of the 2006 changes’.

BDA members may well ask what is a ‘proper use’ of their money if it is not to support them in their struggles with the Department and challenge the legality of this unpopular contract even if there is little prospect of winning the case. At least the profession would know where it stands.

Department of Health makes its position clear