Event focuses on legal issues of new contract

Chris Baker of Corona Design & Communication reports on a very informative day at the Lowry Hotel in Manchester...

Delegates took the chance to network at the event.

Time was when most dentists would only require the services of a solicitor when they either bought or sold a practice. Times they are a-changing! The law firm Pannone recently organised an excellent conference which discussed the way that the new dental contracts have had a significant impact on practitioners and the legal issues that can arise.

Dr Colin Hancock, Chairman of Denticare – kicked the day off with a discussion on 2 really big issues, Clawback and Goodwill. He began with a Samuel Goldwyn quote, “A verbal contract is not worth the paper it is written on”. This was to be a theme of the whole day – if you don’t record it, it didn’t happen. On the issue of clawback his message was clear: challenge the underperformance demand and detail the issues that were out of your (the practitioner) control and launch a counterclaim. Items such as FTAs and failure to recruit can be considered to be beyond your control and not to be offset against the demand. A performance’. Also, ongoing costs such as heat, light etc. will be incurred anyway and should be beyond your control and not part of ‘reasonable underperformance’. Also, ongoing costs such as heat, light etc. will be incurred anyway and should be offset against the demand. A member of the audience questioned Colin on the amount of clawback paid by his organisation in the last four years and the answer was simple; ‘none’. Colin also spoke on the subject of goodwill and stated that it is neither reasonable for a healthcare authority to ‘pirate’ a Provider’s goodwill. Goodwill is in effect a relationship between two parties NOT three!

Former BDA Chairman, John Renshaw then took us through the process (and hoops?) that need to be negotiated to gain a new NHS contract. He said to delegates who are considering applying to tender, there can be a large element in the NHS towards the private dentist and this shouldn’t be underestimated. He pointed out that the new PDS+ contracts need to be viewed with caution as many can involve huge commitments including 8am to 8pm service, 357 days a year! After coffee and refreshments, James Lister a partner at Pannone LLP, discussed employment issues and in particular redundancy and flexible working. He began by dispelling the myth that redundancy only comes into play in bad times and when there is a shortage of work. In reality, redundancy is related to the reality, redundancy is related to the fault position is that employers cannot go back on it when it is unjust or inequitable to do so. For instance, if a PCT should have failed to meet their obligations in Year 1 or 2, don’t, and then try and do so in Year 4, this could be considered inequitable. As you would expect, Simon was the barrister who represented Eddie Crouch in his case against South Birmingham PCT and the clause in the NHS Dental Contract that allowed practices to terminate dental contracts without cause or notice.

The principle of Promissory estoppel means that when two people enter into a contract, if one leads the other to believe that a certain state of affairs exists, they cannot go back on it when it is unjust or inequitable to do so. For instance, if a PCT should have clawed back funds in Year 1 or 2, don’t, and then try and do so in Year 4, this could be considered inequitable. As you would expect, Simon was the barrister who represented Eddie Crouch in his case against South Birmingham PCT and the clause in the NHS Dental Contract that allowed practices to terminate dental contracts without cause or notice.

Flexible working will become a greater part of all our lives and all full-time employees who have the responsibility of care of a child up to the age 18 or care of an adult spouse, cohabitee or relative, have a right to request flexible hours. This request should be made in writing but informal requests should not be ignored.

Again, a paper trail and correct procedure are vital. He concluded by notifying the audience that most employment tribunals’ default position is that employers can offer flexible working in the majority of cases.

The afternoon session got going with Simon Butler of Ely Place Chambers talking us through dental agreements between PCTs and practitioners and the ‘fair and sensible’ test. Simon was the barrister who represented Eddie Crouch in his case against South Birmingham PCT and the clause in the NHS Dental Contract that allowed practices to terminate dental contracts without cause or notice.

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