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...

Time was when most dentists would only require the services of a solicitor when they either bought or sold a practice. Times they are 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. When they either bought or sold a practice, 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 flexibility in the last four years and the clawback paid by his organisation in favour of the employer 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 reality, redundancy is related to 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 houses 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 also spoke about the process of termination and used the case of Dr Crouch vs South Birmingham Primary Care Trust to illustrate that is unfair for a retrospective clause to be enforced. It is retrospective because as a practitioner, you will have made decisions eg investment, premises, staffing etc., upon the initial agreement. He told us that it is “a fundamental rule of English law that no statute shall be construed to have a retrospective effect when application would be contrary to the intention of Parliament”.

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Flexible working will become a greater part of 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.