

# FACING THE CHALLENGE

.....a new world order

Presentation

by

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# Our background...

acting for the dental profession since  
1984



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**Specialist lawyers for dentists**



# THE CONTRACT

- The forerunner: General Medical Services
- Dental Regulations passed into law effective April 2006
- General Dental Services
- Personal Dental Services

# DIFFERENCE BETWEEN PDS AND GDS CONTRACTS

- PDS: fixed term
- PDS: no additional providers/contractors/partners
- GDS: continue until terminated
- GDS: introduction of new partners

# WHOSE PATIENT IS IT?

- Is the patient the “property” of the PCT?
  - Contract offering “services”
  - Not a Contract of “service”
- Who controls
- Information requested by the PCT
- Co-operate in transfer of patients

# VARIATION OF CONTRACT

- If contract does not comply with the Regulations (query? Children-only contracts)
- Direction given by the Secretary of State
  - Number of UDA's varied
  - May be other variations (problems with children-only contracts)
- Negotiated variation
- Variations must be recorded in writing

# TERMINATION

- “In accordance with the terms of this contract or the general law” (GDS only)
- Death
- Suitability; what is this? Premises?
- Untrue information
- Patient safety / health and safety
- Breach
- Management issues

# A FLAVOUR OF THE CONTRACT REQUIREMENTS

- Non-discriminatory
- Course of treatment within reasonable time
- Treatment plan
- Proposals for private treatment
- Repair or replacement
- Suitable premises
- Any relevant guidance that is issued by NICE
- Infection control
- Notify anything giving right of PCT to terminate

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# SALE OF PRACTICE

- PDS contract;
- Very little room to manoeuvre
- Apply for GDS contract?
- Obtain new contract in name of dental corporate (discussion with DoH) (main problem is local commissioning no continuity or uniformity)
- Sell the shares
- Buyer takes on the company “warts and all”

# SALE PROCEDURE

- **GDS**
- Best course of action negotiate new contract;  
is there any variance/ out to tender
- But do you put your head above the parapet?
- Never terminate before future assured

# SALE PROCEDURE

- **GDS**
- Alternatively; contract conditional upon new partner being accepted
- Substantially the same terms; negotiate variance provisions
- Complete and bring in buyer as a partner
- Cover superannuation
- Seller retires as a principal/partner

# SALE PROCEDURE

- GDS
- Primary Care Trust entitled to terminate or vary in certain circumstances (query; condition of premises, discrimination)
- *“Where the contractor is two or more persons practicing in partnership, the Primary Care Trust shall be entitled to terminate the contract **where one or more partners have left the practice** during the existence of the contract if, in its reasonable opinion, the Primary Care Trust considers that the change in membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Primary Care Trust to perform its obligations under the contract.”*

# SALE PROCEDURE

- GDS
- Probably desirable that the PCT should be “on board”
- Downside of partnership route
  - Seller may be liable for future breaches
  - Indemnity, but not copper-bottomed

# SALE PROCEDURE

- GDS
- The new Regulations effectively give the PCTs (in the longer term) the power to **“influence where new practices are established”** (NHS leaflet) (Cornwall)
- Agenda: regaining what they lost in the 1940s?

# PRACTICE AGREEMENTS: THE FUTURE

## Associates



# PRACTICE AGREEMENTS: THE FUTURE

## Associates

- Will associates retain their self-employed status?

*“The changes, introduced by the Department of Health, shifted associate dentists from self-employed to salaried status. The move was made on the basis that they would not suffer in terms of their gross earnings.”*

- UDA’s spread throughout the year?



# PRACTICE AGREEMENTS: THE FUTURE

## Practice agreements

- Expense-sharing arrangements
- Monitor performance of associates and co-principals
- Ensure conditions of contract complied with

# DISCLAIMER

- These slides are for information purposes only. Their content is not exhaustive, and should not be used as a basis for preparing or updating any agreement
- Specific legal and accountancy advice should be taken before any agreement is signed, although the various points raised in these slides may well assist you in preparing initial instructions to your lawyer.
- **If you would like more advice or assistance on your practice agreement do contact:**

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