



Welcome

Welcome to the March 2010 edition of our Dental Bulletin.



By Alexander Hall

Much has occurred in dentistry (especially NHS dentistry) since the last Bulletin. It appears that working in NHS

dentistry and running a business in the profession continues to be exciting, frustrating and unsettling. This looks likely to continue with the launch of Steele pilot contracts and, if there is a change in government, the introduction of Conservative initiatives.

As ever, if you have any questions or comments about any of the items in this Bulletin or need advice or assistance in relation to any legal issues, please do not hesitate to contact us on: **0845 55 55 321** or alexander.hall@mfgsolicitors.com

INCLUDES:

- PDS Plus and tendering
- Steele Pilots
- Contract Management Handbook
- Recent FHSAU decision
- Incorporation
- HMRC Tax amnesty
- The Dentistry Show
- www.dentaltubules.com

PDS Plus & Tendering

Since the launch on 16 November 2009, many PDS Plus contracts are well on their way to being awarded in many parts of the country. It is worth remembering that the PDS Plus contract template is subject to the PDS Regulations and the mandatory terms, rights, qualifications and obligations required by the Regulations apply. However, PDS Plus contracts are very different. The contractor gains no valuable goodwill that may be sold or realised. The payment mechanism not wholly based on UDAs performed, but also the contractor's success in meeting Key Performance Indicators. Due to these and many other issues, dentists must consider whether to take on a PDS Plus very carefully, taking advice regarding the impact of a PDS Plus on their circumstances. This is especially true if the contractor has an existing private or NHS (under a PDS or GDS contract) practice.

Even the seasoned bid-writer may be taken aback by the procurement

process and requirements for PDS Plus. Most would agree that the requirements of the PQQ, the ITT and presentation/ interview have become lengthy, complicated and intimidating. However, the PDS Plus procurement process is more complicated still.

Dr Fuzail Jamall of Pennington Dental Tender Consultancy points out:

"Writing a tender is a time-consuming process for any practitioner, especially one for whom such bid-writing is alien. A lack of success in that process can compound the frustration and wasted hours. It pays to obtain professional assistance, thereby freeing up the dentist's time to concentrate on dentistry and increasing chances of success."

For more details visit www.nhsdentaltenders.co.uk.

If a contractor is unused to the management 'speak' and business planning that is required, the

procurement process is less likely to lead to success. Indeed, a business plan and exit plan are intrinsic parts of the PDS Plus contract and some PCTs have begun to annex business plans (and even the entire ITT response) to GDS and PDS contracts. Whilst the ability to write a business plan on its own cannot guarantee success, Glenys Bridges, MD of Dental Resource Limited states:

"Many practice owners and practice managers do not know how to complete an effective business plan or have the skills required to put one together. However, these skills and a comprehensive business plan are now essential."

The ability to write a business plan is just one small but important part of the tendering process. Following on from the success of its courses in Dental Practice Management, Dental Resource now offers a short course on Business Planning (with 12 hours CPD!) Visit www.dental-resource.com for details.

Steele Pilots

On 9th February 2010, documents appeared on the DoH website in relation to Steele pilots. A number of contract options will be piloted by way of a 'Contracts Pilot Workstream' and developed with three principles from the Steele Review in mind – 1) the development of a patient pathway, 2) a set of quality indicators and 3) practicality and scalability.

The project will be conducted in two 'waves' – Wave 1: a small number of Pioneer Pilots beginning April 2010 and Wave 2: Whole System Pilots, a number of differently blended contracts that will run for two years. Furthermore, the experiences of and data collected from dentists that are already practicing under blended contracts in some places ("Steele

Affiliates") will also be used to assess the way forward.

Expressions of interest for the Pioneer wave were required by 19 February 2010 (but that deadline may have been extended by the time you read this). At the time of writing, the documents could be viewed on the DoH and BDA websites.

Recent FHSAU decision

One notable decision (in December 2009) of the FHSAU (NHSLA) involved a dentist who had been refused consent by the PCT to the transfer of a GDS contract to his company. Clause 12 of the standard GDS contract makes clear that PCT consent is required for such a transfer. From the

contractual point of view, it is worth remembering that the contractor agrees to this restriction at the outset (and negotiating any amendment to Clause 12 is virtually unheard of) and so the adjudicator correctly ruled that the PCT was entitled to refuse to give such consent if so minded. Interesting

however, is that the PCT used the EU procurement rules as the reason for its refusal. For more on this issue see the below Incorporation update...

FHSAU decisions may be viewed at www.nhsla.com/FHSAU/DisputeResolution/Dental

Contract Management Handbook

In January 2010, the new Contract Management Handbook (another Steele production) was released by the DoH. The handbook is designed to offer guidance and advice to PCTs in

managing dental contracts. It provides some interesting insights into the approach that PCTs take or may take in relation to different contract matters, although it contains surprisingly little about

the transfer of contracts or incorporation.

The handbook may be downloaded from www.pcc.nhs.uk/contract-management-handbook.



HMRC Tax amnesty (the Tax Health Plan – ‘THP’)

HM Revenue & Customs are offering an opportunity for medical professionals with undisclosed tax liabilities to come forward and settle their affairs. Following an update on 18th January 2010 HMRC have decided to include dentists in the THP, despite initially appearing to omit them when the THP was launched on 11th January 2010. According to HMRC, the THP provides a simple, straightforward opportunity for medical professionals, including dentists, to get their tax affairs in order, although simple and straightforward do not usually go hand in hand with HMRC. However, be warned, after the THP closes HMRC

have promised to use the intelligence they have to pursue those who have outstanding liabilities and choose not to take the opportunity.

Key dates:

- Notify your intention of disclosure by 31 March 2010.
- Submit your disclosure by 30 June 2010.

Graham Rew, LLP partner and Head of the Dental Team at Hazlewoods LLP, Chartered Accountants urges:

"If anyone is aware of circumstances that could lead to a tax investigation or suspects that they may otherwise benefit from the amnesty, they must contact their specialist dental accountant immediately. Prompt action is required to take advantage of this opportunity."

Graham may be contacted in confidence on **01242 680000** or by visiting www.hazlewoods.co.uk

For more details see the HMRC website at www.hmrc.gov.uk/tax-health-plan

- Company and commercial
- Corporate finance
- Mergers and acquisitions
- Commercial property
- Employment
- Commercial disputes
- Corporate tax

Incorporation

With the forthcoming 50% tax rate for income above £150,000 per annum, incorporation continues to be a potentially attractive option to secure tax advantages in certain personal circumstances.

However, for practices with NHS contracts (whether GDS or PDS) in many parts of the country this remains difficult as PCTs refuse to consent to the transfer of contracts to companies or

to the replacement of existing contracts with new contracts in the name of the company without first pursuing a competitive tendering process.

However, PCTs appear to be waking up to the fact that, since the "Presstext" decision in 2008, it is clear that the EU procurement rules do not require tendering in circumstances where the

original contractor 1) agrees to remain liable under the contract along with the company and 2) agrees to an additional clause giving the PCT a right to veto a proposed change to the persons who own and manage the company. This approach has been taken by some 'enlightened' PCTs for some time. Watch this space for news of how this develops.

The Dentistry Show (19-20 March 2010)

Alexander Hall will be on hand at The Dentistry Show at the NEC on Friday 19 March 2010. If you wish to speak

to him about any matter at the Show, please contact him to make an informal appointment for the day on

0845 55 55 321 or email him on alexander.hall@mfgsolicitors.com.

www.dentinaltubules.com

We are pleased to be able to support the new website for dentists - www.dentinaltubules.com – with Alexander Hall writing as the site's resident legal expert.

Over the next few months a series of articles will be posted on the site (the first introductory article is online now) explaining the different phases, options

and issues that arise when buying or selling a dental practice. The site has many other professional contributors and is set to become a good source of

information. Please take a look. Comments and questions in relation to articles are encouraged. We look forward to seeing you there soon!

Web: www.mfgsolicitors.com/dentists • e-mail: info@mfgsolicitors.com

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