

## Dental Newsletter No. 2

*The following information will be of interest to both Providers and Performers and we shall be grateful if Contractors could make sure that all practice dentists, and other appropriate staff, have access to this newsletter. Please feel free to photocopy as required.*

### ***Dental Contracts - April 2009 and Beyond***

General issues concerning existing dental contracts, and in particular contract values, post April 2009 have attracted much comment and speculation among local dentists and in the dental press.

The PCT has received many questions, from local contractors providing NHS dental services, about the significance of this date in relation to their own NHS contract.

In order to provide guidance and clarification, the PCT devotes the whole of Newsletter No. 2 to this topic.

### ***What is so significant about the April 2009 date?***

At the time of the introduction of the new NHS dental contracts from April 2006, the Department of Health offered dentists a guarantee that their gross incomes would not be reduced for a three year period following the introduction of the new contracts; provided the terms of individual contracts were met annually.

This guarantee was enshrined in the dental Regulations and comes to an end on 31 March 2009.

This guarantee prohibited PCTs from seeking to review, and possibly renegotiate, gross contract values with existing contractors prior to 31 March 2009 but this will now be possible for contract terms from 1 April 2009 onwards.

The other significance is that most nPDS agreements offered from 1 April 2006 were time limited, i.e. they are not 'rolling agreements'. Where time limited nPDS agreements exist, most will expire on 31 March 2009. PCTs have the option to choose whether or not to re-commission all or part of the dental services provided under an existing contract or agreement from 1 April 2009

### **Did the Department of Health extend guaranteed gross contract values for a further two years to March 2011?**

This is not the case. The Department extended the 'ring fencing' of PCT dental budgets for a further two years from April 2009 to ensure that PCTs continue to use a

minimum funding allocation to commission dental services for their populations. This is entirely separate and distinct from the guarantee of gross contract values.

***I hold an nGDS contract with the PCT. Will this expire on 31 March 2009?***

All current General Dental Services contracts (nGDS contracts) held by the PCT **are not** time limited, i.e., they have a commencement date but no expiry date. You can check the status of your own contract by looking at clauses 15 and 16.

These nGDS contracts are described as 'rolling contracts' and they will not come to an end on 31 March 2009.

In advance of April 2009 however, the PCT will contact individual nGDS contractors with proposed terms, e.g. gross contract value and/or units of dental activity, to apply their contract from 1 April 2009.

**Do nGDS contract holders have to accept these terms or lose their contract?**

The PCT's interpretation of the nGDS contract is that it does not have the power, save in limited circumstances, to impose unilateral contract changes on contractors; see clause 287 of the nGDS contract.

When a proposal of revised contract terms is made by the PCT, the PCT anticipates that both parties to the contract will use their best endeavours to communicate and co-operate with each other to achieve a mutually acceptable agreement.

**Do nGDS contract holders have any right of appeal if they reject the PCT's terms?**

Whilst the PCT will be keen to negotiate mutually acceptable terms for all existing contracts, if negotiations with contractors fail to resolve any dispute concerning the PCT's proposals, Part 21 of the nGDS contract details provides for the NHS dispute resolution process.

Either the PCT, with the contractor's agreement, or the contractor alone, can refer any dispute to the Secretary of State (via the office of the NHS Litigation Authority) for a binding determination.

**What if the nGDS contractor does not accept this determination?**

The determination is binding on both parties and the contractor would have to decide at this point whether or not to remain in contract with the PCT post 31 March 2009.

**If I accept the PCT's terms, do I have to undergo this process every year in future?**

No. The PCT will recognise the fact that, where mutually acceptable contract terms are agreed from 1 April 2009, contractors need some degree of certainty to assist with their business plans. In recognition of this, the PCT will guarantee to maintain

the terms agreed for three years from April 2009; provided the terms of individual contracts continue to be met annually.

***I hold an nPDS agreement with the PCT. Will this expire on 31 March 2009?***

At the present time, the PCT holds Personal Dental Services Agreements (nPDS agreements) some of which are time limited and some which are rolling agreements. You can check the status of your own contract by looking at clauses 15 and 16.

An nPDS agreement with no expiry date is a 'rolling agreement' and will not come to an end on 31 March 2009. As with nGDS contracts, in advance of April 2009 the PCT will contact individual nPDS contractors with proposed terms, e.g. gross contract value and/or units of dental activity, to apply their contract from 1 April 2009.

An nPDS agreement with an expiry date will terminate on that date and the PCT is not under any obligation to enter into a new contract or agreement with the existing contractor.

***I hold an nPDS agreement with an expiry date of 31 March 2009. What do I do?***

If you wish to maintain some level of NHS dental service provision from 1 April 2009 onwards, you should;

- contact the PCT now to establish their commissioning intentions for NHS dental service provision in the locality serviced by your practice, e.g. have the PCT assessed a need, and the extent of that need, for NHS dental services in your locality?
- if the PCT do wish to commission NHS dental services to meet the needs of the public within the locality served by your practice, from 1 April 2009, express your interest in participating in any form of tendering process undertaken by the PCT to secure those services.

If the PCT does elect to conduct any form of tender process in order to re-commission all or part of the services provided by your expiring agreement, it will seek to conclude this process by 31 March 2009 at the latest. If this is not possible, the PCT may seek to agree a short term extension of your nPDS contract to allow the conclusion of this process.

***Do I have any option to avoid the termination of my time limited nPDS agreement?***

The NHS (Personal Dental Services Agreements) Regulations 2005 provide contractors with the right to request an nGDS contract at any time up to 3 months prior to the expiry date of their nPDS agreement. The full terms of this right are set out under Part 6 of these Regulations.

Provided all preconditions are met by the contractor, the PCT is required to enter into a new nGDS contract in replacement of the nPDS agreement; which will then lapse.

The new nGDS contract offered by the PCT must include;

- the same services as provided by the nPDS agreement
- at least the same number of units of dental activity, and/or units of orthodontic activity, contracted under the nPDS agreement.

The Regulations are however silent on the issue of the gross contract value, and the term of the new nGDS contract, the PCT is required to provide in substitution for the expiring nPDS agreement.

**Will the contract value of the replacement nGDS contract be the same and will it be a 'rolling contract'?**

Recent guidance provided to PCTs by the Department of Health on this issue suggested that the Regulations 'probably' mean that the gross contract value should not be renegotiated at the time of agreeing a replacement nGDS contract.

At the current time, the PCT is of the opinion that, faced with a request for an nGDS contract from an existing nPDS agreement holder, it is at liberty to negotiate a revised gross contract value, and may also elect to offer a 'time limited' nGDS contract as opposed to a 'rolling contract', provided all other conditions of Part 6 of the Regulations are met.

This issue has, to some extent, become academic as we approach April 2009. The PCT will therefore take the following action in response to any request for a replacement nGDS contract in the place of an existing nPDS agreement;

- in addition to compliance with it's obligations under Part 6 of the Regulations, the PCT will offer a replacement nGDS contract at the existing gross contract value without renegotiation.
- the nGDS contract offered will be 'time limited' to 31 March 2009.
- In advance of 31 March 2009, the PCT will, in all cases, propose terms for the extension of this nGDS contract to 31 March 2012.

**Do nPDS contractors have the same right of appeal as nGDS contractors?**

Yes. Whilst every effort will be made by the PCT to agree mutually acceptable terms with all contractors, either the PCT, with the contractor's agreement, or the contractor alone, can refer any dispute to the Secretary of State (via the office of the NHS Litigation Authority) for a binding determination of any dispute.

**What if the nPDS contractor does not accept this determination?**

The determination is binding on both parties and the contractor would have to decide at this point whether or not to remain in contract with the PCT post 31 March 2009.

**Will the PCT be seeking to agree a single value per UDA across all its contracts from April 2009?**

No. Whilst the PCT anticipates that the current broad range of UDA values will narrow from April 2009, at both extremities, the intention will be to ensure that gross contract values in future reflect actual costs factors and/or service levels, i.e. contractors providing services judged to be 'superior' against set criteria should be rewarded and those offering standard services should see a clear incentive to improve their offering.

**How will the PCT fairly determine individual proposed contract terms to apply post 31 March 2009?**

At the current time, the PCT is developing criteria to be used to determine its proposals for individual contract values from 1 April 2009. The criteria will take into account basic minimum service standards that all contractors must provide and also any enhancements to these minimum standards offered (or proposed) by some contractors, e.g. enhanced opening hours.

The PCT has agreed to consult, during September 2008, with the Dorset Local Dental Committee on its proposed criteria to determine proposed contract values.

It is anticipated that during October 2008, the PCT will contact all existing contractors with its proposed terms for April 2009. The full criteria used to determine individual contract values will be disclosed to contractors in order to ensure that negotiations are transparent and based on correct assumptions.

*Please let us know if you have any outstanding general queries relating to the NHS dental regulations in general or 'April 2009 issues' in particular. Any issues raised which may be of common interest to all Contractors will be included in future monthly newsletters.*



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