

Dental guarantees

Damien Charlton discusses the guidelines in place for dentists.



Guarantees for dental work are topical in the light of new GDC guidance,



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Standards for the Dental Team. A guarantee in this context is a contractual agreement with a patient which provides them with recourse in the event that treatment fails. For example, a basic guarantee might be that lab work or a filling would be replaced free of charge if it fails within two years of the date of treatment.

The GDC Guidance on guarantees states that practitioners should:

- tell their patients whether treatment is guaranteed;

- if a guarantee is provided, tell their patients exactly what the guarantee covers, and tell them about any exclusions that apply;
- make clear any circumstances under which the treatment is not guaranteed (for example, if a problem arises through lack of care on the patient's part).

The GDC guidance does not make it mandatory for a guarantee to actually be given, although the recent report into the dental market by the Office of Fair Trading says that they see no reason why a one year guarantee ➔

Should not be implemented across the whole of the dental market.

Outside GDC guidance

Away from the GDC Guidance, the law does not make it mandatory to give guarantees. However, even in the absence of a specific guarantee, the law does provide some protection for both private and NHS patients.

In the case of both private and NHS treatment, a patient is entitled to expect that dental treatment will be carried out with 'reasonable care and skill'. This phrase means that if a patient is treated by a general dental practitioner, then that dentist is expected to provide treatment with the skill of a 'reasonable' general dental practitioner. If the standard of treatment falls below this, the patient may have a right to recover damages. These damages could cover costs of rectifying defective treatment, and also could include an amount in respect of pain and suffering, and compensation for certain costs incurred as a result of the negligent treatment.

In respect of NHS treatment, the National Health Service (General Dental Services Contracts) Regulations 2005 and (Personal Dental Services Agreements) Regulations 2005 provide that any restoration work provided by a dentist under a GDS contract or PDS agreement, which within 12 months has to be repaired or replaced to secure oral health, must be repaired or replaced at no charge to the patient. There are certain exceptions to this, such as where

the repair or replacement is needed as a result of trauma, or within the 12 month period another dentist has carried out treatment on the tooth in question. It can therefore be seen that even in the absence of a formal guarantee, a patient enjoys a number of 'implied rights'.

You may be wondering why you should give a guarantee if the law already gives patients these protections. Well, you might consider giving a guarantee so both dentist and patient are clear about their respective rights and responsibilities in respect of treatment provided, and of course there might be some marketing value in being able to advertise the fact that treatment is guaranteed.

Legal implications

In simple terms, the consequences of giving a guarantee will depend on how the guarantee is worded. A well-drafted guarantee should set out clearly how long the treatment is guaranteed for, explain what the patient is entitled to in the event that they make a claim, and should set out the circumstances when the guarantee doesn't apply.

One of the obvious consequences of giving a guarantee is that a dentist might give the client legal rights that extend beyond the 'implied rights' described above. This means that the terms of a guarantee could result in a dentist having

to rectify or replace treatment in circumstances where the patient would not have otherwise have been able to claim it. If the guarantee is not well drafted, especially if insufficient thought is given to the limitations and exclusions to the guarantee, a dentist could be exposed to potentially significant costs and liabilities.

Conclusion

Dentists do not have to give a guarantee and indeed, there may be risks in doing so. It is therefore important that you take legal advice from a lawyer who has experience of dental matters if you do decide to offer a guarantee so that you fully understand the extent of the obligations that you are assuming.

You should also consider your insurance position. Costs and expenses arising under a claim made by a patient under a guarantee might not be covered by your insurance where the rights that you have given the patient under that guarantee extend beyond those rights which the patient would have under the general law. You should speak to your indemnity provider or insurer before you enter into any arrangement such as a guarantee that has the potential to change the terms upon which you provide treatment.

References available on request.

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