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### **Success for dentists who challenged UDA allocations**

Lessons are still being learned from the Liverpool dentists who successfully challenged their 2006 UDA allocations when they moved over to a new NHS contract. Specialist dental lawyer Susan Hunneyball of Charles Russell LLP, who took their case to court, believes that their determination to stand their ground will be instructive, and help practitioners who enter new contracts in the months ahead.

Since the litigation, Susan has acted for other practices in disputes with PCTs and NHS England. Although the circumstances of each case were different, the practices were successful in achieving an increase in their UDAs. They were able to do this through mediation, without having to take their cases through to a trial.

The important lessons for the profession as it moves forward are:

- If you take a stand, base it on an important principle
- Don't worry too much about upsetting NHS England – if you win against a trust or team, they are professionals too, so it's possible to continue working constructively

The first case Susan dealt with involved three dentists, Walters, Petersen and Forsey who had felt forced to terminate their contract because they could not meet the UDA targets set unilaterally by the PCT.

The UDA rate was supposed to reflect the activity of each practice in a given period from October 2004 to September 2005. Liverpool PCT sent

practitioners a letter with a draft contract, stating the contract value on offer, based on a universal UDA rate of £20.33.

Unless the dentists signed and returned the contract within the space of a few weeks, they were told they would not be able to practise.

Said Susan: "No information about how the UDA figure of £20.33 had been arrived at was given, and universal pricing implied that every dentist had similar patients and practised in the same way."

She said that what wasn't taken into account was the way the Walters, Petersen and Forsey practice worked. Many of the patients were from the more deprived sections of the community and included in their NHS treatment was access to a hygienist and dental health educator.

Susan continued: "When they moved into the new GDS contract, the three dentists felt they did not have the time and flexibility they had enjoyed while in a PDS contract. As professional, committed dentists, they were not being allowed to do the best for their patients."

After terminating their contract, the PCT pursued the three dentists for the money it believed they owed for failing to meet their UDA targets. The dentists took advice from Charles Russell, specialists in dental law, who advised them to issue a counter claim.

It was argued that the contract should be retrospectively corrected. In particular, it was argued that if a dentist had done substantially the same amount of work under their GDS contract as they had during the baseline period the clear intention of Parliament was that they should continue to receive the same remuneration.

Susan's success led to two further cases, each a victory for the dentists who succeeded in increasing their UDA rate.

Practice A also had a universal baseline rate applied to them and were able to argue in negotiation that because of the judge's comments in the earlier case, the baseline UDA rate could not possibly reflect the work carried out in the index period.

Practice B, acquired a contract from other practitioners. Initially, Practice B was faced with an argument that, as new owners, they were not entitled to rely on events before their acquisition. However, NHS England eventually conceded that the new owners stood in the shoes of the original contractual parties. Once this was accepted the new owners successfully argued that the original UDA amounts did not reflect the common intention of the parties and that dentists should be paid the same under the GDS contracts as they were during the baseline period for doing the same work. The quantification was complicated because the circumstances of Practice B had changed, but they were able to achieve an uplifted blended rate on an ongoing basis.

Said Susan, "Ironically, the initial litigation came about because the Primary Care Trust issued proceedings to recover money they felt they were owed. This prompted Walters, Petersen and Forsey to make a stand. The trial judge recognised the important principle at stake."

She added: "Dental practitioners are heading towards new NHS contracts again and will need to be vigilant to ensure that new terms do not disadvantage them or their patients."

**Note to editors**

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