

PDS Plus ... or minus

What's the fuss, asks **Alexander Hall**?

On November 16, 2009, the new PDS Plus contract template was finally made public on the health department's dental access programme website (www.dentalaccess.nhs.uk). This followed months of work led by Mike Warburton and following consultation with the British Dental Association.

As a contract for the delivery of personal dental services, the PDS Plus template follows and complies with the National Health Service (Personal Dental Services Contracts) Regulations 2005 and includes the mandatory terms specified in the regulations.

The prospective contractor should take a long hard look at whether the contract is appropriate in the circumstances.

Furthermore, like any holder of a 'normal' PDS contract, the holder of a PDS Plus contract would be entitled to opt for a GDS contract to replace it if they so wish.

However, notwithstanding the mandatory PDS terms and the GDS contract entitlement, other proposed terms in the PDS Plus template and the structure and basis of the contract make it a very different proposition to a 'normal' PDS contract.

The relative options and opportunities open to prospective PDS Plus contractors and the potential consequences of the contract on a contractor's other business and



● How would you feel if you had to transfer all staff and associates to a new contractor after five or ten years?

practice should encourage the prospective contractor to take a long hard look at whether the contract is appropriate in the circumstances.

The template is not designed to be a ready-to-go contract. It contains options and variations to be carefully chosen depending on the circumstances of each case. It is supposed to be negotiable. However, this was also claimed to be the case for the GDS contract, but very few holders of GDS contracts manage to negotiate more favourable or appropriate terms and very few PCTs dare to stray from the template.

Below are just a few of the key differences, terms and issues which a prospective PDS Plus contractor would do well to consider.

Payment structure

Payment is not based on UDAs only.

The template recommends only 51 per cent of the contract value be based on UDAs performed. The remaining 49 per cent is made up of flexible performance-related pay dependent on successful measurement against quality and access key performance indicators.

In relation to the first year, the agreement provides for PCTs to offer a minimum payment of a percentage of the potential maximum performance-related pay that may be earned (whilst performance information is being gathered). However, there is no default guarantee.

There is a real prospect that a practice may never receive 100 per cent of the contract value payment. Consequently, tendering at a higher UDA value must surely be considered.

The payment structure has a disincentive effect on the option to ↻



Alexander Hall

is a member of the corporate division of mfg Solicitors LLP.

convert to a GDS contract. On such conversion it appears only the UDA basis of the PDS Plus agreement (the 51 per cent) would be carried over in to the new GDS contract. Consequently, opting for a GDS contract could nearly halve the potential maximum payment.

Claw-back of UDAs due to underperformance is inevitable. However the PCT also has the opportunity to reduce performance-related pay (notwithstanding full compliance with all KPIs) if claw-back occurs.

Transfer and control

There is no mechanism by which a contract-holder could transfer the contract and sell the goodwill inherent in the contract without the prior written consent of the PCT.

Dental Bodies Corporate must obtain written consent from the PCT in relation to a change of control (a change in the person or entity who owns 50 per cent or more of the shares), and must also inform the PCT when any shares are transferred or a new director or a secretary is appointed.

At the end of the contract period (five or 10 years), the PCT may simply appoint a new contractor. In such a case, the PCT would be entitled to enforce and the contractor would be obliged to transfer all staff and associates that provided the services under the PDS Plus contract to the new contractor. The PCT would have an option to buy equipment exclusively used for the provision of the services at a price equal to the net book value or market value, but not at new replacement value.

Insurance

By signing a PDS Plus contract the contractor is agreeing to take out and maintain insurances policies with high minimum insured sums. According to the template, the contractor must be insured for public liability of at least £5m and employer's liability and clinical negligence of at least £10m each.

Additionally, at the time of writing, the

template includes a clause whereby the contractor confirms the insurers have waived all rights to subrogation against the PCT and that the insurer will not bring a claim against the PCT for loss and damage in circumstances where the contractor could recover loss and damage under the insurance. This is something to which the majority of insurers will not agree. Consequently, the contractor must be very careful that he does not confirm something which is not true, putting himself in breach of contract from the beginning.

Branding of practice premises

The contractor must agree to ensure the practice premises are clearly designated and branded so patients can clearly see the practice is one from which NHS services may be obtained.

Whilst many will not be too bothered about this, others have been worried that they shall be required to festoon the exterior of their surgery with large blue NHS signs, perhaps compromising the branding and image of their existing, professional (and private?) practice.

Stop and consider

For the above and many other reasons, it is widely held opinion that a PDS Plus contract in its current format would be inappropriate for existing practices carrying out private or even NHS work under a GDS or 'normal' PDS contract.

The BDA have reportedly advised their members not to enter PDS Plus contracts. Those being offered one should consider the issues, terms and the potential impact on their existing practice very carefully.

The evolution of PDS Plus and other proposed new dental agreements continues to be swift. ■

This article was correct at the time of writing.

Contact Alexander Hall on 0121 550 0777 or email alexander.hall@mfgsolicitors.com