

Birmingham and Solihull Area Team
St Chads Court
213 Hagley Road
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B16 9RG

5th March 2015

DENTAL CONTRACTS DECISION REVIEW

1. I set out below my decision following my review on the 30 January 2015 of the decision taken by NHS England not to extend the periods of 2 PDS Plus dental contracts between Heart of Birmingham Teaching Primary Care Trust (PCT) and Smile Stylist Ltd at the end of the five year contractual period. These contracts relate to the Oscott/Perry Barr and Handsworth Wood/Lozells practices and commenced in September and October 2010. These contracts were novated to NHS England in April 2013.
2. I wish to confirm in relation to paragraph 5 of the Terms of Reference of the review that Wendy Saviour is no longer in post and I have succeeded her as the reviewer. In undertaking the review, I have read and understood the Terms of Reference. In reaching the conclusions set out in this letter I have looked at the contracts and have taken into account the representations made on behalf of Mr Kumar of Smile Stylist (including the bundle of supporting documents), and the statements provided by Mr Crouch of the Local Dental Committee, and Mr Takhar of The Smile Centre. I am grateful to everyone who has taken the time to assist me in conducting this review.
3. I began the review by noting that the original challenges to the two contracts in question made by Mr Takhar of The Smile Centre were made outside of the "Alcatel" period. The PCT was therefore under no legal obligation to consider it or to involve the Strategic Health Authority (SHA) in this matter. I note that the SHA set up the West Midlands Co-operation and Competition Panel (the CCP) to help the PCT make decisions on such matters.
4. I have reviewed the process adopted by the CCP but I have come to the decision that this process was unfair because Mr Kumar of Smile Stylist, as the successful bidder, was neither informed about the challenge, nor invited to make representations within the appeal process. For that reason I have only given limited weight to the recommendations of the CCP even though they were subsequently adopted by the PCT.
5. The PCT relied on the recommendations of the CCP in making the decision not to extend these contracts after the initial contractual periods of 5 years. Given the unfairness in the process leading to the CCP's recommendations, I consider that there are good grounds why NHS England should look at this decision again.

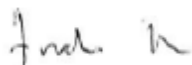
6. It has consistently been made clear to all parties that, when NHS England succeeded the PCT as the contract holder in April 2013, it would not consider itself bound by the decisions of the PCT concerning the future of the contracts. However, again based on the CCP's recommendations (and without appreciating the unfairness set out above) NHS England took its own decision not to extend these contracts after the initial contractual periods of 5 years.
7. That decision was set out in a letter dated 25/3/14 from Tracy Harvey to Mr Kumar. Given that NHS England took the decision not to extend these contracts after the initial contractual periods of 5 years based on recommendations that I now accept were reached as a result of an unfair process, it must be right to look at this decision afresh.
8. Having formed the view that the decision not to renew both contracts should be reversed, I have considered whether on the information before me, both contracts should be renewed or whether to request a further service review of the services provided by Smile Stylist in respect of both contracts before a decision on renewal is made.
9. The contract is for a period of 5 years. However, NHS England can request an extension of the contract for up to 5 additional years. No decision based on a fair process has been proved to have been taken to treat these contracts differently to other time-limited dental contracts, I therefore consider that it would be right for NHS England to adopt the same approach to these contracts as it is adopting in the case of other time-limited contracts.
10. I have therefore asked for NHS England staff to undertake the same review of these services as NHS England is taking in the case of other time-limited contracts. , I then expect a decision will be made as to whether NHS England will exercise its contractual right to renew the contracts just as it is doing in the case of other time-limited contracts.
11. Finally, in relation to the submissions made in advance of my review I offer the following comments:
 - I have upheld a number of points made by Mr Kumar in relation to the fairness of the CCP process and the conclusions reached by the CCP. These informed (and thus made unfair) decisions of the PCT and the initial decision by NHS England. I note also the advice offered by Monitor in its competition and co-operation role which does not contradict my conclusion. The representations made on behalf of Smile Stylist include references to CQC inspection reports, signed petitions from patients, patient questionnaire audits, and 'thank you' letters/cards from patients. Whilst I have carefully considered these, I make no conclusions on the quality of the services being delivered until our own service review has been concluded.
 - In relation to the questions raised by Mr Takhar in his letter to Mills & Reeve of 8 January 2015, I have made it clear that I attach little weight to the recommendations of the SHA review panel because of the procedural flaws in the process adopted by the panel.

In reaching this view I have also taken into account the best interests of NHS patients and the health service generally, for whom high standards of governance are critically important. Those interests will also be central to the service reviews that will now take place.

- Mr Crouch in his email dated 7 January 2015 to Mr Finegan of NHS England, raises a number of points in relation to PDS Plus contracts that are not material to the considerations of my review. I have also considered his questions about the nature and standing of the recommendations of the SHA review and have set my conclusions out above. I note Mr Crouch's contention that he does not consider a decision made on the basis of my review to be final. While I do not accept this point, it would be open to Mr Crouch to pursue this through the NHS England complaints system.

12. In summary, therefore, I have reached the conclusion that the existing decision by NHS England not to extend the two contracts in question at the end of their five-year period were not made on a sound basis and should be rescinded for the reasons set out above.

13. Any future decision about whether NHS England should extend these contracts will be based on service reviews to be undertaken which will take into account the best interests of NHS patients and the health service generally, in the same way as decisions are made for other time limited contracts.

A handwritten signature in black ink, appearing to read 'Andrew Reed'.

Andrew Reed
Director of Commissioning Operations (West Midlands)
NHS England

16 February 2015