

FTA LAW RESPONSE TO CONCERNS RAISED BY THE BRITISH DENTAL ASSOCIATION AND OTHERS

On Thursday 16th April, the Commercial Litigation team at FTA Law circulated a newsflash advising NHS contract holders that we could assist them in drafting a response to the recent NHS communication dealing with the ongoing COVID 19 crisis. Since then we have become aware that a number of professional advisors have seen fit to comment on the nature of our advice and question the approach they assume we are taking. The British Dental Association did likewise through an article circulated through their website on Friday 17th April.

We would firstly point out that neither the BDA or any other professional advisor who has seen fit to comment have at any time spoken with anyone at FTA Law to ascertain exactly what it is that we are advising our clients to do. Their comments are therefore based on assumptions as to the nature of our advice, without actually being in possession of any of the facts. The only people that have been availed of our advice and who know the specific details of our communications with NHS England are the growing number of clients who have contacted us to undertake this work for them. Ironically since the BDA saw fit to comment so publicly about our position, we now find ourselves somewhat overwhelmed by clients contacting us to discuss it.

It is quite clear that certain commentators have rushed to the conclusion that we are advocating a confrontational approach with NHS England. I can confirm that nothing could be further from the truth. The FTA Law clients who have already availed themselves of this service will be able to confirm that the thread running through all of our advice on the matter is one of cooperation with and amenability to NHS England's requests. This is repeated both in our initial consultations with clients, in our client care paperwork and reflected in the tone and stance of our letter to NHS England. It will clearly come as something of a surprise to certain commentators that generally speaking, our response actually accepts the requests NHS England have made and goes on to provide examples of how the practice is complying with such requests.

The value in the service we are offering is in the use of certain additional wording in the communication that we feel could be of future benefit to NHS Contract holders should the NHS take a position over the 2020/21 contract, particularly in respect of clawback, that is deemed to be sub-optimal. The additional wording is entirely non contentious and to a layperson will appear somewhat innocuous. I would also add that prior to publicising this we did also seek the opinion of legal Counsel on it to ensure our position was watertight and at no risk to the NHS Contract holder. Rest assured we have no wish to write a blank cheque on our professional indemnity insurance in respect of this issue and we are certainly not in the habit of providing incorrect advice to our clients. That our competitors in the legal market and the BDA themselves are not offering such a service is a matter for them and we make no apologies for apparently being ahead of the curve on this issue.

Here at FTA Law we are in constant communication with NHS England on behalf of our clients on a wide variety of contractual matters. We have over the years had significant success on behalf of our clients in our dealings with NHS England whilst managing to retain cordial relations with them. I expect the position to be no different here.

Finally, what I would say is that it is somewhat disappointing that at a time of significant stress and upheaval, that certain legal professional advisors serving the dental industry cannot take a more collaborative approach for the benefit of all rather than reverting to the combative and pedantic approach that unfortunately typifies our profession. To that aim, we remain happy to discuss our legal position with anyone including both dentists and professional advisors and we look forward to continuing to advise both the BDA membership and the wider dental community as we navigate our way through these testing times.

Thomas Coates
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