

# ***Dental Protection celebrates Judicial Review Victory***

***5 March 2014***

Dental Protection is celebrating a judicial review victory after a judgement established that a failure to record an examination does not necessarily mean that the examination did not take place.

Dental Protection had lobbied for the significant change after a dentist in Powys was accused of making inappropriate claims because no record of an examination had been made.

This follows an increasing number of cases where dental work has been carried out in good faith, and expenses have been incurred in that provision, and the NHS body in question has withheld or reduced payments by referring to a technicality or using a unilateral interpretation of the Regulations or contract.

Recognising the importance of the issue for dentists and the need to bring clarity to members, Dental Protection chose to pursue a judicial review rather than an appeal through the NHS.

Kevin Lewis, Dental Director, said:

"Dental Protection has a long history of fighting important points to ensure the fair treatment of members. The result can sometimes have significant benefits for the wider profession and so it is good to have an opportunity once again to remind the profession that we do a whole lot more than simply settling clinical negligence claims. Sadly claims from patients arise more frequently and garner more column inches in the press than a judicial review. That is a pity, because although it helps to explain the cost of professional indemnity it doesn't accurately reflect all the other work going on behind the scenes every day to deliver the excellent value that Dental Protection has a reputation for."

Many practitioners have found themselves under investigation by the PCT, Health Board or NHS commissioning body for allegedly inappropriate claiming. There can be several ways in which claims are deemed inappropriate and increasingly common is the "failure to record an examination".

In his judgment, Mr Justice Wyn Williams quite rightly emphasised the importance of keeping accurate and complete records, but concluded:

"The word 'examination' in the contract means a 'full mouth examination.' A dentist is obliged to make a full and accurate record of the treatment afforded to a particular patient in the patient record (including the carrying out of an examination) but the failure to record the fact of an examination in the patient record does not mean that the dentist has no entitlement to be paid for 'the units of dental activity' or 'course of treatment' provided to the particular patient. His entitlement will depend upon whether or not it is established that he has provided the 'units of dental activity' which justify the payment."

For further comment please contact David Croser, Dental Protection on +44 (0)207 399 1397 or email [david.croser@mps.org.uk](mailto:david.croser@mps.org.uk) for more information.

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