

WHAT HAPPENS NEXT?

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The BDJ Upfront section includes editorials, letters, news, book reviews and interviews.

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It is declared that the Defendant's consultation in respect of the 2015 ARF was unlawful.

These are the words on the Court Order dated 18 December 2014 relating to judicial review of the General Dental Council's (GDC's) (the Defendant referred to) annual retention fee (ARF) consultation in 2014. To me they are unambiguous words and ones that should be taken seriously by those to whom they refer. And yet those to whom they refer have either described the outcome of that case in rather different terms or have chosen not to discuss it at all. Before the order was actually published, the GDC put up a press release on its website to say that: 'The GDC recognises that Mr Justice Cranston found there was a procedural error in the ARF level consultation, but... that the error was not serious enough to require him to quash the consultation and the new fee...'

Tut tut – not exactly what he said – now was it?

And by early in the new year, it was as if the GDC had never been to court at all, let alone been found to have acted unlawfully. Despite taking the unusual step of writing to all registrants, the GDC Chair did not think the Court findings were even worthy of comment. He also put his own opinions above those of a learned High Court judge and the majesty of the law in saying that '...These decisions were controversial, but I am in no doubt that they were right...'

The bottom line in all of this is that the GDC got away with the money. And it did so by saying that its administrative systems and financial mismanagement are such that by doing the honourable

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thing patients would be left without a viable regulator. In those circumstances, the judge's hands were tied.

There are those who have asked us on the back of all of this whether it was all worth it. They have asked '...if you knew then what you know now, would you have done it again?'. My answer to you is that unequivocally 'Yes, we would'. I say that firstly because our members loudly expressed their outrage at being pushed around by an inadequate and indifferent regulator. They told us that we should take a stand and pursue this case as far as was legally possible to challenge the decision. We took high quality legal advice that confirmed to us that the GDC had acted unlawfully and was in breach of its own stated commitment concerning the way it would deal with registrants. They told us that we had a good case to make to bring the GDC to account.

When the GDC decided to press on with its imposition of the increase our lawyers said to the GDC (to paraphrase) 'but what if you lose? You will have taken money unlawfully. Please delay the fee rise and find out what the court says'. The GDC lawyers wrote back in October and said: '...The defendant recognises of course that, if ultimately it is found to have acted unlawfully in conducting the ARF consultation and it is found as a result that ARF payments at too high a level were collected, it will need to address the consequences...'. In the event, and whilst this is exactly what happened, the GDC stood back from what we had taken as a gesture of decency and instead pleaded that it should be allowed to keep its ill-gotten gains.

The big question is; were we right to accept this implied acknowledgement that if the case went against the GDC it would put matters in order and refund the money? In all the circumstances I would say that this type of proper behaviour is something that a reasonable person should be able to take at face value. The fact that the GDC ultimately ducked the issue says a lot about how we will treat its pronouncements in the future. We would suggest that all who transact with the GDC in the future should also be equally circumspect.

So yes, the GDC got to keep the money – dentists were forced to pay it. We are really disappointed by that but where does that leave the GDC? In the process it has demonstrated that: it is disingenuous in its undertaking to be transparent and open in its consultations; it has been unable to demonstrate reliable figures to support its business case; it has mismanaged its finances to the point of near bankruptcy; it cannot manage its operations to deal with business demands; it lacks any sense of honour; it appears to disregard the significance of judicial legal process and it wilfully misrepresents matters within its own publicity. This is the body which is the custodian of professional conduct within the dental profession.

Within his closing comments in the 'Dear Registrant' letter, that body's chair said; '...I hope 2015 will see the development of a more constructive relationship between the GDC and those who represent the different elements of the dental sector...'

So do we.

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