

Dental Contract Dispute Resolution Hints & Tips 2

During the course of contract negotiations, various issues have arisen in relation to the model GDS contract. In some cases, this has led to contracts being signed in dispute. The table below lists the most common points that have emerged. These have been gleaned from both providers and PCTs. Where actual changes to existing clauses of the contract have been proposed, both the original and proposed new wording (where examples available) have been given, together with the rationale.

The third column shows the wording of the clause: additions to the model contract clause by the contractor are shown in bold blue underlined text; deletions to the model contract clause by the contractor are shown in red strike-through text.

In each case, the right column (highlighted) provides a brief commentary, aimed at clarifying the position. It is hoped that this will assist PCTs in reducing the number of disputes referred the NHS Litigation Authority.

Clause No	Issue (& rationale where appropriate)	Example of actual amendment being proposed	Original GDS model contract wording	Commentary
12	<p>Sale of goodwill</p> <p>Practices are businesses with valuable goodwill, and they must be saleable assets. Provided the proposed purchaser meets the same requirements that current owner(s) meet, no sale should be prevented.</p>	<p>TheSubject to the provisions of this clause 12, the Contractor shall not without the prior written consent of the PCT give, sell, assign or otherwise dispose of the benefit of any of its rights under this Contract, [save in accordance with Schedule 4] <u>this Contract or any of its rights or obligations hereunder to any third party. Provided that the person to whom the Contractor proposes to give, sell, assign or otherwise dispose of this Contract (the "assignee") falls within the specified categories of person with whom the PCT is empowered by the Act and the Regulations to enter into personal dental services Contracts, the PCT shall not withhold its consent to any proposed gift, sale, assignment or other disposal unless the proposed assignee (or, if the proposed assignee is a qualifying body, any director, chief executive or secretary of the proposed assignee) falls within clause 304 at the time at which such consent is requested. The PCT shall notify the Contractor in writing within ten working days of any request for its consent hereunder whether or not it consents to the relevant gift, sale, assignment or other disposal. If the PCT fails to give such notice to the Contractor within such period, the PCT shall be deemed to have given its consent to the relevant gift, sale, assignment or other disposal. If the PCT withholds its consent to any proposed gift, sale, assignment or other disposal it shall provide full details to the Contractor of its reasons for doing so. The Contractor shall be entitled to give, sell, assign or otherwise dispose of this Contract or any of its rights or obligations hereunder, without obtaining the prior consent of the PCT, provided that the Contractor shall give as much prior written notice as possible to the PCT of any such gift, sale, assignment or disposal.</u> The Contract does not prohibit the Contractor from sub-contracting its obligations arising under the Contract where such sub-contracting is expressly permitted by the Contract.</p>	<p>The Contractor shall not give, sell, assign or otherwise dispose of the benefit of any of its rights under this Contract, save in accordance with the Contract. The Contract does not prohibit the Contractor from sub-contracting its obligations arising under the Contract where such sub-contracting is expressly permitted by the Contract.</p>	<p>This clause is required, as in the opinion of the DH's lawyers the contracts are personal contracts between the parties and cannot be assigned to a successor contractor.</p> <p>Minor changes to contracts with an individual contractor or two or more individuals practising in partnership are dealt with in GDS/PDS Regulations, Schedule 3, Part 9</p> <p>Where a practice is sold, assigned, or otherwise disposed of, the contract will therefore terminate. In these circumstances, if the PCT wished to commission services from the new practice owner, the PCT would wish to satisfy itself before entering into a new contract</p> <ul style="list-style-type: none"> a) that the new owner falls within the categories of person that the PCT is able to enter into a GDS contract with, and b) that entering into a contract with that person is justified in terms of the local health needs assessment and PCT priorities c) that the new contract offers value for money – note that where the sale/assignment/disposal is a straight transfer of services, it is not a requirement to go out to tender (unless the PCT so wishes) prior to entering in to a contract. <p>Where the PCT decides to re-commission services from the new provider, the issue of goodwill then becomes a matter for discussion between the vendor and purchaser. It would therefore be in the vendor's interests to enter into early discussions with the PCT.</p> <p>It would be in the vendor's interests to enter into early discussions with the PCT.</p>
13	<p>Prior notification of assignment</p>	<p>The PCT may give, sell, assign or otherwise dispose of the benefit of its rights under this Contract to another Primary Care Trust <u>provided that it shall give as much prior written notice as possible to the Contractor of any such gift, sale, assignment or disposal.</u></p>	<p>The PCT may give, sell, assign or otherwise dispose of the benefit of its rights under this Contract to another Primary Care Trust.</p>	<p>This would be good practice, but does not need to be included within the contract</p>
22	<p>Information</p> <p>Accidental / inadvertent</p>	<p>22. The Contractor warrants that: 22.1 all information in writing provided to the PCT in seeking to become a party to this Contract was, when given, true and accurate in all material respects, and in particular, that the</p>	<p>22. The Contractor warrants that: 22.1 all information in writing provided to the PCT in seeking to become a party to this Contract was, when given, true and accurate</p>	<p>This amendment is unacceptable, as it would be virtually impossible to refute a contractor's claim that no information had been knowingly omitted.</p>

	omissions of information should not be treated as a breach of clause 22.	Contractor satisfied the conditions set out in regulations 4 [and 5] ^{16,14} of the Regulations; 22.2 no information has been <u>knowingly</u> omitted which would make the information that was provided to the PCT materially misleading or inaccurate; 22.3 no circumstances have arisen <u>between the date on which such information was provided and the date of this Contract</u> which materially affect the truth and accuracy of such information; 22.4 it is not aware as at the date of this Contract of anything within its reasonable control which may or will materially adversely affect its ability to fulfil its obligations under this Contract.	in all material respects, and in particular, that the Contractor satisfied the conditions set out in regulations 4 [and 5] ¹ of the Regulations; 22.2 no information has been omitted which would make the information that was provided to the PCT materially misleading or inaccurate; 22.3 no circumstances have arisen which materially affect the truth and accuracy of such information; 22.4 it is not aware as at the date of this Contract of anything within its reasonable control which may or will materially adversely affect its ability to fulfil its obligations under this Contract.	Any minor inaccuracies may be sorted out in the course of contract reviews/discussions
23.4	UDA levels Where the UDA level has been reached by taking an average of the £/UDA for performers in the PCT's area, need reassurance that it is fair i.e. that it takes into account all performers in the area.	<u>23.4 without limitation to the generality of clauses 23.1 to 23.3, the target number of units of dental activity and the target number of units of orthodontic activity to be provided by the Contractor pursuant to clauses [77 / 78] and [116 / 117] respectively have been calculated carefully and accurately in accordance with all guidelines issued by the Department of Health from time to time and on the basis of (and consistently with) accurate, relevant and representative historical activity data, which the PCT has taken all reasonable steps to verify. Where the PCT has calculated the target number of units of dental activity by reference to the average pounds per unit of dental activity in the PCT's area, the PCT warrants that such average shall be a true average, accurately representing the actual pounds per unit of dental activity across all performers in the PCT's area, with no exclusions.</u>	23. The PCT warrants that: 23.1 all information in writing which it provided to the Contractor specifically to assist the Contractor to become a party to this Contract was, when given, true and accurate in all material respects; 23.2 no information has been omitted which would make the information that was provided to the Contractor materially misleading or inaccurate; 23.3 no circumstances have arisen which materially affect the truth and accuracy of such information.	This is entirely a matter for PCT local judgement, although it is not recommended (there may be such wide variations across a PCT area that an average may be meaningless). The only requirement in the Regulations is for a PCT "to have regard to any data it holds".
28	Exempt only contracts			This could be construed as discriminatory (and thus in breach of clause 28) unless the PCT feels it is justified by local health needs assessment
62	Changed so that it reads exactly as per paragraph 12(3) of Schedule 3 Part I of the Regulations	The restorations referred to in clause 61 are any filling, root filling, inlay, porcelain veneer or crown provided by the Contractor to a patient in the course of providing services under the Contract, which within the relevant period has to be repaired or replaced to secure oral health and . <u>The repair or replacement of a restoration specified in this clause 62 is a banded course of treatment for the purposes of calculating the number of units of dental activity and clause 79 shall apply notwithstanding that no charge is made or recovered in accordance with the NHS Charges Regulations.</u>	61. Subject to clause 63, where a restoration specified in clause 62 needs to be repaired or replaced, the Contractor shall repair or replace the restoration at no charge to the patient. 62. The restorations referred to in clause 61 are any filling, root filling, inlay, porcelain veneer or crown provided by the Contractor to a patient in the course of providing services under the Contract, which within the relevant period has to be repaired or replaced to secure oral health and is a <i>banded course of treatment</i> for the purposes of calculating the number of <i>units of dental</i>	This is unnecessary, as nothing in the model GDS contract supersedes the Regulations.

74	<p>Refusal to provide treatment</p> <p>Clause subject to all the clauses of the Contract that allow provider to refuse to provide treatment in specified circumstances, for clarification</p>	<p>74.<u>Subject to clauses 28, 29 and 33, the</u> Contractor must provide to its patients, during the period specified in clause 75, all proper and necessary dental care and treatment which includes—</p> <p>74.1 the care which a dental practitioner usually undertakes for a patient and which the patient is willing to undergo;</p> <p>74.2 treatment, including <i>urgent treatment</i>; and</p> <p>74.3 where appropriate, the referral of the patient for <i>advanced mandatory services, domiciliary services, sedation services</i> or other relevant services provided under Part 1 of the Act.</p>	<p><i>activity.</i></p> <p>74.The Contractor must provide to its patients, during the period specified in clause 75, all proper and necessary dental care and treatment which includes—</p> <p>74.1the care which a dental practitioner usually undertakes for a patient and which the patient is willing to undergo;</p> <p>74.2 treatment, including <i>urgent treatment</i>, and</p> <p>74.3 where appropriate, the referral of the patient for <i>advanced mandatory services, domiciliary services, sedation services</i> or other relevant services provided under Part 1 of the Act.</p>	<p>It is down to the PCT's discretion whether or not to amend this clause.</p>
77	<p>UDA profile</p> <p>Splitting the overall number of UDAs required under the contract into patient categories (ie x UDAs for children, y UDAs for adults, and z UDAs for exempt)</p>			<p>There is no legal basis for doing this – but equally it is not prohibited in Regulations, so such a clause may be included if both parties agree</p>
78A	<p>Bodies corporate and practices with more than one surgery in a PCT's area</p> <p>Activity of all practices to be aggregated for the purposes of measuring delivery of UDAs. This gives provider flexibility so long as overall UDA level is delivered – effectively netting off over and under performance.</p>	<p>78. [The Contractor shall provide [] <i>units of dental activity</i> during [<i>insert relevant period</i>] and [] <i>units of dental activity</i> in each financial year thereafter.]^{292B}</p> <p><u>78A. Where, pursuant to any general dental services contract(s) and/or personal dental services agreement(s) other than this Contract, the Contractor provides general dental services and/or personal dental services within the PCT's area from time to time, in addition to the services provided hereunder, the Contractor shall be deemed to have complied with clause [77] [78] if the aggregate number of units of dental activity provided by the Contractor within the PCT's area from time to time is equal to or greater than the sum of the target number of units of dental activity that the Contractor has agreed to provide.</u></p>	<p>78. [The Contractor shall provide [] <i>units of dental activity</i> during [<i>insert relevant period</i>] and [] <i>units of dental activity</i> in each financial year thereafter.]²</p>	<p>This is a matter for local commissioning decision.</p> <p>This approach is not normally recommended. A PCT might possibly wish to consider it, where practices are very closely located. But PCTs will usually have a valid interest in the location as well as the level of NHS dentistry that is delivered.</p>
78B	<p>Number of Performers</p> <p>Provider freedom to choose the number of performers appropriate to deliver required UDA levels.</p>	<p><u>78B. For the avoidance of doubt, the Contractor shall be free at its absolute discretion to appoint such number of performers as the Contractor may deem necessary or appropriate in order to ensure that the required number of units of dental activity are provided.</u></p>		<p>Unnecessary - the contractor is only required to inform the PCT of performers working under the contract</p>

84.1	Performance failure	84.This clause applies where the Contractor has failed to provide the number of <i>units of dental activity</i> it is contracted to provide pursuant to clause [77][78] ³⁴³⁰ where— <u>84.1. that failure amounts to 4 per cent or less of the total number of units of dental activity that ought to have been provided during a financial year and</u> the Contractor agrees to provide the units it has failed to provide within such time period as the PCT specifies in writing, such period to consist of not less than 60 days <u>90 days; or</u>	84. This clause applies where the Contractor has failed to provide the number of <i>units of dental activity</i> it is contracted to provide pursuant to clause [77] [78] ³ where— 84.1 that failure amounts to 4 per cent or less of the total number of units of dental activity that ought to have been provided during a <i>financial year</i> , and	This is unacceptable as it conflicts with the Regulations, which specify “such period as the PCT specifies in writing, such period to consist of not less than 60 days”
84.2	UDA levels Unforeseen factors, beyond a provider’s control, may affect its ability to deliver UDA levels.	<u>84.2 the Contractor is able to demonstrate that the failure to provide the agreed number of units of dental activity has resulted wholly or substantially from the fact that:</u> <u>84.2.1 the clinical needs of patients during the relevant financial year have been such that, on average, each course of treatment during that financial year has involved more treatment (in terms of frequency and/or duration) than was reasonably contemplated by the Contractor at the time it agreed the target number of units of dental activity specified in clause [77] [78], thereby limiting the total number of courses of treatment that the Contractor could complete during the relevant financial year, and/or</u>	84.2 the Contractor agrees to provide the units it has failed to provide within such time period as the PCT specifies in writing, such period to consist of not less than 60 days.	Unnecessary – this is already covered by the <i>Force Majeure</i> provisions (clauses 372-375)
84.3	Activity Profile It will take several months for activity data to start feeding through from the Business Services Authority. As such it will be virtually impossible for any contractor to meet its UDA targets in the first year. This would have a particularly pronounced effect for the first mid-year review.	84.3. []³² and for the avoidance of doubt, any assessment of whether or not the Contractor has breached clause [77] [78] shall take into account any written evidence the Contractor may put forward in order to demonstrate how many units of dental activity it has provided, which evidence may include without limitation real time information generated by the computer and/or management systems of the practices from which the Contractor is providing services under this Contract. The PCT shall not take any action pursuant to Part 22 of this Contract for breach of clause [77] [78] without first (i) allowing the Contractor the opportunity to put forward such evidence, together with any reasons (which may without limitation include the reasons set out in clauses 84.2, 84.3 and/or 182A) for its levels of activity during the relevant financial year, and (ii) considering that evidence and those reasons.		Unnecessary. It is true that the activity profile will be uneven in the first few months because of the inherent time lag in reporting activity – but this is covered by the review clause of the contract. GDS Regulations, Schedule 3, para 39 deal with the annual review – given the requirement on the PCT to provide to the contractor an annual report (for which data from the BSA will be required) it is unlikely that an annual review will be held until 3 months or so after the end of the financial year in any event On a more general point, it is expected that both PCTs and contractors will discuss issues openly, and that PCTs will listen to any reasonable arguments put forward.
84.2	Up to date activity data The data feeding through the BSA is often a few months out of date and, to gain an accurate picture of activity at a practice, it is necessary to use live	<u>84.2.2 the provision of the required number of units of dental activity would have jeopardised the Contractor’s ability to administer treatment to a satisfactory standard or quality; or</u>		

	activity data extracted from the practice's own records.			
92.1	<p>Activity data</p> <p>Want to use live activity data extracted from the practice's own records, in order to demonstrate actual activity.</p>	<p>92. Where a mid-year review is required by the PCT pursuant to clause 91, the PCT and the Contractor shall discuss at that review—</p> <p>92.1 any written evidence the Contractor puts forward to demonstrate that it has performed a greater number of <i>units of dental activity</i> during the first half of the <i>financial year</i> than those notified to it pursuant to clause 91.1.1<u>91.1.1, which evidence may include without limitation real time information generated by the computer and/or management systems of the practices from which the Contractor is providing services under this Contract;</u> and</p>	<p>92. Where a mid-year review is required by the PCT pursuant to clause 91, the PCT and the Contractor shall discuss at that review—</p> <p>92.1 any written evidence the Contractor puts forward to demonstrate that it has performed a greater number of <i>units of dental activity</i> during the first half of the <i>financial year</i> than those notified to it pursuant to clause 91.1.1; and</p>	<p>Unnecessary – the model contract allows for this to be done. In any case it would be good practice to utilise practice information as well as information from the BSA as part of the review process.</p>
92.2	<p>This amendment refers back to the previously proposed changes to clauses 84.2, 84.3</p>	<p>92.2 any reasons that the Contractor puts forward for the level of activity in the first half of the <i>financial year</i>, <u>which may without limitation include the reasons set out in clauses 84.2, 84.3 and/or 182A.</u></p>	<p>92.2 any reasons that the Contractor puts forward for the level of activity in the first half of the <i>financial year</i>.</p>	<p>Unnecessary – It is true that the activity profile will be uneven in the first few months because of the inherent time lag in reporting activity – but this is covered by the review clause of the contract.</p> <p>GDS Regulations, Schedule 3, para 39 deal with the annual review – given the requirement on the PCT to provide to the contractor an annual report (for which data from the BSA will be required) it is unlikely that an annual review will be held until 3 months or so after the end of the financial year in any event</p> <p>On a more general point, it is expected that both PCTs and contractors will discuss issues openly, and that PCTs will listen to any reasonable arguments put forward.</p>
97.2	<p>Withholdings</p> <p>Want an explanation of the reasons for the withholding and the methodology for calculating it</p>	<p>97.2 The PCT may—withhold monies payable under the Contract <u>provided the PCT provides the Contractor in writing with a detailed explanation of the sum(s) it intends to withhold, the method by which it calculated such sum(s), and its specific reason(s) for making the withholding.</u></p>	<p>97.2 The PCT may—withhold monies payable under the Contract.</p>	<p>Unacceptable – as drafted, the PCT may only make a withholding if it provides its reasons for doing so and the methodology for calculating the amount.</p> <p>Part 8 of the Regulations set out the provisions for mid year contract reviews - this includes provision for the PCT to notify the contractor of the reasons for its concerns.</p> <p>Part 8, para 59 specifies the maximum amount that the PCT can withhold following a mid year review.</p>
100.1	<p>Want to be able to use live activity data extracted from the practice's own records, in order to evidence actual activity.</p>	<p>100. Where the PCT withholds monies pursuant to clause 97.2, it shall ensure that it pays the withheld monies to the Contractor as soon as possible following the end of the <i>financial year</i> where the Contractor has—</p> <p>100.1 provided the number of <i>units of dental activity</i> required to be provided <u>(which the Contractor may demonstrate by reference to such written evidence as it may deem appropriate, which may without limitation include real time information generated by the computer and/or management systems of the practices from which the Contractor is providing services under this Contract);</u> or</p>	<p>100. Where the PCT withholds monies pursuant to clause 97.2, it shall ensure that it pays the withheld monies to the Contractor as soon as possible following the end of the <i>financial year</i> where the Contractor has—</p> <p>100.1 provided the number of <i>units of dental activity</i> required to be provided; or</p>	<p>Unnecessary – Part 8 of the Regulations specify that the PCT and contractor shall discuss “any reasons the contractor puts forward for the level of activity in the first half of the financial year”</p>

100A	<p>PCR shortfall</p> <p>Want to make it clear that provider liability extends to delivery of UDA levels only. Provided these are delivered, there is no liability for any PCR shortfall.</p>	<p><u>100A. For the avoidance of doubt, if the Contractor has provide the required number of units of dental activity in accordance with clause [77] [78] for any financial year or other period, but there is nevertheless a shortfall in NHS Charges for the relevant financial year or other period, the Contractor shall have no liability to the PCT or otherwise in connection with such shortfall.</u></p>		<p>PCTs are responsible for PCR shortfalls.</p> <p>Part 6 of the contract defines persons to whom mandatory or additional services are to be provided. Any changes in the mix of patients would be picked up in the course of contract monitoring and trigger a discussion as to the reasons. If it were found that the contractor was deliberately discriminating in order to change its patient profile then this could be dealt with as a breach of Schedule 3 para 1(3) of GDS Regs: "The contractor may refuse to provide mandatory or additional services in relation to a person falling outside a specified group of persons only where the contract provides for the contractor to provide such services to a specified group".</p> <p>Would recommend this amendment is rejected.</p>
108	<p>Sedation</p> <p>The provider wishes to take a more cautious approach to sedation than that outlined in the "Conscious Sedation in the Provision of Dental Care" recommendations.</p>	<p>108. The Contractor shall only provide <i>sedation services</i> to a patient in accordance with the recommendations contained in the report of the Standing Dental Advisory Committee entitled "Conscious Sedation in the Provision of Dental Care", insofar as those recommendations and guidelines are relevant to—</p> <p>108.1 the type of sedation being administered; and</p> <p>108.2 the patient to whom the sedation is being administered.</p> <p><u>In relation to the provision of conscious sedation, the Contractor and all of its performers and sedationists must, over and above the recommendations set out within clause 19.4 of "Conscious Sedation in the Provision of Dental Care", ensure that:</u></p> <ul style="list-style-type: none"> ➤ <u>single drug sedation - the "standard technique" - is the only technique used for intravenous sedation (typically using a benzodiazepine);</u> ➤ <u>intravenous sedation is only provided for patients over 16 years of age; and</u> ➤ <u>children are only offered inhalational sedation.</u> 	<p>108.The Contractor shall only provide <i>sedation services</i> to a patient in accordance with the recommendations contained in the report of the Standing Dental Advisory Committee entitled "Conscious Sedation in the Provision of Dental Care", insofar as those recommendations and guidelines are relevant to—</p> <p>108.1 the type of sedation being administered; and</p> <p>108.2 the patient to whom the sedation is being administered.</p>	<p>This is a local commissioning decision. There is no reason in principle why PCTs and contractors should not agree standards that go beyond the SDAC guidelines.</p>
117A + 117B	<p>See the notes to Clause 78A and 78B above. These clauses are the same, except relate to orthodontic, not dental activity.</p>	<p>117.[The Contractor shall provide [] units of orthodontic activity during [insert relevant period] and [] units of orthodontic activity in each financial year thereafter.]^{4e16}</p> <p><u>117A. Where, pursuant to any general dental services contracts(s) and/or personal dental services agreement(s) other than this Contract, the Contractor provides general dental services and/or personal dental services within the PCT's area from time to time, in addition to the services provided hereunder, the Contractor shall be deemed to have complied with clause [116] [117] if the aggregate number of units of orthodontic activity provided by the Contractor within the PCT's area from time to time is equal to or greater than the sum of the target number of units of orthodontic activity that the Contractor has agreed to provide.</u></p> <p><u>117B. For the avoidance of doubt, the Contractor shall be free</u></p>	<p>117. [The Contractor shall provide [] units of orthodontic activity during [insert relevant period] and [] units of orthodontic activity in each financial year thereafter.]⁴</p>	<p>117A This is a matter for local commissioning decision, but this approach is not recommended.</p> <p>117B Unnecessary - the contractor is only required to inform the PCT of performers working under the contract</p>

		<p><u>at its absolute discretion to appoint such number of performers as the Contractor may deem necessary or appropriate in order to ensure that the required number of units of orthodontic activity are provided.</u></p>		
125	Please see the notes to Clause 84 above.	<p>125. This clause applies where the Contractor has failed to provide the number of <i>units of orthodontic activity</i> it is contracted to provide pursuant to clause [116][117]⁵⁴ where—<u>125.1 that failure amounts to 4 per cent or less of the total number of units of orthodontic activity that ought to have been provided during a financial year and</u> the Contractor agrees to provide the units it has failed to provide within such time period as the PCT specifies in writing, such period to consist of not less than 60 days<u>90 days; or</u> <u>125.2 the Contractor is able to demonstrate that the failure to provide the agreed number of units of orthodontic activity has resulted wholly or substantially from the fact that:</u> <u>125.2.1 the clinical needs of patients during the relevant financial year have been such that, on average, each orthodontic course of treatment during that financial year has involved more treatment (in terms of frequency and/or duration) than was reasonably contemplated by the Contractor at the time it agreed the target number of units of orthodontic activity specified in clause [116] [117], thereby limiting the total number of orthodontic courses of treatment that the Contractor could complete during the relevant financial year, and/or</u> <u>125.2.2 the provision of the required number of units of orthodontic activity would have jeopardised the Contractor's ability to administer treatment to a satisfactory standard or quality,⁵⁰ or 125.3. during the first financial year only, the Contractor's failure to provide the agreed number of units of orthodontic activity during that financial year results from the slow lead-in period during the first three months of the first financial year, during which the PCT acknowledges that it will take time for courses of treatment completed during those months to be reported to the Business Services Authority and thereby included in the units of orthodontic activity counted for the purposes of clause [116] [117],126. }⁵² <u>and for the avoidance of doubt, any assessment of whether or not the Contractor has breached clause [116] [117] shall take into account any written evidence the Contractor may put forward in order to demonstrate how many units of dental activity it has provided, which evidence may include without limitation real time information generated by the computer and/or management systems of the practices from which the Contractor is providing</u></u></p>	<p>125. This clause applies where the Contractor has failed to provide the number of <i>units of orthodontic activity</i> it is contracted to provide pursuant to clause [116][117]⁵ where— 125.1 that failure amounts to 4 per cent or less of the total number of <i>units of orthodontic activity</i> that ought to have been provided during a <i>financial year</i>, and 125.2 the Contractor agrees to provide the units it has failed to provide within such time period as the PCT specifies in writing, such period to consist of not less than 60 days.</p>	This is unacceptable as it conflicts with the Regulations, which specify “such period as the PCT specifies in writing, such period to consist of not less than 60 days”

		services under this Contract. The PCT shall not take any action pursuant to Part 22 of this Contract for breach of clause [116] [117] without first (i) allowing the Contractor the opportunity to put forward such evidence, together with any reasons (which may without limitation include the reasons set out in clauses 125.2, 125.3 and/or 182A) for its levels of activity during the relevant financial year, and (ii) considering that evidence and those reasons.		
133.1	Please see the notes to Clause 92.1 above.	132.133. —Where a mid-year review is required by the PCT pursuant to clause 132.2,131.2 , the PCT and the Contractor shall discuss at that review— 132.133.1 —any written evidence the Contractor puts forward to demonstrate that it has performed a greater number of <i>units of orthodontic activity</i> during the first half of the <i>financial year</i> than those notified to it pursuant to clause 91.4.4 91.1.1, which evidence may include without limitation real time information generated by the computer and/or management systems of the practices from which the Contractor is providing services under this Contract ; and	133. Where a mid-year review is required by the PCT pursuant to clause 132.2, the PCT and the Contractor shall discuss at that review— 133.1 any written evidence the Contractor puts forward to demonstrate that it has performed a greater number of <i>units of orthodontic activity</i> during the first half of the <i>financial year</i> than those notified to it pursuant to clause 132.1.1; and	Unnecessary – the model contract allows for this to be done. In any case it would be good practice to utilise practice information as well as information from the BSA.
133.2	Please see the notes to Clause 92.2 above.	132. 433.2 —any reasons that the Contractor puts forward for the level of activity in the first half of the <i>financial year</i> , which may without limitation include the reasons set out in clauses 125.2, 125.3 and 182A.	132.2 any reasons that the Contractor puts forward for the level of activity in the first half of the <i>financial year</i> .	Unnecessary – It is true that the activity profile will be uneven in the first few months because of the inherent time lag in reporting activity – but this is covered by the review clause of the contract. It is recommended that the annual review is held 3 months after the end of the financial year. On a more general point, it is expected that both PCTs and contractors will discuss issues openly, and that PCTs will listen to any reasonable arguments put forward.
137.2	Please see the notes to Clause 97.2 above.	137.2 438.2 —withhold monies payable under the Contract, provided the PCT provides the Contractor in writing with a detailed explanation of the sum(s) it intends to withhold, the method by which it calculated such sum(s), and its specific reason(s) for making the withholding.	138.2 withhold monies payable under the Contract.	Unacceptable – as drafted, the PCT may only make a withholding if it provides its reasons for doing so and the methodology for calculating the amount. Part 8 of the Regulations set out the provisions for mid year contract reviews - this includes provision for the PCT to notify the contractor of the reasons for its concerns. Part 8, para 59 specifies the maximum amount that the PCT can withhold following a mid year review.
140.1	Please see the notes to Clause 100.1 above.	140.1 441.1 —provided the number of <i>units of orthodontic activity</i> required to be provided (which the Contractor may demonstrate by reference to such written evidence as it may deem appropriate, which may without limitation include real time information generated by the computer and/or management systems of the practices from which the Contractor is providing services under this Contract) ; or	141.1 provided the number of <i>units of orthodontic activity</i> required to be provided; or 141.2 failed to provide that number of <i>units of orthodontic activity</i> , but that failure amounts to 4 per cent or less of the total number of <i>units of orthodontic activity</i> that ought to have been provided during that	Unnecessary – Part 8 of the Regulations specify that the PCT and contractor shall discuss “any reasons the contractor puts forward for the level of activity in the first half of the financial year”

			<i>financial year</i> (and therefore clauses 124 to 126 apply).	
140A	Please see the notes to Clause 100A above.	<p>140. 441. Where the PCT withholds monies pursuant to clause 438.2, 137.2, it shall ensure that it pays the withheld monies to the Contractor as soon as possible following the end of the <i>financial year</i> where the Contractor has—</p> <p><u>140A For the avoidance of doubt, if the Contractor has provided the required number of units of orthodontic activity in accordance with clause [116] [117] for any financial year or other period, but there is nevertheless a shortfall in NHS Charges for the relevant financial year or other period, the Contractor shall have no liability to the PCT or otherwise in connection with such shortfall.</u></p>	141. Where the PCT withholds monies pursuant to clause 138.2, it shall ensure that it pays the withheld monies to the Contractor as soon as possible following the end of the <i>financial year</i> where the Contractor has—	<p>PCTs are responsible for PCR shortfalls.</p> <p>Part 6 of the contract defines persons to whom mandatory or additional services are to be provided. Any changes in the mix of patients would be picked up in the course of contract monitoring and trigger a discussion as to the reasons. If it were found that the contractor was deliberately discriminating in order to change its patient profile then this could be dealt with as a breach of Schedule 3 para 1(3) of GDS Regs: "The contractor may refuse to provide mandatory or additional services in relation to a person falling outside a specified group of persons only where the contract provides for the contractor to provide such services to a specified group".</p> <p>Would recommend this amendment is rejected</p>
166	This change brings the wording in line with Para 2(3) of Part 1, Schedule 1 of the Regulations.	166. The Contractor shall, subject to the termination of <u>or being unable to complete</u> , a <i>course of treatment</i> in accordance with clause 45, clauses 45 or 46 , provide the services which are detailed in the referral treatment plan, or where a revised treatment plan is provided pursuant to clause 165, pursuant to that revised treatment plan.	166. The Contractor shall, subject to the termination of the Contract or being unable to <i>complete a course of treatment</i> in accordance with clause 45, provide the services which are detailed in the <i>referral treatment plan</i> , or where a revised treatment plan is provided pursuant to clause 165, pursuant to that revised treatment plan.	This seems unnecessary – the original wording is clear and more robust.
182A	<p>Delay in including dentists on performers' lists</p> <p>Want to be excused for any failure to deliver UDA levels resulting from PCT's delay in including a dentist on the dental performer's list.</p>	<u>182A. The Contractor shall not be liable under this Agreement, for failure to provide the required number of units of dental activity and/or units of orthodontic activity or otherwise, if and to the extent that such failure results from or arises as a result of the PCT's delay in including any person on the dental performer's list.</u>	182. Where— 182.1 the registration of a dental practitioner, <i>dental care professional</i> or other <i>health care professional</i> ; or 182.2 a dental practitioner's inclusion in a <i>dental performers list</i> , is subject to conditions, the Contractor shall ensure compliance with those conditions in so far as they are relevant to the Contract.	It is important that the PCT carries out thorough checks, and that these are done as expeditiously as possible; clause 185 allows some leeway (7 days).
189.2	<p>Reference checks</p> <p>Both provider and PCT are responsible for making appropriate checks on dentists.</p>	189.2 the Contractor has checked and is satisfied with the references <u>(but this shall be without prejudice to the PCT's responsibility to check each such person's references prior to registering them on the dental performers list).</u>	189. The Contractor shall not employ or engage a person to perform dental services under the Contract unless— 189.2 the Contractor has checked and is satisfied with the references.	Unnecessary – PCT obligations in this regard are specified in the Performers' List Regulations
198A	Delegation of contractual responsibilities – bodies corporate	<u>198A The PCT acknowledges and agrees that the Contractor, being a corporate entity, shall not itself provide any clinical services pursuant to this Contract but shall delegate the provision of such services to its employees and contractors from time to</u>	198. The Contractor shall not sub-contract any of its rights or duties under the Contract to any person in relation to clinical matters unless—	This is not the meaning of sub-contracting of services to another provider in this context. The Body Corporate is responsible for delivering the obligations through its performers.

	<p>Clause 198 seems to assume that the Contract is with a dentist or dental practice, not a body corporate. Corporate entities do not provide any of the services directly but delegate these responsibilities to individual dentists and dental practices.</p>	<p>time pursuant to performers agreements. The PCT hereby agrees that such performers agreements shall not constitute sub-contracts for the purpose of clauses 198 to 201 or for the purpose of clause 252.</p>	<p>198.1it has taken reasonable steps to satisfy itself that— 198.1.1 it is reasonable in all the circumstances, and 198.1.2 that the person is qualified and competent to provide the service; and 198.2 it is satisfied in accordance with clauses 251 to 254 that the sub-contractor holds adequate <i>insurance</i>.</p>	<p>A distinction needs to be made between a provider and a performer in this context.</p>
211	<p>Disclosure of information</p> <p>Want to limit <i>contractual</i> obligation to disclose to patient and clinical data, as opposed to internal financial and business data.</p>	<p>211.2 allow the PCT, or a person authorised in writing by it to access, the information specified in clause 212. Without prejudice to any statutory obligations of the Contractor, the Contractor shall not be obliged under this clause 211 to provide any information which does not relate specifically to patient care and is in the Contractor's reasonable opinion commercially and/or financially sensitive.</p>	<p>211.The Contractor shall, at the request of the PCT— 211.1 produce to the PCT or to a person authorised in writing by the PCT in such format, and at such intervals or within such period, as the PCT specifies; or 211.2 allow the PCT, or a person authorised in writing by it to access, the information specified in clause 0. 212.The information specified for the purposes of clause 211 is— 212.1 any information which is reasonably required by the PCT for the purposes of or in connection with the Contract; and 212.2 any other information which is reasonably required in connection with the PCT's functions, and includes the Contractor's <i>patient records</i>.</p>	<p>Unnecessary, as this does not include business data - provision of information to the PCT is restricted to "any information which is reasonably required for the purposes of or in connection with the contract, and any other information which is reasonably required in connection with the PCT's functions" (clause 212 of GDS model contract).</p>
239A	<p>Late payments</p> <p>Interest should be payable on overdue sums.</p>	<p>239A If the PCT fails to pay any sum due hereunder within five days of the PCT's normal payment date, then without prejudice to the Contractor's other rights or remedies (including without limitation its rights under clauses 312 to 314), the PCT shall be liable to pay interest on the overdue amount at an annual rate of 4% above the prevailing base rate of HBOS plc, which interest shall accrue on a daily basis from the date payment becomes due until the Contractor has received payment of the overdue amount together with all interest that has accrued.</p>	<p>239. The PCT shall make payments to the Contractor under the Contract promptly and in accordance with both the terms of the Contract (including, for the avoidance of doubt, any payment due pursuant to clause 240), and any other conditions relating to the payment contained in directions given by <i>the Secretary of State</i> under section 28N of <i>the Act</i> subject to any right the PCT may have to set off against any amount payable to the Contractor under the Contract any amount- 239.1 that is owed by the Contractor to the PCT under the Contract; 239.2 has been paid to the Contractor owing to an error in circumstances when it was not due; or 239.3 that the PCT may withhold from the Contractor in accordance with the terms of</p>	<p>Unnecessary because 1) PCT functions in relation to payments under the GDS & PDS SFEs have been transferred to the BSA 2) provided payment conditions specified in SFE have been met, contractors will be paid a monthly amount calculated in accordance with the SFE at the same time as they are sent the monthly pay schedule (specified in the SFE para 4.19)</p> <p>For GDS contracts and most PDS agreements this will be the first working day of the month. Some PDS agreements may continue to be paid on the date agreed at the start of the pilot.</p>

			<p>the Contract or any other applicable provisions contained in directions given by <i>the Secretary of State</i> under section 28N of <i>the Act</i>.</p> <p>239A. Where, pursuant to directions made under section 17 or 28N of <i>the Act</i>, the PCT is required to make a payment to the Contractor under the Contract but subject to conditions, those conditions shall be a term of the Contract.</p> <p>239B. Payments to be made to the Contractor (and any relevant conditions to be met by the Contractor in relation to such payments) in respect of services where payments, or the amount of any such payments, are not specified in directions under section 17 or 28N of <i>the Act</i>, are set out in Schedule 4 to this Contract.⁶</p>	
239.5	<p>Want to ensure</p> <ol style="list-style-type: none"> 1) that the Annual Contract Value is set without any infringement of applicable discrimination legislation. 2) Annual Contract Value will increase annually in line with any recommendations issued by the DoH or DDRB. 3) freedom to allocate the Annual Contract Value within the business, as provider sees fit. 	<p>239.5 Payments to be made to the Contractor (and any relevant conditions to be met by the Contractor in relation to such payments) in respect of services where payments, or the amount of any such payments, are not specified in directions pursuant to clause 239.4, are set out in Schedule 4 to this Contract.⁶⁵³ <u>In setting and/or varying the sums set out in Schedule 4, the PCT agrees that it shall not discriminate between contractors, practices or performers on the grounds of race, ethnic origin, nationality, sex, age and/or religion. All sums payable to the Contractor hereunder, including without limitation the sum referred to as the "Annual Contract Value" in Schedule 4 to this Contract, shall be increased on an annual basis by such amount as may increase such "Annual Contract Value" to a level consistent with the higher of any applicable contract value recommendations made from time to time by the Department of Health and/or the Doctors and Dentists Review Body. The PCT acknowledges and agrees that the Annual Contract Value shall be allocated by the Contractor as it sees fit between (amongst other things) the salary costs of performers and other staff, the cost of providing management resources and structures, the cost of maintaining appropriate corporate governance, recruitment costs and the cost of maintaining quality control and information systems.</u></p>	<p>See related information above (there is no clause 239.5)</p>	<p>There are 3 points here:</p> <ol style="list-style-type: none"> 1) PCT compliance with anti-discrimination legislation as regards payments – since this is a legal requirement, it is unnecessary to insert a clause in the contract 2) Annual uplifts are determined by the Secretary of State (SFE paras 3.6-3.7) 3) It is entirely a matter for the contractor to decide how it deploys monies received from a PCT (and paid via the BSA) in respect of services delivered, within the terms of an agreed contract
242	<p>Does not make sense to treat 242.1 and 242.2 as sub-clauses of 242. From the Regulations, it appears that these were intended to be two separate</p>	<p>242. 242.1. <u>The Contractor shall</u> only collect from any patient of its any charge that that patient is required to pay by virtue of the <i>NHS Charges Regulations</i>, in accordance with the requirements of those Regulations; and <u>Obligations</u> obligations imposed on the Contractor by virtue of the NHS Charges Regulations shall be terms of this Contract.</p>	<p>242. The Contractor shall—</p> <p>242.1 only collect from any patient of its any charge that that patient is required to pay by virtue of the <i>NHS Charges Regulations</i>, in accordance with the requirements of those Regulations; and</p>	<p>The original wording is (a) clear and (b) robust.</p>

	provisions.	242.2. — obligations imposed on the Contractor by virtue of the NHS Charges Regulations shall be terms of this Contract.	242.2 obligations imposed on the Contractor by virtue of the <i>NHS Charges Regulations</i> shall be terms of the Contract.	
Part 16	Clinical Audit, Peer review, CPD			<p>Under nGDS, a dentist is expected to undertake CPD/clinical audit in line with the PCT's clinical governance framework. Unlike old GDS, there is</p> <p>a) no loss of income associated with this (so there is no need for any compensatory payments)</p> <p>b) no specific time commitment (previously it was 15 hours over 3 years).</p> <p>Where a dentist undertook CPD or clinical audit during the reference period, the compensation for loss of GDS earnings will be reflected in their CACV. Where no CPD or clinical audit was undertaken, there would have been no loss of earnings.</p> <p>There may be an issue for PCTs where a dentist did some CPD activity in the base period but did not receive payment for it - in which case s/he might argue that both their CACV and associated UDA level should be adjusted. This does not alter the fact that the formal entitlement is only to what was earned in the base period.</p> <p>Clinical audit was undertaken on a 3 year cycle - so if a dentist received a CA payment in the reference period, his or her CACV will reflect this (3 year) amount recurrently and the dentist's UDA level will also have been reduced as a result. PCTs could in theory seek to agree with contractors in their area that dentists who undertook CPD/CA during the reference year should have their UDAs marginally increased (or contract value reduced), so that there can be a corresponding reduction in UDAs (or increase in contract value) for the other dentists in their area. However, all dentists are likely to have significant time freed up for activities such as clinical audit and CPD, both through the 5% reduction in UDAs and through the opportunity to carry out simpler courses of treatment with fewer items of service. It is therefore questionable whether the benefits from marginal redistribution of UDAs or contract values involved in such an exercise – which would have to be by mutual agreement with all the contractors involved – would be proportionate to the effort involved.</p>
261	Legal compliance obligation to be mutual	261. The Contractor shall comply with all relevant legislation and have regard to all relevant guidance issued by the PCT, the <i>relevant Strategic Health Authority</i> or <i>the Secretary of State</i> . The PCT shall comply with all relevant legislation and have regard to all relevant guidance issued by the relevant Strategic Health Authority or the Secretary of State.	261. The Contractor shall comply with all relevant legislation and have regard to all relevant guidance issued by the PCT, the <i>relevant Strategic Health Authority</i> or <i>the Secretary of State</i> .	<p>Part 19, clause 261 is mandatory (Para 84 of Schedule 1 of the Regulations).</p> <p>This is not a contractual matter - Secretary of State would direct PCTs and SHAs</p>
262		262. The Contractor shall establish and operate a complaints	262. The Contractor shall establish and	Unacceptable.

	<p>Complaints The changes to this clause and clauses 263 to 278 are necessary because individual performers run their own complaints procedures as they have their own personal professional indemnity cover and, should a complaint arise, they will be personally in contact with their respective indemnity organisations to deal with that complaint.</p>	<p>procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the Contract which shall comply with the requirements of clauses 265 to 274 and 277 to 278. <u>The Contractor shall have fulfilled its obligation under this clause 261 if it procures that all performers providing services pursuant to this Contract establish and operate complaints procedures which comply with the requirements of clauses 265 to 274 and 277 to 278.</u></p>	<p>operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the Contract which shall comply with the requirements of clauses 265-274 and 277 to 278.</p>	<p>This proposed amendment appears to assume that all complaints will be directed exclusively at performers, and lets the contractor offload responsibility on to its dentists (!).</p> <p>The complaints process is practice-based, and performers are not required to operate their own procedures. Part 20 of the contract is mandatory. The Regulations (Part 6 of Schedule 3) specify that “the contractor shall establish and operate a complaints procedure.....”</p>
263		<p>263. The Contractor shall take reasonable steps to ensure <u>(or shall procure that its performers take reasonable steps to ensure)</u> that patients are aware of— 263.1 the complaints procedure; 263.2 the role of the PCT and other bodies in relation to complaints about services under the Contract; and 263.3 their right to assistance with any complaint from independent advocacy services provided under section 19A of the Act.</p>	<p>The Contractor shall take reasonable steps to ensure that patients are aware of— 263.1 the complaints procedure; 263.2 the role of the PCT and other bodies in relation to complaints about services under the Contract; and 263.3 their right to assistance with any complaint from independent advocacy services provided under section 19A of the Act.</p>	
264		<p>264. The Contractor shall take reasonable steps to ensure <u>(or shall procure that its performers take reasonable steps to ensure)</u> that the complaints procedure is accessible to all patients.</p>	<p>264. The Contractor shall take reasonable steps to ensure that the complaints procedure is accessible to all patients.</p>	
270		<p>270. The Contractor must nominate <u>(or procure that its performers nominate)</u>— 270.1 a person (who need not be connected with the Contractor and who, in the case of an individual, may be specified by his job title) to be responsible for the operation of the complaints procedure and the investigation of complaints; and 270.2 a partner, or other senior person associated with the Contractor <u>(or the relevant performer(s))</u>, to be responsible for the effective management of the complaints procedure and for ensuring that action is taken in the light of the outcome of any investigation.</p>	<p>270. The Contractor must nominate— 270.1 a person (who need not be connected with the Contractor and who, in the case of an individual, may be specified by his job title) to be responsible for the operation of the complaints procedure and the investigation of complaints; and 270.2 a partner, or other senior person associated with the Contractor, to be responsible for the effective management of the complaints procedure and for ensuring that action is taken in the light of the outcome of any investigation.</p>	
273		<p>273. Where the investigation of the complaint requires consideration of the patient's dental records, the person specified in clause 270 must inform the patient or person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the Contractor or an employee of the Contractor; 273.1 <u>where the Contractor operates the complaints system, the Contractor, an employee of the Contractor, or the person specified in clause 269.1; or</u> 273.2 <u>where a performer operates the complaints system, the performer, an employee of the performer or the person specified in clause 269.1.</u></p>	<p>273. Where the investigation of the complaint requires consideration of the patient's dental records, the person specified in clause 270 must inform the patient or person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the Contractor or an employee of the Contractor.</p>	
274		<p>274. The Contractor must keep <u>(or shall procure that its performers keep)</u> a record of all complaints and copies of all correspondence relating to complaints for a period of at least two years from the date on which such complaints were made, but such records shall be kept separate from the patients' dental</p>		

		records.		
277		277. The Contractor shall inform the PCT, at such intervals as the PCT requires, of the number of complaints it has <u>and all of its performers have</u> received under the procedure established in accordance with this Part.	277. The Contractor shall inform the PCT, at such intervals as the PCT requires, of the number of complaints it has received under the procedure established in accordance with this Part.	
282	NHS contract	282. The <i>NHS dispute resolution procedure</i> applies in the case of any dispute arising out of or in connection with the Contract which is referred to <i>the Secretary of State</i> in accordance with [section 4(3) of the 1990 Act / clause 280 above] ^{76/74} , and the PCT and the Contractor shall participate in the <i>NHS dispute resolution procedure</i> as set out in paragraphs 55 and 56 of Schedule 3 to <i>the Regulations</i> .	282. The <i>NHS dispute resolution procedure</i> applies in the case of any dispute arising out of or in connection with the Contract which is referred to <i>the Secretary of State</i> in accordance with [section 4(3) of the 1990 Act or clause 280 above] ⁷ and the PCT and the Contractor shall participate in the <i>NHS dispute resolution procedure</i> as set out in paragraphs 55 and 56 of Schedule 3 to <i>the Regulations</i> .	If a non- NHS contract, clauses 280-281 are mandatory, and clause 282 should read "The <i>NHS dispute resolution procedure</i> applies in the case of any dispute arising out of or in connection with the Contract which is referred to <i>the Secretary of State</i> in accordance with clause 280 above and the PCT and the Contractor shall participate in the <i>NHS dispute resolution procedure</i> as set out in paragraphs 55 and 56 of Schedule 3 to <i>the Regulations</i> ."
289	Do not want to compromise the quality of patient care in order to deliver UDA levels. If this were the case, would request an adjustment to our UDA target under the mechanism set out in clause 288.	No changes made to the clause.	289. Where the Contractor or the PCT is of the opinion that there needs to be a variation to the number of— 289.1 <i>units of dental activity</i> ; or 289.2 <i>units of orthodontic activity</i> , to be provided under the Contract, clauses 290 and 291 shall apply.	The contract has provision for variations to UDAs/UOAs to be made.
357.3	Arrangements on contract termination Patients will not automatically be transferred to another provider. All patients, and all goodwill that has been built up during the term of the Contract, will remain with provider unless the patients elect to go elsewhere rather than being treated privately by provider.	357. On the termination of the Contract for any reason, the Contractor shall- 357.1 subject to the requirements of this clause, cease performing any work or carrying out any obligations under the Contract; 357.2 co-operate with the PCT to enable any outstanding matters under the Contract to be dealt with or concluded in a satisfactory manner; 357.3. co-operate with the PCT to enable the Contractor's patients to be transferred to one or more other contractors or providers of mandatory services (or their equivalent), which include providing reasonable information about individual patients to such other appropriate person or persons as the PCT specifies; 357.4. [If the PCT has lent any property such as computer hardware and software, drugs, appliances or dental equipment which may be in the Contractor's possession or control, the contract may include provision for the return of such property here];	357. On the termination of the Contract for any reason, the Contractor shall- 357.1 subject to the requirements of this clause, cease performing any work or carrying out any obligations under the Contract; 357.2 co-operate with the PCT to enable any outstanding matters under the Contract to be dealt with or concluded in a satisfactory manner; 357.3 co-operate with the PCT to enable the Contractor's patients to be transferred to one or more other contractors or providers of <i>mandatory services</i> (or their equivalent), which include providing reasonable information about individual patients to such other appropriate person or persons as the PCT specifies; 357.4 [If the PCT has lent any property such as computer hardware and software, drugs, appliances or dental equipment which may be in the Contractor's possession or control, the contract may include provision for the	Regulation 23 specifies that the contract "shall make suitable provision for arrangements on termination of a contract including the consequences (whether financial or otherwise) of the contract ending", but clause 357 is not mandatory – the parties may draft their own provisions instead. A patient is defined as "a person to whom the contractor is providing services under the contract". It is reasonable to expect the contractor to cooperate with the PCT to ensure patients currently undergoing a course of NHS treatment (who are the ones most affected by the termination) can complete that treatment under the NHS. As a point of good practice, it may be helpful to agree a local policy for arrangements on termination of a contract

			<i>return of such property here];</i>	
379	<p>Legal & contractual notices</p> <p>Would prefer that legal and contractual notices were <u>not</u> sent by email, and that PCTs do not have the right unilaterally to alter the notices requirements.</p>	<p>379. Save as otherwise specified in this Contract or where the context otherwise requires, any notice or other information required or authorised by this Contract to be given by either party to the other party must be in writing and may be served:</p> <p>379.1 personally;</p> <p>379.2 post, or in the case of any notice served pursuant to Part 22, registered or recorded delivery post; <u>or</u></p> <p>379.3 by telex, or facsimile transmission (the latter confirmed by telex or post);</p> <p>379.4. — electronic mail; or</p> <p>379.5. — by any other means which the PCT specifies by notice to the Contractor.</p>	<p>379. Save as otherwise specified in this Contract or where the context otherwise requires, any notice or other information required or authorised by this Contract to be given by either party to the other party must be in writing and may be served:</p> <p>379.1 personally;</p> <p>379.2 by post, or in the case of any notice served pursuant to Part 22, registered or recorded delivery post;</p> <p>379.3 by telex, or facsimile transmission (the latter confirmed by telex or post);</p> <p>379.4 electronic mail; or</p> <p>379.5 by any other means which the PCT specifies by notice to the Contractor.</p>	<p>The footnote says that this clause is not required by the regulations, but is recommended. This is a matter for local decision.</p> <p>Para 60 Schedule 3 of the Regulations enable the PCT to enforce a variation, subject to notice etc, to comply with any changes in the law.</p>