

# Enemy at the gates

David Parker discusses the commercial significance of the new developments in 'control of entry' regulations....

Arguments rage almost every week in trade publications, about the injustice of the control-of-entry system and the impact it has upon existing business owners.

Whilst I understand the concerns of existing owners, particularly given the substantial sums committed to goodwill, it has to be recognised that the control-of-entry regulations are devised primarily with the patient in mind.

The Department of Health (DH) does not seek to protect pharmacists, they seek to deliver a service to patients. That is not to say that pharmacy should not continue to fight its corner, but simply that we must recognise there is a genuine and non-malicious conflict of agenda.

After all, I have yet to come across an existing owner who thinks 100-hour pharmacies are the best thing since sliced bread and yet interestingly I can't find a member of the public that thinks they are not.

This tension between the desire to retain the status quo, on the one hand, and the desire to drive service and innovation through competition on the other, will continue to fuel debate and discontent for some time to come.

However, from a practical standpoint, what is most important for those sitting in the status quo camp (that sounds like a field you would avoid at Glastonbury!) is that they are not only aware of the latest developments, but that they also appreciate how these are applicable to their local trading position.

There have been a number of small yet important developments over recent months that may, for the time being, provide some



PCTs have to consider 'choice' as a factor when awarding a new pharmacy contract

operating for 100 hours per week are not to be taken lightly.

Based on average market profit and loss parameters, it became commonly recognised that anything less than 6,000 items per month would result in ever-aggregating loss.

The number of 100-hour pharmacies exceeding this target is very small indeed, but for those that have sweated blood and tears to surpass the

## The White Paper

The recently published White Paper also addressed, albeit in a rather vague manner, the impact of the 100-hour contract.

The most concrete proposal that came out of the paper was one of applying distance restrictions on new applications, whereby a second 100-hour contractor could not open within, say, two km of an existing one.

In reality, the protection afforded by this regulation would probably be less than that afforded by the commercial pressures and plain business common-sense mentioned above.

## Consortium pharmacy

A far greater threat on the horizon, I believe, is the exemption under the modified control-of-entry regulations that allows new contracts to be granted to consortia wishing to establish in One-Stop Primary Care Centres of more than 18,000 patients (Regulation 13 (1) (c)).

This exemption has until now had little impact on existing contractors and has consequently passed below the radar for a number of reasons. The most important is that the regulation requires that the development had not been mentioned in an Strategic Service Development Plan prior to April 1 2005 (i.e. It should not have been a project already planned by the PCT when the regulations were changed).

This requirement has, thus far, kept the

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welcome respite from the seemingly unremitting flow of applications for new contracts.

## Category M

Not the obvious cloud to yield up a silver lining, but the impact of category M reimbursement changes has had one side effect that is welcome to existing business owners.

When the 100-hour contract was made available several years ago many pharmacists who could not get their feet on the ownership ladder saw this as their route to a wealthy and prosperous future.

Since the initial flood of applications, many of which never materialised, applicants have become aware that the costs and pressures of

break-even point, the goal posts have just been moved upwards by approximately 1,000 items.

Although category M has affected all contractors, the NHS volumes required to make 100 hours work, along with the lack of profit and loss clearance that even the best business has, serves to amplify the effect for the 100-hour operator.

I am not a regular 100-hour basher; in fact I find the service a very useful one myself. However contrary to common opinion, mine is that the number of 100-hour contracts has reached its peak and will reduce over the coming years (perhaps with the exception of the supermarkets) as the existing operators run out of energy and/or their banks run out of patience.

flood gates closed because, given the length of time taken for large developments to pass from concept to reality, there are very few that were not on the drawing board prior to April 2005.

However, as we are now approaching the mid-way point in 2008, this particular barrier to entry will begin to lift quite quickly. Although there will still be some hoops to jump through to qualify for this exemption the rewards for owning the pharmacy in a development of 18,000 plus patients are substantial.

For any contractor where such a development is, or may be, planned locally, it is imperative that they seek expert advice on whether or not the exemption could apply. With the increased tendency for GPs and other disciplines to congregate in 'Super surgeries' this exemption will become ever more relevant. The scenario where all the GPs in a town co-habit under one roof, with a pharmacy on-site, leaving all existing contractors to fight for the scraps, is a very real one.

## Competition and Choice

The 2005 regulations also included provision for PCTs to consider 'Choice' when assessing adequacy of pharmaceutical services.

Although not explicit within the regulations, this inclusion almost certainly came about as a result of the Office of Fair Trading enquiry that recommended complete deregulation. In fact the DH guidance notes to PCTs refer not just to 'Choice' but to 'Competition and Choice' and all but encourage PCTs to grant new contracts where the overall effect of a new contract would be positive (to the patient).

Since then there has barely been a new contract application that has not put forward the argument of 'Choice' but perhaps surprisingly there appears to have been less than a handful of new contracts granted on that basis.

This paradox between written regulations, and the decisions made by both PCTs and the Litigation Authority, recently led Assura Pharmacy to ask for a judicial review of two decisions to which the question of 'Choice' was key.

For existing contractors the outcome of this judicial review was generally positive, in that the issue was blurred further still.

By way of example the judgement established that the decision-maker is required to consider 'Choice of provider' as a factor when assessing adequacy, but can then attribute

**PCTs can now levy charges for new contract applications**



directions to PCTs to levy charges for all applications from April 21 2008. These fees range from a fairly nominal and risk-free £150 for the most minor of relocations (minor <500 metres) to a more significant and far from risk-free £750 for a new contract application. In the event of repeat applications within certain time limits, this fee rises to £3,000.

The justification for these charges is entirely plausible. The consideration of an ap-

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plication incurs substantial cost. With no disincentive, many applications that have little merit have had to pass through first the PCT's and then the appeals authority's process.

The first aim of the changes is to recoup part of the cost incurred in considering applications (the DH estimate this at £1,500 to £3,000 per application). A second, and perhaps more valuable motive for existing owners, is to reduce the number of applications made.

Given that an application for a new, non-exempt, contract has a very substantial chance of failure, applicants will think seriously before putting pen to paper.

If, for the sake of argument, only one application in twenty succeeds, £750 is quite a stake to place each time. Nevertheless, to put a gambler's perspective on it, the prize may be worth considerably more than 20 x £750.

My expectation is that these charges will have a significant effect on the overall number of applications made, where larger groups will still take the gambler's, or statistical, approach but all other applications will reduce massively.

Although a probable side-effect of these charges will be to discourage competition from new entrants, I'm not sure many existing contractors will complain.

Overall therefore, some news is good news and, for the moment at least, most well informed contractors will be able to keep the enemy at the gates.

whatever weight they wish to this factor.

Quite how you determine whether somebody has considered something but attributed zero weight to it, or merely not considered it at all, is a philosophical question indeed! The judgement in fact was extremely profound and made conceptually interesting reading, but unfortunately delivered precious little in terms of a practical answer to the original question.

Nevertheless, for the time being at least, it appears that the floodgates of 'Choice' have not been forced open and existing contractors can breathe a little easier. I suspect however that this may just be the end of 'Round 1' so far as Assura are concerned.

## Introduction of fees for applications

It has, for some time, been foreseen that PCTs could levy a charge for applications to enter the register, relocate or transfer ownership. Nevertheless, until now the cost of making an application has been limited to an envelope and a stamp.

At the start of April 2008 the DH issued

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