REGULATORY APPRAISAL

NATIONAL HEALTH SERVICE, WALES

THE GENERAL DENTAL SERVICES AND PERSONAL DENTAL SERVICES TRANSITIONAL PROVISIONS (WALES) REGULATIONS 2006

Background

1. *'Routes to Reform, A Strategy for Primary Dental Care in Wales'* published in 2002 highlighted the importance of developing a preventive focus within dentistry and identified the need to tackle oral health inequalities, particularly in children, as a key function for a modernised NHS dental service. The Health and Social Care (Community Health and Standards) Act 2003 legislated for far-reaching reform of NHS dental services to deliver the '*Routes to Reform'* objectives.

2. In the main, NHS dental care and treatment is currently provided by 'high street' dentists under general dental services (GDS) arrangements under section 35 of the National Health Service Act 1977 (the 1977 Act). About 70% of these dentists' earnings are derived from fees for the individual items of service they provide. The remaining 30% is derived from other monthly NHS payments, which are not directly related to treatment provision but are intended to reimburse dentists for the provision of facilities in relation to the NHS. These payments to dentists are set out in the Statement of Dental Remuneration (SDR).

3. Since 1998, an alternative system of dental service provision has been able to be piloted under the National Health Service (Primary Care) Act 1997 (the Primary Care Act). Under these Personal Dental Services (PDS) pilots, an annual contract sum is agreed between the provider of the service and the Local Health Board (LHB) commissioning the service for an agreed level of NHS commitment. Payments under the PDS agreement are made in 12 instalments. The Primary Care Act requires dental charges paid by the patient under a PDS pilot scheme to be the same as if the treatment had been provided under GDS arrangements.

Purpose and intended effect of the measure

4. Building on the experience of PDS piloting, provisions in the Health and Social Care (Community Health and Standards) Act 2003 (the 2003 Act) will underpin modernised, locally sensitive primary dental services properly integrated with the rest of the NHS. Under the new arrangements, LHBs will be able to enter into contracts for the provision of primary dental services to meet all reasonable requirements or provide the services themselves. Remuneration of providers under the contract will be by annual contract value, as under the PDS piloting arrangements.

5. The 2003 Act provides for two types of contract: GDS contracts and PDS agreements. Under a GDS contract, the contractor will be required to provide a range of dental services set out in the GDS Contracts

Regulations. New PDS agreements will be the ‘permanent’ version of PDS piloting and will provide for greater flexibility in the services to be provided. Additionally, a wider range of potential providers will be permitted to hold contracts, including healthcare professionals other than dentists. PDS agreements will, for example, be used for commissioning specialised services such as orthodontics.

6. In other material respects the mandatory terms of contracts are similar under both the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006 (the 2006 GDS Regulations) and the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006 (the 2006 PDS Regulations).

Risk Assessment

7. The new dental contract is based closely on that being introduced in England, although officials have been working with British Dental Association Wales and the dental profession to amend the contract where possible to reflect needs and address difficulties here. However, our timetable is inextricably linked to the one in England and the reforms in England are due to come into effect at the same time. Any delay in implementation in Wales would put Wales seriously out of step and have an immediate and negative effect on retention and recruitment of dentists providing NHS care. There would also be substantial additional cost in maintaining different payment and charging arrangements for dentists in Wales with the Dental Practice Board.

Options

Option 1: ’Do Nothing’

8. Would leave the existing provision of NHS dental services in place.

Option 2: ‘Make the Legislation’

9. Introduce legislation to establish new forms of local contracting for the provision of primary dental services to improve access to a quality NHS dental service.

Costs

10. There are no specific costs arising from this Order. The overall intention of the proposed reform of NHS dental services is to secure the existing level of NHS dental services within existing resources. Growth of NHS dental services, and increasing access, is a key aim of the reforms and an additional £15 million has been made available from 2006-07.

11. Current expenditure on GDS is non-cash limited. Net expenditure in 2004-05 was some £80.041 million. It is proposed that current expenditure on dentistry will be protected so that when spend on GDS moves from a national budget into local allocations, there will be a floor, so that LHBs will be required to spend at least at the current level on

dentistry. They can spend more than this if they wish but cannot spend less.

12. Practices are guaranteed the same level of gross income as that in the test period (October 2004-September 2005), increased by the agreed Doctors and Dentists Review Body (DDRB) uplift (3.4% for 2005-06), for comparable levels of commitment work.

13. To support LHBs, local dental committees and dentists to help prepare for the changes and to implement reform, funding of £990,000 was incurred in 2004-05. This was made up as follows:
    - £440,000 - £20,000 to each LHB in terms of supporting the dental change agenda allowing them to support leadership in LHBs; improve organisational development to successfully implement the contract; support Local Dental Committees; developing dental leadership skills; improve communication and review and update dental competencies in line with the development of the dental reforms; and

    - £550,000 - The equivalent of £1,000 per dental practice (pro rata on NHS commitment). This was in response to the DDRB recommendation that financial assistance to practices was required to assist them to prepare for the new contractual arrangements.

14. The above allocation to LHBs to help them get to grips with the changes is recurrent in 2005-06 and 2006-07. This funding has come from the Health and Social Services Main Expenditure Group (Payments to Contractors Budget Expenditure Line).

Benefits

15. The main benefit of making these Regulations would be improved access to an NHS dental service better aligned to patients needs. Making these Regulations could enhance clinical effectiveness, cost effectiveness and appropriateness of oral healthcare for the patients. In addition, it is likely to lead to improved working lives for dentists and their dental teams.

Consultation

With Stakeholders

16. This Order forms part of the wider reform of NHS dental services, which has been discussed with the dental profession on and England and Wales and Wales only basis. The main enabling Regulations (the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006; the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006; and the National Health Service (Dental Charges) (Wales) Regulations 2006), along with accompanying guidance, were published for information and comment on 9 September 2005. A summary of the main points made during these discussions is given in the Regulatory Appraisal for the National Health Service (General

Dental Services Contracts) (Wales) Regulations 2006. In addition they have been published on the Welsh Assembly Government website and details included in updates sent to all dentists in Wales.

17. The proposal is not new policy and has not, therefore been subject to public consultation.

With Subject Committee

18. The draft Order was notified to the Health and Social Services Committee on 3 November 2005, via the list of forthcoming legislation (HSS(2)-11-05(p.4)) and was identified for detailed scrutiny.

19. The Committee scrutinised this Order at its meeting on Thursday 19 January 2006 (HSS(2)-01-06(p.1)). The Order was considered in accordance with the Committee's agreed protocol for scrutinising legislation. No amendments were proposed or points of clarification raised. The Committee recommended approval of the draft Order. A draft transcript detailing the discussion is attached at Annex A.

Review

20. Dentists are required to comply with their terms of service. Failure to comply would result in a breach of the terms of service. A financial withholding may be imposed on the dentist in relation to a breach. The Dental Practice Board (DPB) is responsible for establishing the probity of payment claims for GDS and PDS pilots and for making payments to them for the work they have done. The DPB continually monitors dentists' prescribing patterns and activity and the verification of dental charges in respect of each course of treatment provided.

21. The reforms will require those holding contracts for the provision of primary dental services and dentists employed directly by LHBs to submit to the Business Services Authority (who are taking over the role and functions of the DPB from April 2006) data for activity monitoring and patient charge verification. Data from this process will be provided regularly to both the LHB and the provider of the service.

Summary

22. This Order sets out the arrangements to be put in place to move contractors and potential contractors from the existing regime for NHS dental services to provision of primary dental services under GDS contracts and PDS agreements.

ANNEX A

DRAFT

Y Contract Deintyddol—Is-ddeddfwriaeth
The Dental Contract—Secondary Legislation

[1] **Rhodri Glyn Thomas:** Unwaith eto, byddwn yn edrych ar y ddeddfwriaeth hon ar sail y protocol y soniwyd amdano ynghynt, gyda'r Mesur Iechyd. Gofynnwyd eto am welliannau a phwyntiau o eglurhad.

Rhodri Glyn Thomas: Once again, we will look at this legislation on the basis of the protocol that was referred to earlier, with the Health Bill. Amendments and points of clarification were, again, requested.

[2] **Brian Gibbons:** Do you want me to make some preliminary remarks? I have some prepared.

[3] **Rhodri Glyn Thomas:** If you want to, although I was going to move straight to the amendments and the points of clarification. I am happy if you have some initial comments to make.

[4] **Brian Gibbons:** No. I am just saying that I would be pleased to make some preliminary remarks.

[5] **Rhodri Glyn Thomas:** Please do so. Let me get over the pleasantries first, and then you can make your initial remarks, Minister.

[6] Just note that the amendments and the points of clarification are all to do with point 3: the functions of local health boards. In that sense, you can make some general comments, Minister, but comments referring specifically to item 3 would be very welcome.

[7] **Brian Gibbons:** No. I am more than happy not to bother with opening remarks if it is conducive to business. There is no particular virtue in doing it.

[8] **Rhodri Glyn Thomas:** In principle, unless the opening remarks are necessary, I do not think that we really need them, and we can move straight to the meat, as you put it.

[9] **Brian Gibbons:** Yes, okay. Let us forget about them then.

[10] **Rhodri Glyn Thomas:** As you have prepared them, Minister, I would not want your work to be in vain.

[11] **Brian Gibbons:** Let us reconcile.

[12] **Rhodri Glyn Thomas:** I am sure that you have been in front of the mirror this morning rehearsing it, so we will listen to what you have prepared.

[13] **Brian Gibbons:** No, let us get straight to the meat of it.

[14] **Helen Mary Jones:** I do not mind what we do, but I would really like you to stop batting it backwards and forwards.

[15] **Brian Gibbons:** Let us go on for today.

[16] **Rhodri Glyn Thomas:** Okay, we will go on. We have amendments and points of clarification tabled by Jenny Randerson. We will take the amendments first, Jenny, starting with amendment 1.

[17] **Jenny Randerson:** As you say, Chair, it is an amendment to the Functions of Local Health Boards (Dental Public Health) (Wales) Regulations 2006. Paragraph 2(2) on page 2 reads as follows.

[18] 'A local health board will provide, or secure the provision of, the following, to the extent that it considers necessary to meet all reasonable requirements'.

[19] I propose that

in paragraph 2(2), delete 'to the extent that it considers necessary'.

11.10 a.m.

[20] That motion of amendment is for two reasons, the first being that the word 'reasonable' deals with the question of the extent to which it is considered necessary because the term 'reasonable' makes it sufficiently possible for local health boards to have discretion in this area. Also, it means that the onus is on the local health board as to what it thinks is necessary rather than the onus being on the Government to provide direction to the local health board that it needs to improve, for example. You may tell a local health board, 'You have got to increase the take up', Minister, but availability is dramatically variable from one local health board area to the next—if you live in Gwynedd, you have precious little hope of ever seeing an NHS dentist, but if you live in Swansea, it is a lot better. That variability is the issue. You might well, as Minister, wish to direct a local health board by telling it, 'You have got to improve', but it seems to me that 'to the extent that it considers necessary' will give the local health board the right to turn around and say, 'We think that this is all that is necessary'. That is the point of that amendment.

[21] **Rhodri Glyn Thomas:** Are there any other comments on that motion before I ask the Minister to respond?

[22] **Helen Mary Jones:** I was not clear, from looking at it on paper, what Jenny

Randerson intended. Having heard it explained, I am minded to support the amendment, in principle, because the last thing that we want is for this kind of postcode lottery dental provision to carry on. There may be just a bit too much flexibility—we all support local health boards being able to respond to local circumstances, but this may be a flexibility too far. I would be interested in hearing the Minister's justification for the current wording, but, at the moment, I am minded to support the amendment.

[23] **Brian Gibbons:** While it is true that dental access is not good in Gwynedd, I was there a few weeks ago, and I am pleased to say that the local health board is working very hard to improve access and, hopefully, if its current plans reach fruition, there will be a significant improvement. I just wanted to state that.

[24] On Jenny's amendment, I must admit that my initial instinct was that her remarks seemed sensible and that it seemed to be a little bit of legalese belt and braces in terms of putting in the additional phrase that she wants to delete. However, if you look at it in greater detail, it is actually very necessary to include that phrase because, you are quite right, the local health board will meet all reasonable requirements, but then the question should be asked as to who will decide the test of reasonableness. If it is the local health board that is responsible for commissioning, and which has the statutory duty to do that, clearly, the responsibility for making the judgment as to reasonableness must rest with the local health board. If we do not include the extent to which the local health board considers it necessary, the onus to decide the reasonable requirements will be anywhere, and there will be no clear legal responsibility on anybody to decide what 'reasonableness' is in this particular context.

[25] By including that particular phrase, it clearly states that it is the organisation responsible for commissioning that makes that decision. That particular phrase is crucial to clearly laying the lines of accountability because, if we did not put that in, the local health board could say 'Some other organisation or group, or the local newspaper campaign, decided that something else was reasonable; we have no ownership of that decision, but we are expected to deliver it'. So, I think that including that particular phrase fits in with where statutory responsibilities lie and clearly establishes the grounds of accountability for that decision.

[26] **Rhodri Glyn Thomas:** It seems to be a pretty clear situation. The amendment has been laid and the Minister has taken advice and is not minded to accept it. Therefore, if you want to pursue the amendment, Jenny, I will have to ask for a vote on it.

[27] **Jenny Randerson:** Before we do that, can I just ask for some legal advice from Peter? I discussed this with him. Is your interpretation the same as the Minister's, Peter?

[28] **Mr Jones:** I think that the question of reasonableness would be a matter for the courts. I cannot quite see why it is absolutely crucial to have the words 'to the extent that it considers necessary'. I think that the reasonableness test is common, and

I think that the final arbiter would be the courts on that.

[29] **Brian Gibbons:** I am not a lawyer, but my instinctive reaction to that is that, clearly, one does not want to have to be resorting to the courts to resolve these particular issues if there is a local dispute. By having that responsibility lying with the local health board, there is a local resolution in terms of who decides what is reasonable. If someone decides that the local health board is not reasonable, they have a redress through the courts. However, if the accountability is not with the local health board, then there is no-one to make a judgment call on the reasonableness of a particular request to commission services. So, I think that it leaves accountability local with the subsequent right to redress through the courts. I think that what Peter is suggesting—and I am not a lawyer, as I said—is to bring the courts into this process at a much earlier stage, which I do not think is good for local accountability in terms of commissioning.

[30] **Rhodri Glyn Thomas:** We could debate this for a long time. It looks to be a pretty clear situation to me. The amendment clearly states that this wording is not necessary, we have had legal advice on it, and the Minister has taken advice and has a different view. So, I will have to move to a vote to deal with it.

[31] **Mr Jones:** Perhaps I could point out that this question is linked to Jenny's second amendment.

[32] **Jenny Randerson:** Yes. It might be helpful to do them together.

[33] **Rhodri Glyn Thomas:** Okay. Let us take the second amendment first and then have a vote on both of them.

[34] **Jenny Randerson:** I propose that

in paragraph 2(2)(b), insert 'regular' before 'dental inspection' and insert 'all' before 'pupils'.

[35] The reason for this amendment is that, as it stands, the regulations include the words:

[36] 'dental inspection of pupils in attendance at schools'.

[37] This is one of the issues to which the reasonableness refers. My amendment is that paragraph 2(2)(b) should read:

[38] 'the regular dental inspection of all pupils',

[39] because the phrase 'dental inspection of pupils in schools' could mean one

dental inspection at one school once while the children are there. By putting the word 'regular' at the beginning, you imply that it will be at least more than once or twice in a child's school life. I have not put in 'annual' or anything overly onerous. I have put in 'regular' to imply that it should happen regularly in a child's school life and that it should be available to all pupils at schools. That fits in very much with the amendment that we passed on the previous set of regulations that we looked at, which related to the general dental service contract, which allowed dentists to give preference to young people. It is all to do with having a strong prevention programme and a strong dental health education programme for young people. I wanted to tighten that bit up a little so that all local health boards have to provide a regular dental inspection, which has to be available to all pupils in schools.

11.20 a.m.

[40] **Rhodri Glyn Thomas:** Before I ask for further comments, can you indicate, Minister, whether you are minded to accept that amendment?

[41] **Brian Gibbons:** No. There is a bureaucratic reason why we cannot accept it.

[42] **Rhodri Glyn Thomas:** Okay. I will take comments first and then you can respond.

[43] **Jonathan Morgan:** Setting the amendment aside and looking at the wording as it stands, it seems fairly pointless if you are going to allow it to be so relaxed. The phrase 'dental inspection of pupils' does not really set you on a particular course of action towards a particular objective. It says, 'Well, we will stick it in because we think that there could be inspections of pupil dental health', but it does not really set in stone much in the way of firming up the objective as to what you want to achieve. It just looks weak and almost as if you have chucked it in at the last minute without thinking about the wording. How do you expect this section of the regulations to operate? What are you expecting to get out of that? That is what we need to understand before the amendments are pushed any further.

[44] **Helen Mary Jones:** I definitely support the idea that it should be clear that it has to be all pupils, because otherwise it is incredibly wide, but could we have some advice on whether, in legal terms, the word 'regular' has a particular meaning, and whether there are any hidden dangers in that? There is a legal meaning for what is reasonable, is there not, and how the courts judge that? I wonder whether that is one of the reasons why the Minister may not want to accept this.

[45] **Brian Gibbons:** Before Peter comes in on this, one of the concerns regarding the word 'regular' is that children generally have two examinations, and very often the second is on a cycle, which could be three or four years—I cannot remember exactly—after the initial assessment. Clearly, depending on how the cycle works its way around, every child will have two examinations, but one will be after three years and the other could be after four years. That would not be regular—perhaps Peter will tell us that that is regular, but, to me, it does not sound as if it is regular. So, they will have two examinations, but they will not be regular because they will not be every

three years or every four years. It could be either.

[46] **Rhodri Glyn Thomas:** So, how regular is regular?

[47] **Brian Gibbons:** How regular does regular have to be?

[48] **Mr Jones:** I think that it is probably the common-sense interpretation of the word. You could say that regular is every 10 years, but that must be an unreasonable interpretation of regular. I cannot say, in relation to dental inspections, what regular is, but I think that there must be a pattern of regularity, be that every two, three or four years. I think that it must be reasonable.

[49] **Rhodri Glyn Thomas:** Minister, do you want to expand on that?

[50] **Brian Gibbons:** As I said, that is part of our concern. If we understand 'regular' to mean a fixed interval, there is a problem there. However, I realise that this is a bureaucratic issue. Something that is equally seen to be bureaucratic and pedantic is the use of the word 'all'. Unless we are suggesting that they should be compulsory dental inspections, I do not think that we can include the word 'all' as children should have the right not to have dental inspections if they do not want them, or at least if the parents do not want them to have them. Equally, if there is absenteeism and so on, there is a problem in terms of how far including such a word would place an onus on the community dental service, which is most likely to be involved in delivering this, and to what extent it would have to go to deliver the requirements. So, I think that there are two aspects to this. It might be helpful for Paul Langmaid, our chief dental officer, to say a few words.

[51] **Mr Langmaid:** I think that it is important to make clear that these particular words refer to the statutory inspection rather than the close dental examination of children three times during their school life. This is an inspection at which the presence or absence of disease is detected and advice is given to parents. It usually occurs three times during a school life, according to the present guidance, which is at the age of five when children enter school and all the baby teeth are there; it is about 12, when there is a mixed dentition and children have either gone to or are going to a higher school, and then at 14, when the adult dentition is there.

[52] Those regular intervals have been chosen because that is when the teeth that need to be looked at are there. So, in a way, it is regular; not in terms of months, but in terms of the biological development of dentition. It is not to be confused with the dental inspection of people that discovers the extent of any diseases present. It is really screening that has been a continuous process for many years in order to separate people with disease from those without disease and give the necessary advice.

[53] **Jenny Randerson:** I would like to take up a specific point from the Minister about forcing people into being inspected. I thought that that bit was covered by the fact that it says that the local health board 'will provide'. It does not say 'and everyone must do it', it says that the local health board 'will provide', and I hoped

that that was therefore covered, because I had thought about people who did not want their children’s teeth inspected for some reason. I am concerned, however, that there is no provision for pupils who happen to be away on the day to catch up on the inspection, but that is a separate issue, to take up at another time.

[54] **Rhodri Glyn Thomas:** Are we clear about that, Peter, in terms of it being a provision rather than something that is forced on people?

[55] **Mr Jones:** I cannot see that it would be forced. I think that the provision is that you will provide the facilities for it to happen.

[56] **Rhodri Glyn Thomas:** Unless there are any other comments, we are going to have to move to a vote on both motions proposing amendments.

Cynnig 1: O blaid 3; Ymatal 0; Yn erbyn 4.

Motion 1: For 3; Abstain 0; Against 4.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Helen Mary Jones
Jonathan Morgan
Jenny Randerson

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Brian Gibbons
John Griffiths
Huw Lewis
Karen Sinclair

Gwrthodwyd y cynnig.
Motion defeated.

Cynnig 2: O blaid 2; Ymatal 0; Yn erbyn 5.

Motion 2: For 2; Abstain 0; Against 5.

Pleidleisiodd yr Aelodau canlynol o blaid:
The following Members voted for:

Helen Mary Jones
Jenny Randerson

Pleidleisiodd yr Aelodau canlynol yn erbyn:
The following Members voted against:

Brian Gibbons
John Griffiths
Huw Lewis
Jonathan Morgan
Karen Sinclair

Gwrthodwyd y cynnig.
Motion defeated.

11.27 a.m.

Cyfrinachedd a Datgelu Gwybodaeth—Cyfarwyddiadau Gwasanaethau Meddygol Cyffredinol a Gwasanaethau Meddygol gan Ddarparwyr Amgen 2006
The Confidentiality and Disclosure of Information—General Medical Services and Alternative Provider Medical Services Directions 2006

[57] **Rhodri Glyn Thomas:** Symudwn at eitem 5 ar yr agenda, Cyfrinachedd a Datgelu Gwybodaeth: Cyfarwyddiadau Gwasanaethau Meddygol Cyffredinol a Gwasanaethau Meddygol gan Ddarparwyr Amgen 2006.

Rhodri Glyn Thomas: We move to item 5 on the agenda, the Confidentiality and Disclosure of Information: General Medical Services and Alternative Provider Medical Services Directions 2006.

[58] **Jenny Randerson:** What about the points of clarification on the dental contract?

[59] **Rhodri Glyn Thomas:** Sorry, Jenny. Yes, you are right; we will return to that item.

11.27 a.m.

Y Contract Deintyddol—Is-ddeddfwriaeth: Parhad
The Dental Contract—Secondary Legislation: Continued

[60] **Rhodri Glyn Thomas:** Two issues were raised as points for clarification. They were both raised by Jenny.

[61] **Jenny Randerson:** They relate to the paper that the Minister produced. On page 2, paragraph 7, he states that the funding of—my paper should say 'dental services', I am sure that the mistake was by my office—dental services will be done on a catchment basis. I am interested in what arrangements will be made to ensure that that funding takes account of the numbers of non-residents. People often choose to go to the dentist where they work rather than where they live. This is an issue which particularly affects Cardiff, Swansea and any large town, does it not?

[62] **Brian Gibbons:** In order to try to understand this, the allocation to hospital and community health services, the main allocation that we make to local health boards, is generally on a capitation or resident-based formula. When we, up to now, have talked about Townsend, we are talking about that predictable formula for residents. For general medical services and dental services, the funding stream is mainly based on registration, in other words, the funding stream is not driven by the number of residents that a particular local health board will have responsibility for, but by the number of people who are registered on the lists of practitioners in that local health board area.

[63] The strength of that is that, even if there is cross-border flow, because the payment is based on the registration then it is caught, without being unduly bureaucratic about it. This predates even the concept of community service commissioning and so forth. It is the historical way that community services' independent contractors have been paid and it is a continuation of that.

11.30 a.m.

[64] That leads on to your second question. The advantage of this is that it is an easy and convenient way to pick up and remunerate the people who have the patients and are doing the work without being over-bureaucratic about counting people according to their place of residence and then being involved in money transfers and so forth. The downside of it is that, in an area where there is under-provision, the money may not be there in the first place and, consequently, the local health board will not have the commissioning muscle to provide the service if the money is not provided on the basis of the number of residents in the local health board area. So, the set-up that we are using at the moment, which is the traditional way of funding independent contractors, is probably the most robust way of starting this contract but, in terms of strengthening the local health boards' commissioning hand, we also need to look at some element of allocation on a resident basis so that those areas that do not have effective dental access at the moment will have the resources to be able to start providing that.

[65] **Jenny Randerson:** I am sorry, Minister, I am not clear.

[66] **Brian Gibbons:** I know; it is not easy.

[67] **Jenny Randerson:** What I am concerned about is what the term 'catchment' would mean. Would it mean the people living in that area or in terms of the people choosing to go to the dentist in that area?

[68] **Brian Gibbons:** It is the population. It is the catchment area for the people who are using that provider of dental services.

[69] **Jenny Randerson:** I could give you examples of people who go to the dentist in Cardiff but who live in Swansea. That would be a significant number of people. Will that be taken into account?

[70] **Brian Gibbons:** Yes, that will be reflected in the registrations. Swansea is not a good example to a certain extent—

[71] **Jenny Randerson:** I know it is not, because it has good services.

[72] **Brian Gibbons:** Yes, it has a good service, but let us suppose that people from Carmarthen go to Swansea. If all the money went to Swansea because all the dental registrations were there, that would mean a relatively simple funding stream for paying the people who are doing the work, but it would leave Carmarthen without any resources to build up its services. So we need to have an additional mechanism, which I think your second question is geared towards, and we need to do that in parallel, providing a reasonably streamlined mechanism to pay dentists with the introduction of the new contract while, at the same time, being able to improve the resilience of commissioning in Carmarthen, where there is a need to improve access to dentistry.

[73] **Jenny Randerson:** This is a very complex area, because people are being forced to go to the dentist in certain places because there is not one locally. We would all support measures to address that problem and redress the balance, but dentistry is unlike the service provided by your local general practitioner. You have to live where your GP is, otherwise he or she would not come out to you and so on but, traditionally, and for very understandable reasons, the situation with a dentist is completely different because people choose to go to the dentist in their lunch hour when they are in work and so on, so you cannot have the same model for both, can you? You are going to do some work to try to disentangle those two issues and ensure that people get access to dentistry where they find it convenient, are you? Otherwise they will not go, will they? At the same time, you will be doing things to the funding, which will improve the level of service in those areas, many of which are rural, where it is currently very difficult to find a dentist?

[74] **Brian Gibbons:** It is complicated and you have to sit down with a pen and paper to get your head around it. It is even more complicated because of the cross-border issues. The money transfers within Wales are relatively easy. However, funding across the England and Wales border is even more complicated. If Welsh patients are registered with English general practitioners, the Westminster Treasury pays for them because of this paying mechanism. To deal with this cross-border issue—and Ann and Andrew may want to say something about this, if we want to go down this route—we are in discussions with the Department of Health to try to develop a consistent, uniform way of allocating resources. The balance is clearly in favour of moving towards an entirely residency-based allocation mechanism. If we get to that stage, and if that is applied within Wales, Carmarthen will, theoretically, have dental money that will have to be passed in some way to dentists based in Swansea to recompense them for providing dental services to Carmarthenshire residents. In terms of getting the funds together for this, I think that would be a bridge too far in terms of encouraging a successful take-up of the new dental contract. It is a complicated enough business without further complicating the issue by tinkering around with the payment systems. However, given the England and Wales issue—not so much the situation within Wales—we will have to get to grips with it sooner or later. I do not know whether Andrew or Ann would like to add anything to that.

[75] **Mr Powell-Chandler:** Within the new legislation, there is also a duty on local health boards to co-operate with each other, particularly where there are flows of patients for dental care. That is with neighbouring local health boards, or even with primary care trusts in England. Therefore there is a duty to do that. Detailed information is also available from the Dental Practice Board on those flows of patients. Any local health board can see precisely where those people who are receiving dental treatment in their areas come from. As the Minister picked up, the issue is whether that is a choice, with people choosing to get dental treatment where they work or regularly shop and so on, or whether people feel that they have to go to that area because there are not sufficient services in their area. To pick up the original question, the starting point is that, for example, Cardiff will receive the funding for all those patients currently receiving care in Cardiff, wherever they are from.

[76] **Jenny Randerson:** I am grateful for all of that; it is useful. I would like to highlight an additional issue associated with my second point of clarification, which

the Minister has started to address. Looking at paragraph 40 of the Minister’s report, I understand why you are starting from the point of the amount of money that you—or we—spend at the moment on dental services. I understand that entirely from the Minister’s replies. However, if you want an LHB to improve, do you have financial plans, Minister, to give money to specific areas where you are planning improvement? Is it your intention to say to particular LHBs—I am sure that it is not necessary to do so for all of them, but it will be necessary in some cases—‘You must improve, and I will give you extra money to do it’?

[77] **Brian Gibbons:** There is a considerable amount of documentation here. We will guarantee a floor to every community so that existing services will not be destabilised because of the introduction of this new contract. There is in the order of £15 million in the budget for the successful implementation of the new dental contract. Some of that £15 million has yet to be allocated, and some of it will be allocated to local health boards to give them some resource to improve their commissioning activity for dental access. As I understand it, a sub-group is working on this to try to come up with the specific detail as to how precisely we will go into this.

11.40 a.m.

[78] As Andrew said, its information from the dental board, and so on, will have to be fed into that, just to know what sort of money is available to allocate to the various LHBs. We are in a fluid situation because of the number of extra people signing on with dentists through the PDS. Figures change from week to week, so, from one week to another, we do not know how much money is there to allocate. These are the sorts of issues that the sub-group has to tackle.

[79] **Jenny Randerson:** I do not want to pursue that issue, but there was a general issue that I wanted to raise, which I think that you will find of interest, Chair. I want to register my concern that such a major piece of legislation will not be translated. I understand the Minister’s problem regarding the timetable for the negotiations, and so on, and the fact that Standing Order No. 29 has been disapplied in relation to the directions. That is not ideal, but I understand that. However, I am concerned that such a big piece of legislation is not being translated.

[80] **Rhodri Glyn Thomas:** I think that your concern is noted, and it will be noted in the minutes.

11.41 a.m.