

8 August 2024

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FILE REF: **SHA/26217**

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DECISION MAKING BODY: **STAFFORDSHIRE AND STOKE ON TRENT INTEGRATED
CARE BOARD ("THE COMMISSIONER")**

GDS CONTRACTOR: **MR BALWINDER AHITAN,
ABBEYSIDE DENTAL PRACTICE**

DISPUTE RESOLUTION: **NATIONAL HEALTH SERVICE
(GENERAL DENTAL SERVICES
CONTRACTS) REGULATIONS 2005**

RE: **APPLICATION FOR DISPUTE RESOLUTION WITH REGARD TO TERMINATION OF
CONTRACT**

1 Outcome

- 1.1 I determine that both the Remedial Notice dated 26 May 2023 and the Termination Notice dated 29 August 2023, issued by the Commissioner, were valid under both the Contract and the Regulations and should be upheld.
- 1.2 There are no disputes between the parties with regard to interest and I determine that no interest shall be payable in relation to this dispute.

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1 INTRODUCTION

- 1.1 The Commissioner has referred the dispute in relation to the General Dental Services (“GDS”) Contract for dispute resolution under the provisions of Paragraph 55 of Schedule 3 of the National Health Service (General Dental Services Contracts) Regulations 2005 (the “Regulations”).
- 1.2 The Secretary of State for Health and Social Care has directed that NHS Resolution exercise the functions of dispute resolution on their behalf. I, as an authorised officer of NHS Resolution, have made this determination.

2 APPLICATION FOR DISPUTE RESOLUTION

- 2.1 By letter dated 12 April 2024 the Commissioner applied to NHS Resolution for dispute resolution.
- 2.2 I have had regard to the following documents made available to me in consideration of this matter to ensure the just, expeditious, economical and final determination of this dispute: -
 - 2.2.1 Application dated 12 April 2024, together with supporting information.

3 PARTIES SUBMISSIONS

The Commissioner’s application

- 3.1 “We would like to request that you undertake dispute resolution between Staffordshire and Stoke on Trent ICB Dental Commissioners (the Commissioner) and Mr Balwinder Ahitan (the Contractor), Abbeyside Dental Practice, 1441 Leek Road, Abbey Hulton, Stoke on Trent, ST2 8BY. Email address bsa427@hotmail.com.
- 3.2 We are mindful that the Contractor has 3 years in which to raise a formal appeal with yourselves so we submit our request to ultimately speed up the appeal process. The Contractors practice is in one of the most deprived and challenged areas within Staffordshire and Stoke-on-Trent ICB and it is vital that if our decision to terminate is upheld, that we can

recommission the dental activity held within the Contractor's NHS dental contract as soon as possible to improve local dental access.

- 3.3 The Contractor is an Individual Contract holder and the only performer currently attached to the contract.
- 3.4 I can confirm that in accordance with clause 14 of his GDS Contract, which commenced on the 1st April 2006 (Document A), we are able to refer the dispute to the Secretary of State under section 9 of the NHS Act 2006 as this contract can be considered to be an NHS Contract.
- 3.5 The dispute is regarding the issuing of a Termination Notice for the Contractor's GDS contract on the 29th August 2023. The grounds for termination fall under clause 9.1.1 remedial and breach notices and Paragraph 73(4) of Schedule 3 of the GDS Regulations, which provides a right to terminate a GDS contract where the Commissioner is satisfied that the Contractor has not taken the required steps to remedy the breach by the end of the notice period. The Contractor has disputed the decision to terminate his GDS contract.
- 3.6 The Contractor has been under investigation by the GDC since 2016 to the current date, following a referral to the GDC by the NHS England Commissioning Team, with a number of hearings and adjournments being held during that period. On the 11th April 2023, a GDC hearing was held and a decision was taken by the GDC to issue an interim suspension for 18 months (to be reviewed after 6 months or sooner if a hearing date is agreed) (Document B) and also suspension from the National Performers List. The grounds for the suspension was due to [redacted] and patient safety and the outstanding investigation was still to be considered at a later date. The Contractor did not attend the hearing and was represented by his legal representative.
- 3.7 The Contractor did not advise us of the GDC interim suspension. We received notification from the NHS England Professional Regulations Team on the 14th April 2023 and they also advised us of his immediate suspension from the National Performers List.
- 3.8 A virtual Teams meeting was held with the Contractor on the 21st April 2023 to discuss what provisions had been put in place for urgent and routine dental care for the patients. He was advised that as the contract holder he was still responsible for ensuring the provision of NHS Dental Services for his patients, whilst he was suspended.
- 3.9 The Contractor confirmed that he had been in contact with local practices and the Community Dental Services (CDS), who had agreed to provide interim urgent care. He had also contacted 9 locum agencies and he advised that a locum should be starting the following week. The Senior Commissioning Manager, Darrell Jackson, asked the Contractor to provide a timetable to show which dentist would be working on what days so that we could be satisfied that patients could still access general dental services as well as urgent care. The Contractor was advised that as long as adequate provision was in place for patients the contract could continue. During the meeting a discussion was also held regarding the amount of debt that was still currently outstanding for the 2022/23 year-end reconciliation and that payments would continue to be taken from his contract payments until the debt was cleared. It was suggested that a BACS payment to clear all or some of the debt may be helpful so that the contract payments could continue otherwise it was a concern as to how he would be able to afford to pay the locum dentists. The Contractor was also advised to consider whether or not he wished to terminate his contract due to his [redacted] and the amount of debt that he was incurring with his under-delivery. He said he would consider his options and let us know what he decided.
- 3.10 An update was received from the Contractor on the 27th April 2023 to advise that he was still waiting to hear from the locum agencies and that he would let us know as soon as he had someone starting. He confirmed that the staff were triaging calls and directing patients to the local practices or the CDS.

- 3.11 A further email was received on the 17th May 2023 advising us that he was still trying to secure locum cover but was unable to pay the initial fees because he had not received his contract payment due to the repayment of the outstanding debt. The Contractor advised that he was unable to secure a locum without any funding. A response was sent to the Contractor to advise him that his monthly statements clearly showed how much debt was still to be paid and that the concerns about paying for locums had been raised with him in our meeting on the 21st April 2023. He was reminded that he did have the option to terminate his contract if he wished to do so.
- 3.12 As no timetable had been provided on what provision had been put in place for routine and urgent care from the Contractor, a Remedial Notice was issued on the 26th May 2023 under clause 317 of the GDS contract (Document C). The breach was for the failure to provide us with a detailed plan of what arrangements had been put in place to ensure the provision of dental services under the contract whilst the Contractor's suspension was in place.
- 3.13 The Contractor was given 28 days to provide us with the plan, that met with our satisfaction. We advised that the plan must include details of what locum cover he had put in place for the provision of NHS dental services on each of the days that the contract specified that such services should be provided, and that he was contractually obliged to provide us with such information under clauses 211 and 212 of the contract. The information needed to be provided to the Commissioners by the 23rd June 2023.
- 3.14 A locum was added to the contract on the 12th June 2023 and ended on the 20th July 2023. A total of 282.40 UDAs were delivered by the locum and this is the only activity that has been delivered on the contract in this financial year.
- 3.15 An email was sent from the Contractor on the 29th June 2023 (which was outside the 28 day deadline) (Document D) listing things that he was currently doing to secure locums, the triaging of patients possible partnership opportunities and the recruitment of a locum doing two sessions per week. This was not the plan that we requested and did not meet with our satisfaction as it did not give details of how NHS dental services would be provided to the patients on each day that the contract specified services should be provided.
- 3.16 An acknowledgement of the action plan was sent to the Contractor on the 7th July 2023 and he was advised that it would be reviewed and escalated to the relevant governance group for a decision to be made.
- 3.17 A paper was presented to our Dental Assurance and Improvement Group on the 6th July 2023 and it was decided that as the Contractor had not taken the required steps to remedy the breach by the end of the required period as stated in the Remedial Notice, that the contract should be terminated. The decision to terminate was ratified by our Joint Commissioning Group on the 26th July 2023.
- 3.18 A Termination Notice was issued to the Contractor on the 29th August 2023 advising him of the decision and the reasons for that decision (Document E). The date of termination was the 26th September 2023. The Contractor was advised that he had 28 days to advise us if he did not agree with our decision and that if after making every reasonable effort at the local resolution stage, we were unable to resolve the dispute we would advise him of the details of the next stages of dispute under the contract.
- 3.19 On the 20th September an email was received from the Contractor confirming he was disputing the decision to terminate the GDS contract and the locum position had changed significantly. [redacted].
- 3.20 On the 25th September Mr Ahitan provided details of the two locums that were joining the practice, however it was later confirmed by the practice manager that one of the locums never actually commenced work at the practice and no activity has ever been scheduled for the other locum, who had only been added onto Compass for two days, so it is not clear if they worked there or not.

- 3.21 Following the dispute resolution process set out in the NHS England Policy Book for Primary Dental Services, an informal dispute resolution, via a virtual Teams meeting, was held on the 28th September 2023 with the Contractor to discuss the grounds for his dispute. The Contractor was advised that the termination notice was issued due to him for not providing a satisfactory plan. The Contractor said he had not been advised that his plan was not been accepted [sic] but he was advised that this was why the Termination Notice had been issued and it was all set out in there. The Contractor was asked on what ground he was disputing the Termination and he said that he believed his plan met the requirements of the Remedial Notice. The Contractor was asked to confirm to us in writing how he believed the plan was acceptable if he did not agree with the decision. It was also agreed that we would provide him with a template that he could complete with he required information. [redacted]. However, the termination of the contract was not as a result of [redacted] but the failure to provide a satisfactory plan on how NHS dental services were going to be provided for patients so this was not relevant to the dispute process.
- 3.22 We discovered on the 22nd December 2023 that a review hearing had been held by the GDC on the 26th September 2023 (Document F) to review the interim suspension order that was in place for the Provider. The Contractor did not advise us in our meeting of the 28th September 2023 that this review had taken place. Mr Ahitan had advised the Committee by email on the 31st August 2023 that he would not be attending the hearing and was content for the current order of suspension to remain in place at that time. He would therefore not be returning to work as he led us to believe during our meeting on the 28th September 2023.
- 3.23 An email was received from the Contractor on the 2nd October 2023 making a formal request for external arbitration. He did not provide the completed plan template that had been provided to him or provide any other evidence to show why he thought his plan should meet with our requirements.
- 3.24 Following the NHS England dispute resolution process, a letter was sent by email on the 5th October 2023 to the Provider advising him that we now had to follow the local resolution process as the informal process had not resolved the dispute. He was asked to acknowledge the letter and provide the supporting evidence within 28 days of the letter.
- 3.25 An email was received from the Contractor on the 2nd November 2023 to say that he was confused as to what was required of him. He acknowledged that he understood that we were saying he had failed to remedy the breach of contract as he had failed to submit an action plan to our satisfaction and what the action plan should have included and that this is why we terminated the contract. He advised that he was not in a position to employ multiple dentists to cover the contracted hours, due to the position that he was placed in by others. We believe this is referring to him not receiving contract payments for part of the year due to the repayment of the 2022/23 year-end debt. He agreed that he wanted to continue with the dispute resolution process.
- 3.26 In line with the process set out in the NHS England Policy Book for Primary Dental Services the local resolution process has been undertaken by staff members who have had no connection to the contract or the dispute resolution process so far.
- 3.27 A virtual Teams meeting was held with the Contractor on the 20th December 2023. Mrs Tracy Harvey, Senior Commissioning Manager, advised the Contractor that she had reviewed the process that had been followed and the plan that had been provided to us, and that she agreed that the plan provided was not to our satisfaction and that the termination should proceed unless he had any further evidence to support his dispute. The Contractor advised he did have further evidence he wanted to submit.
- 3.28 A letter was sent to the Contractor on the 11th January 2024 to advise him that he had not been advised that he was able to be accompanied in the local dispute resolution meeting and he was therefore being offered another meeting where he could be accompanied and to advise who that person could be. It was acknowledged in the letter than no other evidence had been provided by the Contractor. That meeting was held on the 9th February 2024 and

the Contractor had no support or representatives accompanying him during the meeting and did not provide any further evidence.

- 3.29 The local resolution outcome letter was sent to the Contractor on the 21st February 2024 (dated 20th February 2024) (Document G). The letter confirmed that the Termination Notice was still in place and that we have been unable to resolve this dispute at a local level and that he may now wish to refer the matter to the Secretary of State for dispute resolution and what that process would be.
- 3.30 A further review hearing was held by the Interim Order Committee of the GDC on the 8th March 2024 (Document H), which was not attended by the Contractor or his representative, and a decision was made to continue with the interim suspension and a further review will be held in 6 months' time."

Representations

No representations were submitted by either party in response to the application for dispute resolution.

4 CONSIDERATION

- 4.1 As part of this consideration of the application for NHS dispute resolution, I required an up-to-date version of the Contract in dispute containing all variations agreed since the Contract was signed. This was provided and has not been disputed by the Contractor.
- 4.2 I note that the Contractor has provided neither representations nor observations in relation to this matter. However, I have had regard to the prior correspondence between the two parties in consideration of this matter.
- 4.3 I note that it is unusual for the Commissioner to have made the referral, as it is the Contractor who initially disputed the Commissioner's decision and that local dispute resolution has already been engaged. Therefore, I have set out my reasoning as to why I consider there to be a dispute in relation to the termination and why it is suitable for determination.
- 4.4 The Commissioner has referred the dispute under section 9 of the NHS Act 2006, which covers the referral of NHS Contract disputes to the Secretary of State for determination. I note that as a part of that section it is made clear that either party may refer the matter.
- 4.5 Schedule 3 paragraph 55 of the Regulations allows either party to refer a dispute and paragraph 57 specifically states that this includes disputes arising out of or in connection with termination. A dispute can only be referred by the Contractor under Schedule 3 paragraph 77, which is where the Contractor is disputing a termination notice. In relation to this I note that the termination notice has not been referred for NHS dispute resolution by the Contractor under that paragraph, and so it is not relevant to the current determination.
- 4.6 As such, provided there is a dispute, I consider it suitable for determination by NHS Resolution. I note that the alleged dispute is in relation to a termination notice which was, as stated by the Commissioner, and provided to me, dated 29 August 2023 ("Document E"). This set the date of termination as 26 September 2023. It appears, from the Commissioner's statements, that the Commissioner did not terminate the Contractor's GDS Contract on that date, due to his disputing of the notice. It has not been expressly stated why the Contract was not terminated sooner, given the statements made by the Commissioner regarding the necessity of this termination and the ability to terminate, regardless of any dispute resolution process, to protect the safety of the Contractor's patients; or protect the Commissioner from material financial loss.
- 4.7 I note the last correspondence provided to me from the Commissioner to the Contractor, is dated 20 February 2024, and referred to as "Document G". This Document G indicates the outcomes of the local dispute resolution process. I am mindful that the Policy Book for Primary Dental Services (the "Policy Book"), referred to by the Commissioner, provides that there are

two possible outcomes for this process – either the dispute is resolved or it is unresolved and the process may be escalated to the NHS dispute resolution procedure.

4.8 Document G indicates that *"we were unable to resolve this dispute"*. Having carefully considered the language of this document, the Policy Book and of the Regulations, I am of the opinion that this indicates that the dispute is ongoing. I note that the Commissioner has stated that Document G was sent on 21 February 2024, and that the referral for dispute resolution was made on 12 April 2024. In that time, per the Commissioner, there has not been any correspondence received from the Contractor either accepting this outcome or seeking to escalate the dispute. I note that the Policy Book provides that the Commissioner must cease all action in relation to the dispute until there is a determination of the dispute or the Contractor ceases to pursue the NHS dispute resolution procedure. Given that the Regulations allow for a dispute to be referred within a period of three years, and the outcome of the local dispute resolution was to leave the dispute unresolved, I consider that this could put the dispute in a state of limbo until such time as the Contractor chooses to respond.

4.9 As such, there remains a dispute between the parties, in relation to termination, which either party may refer for dispute resolution. Given my explanation above I consider that there is a clear benefit in having this matter determined and I will, therefore, proceed to consider if there is any reason why the termination notice should not be upheld.

4.10 The Commissioner has stated that Document E was issued on 29 August 2023 and was in relation to paragraph 73 of Schedule 3 of the Regulations, clause 332 of the Contract, dated 1 April 2006. These provisions allow the Commissioner to terminate the Contract where the Contractor has not taken the steps required to remedy a breach, set out in a remedial notice, by the end of the notice period. The Commissioner has provided the required remedial notice ("Document C") issued on 26 May 2023. Given that I have not received any representations from the Contractor in relation to why the termination notice was initially disputed I shall consider the following questions in determining this appeal:

4.10.1 Was the remedial notice compliant with the Regulations?

4.10.2 Was the remedial notice suitably clear?

4.10.3 Was the remedial notice complied with by the Contractor during the notice period?

4.10.4 Was the termination notice compliant with the Regulations?

4.10.5 Is there any other obvious deficiencies or reasons why the termination notice should not be upheld?

4.11 I note that paragraph 73 of Schedule 3 of the Regulations provides that in order to issue a remedial notice there must be a breach of the Contract and it must be capable of remedy. The Commissioner has stated that the Contractor has breached clause 317 of the Contract as the Commissioner requested that the Contractor provide a plan which detailed the arrangements that the Contractor had in place to ensure the provision of dental services under the Contract, and that this had not been provided.

4.12 I note that clause 317 of the Contract provides the following:

"317. Where the Contractor ceases to be a dental practitioner by virtue of a suspension specified in clause 321, clause 316 shall not apply unless-

317.1. the Contractor is unable to satisfy the PCT that it has in place adequate arrangements for the provision of dental services under the Contract for so long as the suspension continues; or

317.2. the PCT is satisfied that the circumstances of the suspension are such that if the Contract is not terminated forthwith-

317.2.1. *the safety of the Contractor's patients is at serious risk, or*

317.2.2. *the PCT is at risk of material financial loss. "*

4.13 I note that, as per the documents provided by the Commissioner, the Contractor was at the time of the notice, and is still currently, suspended as specified under clause 321.2.3 of the Contract. As such I consider that the Contractor was obliged to comply with Clause 317.1 in satisfying the Commissioner that such adequate arrangements were in place. The Commissioner has stated that this information had not been provided and both Document C and its application for NHS dispute resolution provide that multiple opportunities had been given to the Contractor to comply, but this had not happened. This included specific explanations of what was required and what the Commissioner would need to see. As such I consider that there had been such a breach that a remedial notice was both necessary and appropriate.

4.14 I note the requirements in paragraph 73(2) of Schedule 3 which sets out what the notice must contain. I consider that the breach was clearly specified, as I have detailed above. The steps required of the Contractor and date, not less than 28 days from the notice, for compliance was specified as:

"To provide a plan, that meets with our satisfaction, within the next 28 days. The plan must include details of what locum cover you have put in place for the provision of NHS dental services on each of the days that your contract specifies such services shall be provided."

I consider that this adequately meets the requirements. I also consider that it is suitably clear and easily understood.

4.15 Based on the details included in Document C, I consider that paragraph 77(1) and (2) of Schedule 3 have been complied with by the Commissioner in regard to the remedial notice. As to whether the remedial notice was complied with, I have been provided with the Contractor's "action plan" email dated 29 June 2023. I note that the date specified in the remedial notice was 23 June 2023, consequently the remedial notice had already not been complied with by the time the Contractor responded. I note that the email states that he tried to send it the day previous, but this would still be 4 days past the deadline.

4.16 Regardless of this failure by the Contractor, I have also had regard to the content of that email. I note there was no breakdown of what the locum cover for each day would be. I also note that there are several allusions to future possible events, which may or may not have succeeded in providing the necessary services. Only one locum dentist is named, and this provision is only for two sessions a week, with the sessions not being explained. Three further locums are alluded to, with no firm agreement, and a meeting is suggested with an agency but without any specifics. I do not consider that this constitutes a plan, and clearly no detailed explanation of how the Contract requirements would be covered had been provided. I also note that no evidence was included with this email to support the statements, making it impossible for the Commissioner to verify the Contractor's claims. Therefore, due to the vague, unevicenced and unspecific nature of this email, I do not consider that the steps required to remedy the breach had been complied with by the Contractor.

4.17 I note that during the local dispute resolution process the Contractor alluded to having the requisite evidence and a plan. However, I have not seen any evidence to support this and note that the Commissioner has stated that no such evidence has ever been provided. I also note that the Contractor had the requirements explained to him both before and during the local dispute resolution process, as stated by the Commissioner. The Contractor cannot have been left in any doubt as to what was required of him in order to remedy this breach. As such, I consider that the conditions of paragraph 73(4) of Schedule 3 have been met and the Commissioner was entitled to terminate the contract with further notice.

4.18 I note that Document E is the termination notice and need only comply with paragraph 77(1) of Schedule 3 to be compliant with the Regulations. Document E specified that the Contract

would terminate on 26 September 2023, 31 days after the termination notice. Therefore, it met with the conditions of being not less than 28 days after the notice was served. Having regard to the contents of Document E, it explains the requirements of the remedial notice and why they had not been met.

- 4.19 Finally, I note that the outcome of the local dispute resolution process was provided on 20 February 2024. As I have referred to, based on the statements made by the Commissioner, I do not consider that the Contract has, of yet, been terminated. Thus the Contractor has had an exceedingly large amount of time to remedy the breach by providing the requisite information and supporting evidence. I also note that the Commissioner has stated that templates had been provided and multiple explanations as to what was required made. Consequently, I cannot see any reason why the termination notice should not be upheld. I therefore consider that the Commissioner has complied properly with the Contract and the Regulations.

5 DECISION

- 5.1 I determine that both the Remedial Notice dated 26 May 2023 and the Termination Notice dated 29 August 2023, issued by the Commissioner, were valid under both the Contract and the Regulations and should be upheld.
- 5.2 There are no disputes between the parties with regard to interest and I determine that no interest shall be payable in relation to this dispute.

**Head of Appeals
NHS Resolution**