

7 May 2025

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COMMISSIONER: NHS ENGLAND & HUMBER AND NORTH YORKSHIRE
INTEGRATED CARE BOARD
("THE COMMISSIONER")

GDS CONTRACTOR: AISHWARYAM LIMITED

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

RE: TERMINATION OF CONTRACTS AT DENTAL SURGERY, 10 NEW
ROAD, WALTHAM, DN37 0EN

**DETERMINATION ON A PRELIMINARY MATTER – LOCAL
DISPUTE RESOLUTION**

1 Outcome

- 1.1 I determine that both parties have made every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute and that the dispute is, therefore, suitable for referral for determination in accordance with the NHS dispute resolution procedure.
- 1.2 In the circumstances, to enable a final determination of this dispute, each party shall provide their Representations on the substantive matter as set out in the Contractor's original application for dispute resolution of 21 November 2024. Any evidence provided by either party in their Representations must be accompanied with a written response (together with pagination of documents and references) of what is being provided. This must be provided within 21 days of the date of this determination on a preliminary matter.
- 1.3 The information provided in accordance with paragraph 1.2 above should include copies of any agreements, guidance and reminders/correspondence in relation to the matter in dispute upon which parties seek to rely.
- 1.4 Each party will then be provided with a copy of the other party's comments and asked to make any Observations on these within a further 14 days.
- 1.5 I will then proceed to make a final determination.

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RE: **TERMINATION OF CONTRACT AT DENTAL SURGERY, 10 NEW
ROAD, WALTHAM, DN37 0EN**

1 INTRODUCTION

- 1.1 The Contractor has referred the dispute in relation to its General Dental Services ("GDS") Contract for dispute resolution under the provisions of Paragraph 55 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 21 November 2024 the Contractor 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 Email dated 21 November 2024 from the Contractor with application;
 - 2.2.2 Email dated 9 December 2024 from the Contractor with enclosures;
 - 2.2.3 Email dated 18 December 2024 from the Commissioner;
 - 2.2.4 Email dated 22 December 2024 from the Contractor with enclosures;
 - 2.2.5 A further email dated 22 December 2024 from the Contractor;
 - 2.2.6 Email dated 2 January 2025 from the Contractor with enclosures;
 - 2.2.7 Email dated 9 January 2025 from the Contractor with enclosure;
 - 2.2.8 Email dated 19 January 2025 from the Contractor to NHS Resolution;

- 2.2.9 Email dated 30 January 2025 from the Contractor's Solicitor to NHS Resolution;
- 2.2.10 Email dated 19 February 2025 from the Contractor to NHS Resolution;
- 2.2.11 Email dated 27 February 2025 from the Contractor's Solicitor to NHS Resolution;
- 2.2.12 Email dated 8 March 2025 from the Contractor's Solicitor to NHS Resolution; and
- 2.2.13 Email dated 9 March 2025 from the Contractor to NHS Resolution.

3 PARTIES SUBMISSIONS

The Contractor's application

- 3.1 "Subsequent to your notice of termination of contracts 1008740000 and 1918330001 sent to us on the 1st November 2024 by Mr Andrew Hobson stating that you have "decided to terminate both of [our] contracts with 28 days' notice, with contracts therefore due to terminate on 29th November 2024", please take this letter as my appeal of this decision.
- 3.2 Firstly, I want to make note of the absolute shock resulting from the notice. The decision of termination of contracts came without warning and caused us great confusion and upset. We love our NHS and we all were always proud to be part of the National Health Service ensuring that everyone in our community could access top-quality dental care.
- 3.3 Moreover, the decision of termination is absolutely unjustifiable. Our clinic did indeed face difficulties in meeting UDA targets after the pandemic as many dental practices did. However, we took notice of this and directly communicated with the NHS (and later the ICB) to create an arrangement that would work for everyone i.e. our clinic would be permitted to continue offering NHS dental services without facing clawback for the duration of the sale process, and only after completion of the sale, the NHS/ICB would take the owed amount from the purchase price. This way our local community would have dental services, our staff would continue to have steady employment, but the NHS/ICB would nonetheless end up receiving the amounts due. This agreement was concluded between our solicitor Mr Jonathan Stones and our Contract Manager Ms Leesa Rayton, and this was how the "financial issues" were circumvented. I enclose below 5 emails from correspondence relating to this matter.
- 3.4 To then start unexpectedly, without any notice, clawback of 100% funds against our clinic, in fact only then creating financial difficulties for the practice, breaking the agreement, and pretending this solution to our financial issues didn't exist is simply inexcusable. The ICB are 1) breaking their contractual promise, 2) pretending that we have not addressed the issue to utilise it as a weak justification to terminate our contracts and 3) as a public body, according to Public Law, the ICB are obliged to act reasonably and by terminating the contracts they are risking a loss for NHS England/ICB of more than 300k which will not be recoverable unless the novation of the contracts to the buyer is granted simultaneously with the taking over the Practice by the Buyer. Aishwaryam Limited was bought by a holding company, Family Dental Practice, which also holds a mortgage for the business at the bank. Therefore, by terminating the contracts, you will not be able to recover the funds, patients will lose access to an NHS dentist, staff could lose their jobs and the bank will not be able to recover the mortgage repayments. The ICB are acting unreasonably, harming themselves, NHS England, the local community and harming the bank.
- 3.5 Please be aware that we have collected signatures of patients supporting our request for reinstating the contracts (enclosed). On top of that, our MP, Mr Martin Vickers, has written a letter of support which I attach to this appeal, as the ICB's actions are harming the local community.
- 3.6 I have sought advice from BDA and they are encouraging me to take action and not give up. We have been assigned a dedicated adviser at the BDA who is assisting us in this matter."

3.7 [Documents enclosed:

- 3.7.1 Email from the Commissioner to the Contractor dated 20 September 2023;
- 3.7.2 Email from the Contractor's Solicitor to the Commissioner dated 26 September 2023;
- 3.7.3 Email from the Contractor's Solicitor to the Commissioner dated 16 October 2023;
- 3.7.4 Email from the Commissioner to the Contractor's Solicitor dated 27 October 2023;
- 3.7.5 Email from the Commissioner to the Contractor's Solicitor dated 27 February 2024;
- 3.7.6 Letter from Martin Vickers MP to the Commissioner dated 17 November 2024; and
- 3.7.7 Petition with signatures to "uphold the NHS Dental Contract for Waltham Surgery"].

Representations

NHS England's representations

- 3.8 "In relation to the above cases, please see the evidence below of our ongoing correspondence with the contractor and their solicitor in respect of the issues associated with their NHS dental contracts 1008740000 and 1918330001.
- 3.9 We have been working with the contractor since April 2023 to try to resolve the situation which has now led to our issuing of Termination Notices (enclosed). Throughout this time, we have responded to requests and worked to co-ordinate responses between ourselves, the contractor and solicitors from across both NHS England and ICB organisations.
- 3.10 In summary, the contractor has been significantly under-performing on their NHS dental contracts and is in debt to both NHS England and Humber and North Yorkshire ICB. Throughout 2023, we worked with the practice to recover the debts owed by supporting their requests for a novation of the contract which would enable a sale of the business. This selling/buying process has never concluded and in June 2024, it appears that another buyer was interested but again, the sale was not concluded. During this time, the contractor has continued to under-perform with regards to their contract delivery and has continued to build their debt with Humber and North Yorkshire ICB.
- 3.11 In line with dental policy, the ICB has worked with NHS BSA to review contract performance at both mid and year end. In line with national approaches, contractual under-performance has resulted in the issuing of Remedial Breaches and withholds on contract payments.
- 3.12 It is our view that, prior to taking the decision to terminate the NHS dental contracts on 1 November 2024 (approximately 18 months since first engaging with the practice), Humber and North Yorkshire ICB did make every reasonable effort to communicate and co-operate with the contractor and solicitors in an attempt to reach an amicable solution to both the debt recovery and sale of the contractor's business.
- 3.13 In making arrangements to novate the contracts and to recover debts upon the sale of the business demonstrates our commitment to finding a local resolution to the issue. However, due to the ongoing timeframe with no movement, further escalation of debts, the contractor becoming unreasonable in their requests (e.g. demanding withholds be lifted, threatening to release names of staff and their contact details, threats of going into administration and job losses), and needing to ensure value for money of our dental contracts, we took the decision to terminate the contracts on the basis of the risk of further material financial loss.
- 3.14 In particular, the threat made on 29 October 2024 to move Aishwaryam Limited into administration if we did not pause debt recovery, on top of our previous concerns, led us to

believe that the company was in an extremely fragile financial state, and we considered at this point we would be at risk of material further financial loss if we were to continue to contract with the company.

- 3.15 In line with the process for contract terminations, we notified the contractor of their right to lodge an appeal with yourselves at NHS Resolution.
- 3.16 It is our view that we have exhausted all internal resolution processes and had no option but to issue Termination Notices.
- 3.17 Whilst the appeal is being considered, Humber and North Yorkshire ICB have not proceeded to terminate the contracts as we await the decision from NHS Resolution. As such, the practice is able to continue delivering NHS dental services during this time. We are also willing to work with them to secure a sale of the business.
- 3.18 Below is a timeline of events and the associated email correspondence.
- 3.19 I have also attached to this email, copies of the contract 1008740000 as requested. To assist, I have also included the Termination Notices as issued on 1 November 2024.”
- 3.20 [Timeline of correspondence with a date range from 26 April 2023 to 6 February 2025 – appendix A].

The Contractor’s representations

- 3.21 “To this day I have not received any response to my Appeal sent to Ms Hazelgrave from NHS Dental Commissioning Team on the 26th November by e-mail to hnyicb-ny.dentalreturns@nhs.net and by post.
- 3.22 As NHS Commissioning did not reply to the Appeal sent to them at all it means that they did not in fact enter into any local resolution in spite of the fact that it is a contractual requirement for them.
- 3.23 Furthermore I received a letter dated 8th of January 2025 from Mr [MG], Interim Regional Director of Commissioning & Transformation, [MG]@nhs.net. In his letter he states:
- 3.24 “On 1 April 2023, responsibility for commissioning pharmaceutical, general ophthalmic services, and dentistry (POD) was delegated to 42 integrated care boards (ICBs)...We are therefore no longer a party to the GDS contracts...”.
- 3.25 This above means that the termination notices sent to us on the 1st of November by Ms Hazelgrave from the NHS Dental Commissioning Team are not legally binding as they are not a proper party to issue the termination notice to my company.
- 3.26 I have to say that cooperation with the Area Team/Commissioning/ICB has been very difficult. Multiple of my, the practice manager's and my company's solicitor's emails had gone either unanswered or with an answer delayed by months which in my opinion is a sign that they do not care about the NHS, about NHS patients and about preserving continuity of NHS care while recovering the funds owed. It was always and still is my company's intention to return all and any monies owed through clawback and we had an agreement in place, formed between my company's lawyer and the Commissioning Team, in relation to how the clawback would be repaid and when (in full, upon completion of the sale of the practice) and the Commissioning Team broke this agreement.
- 3.27 I once again enclose an email [appendix B] from the broken [sic] involved in the sale of the practice which shows that the purchaser's lender are no longer proceeding because of the termination of the contracts and that they would only proceed if the contracts are reinstated and if there is a formal written irrevocable undertaking in place to guarantee that the contracts

would be novated in the name of the buyer who is still willing to proceed. Completion of the sale would restore NHS care provision to our patients and would result in all monies owed being repaid to NHS England in full. **This is the only solution which ensures these two outcomes.**"

- 3.28 "We have been attached to correspondence from our client addressed to yourselves. The position appears clear that the notice to our client appears by your own consideration not to have legal standing. In a letter dated 8th of January 2025, Mr [MG], Interim Regional Director of Commissioning & Transformation, [MG]@nhs.net states:
- 3.29 "On 1 April 2023, responsibility for commissioning pharmaceutical, general ophthalmic services, and dentistry (POD) was delegated to 42 integrated care boards (ICBs)...We are therefore no longer a party to the GDS contracts..."
- 3.30 From this it is clear that the termination notices sent to our client on the 1st of November by Ms Hazelgrave from the NHS Dental Commissioning Team are not legally binding as Commissioning are not the correct party to issue the termination notice.
- 3.31 Our client is willing to accept immediate re-instatement of the contract without any consideration of any damages based on this contractual breach, subject to confirmation of the same by 14th February 2025. Failing that point our client will reserve the right to further consider damages.
- 3.32 In addition can it be agreed that any further action in respect of the contract is stayed for a period of 1 year to allow the sale to be completed. As evidenced there is a transaction that seems to be genuinely proceeding based on the correspondence from the agent. This being sabotaged by the actions taken forming the basis of the appeal. As stated before this firm believes this is the best basis to bring the matter to a resolution - re-instate the contract, allow the sale to proceed, from the sale proceeds the amounts due under the contract paid, with this firm supplying an undertaking in respect of the same. We would be grateful for your kind consideration in this matter and look forward to a response as soon as you are able, taking into consideration the timescales contained in this email."

Observations

NHS England's observations

- 3.33 "In relation to the above cases, I thank you for sharing the representations received from the other party. Please accept this letter as our observations and rebuttal of the details shared. Specifically, we refer to the enclosures:
- 3.33.1 Representations email from John Barker Solicitors (Aishwaryam Ltd) received 30 January 2025
- 3.33.2 Representations email from Aishwaryam Ltd received 19 January 2025
- 3.34 In both of the above emails, the other party sets out that they believe the Termination Notices issued on 1 November 2024 by Humber and North Yorkshire Integrated Care Board (ICB) have no legal standing. This is based on a letter from Mr [MG], Interim Regional Director of Commissioning and Transformation at NHS England, which sets out that the commissioning of dental contracts was delegated to ICBs from 1 April 2023 (a copy of this letter is included as Appendix A). It is clear, however, that the other party has misunderstood the situation and Mr [G]'s letter aims to set out that it is indeed the ICB which is now responsible for contracting and commissioning of dental provision. On that basis, the Termination Notices issued by Humber and North Yorkshire ICB, as the party with delegated responsibility, are in fact, legally binding. Furthermore, please note Appendix B which also sets out an email from May 2023 when NHS England confirmed the changes of commissioning responsibility, with the provider.

- 3.35 Specifically, in the email from Aishwaryam Ltd received 19 January 2025, the party outlines that they have not received a response to the appeal sent to Ms Hazelgrave on 26 November by email. Our records show, as evidenced in Appendix C, that this email relates to the return of the signed Declaration of Receipt of Termination Notices in respect of contracts 1008740000 and 1918330001 and their intention to appeal. In line with the process for contract terminations, at the time of issuing the Termination Notices, we notified the contractor of their right to lodge an appeal with yourselves at NHS Resolution and it is our view that any correspondence outlining their request to lodge an appeal will have been sent directly to NHS Resolution. Upon receiving the Declaration of Receipt, no further action was taken as any correspondence relating to the appeal would be facilitated through NHS Resolution.
- 3.36 We are sorry that Mr Pekacki, Director for and on behalf of Aishwaryam Limited, feels that cooperation with the Area Team/Commissioning/ICB has been very difficult. However, as detailed in our submission of evidence, Humber and North Yorkshire ICB believe that prior to issuing the Termination Notices, the ICB had exhausted all internal resolution processes to recover debts owed and to support the sale of the business. We had been engaged in ongoing correspondence with the practice and their solicitors for over 18 months regarding their contract performance, recovery of debt and sale of the business. Throughout this time, we did respond to requests and our initial evidence submitted outlines the timeliness of our responses. However, due to escalating concerns following the threat made by the other party on 29 October 2024 to move Aishwaryam Limited into administration if the ICB did not pause debt recovery, on top of our previous concerns and lack of updates regarding the sale of the practice, we believed that the company was in an extremely fragile financial state. We considered that we would be at risk of further material financial loss if we were to continue to contract with the company and as such, felt the best decision in the public interest was to issue Termination Notices.
- 3.37 In an attempt to clarify matters and to confirm to the other party that the NHS dental contracts remain in place whilst the appeal is being considered, the ICB wrote to Aishwaryam Limited on 3 February 2025 (Appendix D). This letter set out that the ICB was the responsible party for dental commissioning and clearly set out that their NHS contracts remained active, whilst the appeal was being considered. It remains the fact that whilst the appeal is being considered, Humber and North Yorkshire ICB have not proceeded to terminate the contracts as we await the decision from NHS Resolution. As such, the practice is able to continue delivering NHS dental services during this time. We are also willing to work with them to secure an immediate sale of the business.”
- 3.38 [Appendices A – D enclosed – see appendix C].

The Contractor's observations

- 3.39 “I would like to inform you that the letter from Debra Leadbetter dated 6th February 2025, attached to your email, contains information that is not true, as the termination notices sent also by Ms Leadbetter, clearly indicated that the NHS contracts 1008740000 and 1918330001 were to be terminated on the 29th November 2024. Only in the letter of the 3rd of February 2025, Debra Leadbetter informed us of reinstating the terminated contracts 1008740000 and 1918330001.
- 3.40 In addition, there was no local resolution, there was no reply to our appeal at all. Instead our dental practice was widely shown in local newspapers and talked about on the radio and TV, where our distressed staff were interviewed. I lost the interest of two buyers because of the complete lack of any response from NHS England/ICB to my lawyer's letters and emails. Now someone has woken up and asked NHS Resolution for a retrospective extension for a response. It is simply a joke, showing a lack of professionalism, lack of care towards contractors and staff dedicated to NHS service, but most of all a lack of care towards NHS patients.
- 3.41 Regarding other issues included in the 6th February letter I will reply as soon as I speak with my lawyer.”

- 3.42 “We write on behalf of our client, Aishwaryam Limited, whose director is Mr Paul Pekacki. We refer to recent developments regarding the stated termination of NHS contracts and the subsequent withholding of payments, which have resulted in significant financial and operational hardship for our client and its staff.
- 3.43 It has come to our attention that, notwithstanding our client’s pending appeal, termination notices were issued and, although subsequently “reinstated,” your actions have effectively resulted in non-payment of services rendered since September 2024. Such conduct, particularly the demand that our client and its staff continue to work without remuneration, is manifestly unreasonable and contravenes established Public Law obligations. As a public body, you are legally bound to act reasonably. Our client would comment that withholding payments and insisting that the company’s staff comply with the provisions of the contract, when a strategy was in place to deal with the recoupment is unreasonable.
- 3.44 The evidence clearly indicates that since 1 November 2024, following receipt of an unenforceable termination notice, our client has been deprived of vital NHS payments. This has had a cascading effect: the practice has been unable to settle its mortgage and loan obligations, pay staff salaries, or procure essential materials—all of which have contributed to a severe deterioration in the provision of NHS dental services. The repercussions extend further, damaging the goodwill built over 60 years of continuous service and inflicting considerable stress and hardship on our client’s employees, who are now forced into private practice under duress to avoid the Company falling into insolvency.
- 3.45 Furthermore, we draw your attention to the ICB’s recent correspondence, which, while acknowledging that the NHS contracts remain active during the appeal process, simultaneously confirms that payment withholds have been applied in line with regulatory provisions. This contradictory stance is both unacceptable and is our client’s position legally indefensible.
- 3.46 In light of the above our client seeks the immediate release of all missed payments dating from September 2024. It is imperative that NHS Resolution and the ICB act without further delay to remedy this breach. The continued failure to do so not only exacerbates our client’s financial difficulties but also constitutes a further breach of your Public Law obligations to act reasonably and in the best interests of both patients and the Company’s staff keen to provide a key NHS service to the local public.
- 3.47 Please confirm in writing within 7 days of the date of this letter that the full amount due will be remitted promptly and that steps will be taken to prevent any recurrence of these issues.
- 3.48 We would appreciate that all future correspondence in this matter is copied to our office.
- 3.49 As previously stated an agreement was in place to sell the practice and from the sale proceeds the shortfall was to be recouped. The writer remains somewhat surprised by the stance taken in respect of dealing with our client in this matter as it appears with the contract returned we will be in a position to progress a sale.”

Email dated 8 March 2025 from the Contractor’s Solicitor to NHS Resolution

- 3.50 “We write in connection with the above matter.
- 3.51 Our client has secured a purchaser for the two NHS contracts referenced below:
- 3.52 SHA/26398 – AISHWARYAM LIMITED, DENTAL SURGERY, 10 NEW ROAD, WALTHAM, DN37 0EN; and
- 3.53 SHA/26433 – AISHWARYAM LIMITED, DENTAL SURGERY, 10 NEW ROAD, WALTHAM, DN37 0EN.

- 3.54 This is a transaction that could proceed swiftly. The intention is for these contracts to be novated to the purchaser, enabling him to operate from his chosen location.
- 3.55 The benefit to the NHS is that the sale would generate sufficient funds to cover the recoupment due under the contract. Our firm would provide an appropriate undertaking confirming that the recoupment due would be paid from the net sale proceeds.
- 3.56 Clearly, this proposal is advantageous to the NHS and the wider government finances, ensuring continued NHS provision in Lincolnshire. This transaction would allow all parties to achieve their desired outcome without the need for further recourse—making it a “win-win” solution. It simply facilitates what was understood to be the agreed resolution to this matter, benefitting all parties, including the local community, by maintaining the provision of services in the region.
- 3.57 The proposed purchaser is:
- 3.58 **Tafadzwa Shuro**
- 3.59 Coningsby Dental Practice
- 3.60 41 Silver Street
- 3.61 LN4 4SG
- 3.62 We would be grateful if you could urgently confirm your agreement to this proposal by providing a scanned letter, on letter headed paper, which can be relied upon, so that we may proceed with the disposal via novation. This is subject to the condition that the recoupment due under the contract is paid as part of the novation process.
- 3.63 We look forward to your prompt response so we can commence the disposal.”
- 3.64 “Firstly, I wish to point out that to this day, no one from the ICB nor NHS Commissioning, has responded to our appeal dated [sic].
- 3.65 As you can see from the letter sent to you from the ICB, it was in fact not legal for NHS Commissioning to terminate the contracts while I am appealing and they have reinstated both contracts after 4 months. By terminating the contracts despite the appeal, they basically breached the NHS agreement. **Consequently we demand to receive all missed payments since September 2024 to be able to continue offering NHS services to the local community and to repay the mortgage and loan to the banks.**
- 3.66 In their letter you can read:
- 3.67 *"1. Termination Notices have been issued for both contracts. You have submitted an appeal to NHS Resolutions in respect of these Termination Notices. Whilst your appeal is being considered, I can confirm that your NHS contracts **remain active**,...*
- d. The ICB will continue to recover debts owed in previous years, and will place payment withholds on 24/25 contract payments, in line with Regulations, to minimise debts accrued against these contracts."*
- 3.68 In my opinion the ICB are basically committing **creative accounting** - because they know very well that the company has not been providing NHS services since the 1st of November 2024 because of the lack of funds caused by their 100% recovery. They are not paying Aishwaryam Ltd, Aishwaryam is not returning any money to them because it doesn't have funds, by not paying Aishwaryam they are artificially "recovering" money that is due back to them but all of this is creating a future debt for Aishwaryam because obviously Aishwaryam cannot afford to continue offering NHS services without receiving payments from the NHS.

- 3.69 They are clearly lying (as per correspondence attached wherein our solicitor was requesting written confirmation of novation back in 2023) that they were not aware of the sale as they have correspondence with you regarding this matter:
- 3.69.1 *"You have written that you aim to sell the business and have requested that the NHS contracts are re-instated to support the purchase by an interested buyer. As above, I can confirm that the contracts currently remain in place. As an ICB, however, we are not aware of your current position with regards to the sale of the business and kindly request that you confirm details with us as soon as possible so that we may support with the novation (or other requests) on the contracts to enable a sale to proceed. Please direct all correspondence, via email to hnyicb-ny.dentalreturns@nhs.net".*
- 3.70 They are breaking Public Law. They are obligated by Public Law to act reasonably. Demanding that Aishwaryam and its staff work without payment is not only unreasonable but is also against employment law because people should receive salaries for their work.
- 3.71 From the 1st of November 2024 when we received the **legally unenforceable termination notice** from NHS Commissioning we were unable to pay our staff and dentist, pay off our loan and mortgage, pay the lease and buy materials because the company had no money in the Company. Despite the fact that they as a public body are obligated to act reasonably, their careless approach which had no patient care and wellbeing of patients in mind left patients without NHS care overnight after 60 years of continuous service of the Practice. Our staff would be very happy to return to NHS service if allowed to do so i.e. if the company is properly paid for its work. They have families to care about, mortgages to pay, small children etc. Staff cannot work without being paid and Aishwaryam does not have money to pay them without a continuous full remuneration from NHS work.
- 3.72 Their illegal acts put me as a director of the company, all the staff, the dentist and the patients through horrendous stress. Their decision forced the staff and the dentist to start working privately despite being dedicated to the NHS for years. This one decision made by someone at a desk with a computer, someone who does not have to stand face to face with our staff and look them in the eyes and say "we have no money for you from this day on." This person or persons never thought about the level of stress, embarrassment and enormous pressure we had to manage to find a solution for our dental practice overnight.
- 3.73 We received no apology and all they are saying now is basically "Nothing happened... just get back to NHS work without any payment, having no money to provide the service". It is of course impossible to do and is clearly violating the public body obligation to act reasonably.
- 3.74 It is very clear that they are happy now to give us NHS contract novations to help us with the sale but at the same time, thanks to them, our second buyer, Dr Anisa, has already lost the funds promised from Lloyds because of contracts terminations, resulting in losses of 550K for the assets sale. This is the second buyer we lost thanks to the ICB's actions and two lost opportunities to repay clawback. The first lost buyer was Dr Kasumba (who approached us in 2023) in whose case the ICB/Commissioning failed to send us a written novation confirmation despite a year's worth of our solicitor's requests. Instead, they were responding to his emails with delays or not responding at all (correspondence attached). They were not cooperating at all.
- 3.75 We have another buyer interested in taking over the contracts (Mr Jonathan Stones of John Bakers Solicitors, informed NHS Resolution and the ICB about this in his email of the 8th March). What we need now (as is requested by the prospective buyer) is a written undertaking that on completion of the sale, the contracts will be novated in the name of the buyer, and simultaneously the clawback will be repaid."
- 3.76 [Numerous emails enclosed – see Appendix D]

4 CONSIDERATION

- 4.1 Since 1 April 2023, Integrated Care Boards have taken on delegated responsibility for the commissioning of primary dental services.
- 4.2 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. I note that I was provided with a copy of two Contracts (1918330001 and 1008740000) and the Commissioner confirmed that:
- 4.2.1 *“As they were temporary UDAs they had a second contract number attached to it (1008740000) and it was issued as a variation against both contract numbers. They were then made permanent on that additional number. The main contract (1918330001) is attached.”*
- 4.3 I note the Contracts and variation notices provided have not been disputed by either party.
- 4.4 I note that the application for NHS dispute resolution seeks to challenge the Commissioner’s decision to terminate the Contracts by letters dated 1 November 2024, in respect of Dental Surgery, 10 New Road, Waltham, DN37 0EN.
- 4.5 I note that Paragraph 53 of Part 7 of Schedule 3 of the Regulations states that:
- “In the case of any dispute arising out of or in connection with the contract, the contractor and the Primary Care Trust must make every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings).”*
- 4.6 The same wording is included under clause 278 of the Contracts provided by the Contractor. This determination on a preliminary matter relates to the question of whether “every reasonable effort” has been made [to resolve the dispute], as referred to in the Regulations.
- 4.7 On 15 January 2025 I requested that both parties provide Representations in relation to this question, the responses to which I have included above. I note that it is the Commissioner’s view that local dispute resolution has been exhausted, while the Contractor contends that it has not been.
- 4.8 I note one of the grounds of challenge raised by the Contractor is in relation to the validity of the Termination Notices as a result of a letter from NHS England – North East & Yorkshire to the Contractor dated 8 January 2025. I note this letter outlines that the commissioning of dental contracts was delegated to ICBs from 1 April 2023. The Contractor contends that the Termination Notices are not valid as they were issued by the NHS Dental Commissioning Team. I note that this team is part of Humber and North Yorkshire ICB and this accords with the contents of the letter of 8 January 2025. Nevertheless, I do not consider that I am in a position to fully consider the validity of the Termination Notices at this stage because both parties have predominantly made submissions on local dispute resolution and have not been invited to make submissions on the substantive matter, including the validity of the Termination Notices.
- 4.9 I consider that the discussions prior to the Termination Notices should be considered as communication for the purposes of paragraph 53/clause 278, and hence form part of the efforts by the Commissioner to resolve the dispute, for the reasons I shall explain. Of vital importance is that the source of dispute which led to the termination was the failure by the Contractor to achieve the required levels of UDAs under the Contracts. I note that the Commissioner had the right to financial recovery due to the Contractor’s undelivered UDAs, as per the end of year reconciliation letters dated 31 July 2023. The emails provided to me by both parties detail their attempts to co-operate in order to resolve this issue. However, I note that the dispute pre-dates this letter, as per the Contractor’s Solicitor’s email of 26 April 2023 – wherein they note that a financial recovery was likely to occur. I consider that this is the start

of the communication relating to the UDA matter and consequently, I consider that the issues have been ongoing for a considerable amount of time.

- 4.10 I am mindful that to separate the correspondence between the parties regarding the UDA financial recovery issues from the Termination Notices would be an entirely artificial construction and not reflective of the reality of the nature of the discussions. The language of paragraph 53/clause 278 refers to the "dispute" not the contractual mechanism by which the dispute is being dealt with under. As such, where the dispute at the heart of the Termination Notices is the same as that previously discussed, I must conclude that any correspondence and co-operation in an attempt to resolve it should be treated as the same dispute for the purposes of paragraph 53/clause 278.
- 4.11 I have had regard to the correspondence between the parties in the two years prior to the dispute being referred for NHS dispute resolution. I note that the Contractor has underperformed on its contractual obligations across two years and is now in debt to the Commissioner. I note that in order to repay the monies owed under the Contracts, the Contractor made the suggestion of a novation to a third party in order to carry out an asset sale of Aishwaryam Ltd. As confirmed by both parties, the intention was that the proceeds of said sale would then be used to offset the monies owed by the Contractor due to its underperformance of UDAs. I note that the Commissioner accepted this proposal in relation to the outstanding amounts from 2022/2023 subject to certain conditions. Despite attempts by both parties, I consider that, as per the evidence provided to me, a sale was not concluded and the issue of monies owed was not resolved and in fact worsened as the Contractor continued to underperform, resulting in the need for further financial recovery by the Commissioner in relation to the 2023/2024 year-end reconciliation dated 30 July 2024.
- 4.12 I note the Contractor states that *"To this day I have not received any response to my Appeal sent to Ms Hazelgrave from NHS Dental Commissioning Team on the 26th November by e-mail to hnyicb-ny.dentalreturns@nhs.net and by post. As NHS Commissioning did not reply to the Appeal sent to them at all it means that they did not in fact enter into any local resolution in spite of the fact that it is a contractual requirement for them."*
- 4.13 I note in response the Commissioner states that *"Our records show, as evidenced in Appendix C, that this email relates to the return of the signed Declaration of Receipt of Termination Notices in respect of contracts 1008740000 and 1918330001 and their intention to appeal."* I have had regard to the email provided by the Commissioner and consider that the Commissioner's interpretation is correct. I also note the Commissioner states that *"It is our view that, prior to taking the decision to terminate the NHS dental contracts on 1 November 2024 (approximately 18 months since first engaging with the practice), Humber and North Yorkshire ICB did make every reasonable effort to communicate and co-operate with the contractor and solicitors in an attempt to reach an amicable solution to both the debt recovery and sale of the contractor's business."* I further note that the application for dispute resolution was made on 21 November 2024, five days before the Contractor's email to the Commissioner that it did not receive a response to. I consider that it is odd that the Contractor made the application to NHS Resolution first, before engaging with the Commissioner, if it considered that local dispute resolution had not been exhausted.
- 4.14 I note the Termination Notices state that *"If you do not agree with our decision to issue this Termination Notice, you should contact us within 28 days of this notice. If, after making every reasonable effort, we are unable to resolve the dispute, you may wish to refer the matter to the NHS dispute resolution procedure"*. I note that this clearly sets out that referral to NHS dispute resolution should only occur following the local dispute resolution procedure. Consequently the pre-emptive referral by the Contractor is tantamount to admittance of local dispute resolution being concluded. I note that this appears to contradict the Contractor's current position.
- 4.15 I note that the Termination Notices were issued on the grounds of *"the Contractor's financial situation is such that the Board considers that the Board is at risk of material financial loss"* and that the Commissioner has confirmed that *"in making arrangements to novate the*

contracts and to recover debts upon the sale of the business demonstrates our commitment to finding a local resolution to the issue. However, due to the ongoing timeframe with no movement, further escalation of debts, the contractor becoming unreasonable in their requests (e.g. demanding withholds be lifted, threatening to release names of staff and their contact details, threats of going into administration and job losses), and needing to ensure value for money of our dental contracts, we took the decision to terminate the contracts on the basis of the risk of further material financial loss."

- 4.16 Aside from the wording of the Termination Notices, I note that the parties have been in communication with each other since April 2023. I note that there have been discussions between the parties and a considerable length of time has passed, but that this has not resolved the issue. Having regard to the application for dispute resolution made by the Contractor in response to the Termination Notices, and its subsequent correspondence I note that this does not provide any new information, arguments or additional evidence of a sale being any closer to being completed or that would lead to the immediate resolution of the dispute. I am also unclear as to whether the Commissioner has agreed that the Termination Notices, the subject of the application for dispute resolution, would be rescinded in the event of a sale in the event that the dispute is found in favour of the Commissioner. I do not consider that further local dispute resolution would have unearthed any additional grounds of dispute or information that the Commissioner had not previously considered. In this situation I am mindful that this had been continuing for quite some time. I note that paragraph 53 of Part 7 of Schedule 3 of the Regulations and clause 278 of the Contracts is not an absolute right to communication and co-operation but is tempered by the use of "every reasonable effort".
- 4.17 Whilst the Commissioner did not respond to the email of 26 November 2024, I do not consider that it was necessary to do so, given the surrounding information and that, at that point, an application to NHS Resolution had already been made. I do note that further correspondence did take place, even if specific regard was not had to that email, and that still no resolution was found. Taking the entirety of the two years of communication between the parties, the lack of any new information or a change in situation, combined with the statements of the Contractor regarding administration, I consider it clear that every reasonable effort had been expended in an attempt to resolve the dispute.
- 4.18 I also note that local dispute resolution cannot be engaged in perpetually. I consider that at some point a failure to achieve a resolution is, in of itself, a resolution, of sorts. I am mindful that the Contractor has not managed to achieve the sale of its assets, as intended, however, I will consider the point as to whether it was entitled to continue to operate without clawback, until such time as it proceeded following further comments from both parties.
- 4.19 I do not consider that any further local dispute resolution would provide any solution to this situation, nor do I consider that either party has provided evidence of such progress. I consider that any further correspondence between the parties would fail to move the matter any closer to resolution, based on the Representations and Observations before me, and the language used therein, and conclude that paragraph 53/clause 278 has been accorded with.

5 DECISION

- 5.1 I determine that both parties have made every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute and that the dispute is, therefore, suitable for referral for determination in accordance with the NHS dispute resolution procedure.
- 5.2 In the circumstances, to enable a final determination of this dispute, each party shall provide their Representations on the substantive matter as set out in the Contractor's original application for dispute resolution of 21 November 2024. Any evidence provided by either party in their Representations must be accompanied with a written response (together with pagination of documents and references) of what is being provided. This must be provided within 21 days of the date of this determination on a preliminary matter.

- 5.3 The information provided in accordance with paragraph 5.2 above should include copies of any agreements, guidance and reminders/correspondence in relation to the matter in dispute upon which parties seek to rely.
- 5.4 Each party will then be provided with a copy of the other party's comments and asked to make any Observations on these within a further 14 days.
- 5.5 I will then proceed to make a final determination.

Head of Appeals
NHS Resolution