NHS Resolution

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22 January 2026

FILE REF: **SHA/26709 & SHA/26717**

DECISION MAKING BODY: **NHS ENGLAND ("THE COMMISSIONER")**

GDS CONTRACTOR: **DR [redacted]**
FRAMPTON DENTAL SURGERY AND
FLAXPITS LANE DENTAL SURGERY

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

RE: **RECONCILATION OF CONTRACTS**

1 Outcome

1.1 I determine that the Commissioner can proceed to recover the amounts of:

1.1.1 £146,943.21 in relation to the Frampton Contract (Contract 1817730001); and

1.1.2 £141,281.80 in relation to the Flaxpits Contract (Contract 9361330001).

1.2 I note that neither party has submitted a claim for interest with regard to this dispute so I make no determination in this regard.

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RE: **RECONCILATION OF CONTRACTS**

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 54 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 19 June 2025, 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 letter dated 19 June 2025, received on 4 September 2025, from Bevan Brittan on behalf of the Commissioner;

2.2.2 Application supporting documents, received on 12 September 2025, from Bevan Brittan;

2.2.3 Copy of Contractor's email to Bevan Brittan dated 12 September 2025;

2.2.4 Contractor's email dated 9 October 2025;

2.2.5 Contractor's representations dated 4 November 2025;

2.2.6 The Commissioner's representations dated 5 November 2025, from Bevan Brittan;

2.2.7 Contractor's observations dated 7 November 2025; and

2.2.8 The Commissioner's observations dated 21 November 2025, from Bevan Brittan.

3 PARTIES SUBMISSIONS

The Commissioner's application

3.1 "**Application for dispute resolution by NHS England**

Reconciliation for NHS England Contracts 1817730001 and 8361330001

We represent NHS England, and we are writing in respect of the financial reconciliations for contracts 1817730001 and 8361330001 in relation to which NHS England and the Contractor are in dispute.

1 THE PARTIES

1.1 The Commissioner in this matter is NHS England of NHS England London, Wellington House, 133-135 Waterloo Road, London, SE1 8UG. Since April 2023, the responsibility for commissioning primary care services in the Contractor's region has been delegated by NHS England to NHS Somerset ICB (the "**ICB**"), but the period of time to which the dispute relates pre-dates this delegation of responsibility and so this application is made by NHS England.

1.2 Any documents and/or correspondence in relation to this matter for the attention of NHS England should be sent to:

FAO [HL]
Bevan Brittan LLP
Fleet Place House
2 Fleet Place
Holborn Viaduct
London
EC4M 7RF

Ref: HL\DP\99479\454
Email: [redacted]

1.3 The Contractor in this matter is Dr [redacted], who previously operated from a number of practices including: (i) Frampton Dental Surgery at 288 Park Lane, Frampton Cotterell, Bristol BS36 2BL ("**Frampton**")**;** and (ii) Flaxpits Lane Dental Surgery at 15 Flaxpits Ln, Winterbourne, Bristol BS36 1JY ("**Flaxpits**") pursuant to two separate General Dental Services Contracts (collectively, the "**Contracts**") as varied from time to time and as set out in more detail below.

2 ENCLOSURES

2.1 We enclose with these representations a paginated bundle of documents relied on by NHS England in its defence of the Application. Cross-references in the form **[XX]** are to page numbers within that bundle.

3 THE CONTRACTS AND BACKGROUND

Contract 1817730001 (Frampton)

3.1 Contract 1817730001 was a Standard GDS Contract between NHS England and Dr [redacted], for the provision of dental services at Frampton Dental Surgery ("the "**Frampton Contract**"). Dr [redacted] took over this contract as an individual, by way of contract variation, effective from 1 December 2019 **[P1-4]**. Pursuant to this contract, Dr [redacted] was required to deliver 16,609 UDAs.

3.2 Although neither party has a copy of this contract, the parties accept that the standard form GDS provisions apply. Accordingly, it is not in [sic] issue that pursuant to clause 359 of the Frampton Contract, a reconciliation of the payments made to Dr [redacted] and the value of the work undertaken by Dr [redacted] under the Frampton Contract would be undertaken by or on behalf of the Commissioner on termination.

3.3 Dr [redacted] gave notice to terminate this contract with effect from 18 January 2022. Accordingly, NHS England prepared a final contract reconciliation dated 19 October 2022 **[P5-6]**. This was provided to Dr [redacted] by email on 4 November 2022 **[P7]**.

3.4 As set out in the final contract reconciliation, NHS England is seeking a total financial recovery of **£146,943.21** which remains unpaid.

Contract 8361330001 (Flaxpits Lane)

3.5 Contract 8361330001 was a Standard GDS Contract for the provision of both dental services and orthodontic services at Flaxpits Lane Dental Surgery dated 17 March 2006 **[P8-160]** ("**the Flaxpits Contract**").

3.6 Dr [redacted] joined as a partner to this contract, by way of contract variation, effective from 28 February 2019 **[P161-163]**. He elected to terminate the provision of mandatory services (under Part 8) of the contract, being the provision of dental care and treatment, effective from 18 January 2022. He elected to continue with the provision of orthodontic services under the contract (under Part 9).

3.7 On 2 September 2022, Dr [redacted] elected to terminate this contract with effect from 2 December 2022 **[P164]**. Accordingly, pursuant to clause 359 of the Flaxpits Contract, NHS Business Services Authority ("**NHS BSA**") on behalf of NHS England issued a year-end reconciliation dated 20 September 2022, advising there was a total financial recovery of £207,141.45 **[P165-169]**.

3.8 On 2 November 2022 Dr [redacted] raised a number of queries regarding this calculation which NHS England considered and responded to on 4 November 2022 **[P170-171]**. Having taken Dr [redacted]'s concerns into account, NHS England's position was that the total financial recovery owing is £145,403.47. This was on the basis that there were two withheld payments relating to the financial year 2021-22 that should have been taken into account, equating to £61,737.98.

3.9 NHS England's final position is that Dr [redacted] owes **£141,281.80** which remains unpaid **[P172-174]**. This reflects that NHS BSA recovered a payment from Dr [redacted] of £4,121.67.

Interparty correspondence

3.10 There has been considerable correspondence between the parties regarding the reconciliations undertaken in respect of both Contracts, and an in-person meeting on 16 March 2023 **[P175-177]**. In preparation for that meeting NHS England prepared a spreadsheet setting out the total amount Dr [redacted] owed in respect of the Flaxpits Contract in the sum of **£141,281.80**

3.11 Bevan Brittan LLP, representing NHS England, subsequently wrote to Dr [redacted] on 11 March 2024 setting out the basis of NHS England's claim **[P178-185]**. Dr [redacted] responded by email on the same day **[P186-188]**, maintaining his position that NHS England / NHS SBS had deliberately deducted activity that had been undertaken by both Frampton and Flaxpits, whereupon the reconciliations are, simply put, flawed.

3.12 No resolution has been agreed. NHS England considers that it has taken Dr [redacted]'s concerns about the reconciliations into account and has made amendments where he has identified genuine errors or discrepancies in the calculations. However, NHS England's position is that all valid objections have been accounted for, and that the final sums referred to above are owed to NHS England.

3.13 The parties are in agreement that local dispute resolution options have been exhausted, hence NHS England is making this application to the PCA service.

4 NHS BSA GUIDANCE ON RECONCILIATION

4.1 We set out below NHS England's approach to reconciliation for both contracts, including with respect to (both of which have been provided to Dr [redacted]):

4.1.1 NHS England's '*Managing the 2021/22 year-end reconciliation*' dated 5 April 2022 ("**2021/22 Guidance**" **[P189-207]**)[1]

4.1.2 NHS BSA's '*Guidance to support dental contract management arrangements for April 2021 to 30 September 2021*' (the "**Covid Policy**" **[P208-239]**)[2].

4.2 As outlined in the 2021/22 Guidance, in recognition of the ongoing constraints to practice capacity due to COVID-19, contractual protections remained in place throughout 2021/22. Arrangements were put in place between the following periods:

4.2.1 1 April 2021 to 30 September 2021;

4.2.1 1 October 2021 to 31 December 2021; and

4.2.2 1 January 2022 to 31 March 2022.

4.3 The 2021/22 Guidance introduced reduced thresholds for NHS income protection. This means that instead of having to deliver 100% of annual contract activity to receive income protection (i.e. no financial recovery by NHS England), two lower thresholds were introduced to qualify for income protection:

4.3.1 **Performance threshold** – this was the level of contract delivery required for full NHS income protection. For the relevant time periods:

(a) 1 April 2021 to 30 September 2021 (H1): 60% contracted UDAs / 80% contracted units of orthodontic activity (UOAs);
(b) 1 October to 31 December 2021 (Q3): 65% contracted UDAs / 85% contracted UOAs; and
(c) 1 January to 31 March 2022 (Q4): 85% contracted UDAs / 90% contracted UOAs

4.3.2 **Minimum threshold** – this was the level of contract delivery required to avoid full financial recovery by NHS for non-delivered activity:

(a) 1 April to 30 September 2021 (H1): 36% contracted UDAs / 56% contracted UOAs;
(b) 1 October to 31 December 2021 (Q3): 52% contracted UDAs / 60% contracted UOAs; and
(c) 1 January to 31 March 2022 (Q4): 75% contracted UDAs / 85% contracted UOAs.

4.4 The 2021/22 Guidance sets out at paragraphs [7] to [9], the following general conditions which are required for income protection (emphasis added):

7. In order to receive income protection for any time period, the minimum or performance threshold and contractual requirements must be met.

8. The following requirements must also be met across the year:

• *All required declarations must be submitted in full via NHSBSA Compass system.*

• *All annual declarations should be fully completed. A failure to fully complete these will result in contractual sanctions being issued irrespective of the level of contract delivery.*

• *All NHS funded capacity must be used to deliver the maximum possible volume of safe care for patients.*

9. If these conditions have not been met contractors will revert to normal contractual payment and financial recovery arrangements.

4.5 In addition, there were further requirements for full income protection and for partial income protection:

Conditions required for full income protection

10. In the case of any contractor delivering 100% of their total actual annual contract activity across the year, irrespective of how that activity is distributed across the year, they will be deemed to have successfully delivered actual contract activity and no adjustment to contract payment will be made at year end.

11. Where 100% of the total actual annual contract activity has not been delivered, but contractors have met all the conditions of income protection requirements and achieved or exceeded the performance threshold in each time period, the contractor will be eligible for 100% of their actual contract value in that period adjusted for variable costs to reflect reduced patient care activity. This variable rate will be calculated as below:

- *16.75% April 2021 to September 2021 – H1.*
- *12.75% October 2021 to March 2022 – Quarter 3 and Quarter 4.*

Conditions required for partial income protection

12. Contracts that have met all the conditions of income protection described at paragraph 8 and who have delivered levels of care between the minimum threshold and the performance threshold in H1 and/or Q3 and/or Q4 will be eligible for partial income protection in that period on a sliding scale (see worked example 2) between the minimum threshold and performance threshold. The adjustment for variable costs will be applied as above to reflect reduced patient care activity.

Where income protection will not apply

13. Where a contractor has performed below the minimum threshold in H1 and/or Q2 and/or Q4 normal contractual rules will apply in that period and contractors will only be paid for activity delivered.

4.6 As the above demonstrates, the policy was that:

4.6.1 if a contractor delivered their total annual contract activity throughout the year, there would be no financial recovery by NHS England at the end of the year.

4.6.2 if a contractor delivered sufficient activity to meet the performance threshold (outlined above at paragraph [4.3.1]), they would be eligible to receive their total contract value. However, there was an adjustment to reflect that the contractor's costs would have been lower throughout the year (as fewer UDAs/UOAs were actually delivered). This percentage adjustment is applied to the actual number of UDAs that were not delivered. Accordingly, even though the contractor was "eligible for 100% of their actual contract value", there was still a financial recovery to reflect the fact that the contractor's costs would have been lower due to reduced patient care activity.

4.6.3 if a contractor delivered above the minimum threshold (see at [4.3.2] above) but less than the performance threshold, there would therefore be some financial recovery, calculated on a sliding scale. In addition, the same variable costs adjustment would be applied to reflect the lower costs associated with reduced patient care activity.

4.7 Where 'partial income protection' was relevant as the contract has met minimum performance thresholds, worked example 2 provides additional guidance on how the sliding scale would work. More specifically:

1. Partial income protection will be applied based on a sliding scale between the minimum and performance threshold. The value of activity once the sliding scale income protection is applied will be:

i. H1: = 100% / 60% Performance Threshold x Adjusted Scheduled Activity x Indicative UDA/UOA value

ii. *Q3: = 100% / 65% Performance Threshold x Adjusted Scheduled Activity x Indicative UDA/UOA value*

iii. *Q3: = 100% / 85% Performance Threshold x Adjusted Scheduled Activity x Indicative UDA/UOA value*

2. The partial financial recovery for undelivered UDA/UOAs will be = Prorated contract value – value of Income protection activity

4.8 NHS England has applied the 2021/22 Guidance to the reconciliation for both the Frampton Contract and the Flaxpits Contract.

5 FRAMPTON CONTRACT (DENTAL)

5.1 As outlined above, a final contract reconciliation dated 19 October 2022 was prepared in respect of the Frampton Contract **[P5]**, following Dr [redacted]'s notice to terminate effective from 18 January 2022. As set out in the 19 October 2022 letter, the table below sets out a summary for the period 1 April 2021 to 18 January 2022 (when the contract closed):

Time Period	**H1**	**Q3**	**Q4**	**Total**
Months and year	Apr to Sep 21	Oct to Dec 21	Jan-22	
% Performance Threshold	60%	65%	85%	
% Minimum Threshold	36%	52%	75%	
Adjustment for undelivered UDAs	16.75%	12.75%	12.75%	
Contacted [sic] UDAs pro-rated per time period	8304.5	4152.3	803.3	**13260.0**
Scheduled UDA activity	3234.8	1682.2	230.2	**5147.2**
UDA carry forward from 20/21 (including distribution if applicable)	181			181
Adjusted UDA Scheduled Activity	3053.8	1682.2	230.2	4966.2
% UDA activity delivered	36.77%	40.51%	28.66%	37.45%
Year end reconciliation				
Final % UDA activity delivered	36.77%	40.51%	28.66%	**37.45%**
Actual No. of undelivered UDAs	5250.7	2470.1	573.1	**8293.8**
Indicative UDA value				£22.27
Recovery of undelivered activity (£)	£7,593.34	£55,002.60	£12,761.42	£75,357.36
Total Adjustment Recovery (£)	£71,585.85			£71,585.85
		Total Financial Recovery		**£146,943.21**

5.2 As this table demonstrates, in H1 and Q3, Dr [redacted]'s contract delivery was above the minimum threshold but below the performance threshold, meaning he only qualified for partial income protection over these periods. In Q4, his activity was below the minimum performance threshold, meaning that he was only entitled to be paid for the activity delivered.

5.3 The "UDA carry forward from 20/21" reflects the fact that in 2020/21, Dr [redacted] under-delivered by 181 UDAs. These 181 UDAs were therefore deducted from his scheduled activity in H1 (in accordance with paragraphs [5] and [6] of the 2021/22 Guidance).

6 FLAXPITS CONTRACT (DENTAL AND ORTHODONTIC)

6.1 As we referred to above, NHS BSA issued a 2020/21 year-end reconciliation letter dated 20 September 2022 for this contract. However, having engaged with Dr [redacted] NHS England identified a number of errors, the updated calculations separated into UDA and UOA are in the spreadsheet at **[P172-174]** and summarised below:

2021/22

Recalculated removing the UDA activity from 18.1.22 & reducing the UDA value				
UDA Activity				
Time period	**H1**	**Q3**	**Q4**	**Total**
Months and Year	Apr – Sept 21	Oct to Dec 21	Jan to Mar 22	
%Performance Threshold	60%	65%	85%	
%Minimum Threshold	36%	52%	75%	
Adjustment for undelivered UDAs	16.75%	12.75%	12.75%	
Contracted UDAs pro-rated per time period	5452.00	2726.00	2726.00	10904.0
Scheduled UDA activity	2890.6	1242.6	95.4	4228.6
UDA carry forward from 20/21 (including distribution if applicable)	139.0	0	0	139.0
Adjusted UDA scheduled activity	2571.6	1242.6	95.4	4089.6
% UDA activity delivered	50.47%	45.58%	3.50%	
Year end reconciliation				
Covid 19 credited UDA activity		0	0	0
Adjusted UDA scheduled activity including credited activity	2751.6	1242.6	95.4	4089.6
Redistributed UDA	0	0	0	0
Adjusted UDA scheduled activity following distribution	2751.6	1242.6	95.4	4089.6
Final % UDA activity delivered	50.47%	45.58%	3.50%	37.50%
Actual no. of undelivered UDAs	2700.40	1483.40	2630.60	6814.40
Indicative UDA value				**£24.73**
Recovery for undelivered activity (£)	£7,597.47	£0.00	£0.00	**£7,597.47**
Carry forward UDA in 22-23				**0**
Total adjustment recovery (£)	£21,442.43	£36,687.09	£65,059.36	**£123,188.88**
			Total recovery	**£130,786.35**

As the above illustrates, for H1 and Q3, Dr [redacted] delivered above the minimum threshold and below the performance threshold, meaning partial income protection was applied on a sliding scale. For Q4, he delivered below the minimum threshold.

UOA Activity (remains unchanged)				
Time period	**H1**	**Q3**	**Q4**	**Total**
Months and Year	Apr – Sept 21	Oct to Dec 21	Jan to Mar 22	
%Performance Threshold	80%	85%	90%	
%Minimum Threshold	56%	60%	85%	
Adjustment for undelivered UDAs	16.75%	12.75%	12.75%	
Contracted UOAs pro-rated per time period	250.0	125.0	125.0	500.0
Scheduled UOA activity	202.0	21.0	63.0	286.0
UOA carry forward from 20/21 (including distribution if applicable)	0.0	-10	0	-10.0
Adjusted UOA scheduled activity	202.0	31.0	63.0	296.0
% UOA activity delivered	80.80%	24.80%	50.40%	
Year end reconciliation				
Covid 19 credited UDA activity		0	0	0
Adjusted UOA scheduled activity including credited activity	202.0	31.0	63.0	296.0
Redistributed UOA	0	0	0	
Adjusted UOA scheduled activity following distribution	202.0	31.0	63.0	296.0
Final % UOA activity delivered	80.80%	24.80%	50.40%	59.20%
Actual no. of undelivered UOAs	48.0	94.0	62.0	204.0
Indicative UOA value				**£74.20**
Recovery for undelivered activity (£)	£596.57	£0.00	£0.00	**£596.57**
Carry forward UOA in 22-23				**0**
Total adjustment recovery (£)	£0.00	£6,974.80	£4,600.40	**£11,575.20**
			Total recovery	**£12,171.77**

6.3 In H1 Dr [redacted] delivered between the minimum and performance thresholds, meaning he received partial income protection. However, for Q3 and Q4, he delivered below the minimum threshold and was therefore only entitled to payment for the activity actually delivered.

6.4 Taking into account both UDAs and UOAs for 2021/22:

6.4.1 NHS England is entitled to recover **£142,958.12**, which breaks down as a total adjustment for underperformance of £134,764.08 (i.e. £123,188.88 for UDAs and £11,575.20 for UOAs) and £8,194.04 for undelivered activity (i.e. £7,597.47 for UDAs and £596.57 for UOAs); plus

6.4.2 NHS England also made an overpayment during this year of **£64,184.33** on the basis that Dr [redacted] was in error paid for 13,500 UDAs rather than 10,904, bringing the total Dr [redacted] owed to NHS England in respect of 2021/22 was **£207,141.45**; less

6.4.3 NHS England also withheld **£61,737.98** from contract payments due in February and March 2022, thereby reducing the total amount owed by Dr [redacted] to **£145,403.47**.

Final Position for both 2021/22 and 2022/23

6.5 We have considered the amounts owing for 21/22 and 22/23 together, and set out below the final calculations:

21-22	
Original YE 21-22 recovery (based on 13,500 UDAs and 500 UOAs)	£207,141.45
Revised YE 21-22 recovery (based on 10,904 UDAs and 500 UOAs)	£142,958.12
Recovery of overpayment of 2,596 UDAs (13,500 UDAs paid instead of 10,904)	£64,183.33
Sub total	**£207,141.45**
Difference between original and revised position	**£0.00**
22-23	
YE 22-23 recovery (based on contracted 336 UOAs)	£21,219.05
Recovery of overpayment of 9,073 UDAs	£235,041.80
Sub total	**£256,260.85**
Total repayment owed for both years	£463,402.30
Less withhelds 21-22	-£61,737.98
Less withhelds 22-23	-£197,590.46
Sub total	£204,073.86
Less 21-22 recovery added to contract (month 7-9 22-23 schedules)	-£207,141.45
Sub total	-£3,067.59
Add negative debt on contract (month 7-9 22-23 schedules)	£144,349.39
Total amount owed by provider	£141,281.80

6.6 As the table above illustrates, NHS England's position is that the total amount owed for the Frampton Contract is **£141,281.80**.

7 CONCERNS RAISED BY DR [redacted]

7.1 Dr [redacted] has raised a number of concerns in respect of the reconciliation process challenging the figures and, in particular, raising concerns about being able to upload activity onto Compass.

To try and address these we set out below some general principles underpinning our client's approach.

7.2 NHS England will only accept UDA and UOA figures from the NHS BSA. To the extent that Dr [redacted] disputes the figures used above, that is not an issue that NHS England can easily resolve as it relies on figures provided by NHS BSA.

7.3 In any event, NHS England does not accept that is a valid basis on which to object to the figures relied on in the reconciliations. It is the provider's responsibility to submit all activity onto Compass within the required timeframe. While issues can arise, our client's view is that NHS England staff are available to assist with this if the issue is raised with them in a timely manner.

7.4 Further, following the meeting that took place on 16 March 2023, NHS England agreed to confirm the UOA figures with the NHS BSA for the Flaxpits Contract, as Dr [redacted] had identified a potential discrepancy between the figures in the payment schedule for this contract, and the figures used by NHS England in the reconciliation. We understand Dr [redacted]'s position was that the figure of 286 UOAs used for the 21/22 calculation was incorrect. The NHS BSA has confirmed that four cases were excluded from the final calculation, totalling 86 UOAs. At this stage, our client has not adjusted the year-end reconciliation to account for this, given the outstanding issues to be resolved first.

8 CONFIRMATION OF OUTCOME SOUGHT

8.1 NHS England seeks a determination that:

8.1.1 Dr [redacted] is required to repay to NHS England the sum of **£146,943.21** in respect of, and pursuant to, the Flaxpits Contract on the basis set out above;

8.1.2 Dr [redacted] is required to repay to NHS England the sum of **£141,281.80** in respect of, and pursuant to, the Frampton Contract on the basis set out above; and

8.1.3 The sums sought at 8.1.1 and 8.1.2 are immediately payable by Dr [redacted] to NHS England.

9 SUMMARY

9.1 NHS England's position remains:

9.1.1 It is owed significant outstanding sums in respect of both the Frampton Contract and the Flaxpits Contract totalling **£288,225.01**.

9.1.2 The parties have exhausted local dispute resolution and agreed to refer this dispute to the Primary Care Appeals service.

9.1.3 NHS England is content for this matter to be determined on papers."

[Supporting documents provided]

Representations

NHS England's representations

3.2 "1. By letter dated 14 October 2025, NHS England has been invited to provide any representations relevant to this dispute.

2. NHS England invites the Primary Care Appeals Service to review the application for dispute resolution dated 19 June 2025 (the **Application**) which sets out the full and complete detail of this dispute including:

a. The background of the two contracts between NHS England and Dr [redacted], for the provision of dental services at two dental practices (Frampton Cotterrell and Flaxpits Lane).

b. The reconciliation process which took place following termination of each contract, to compare the number of procedures undertaken by Dr [redacted] with the expected performance levels within his contract.

c. The quantification of debt owed by Dr [redacted] to NHS England, because Dr [redacted] did not meet the requisite performance level under the contract.

3. NHS England does not propose to repeat these matters within these representations but instead has summarised its position and set out details of the previous attempts to resolve this dispute locally.

NHS England's Position

4. NHS England will say that the Application sets out a clear cause of action against Dr [redacted], for the recovery of debt in the sum of £288,225.01 (the **Debt**) because:

a. This sum is supported by evidence, as included within the paginated Bundle provided; and

b. It has been made with reference to the contracts and the appropriate guidelines in place at the time.

5. Together, these show that the Debt is due, that it has been correctly calculated by NHS England based on information provided by Dr [redacted] himself and in accordance with the payment provisions set out in the contracts and guidance, and that this is now payable by Dr [redacted].

Local Resolution

6. NHS England has attempted to engage with Dr [redacted] on multiple occasions to resolve this dispute.

7. In good faith, in March 2023 NHS England met with and listened to Dr [redacted]'s position and attempted to reconcile his explanation with the evidence. However, NHS England is simply unable to reconcile Dr [redacted]'s account of the number of procedures undertaken with the contemporaneous documentation in place.

8. Furthermore, there is no evidence whatsoever to support Dr [redacted]'s suggestion that NHS England has deliberately reduced its records of the number of procedures performed at his practices. This is firmly contested.

9. Accordingly, NHS England proposed referring this matter for PCAS determination, and it is pleased that Dr [redacted] has confirmed acceptance to PCAS on 9 October 2025.

Concluding Comments

10. NHS England is a guardian of the public purse. As a matter of public policy, it is only right that NHS England seeks to recover the money paid to Dr [redacted] for dental procedures that he did not carry out, for the benefit of the taxpayer we serve. Any other course of events would be irresponsible.

11. NHS England reserves the right to respond to the representations (if any) prepared by Dr [redacted].

12. Finally, as a matter of housekeeping, it is noted from the letter dated 14 October 2025 that you have sought a copy of the contracts from Dr [redacted]. For the avoidance of doubt, we have dealt with these in the Application and summarised the key points below:

a. Frampton Cotterell: Neither party has been able to find a copy of the contract in place, but it is common ground that this was Standard GDS Contract. Dr [redacted] joined the contract by variation dated 1 December 2019 (pages 1-3 of the Bundle)

b. Flaxpit Lane: The contract been provided at pages 8-160 of our Bundle. Dr [redacted] joined the contract by variation (pages 161-163 of the Bundle) on 28 February 2019.

13. NHS England will be happy to assist the Primary Care Appeals Service with any queries or questions that you may have regarding the Application or the supporting Bundle of documents."

The Contractor's representations

3.3 "Thank you for your last email, unfortunately the only documentation received was the (NHS/contract) for Flaxpits lane dental practice noting from Frampton dental practice, regarding contract, etc.

It seems that your department has not received the latest NHS statements, that was send [sic] to me, regarding Flaxpits lane dental practice and Fampton [sic] dental practice,

With that statement it seems that the NHS dental department acknowledge their mistake for Frampton dental practice, but unfortunately not yet for Flaxpits lane dental practice,

We have during many years now, tried to finalise this dilemma between the NHS department and ourselves, we have been to a numerous meeting, with all your colleagues that has been involved,

The most important issue, is the NHS dental department deliberately stopped:

Payment for 9 months when we where [sic] still working and providing the service, UDA/UOA in both practices,

Stopped the possibility to rectify the NHS dental department regarding our UOA claims, even though that this was agreed on,

Not considered all the treatment that was done regarding UOA/USDA

Witch [sic] did force us to give away our four contracts regarding UDA/UOA for both Dental practice

Not full filled [sic] their obligation to hand over the ortho contract to Frampton dental practice,

Previously agreed to mediation, but nothing arranged,

Continuously different amounts from the NHS/dental department

We have visited the NHS office, plus have numerous of video conference with my account and practice manager but no follow up,

Hundreds of hours spent to discuss and seeking to concluded with the very high economic loss that we have suffered, both staff and patient".

Observations

NHS England's observations

3.4 "1. By letter dated 14 October 2025, NHS England has been invited to provide any observations in response to Dr [redacted]'s Representations dated 4.11.2025 (the "**Contractor's Representations**")

2. For the avoidance of doubt, defined terms shall have the same meaning as in our Application dated 19.06.2025 (the "**Application"**), and our Representations dated 5.11.2025 ("**Commissioner's Representations**") unless otherwise stated.

3. Page references in the form [XX] are to pagination in the bundle of documents enclosed with our Application.

EXECUTIVE SUMMARY

4. These Observations should be read in conjunction with our Application, and with both the Commissioner's Representations, and the Contractor's Representations.

5. In brief, NHS England's position is as follows:

a. This dispute relates to the repayment of the Debt in the sum of £288,225.01, owed to NHS England under two dental contracts between NHS England and Dr [redacted] (together "the **Contracts**"):

- Frampton Contract - (Contact 1817730001) - £146,943.21
- Flaxpits Contract (Contract 8361330001) - £141,281.80

Total: £288,225.01

b. Dr [redacted] did not meet the requisite performance level under both Contracts.

c. The issue between the parties relates to the contractual reconciliation process that was undertaken following termination of the Contracts. This is a standard contractual process that NHS England undertakes at the termination of any contract, to compare the number of dental and orthodontic procedures undertaken by the contractor with the expected performance levels within the contract.

d. Paragraph 4 of the Application sets out how the reconciliation process is undertaken in conjunction with NHS Business Services Authority ("**NHS BSA**"), with reference to the Contracts and the relevant guidance.

e. Paragraph 5 of the Application sets out the reconciliation process for the Frampton Contract (1817730001). The Frampton Contract was terminated on 18.01.2022. NHS England carried out the final reconciliation on 19.10.2022, and this was provided to Dr [redacted] on 4.11.2022. It is NHS England's position that Dr [redacted] owes NHS England **£146,943.21** under this

Contract because he did not undertake sufficient units of dental activity ("**UDAs**"). We refer PCAS to:

i. Paragraphs 5.1 – 5.3 of the Application:
ii. Pages 5-6 of the Bundle – the Final Reconciliation (Frampton Contract)

f. Paragraph 6 of the Application sets out the reconciliation process for the Flaxpits Contract (8361330001). The Flaxpits Contract was terminated on 2.09.2022. An initial reconciliation was undertaken on 20.09.2022, and the final reconciliation was undertaken on 4.11.2022 and provided to Dr [redacted] on the same date. It is NHS England's position that Dr [redacted] owes NHS England **£141,281.80.** under the Flaxpits Contract because he did not undertake sufficient UDAs and units of orthodontic activity ("**UOAs**"). We refer PCAS to:

i. Paragraphs 6.1 – 6.6 of the Application
ii. Pages 178 of the Bundle – the Final Reconciliation (Flaxpits Contract)

g. The reconciliation under the Flaxpits Contract was complex, and it required several adjustments to take into account withheld funds and Dr [redacted]'s concerns sent by email dated 2.11.2022 (pages 174 – 175 of the Bundle). The fact that the Debt owed by Dr [redacted] under the Flaxpits Contract fluctuated prior to undertaking the final reconciliation should **not** be seen as:
- evidence of any flaws in the reconciliation process
- acceptance of fault on the part of NHS England or NHS BSA; or
- lack of confidence in our calculations.

It is not unusual to go through stages to ensure that the final figure reached is correct.

6. Finally, as a matter of housekeeping, we would like to apologise for a typographical error at paragraphs 9.1.1 and 9.1.2 of the Application. Paragraph 9.1.1 should refer to the Frampton Contract, and paragraph 9.1.2 should refer to the Flaxpits Contract. We trust that this minor typographical error will not cause any issues to PCAS, and no disrespect was intended by this.

RESPONSE TO CONTRACTOR REPRESENTATIONS

7. The approach taken by Dr [redacted] within the Contractor's Representations has made it extremely difficult to meaningfully respond. The Contractor's Representations are brief, they lack cogency and clarity, they are vague to the point of being, at times, misleading, and they fail to submit any evidence to counter NHS England's contractual entitlement to the Debt. More importantly, Dr [redacted] does not appear to actually challenge the reconciliation process that was undertaken to calculate the Debt.

8. Furthermore, Dr [redacted] has failed to comply with the requirements for Representations as set out within the PCAS Guidance Note for Dispute Resolution: NHSR-Dispute-Resolution-Guidance-Note-May-2023-2.pdf. It is NHS England's position that Dr [redacted]'s decision not to engage with the PCAS process for dispute resolution should count against him – he has been given the opportunity to set out:

a. His objections to the reconciliation process; and
b. What evidence he intends to rely on to prove his case.

He has failed to do so. This is, of course, a matter for PCAS, but we respectfully suggest that the reason he has failed to submit any evidence is simple – there is none available.

9. To the extent that Dr [redacted] suggests that the information relied upon by NHS England is flawed (whether in error or deliberately), this is firmly rejected. For context, we have set out the process for how contractors upload relevant data to NHS BSA to be included within the final reconciliation:

a. The contractor submits the UDA and UOA to NHS BSA via their software programme, Compass ("**Compass**")

b. It is mandatory to submit all information to Compass within 2 months of the dental/orthodontic activity in question

c. After 2 months, it is not possible to add new dental/ orthodontic activity

d. However, if the information submitted to Compass is incorrect or incomplete (or has been rejected) NHS BSA can apply an override to re-open Compass

e. Generally, NHS BSA will apply the override for 2 weeks to permit the contractor sufficient time to add or amend, with evidence, as necessary

f. NHS BSA is able to override the system as many times as is needed to make sure that the information within the final reconciliation is correct.

This is not an uncommon occurrence at all.

10. It is NHS England's position that Dr [redacted] was fully aware of the process set out at paragraph 9, and he was given every opportunity to add to, amend or correct any errors within the information on Compass, prior to the final reconciliations taking place. Furthermore, since the final reconciliations were complete in November 2022, Dr [redacted] has had every opportunity to engage with NHS England and set out (with the support of evidence) how the figures are incorrect. Aside from unsubstantiated claims, such as his email dated 11.03.2024 (page 191 of the Bundle) which is vague and unsupported by any proof, he has failed to do so.

11. Finally, Dr [redacted] has failed submit any evidence with the Contractor's Representations, as required by PCAS.

12. In the absence of any cogent objections to the process undertaken by NHS England and any evidence in support of his claims, it is not open to Dr [redacted] to now argue that the approach taken by NHS England in the final reconciliation was flawed.

SPECIFIC RESPONSES TO CONTRACTOR'S REPRESENTATIONS

13. We have attempted to respond to the assertions made within the Contactor's Representations. As above, this has been difficult in the absence of any evidence-based claims. Dr [redacted]'s assertions are in italics, and NHS England's Response is below. For consistency, we have not amended any of his typographical errors:

a. **Dr [redacted]:** "*unfortunately the only documented received was the nhs/ contract from Flaxpits lane dental practice noting from Frampton dental practice, regarding contact* etc"

NHS England Response: As set out in our Application (paragraph 3.2), neither party has been able to locate the Frampton Contract, but it is common ground that this was the General Dental Services Standard Contract.

b. "*It seems that your department has not received the latest NHS statements, that was send to me, regarding Flaxpits lane dental practice and Frampton dental practice, With that statement it seems that the NHS dental department acknowledge their mistake for Frampton dental practice, but unfortunately not yet for Flaxpits lane dental practice*,"

NHS England Response: Dr [redacted] has not set out what "NHS Statement" he is referring to so we cannot meaningfully respond. NHS England does not understand what Dr [redacted] means when he states that "*NHS dental department acknowledge their mistake from Frampton dental practice".* In the absence of a clear ground of contention or any evidence, this statement is denied in full. We have summarised the position again:

- Frampton Contract: 1817730001 – the final reconciliation was conducted in November 2022, and the figure claimed by way of Debt has remained entirely consistent [see Page 5-6 of the Bundle]. NHS England specifically denies that it has made any mistakes within this process. The Debt arising out of the Frampton Contract is £146,943.21.

- Flaxpits Contract: 8361330001 – We agree that there were fluctuations in the figures communicated to Dr [redacted] pending completion of the final reconciliation on 4.11.2022. The final reconciliation for the Flaxpits Contract is set out from pages 176 – 178 of the Bundle. As above, the reconciliation process is not straight-forward, and has had to take into account (for example)

  - o Ongoing payments to contractors;
  - o Pension deductions/ contributions;
  - o Changing information submitted to Compass if an override has been applied;
  - o Withheld funds, if there is Debt on the Contract or serious underperformance.

In short, there can be many moving parts during the reconciliation process. NHS England agrees that the initial reconciliation for Flaxpits, issued on 20.09.2022, did not reflect the full picture. This was reviewed and the final reconciliation was issued on 4.11.2022 calculating a Debt of £141,281.80. The prior work undertaken during the reconciliation process does not, as Dr [redacted] may be seeking to claim, have the effect of invalidating the final calculation.

We do not agree with the suggestion that because the figure changed, this makes it inherently unreliable. The fact that NHS England took steps to review, clarify and adjust the figures to reach the final reconciliation is evidence of good practice. It is further illustrative of the "override" process that can be adopted to amend the information on Compass if required.

c. *“We have during many years now, tried to finalise this dilemma between the NHS department and ourselves, we have been to a numerous meeting, with all your colleagues that has been involved,”*

NHS England Response: It is not contentious that this has been a long-running dispute that has required significant resources to date. However, this is not relevant to the contractual dispute between NHS England and Dr [redacted].

d. *The most important issue, is the NHS dental department deliberately stopped: Payment for 9 months when we where* [sic] *still working and providing the service, UDA/UOA in both practices,*

NHS England Response: Dr [redacted] has not set out which contract he is referring to and which funds. He has also not set out his grounds for objection. It is not contentious that NHS England has withheld funds from Dr [redacted] in relation to the Flaxpits Contract, because his Contracts were in debt. The withheld funds are clearly accounted for within the final reconciliation for the Flaxpits Contract - page 178 of the Bundle.

e. *“Stopped the possibility to rectify the NHS dental department regarding our UOA claims, even though that this was agreed on”,*

“Not considered all the treatment that was done regarding UOA/USDA”

NHS England Response: We have responded to both points together. For the record, it is unclear what Dr [redacted] means by USDA but we assume this meant UDAs.

As set out at paragraph 9 above, NHS England and NHS BSA have a dedicated process in place to manage a situation where (for whatever reason) a contractor needs to update the information on Compass regarding the UOAs or UDAs undertaken. Dr [redacted] was aware of this process, and NHS BSA would have given him as many opportunities as he would have needed to include any extra or missing UDAs or UOAs. This is not an unusual request.

NHS England is not aware that Dr [redacted] has resubmitted a request for NHS England or NHS BSA to override the system to permit him to submit additional UDAs or UOAs.

f. “*Witch did force us to give away our four contracts regarding UDA/UOA for both Dental practice*”

NHS England Response: This is not an issue which forms part of the contractual dispute between NHS England and Dr [redacted], and therefore is not relevant to the PCAS determination.

g. *“Not full filled their obligation to hand over the ortho contract to Frampton dental practice*,”

NHS England Response: This is not an issue which forms part of the contractual dispute between NHS England and Dr [redacted], and therefore is not relevant to the PCAS determination.

h. “*Previously agreed to mediation, but nothing arranged*”,

NHS England Response: Dr [redacted] has failed to evidence this claim. We have been unable to find correspondence between the parties or recall confirmation of an agreement to Mediation as a form of alternative dispute resolution.

NHS England did meet with Dr [redacted] and his accountant on 16.03.2023 to discuss the reconciliations and the sums owed. Regrettably, the meeting did not resolve the position between the parties. After this meeting, Dr [redacted] disengaged with the resolution process. Accordingly, NHS England proposed using the PCAS process to resolve the position between the parties.

i. *Continuously different amounts from the NHS/dental department"*

NHS England Response: Dr [redacted] has not set out what he means by this statement, which makes it difficult to respond. It is rejected that there has been any ambiguity in the Debt owed by Dr [redacted] following completion of the final reconciliations as follows:

- Frampton Contract - £146,943.21 – owed since 4.11.2022
- Flaxpits Contract - £141,281.80 – owed since 4.11.2022.

As above, we reject the premise of any suggestion that the final reconciliation for the Flaxpits Contract is unreliable, because the figures changed between September and November 2022. As more information became available.

j. *We have visited the NHS office, plus have numerous of video conference with my account and practice manager but no follow up,"*

NHS England Response: This is not an issue which forms part of the contractual dispute between NHS England and Dr [redacted] and therefore is not relevant to the PCAS determination. For completeness, this characterisation of the history of communications between NHS England and Dr [redacted] is denied.

k. *"Hundreds of hours spent to discuss and seeking to concluded with the very high economic loss that we have suffered, both staff and patient"*

NHS England Response: This is not an issue which forms part of the contractual dispute between NHS England and Dr [redacted], and therefore is not relevant to the PCAS determination. It is not contentious that this has been a complex dispute to resolve, and NHS England has also incurred significant resources and legal spend to recover the Debt owed.

CONCLUDING COMMENTS

14. As set out in the Commissioner's Representations, NHS England is a guardian of the public purse. As a matter of public policy, it is only right that NHS England seeks to recover the money paid to Dr [redacted] for dental and orthodontic procedures that he did not carry out, for the benefit of the taxpayer we serve.

15. Dr [redacted]'s approach to the PCAS process displays both the lack of any genuine objections to NHS England's claim to Debt, and the lack of any evidence to support his position.

16. Despite the time the fact 3 years have elapsed since the final reconciliations confirmed the Debt payable, in good faith, NHS England has not sought interest for late payment. We respectfully seek **£288,225.01**, which is owed to the taxpayer in respect of the Contracts.

17. NHS England will be happy to assist PCAS with any queries that have arisen out of the Application, the Commissioner's Representations or these Observations."

The Contractor's observations

3.5 "There is a very large discrepancy between the figures that we were using in compass and in the BSA figures, we have raised that issue since 2019 with [redacted] and other staff members of NHS England, it has never been resolved on your side.

Even though the tens of hours that my practice manager, staff, our specialist and therapist have been trying and re trying with your acknowledgement to submit and re submit the UOA claims, with you advise, and the NHSBSA none functioning system (please see the communication that we had and still have between your organisation and ourselves [sic].

During the process when we were trying to reconcile the UOA claims in both practices with the acknowledgement of [redacted]/NHS England, they always bounced back.

After hours of investigation, with SOE we found oud [sic] that they were bouncing back since NHS England had deliberately taken of our contracts number on their side, making it impossible to reclaim our claim over the work that has been done, of course proof is available.

UOA claims, we have all the necessary proofs, patient's names etc... And work done and finalise that has been completed and transmitted, but still not showing on your NHSBSA data-based calculation. This work that has been accomplished and has not been considered for Flaxpits lane dental practice: 8361330001.

A) Frampton

Question:

The large recovery amount of £71,585.85 I really don't know what it is, like so many numbers in this process.

B) Flaxpits

Summarising what I believe are the errors in the NHS workings:

1. Number of UDA's delivered should be 4,379, rather than 4,089.6.
2. The expected UDA's are not scaled down to the following, due to covid:
    a. 60% for H1
    b. 65% for Q3
    c. 85% for Q4
3. The recovery for undelivered activity has already been deducted in Sep/Oct/Nov.
4. The Feb-2022 and Mar-2022 contract amounts were not paid.

Once again you are applying different rules in the way you are calculating our UOA/UDA for the two dental contract/ practices.

At Frampton dental practice you have scaled down the UDA following the covid rules, but at Flaxpits lane dental practice you have not, and on top wrongly calculated our UOA/UDA amount and values.

c) Orthodontic contract

2021/22 Year-end reconciliation – 8361330001

NHS schedule says we have only done 296UOA /£74.20,
when they should have based it as follow:
01/05/21: £72.58/per units
Total UOA activity:
is 370 UOA plus one addition patient bond up.
Mrs [MG] bond up 21 UOA

Total of 391 UOA and with the average of perform year.
21/22 418.75UOA, which give you a:

The difference of minus 27.75 UOA

We have still not been paid for our delivered work that we have provided.

d) orthodontic contract Frampton/ Mrs [redacted]

You are mentioning in in your last email that you have reached an agreement with Mrs [redacted] regarding the orthodontic contract at Frampton, so what was the agreement and why have we still not been paid for the delivered work, and the lost our contract value.

Regarding what you owe us is:

The two orthodontic contracts,
Flaxpits value of £36,297.47,
and Frampton of a value of £45,000.00, Frampton 1817730001(Mrs [redacted] contract that you were in the process) to convert to the Frampton dental practice, after you deliberately stopped paying our orthodontic contract and forced us to give them back.

The work done and achieved in relation to the UOA in both practices, (Flaxpits lane dental practice, Frampton dental practice)

The work that has been done in relation to our UDA but deliberately not been considered form the NHSBSA/NHS

As I can see and understand large recording mistakes has been done by the NHSBSA/NHS and still on-going regarding our two contracts: 1817730001, 8361330001, regarding our UDA and UOA.

As a result of that past and present large mistake the accountability that NHSBSA are proving is not credible, and very questionable.

Please remember that NHSBSA was trying to claim a very large amount, even though we had never [sic] received it, but after a lot of ongoing discussion between our side the NHSBSA finally acknowledged it and rectified it.

Please see all the emails dated and discussion that we had in the past and still having tried to resolve all those incredible and incorrect mistakes with NHS England, NHSBSA, SOE etc., and several of your colleagues and administrator in NHS England.

Some communication, emails reports, visits, and dates, with NHSBSA, NHS England in chronologic order that we have and that you should also have during last years,

09/11/2022, 13/09/2022, 12/09/2022, 09/09/2022, 08/09/2022, 01/09/2022, 30/08/2022, 24/05/2022, 23/05/22, 10/05/22, 25/04/2022, 21/03/2022, 16/02/2022

06/12/2021, 25/11/2021, ,09/11/2021, 04/11/2021, 30/10/2021, 29/10/2021, 18/10/2021,11/10/2021, 10/11/20201 12/05/2021, 07/05/2021

NHS England is in breach of two orthodontic contracts: 1817730001, 8361330001 (Flaxpits/Frampton) for non-payment to us since January 2022, (pleases see all the emails and communication that we have on records with your different colleagues in this issues).

This incredible, unlawful, and uncomfortable acting on your side has led to incredible cost of staff, material, patient waiting for treatment, now loss of colleagues (specialist+ therapist), finally a very large loss of revenue and contracts.

UOA claims for work that has been done and completed, showing all the work that has been accomplished has not been taken into account at Flaxpits lane dental practice:8361330001 and Frampton 1817730001 (Mrs [redacted] contract that you was in the process to convert to Frampton dental practice), even though the tens of hours that my practice manager, staff, our specialist and therapist have been trying and re trying with your knowledge to re submit and re submit the UOA claims, with you advise and the none functioning system (please see the communication that we had and still have between your organisation and ourselves.

Now the NHSBSA are trying to claim an absurd value for both our contract, this has been very distressful for our colleagues, staffs, patients and community.

Finally, regarding the Frampton 1817730001 dental practice a much lower value has been based on our contracts, £295,265.18 (dated 01/02/2022) instead of £369,828.84 (dated 01/01/2022), we don't understand the reason.

Further the last statement received by NHS England does not reflect the sum/ debt that the NHS England representant are [sic] indicating in their last letter."

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 to me in relation to Flaxpits Lane Dental Surgery and has not been disputed by the Contractor. However, in relation to Frampton Dental Surgery this was not provided and it is unclear if there is an

agreement between the parties on the version of the Contract that is in place. I have therefore assumed that the Contract between the parties reflects the provisions of the relevant Regulations in force at the relevant time and have proceeded to determine the dispute on that basis.

4.2 This application for dispute resolution relates to the financial reconciliation of two contracts held by the Contractor; Frampton Dental Surgery at 288 Park Lane, Frampton Cotterell, Bristol BS36 2BL ("**Frampton**"); and (ii) Flaxpits Lane Dental Surgery at 15 Flaxpits Lane, Winterbourne, Bristol BS36 1JY ("**Flaxpits**").

4.3 The Commissioner has stated that there has been considerable correspondence between the parties, including an in-person meeting on 16 March 2023. I note that the Contractor has referred to some form of mediation which did not occur. This has been disputed by the Commissioner and no further response on the matter has been made by the Contractor. I note that no evidence of the mediation request, or agreement to it has been provided by the Contractor. Despite the mention of mediation, the Contractor does not appear to dispute that local dispute resolution has taken place. From the information before me, I am of the view that local dispute resolution has been exhausted following which the Commissioner has referred the matter in dispute to NHS Resolution.

4.4 I note that the Commissioner has provided substantial evidence, guidance, and the mathematical workings which underpin its financial reconciliation. Conversely, the Contractor has not produced any evidence to support its representations. I am mindful in particular that the Contractor's observations refer to communications, proofs of claims, and an extensive list of dates (covering communications, emails, visits and dates) but that they have not actually provided any of this documentation.

4.5 As the Commissioner has stated, the Contractor has failed to comply with the PCAS Guidance Note for Dispute Resolution, in particular the fact that they were required to provide evidence upon which it sought to rely. It is unclear why they have not done so, in particular, in its response to where the Commissioner had previously provided significant evidence to support their application.

4.6 I note that the Commissioner's observations should have alerted the Contractor to its lack of evidence, however it has not made any further comment on this point. As such, I can only rely on the information provided to me and the explanations of the parties.

4.7 Before proceeding to consider the issues raised by the Contractor, I also note that the Contractor's observations are not actually observations, but replicate much of their email to the Commissioner dated 11 March 2024. It does not directly address the issues raised by the Commissioner and is worded as if I were the Commissioner, rather than separate to it. The Contractor seems to misunderstand the independent role of NHS Resolution, and its relationship with the parties.

4.8 Turning to the issues raised by the Contractor, I agree with the Commissioner that several matters are outside of the scope of this dispute resolution in terms of what it relates to. In particular, as I have noted, this application for dispute resolution relates to the financial reconciliation of the Contractor's contracts. Therefore, I will have no regard to the following matters:

4.8.1 The length of time during which this "dilemma" has been ongoing;

4.8.2 Whether the Contractor was "forced" to give away their four contracts;

4.8.3 Whether there was no follow up by the Commissioner to video conferences; and

4.8.4 The number of hours spent on the issue.

In addition, I have already considered the matter of mediation and so do not need to consider it further.

4.9 I will consider each of the issues in order. Firstly, the question of "latest NHS Statements". I am entirely unclear as to what NHS Statement is being referred to here, or what aspect of the Commissioner's calculation is being called into question by this issue. Further, I note that the Commissioner has stated that it disputes that any mistake was made in relation to Frampton. I again note that no evidence has been provided on this, so I am unable to understand what the Contractor intended to refer to as being the acceptance of the mistake. It is also unclear to me what mistake has been made with regard to Flaxpits that the Contractor is hoping to be remedied, similar to Frampton. As such, I do not consider that this line of reasoning contains any grounds which would impact on the reconciliations.

4.10 The next issue of note is the question of the Commissioner stopping payment "for 9 months". The Commissioner has highlighted that the Contractor has failed to indicate for which premises the payment was stopped. This is plainly the case. I also note that the Commissioner has factored in withheld payments during its reconciliations process, and that the Commissioner has indicated that it was entitled to do so due to the debt accrued by the Contractor. I consider that the Commissioner may be entitled to withhold payment under the terms of the GDS contract, and such withholding is not the subject of this application for dispute resolution.

4.11 As I have noted, any money withheld is clearly accounted for under the reconciliation calculations, and there is no clear objection to these calculations. Instead, the objection appears to be that the money was withheld, but there is no clear explanation as to why this has been objected to. As such, I also dismiss the claim of this impacting on the reconciliation calculations.

4.12 The Contractor has stated that the Commissioner prevented them from rectifying their UOA claims, and that there were missing claims relating to both UOA and "USDA". Similar to the Commissioner, I will consider these two points together. I also consider that the Contractor has raised additional aspects to this as part of its observations. The Contractor states that the UOA rate and number of UOAs is incorrect, and provides their alternative figures which result in a difference of 27.75 UAO. I consider it a well-established principle that the party alleging an error or entitlement bears the burden of proving it. In this case, the Contractor has not provided verifiable evidence to substantiate its assertions regarding UOA or UDA discrepancies.

4.13 I also consider that the language of the Contractor is confusing. They describe the Commissioner's schedule as saying they have performed 296 UOAs; however, this is incorrect. As per my understanding of the Commissioner's figures, 296 represents the scheduled UOAs, not the performed UOAs. Instead, the delivered UOAs are 204. This would mean that, as per the Contractor's figures, they over delivered by some 80 UOAs rather than being under by 92. Assertions of systemic error within NHS BSA require compelling evidence, such as audit logs or corroborating data. No such evidence has been provided, and the figures offered by the Contractor diverge significantly from those recorded by the Commissioner without explanation.

4.14 The Contractor also alludes to money owed to it by the Commissioner. However, I am unclear as to what this relates to, and no supporting documentation has been provided to explain or quantify this claim.

4.15 I have considered these issues, but the central problem faced by the Contractor is the lack of any evidence to support its claims, in the face of lengthy explanation and justification by the Commissioner. The Contractor's figures are also significantly different to the Commissioner's, with the only explanation being faulty NHS BSA systems which have inaccurately recorded the performance of the Contractor. In circumstances where the Contractor introduces new issues at the observations stage, rather than during its initial representations, this undermines the credibility of its position and raises potential procedural and fairness concerns affecting the other party.

4.16 I note that the only figures which are detailed and explained are the UOAs, with the UDA discrepancy left unexplained. I am also unclear as to what the money owed to the Contractor relates to. I note that the contractual framework places responsibility on the Contractor to ensure accurate submission of claims and maintain supporting records. Failure to do so cannot be remedied retrospectively without clear evidence.

4.17 I also note that these issues are raised in detail during the Contractor's observations, which is intended to respond to the Contractor's representations, rather than raising wholly new issues. In these circumstances, where the Contractor has not explained its reasoning, not provided evidence to support its case, and has not coherently responded to the Commissioner's reasoning, I must consider that the Commissioner's financial reconciliation calculations the favorable of the two options afforded to me. In particular, allusions to mistakes or errors within the NHS BSA system require substantial evidence to prove a contractor is not at fault. Merely alleging mistakes or alternative figures, especially those which are significantly different and substantially favour the Contractor, will not be sufficient. Accepting such figures without evidence would risk undermining the integrity of the reconciliation process.

5 DECISION

5.1 I determine that the Commissioner can proceed to recover the amounts of:

5.1.1 £146,943.21 in relation to the Frampton Contract (Contract 1817730001); and

5.1.2 £141,281.80 in relation to the Flaxpits Contract (Contract 9361330001).

5.2 I note that neither party has submitted a claim for interest with regard to this dispute so I make no determination in this regard.

Head of Appeals
NHS Resolution