NHS Resolution

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5 February 2026

FILE REF: **SHA/26716**

DECISION MAKING BODY: **NHS ENGLAND & SHROPSHIRE, TELFORD AND WREKIN INTEGRATED CARE BOARD ("THE COMMISSIONER")**

GDS CONTRACTOR: **CHAPEL STREET DENTAL**
16 CHAPEL STREET
WEM
SHREWSBURY
SY4 5ER

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

RE: **APPLICATION FOR DISPUTE RESOLUTION WITH REGARD TO CLAWBACK OF MONIES**

1 Outcome

1.1 I determine that the Commissioner can make the financial recovery of £45,154.74.

1.2 I also determine that an interest rate of 8% plus the Bank of England base rate, should apply from 17 October 2025 until such time as the full amount is paid.

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

RE: **APPLICATION FOR DISPUTE RESOLUTION WITH REGARD TO CLAWBACK OF MONIES**

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 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 email dated 16 September 2025 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 from the Contractor of 16 September 2025;

2.2.2 Email from the Contractor of 25 September 2025 with enclosures;

2.2.3 Email from the Contractor of 1 October 2025 with enclosures;

2.2.4 Letter from the Commissioner of 9 October 2025 with enclosures;

2.2.5 Email from the Contractor of 24 October 2025 with enclosures;

2.2.6 Letter from the Commissioner of 4 November 2025 with enclosures;

2.2.7 Email from the Contractor of 18 December 2025; and

2.2.8 Letter from the Commissioner of 23 December 2025.

PARTIES SUBMISSIONS

3 The Contractor's application

In an email of 16 September 2025, the Contractor stated:

3.1 "I am writing to refer a dispute in respect of the year end reconciliation letter dated 17 July 2025 issued by Shropshire, Telford and Wrekin ICB concerning Contract 1202270001.

3.2 I contest the clawback on the grounds that the reconciliation does not reflect the reality of care delivered, that I acted in compliance with my professional and ethical duties beyond the UDA framework, and that the strict application of the 96% threshold is disproportionate and contrary to the NHS's duty to act reasonably under the Statement of Financial Entitlements.

3.3 I acknowledge that the 28-day period (following the final reconciliation letter) to refer the matter formally (ending 14 August 2025) has passed. However, I ask that NHS Resolution exercise discretion to accept this referral on the following grounds:

3.4 1. Good Faith Engagement: I raised the dispute directly with the ICB on 17 August 2025, only three days after the 28-day deadline, and before any enforcement action was taken. This led to a formal meeting with the Senior Commissioning Manager, [DJ], and Dental Contracts manager [KG] on 3 September 2025 at which I sought proportional review of clawback application.

3.5 2. Continuing Discussions: The ICB continued to engage with me beyond the formal deadline and following the meeting on 3 September 2025, advised that I take two weeks to decide whether to pay or escalate to NHS Resolution.

3.6 3. Mitigating Circumstances: I manage ADHD, which can impact administrative deadlines and information processing. I acted promptly once I understood the position and sought resolution in good faith.

3.7 4. Proportionality and Natural Justice: The amount in question is significant (£45,154.71). It would be disproportionate and unfair to exclude review of this case solely due to a short procedural delay, especially given that both parties have already engaged substantively.

3.8 For these reasons, I respectfully request that NHS Resolution accept this referral and list the matter for consideration.

3.9 Of note, I do not have access to my NHS email, please send all correspondence to [xx]."

4 Representations

The Commissioner's representations

In a letter dated 9 October 2025, the Commissioner responded to the application and stated:

4.1 "In accordance with the required process, we hereby submit our representations concerning the recovery of funds attributed to underperformance by the contractor prior to their voluntary termination of the NHS General Dental Services (GDS) contract.

Underperformance and Supporting Regulatory and Contractual Provisions:

4.2 During the financial year in which the contract was voluntarily terminated, the contractor failed to deliver the agreed Units of Dental Activity (UDAs), resulting in underperformance below the acceptable threshold. It is noted that the provider has previously been subject to year-end underperformance and has settled the associated repayment obligations in accordance with contractual provisions.

4.3 In accordance with **Regulation 17** *(page 20)* of the ***(1)*** **National Health Service (General Dental Services Contracts) Regulations 2005*,*** the contract must specify the number of UDAs to be delivered annually. Where the contractor fails to deliver the contracted UDAs, **Regulation 19** *(page 22)* provides that NHS England may recover a proportionate amount of the contract value, unless the shortfall is 4% or less and remedied within a specified period of not less than 60 days. Furthermore, **Regulation 23** *(page 25)* requires the contract to include provisions for arrangements on termination, including the financial consequences of the contract ending. These provisions form the statutory basis for the recovery of funds (clawback) in cases of underperformance following contract termination.

4.4 This regulatory provision is further supported by the terms of the ***(2)*****Standard General Dental Services Contract,** specifically **Schedule 4 (Payment Schedule)** *(page 150),* which outlines monthly payments based on expected activity levels, and **Part 22 (Termination)** *(pages 134-136),* which sets out procedures for contract termination, including financial reconciliation and the recovery of overpaid funds where underperformance is identified, such as failure to deliver the contracted Units of Dental Activity.

4.5 Additionally, the ***(3)*** **General Dental Services Statement of Financial Entitlements (SFE),** provides a clear financial framework for commissioners to recover monies in cases of underperformance. Specifically, **Part 3 – Supplementary Provisions, Section 11 – Administrative Provisions, Paragraphs 11.19 to 11.22** (*page 45*) detail the reconciliation process and repayment obligations upon termination of a GDS contract where contracted activity has not been delivered.

4.6 This framework is further reinforced by **Chapter 11.4.9** - **Financial Reconciliation** (page 109) of ***(4)*****NHS England's Policy Book for Primary Dental Services** and **Chapter 8 Financial Recovery and Reconciliation, specifically Section 8.4** (*Page 80–83*) which outlines the nationally agreed process for reconciling payments following contract termination in line with the relevant Statement of Financial Entitlements. Commissioners are required to reconcile actual delivery against contracted UDAs and, where underperformance is identified, recover the corresponding proportion of the contract value. This process is supported by the NHS

Business Services Authority and must be completed within defined timescales to ensure compliance with national governance standards.

Chronology of Events:

4.7 The following chronology outlines the relevant contractual and administrative actions taken in relation to the Provider's termination and subsequent financial reconciliation:

Date	Action/Event	Participant	Communication method	Purpose/Outcome	Evidence (saved in bundle)
14 August 2024	Termination notice served in accordance with GDS Contract	Provider	Email	To provide the contractually required three months notice of termination	(12) 24 08 14 notice to terminate GDC [sic] contract
26 August 2024	Termination date of 31 December 2024 mutually agreed	Provider & ICB	Email	To confirm the end date of the contract	(13) 24 08 26 confirmation of end date
27 August 2024	(7) Formal Acknowledgement of termination issued	ICB	Email	To confirm termination and advise that financial reconciliation would follow tow months post-termination	(14) 24 08 27 acknowledgment letter to provider and new 2324 YE instalments
27 August 2024	Confirmation of email addresses	Provider	Email	To confirm email addresses for official correspondence	(15) 24 08 27 contact email addresses
17 March 2025	(8),(9),(11) Final contract statement, financial reconciliation letter and activity data issued	ICB	Email	To communicate the outcome of the reconciliation covering 1 April to 31 December 204	(16) 25 03 17 Financial reconciliation letter sent to provider
7 July 2025	Formal dispute submitted in response to reconciliation	Provider	Email	To challenge the reconciliation outcome	(17) 25 07 07 Clawback contract
17 July 2025	Response to dispute issued, revised reconciliation letter provided (10)	ICB	Email	To confirm reconciliation was contractually compliant and correct clause references 3-month extension granted	(18) 25 07 17 response re Formal dispute of clawback following termination
17 August 2025	Case Review meeting requested	Provider	Email	To seek a fair and proportionate resolution and discuss the	(19) 25 08 18 meeting arranged with Provider

				contractual basis of the clawback	
3 September 2025	Local resolution meeting held	ICB & Provider	Virtual meeting	To discuss the dispute; Provider advised that the debt could not be reduced or waived	
3 September 2025	NHS Resolution contact details provided	ICB	Email	To enable the Provider to escalate the matter to NHS Resolution	(20) 25 09 03 Latest statement sent to Provider and contact details for NHS Resolution
18 September 2025	Response to Provider query regarding interest on debt	ICB	Email	To confirm that interest may be applied if the appeal is upheld in favour of the ICB	(21) 25 09 18 Email to Provider – interest on debt

Request for Recovery and Interest:

4.8 We trust that the enclosed documentation and supporting evidence provide a clear and well-founded basis for the recovery of funds, in line with the applicable contractual and regulatory provisions. Accordingly, we respectfully request that NHS Resolution review this submission and uphold the outstanding recovery amount of £45,154.71.

4.9 In accordance with NHS Resolution's published guidance ***(5)* Primary Care Appeals – Approach to Awarding Interest specifically Sections 4 and 5** (pages 2 -4) and the precedent set in *SSP Health Ltd v NHS Litigation Authority [2020] EWCA Civ 1574*, we request that interest be applied to the recovery amount should the appeal be upheld in favour of the commissioners. This aligns with the discretionary authority outlined in the guidance, which supports awarding interest where a party has been deprived of funds rightfully due. We propose an interest rate of 8% plus the Bank of England base rate, reflecting standard commercial practice under the ***(6)* Late Payment of Commercial Debts (Interest) Act 1998 specifically section 2. Interest on late commercial payments** (page 1)

4.10 We trust NHS Resolution will give due consideration to this request under its discretionary powers within the relevant regulatory framework.

4.11 Should you require any further information or clarification, please do not hesitate to contact us."

4.12 ***Sources and documents included within bundle:***

(1)*Regulation 19 – NHS (General Dental Services Contracts) Regulations 2005*

(2) *15 04 01 Standard GDS Contract.pdf*

(3) *Primary dental services statements of financial entitlements directions - GOV.UK*

(4) *NHS England » Policy book for primary dental services*

(5) *NHS-Resolution-approach-to-Interest-Payments-May-22-FINAL-2.pdf*

(6) *Late commercial payments: charging interest and debt recovery: Interest on late commercial payments*

(7) *24 08 27 Termination acknowledgement letter*

(8) *25 03 14 Financial Reconciliation Calculation*

(9) *25 03 14 Original Financial Reconciliation Letter*

(10) *25 07 17 Revised Financial Reconciliation Letter*

(11) *25 08 01 Final monthly statement from NHSBSA Compass*

(12) *24 08 14 notice to terminate GDC contract*

(13) *24 08 26 confirmation of end date*

(14) *24 08 27 Acknowledgement letter to provider and new 2324 YE instalments*

(15) *24 08 27 Contact email addresses*

(16) *25 03 17 Financial reconciliation letter sent to provider*

(17) *25 07 07 Clawback contract*

(18) *25 07 17 response re Formal dispute of clawback following termination*

(19) *25 08 18 meeting arranged with Provider*

(20) *25 09 03 Latest statement sent to Provider and contacts details for NHS Resolution*

(21) *25 09 18 Email to Provider - interest on debt*

The Contractor's representations

In an email dated 24 October 2025, the Contractor stated:

"Jurisdiction and Procedural Context

4.13 I submit these representations in response to the NHS Resolution letter dated 3 October 2025. This submission is made within the 21-day period and relates to the reconciliation and clawback applied to Contract 1202270001.

4.14 I confirm that the dispute concerns the proportionality and ethical context of the clawback.

4.15 This submission is made under Schedule 3, Paragraphs 54 and 55 of the National Health Service (General Dental Services Contracts) Regulations 2005 (the "Regulations").

Representations

4.16 A. Ethical Over-Delivery and Proportionality

4.17 B. Breach of Policy Duties and Fairness Obligations

Ethical Over-Delivery and Proportionality

4.18 The clawback arises from a contractual model that funds output in UDAs but does not fund the time or resources required to deliver care at the standards legally required by the GDC, CQC, and NHS safeguarding framework.

4.19 In fulfilling our professional duty, we delivered care that met these standards even where that required more time per patient and therefore fewer UDAs.

4.20 This resulted in an apparent under-delivery on paper but not in reality: all contracted duties of care were performed to a high and compliant standard.

4.21 The model therefore creates a structural conflict between lawful clinical care and the metric used to measure performance. Penalising a provider for choosing compliance with NHS and GDC standards over speed of throughput is inconsistent with good-faith contracting and the public interest.

4.22 For context and further information, our practice has effectively subsidised the cost of providing NHS care for several years. The UDA model has become increasingly unsustainable, with a growing gap between contract values and the real cost of delivering safe, compliant care. This has been compounded by the lack of any adequate uplift in UDA rates.

4.23 Over the course of 2023 to 2024 we reviewed our operating systems to explore every possible way of maintaining NHS care delivery within the required clinical standards and appointment timeframes. We ran our own independent pilot to test these operating changes and provided care outside of contracted hours (e.g. Saturdays).

4.24 Despite these efforts the practice found that the administrative and clinical workload required to meet GDC, CQC, and NHS standards was disproportionate to the funding available. At the same time we actively engaged with the local community in finding and accepting NHS patients of all complexities.

4.25 Several members of the team experienced a decline in mental health as a direct result of the strain of trying to meet professional standards while maintaining a viable business in line with standards. One member of staff, a clinician left as a result.

4.26 Prior to our contract end, we made every effort to ensure a responsible and ethical transition — completing all outstanding courses of treatment, supporting patients to find alternative providers, and offering interim care solutions where needed.

4.27 Ultimately, after exhausting every practical option to make the NHS element viable, we made the difficult decision to hand back the contract. This was not due to any unwillingness to provide NHS care, but because the current contract framework is no longer compatible with sustainable or compliant clinical practice — a position now echoed by multiple parliamentary reviews describing the GDS contract as “unfit for purpose”.

4.28 NHS England Policy Book Part B Section 8 instructs commissioners to apply discretion when determining repayment.

4.29 In previous NHS Resolution determinations (e.g. SHA/26026), panels directed commissioners to revise reconciliations where discretion was not applied in accordance with fairness and contextual evidence.

4.30 Reference: NHS England Policy Book for Primary Dental Services (2024, Part B), which confirms that commissioners may apply discretion or agree variations where under-performance has contextual or mitigating causes.

Breach of Policy Duties and Fairness Obligations

4.31 Evidence Context

4.31.1 D1 Meeting Notes (03 Sep 2025): ICB representatives acknowledged the high quality of care and that the UDA rate does not reflect the cost of compliant treatment.

4.31.2 B1 Reconciliation Letter and Calculation (Jul 2025): show the financial position but not the care actually delivered.

4.31.3 C4 Correspondence (Jul–Sep 2025): demonstrates consistent attempts to resolve the matter proportionately.

4.32 These materials evidence both ethical delivery and engagement in good faith.

4.33 On 17 August 2025, I formally requested a Case Review Meeting under Schedule 3, Paragraph 54, seeking proportionate resolution before escalation to NHS Resolution. I was grateful for the ICB response to engage and meeting discussions but they did not resolve the representations.

4.34 The supporting evidence shows engagement and the Commissioner's own acknowledgement that they were aware of my good-faith efforts.

4.35 Previous NHS Resolution determinations (e.g. SHA/26155, SHA/25887, and SHA/26026), which confirm that commissioners must exercise discretion and consider context when applying year-end clawback.

4.36 The enforcement disregards the Commissioner's duty under Clause 10 of the GDS Contract to act reasonably and in good faith, and its obligation under Schedule 3, Part 8 to undertake a mid-year review to support delivery before reconciliation.

Requested Outcome / Remedy

4.37 I ask that NHS Resolution recognise that:

4.37.1 The proposed under-delivery is the result of a systemic funding mismatch, not a failure of performance. The ICB failed to meet its obligations under Schedule 3, Clause 10 (Reasonableness and Good Faith) as it is unreasonable and disproportionate to enforce clawback in full in this case.

4.38 This position is consistent with parliamentary and professional findings. As noted in the 2023–24 parliamentary scrutiny of NHS dentistry, the Select Committee described the dental contract as "unfit for purpose", and the British Dental Association has repeatedly condemned the UDA system as an arbitrary measure that fails to reward complexity or time.

4.39 The introduction of the UDA in 2006 created a payment structure that, by design, discourages thorough clinical care for patients with higher needs. My case exemplifies this systemic flaw — providing compliant, high-quality care under these conditions results in an apparent shortfall that is administrative, not clinical.

4.40 Accordingly, I request that NHS Resolution exercise its powers under Schedule 3, Paragraphs 54 and 55 of the Regulations to direct the ICB to reconsider the year-end reconciliation in light of proportionality, fairness, and the care actually delivered.

4.41 References

4.41.1 NHS Resolution Determinations

4.41.1.1 SHA/26155 – Application of discretion and evidence windows.

4.41.1.2 SHA/25887 – Requirement for commissioners to consider contextual evidence before enforcing recovery.

4.41.1.3 SHA/26026 – Reconciliation, guidance application, and Clause 10 (Reasonableness and Good Faith).

4.41.2 National Policy and Regulation

4.41.2.1 NHS England Policy Book for Primary Dental Services (Updated August 2024), Part B – Financial Recovery & Reconciliation; Dispute Management; Duties to Act Fairly and Reasonably; Mid-Year Reviews.

4.41.3 Operational Guidance

4.41.3.1 Mid-Year Review Process (NHSBSA / Commissioner Actions) – Indicative workflow extracts."

4.42 Evidence Index

Ref	Document Title	Date	Summary/Relevance	Representation	Pages on PDF evidence file
A. CONTRACTUAL DOCUMENTS					
A1	GDS Contract (2015 version + variations)	08/02/2016	Includes Clause 10 and reconciliation provisions relating to financial recovery. Forms the contractual foundation of the dispute	A&B	1-28
B. FINANCIAL EVIDENCE					
B1	Reconciliation letter and calculation (Contract 1202270001)	July 2025	Issued by the ICB confirming year-end recover amount and forming the subject of this appeal	A&B	29-35
B2	Commissioner Calculation Sheets	July 2025	Shows UDA figures were derived and	B	36-45

	(workings annotated)		checked against contract values		
C. CORRESPONDENCE					
C1	My letter – response to clawback (July 2025)	July 2025	Sets out the practice's initial formal response and grounds for challenge. Demonstrates good faith engagement	A&B	46-53
C2	My request email – 17.08.2025 request ICB meeting	17 August 2025	Demonstrates early attempt to resolve informally before formal escalation to NHS Resolution	A&B	54-55
C3	NHS England reply to my letter (email)	2025	Shows commissioner's stated reasoning for recover decision	A&B	56-57
C4	NHS Email Timeline summary (.eml)	2024-2025	Chronology summary of key communications with ICB/NHS England, evidences engagement	A&B	58-60
D. MEETING EVIDENCE					
D1	Notes dictated from meeting notes – 03/09/2025	3 September 2025	Full typed version of discussion with ICB; evidences ongoing engagement	B	61-65
D2	Scan of actual hand written notes – first meeting 03/09/2025	3 September 2025	Original contemporaneous notes supporting the dictated notes of meeting content	B	66-67

Observations

The Commissioner's observations

In a letter dated 4 November 2025, the Commissioner responded to the representations and stated:

4.43 "I am writing in response to your letter dated 30 October 2025, which enclosed a copy of the representations submitted by the provider in relation to their application for dispute resolution.

4.44 Please find below our observations:

Ethical Over-Delivery and the UDA Model

4.45 The provider has cited NHS Resolution cases SHA/26155, SHA/25887, and SHA/26026, and submitted representations based on ethical over-delivery, proportionality, and fairness.

4.46 We have reviewed the provider's submission and the referenced cases in detail. While we acknowledge their commitment to high-quality care and understand the

challenges posed by the UDA model, we respectfully submit that the clawback applied is consistent with NHS England guidance and the terms of the GDS contract. The cited cases are not applicable to the current dispute.

4.47 The provider states that under-delivery resulted from delivering care in line with GDC, CQC, and NHS safeguarding standards, which required more time per patient. While we recognise the pressures of delivering complex care within the UDA framework, NHS England guidance is clear: reconciliation is based on actual UDA delivery. Ethical over-delivery, while commendable, does not exempt providers from contractual thresholds or alter the basis for clawback.

4.48 The UDA model is nationally determined, and commissioners are required to apply clawback for under-delivery below 96%, unless exceptional circumstances are evidenced. This ensures consistency and fairness across all contracts.

Relevance of Cited NHS Resolution Cases

4.49 The provider references SHA/26155, SHA/25887, and SHA/26026. We note the following:

4.49.1 **SHA/26155** (Appendix 1) Discretion was permitted if the contractor could provide evidence that appointment cancellations were directly related to the pandemic.

4.49.2 **SHA/25887** (Appendix 2) Similarly allowed discretion based on COVID-related disruptions, not ethical over-delivery.

4.49.3 **SHA/26026** (Appendix 3) The Commissioner was directed to revise reconciliation due to misapplication of NHS guidance and failure to account for carry-forward UDAs and COVID-related staff absence.

4.50 None of these cases support clawback reduction based on ethical or clinical discretion alone. Each involved documented exceptional circumstances or misapplication of national guidance.

Mid-Year Review Context

4.51 Under Schedule 3, Part 8 of the GDS Contract Regulations 2005 (Appendix 4) (see pages 70-72), commissioners are expected to support contract delivery through performance monitoring, which may include mid-year reviews. However, mid-year reviews are not mandatory for all contracts, as clarified in Section 8.3: Mid-Year Review of the Policy Book for Primary Dental Services(Appendix 5) (see pages 77-80).

4.52 A formal mid-year review is only required when a provider's adjusted activity falls below 30% of their contracted UDAs at the mid-year point. In such cases, the provider must submit an action plan outlining how they intend to meet their contractual obligations. Where activity exceeds 30%, no formal review is required.

4.53 The Policy Book does not mandate mid-year reviews where the provider has already issued notice to end the contract.

4.54 In this case, the provider issued termination notice prior to the mid-year review period therefore, no formal review was initiated. Communication was maintained via email

during the exit period, but this did not constitute a formal mid-year review under NHSBSA protocols.

Discretion and Fairness

4.55 We acknowledge the provider's concerns regarding fairness and the broader challenges affecting dental practices. However, Section 8.4.9 (Exceptional Circumstances) of the Policy Book for Primary Dental Services (Appendix 5) (see page 85) and Chapter 14: Adverse Events (see pages 130-138) confirm that discretion may be applied only where exceptional circumstances are evidenced and formally communicated.

4.56 Contractors are required to notify commissioners promptly and submit a formal claim for relief. In this case, no Force Majeure notice or documented exceptional circumstance was submitted during the contract period, and therefore the clawback remains applicable under standard reconciliation rules.

Workforce and Mental Health Impact

4.57 We are sympathetic to the provider's experience and recognise the pressures faced by dental teams. However, these factors do not alter the contractual requirement to reconcile based on delivered UDAs. We must apply national policy consistently across all providers to ensure equitable treatment and responsible use of public funds.

4.58 In light of the above, we maintain that the clawback applied is consistent with NHS England policy and the terms of the GDS contract. The cases cited by the provider do not support their position, and the arguments presented, while understood, do not meet the criteria for discretionary adjustment under current guidance.

4.59 We remain committed to fair and proportionate commissioning and welcome any further clarification you may require."

4.60 *Enc.*

Appendix 1 - 26155-Dental-Dispute

Appendix 2 - 25887-Dental-Dispute

Appendix 3 - 26026-Dental-Dispute

Appendix 4 - NHS General Dental Services Contracts Regulations 2005

Appendix 5 - Policy Book for Primary Dental Services

<u>The Contractor's observations</u>

In an email dated 18 December 2025, the Contractor responded to the representations and stated:

4.61 "These observations are submitted in response to the ICB's representations dated 9 October 2025, pursuant to NHS Resolution's letter of 30 October 2025. They are confined to matters raised within those representations and are provided for the

purposes of assisting NHS Resolution in determining the application for dispute resolution under the NHS (General Dental Services Contracts) Regulations 2005.

Alleged underperformance due to under-delivery of UDAs

4.62 What the ICB representations say

4.63 The contractor failed to deliver the agreed number of UDAs, and delivery fell below the acceptable threshold.

4.64 My observations

4.65 I do not dispute that the year-end reconciliation records a UDA shortfall.

4.66 My observations are directed to whether the numerical shortfall alone is sufficient to justify full recovery. The representations focus on the existence of under-delivery but do not address the circumstances in which that under-delivery arose, or whether those circumstances were considered when deciding that full recovery should follow.

4.67 In particular, the representations do not explain whether any consideration was given to:

4.67.1 the context in which delivery occurred,

4.67.2 the efforts made to deliver care during the relevant period, or

4.67.3 whether full recovery was considered appropriate in light of those factors.

Reliance on the 4% tolerance rule (Regulation 19)

4.68 What the ICB representations say

4.69 They rely on Regulation 19 on the basis that the shortfall exceeded 4%.

4.70 My observations

4.71 I understand Regulation 19 to describe circumstances in which protection from recovery applies, rather than to determine the outcome in all cases where that protection does not apply.

4.72 The representations refer to the 4% threshold but do not explain how that threshold was used when considering whether recovery should be pursued in this case, or whether any wider assessment was undertaken once it was exceeded.

4.73 It is not clear from the representations whether the threshold was treated as determinative, or whether any discretion was exercised once the numerical position was identified.

Termination and reconciliation

4.74 What the ICB representations say

4.75 They state that reconciliation must occur on termination and that any overpayment must be recovered.

4.76 My observations

4.77 I accept that, following termination, a reconciliation process is required.

4.78 My understanding is that reconciliation is intended to establish what sum, if any, is due once the relevant information has been considered. The representations confirm that reconciliation took place, but they do not explain how the circumstances of this contract year were taken into account when determining that full recovery should follow.

4.79 It is not clear whether any consideration was given to whether the outcome reached was appropriate in the circumstances, or whether any adjustment was considered as part of that process.

Assertion of legal authority to recover funds

4.80 What the ICB representations say

4.81 They rely on the GDS Regulations 2005, the Standard GDS Contract, the Statement of Financial Entitlements, and the NHS England Policy Book as the statutory basis for recovery.

4.82 My observations

4.83 I understand these documents to form the framework governing reconciliation and potential recovery following underperformance or termination.

4.84 The representations list these authorities but do not explain how they were applied to the specific circumstances of this case, or how any discretion within that framework was exercised. The representations apply the regulatory framework as determinative, without reference to the scope for discretionary assessment

Reference to previous underperformance

4.85 What the ICB representations say

4.86 They note that the provider has previously underperformed and settled the associated repayment.

4.87 My observations

4.88 The representations do not explain how this point is relevant to the present decision.

4.89 My understanding is that each contract year is assessed on its own facts. Previous repayment demonstrates cooperation with contractual processes, but it does not of itself establish liability or determine the outcome for a later period.

Claim that correct process was followed

4.90 What the ICB representations say

4.91 They state that notice was acknowledged, reconciliation was issued, the dispute was considered, and local resolution was offered.

4.92 My observations

4.93 I acknowledge that these procedural steps were followed.

4.94 However, the representations focus on the steps taken rather than the substance of the consideration given. It is not clear whether the reasons for underperformance were examined in any depth, whether proportionality was considered, or whether alternative outcomes were explored during the process.

Assertion that the reconciliation is correct and final

4.95 What the ICB representations say

4.96 They state that the reconciliation is contractually compliant and that the figures are correctly calculated.

4.97 My observations

4.98 My observations are not limited to the arithmetic accuracy of the reconciliation.

4.99 While the calculations themselves may be technically correct, the representations do not address whether the outcome reached was appropriate in the circumstances, or whether any discretion was considered beyond the calculation exercise.

Statement that the debt cannot be reduced or waived

4.100 What the ICB representations say

4.101 They state that, at local resolution, the debt could not be reduced or waived.

4.102 My observations

4.103 The representations do not identify any regulatory provision that removes all discretion in this regard.

4.104 It is not clear whether this position reflects a legal requirement or an internal policy approach, nor how that position was reconciled with the wider framework governing recovery decisions.

Request for recovery of the full sum

4.105 What the ICB representations say

4.106 They request that NHS Resolution uphold recovery of £45,154.71.

4.107 My observations

4.108 The representations proceed as though the outcome of recovery was fixed by reference to the numerical shortfall alone

4.109 My observations are directed to whether sufficient consideration was given to the context and proportionality of the outcome, rather than to the existence of a numerical shortfall alone.

Request for interest to be applied

4.110 What the ICB representations say

4.111 They request interest at 8% plus the Bank of England base rate.

4.112 My observations

4.113 This sum has been disputed throughout the process.

4.114 The representations do not explain why interest is considered appropriate in the context of a disputed NHS contractual matter, nor how the proposed rate reflects the nature of the dispute or my conduct during the process.

Final note

4.115 The ICB's observations focus solely on numerical UDA delivery and do not engage with the reality that clinically necessary, ethically required care was delivered which did not generate UDAs.

4.116 The resulting clawback therefore reflects a failure of the contractual metric to accommodate lawful clinical constraints, rather than a failure by the contractor to provide appropriate NHS care, rendering full recovery disproportionate in the circumstance."

Unsolicited comments

The Commissioner

4.117 "Thank you for your letter dated 22 December 2025 enclosing the provider's additional observations.

4.118 While the statutory process is complete, we wish to offer supplementary comments for your consideration.

Summary

4.119 The provider acknowledges an undisputed UDA shortfall. Their argument rests on "ethical over-delivery" and proportionality. These points do not override contractual obligations. Our decision to recover the overpayment is lawful, mandatory under the GDS Regulations, and consistent with national policy.

Statutory and Contractual Basis for Recovery

4.119.1 Mandatory Reconciliation: Under the GDS Regulations 2005 (Regulations 17–23), payments are reconciled against actual UDAs delivered. Funding for undelivered activity is recoverable - this is not discretionary.

4.119.2 Termination: Regulation 23 requires reconciliation and recovery upon contract termination. These provisions are mandatory, not optional.

4.119.3 Regulation 19 (4% Tolerance): Applies only where the shortfall is ≤4% and remedied within 60 days. This shortfall exceeded 4%, and the contract ended. Regulation 19 does not apply.

Discretion Considered

4.120 We assessed discretion under the Policy Book for Primary Dental Services:

4.120.1 Mid-Year Review (Section 8.3): Not triggered due to termination notice and failure to meet thresholds.

4.120.2 Exceptional Circumstances (Section 8.4.9): No Force Majeure notice or qualifying event evidenced.

4.120.3 Commissioner Error: None identified.

Ethical over-delivery

4.121 Extra clinical care, longer appointments, or non-UDA treatments do not offset contractual obligations. Allowing exceptions would undermine consistency and accountability across providers. UDAs remain the sole contractual measure of activity.

Provider's Case References

4.122 The provider references SHA/26155, SHA/25887, and SHA/26026; however, these cases relate to pandemic factors or misapplication of guidance, not ethical discretion. NHS Resolution has consistently upheld uniform application of national rules.

Proportionality and Fairness

4.123 We considered proportionality. Ethical care that does not generate UDAs is commendable but not a contractual offset and it does not remove the obligation to manage capacity and meet UDA commitments. Fairness is achieved by applying national policy consistently. We addressed proportionality by offering repayment flexibility, not by waiving clawback.

Process Compliance

4.124 Notice, reconciliation and local resolution were completed in full compliance with policy and contractual timelines. The provider accepts calculation accuracy; their objection concerns outcome rather than figures. Our decision reflects a thorough review of context, proportionality, and any exceptional circumstances, none of which applied.

Interest

4.125 Interest is recoverable under the GDS contract and NHS debt recovery policy, typically calculated at Bank of England base rate + 8%. This ensures compliance with law and fairness where public funds have been withheld.

Conclusion

4.126 UDA shortfall and termination are undisputed.

4.127 No exceptional circumstances or commissioner error justify deviation from standard reconciliation.

4.128 Discretion was considered but not applied as conditions were unmet.

4.129 Recovery is mandatory under law and contract.

4.130 We request NHS Resolution to uphold recovery of £45,154.71, plus interest in accordance with NHS policy."

The Contractor

4.131 "Thank you for confirming that I may submit further comments.

4.132 I respond briefly to the ICB's supplementary observations dated 23 December 2025, noting that these introduce new points not raised in their earlier representations.

4.133 Mid-Year Review and contract management The ICB states that no Mid-Year Review was undertaken due to standard thresholds and because notice had been served. I do not consider this position reasonable in the specific circumstances of this contract.

4.134 At the point notice was given, performance was affected by carry-over underperformance from the previous contract year (2022/23). In addition, the shortened contract period reduced the practical opportunity to recover performance, as only three months remained rather than six. While the UDA target was pro-rated, the reduced time materially constrained delivery capacity.

4.135 Further, once notice had been served, there was an increased obligation on both parties to manage the contract closely to ensure appropriate completion. In practice, this did not occur.

4.136 The Commissioner states that a Mid-Year Review was "not triggered" due to a "failure to meet thresholds." We wish to contest this position based on the following points already referenced in the correspondence:

4.136.1 Threshold Proximity: The Commissioner's assessment relies on a rigid application of thresholds. Our performance was recorded at 31%, representing a variance of only 1% from the 30% threshold mentioned.

4.136.2 Proportionality and Context: Under the heading "Proportionality and Fairness," the Commissioner claims to have considered context and proportionality. We submit that a proportional approach would recognize that a 31% delivery rate is substantially compliant with the requirement to trigger a Mid-Year Review. To deny the Section 8.3 process based on a 1% margin is inconsistent with the "thorough review of context" the Commissioner claims to have performed.

4.136.3 Procedural Fairness: The Commissioner's letter emphasizes "Process Compliance." However, by failing to trigger a Mid-Year Review for a provider achieving 31%, the Commissioner bypassed a vital contractual stage intended to address delivery concerns locally before moving to the "Mandatory Recovery" and "Termination" protocols cited under Regulations 17–23.

4.137 The Commissioner states that "discretion was considered but not applied." We contend that the decision to not trigger the Section 8.3 Mid-Year Review, despite the provider being within 1% of the threshold, represents a failure to exercise the very discretion and proportionality that the Commissioner's own letter defines as central to this process.

4.138 We request that NHS Resolution considers this procedural oversight when determining whether the recovery of £45,154.71 is appropriate and fair in these circumstances.

4.139 End-of-contract clinical and regulatory obligations The Regulations require contractors, on termination, to ensure that all active courses of treatment are completed and patients are managed safely and ethically. This necessarily diverts clinical time and administrative resource away from new UDA-generating activity. This factor is inherent to lawful contract closure and is not discretionary.

4.140 In my view, these combined factors strengthened, rather than diminished, the case for proactive engagement and review during the final contract period.

4.141 Fairness and proportionality My position remains that while the numerical shortfall is not disputed, full clawback in these circumstances does not reflect a fair or proportionate assessment of how the contract was delivered, managed, and concluded.

4.142 I respectfully submit these comments for consideration should the adjudicator decide to place any weight on the ICB's supplementary observations."

5 CONSIDERATION

5.1 As part of this consideration of the application for NHS dispute resolution, I required an up-to-date version of the Contract in dispute containing all variations agreed since the contract was signed. This was provided and has not been disputed by the Commissioner.

5.2 I note that this application for dispute resolution is in relation to the financial reconciliation from 1 April 2024 to 31 December 2024, and the proposed repayment of a calculated overpayment to the Commissioner. The Contractor seeks to dispute the Commissioner's letter dated 17 July 2025 which sought repayment of £45,154.74.

5.3 I note that the Commissioner has provided a history of the communications between the two parties by which the issue was discussed, including both a virtual meeting and further emails. From the information before me, I am of the view that local dispute resolution has been exhausted following which the Contractor has referred the matter in dispute to NHS Resolution. There is no dispute that local dispute resolution has not been entered into and therefore I will proceed to consider the matters before me.

5.4 I note that there is no dispute between the parties regarding the value of the under-delivered UDAs, that the Contractor was required to provide, or that the Contractor did not in fact deliver them. Therefore, I accept that the figure of £45,154.74 accurately represents the amount that would be owed by the Contractor and do not propose to further consider the logic behind its calculation. I consider the question before me to be something of an all-or-nothing, whereby either the entire amount is required to be repaid by the Contractor or none of it is.

5.5 The Contractor states in its observations that the Commissioner has relied on Regulation 19 on an absolute basis and has therefore not considered the question of whether it should be seeking repayment, only that it can. In this regard, the Commissioner's representations state: "*In accordance with Regulation 17 (page 20) of the (1) National Health Service (General Dental Services Contracts) Regulations 2005, the contract must specify the number of UDAs to be delivered annually. Where*

the contractor fails to deliver the contracted UDAs, Regulation 19 (page 22) provides that NHS England may recover a proportionate amount of the contract value, unless the shortfall is 4% or less and remedied within a specified period of not less than 60 days."

5.6 I note that Regulation 19 relates to when action for breach of a contract term can be taken by the Commissioner, rather than when recovery should be sought. I also note that paragraph 11 of the General Dental Services Statement of Financial Entitlements as referred to by the Commissioner states that where there is a termination of the GDS contract, the Commissioner has the power, but not the obligation, to recover monies paid to a contractor to which the contractor was not entitled. I also note that the reference to recovery where the 96% threshold is not met appears to originate from the Policy Book for Primary Dental Services which provides "*Where a Contractor has delivered less than 96% of their contracted activity, the Commissioner will recover the full amount of money (the overpayment to the Contractor in respect of the activity delivered under the contract) up to the full contract value.*" It is therefore necessary to understand the basis of this threshold in order to properly understand the position of each party.

5.7 The Contractor states that the Commissioner should apply discretion when determining repayment, and also references Part B of Section 8 of the Policy Book for Primary Dental Services. This section describes the discretion which the Contractor is relying on in order to state that there should be no repayment in its situation. I will return to this discretion but first consider the Contractor's circumstances.

5.8 The reason why this purported discretion should be used, as stated by the Contractor, is due to its "*ethical over-delivery*". It goes onto explain that this is because when providing UDAs, they did so whilst meeting the standards legally required by the GDC, CQC and NHS safeguarding framework. This required that more time was put in per patient, resulting in lower UDAs being delivered overall. Essentially, the reason for not meeting the UDAs required under the Contract was because it was focused on providing a "*high and compliant standard*".

5.9 The Contractor goes on to state that UDA requirements under the Contract were essentially unworkable, whilst also achieving the level of standard required. A central aspect of this being that it is a systemic issue rather than one with itself. Its observations go on to criticise the Commissioner's response on the grounds that it does not grapple with the question of discretion, only the factual basis of there being an underperformance.

5.10 I consider that there are two aspects here, the question of discretion and the facts which lead to the underperformance. I note that the Contractor has provided three previous determinations to illustrate the existence of this discretion. Having regard to the Policy Book for Primary Dental Services, there is reference to a discretion under 8.4.9. However, this is titled "Exceptional Circumstances" and it states that it may only operate on an individual basis and, in addition, refers to chapter 14 for further information, which is ostensibly concerned with force majeure events.

5.11 I note that the Contractor has not, at any point, suggested that their circumstances constituted force majeure, and instead allude more generally to the fact that discretion should have been considered. I note that the wording that I cited earlier, whereby the recovery aspect is established, uses the phrase "will" which suggests that the starting point is that where there has been a failure to provide 96% of UDAs

then recovery is presumed. As both parties agree, there has been an under-delivery here, so recovery "will" occur, unless the circumstances are "exceptional".

5.12 I note that the requirements cited by the Contractor that it sought to achieve were those that it was obliged to attain. I have not been made aware that the Contractor was going beyond its legislative and contractual obligations. Whilst providing a high standard of care is applaudable and should be congratulated, it is somewhat to be expected. The Contractor agreed to the terms of its GDS Contract, not only that it would provide the UDAs required but it would do so while achieving the standard of care necessary to meet the requirements imposed upon it.

5.13 I have not been made aware of anything particularly exceptional about the circumstances that the Contractor found themselves in. I would assume that most, if not all, contractors meet their GDC, CQC, and NHS standards whilst maintaining their administrative and clinical workload.

5.14 I consider that the Contractor's description of there being a "discretion" misrepresents the situation. It suggests that a Commissioner may choose to apply recovery, and consider the facts, in order to decide to do so. As I have highlighted above, the reality would appear to be that the Commissioner will seek recovery, and a narrow exception exists only to be employed where there are extraordinary individual circumstances. This is a subtle but important difference. The Commissioner is not simply free to pick and choose when to seek recovery, instead they are obliged to seek it.

5.15 I find that the previous determinations cited by the Contractor, and explained by the Commissioner, perfectly illustrate this issue. Each of these determinations involved circumstances which are easily understood to be outside of the ordinary. In particular, they relate to the pandemic, which is a textbook force majeure event, and impacted multiple facets of delivering the GDS contract. The events were completely unforeseeable and necessitated a different approach from the Commissioner. Even so, the determinations resulted in the contractors being required to provide evidence to support the claimed exceptional circumstances.

5.16 I note that this represents a stark contrast to the present circumstances. The Contractor here is operating in ordinary circumstances, with ordinary business pressures. It is likely that many other contractors are performing in the same circumstances. This does not fit with the language of the Policy Book, and the exemption envisioned therein. It also does not align with the facts of the previous determinations, as it lacks any exceptional event by which to justify any non-recovery.

5.17 Therefore, to reconcile the discretion and the Contractor's statements, the discretion is narrow and specific and the Contractor does not meet the criteria necessary for it to be relied on by the Commissioner. Upon reviewing the entirety of the Contractor's statements, whilst their actions are commendable, and are recognised by the Commissioner as such, they do not constitute "exceptional circumstances". As such, I consider that the Commissioner is right to seek recovery in these circumstances.

5.18 I note that the Contractor has also alluded to the Commissioner's obligation to act reasonably and in good faith. The suggestion by the Contractor appears to be that by not utilising its discretion the Commissioner was acting unreasonably and unfairly. However, as I have concluded, there was no discretion actually available to the Commissioner in the Contractor's circumstances. Therefore, I do not consider its actions can be either unreasonable or unfair.

5.19 I next turn to the question of the mid-year review. In particular, I note that one was not carried out and that the Contractor suggests that this represents a failure by the Commissioner. Both parties agree that there is a 30% threshold whereby a mid-year review is only required if the Contractor's UDA delivery falls below that level. However, the Contractor was operating at 31%. The Contractor essentially states that 31% is materially similar to 30% and so it would have been proportional and fair for the Commissioner to trigger a mid-year review.

5.20 I do not consider that this reasoning holds true. Where the threshold is unmet then the decision to hold a mid-year review is at the discretion of the Commissioner. This dispute resolution is not concerned with that decision, and I cannot revisit the mind of the Commissioner at that time. However, it is a discretion, and the Commissioner cannot be compelled to use it. In addition, 31%, whilst close to 30%, is not the same number. Any suggestion that being close enough is sufficient would completely undermine the point of there being a cut-off of 30%.

5.21 I consider that if it was intended that 31% should trigger a mid-year review, then that is the figure which would be provided. Therefore, 30% must mean 30%, not anything else. The Contractor refers to being within a "a 1% margin". However, 31% is not a 1% margin of 30%, it's a margin of 3%, which is quite a significant difference. The Commissioner has provided its reasoning for not carrying out such a review, and I consider that reasonable.

5.22 I also note that there is no guaranteed outcome from a mid-year review. The Commissioner is given certain actions that it may take as a result, but nothing that it must do. I therefore consider that, even if there had been a mid-year review, it is unclear how that would materially impact the outcome which the Contractor is disputing. In consequence, I do not consider that this contributes to any exceptionality or a potential action which could render recovery untenable.

5.23 Therefore, since there is no dispute as to the facts of the under-delivery or the amount, I consider that the Commissioner should proceed to recover £45,154.74.

5.24 Finally, I turn to the question of interest. I note that the Commissioner is seeking an interest rate of 8% plus the Bank of England base rate, reflecting standard commercial practice. I note that the Contractor has disputed this as the Commissioner did not explain why it would be appropriate to do so. The Commissioner has stated that this is recoverable under the GDS Contract and is in line with the NHS debt recovery policy. I also note that the GDS Contract specifically obliges the Contractor to pay the amounts due under the reconciliation process.

5.25 I note that the amount owed was not contested, but instead that it being due at all, was in dispute. I also note that the Contractor was made aware that interest would be sought during the meeting on 3 September 2025. Having reviewed the correspondence, it was repeatedly explained to the Contractor that their position would not warrant the disapplication of the recovery, for the same reasons I have set out above. I note that payment has now been outstanding since 17 July 2025, however I am mindful that local dispute resolution concluded on 3 September 2025, during the meeting in which the interest was explained to the Contractor.

5.26 I note that clause 359 states that payment is due within three months of the reconciliation. Therefore, with the Contractor being aware of the risk of interest being sought, I consider it fair that from 17 October 2025 interest would have started to accrue in favor of the Commissioner.

5.27 Therefore, I consider that interest at an interest rate of 8% plus the Bank of England base rate, should apply to the £45,154.74 owed from 17 October 2025 until such time as the full amount is paid by the Contractor.

6 DECISION

6.1 I determine that the Commissioner can make the financial recovery of £45,154.74.

6.2 I also determine that an interest rate of 8% plus the Bank of England base rate, should apply from 17 October 2025 until such time as the full amount is paid.

Head of Appeals
NHS Resolution