13 February 2026

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

FILE REF: **26740**

DECISION MAKING BODY: **LANCASHIRE AND SOUTH CUMBRIA INTEGRATED CARE BOARD ("THE COMMISSIONER")**

PDS CONTRACTOR: **KING STREET DENTAL SURGERY ("THE CONTRACTOR")**

DISPUTE RESOLUTION: **NATIONAL HEALTH SERVICE (PERSONAL DENTAL SERVICES AGREEMENTS) REGULATIONS 2005**

RE: **DISPUTE REGARDING A CHANGE OF OPENING HOURS**

1 Outcome

1.1 I determine that the Contractor's request to amend its PDS Agreement in order to vary its opening hours on Tuesday, Thursday and Saturday should be refused.

A copy of this decision is being sent to:

King Street Dental Surgery
Lancashire and South Cumbria ICB

NHS Resolution

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

FILE REF: **26740**

DECISION MAKING BODY: **LANCASHIRE AND SOUTH CUMBRIA INTEGRATED CARE BOARD ("THE COMMISSIONER")**

PDS CONTRACTOR: **KING STREET DENTAL SURGERY ("THE CONTRACTOR")**

DISPUTE RESOLUTION: **NATIONAL HEALTH SERVICE (PERSONAL DENTAL SERVICES AGREEMENTS) REGULATIONS 2005**

RE: **DISPUTE REGARDING A CHANGE OF OPENING HOURS**

1 INTRODUCTION

1.1 The above Contractor has referred the dispute in relation to its Personal Dental Services Agreement for dispute resolution under the provisions of Paragraph 55 of Schedule 3 of the NHS (Personal Dental Services Agreements) 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 7 October 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 Commissioner's decision letter dated 25 September 2025;

2.2.2 Contractor email dated 7 October 2025, with supporting documents;

2.2.3 Contractor email dated 24 October 2025, with contract variation;

2.2.4 Contractor email dated 28 October 2025;

2.2.5 Commissioner representations dated 18 November 2025;

2.2.6 Commissioner observations dated 8 December 2025; and

2.2.7 Contractor observations dated 11 December 2025.

3 PARTIES SUBMISSIONS

The Contractor's application

3.1 "To whom it may concern,

We have held this contract since securing it through a formal bidding process in 2019. At the time, we committed to providing late evening and Saturday clinics, and we honoured those commitments for as long as it was operationally feasible.

However, the situation has changed dramatically since the advent of Covid-19. The team members who were previously willing and able to staff late-night and Saturday sessions have since moved on, and we have been unable to recruit replacements willing to work these unsociable hours. This difficulty stems from several factors:

- Workforce availability: We no longer have sufficient personnel to safely and reliably staff these additional sessions.
- Personal commitments: Many of our current team members have family responsibilities or other professional obligations.
- Safety concerns: Blackpool is unfortunately not always safe after working hours. On several occasions, members of the public have entered the premises during late-night sessions and caused disturbances, with police intervention required. Understandably, this has created significant concerns for staff safety.

Due to these circumstances, we have been unable to maintain these specific sessions, despite our initial commitment. When placed in breach (and once the breach was lifted) we submitted a formal application to vary our contractual hours so that they mirror those of other contracts held at the practice. Importantly, we already offer early morning appointments from 8am, ensuring that patients have access outside of standard working and school hours.

Despite providing evidence in the form of patient questionnaires to support our application, including a willingness to proportionally reduce contract size in line with the adjusted hours, our request was refused, and the appeal dismissed without due consideration.

We wish to stress that:

- We have consistently met our UDA targets for this contract without the need for extended evening or Saturday sessions.
- Patient demand for these appointments has been minimal. The majority of our patient base commute into Blackpool for work and therefore show little interest in Saturday clinics.
- The late evening and weekend provision has not demonstrated added value to patient care or access, particularly when balanced against the safety and staffing issues.

Without flexibility from the ICB, we will have no option but to hand back this contract. This would represent a loss of 28,000 UDAs in one of the most deprived areas of the

country, with no other practice locally able to absorb a contract of this size. The consequences for the population of Blackpool would be severe, both in terms of access and oral health inequality.

We would request that the ICB reconsider its position and work with us to agree a pragmatic variation that safeguards both patient access and staff wellbeing."

Representations

The Commissioner's representations

3.2 "I am writing in response to your letter dated 4 November 2025 in which you inform us that NHS Resolution has received an application for dispute resolution from King Street Dental Surgery.

As requested, I have enclosed the ICB's representations in relation to the matter in dispute.

Please note that no representation has been made in relation to performance delivery against Units of Dental Activity (UDA), as this dispute specifically relates to Clause 75 of the Personal Dental Service (PDS) Agreement, whereas contracted dental activity relates to Clause 77 of the PDS Agreement.

Please do not hesitate to contact me if you require any further information."

"**1. FORMAL PROCUREMENT**

1.1 Procurement Evaluation Strategy (PES)

Please refer to **Item 1 of the attached timeline** which provides an embedded copy of the PES for the procurement of General Dental Services (GDS) in Blackpool and Lytham in 2019.

Question No. CSD02 – Access opening hours and emergency provision is on **Page 27**:

"Response required for particular lot being applied for and should take into account the geographical and demographic aspects of the lot when answering the question.

Bidders are asked to consider the service specification in detail prior to responding to the requirements of the question.

Bidders should describe how they will ensure that patients requiring urgent and emergency access will be seen giving details of how appropriate appointments will be protected to ensure patients receive care in an appropriate timely manner. Explain and evidence how your proposal will offer access to a wide range of presenting patient needs. Bidders must provide details of proposed opening hours as per the table below and advise how they meet the needs of the local population and the requirements of the service specification. This should include a clear rationale for the proposed opening hours."

1.2 Service Specification

Please refer to **Item 2 of the attached timeline** which provides an embedded copy of the Service Specification for the procurement of GDS in Blackpool and Lytham in 2019.

Paragraph 4.0 – Access to services is on **Page 3**:

• *"The contractor will specify in its tender the normal surgery hours to be offered to NHS patients and must demonstrate that they will ensure choice of appointment times in line with the size of the contract to meet the needs of patients. To provide patients with maximum opportunity to access the service, it is expected that appointments will be available as follows:*

- *on a daily basis Monday to Friday*
- *a spread of morning and afternoon appointments as well as at least one early morning and one early evening per week*
- *opportunity for patients to access appointments on a Saturday*
- *The contractor will provide access slots to care for all patients with in-hours dental urgencies and emergencies on a daily basis. The contractor will accept patients directed to them from the NHS 111 service"*

1.3 Recommended Bidder Report

Please refer to **Item 3 of the attached timeline** which provides an embedded copy of the Recommended Bidder Report for the procurement of GDS in Blackpool and Lytham in 2019.

The purpose of including this document in the representation is for completeness to evidence that the contract was awarded through the organisation's governance process.

1.4 King Street Dental Surgery (KSDS) Response to Procurement Questions

Please refer to **Item 4 of the attached timeline** which provides an embedded copy of KSDS' response to the procurement questions for the procurement of GDS in Blackpool 2019:

Response to Response to CSD01 – Service Model and CSD02 Access (opening hours and emergency provision) of formal procurement is on **Pages 35-38**:-

"The service currently operates on the basis of the following hours. The service is always open during lunchtime;

Monday: 8:00am – 5:30pm
Tuesday: 8:00am – 5:30pm
Wednesday: 8:00am – 5:30pm
Thursday: 8:00am – 5:30pm
Friday: 8:00am – 4:30pm
Saturday: Closed
Sunday: Closed

Recognising that this is a new contract with significantly increase UDA requirements KSD have prepared to operate on the basis of the following hours if awarded this contract. The service will always be open during lunchtime;

Monday: 8:00am – 5:30pm
Tuesday: 8:00am – 7:30pm
Wednesday: 8:00am – 5:30pm
Thursday: 8:00am – 7:30pm
Friday: 8:00am – 4:30pm
Saturday: 9:00am – 4:30pm
Sunday: Optional

Added Value: This is over and above the requirements contained within the service specification and is reflective of our commitment to offer equitable access to all.

KSD will also provide access slots for patients with in-house dental urgencies and emergencies on a daily basis. KSD will ensure any non-urgent or emergency patients placed on waiting list are prioritised by clinical need, which KSD understand can depend on many factors."

2. CONTRACT

2.1 Personal Dental Services (PDS) Agreement

Please refer to **Item 5 of the attached timeline** which provides an embedded copy of the PDS Agreement awarded to King Street Dental Practice as the winning bidder of the procurement of General Dental Services (GDS) in Blackpool 2019.

Part 1 – Definitions and Interpretation is on **Page 5**:

"The following terms and phrases shall have the following meanings for the purposes of this Agreement"

Page 11:

"mandatory services" means the services described in clauses 74 to 76; "mandatory term" means a term required to be included in the Agreement by the Regulations;

Part 8 – Mandatory Services is on **Pages 28-29:**

"74. The Contractor must provide to its patients, during the period specified in clause 75, all proper and necessary dental care and treatment which includes –

74.1. the care which a dental practitioner usually undertakes for a patient and which the patient is willing to undergo;

74.2. treatment, including urgent treatment; and

74.3. where appropriate, the referral of the patient for advanced mandatory services, domiciliary services, sedation services or other relevant services provided under Part 5 of the 2006 Act.

75. The Contractor must provide –

75.1. urgent treatment, during the following periods/times:

75.1.1. Monday 8.00am-5.30pm
Tuesday 8.00am-7.30pm
Wednesday 8.00am-5.30pm
Thursday 8.00am-7.30pm
Friday 8.00am-4.30pm
Saturday 9.00am-4.30pm
Sunday Optional

75.1.2. [ ]; and

75.1.3. all other services described in clause 76, during normal surgery hours:

Monday 8.00am-5.30pm
Tuesday 8.00am-7.30pm
Wednesday 8.00am-5.30pm
Thursday 8.00am-7.30pm
Friday 8.00am-4.30pm
Saturday 9.00am-4.30pm
Sunday Optional

to the extent that is necessary to meet the reasonable needs of its patients."

PDS Agreement signed by KSDS on 09.04.2021 is on **Page 82.**

2.2 Contract Variations

Items 6-17 of the attached timeline provide embedded copies of various contract variations associated with the PDS Agreement.

The purpose of including these documents in the representation is for completeness, but do not directly relate to the dispute.

Item 34 of the attached timeline provides an embedded copy of the contract variation for the Providers requested non recurrent contract reduction for the 2025/26 contract year. The reduces the contract from 28,000 UDA (£952,323) to 19,807 UDA (£649,178) (£34.01) per UDA).

2.3 Contract Breach

Please refer to **Item 18 of the attached timeline** which provides an embedded copy of the remedial notice which was issued on 14 January 2025 in relation to the breach of Clause 75 of the PDS Agreement:

2.3.1 Remedial notice

"We consider that you have breached clauses 75 of the Agreement. This states:

<u>Mandatory Services</u>

The Contractor must provide –

75.1. urgent treatment, during the following periods/times:-

75.1.1. Monday 8.00am-5.30pm
Tuesday 8.00am-7.30pm
Wednesday 8.00am-5.30pm
Thursday 8.00am-7.30pm
Friday 8.00am-4.30pm
Saturday 9.00am-4.30pm
Sunday Optional

75.1.2. [ ]; and

75.1.3. all other services described in clause 76, during normal surgery hours:

Monday 8.00am-5.30pm
Tuesday 8.00am-7.30pm
Wednesday 8.00am-5.30pm
Thursday 8.00am-7.30pm
Friday 8.00am-4.30pm
Saturday 9.00am-4.30pm
Sunday Optional

to the extent that is necessary to meet the reasonable needs of its patients.

However, you have failed to meet your contractual obligations, on the basis of the following:

• No NHS dental performer has been on site, or any NHS dental activity has been provided, during the full contracted hours, as stipulated in Clause 75, on an ongoing basis since 10 December 2024 to the current date.

Steps required from you to remedy the breach

We require you to remedy this breach by taking the following steps:

• Ensure that the NHS Dental Services are delivered during the full contracted opening hours listed in Clause 75 by 11 February 2025.

• Attendance by all individuals at a meeting with the ICB Dental Team to discuss the contractual breach on Monday 27 January 2025 via MS Teams at 12.30pm.

• Ensure that we receive a detailed action plan containing milestone point (dates) confirming when you will be delivering the full contractual opening hours and/or any actions which may arise from discussions at the contractual meeting by 11 February 2025"

2.3.2 Action Plan in response to remedial notice

Please refer to **Item 20 of the attached timeline** which provides an embedded copy of the Action Plan to remedy the breach.

Page 2 of attachment **"Action Plan – King St Surgery (0002) (3)"**:

"Remedial Action to be taken by 11 February 2025

Correction Action to be Taken	***Action to Completed By* [sic]**
On a temporary basis, we will service the additional contract hours on Tuesdays and Thursdays to 7.30pm and Saturdays from 9am to 4.30pm. We plan to cover this by approaching existing associates with an enhanced rate For UDA rate for covering the Tuesday and Wednesday evenings, if Associates are still unable to cover these times the partners will cover Tuesdays and Thursday. Nurses and reception have been offered an enhanced rate of pay to work the Tuesday and Thursday. The practice manager to organise a rota system if there is enough cover. The partners are to cover the Saturdays. The practice manager is to organise a rota. Nurses and reception have been offered an enhanced rate of pay to work the Tuesday and Thursday. The practice manager to organise a rota system if there is enough cover.	*11 February 2025*
Our website and practice signage hours will be updated to reflect this. Our answering machine message will be updated to reflect this. We will update NHS choices with the times.	*11 February 2025*
We will advertise for two additional Associates to cover the extended hours on Tuesdays, Thursdays, and Saturday on a permanent basis.	*11th February 2025*
We will seek patient feedback in the form of questionnaires regarding our existing opening hours.	*15th February 2025*

If we are unsuccessful in our recruitment of permanent Associates to cover the late evenings and Saturdays, we will submit an application to the ICB to vary our contract hours due to staff shortages."

2.3.3 Remedy notice issue

Please refer to **Item 21 of the attached timeline** which provides an embedded copy of the remedy notice issued on 24.02.2025.

3. CONTRACTOR REQUEST TO AMEND OPENING HOURS

3.1 Dental Contractor Request Form

Please refer to **Item 22 of the attached timeline** which provides an embedded copy of the Dental Contractor request form.

On **Page 1,** this request provides:

"an application to vary and amend the contractual working hours, removing the late night opening hours on Tuesdays and Thursdays 5.30pm to 7.30pm and Saturdays

from 9am to 4.30 so that our new contract opening hours will be from 8am to 5.30pmn [sic] *Monday to Thursday and Friday 8am to 4.30pm."*

Page 3 states that 38 patient questionnaires had been collected. The ICB's Dental Team did not consider this to be proportionate for a 28,000 UDA contract. The Provider was therefore asked to undertake a further survey that was proportionate to the size of the Contract.

Please refer to **Item 24 of the attached timeline** which survey's a further 200 patients.

3.2 ICB's consideration of the request to amend opening hours

Please refer to **Item 25 of the attached timeline** which provides an embedded copy of the paper that was considered by the ICB's Primary Dental Services Group at it's meeting on 23 July 2025.

The outcome of the group was to decline the providers' request to amend the normal surgery hours under Clause 75 of the PDS Agreement, on the basis that the contract was awarded through a competitive procurement process

The decision was communicated to the Provider, by email on 1 August 2025, and reinforced that *"the DSG therefore requires you to continue to deliver the contractual opening hours as procured and outlined under Clause 75"* – See **Item 26 of the attached timeline.**

3.3 Providers dispute of decision

3.3.1 Dispute

Please refer to **Items 27 & 28 of the attached timeline** which provides emails whereby the Provider disputes the decision, **Item 27 Para 3**:

"We would like to now formally dispute the decision made and ask that NHS Resolution be involved to review the decision made by the ICB. As I have clearly stated, unless this decision can be overturned we will return this contract, make no mistakes here. This will be to the detriment of the local population and will gain absolutely nothing in terms of access for NHS dentistry in the area."

As the Provider had indicated the desire to enter a formal dispute process, the case was escalated to the Dental Delivery Assurance Manager (Mrs [LF]), who not been involved in the decision making process, see **Item 28 of the attached timeline**.

3.3.2 ICB Advice

The ICB sought expert advice from Primary Care Commissioning in relation to the dispute resolution process, see **Item 31 of the attached timeline**.

3.3.3 Initial discussions

Mr [SB], agreed to meet with Mrs [F] for an initial discussion in relation to the dispute. This was followed up by email, see **Item 32 of the attached timeline**:

"As discussed, please accept our apologies for not providing you with the opportunity to contact us if you do not agree with the decision to decline your request.

I would now like to offer you the opportunity to contact us within 28 days of this email. If, after making every reasonable effort at the local resolution stage, we are unable to resolve the dispute we will then provide you with the details of the next stages of dispute under the contract.

As we discussed, the key rationale for declining the proposal was that it is not in line with the requirements of the service specification which you won through a formal procurement process. This was a relatively recent procurement, and the requirements of the area have not changed. The specification states:-

"The contractor will specify in its tender the normal surgery hours to be offered to NHS patients and must demonstrate that they will ensure choice of appointment times in line with the size of the contract to meet the needs of patients. To provide patients with maximum opportunity to access the service, it is expected that appointments will be available as follows:

- *on a daily basis Monday to Friday;*
- *a spread of morning and afternoon appointments as well as at least one early morning and one early evening per week;*
- *opportunity for patients to access appointments on a Saturday*
- *The contractor will provide access slots to care for all patients with in-hours dental urgencies and emergencies on a daily basis. The contractor will accept patients directed to them from the NHS 111 service."*

Your current requested opening hours are:-

Day	AM	PM
Monday	8am	5.30pm
Tuesday	8am	5.30pm
Wednesday	8am	5.30pm
Thursday	8am	5.30pm
Friday	8am	4.30pm
Saturday	Closed	Closed
Sunday	Closed	Closed

This request withdraws the late-night opening on Tuesday and Thursday by 2 hours each night and withdraws the Saturday opening hours by 7 hours and 30 minutes. In total this will reduce the weekly opening hours by 11 hours and 30 minutes which represents a significant reduction in access.

During our discussion, you agreed that you wish to pursue with local resolution as opposed to moving straight to NHS Resolution.

You therefore agreed to speak with the Associates to see if there is an alternative proposal that they may wish to put forward for consideration which would meet the requirements of the service specification.

We also discussed that an option might be to stick with the current requested opening hours but with an activity and contract value reduction that is proportionate to the reduction in hours; albeit this would still not meet the requirements of the service specification.

Just to reiterate that any request, whether it's to stick with the original request or an alternative proposal, would need to be considered through the ICBs formal governance proposal as I do not have the authority to make such decisions."

On 26.08.2025 Mr [B] confirmed, by email, that the partners did not wish to submit a proposal for a compromise in relation the opening hours, see **Item 33 of attached timeline**.

3.3.4 Stage 1 – Local Dispute Resolution

Please refer to **Item 36 of the attached timeline** which provides an embedded copy of the acknowledgement of the request to enter into the dispute resolution process, with a request for the Provider to submit supporting evidence as to why the Provider thinks the ICB should change the decision to decline the request to amend contractual opening hours.

Item 38 of the attached timeline provides an embedded copy of the providers email response:

"Conclusion

For these reasons, we respectfully request that the ICB reconsider its position on our application for variance for this contract. We ask that you provide:

1. Clear evidence to substantiate the necessity of the contractual hours in question in our locality.

2. An explanation of how the ICB's strategic plan specifically applies to our practice and patient population.

3. Recognition of the significant post-Covid workforce challenges, and the absence of patient demand for the proposed service."

In line with the NHS Policy Book for Primary Dental Services, the Provider was invited to meet with the ICB to discuss the dispute, see **Item 40 of the attached timeline**.

See **Item 41 of the attached timeline**. The Provider confirmed availability to meet with the ICB but stated that:

"While we are indeed prepared to attend a further meeting, we must make clear that our position has not changed. We remain unable to adequately staff the evening or Saturday sessions as originally agreed.

Unless the ICB is willing to compromise on the basis that we have already proposed, there is, with respect, little point in convening a further meeting. As already advised, in such circumstances, we would have no option but to surrender the contract but would also reserve the right to proceed to NHS Resolution for further discussion as necessary. We do however remain hopeful that a constructive way forward can still be found and await the ICB's thoughts."

As the Provider had made it clear that the position had not change, the ICB agreed that there was little merit in convening a meeting. Instead, a position statement will be taken through internal governance for final decision. Response to partners within 28 days, see **Item 42 of the attached timeline**.

3.3.5 ICB's further consideration of the request to amend opening hours

Please refer to **Item 44 of the attached timeline** which provides an embedded copy of the paper that was considered by the ICB's Primary Dental Services Group at it's meeting on 25 September 2025, **Page 6**:

"Conclusion

King Street Dental Practice have disputed the ICB's decision to decline their request to reduce their contracted opening hours, which removes extended hours and reduces weekly hours by 11 hours 30 mins.

Blackpool is an area which already has high dental access issues.

The ICB is currently working through the local resolution process, as set out in the national dental handbook, to try to resolve the dispute, at the providers request.

An options appraisal is provided at ***Section 3*** *of this report.*

Recommendations

The Dental Service Group is requested to:

1. Note the contents of the report;

2. Debate the options appraisal provided at Section 3 of this report, to confirm the original decision or to propose a counter offer to the provider as part of the local resolution process."

The Group's debate concluded maintain the decision to decline the request, the primary reason being that the contract was awarded following a formal procurement process in 2019, the service specification of which expected appointments to include at least one early evening and the opportunity for patients to access appointments on a Saturday.

In line with the local resolution process, the provider has been given the opportunity to provide supporting evidence in relation to the matters under dispute, but no evidence has been received.

3.5.6 Final decision

The decision was communicated to the Provider, by email on 25 September 2025, and reinforced that *"the DSG therefore requires you to continue to deliver the contractual opening hours as procured and outlined under Clause 75"* – See **Item 45 of the attached timeline.**

Please refer to **Item 46 of the attached time** which provides an embedded informal email trail between Mr [B] and Mrs [F].

Mr [B]:

"Is there no willingness to compromise on the ICB's part? We had previously expressed a willingness to reduce the contract size in proportion to the 'reduced' hours, is there no interest here?

Would a compromise on the sessions perhaps be an option? If we covered one late night per week and opened the surgery on a Saturday once a month perhaps? In honesty there is not enough interest from patients beyond this.

Just trying to find a way around things as otherwise we really will have no option but to hand back the contract and that would be a big blow for the area."

Mrs [F]:

"I did include proportionately reducing the contract as an option but, as this still wouldn't meet the requirements of the service specification, this was not supported.

I have previously suggested to you that you submit a compromise request which still meets the requirements of the service specification, but you dismissed this as an option and said that the partners position had not changed.

I'm finishing for a week's leave today so suggest that you take a little bit of time to work with the partners to see if they wish to submit a formal compromise proposal. If they do, I will pick this up on my return and ask my senior managers if we can reopen local resolution to consider the revised proposal.

Any compromise proposal would need to be fully justified, from a patient access perspective, with all opening times, UDA targets and contract value detailed in full."

3.3.7 Stage 2 – NHS Dispute Resolution Procedure

On 8 October 2025, the ICB received notification that the dispute had been referred to NHS Resolution by the Provider, see **Item 47 of attached timeline**

4. POTENTIAL BREACH OF CONTRACT

Please refer to **Items 48-51 of the attached time**:

"The ICB's Primary Dental Services Group received a verbal update that a report had been received to say that the practice appeared to be closed on Tuesday 28 October 2025 when the contracted opening times stipulated should be open until 7.30pm. A review of NHS Choices indicated that the practice opening times were:-

Monday: 8:00am – 5:30pm
Tuesday: 8:00am – 7:30pm

Wednesday: 8:00am – 5:30pm
Thursday: 8:00am – 7:30pm
Friday: 8:00am – 4:30pm
Saturday: closed
Sunday: closed

Following discussion, it was agreed that the provider should be invited to confirm whether the practice was open or closed after 5.30pm on Tuesday 28 October 2025 and be asked to confirm that NHS choices had been updated to reflect the contracted opening times within 10 working days (13.11.25)"

Mr [B] confirmed:

"As previously advised we are unable to cover the late evening sessions o or Saturdays owing to staffing shortages and safety issues in central Blackpool and so no, the surgery was not open past 5.30pm on the day in question."

Mrs [F] confirmed that this would be discussed by the Primary Dental Services Group at it's meeting on 27 November 2025.

On Thursday 6 November 2025, a voicemail was left by practice staff on behalf of Mr [B] advising that the practice closed at 5pm due to staff shortages. The contractual opening time for this day of the week is until 7.30pm.

This will be included in the update report for the meeting on 27 November 2025."

Observations

The Commissioner's observations

3.3 "Just to notify you that a 2nd remedial notice has been sent to the provider as they continue to fail to deliver their contractual opening hours."

The Contractor's observations

3.4 "Many thanks for your communication of 5th December regarding our appeal to vary our contractual hours.

We have made no further representations as our argument is a simple one. We are unable to provide the late evening hours and Saturday sessions that were originally agreed as previously detailed. We have had incidences of threatening behaviour and intimidation against our staff during these hours when staffing is at a far lower level. This has previously been documented and we have police logs to back this up. We are simply unwilling to put our staff at risk any further in this way. I feel sure that staff members at the ICB would feel the same way if they were in our position.

As previously detailed we applied to vary the contractual hours in question for this particular contract to draw them in line with those of other contracts held at the practice. This was indeed at the suggestion of [SJ] and [DA] who work for the ICB during a review meeting. We were advised to gather supporting evidence to accompany this application to vary, which we did. The overwhelming response from a sample of patient questionnaires provided to the ICB evidenced that the vast majority of patients at the practice are more than happy with the midweek hours that we have always offered.

This application was denied. On appeal we suggested, on the advice of [LF], that we offer to find middle ground and keep the contract viable by reducing the size and value of the contract to reflect the reduced number of hours. We were happy with this suggestion to find a compromise. However, this was then also dismissed out of hand.

Whilst we appreciate that the original contract agreed obliged us to offer these hours times have changed. We no longer have staff willing to risk their wellbeing during these unsocial hours. We are therefore left with very little in the way of options. We are more than willing to keep the contract viable as it provides access for NHS dentistry to the tune of 28,000 UDAs in a very deprived ward. Since Covid SOPs were lifted we have consistently maintained the contract target without need for these hours.

The number of UDAs that the contract size represents is the equivalent of 4 full time dentists. We need to make it clear here that we are a business that contracts to provide NHS activity and are not obliged to remain within the remit of the NHS. If the contract is lost as a result of the ICB being unwilling to be reasonable then our priority would be to keep all of our current staff in work. This position would not change. Accordingly, with the activity that would remain, we would likely run short of NHS access 4 months early. We would then have no option but to charge patients on a private basis for the remainder of the year.

We are willing to make concessions as previously stated and would accept a proportionate reduction in the size of contract to reflect the reduction in contractual hours (despite our hitting contract targets without the need for these hours). Our position however remains unchanged. If the ICB are unwilling to be reasonable and accept some form of mid-ground then the contract will be lost to the area. We would suggest that a certain amount of common sense should be applied here."

4 CONSIDERATION

4.1 Since 1 April 2023, Integrated Care Boards have taken on delegated responsibility for the commissioning of primary dental services.

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

4.3 I have considered whether local dispute resolution has taken place. On the information provided, the parties have engaged in an extensive local process and the Contractor has had more than one opportunity to provide supporting evidence and reasoning in support of the requested variation, as per the timeline provided by the Commissioner. Additionally, there is no dispute between the parties that local dispute resolution has been exhausted, consequently I will proceed to consider the matter before me.

4.4 I note that the dispute concerns the Commissioner's refusal to agree a variation to the Contractor's PDS Agreement that would amend its opening hours on Tuesdays and Thursdays and remove all hours on Saturdays. The Contractor has stated that the relevant evening and Saturday opening formed part of the service model that was originally offered and that it has subsequently become unable to maintain those hours. The Commissioner has stated that the relevant opening hours formed part of the procurement specification and were offered by the Contractor, and that the

requested change was refused because it did not meet population access needs and did not align with relevant strategic objectives (referencing the 10 Year Plan).

4.5 As noted by both parties, the Contractor provided services until 19:30 on Tuesdays and Thursdays and opened on Saturdays, but ceased to do so on 10 December 2024. The Commissioner has stated that it issued a remedial notice to the Contractor following that cessation, a copy of which has been provided to me. I note that this was remedied on 14 January 2025, when those hours recommenced. On 24 February 2025 the Contractor requested the PDS Agreement variation to amend its opening hours so that the Contractor would no longer be required to provide services past 17:30 on Tuesdays and Thursdays, or at all on Saturdays. The Contractor has since resumed non-provision of services during those hours, as from 28 October 2025, per the emails provided.

4.6 I consider that the starting point are the hours as per the PDS Agreement. Both parties agree that the weekday evening and Saturday opening arrangements were part of its contractual obligations and were included as part of the procurement process. The Commissioner has stated that these hours were a material part of the service being commissioned and, accordingly, that a proposal to remove them is not a neutral change but a reduction in access when measured against the service model that was procured.

4.7 As I have already referenced, the Contractor's requested variation would reduce the Tuesday and Thursday opening hours to 17:30 and remove Saturday opening entirely. The Contractor has stated that it seeks this change on three grounds, namely: (i) staffing and recruitment difficulties; (ii) staff safety concerns; and (iii) an alleged lack of patient need for the relevant sessions.

4.8 I first consider the Contractor's staffing and recruitment ground. The Contractor has stated that, due to changes in staffing over the years and recruitment difficulties, it can no longer staff the extended sessions and that it has therefore been unable to continue providing evening and Saturday opening.

4.9 I note that staffing and recruitment constraints are capable of being relevant considerations in assessing the practical deliverability of contractual hours. However, I consider that the weight to be placed on this ground depends on the particular circumstances of the matter including the procurement which led to the PDS Agreement being awarded to the Contractor and whether the asserted difficulty was known, is unavoidable, what mitigations have been attempted, and whether there are any alternatives short of a permanent reduction in access.

4.10 I note that the Contractor has not, on the material submitted to me, provided evidence to support its position. Items such as rotas, vacancy data, recruitment activity, use of locum arrangements, altered staffing models, or similar information would have allowed me to make a clear assessment of whether it is no longer realistically achievable to deliver the contracted hours. Instead, the Contractor has stated the point at a general level, indicating that "*recruitment and retention of staff has become increasingly difficult*" without explanation or justification.

4.11 I consider that it is reasonable to conclude that a permanent reduction in access should not be agreed on the basis of a general assertion alone, particularly where the practical effect of the change would be the removal of specific evening and weekend availability. In addition, I consider it well established that staffing and recruitment matters are, in general, matters within the Contractor's operational control and are

ordinarily capable of being managed and mitigated through taking reasonable steps. In circumstances where the PDS Agreement was awarded on the basis of a particular access model, I consider that a commissioner is entitled to expect delivery of that access model and at the very least clear information related to alternative recruitment and staffing approaches taken to mitigate the purported recruitment and retention of staff before being asked to consider removing those access elements.

4.12 I therefore place limited weight on the staffing and recruitment ground as presented and I consider that staffing issues, in and of itself, is insufficient to justify the requested variation.

4.13 I next turn to the Contractor's staff safety ground. The Contractor has stated that staff safety concerns arise from incidents after hours, but has not provided incident logs, police reports, or other documentary material beyond asserting that incidents have occurred. I note that the Contractor has stated that policy logs could be provided, however it has not done so. It is also unclear as to the scale, nature and seriousness of these events. Information such as when they occurred, how they occurred, or how they were resolved has not been provided. I have not been advised of detailed mitigations and security arrangements put into place by the Contractor to mitigate the concerns and how the Contractor might have used a stepped plan to escalate the request to cease the provision of the services during the specified hours. This makes it difficult for me to make any determination as to their significance.

4.14 I accept that staff safety is also capable of being a relevant consideration. However, I consider that similar to the staffing issue, it is reasonable for a commissioner to expect some form of supporting evidence or structured explanation. The starting point remains the hours agreed upon, especially when factoring in the procurement process. In order to consider any staff safety issues there needs to be enough information to properly evaluate the level of risk involved and the mitigations that the Contractor has sought to put into place to protect its staff from these.

4.15 I also note that the original request for a change in hours did not mention safety as the reason for doing so, and that it was only raised following the initial refusal by the Commissioner, with its first mention on 26 August 2025, several months after the change of hours request was put forward. It may be that these events had not yet occurred, but the Contractor's observations seem to place safety as the central reason for the requested change. I therefore find this hard to reconcile against an initial request which made no mention of it.

4.16 In these circumstances, without being able to fully evaluate the risks and significance of this issue, I must also consider that the safety ground, per the information provided, is insufficient justification for a permanent removal of evening and Saturday sessions.

4.17 I finally have regard to the "no patient need" ground. The Contractor has stated that there is no patient need for the relevant evening and Saturday sessions and relies on a survey of approximately 200 individuals. As per the responses provided, of those surveyed, 11 respondents identified evening access on Tuesday/Thursday as best, and 15 identified Saturday as best, with the remainder indicating weekday morning or afternoon preferences. The survey does note that some patients recorded multiple days/hours being best, which somewhat skews the results.

4.18 I note that the survey documentation provided contains clear limitations. The survey does not record at what times individuals were asked for their views, how individuals were selected, or the method by which the survey was administered. I consider that

this may directly impact its outcomes. Foreseeably, if those who were asked were those attending a weekday morning, they perhaps would not be of the class of persons who could only attend on a Tuesday evening. Additionally, the question asked was about which hours suited the patient "best"; with options being Monday to Friday: mornings, afternoons or evenings or Saturday: morning or afternoon. I note that the hours in this survey are incorrect, with the required opening hours specified in the PDS Agreement being until 19:30 for weekday evenings rather than 19:00 and 16:30 on Saturday, rather than 16:00. I am unclear why this half-hour has been excluded.

4.19 The phrasing of the question does not allow an evaluation of need. There is also a weighting issue, since the morning and afternoon options cover all five days of the week. Therefore, it was always likely that more people would select those options. It makes it difficult to compare need for individual slots and makes the responses for the requested hours appear smaller. For instance, there is no direct comparison between Saturday morning, and Monday morning. Taking an even distribution of days, the survey suggests that 20 people find each afternoon slot per day preferable. This is not far from the same number of people (15) who seek Saturday sessions. Further, the evening slots are only listed as being two hours long (17:00-19:00). This again will increase the likelihood of individuals accessing services and impact the responses.

4.20 Even putting those methodological limitations to one side, I consider that the survey does not support the proposition that there is “no patient need” for the sessions in question. The Contractor has stated that 11 respondents selected Tuesday/Thursday evenings and 15 respondents selected Saturday. I consider that this indicates that some users value, and would use, those access points.

4.21 I note that the Contractor has stated that the majority of respondents preferred weekday morning or afternoon access. I consider, however, that this does not demonstrate that evening and Saturday access is unnecessary. This is further illustrated by the fact that the Contractor's original request for amended hours notes that on average three patients attend on Tuesday, four on Thursday and five on Saturday (rounded up to the nearest patient).

4.22 The relevant question is whether removing evening and Saturday opening reduces accessibility for those who rely on those sessions, including those whose work or have caring responsibilities which make weekday daytime access difficult. The existence of a smaller cohort with a particular need may still be significant where the proposed change is the complete removal of those sessions rather than a minor adjustment within the same access period. The information provided by the Contractor is not suggestive of a complete lack of need for these hours.

4.23 I note that the reasons for the preference are not included and, had it done so, this would shed further light on the necessity of those opening times and why they may be preferred by a particular group of individuals. I note the Contractor's comments regarding opening at 8am, ensuring patients have access outside of school and work hours, however, there is no evidence to suggest that these are the sole reasons for patients accessing the Saturday or evening sessions.

4.24 I, therefore, consider that the Contractor’s survey does not demonstrate an absence of need and, in fact, demonstrates some degree of demand for evening and Saturday access. I also consider it necessary to treat the survey with caution due to the issues

I have highlight above, particularly as those details bear directly on whether the survey can be treated as a reliable proxy for the needs of the relevant population.

4.25 I note that the Commissioner stated in its decision on 1 August 2025 that the proposed reduction “doesn’t meet the needs of the population who require access to dental services”. In light of the points above, I consider the Commissioner's statement accurate, especially because the Contractor’s own evidence indicates at least some patient need for the sessions it is proposing to remove, and the evidence does not demonstrate that those individuals would have adequate alternative access.

4.26 I note that the Commissioner has also stated that the requested reduction does not fit with the NHS 10-year plan. I consider that, where reliance is placed on a strategic policy rationale, it is important that the decision remains anchored in the concrete access implications of the proposed change. Here, the Commissioner has also relied on population access need, which is directly connected to the practical effect of reducing opening hours and removing Saturday opening.

4.27 I also consider the context in which the variation request was made. The Commissioner has stated that the Contractor has ceased providing the sessions that are required under the existing service agreement, and that a remedial notice has previously been issued. The Contractor did remedy this for some time, but it also sought a contractual variation to align the PDS Agreement with what it considered deliverable.

4.28 The proposed change would reduce the scope of the service being provided under the PDS Agreement relative to what was procured and contracted for. I consider that this is a serious matter and requires a strong evidential basis before there can be any agreement to a permanent reduction in access.

4.29 I have also considered whether there is any material that suggests the Commissioner acted unfairly in the process by which it reached its decision. The Contractor has not, on the information summarised to me, identified a procedural defect beyond disagreement with the outcome. The Commissioner has stated that it considered the request and refused it on the grounds set out above.

4.30 Taking the evidence and submissions as a whole, I consider that the Contractor has not provided a sufficiently evidenced or explained case necessary to justify the requested variation, in the circumstances I have described. The staffing and recruitment ground is asserted at a general level without supporting material. The safety ground is asserted without records or a risk evaluation sufficient to understand the issue or steps taken by the Contractor to mitigate this concern. The patient need ground is not made out, because the Contractor’s survey indicates that there is at least some preference for those sessions and the survey has methodological defects that undermines any conclusion that there is no need for the sessions.

4.31 I consider that the requested variation should be refused. I am satisfied that the refusal decision was reasonably open to the Commissioner on the evidence presented and that it reflects consideration of the key practical issues, namely the reduction in access that would result from the proposed change.

4.32 For completeness, I note that this determination only concerns the Commissioner’s refusal of the variation request. It does not determine any separate dispute as to the consequences of any historic or continuing non-compliance with the existing PDS

Agreement, beyond the extent that the parties' positions on those matters form part of the context to the requested variation.

5 DECISION

5.1 I determine that the Contractor's request to amend its PDS Agreement, in order to vary its opening hours on Tuesday, Thursday and Saturday should be refused.

Head of Appeals
NHS Resolution