

17 March 2026

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FILE REF: SHA/26822

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**DECISION MAKING BODY: BIRMINGHAM AND SOLIHULL INTEGRATED CARE BOARD
("THE COMMISSIONER")**

**GDS CONTRACTOR: RUBERY DENTAL SURGERY LIMITED
RUBERY DENTAL SURGERY
119 NEW ROAD
RUBERY
REDNAL
BIRMINGHAM
B45 9JR**

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

**RE: APPLICATION FOR DISPUTE
RESOLUTION WITH REGARD TO
OVERPERFORMANCE OF DENTAL
ACTIVITY**

1 Outcome

- 1.1 On the basis of the information provided, I am satisfied that the Contractor was entitled to receive payment for the overperformance of units of dental activity for the 2024/2025 financial year and that the overperformed UDAs are not eligible to be carried forward into the 2025/2026 financial year.

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RE: **APPLICATION FOR DISPUTE**
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OVERPERFORMANCE OF DENTAL
ACTIVITY

1 INTRODUCTION

- 1.1 The Contractor has referred the dispute in relation to its General Dental Services ("GDS") Contract for dispute resolution under the provisions of Paragraph 55 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 12 December 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 12 December 2025;
 - 2.2.2 Email from the Contractor of 18 December 2025 with enclosures;

- 2.2.3 Email from the Contractor of 9 January 2026;
- 2.2.4 Email from the Contractor of 11 January 2026;
- 2.2.5 Email from the Contractor of 16 January 2026 with enclosures;
- 2.2.6 Email from the Commissioner of 26 January 2026 with enclosures; and
- 2.2.7 Email from the Contractor of 30 January 2026.

3 PARTIES SUBMISSIONS

The Contractor's application

In an email of 12 December 2025, the Contractor stated:

- 3.1 "This appeal is regarding a payment made to Rubery Dental Surgery, for an overperformance from last financial year. I know you may not get requests like this but I overperformed on my NHS contract and was unaware until recently, that a payment had been made, when I was under the impression I would be using these extra UDAs towards this financial year, like I do each year.
- 3.2 Unfortunately, we are find [sic] behind with our UDAs this year, due to me supporting a PLVE dentist into the practice, who has been working at a very slow pace and hence my worry that we will not hit our target this year. I have now copied [D] into this email, [D] could you kindly send [F] the final decision letter so I can start my appeal? Many thanks."

In an email of 18 December 2025, the Contractor stated:

- 3.3 "Please see email below, which explains why I do not have a final response letter but I have permission to enclose all communication with regards to this appeal. This communication in the word document clearly explains what this dispute is regarding. The word document attached has summarised all the correspondence I have had with NHS regarding an overperformance payment, I know it is an unusual request, but I am requesting an appeal to over ride their recent decision, whereby I am requesting to return a payment for an overperformance in exchange for my overperformed UDAs to be contribute towards this financial year.
- 3.4 Please find attached all documents as requested.
- 3.5 I do feel NHS have been misleading in their emails send [sic] last year, each time there is an important decision to be made by a dental contract holder, we providers are instructed to fill in documents to sign our consent or approval, in this case there was no clear option to decline payment, it was a confusing letter, which is attached to this email called "Letter to Contract Holder" and I assumed if I had not "opted in" then I would have not be paid the overperformance. As you can see from the line below from this letter - there was no real choice to accept or decline this payment and it was a misleading letter:
- 3.6 As more than 100% of your contracted UDA activity has been delivered, as agreed by your Commissioner up to 10% will be paid in Compass on 1 September 2025 (August Schedule).

- 3.7 Ultimately, I should have been given the option and been allowed to carry forward these UDAs, rather than be forced to receive payment and that is the reason why I am appealing, please could you assist to ensure that this appeal is kindly addressed before 31st March 2026, as there would be no merit to continue this appeal beyond that date, as I really need my previous year's overperformance to count to this year. ...”

Representations

The Commissioner's representations

In a letter dated 26 January 2026, the Commissioner responded to the application and stated:

- 3.8 “Please find attached our Representations in respect of this appeal. Please acknowledge receipt of this and that all of the attachments enclosed within the document are in an acceptable and accessible format.

Date	Event	Evidence
22/01/2025	Confirmation of email circulation to all practices within Herefordshire and Worcester regarding agreement to 110% contract delivery for eligible practices Extract from e-mail sent to all providers including Rubery Dental Practice showing final paragraph included and highlighted on the right for ease of reference	Funding of 110% 2024/25 all practices (saved in bundle) 'For the avoidance of doubt, all UDAs delivered by eligible providers over 100% up to a maximum of 110% will be funded at the providers usual UDA rate. Over delivery payments will be paid following the 2024/25-year end reconciliation process. Any activity delivered above the 110% limit will not be funded by the ICB nor will this activity be deducted from the providers 2025/26 UDA target. The usual year end rules will apply to all providers that had delivered less than 72% of their UDA target by the December 2024 scheduling date.'
23/01/2025	Email sent to all eligible practices advising that they are eligible to participate in 110% contract delivery	Funding of 110% eligible practices (evidence provided in bundle)
01/07/2025	Email to confirm that providers have been notified that their 2024/25 Year end letters are now in compass to review	2024/25 Year End Reconciliation.YE (evidence provided in bundle)

01/07/2025	Copy of YE letter as per above	Rubery Dental Year End Letter (evidence provided in bundle)
03/11/2025	Email Query received from provider regarding no UDA carry forward	Initial enquiry (evidence provided in bundle)
03/11/2025	Email response to provider regarding the 11% over delivery	03.11.25 Commissioner Response (evidence provided in bundle)
16/11/2025	Email received disputing the response regarding payment for over delivery as never requested it to be paid	16.11.25 Provider Response (evidence provided in bundle)
17/11/2025	Email to provider providing an outcome of decision re 110% sent to the provider	Email to Provider (evidence provided in bundle)
17/11/2025	Email from provider to revert decision on 110% delivery	17.11.25 Provider request (evidence provided in bundle)
17/11/2025	Holding email re decision sent to provider	17.11.25 Holding response (evidence provided in bundle)
19/11/2025	Email from commissioner with further explanation regarding 110%	19.11.25 Commissioner response (evidence provided in bundle)
20/11/2025	Email from provider raising concerns about not having over delivery carried forward and potential impact of having a breach notice if 25/26 delivery isn't met	20.11.25 Provider email raising (evidence provided in bundle)
03/12/2025	Email to provider highlighting support options available including NHS Dispute Resolution	3.12.25 email with support (evidence provided in bundle)
11/12/2025	Copy of email sent from provider to NHS Resolution	11.12.25 Provider email (evidence provided in bundle)
11/12/2025	Email response from NHS Resolution requesting further information	11.12.25 NHS Resolution response (evidence provided in bundle)
11/12/2025	Email from provider to NHS Resolution providing additional information regarding their appeal	11.12.25 explanation of appeal (evidence provided in bundle)
11/12/2025	Email from provider asking for additional information from Commissioners to support their appeal	11.12.25 Provider request (evidence provided in bundle)
15/12/2025	Email from provider requesting confirmation of payment for over delivery	15.12.25 Provider request (evidence provided in bundle)

15/12/2025	Email from commissioner confirming when payment was made attaching a copy of the schedule	Email trail (evidence provided in bundle)
15/12/2025	Copy of monthly schedule shared with provider	August pay schedule
15/12/2025	Copy of GDS Contract shared with provider	Rubery GDS Contract 15.12.25 Commissioner response (evidence provided in bundle)
15/12/2025	Letter from NHS Resolution	NHS Resolution letter to provider (evidence provided in bundle)
16/12/2025	Email confirming decision at SMT regarding the 110% over delivery issue	16.12.25 Commissioner Response (evidence provided in bundle)
18/12/2025	Email to provider to confirm no final letter was available as all queries we on email. NHS resolution option provided again	18.12.25 Commissioner response (evidence provided in bundle)
09/01/2026	Email request from provider to send up to date copy of the contract as part of NHS Resolution appeal	09.01.26 additional information (evidence provided in bundle)
15/01/2026	Response received from Primary Care Commissioning (PCC) regarding this matter received	15.01.26 Advice from PCC (evidence provided in bundle)
15/01/2026	Application for Dispute Resolution received	Rubery Dental Surgery application (evidence provided)
15/01/2026	Letter to Commissioner	Sent by nhs resolution to [DH]
15/01/2026 15/01/2026	Guidance letter Application combined	
21/01/2026	E-mail from PCC confirming Regulations around 110% - extracted from SFE Dental SFE Amendment (2022) Dental SFE Amendment (2018)	PCC response (evidence provided in bundle) Primary Dental SFE Primary Dental SFE (evidence provided in bundle)

N/A	Copy of Regulations around 110% - extracted from Page 34 – Policy Book for Primary Dental Services – May 2024	34 Policy Book - Regulations on 110%.pdf (Command Line) (evidence provided in bundle)
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The Contractor's representations

In an email dated 30 January 2026, the Contractor stated:

- 3.9 “Please could you add the following information to this case:
- 3.10 There is no contractual written agreement between NHS and Rubery Dental Surgery Limited regarding this overperformance payment that was made in relation to our overperformance from last financial year, thereby NHS emailing a letter and then just paying a contract holder for overperformance is unfair process, especially when a contract holder is used to just carrying over UDAs which is normal protocol year on year. If NHS wanted to do something different for last financial year, then it should have been a signed agreement - not just send an email and assume a contract holder is going to accept a new proposal of payment of overperformed UDAs. This arrangement has never happened before on previous financial years and there should have been a form to fill out if Rubery Dental Surgery Limited was willing to accept an overpayment.
- 3.11 As previously mentioned, I am supporting a new dentist who is undergoing PLVE training on our NHS contract and as it takes time for a foreign dentist to settle into the NHS system and get used to various things from the patient management, UDAS, to treatment plans and mastering clinical skills etc. I have provided a supportive environment to our new dentist, however I have never had a breach notice ever before but because of NHS paying us for the 24/25 overperformance we are going to be detrimentally impacted as we will not reach our UDA target by 31st March 2026 and our UDAS be considerable lower due to our new PLVE dentist working slower than an experienced UK qualified dentist. However, if we had these overperformed UDAs from last year to use towards this financial year as I was expecting, then we would not receive a breach notice.
- 3.12 I would be more than happy for NHS to take this overpayment back (in times like this, the NHS are in need of extra funds and it would be advantageous to both parties if these funds were returned and I had my overperformance to utilise towards this financial year).
- 3.13 Please could you update me further once there is more information with regards to this appeal, thank you again for your assistance with this matter.”

Observations

The Contractor's observations

In an email dated 16 February 2026, the Contractor stated:

- 3.14 “Thank you for providing this documentation to review, I am happy for you to continue with this process, however please could I have a response to this case in March 2026 if possible.

- 3.15 The reasoning being - the financial year end in relation to this payment for overperformance is only relevant for this financial year 31st March 2026 and I really would need to know where I stand with regards to this overperformance as soon as possible the sooner the better, as I will need to increase my sessions and workload to make up for this shortfall if this appeal is not successful.
- 3.16 Thank you for your assistance with this matter and I look forward to your resolution and conclusion to this matter.”

4 CONSIDERATION

- 4.1 As part of this consideration of the application for NHS dispute resolution, I required an up-to-date version of the Contract in dispute containing all variations agreed since the Contract was signed. This was provided and has not been disputed by the Commissioner.
- 4.2 This application for dispute resolution relates to the 2024/2025 Year End Reconciliation Statement. The Contractor disputes the Commissioner’s decision not to reverse the payment made for overperformed units of dental activity (UDAs), with the consequence that the 2024/2025 UDAs cannot be carried forward and applied against the 2025/2026 contractual UDAs.
- 4.3 I note that local dispute resolution was pursued and that a number of emails and telephone discussions took place between the Contractor and the Commissioner during November 2025. On 27 November 2025, following discussions with a Senior Manager, the Commissioner confirmed that it did not agree to allow the Contractor to refund the payment made for the 2024/2025 over-performance in exchange for those UDAs being applied to the 2025/2026 financial year, and advised that the Contractor could appeal this decision. This was communicated to the Contractor in a telephone conversation on 3 December 2025 and confirmed in writing by email dated 16 December 2025.
- 4.4 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.
- 4.5 By letter dated 22 January 2025, the Commissioner informed all dental practices within Herefordshire and Worcestershire of the agreement to provide payment for up to 10% overperformance of UDAs for the year 2024/2025. Within the letter, it states:
- 4.5.1 *“For the avoidance of doubt, all UDAs delivered by eligible providers over 100% up to a maximum of 110% will be funded at the providers usual UDA rate. Over delivery payments will be paid following the 2024/25-year end reconciliation process. Any activity delivered above the 110% limit will not be funded by the ICB nor will this activity be deducted from the providers 2025/26 UDA target. The usual year end rules will apply to all providers that had delivered less than 72% of their UDA target by the December 2024 scheduling date.”*
- 4.6 A further letter dated 23 January 2025 confirmed the Contractor as an eligible provider, having delivered at least 72% of its 2024/2025 UDA target by the December 2024 NHS BSA scheduling date. The letter states:

- 4.6.1 *“Further to the email regarding funding of 110% Dental Contract Delivery 2024/25 that was circulated to dental practices for practices within Herefordshire and Worcestershire, we are contacting you to advise that you have been identified as an eligible dental provider as you have delivered the minimum requirement of 72% of your 2024/25 UDA target as at the December 2024 NHSBSA scheduling date, and, therefore, you will be funded up to a maximum of 110% delivery.*

Payments for over-performance of activity will be funded at your usual UDA rate and will form part of the standard year end reconciliation and, therefore, any payment will not be received until a final reconciliation has taken place.

If you have any queries, please send these to the generic inbox nhsbsolicb.dental-westmidlands@nhs.net with a subject title of “Herefordshire and Worcestershire funding of 110% Contract Delivery 2024”.

- 4.7 There is no dispute between the parties as to the level or value of the overperformed UDAs, nor that the Contractor was entitled to receive payment for that activity. The Contractor’s position is that it wishes to return the overpayment to the Commissioner and instead carry forward the overperformed UDAs into the 2025/2026 financial year. This request is based on the Contractor’s concern that UDA delivery in 2025/2026 has been adversely affected by the need to support a PLVE dentist. The Contractor states that *“we are find [sic] behind with our UDAs this year, due to me supporting a PLVE dentist into the practice, who has been working at a very slow pace and hence my worry that we will not hit our target this year.”*
- 4.8 The Contractor has stated to the Commissioner that they did not confirm or approve the automatic payment of the overperformed UDAs and that, in previous years, they have consistently overperformed but have chosen not to accept overpayment. Instead, they have preferred to retain the overperformed UDAs as a buffer to support performance in subsequent financial years. I infer this means that they had a legitimate expectation that the same approach would be taken for 2024/25 into 2025/26. However, the correspondence noted at paragraphs 4.5 and 4.6 above provided the Contractor with notice as to how overperformance would be handled.
- 4.9 I have had regard to the Statement of Financial Entitlements (“SFE”) as provided by the Commissioner which states:
- 4.9.1 *“2.5.3 Without prejudice to any units that may be delivered under Section 10A (participation in oral health or access programmes), where applicable, or under paragraphs 2.1.1 and 2.1.2, this paragraph applies where NHS England(b) agrees with a contractor that the contractor may deliver, in a given financial year (or part of it), additional units of dental or orthodontic activity under the GDS contract; and the agreement for the additional units is made on the basis that it is limited to that financial year.*
- 2.5.4 For the purposes of paragraph 2.5.3, the maximum number of agreed additional units should not exceed 10% of the agreed number of units of dental or orthodontic activity specified in the GDS contract by reference to which the contractor’s NACV for that financial year is calculated.”*
- 4.10 This is consistent with the Policy Book, an extract of which has been provided to me, which states:

- 4.10.1 *“a commissioner may consider, in line with July 2022 policy announcements, the flexibility to allow, where resources are available, relevant contracts to deliver and be paid for up to 110% of contracted activity”.*
- 4.11 I have given the term ‘*be paid*’ its everyday meaning that there is both an entitlement and that there will be a payment from one party to another.
- 4.12 I note the Commissioner issued a letter dated 30 June 2025 to the Contractor setting out the level of UDA overperformance for the 2024/2025 financial year. The letter explained that up to 10% of the overperformed UDAs would be paid to the Contractor on 1 September 2025. It also invited the Contractor to raise any queries or corrections within 28 days of the date of the letter, stating: *“please contact us within 28 days from the date of this letter at dentalcases@nhsbsa.nhs.uk should any of the details in this letter be incorrect, providing us with evidence to support your claim”*. I note that no response was received in relation to the letter of 30 June 2025 and, accordingly, the payment was subsequently made to the Contractor. The Contractor then queried the payment on 3 November 2025.
- 4.13 The Contractor argues that there should have been a written contractual agreement between the parties as to the overperformance payment. However, the SFE does not empower the Commissioner, nor is there discretion, to carry forward this level of activity.
- 4.14 The Contractor has explained that, due to the employment of a foreign trained, GDC registered dentist undertaking PLVE training, they were required to relinquish a portion of their UDAs and patient base in order to support and train this dentist. As the PLVE dentist has been working at a slower pace, UDA delivery during the 2025/2026 financial year has been reduced. The Contractor was relying on the 2024/25 overperformed UDAs to mitigate this shortfall. The Contractor states that, as a result of the payment made for the overperformed UDAs, they will be unable to meet their UDA target for the 2025/2026 financial year. I consider this matter to be distinct from the issue under dispute, as it concerns the current financial year and therefore falls outside the scope of this determination.
- 4.15 I therefore consider that the Commissioner had acted appropriately in paying the Contractor for their overperformance of 2.91% of their UDAs. I further note that the GDS Contract states under Part 8 “Mandatory Services”:
- 4.15.1 *“84. This clause applies where the Contractor has failed to provide the number of units of dental activity it is contracted to provide pursuant to clause [77][78] where –*
- 84.1 The failure amounts to 4 per cent or less of the total number of units of dental activity that ought to have been provided during a financial year, and*
- 84.3 the contractor agrees to provide the units it has failed to provide within such time period as the PCT specifies in writing, such period to consist of not less than 60 days*

...

Mid year review

87. clauses 88 to 100 only apply where services are to be provided under the Contract from 1st April in the relevant financial year.

88. In clauses 89 to 100, “required to provide or “required to be provided” in relation to units of dental activity means required to be provided in accordance with clause [77][78].

89. The PCT shall, by 31st October in each financial year, determine the number of units of dental activity that the Contractor has provided between 1 April and 30 September of that financial year based on the data provided to it by virtue of clauses 221 and 222.

90. Where the PCT determines under clause 89 that the Contractor has, between 1 April and 30 September, provided less than 30 per cent of the total number of units of dental activity that it is required to provide in that financial year, clause 91 shall apply.

...

92. where a mid-year review is required by the PCT pursuant to clause 91, the PCT and the Contractor shall discuss at that review –

92.1 Any written evidence that the Contractor puts forward to demonstrate that it has performed a greater number of units of dental activity during the first half of the financial year than those notified to it pursuant to clause 91.1.1; and

92.2 Any reasons that the Contractor puts forward for the level of activity in the first half of the financial year.

93 The PCT shall prepare a draft record of the mid-year review for comment by the Contractor, and, having regard to such comments, shall produce a final written record of the review.

...

99. Nothing in clauses 96 to 98 shall prevent the PCT and the Contractor agreeing to vary the Contract in accordance with clause 287 to adjust –

99.1 the level of activity to be provided under the Contract; or

99.2 the monies to be paid by the PCT to the Contractor under the Contract.

...

100. Where the PCT withholds monies pursuant to Clause 97.2, it shall ensure that it pays the withheld monies to the Contractor as soon as possible following the end of the financial year where the Contractor has -

100.1 provided the number of units of dental activity required to be provided; or

100.2 Failed to provide that number of units of dental activity, but that failure amounts to 4 per cent or less of the total number of units of dental activity that ought to have been provided during that financial year (and therefore clauses 83 to 85 apply)."

- 4.16 Having considered the above, I am satisfied that the Commissioner acted within its powers in making the payment for the Contractor's 2.91% overperformance of UDAs. The Contractor was given clear advance notice that payment would be made, as evidenced by the correspondence issued in January 2025, which is in line with the SFE and Policy Book.

5 DECISION

- 5.1 On the basis of the information provided, I am satisfied that the Contractor was entitled to receive payment for the overperformance of units of dental activity for the 2024/2025 financial year and that the overperformed UDAs are not eligible to be carried forward into the 2025/2026 financial year.

**Head of Appeals
NHS Resolution**