NHS Resolution

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8 July 2026

FILE REF: **SHA/26955**

DECISION MAKING BODY: **NORTHAMPTONSHIRE INTEGRATED CARE BOARD ("THE COMMISSIONER")**

GDS CONTRACTOR: **RODERICKS DENTAL PARTNERS HARLESTONE ROAD DENTAL PRACTICE**

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

RE: **APPLICATION FOR DISPUTE RESOLUTION**

1 Outcome

1.1 I determine that the Commissioner was not entitled to vary the Contractor's Contract under paragraph 61A of Schedule 3 to the Regulations. The Contract therefore should remain unvaried, subject to any further agreement between the parties.

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

RE: **APPLICATION FOR DISPUTE RESOLUTION**

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 letter dated 18 March 2026 HCR Law on behalf of 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 Letter dated 18 March 2026, with enclosures, from the Contractor's representative;

2.2.2 Email dated 17 April 2026 from the Commissioner;

2.2.3 Letter dated 24 April 2026, with enclosures, from the Commissioner; and

2.2.4 Letter dated 18 May 2026, with enclosures, from the Contractor's representative.

3 PARTIES SUBMISSIONS

The Contractor's application

3.1 By letter dated 18 March 2026, HCR Law on behalf of the Contractor stated:

1. "We are instructed by Rodericks Dental Partners (**Rodericks**). The Harlestone Road Dental Practice is part of the Rodericks group.

2. This letter constitutes a referral of a dispute to the Secretary of State for Health in accordance with the NHS dispute resolution procedure as defined in the General Dental Services contract.

   Background

3. The contract forming the subject of the dispute is a Standard General Dental Services Contract entered into between NHS Northamptonshire and Dr B Kotecha on 3 March 2009 with reference 7536880001 (the **Contract**), a copy of which is at **Document 1**.

4. The Contract has been varied as follows:

   a. In July 2009 to reflect changes in relevant legislation (**Document 2**)

   b. In April 2019, to comply with the terms of relevant legislation (**Document 3**).

   c. In August 2019, to change the contracting party was changed from an individual to a partnership with the name Harlestone Dental Partnership (**Document 4**).

   d. In November 2019, to reflect a retirement from the partnership (**Document 5**).

   e. In April 2022, to reflect a retirement from the partnership (**Document 6**).

   f. In December 2024 in respect of the provision of services according to the Flexible Commissioning New Patient Dental Access Dental Care for High Needs/Vulnerable/Inclusion Groups Pilot 2024/25 Service (**Document 7**).

   g. In August 2025 subcontracting of clinical matters was permitted (**Document 8**)

5. The parties to the Contract, and to this dispute are:

   a. Harlestone Dental Partnership (which, as set out above, is part of the Rodericks group); and

   b. NHS Northamptonshire Integrated Care Board, acting through the East Midlands Primary Care Team (the **ICB**).

6. The regulatory framework in which the Contract operates is the National Health Service (General Dental Services Contracts) Regulations 2005, as amended (the **Regulations**).

7. Pursuant to clause 14 of the Contract, it is not an NHS contract.

8. Part 21 of the Contract concerns dispute resolution and provides as follows:

    a. Pursuant to clause 279, that the parties *"must make every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings)"*.

    b. Pursuant to clause 280, that, for non-NHS contracts, *"any dispute arising out of or in connection with the Contract, except disputes about matters dealt with under the complaints procedure pursuant to Part 20 of this Contract, may be referred for consideration and determination to the Secretary of State"* if either *"the PCT so wishes and the Contractor has agreed in writing"* or *"the Contractor so wishes (even if the PCT does not agree)"*.

    c. Pursuant to clause 281, that where a dispute is referred to the Secretary of State under clause 280 *"the procedure to be followed is the NHS dispute resolution procedure, and the parties agree to be bound by any determination made by the adjudicator"*.

    d. Pursuant to clause 282, that the *"NHS dispute resolution procedure applies in the case of any dispute arising out of or in connection with the Contract which is referred to the Secretary of State in accordance with…clause 280 and the PCT and the Contractor shall participate in the NHS dispute resolution procedure as set out in paragraphs 55 and 56 of Schedule 3 to the Regulations"*.

Proposed rebasing of UDAs

9. Clause 77 of the Contract states as follows:

    *"The Contractor shall provide **13,200** units of dental activity during each financial year"*.

10. On 12 October 2023, the ICB issued a Breach Notice in respect of the number of UDAs delivered under the Contract for the year 1 April 2022 to 31 March 2023 (**Document 9**). *Inter alia*, the Breach Notice stated as follows:

    "We consider that you have breached [clause 77 of the Contract] because:

    - *You have not delivered the number of services specified in the Contract*.
    - *Your year-end delivery was 8,035.20, any carry forward from the previous year has been included where applicable. Your contractual obligation was to deliver 13200.*

    …

If you do not agree with our decision, you should contact us within 28 days of this notice. 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."

11. On 26 September 2024, the ICB issued a Breach Notice in respect of the number of UDAs delivered under the Contract for the year 1 April 2023 to 31 March 2024 (**Document 10**). *Inter alia*, the Breach Notice stated as follows:

    "We consider that you have breached [clause 77 of the Contract] because:

    You have not delivered the number of services specified in the Contract.

    Your year-end delivery was 6,225.31, any carry forward from the previous year has been included where applicable. Your contractual obligation was to deliver 13200.

    …

    If you do not agree with our decision, you should contact us within 28 days of this notice. 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."

12. On 28 August 2025, the ICB issued a Breach Notice in respect of the number of UDAs delivered under the Contract for the year 1 April 2024 to 31 March 2025 (**Document 11**). *Inter alia*, the Breach Notice stated as follows:

    "We consider that you have breached [clause 77 of the Contract] because:

    You have not delivered the number of services specified in the Contract.

    Your year-end delivery was 7,919.34, any carry forward from the previous year has been included where applicable. Your contractual obligation was to deliver 13200.

    …

    If you do not agree with our decision, you should contact us within 28 days of this notice. 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."

13. On 28 October 2025, the ICB wrote to Harlestone Dental Partnership (**Document 12**) stating that it was *"of the opinion that it is necessary to make a contract variation for a recurrent rebase of the contract's UDA target commencing on 1st April 2026* and that its intention was *"to reduce the contracted UDAs from 13,220 to 8,038"*. As to the legislative basis for the reduction, the letter stated as follows:

    "This is out [sic] *standard process when a contract consistently under delivers and is in line with the [National Health Service (General Dental Services Contracts) Regulations 2005, s.3 Pt.9(61)], and Regulation 61A of the National Health Service (Primary Dental Services) Amendment Regulations 2023, and The*

National Health Service (Primary Dental Services and Dental Charges) (Amendment) Regulations 2024".

14. Rodericks and the ICB attended a meeting on 9 December 2025 to commence discussions on the proposed rebasing of the Contract. During that meeting, Rodericks confirmed that it did not agree to the contracted UDAs being reduced.

15. In advance of the meeting on 9 December 2025, Rodericks had requested evidence that the ICB had *"attempted to hold an annual or mid-year review with the Contractor each year of under-performance"* as set out at paragraph 8.4.6 of the NHS Policy Book for Primary Dental Services (the **Policy Book**). In response, the ICB stated that each of the breach notices issued *"includes a review of the Contractor's annual performance for the relevant year, together with an offer to meet within 28 days should the Contractor wish to dispute any aspect of that review"*. On 19 December 2025, Rodericks set out its position that the required reviews did not take place and that the *"inclusion of annual performance data within a notice, accompanied by a 28-day period to challenge the content, does not constitute a formal review and does not meet the standards set out in NHS guidance"* (**Document 13**).

16. On 9 January 2026 Rodericks submitted a Delivery Action Plan (**Document 14**) in respect of the Contract. *Inter alia*, that plan:

    a. Explained that the reason for underperformance in previous years was that several performers had left the practice in recent years *"primarily due to moving into private roles or the wider pressures associated with NHS delivery"*.

    b. Stated that Rodericks had recently recruited additional dental therapists and was installing two additional surgeries to provide *"the additional clinical space required to fully utilise and allocate our NHS UDA contract"* with performers *"ready to start as soon as the new surgery capacity is available"*.

    c. Included a schedule of the workforce and the allocated UDA targets per practitioner.

    d. Set out the actions which Rodericks would take to achieve full contracted delivery and its ongoing recruitment strategy.

17. On 13 January 2026, a standard quarterly meeting took place between Rodericks and the ICB. As is recorded in the notes subsequently circulated by the ICB (**Document 15**), the overall position in Northamptonshire was stated to be *"strong and improving"* and the following was noted in respect of the Contract: *"Positive trajectory with new clinicians, expanded capacity, and subcontracting support"*.

18. On 16 February 2026, the ICB emailed Rodericks*, inter alia*, in the following terms (**Document 16**):

    "I am writing to provide an update on the outcome of the four dental contracts, previously discussed in relation to potential rebasing (due to persistent underperformance over the last three financial years). On 12 February 2026, the East Midlands Dental Assurance and Improvement Group (DAIG) considered the submitted business case, and the outcomes are detailed below:

…

7536880001 (Harlestone Road Dental Practice)

Similarly, the committee was not sufficiently assured by the action plan submitted for Harlestone Road Dental practice. Again, despite the planned increase in performers [sic] *following a refurbishment, significant concerns were raised regarding the predicted delivery for the contract for 2025-26, which has been estimated as 60% (as this follows persistent and significant under-delivery for the contract over the past 3 years). As a result, the committee has approved the rebasing of this contract to its highest level of achievement over the last three years, representing a reduction of 5,182 UDAs, effective from 1 April 2026."*

Local Dispute Resolution

19. On 16 February 2026, Rodericks wrote to the ICB requesting that it reconsider its decision to unilaterally rebase the Contract (**Document 16**). In that email, Rodericks proposed that the rebased UDAs be *"held in a non-recurrent state for one year (2026/27)"* in order to:

    a. *"Provide the practices with a genuine opportunity to demonstrate delivery against the original contracted levels with the newly strengthened teams in place.*

    b. *Give the ICB a clear and structured period in which to gain assurance through enhanced monitoring and reporting.*

    c. *Provide the ICB with a straightforward mechanism to action a rebase next year should performance not meet expectations.*

    d. *Avoid irreversible contract variation decisions before the impact of recent improvements can be fully reflected and evidenced."*

20. On 26 February 2026 the ICB wrote to Rodericks in the following terms (**Document 16**):

    "We acknowledge the improvements you describe across the Northamptonshire practices and recognise the efforts made to strengthen workforce capacity, operational resilience and patient access. The progress achieved in recent months is noted and appreciated, however, following careful consideration, we are unable to agree to your proposal to hold the rebased UDAs in a non-recurrent position for 2026/27.

    As referenced previously, the decision to rebase the contracts was taken at the Dental Governance Meeting involving senior clinicians, public health colleagues, ICB representatives and commissioners. The discussion was detailed and considered the historic delivery position, trajectory data, contractual performance, recovery plans, and the wider commissioning responsibilities of the ICB in respect of equitable access and stewardship of NHS resources with all available options explored.

    After reviewing the full range of information and potential mechanisms, the collective view was that a permanent rebase represents the most appropriate and proportionate course of action. This decision reflects not only recent performance

but sustained contractual delivery over the full assessment period and our responsibility to ensure that commissioned UDAs are aligned with demonstrable and consistent capacity.

We fully appreciate the concerns you have raised regarding workforce stability and public perception. These factors were part of the wider discussion. However, the committee concluded that proceeding with the rebase provides clarity and enables the reallocation of capacity in line with population need and system priorities."

21. On 26 February 2026 Rodericks wrote to the ICB (**Document 17**). That letter:

    a. Stated that Rodericks did *"not accept the decision to proceed with unilateral rebasing, nor the assertion that the policy requirements for such a decision have been met"*.

    b. Highlighted that there was *"no evidence…to demonstrate that the required mid-year or year-end review meetings were arranged or attempted"* and that the evidential requirements set out at section 8.4.6 of the Policy Book had not been met.

    c. Noted that whilst the guidance *"requires that parties attempt to reach a mutual agreement regarding any variation to contract value or activity prior to unilateral action"* and whilst Rodericks had engaged with the ICB on several occasions, *"the process has not involved any structured attempt to reach a mutual agreement regarding contract value*" and *"the decisions communicated to us have been unilateral, issued without any meaningful discussion or negotiation on alternative approaches"*.

    d. Argued that the ICB's approach *"does not align with the requirements or the intent of the national guidance"* and that proceedings with a *"permanent rebase at this stage would not only disregard the significant process demonstrated across our practices, but would also have immediate and serious consequences, including the need to terminate several clinicians who have only recently been recruited to support service delivery".*

    e. *Requested the following:*

        - *"An immediate pause on issuing contract variations*
        - *A formal dispute resolution meeting with all parties present*
        - *Disclosure of the full evidential audit trail that the ICB believes supports the decision to rebase*
        - *Confirmation of the ICB's proposed formal governance pathway for handling this dispute"*

    f. Stated that *"we must formally register this as a contractual dispute and request escalation through the appropriate NHS governance mechanisms".*

22. On 4 March the ICB wrote to Rodericks (**Document 18**). That letter:

- Argued that the requirement of section 8.4.6 of the Policy Book was met in circumstances where *"a meeting was offered in each year of underperformance as part of the breach correspondence issued"*.

- Stated that the panel *"was not assured by the recovery plans submitted and concluded that, in light of the significant and sustained under-performance, a full rebase represented the most appropriate and proportionate cause of action"* and that the decision *"was therefore based on consistent and sustained under-performance against contractual requirements over the relevant review periods"*.

- Advised that if Rodericks disagreed with the decision to rebase, it *"may refer the matter to the NHS dispute resolution procedure by submitting a written request to NHS Resolution at: nhsr.appeals@nhs.net".*

23. Having exhausted local dispute resolution options with the ICB, Rodericks now seeks to refer the decision to permanently rebase the Contract to the Secretary of State in accordance with clause 280 of the Contract.

Legal position

24. The entitlement of the ICB to unilaterally rebase the Contract is derived from paragraph 61A of Schedule 3 to the Regulations which states as follows:

"61A.— *(1) In this paragraph—*

"contracted activity" means the number of units of dental activity or units of orthodontic activity the contractor is required to provide under the contract,

"Covid years" means the financial years ending on 31st March 2021 and 31st March 2022,

"rebasing" means a permanent variation of the contract pursuant to sub-paragraph (2) and "rebase" is to be read accordingly,

"rebasing date" means the date, notified by NHS England under a rebasing notice, from which the rebasing takes effect,

"rebasing notice" means a notice in writing sent by NHS England to the contractor, notifying the contractor of the wording of a proposed rebasing and the rebasing date,

"relevant financial years" means any three consecutive financial years, save for the Covid years, which—

(a) are not before the financial year ending on 31st March 2020, and

(b) immediately precede the financial year in which the rebasing notice is served on the contractor.

(2) If all the conditions in sub-paragraph (3) are met, NHS England may rebase the contract to—

(a) reduce the contracted activity,

(b) and carry out any related variations of the contract, including in relation to the monies to be paid to the contractor under the contract,

but the rebasing must not result in the contracted activity being reduced to less than the highest number of units of dental or orthodontic activity provided by the contractor in any one of the relevant financial years.

(3) The conditions referred to in sub-paragraph (2) are—

(a) in respect of each relevant financial year—

(i) NHS England invited the contractor to participate in a mid-year review of its performance under the contract, pursuant to paragraph 58(5)(b), whether the contractor has engaged with this procedure or not,

(ii) the contractor provided less than 96% of contracted activity,

(iii) there have not been force majeure circumstances under the contract, which have caused the under delivery pursuant to sub-paragraph (ii),

(iv) NHS England issued a breach notice to the contractor by reason of under delivery pursuant to sub-paragraph (ii), which has not been set aside, and no formal dispute is pending in respect of the circumstances that have given rise to the breach notice, and

(b) NHS England has not been able to agree with the contractor a permanent variation of the contract under paragraph 61(3).

(4) If NHS England decides to rebase a contract—

(a) it must serve a rebasing notice on the contractor and allow a minimum of 28 days, starting with the day the rebasing notice is served on the contractor, before taking any action pursuant to that notice, and

(b) it must specify in the rebasing notice a rebasing date it considers appropriate, which must be no earlier than 1st April in the financial year immediately following the financial year in which the rebasing notice is served on the contractor."

25. Paragraph 58 of Schedule 3, which is referred to in paragraph 61A(3)(a)(i) above, states as follows in respect of mid-year reviews:

*"**58.**— (1) This paragraph and paragraph 59 apply where services are to be provided under the contract from 1st April in any financial year.*

(2) In this paragraph and paragraph 59, references to requirements to provide units of dental activity or orthodontic activity are to such requirements under the terms of the contract giving effect to regulation 17 (units of dental activity) or 18 (units of orthodontic activity).

(3) NHS England shall, by 31st October in each financial year, determine the number of—

(a) units of dental activity; or

(b) units of orthodontic activity,

that the contractor has provided between 1st April and 30th September of that financial year based on the data provided to it by virtue of paragraph 38.

(4) Where NHS England determines under sub-paragraph (3) that the contractor has, between 1st April and 30th September, provided less than 30 per cent of the total number of—

(a) units of dental activity; or

(b) units of orthodontic activity,

that it is required to provide in that financial year, sub-paragraph (5) shall apply.

(5) Where this sub-paragraph applies, NHS England may—

(a) notify the contractor that it is concerned about the level of activity provided under the contract in the first half of the financial year, setting out—

(i) the number of units of dental activity or units of orthodontic activity (as the case may be) that it has determined that the contractor has provided; and

(ii) the percentage of the total number of units of dental activity or units of orthodontic activity (as the case may be) required to be provided during the financial year that the number in sub-paragraph (i) represents; and

(b) require in that notification that the contractor participate in a mid-year review of its performance in relation to the contract with NHS England.

(6) Where a mid-year review is required by NHS England pursuant to sub-paragraph (5), NHS England and the contractor shall discuss at that review—

(a) any written evidence the contractor puts forward to demonstrate that it has performed a greater number of units of dental activity or units of orthodontic activity during the first half of the financial year than those notified to it under sub-paragraph (5)(a)(i); and

(b) any reasons that the contractor puts forward for the level of activity in the first half of the financial year.

(7) NHS England 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.

(8) A copy of the final record of the mid-year review shall be sent to the contractor."

Rodericks' position

26. As set out above, pursuant to paragraph 61A(2) of Schedule 3 to the Regulations, the ICB is only entitled to rebase the Contract where the conditions at paragraph

61A(3) are met. Rodericks' position the conditions set out at paragraph 61A(3) have not been met and that the decision to rebase the Contract is therefore unlawful.

27. The ICB's position is that it has met the requirement to invite Rodericks to a mid-year review by virtue of the fact that *"a meeting was offered"* in the Breach Notices issued to Rodericks. Insofar as it is understood, this appears to be a reference to the fact that the Breach Notices included the following statement: *"If you do not agree with our decision, you should contact us within 28 days of this notice. If, after making every reasonable effort at the local resolution state, we are unable to resolve the dispute we will then provide you with the details of the next stages of dispute under the contract"*.

28. For the reasons which follow, the ICB's position is unsustainable:

    a. What paragraph 61A(3)(a)(i) requires is that in respect of each relevant financial year the ICB *"invited the contractor to participate in a mid-year review of its performance, **pursuant to paragraph 58(5)(b)**, whether the contractor has engaged with this procedure or not"* (emphasis added).

    b. Reading paragraphs 61A(3)(a)(i) and 58(5)(b) together, the ICB is required to have provided a notification to Rodericks *"that it is concerned about the level of activity provided under the contract **in the first half of the year**"* (being 1 April to 30 September) and to have required *"**in that notification** that the contractor participate in **a mid-year review** of its performance"* (emphasis added).

    c. A Breach Notice issued after the end of the financial year and relating to the delivery of UDAs over the whole course of that year cannot constitute a notice for the purposes of paragraph 58(5) which is specifically stated to relate to the first half of the year and to require inviting the contractor to a mid-year review. Evidently a mid-year review cannot take place after the year has finished.

    d. It follows that, in circumstances where the ICB did not invite Rodericks to a mid-year review pursuant to paragraph 58(5) in all (or any) of the financial years in question it is not entitled to unilaterally rebase the Contract under paragraph 61A and is in breach of contract for unlawfully attempting to do so.

29. Whilst it is not necessary to consider the position further in light of the ICB's clear failure to meet the conditions at paragraph 61A(3)(a), Rodericks also contends that the ICB has failed to meet the requirements at paragraph 61A(3)(b). As to this:

    a. Paragraph 61A(3)(b) requires that the ICB has *"not been able to agree with the contractor a permanent variation of the contract under paragraph 61(3)"*.

    b. Paragraph 61(3) states that *"both parties shall use their best endeavours to communicate and co-operate with each other with a view to determining what (if any) variation should be made"* to the number of UDAs.

c. Rodericks is concerned that the ICB has not used its best endeavours to communicate and co-operate with it to try to agree a variation. As to this:

i. The meeting at which the proposed rebasing of the Contract was discussed took place before Rodericks had the opportunity to submit an action plan setting out how it proposed to increase delivery of UDAs in the future.

ii. Whilst a second meeting took place on 13 January 2026, after Rodericks had submitted an action plan, its action plan was not discussed at all during that meeting, suggesting that the ICB had not properly considered Rodericks' recovery proposals.

iii. During the meetings which took place between the parties, the ICB did not entertain any alternative proposals, remedial plans or collaborative solutions in order to try to reach mutual agreement with Rodericks as to a variation to the number of UDAs before deciding, unilaterally, to rebase the Contract.

iv. The explanation given to Rodericks for the decision to unilaterally rebase the Contract does not refer to any of the details in the action plan, suggesting that the plan was not substantively reviewed.

v. Moreover, the panel which met on 12 February 2026 did not seek any clarifications as to Rodericks' proposals nor was Rodericks provided with the opportunity to refine or strengthen its proposals on the basis of any concerns raised by the panel.

vi. The above factors give rise to a concern that the decision to rebase has been taken without proper consideration of all of the issues and that the ICB has not used best endeavours to try to agree a variation with Rodericks before taking unilateral action.

Next steps

30. For the reasons set out in this letter, Rodericks seeks an immediate reversal of the decision of the ICB to rebase the Contract with effect from 1 April 2026.

31. Should you have any questions or require any further information from Rodericks in order to determine this appeal, please do not hesitate to contact this firm using the details set out at the top of this letter."

Representations

The Commissioner's representations

3.2 In a letter dated 23 April 2026 the Commissioner stated:

1. "This submission is made by the East Midlands Primary Care Team (EMPCT) on behalf of the Commissioner, NHS Northamptonshire Integrated Care Board (the ICB).

2. This submission is in response to Rodericks Dental Partners (Rodericks) referral of a dispute concerning the decision to rebase the Contract's Units of Dental Activity ("UDAs") with effect from 1 April 2026.

   Rodericks has challenged the lawfulness of the decision to rebase the Contract's Units of Dental Activity ("UDAs") with effect from 1 April 2026.

Background

3. We refer to Rodericks Application letter to NHS Resolution dated 18 March 2026 and agree that the background information provided accurately outlines the Contract held by Harlestone Dental Partnership (Rodericks) (listed in points 3 to 8 of the letter copied below):

   3. The contract forming the subject of the dispute is a Standard General Dental Services Contract entered into between NHS Northamptonshire and Dr B Kotecha on 3 March 2009 with reference 7536880001 (the Contract)

   4. The Contract has been varied as follows:

   a. In July 2009 to reflect changes in relevant legislation.

   b. In April 2019, to comply with the terms of relevant legislation.

   c. In August 2019, to change the contracting party was changed from an individual to a partnership with the name Harlestone Dental Partnership.

   d. In November 2019, to reflect a retirement from the partnership.

   e. In April 2022, to reflect a retirement from the partnership.

   f. In December 2024 in respect of the provision of services according to the Flexible Commissioning New Patient Dental Access Dental Care for High Needs/Vulnerable/Inclusion Groups Pilot 2024/25 Service.

   g. In August 2025 subcontracting of clinical matters was permitted.

   5. The parties to the Contract, and to this dispute are:

   a. Harlestone Dental Partnership (which, as set out above, is part of the Rodericks group); and

   b. NHS Northamptonshire Integrated Care Board, acting through the East Midlands Primary Care Team (the ICB).

   6. The regulatory framework in which the Contract operates is the National Health Service (General Dental Services Contracts) Regulations 2005, as amended (the Regulations).

   7. Pursuant to clause 14 of the Contract, it is not an NHS contract.

8. *Part 21 of the Contract concerns dispute resolution and provides as follows:*

   a. *Pursuant to clause 279, that the parties "must make every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings)".*

   b. *Pursuant to clause 280, that, for non-NHS contracts, "any dispute arising out of or in connection with the Contract, except disputes about matters dealt with under the complaints procedure pursuant to Part 20 of this Contract, may be referred for consideration and determination to the Secretary of State" if either "the PCT so wishes and the Contractor has agreed in writing" or "the Contractor so wishes (even if the PCT does not agree)".*

   c. *Pursuant to clause 281, that where a dispute is referred to the Secretary of State under clause 280 "the procedure to be followed is the NHS dispute resolution procedure, and the parties agree to be bound by any determination made by the adjudicator".*

   d. *Pursuant to clause 282, that the "NHS dispute resolution procedure applies in the case of any dispute arising out of or in connection with the Contract which is referred to the Secretary of State in accordance with…clause 280 and the PCT and the Contractor shall participate in the NHS dispute resolution procedure as set out in paragraphs 55 and 56 of Schedule 3 to the Regulations".*

4. Proposed rebasing of UDAs

The EMPCT refer to Rodericks Application letter to NHS Resolution dated 18 March 2026 and can comment as follows on the timeline of events and process followed outlined (in points 9 to 18 within the letter referenced below).

9. Clause 77 of the Contract states as follows: "The Contractor shall provide 13,200 units of dental activity during each financial year".

The EMPCT agrees that Clause 77 of the Contract is correctly outlined.

10. *On 12 October 2023, the ICB issued a Breach Notice in respect of the number of UDAs delivered under the Contract for the year 1 April 2022 to 31 March 2023.*

The EMPCT agrees that the ICB issued a Breach Notice in respect of the UDAs delivered under the Contract for the year 1 April 2022 to 31 March 2023. Within the Breach Notice dated 12 October 2023 **[Document 1]**, the following information was included:

" Units of dental activity to be provided.

77. The Contractor shall provide 13220 units of dental activity during each financial year.

We consider that you have breached this clause because:

- *You have not delivered the number of services specified in the Contract.*

- *Your year-end delivery was 8,035.20, any carry forward from the previous year has been included where applicable. Your contractual obligation was to deliver 13220.*

We require that you do not repeat this breach. […]

If you do not agree with our decision, you should contact us within 28 days of this notice. 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."

11. On 26 September 2024, the ICB issued a Breach Notice in respect of the number of UDAs delivered under the Contract for the year 1 April 2023 to 31 March 2024.

The EMPCT agrees that the ICB issued a Breach Notice in respect of the UDAs delivered under the Contract for the year 1 April 2023 to 31 March 2024. Within the Breach Notice dated 26 September 2024 **[Document 2]**, the following information was included:

"Units of dental activity to be provided

77. The Contractor shall provide 13,220 units of dental activity during each financial year.

We consider that you have breached this clause because

- *You have not delivered the number of services specified in the Contract.*

- *Your year-end delivery was 6,225.31. Your contractual obligation was to deliver 13,220.*

We require that you do not repeat this breach. […]

If you do not agree with our decision, you should contact us within 28 days of this notice. 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."

12. On 28 August 2025, the ICB issued a Breach Notice in respect of the number of UDAs delivered under the Contract for the year 1 April 2024 to 31 March 2025.

The EMPCT agrees that the ICB issued a Breach Notice in respect of the UDAs delivered under the Contract for the year 1 April 2024 to 31 March 2025. Within the Breach Notice dated 26 September 2024 **[Document 3]**, the following information was included:

"Units of dental activity to be provided

77. The Contractor shall provide 13,220 units of dental activity during each financial year.

We consider that you have breached this clause because

- *You have not delivered the number of services specified in the Contract.*
- *Your year-end UDA delivery was 7,919.34. Your contractual obligation was to deliver 13,220.*

We require that you do not repeat this breach. […]

If you do not agree with our decision, you should contact us within 28 days of this notice. 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."

13. On 28 October 2025, the ICB wrote to Harlestone Dental Partnership stating that it was "of the opinion that it is necessary to make a contract variation for a recurrent rebase of the contract's UDA target commencing on 1st April 2026 and that its intention was "to reduce the contracted UDAs from 13,220 to 8,038". As to the legislative basis for the reduction, the letter stated as follows:

"This is our standard process when a contract consistently under delivers and is in line with the [National Health Service (General Dental Services Contracts) Regulations 2005, s.3 Pt.9(61)], and Regulation 61A of the National Health Service (Primary Dental Services) Amendment Regulations 2023, and The National Health Service (Primary Dental Services and Dental Charges) (Amendment) Regulations 2024".

The EMPCT agrees that the EMPCT on behalf of the ICB wrote to Harlestone Dental Partnership **[Document 4]** on 28 October 2025 outlining the intention to reduce the contracted UDAs from 13,220 to 8,038.

Within this letter, the justification for the reduction was outlined as follows:

"As your contract has underperformed against its contractual delivery by more than 4% in 2024/25 which has resulted in a breach notice, we have undertaken a separate review of the year-end delivery position for the previous two years. Our records show that the contract was issued with a breach notice for under performance in 2022/23 and 2023/24 having delivered less than 96% of the contracted UDA activity for those years.

Following each year end, you have been informed of your contractual obligation and advised to address your performance issues. NHS Northamptonshire Integrated Care Board is therefore of the opinion that it is necessary to make a contract variation for a recurrent rebase of the contract's UDA target commencing on 1st April 2026. We wish to make the contract variation to reduce the likelihood of any further underperformances that would then result in further breach notices.

As per Regulation 61A of the National Health Service (Primary Dental Services) (Amendment) Regulations 2023, and The National Health Service (Primary Dental Services and Dental Charges) (Amendment) Regulations 2024 where a Contractor has delivered less than 96% of their annual contracted activity over a period of three

consecutive years, the Commissioner can take unilateral action to recurrently reduce the annual contract value and associated activity.

Our intention is to reduce the contracted UDAs from 13,220 to 8,038. The proposed change to your contract is to reduce to your highest performing year. As 2022/23 year was your highest performing year across the last 3 years, delivering 60.8%, the Commissioners propose your annual contract value and associated activity are reduced to the following from 01 April 2026."

Within the letter, the provider was offered the opportunity to meet with the EMPCT to discuss the rebasing of the activity.

14. Rodericks and the ICB attended a meeting on 9 December 2025 to commence discussions on the proposed rebasing of the Contract. During that meeting, Rodericks confirmed that it did not agree to the contracted UDAs being reduced.

The EMPCT agrees that as part of the process the Rodericks was offered the opportunity to meet with the EMPCT and a meeting was held via MS Teams to discuss the reduction of activity on 9 December 2025. Rodericks confirmed within the meeting that it was not in agreement with the UDAs being reduced. The EMPCT confirmed within the meeting that if the provider wanted to dispute the rebase, it could submit a business case, which would be taken to the Commissioning governance panel for consideration.

15. In advance of the meeting on 9 December 2025, Rodericks had requested evidence that the ICB had "attempted to hold an annual or mid-year review with the Contractor each year of under-performance" as set out at paragraph 8.4.6 of the NHS Policy Book for Primary Dental Services (the Policy Book). In response, the ICB stated that each of the breach notices issued "includes a review of the Contractor's annual performance for the relevant year, together with an offer to meet within 28 days should the Contractor wish to dispute any aspect of that review". On 19 December 2025, Rodericks set out its position that the required reviews did not take place and that the "inclusion of annual performance data within a notice, accompanied by a 28-day period to challenge the content, does not constitute a formal review and does not meet the standards set out in NHS guidance".

It is acknowledged that on the 9 December 2025 the EMPCT received an email from Rodericks in reference to multiple contracts where rebasing was being discussed. Rodericks queried the process followed by the EMPCT with regards to the rebasing **[Document 5]**:

"The Commissioner must be able to evidence that:

• they have attempted to hold an annual or mid-year review with the Contractor for each year of under-performance

• the Contractor has been issued with breach notices in each year of underperformance

• that they can evidence that they have been unable to reach a mutual agreement on a reduction in the annual contract value and associated activity"

The EMPCT confirmed that *"as set out in the breach notices issued, each notice includes a review of the Contractor's annual performance for the relevant year,*

together with an offer to meet within 28 days should the Contractor wish to dispute any aspect of that review.[…]"

Rodericks responded on 19 December 2025 and reiterated that they remained in dispute regarding this matter as they did not consider that the processes followed constituted a formal review **[Document 5]**.

The EMPCT responded on 24 December 2025 to acknowledge that Rodericks remained in dispute regarding the interpretation of the review process and advised that once the business cases were submitted these would be considered as part of the governance process **[Document 5]**.

16. On 9 January 2026 Rodericks submitted a Delivery Action Plan in respect of the Contract.

It is agreed that the EMPCT received the Delivery Action Plan (business case) **[Document 6]** on 9 January 2026 which outlined the practice plans to improve delivery.

The business case outlined why the practice considered that the contract should not be rebased.

The EMPCT reviewed the business plan, and this was presented to the East Midlands Dental Assurance and Information Group (DAIG), the formal governance forum for dental Commissioning decisions, for consideration on the 12 February 2026.

17. On 13 January 2026, a standard quarterly meeting took place between Rodericks and the ICB. As is recorded in the notes subsequently circulated by the ICB, the overall position in Northamptonshire was stated to be "strong and improving" and the following was noted in respect of the Contract: "Positive trajectory with new clinicians, expanded capacity, and subcontracting support".

The EMPCT can confirm that the quarterly meeting between Rodericks and the EMPCT took place on 13 January 2026. This is a scheduled meeting between the parties to discuss all contracts across the East Midlands geography. It is an opportunity to review delivery and discuss any issues. It was discussed during the meeting that the business cases had been received and would be presented to governance on 12 February 2026.

Although formal minutes are not produced for these meetings, brief notes are taken, and these were circulated by the EMPCT which summarised discussions and updates from the practices.

18. On 16 February 2026, the ICB emailed Rodericks, in the following terms: "I am writing to provide an update on the outcome of the four dental contracts, previously discussed in relation to potential rebasing (due to persistent underperformance over the last three financial years). On 12 February 2026, the East Midlands Dental Assurance and Improvement Group (DAIG) considered the submitted business case, and the outcomes are detailed below: 7536880001 (Harlestone Road Dental Practice) Similarly, the committee was not sufficiently assured by the action plan submitted for Harlestone Road Dental practice. Again, despite the planned increase in performers following a refurbishment, significant concerns were raised regarding the predicted delivery for the contract for 2025-26, which has been estimated as 60% (as this follows persistent and significant under-delivery for the contract over the past

3 years). As a result, the committee has approved the rebasing of this contract to its highest level of achievement over the last three years, representing a reduction of 5,182 UDAs, effective from 1 April 2026."

The EMPCT can confirm that the outcome from the DAIG meeting (12 February 2026) was communicated to Rodericks on 16 February 2026 **[Document 7].**

The EMPCT can confirm that DAIG was quorate as per the Terms of Reference **[Document 8]**.

The Contractor's proposal was reasonably rejected by the panel because:

a. It relied on future, unproven workforce improvements;

b. It did not adequately explain three years of sustained underperformance;

c. The forecast delivery for 2025-26 remained significantly below contractual levels (60%).

The DAIG panel concluded that the plan did not provide sufficient assurance of recovery and did not justify maintaining the existing UDA level.

The DAIG panel were not assured that the plans outlined by the practice gave sufficient assurance that delivery would improve. The practice was anticipating a fourth year of underperformance in 2025-26.

As per 8.4.3 and 8.4.4 of the Policy book for Primary Dental Services (published 16 April 2018, last updated 20 August 2024) **[Document 9]**, providers are expected to deliver 96% in order to be considered within the tolerance for delivery. The contract had delivered as per below:

• 2022–2023: 8,035 UDAs (60.80%)

• 2023–2024: 6,225 UDAs (47%)

• 2024–2025: 7,919 UDAs (59.90%)

5. Local Dispute Resolution

The EMPCT refer to Rodericks Application letter to NHS Resolution dated 18 March 2026 and can comment as follows with regards to the Local Dispute Resolution process (in points 19 to 25 referenced below).

19. "On 16 February 2026, Rodericks wrote to the ICB requesting that it reconsider its decision to unilaterally rebase the Contract. In that email, Rodericks proposed that the rebased UDAs be "held in a non-recurrent state for one year (2026/27)" in order to:

• "Provide the practices with a genuine opportunity to demonstrate delivery against the original contracted levels with the newly strengthened teams in place.

• Give the ICB a clear and structured period in which to gain assurance through enhanced monitoring and reporting.

• Provide the ICB with a straightforward mechanism to action a rebase next year should performance not meet expectations.

• Avoid irreversible contract variation decisions before the impact of recent improvements can be fully reflected and evidenced."

The EMPCT can confirm receipt of the correspondence on the 16 February 2026 **[Document 10]**.

20. On 26 February 2026 the ICB wrote to Rodericks in the following terms:

"We acknowledge the improvements you describe across the Northamptonshire practices and recognise the efforts made to strengthen workforce capacity, operational resilience and patient access. The progress achieved in recent months is noted and appreciated, however, following careful consideration, we are unable to agree to your proposal to hold the rebased UDAs in a non-recurrent position for 2026/27.

As referenced previously, the decision to rebase the contracts was taken at the Dental Governance Meeting involving senior clinicians, public health colleagues, ICB representatives and commissioners. The discussion was detailed and considered the historic delivery position, trajectory data, contractual performance, recovery plans, and the wider commissioning responsibilities of the ICB in respect of equitable access and stewardship of NHS resources with all available options explored.

After reviewing the full range of information and potential mechanisms, the collective view was that a permanent rebase represents the most appropriate and proportionate course of action. This decision reflects not only recent performance but sustained contractual delivery over the full assessment period and our responsibility to ensure that commissioned UDAs are aligned with demonstrable and consistent capacity.

We fully appreciate the concerns you have raised regarding workforce stability and public perception. These factors were part of the wider discussion. However, the committee concluded that proceeding with the rebase provides clarity and enables the reallocation of capacity in line with population need and system priorities."

The EMPCT can confirm this response was issued on 26 February 2026 **[Document 11].**

21. On 26 February 2026 Rodericks wrote to the ICB. That letter:

a. Stated that Rodericks did "not accept the decision to proceed with unilateral rebasing, nor the assertion that the policy requirements for such a decision have been met".

b. Highlighted that there was "no evidence…to demonstrate that the required midyear or year-end review meetings were arranged or attempted" and that the evidential requirements set out at section 8.4.6 of the Policy Book had not been met.

c. Noted that whilst the guidance "requires that parties attempt to reach a mutual agreement regarding any variation to contract value or activity prior to unilateral action" and whilst Rodericks had engaged with the ICB on several occasions, "the process has not involved any structured attempt to reach a mutual agreement regarding contract value" and "the decisions communicated to us have been

unilateral, issued without any meaningful discussion or negotiation on alternative approaches".

d. Argued that the ICB's approach "does not align with the requirements or the intent of the national guidance" and that proceedings with a "permanent rebase at this stage would not only disregard the significant process demonstrated across our practices, but would also have immediate and serious consequences, including the need to terminate several clinicians who have only recently been recruited to support service delivery".

e. Requested the following:

- *"An immediate pause on issuing contract variations*
- *A formal dispute resolution meeting with all parties present*
- *Disclosure of the full evidential audit trail that the ICB believes supports the decision to rebase*
- *Confirmation of the ICB's proposed formal governance pathway for handling this dispute"*

f. Stated that "we must formally register this as a contractual dispute and request escalation through the appropriate NHS governance mechanisms".

The EMPCT can confirm receipt of the correspondence **[Document 12]** on the 26 February 2026.

22. On 4 March the ICB wrote to Rodericks. That letter:

a. Argued that the requirement of section 8.4.6 of the Policy Book was met in circumstances where "a meeting was offered in each year of underperformance as part of the breach correspondence issued".

b. Stated that the panel "was not assured by the recovery plans submitted and concluded that, in light of the significant and sustained under-performance, a full rebase represented the most appropriate and proportionate cause of action" and that the decision "was therefore based on consistent and sustained underperformance against contractual requirements over the relevant review periods".

c. Advised that if Rodericks disagreed with the decision to rebase, it "may refer the matter to the NHS dispute resolution procedure by submitting a written request to NHS Resolution at: nhsr.appeals@nhs.net".

The EMPCT can confirm this response was issued on 4 March 2026 **[Document 13]**.

6. Legal position

The EMPCT refer to Rodericks Application letter to NHS Resolution dated 18 March 2026 and agrees the information outlined (in points 24 and 25 of the letter) copied below accurately reflects paragraph 61A of Schedule 3 to the Regulations and Paragraph 58, Part 8 of Schedule 3).

24. The entitlement of the ICB to unilaterally rebase the Contract is derived from paragraph 61A of Schedule 3 to the Regulations which states as follows:

"61A.— (1) In this paragraph—

"contracted activity" means the number of units of dental activity or units of orthodontic activity the contractor is required to provide under the contract,

"Covid years" means the financial years ending on 31st March 2021 and 31st March 2022, "rebasing" means a permanent variation of the contract pursuant to sub-paragraph (2) and "rebase" is to be read accordingly,

"rebasing date" means the date, notified by NHS England under a rebasing notice, from which the rebasing takes effect,

"rebasing notice" means a notice in writing sent by NHS England to the contractor, notifying the contractor of the wording of a proposed rebasing and the rebasing date,

"relevant financial years" means any three consecutive financial years, save for the Covid years, which—

> *(a) are not before the financial year ending on 31st March 2020, and*
>
> *(b) immediately precede the financial year in which the rebasing notice is served on the contractor.*

(2) If all the conditions in sub-paragraph (3) are met, NHS England may rebase the contract to—

> *(a) reduce the contracted activity,*
>
> *(b) and carry out any related variations of the contract, including in relation to the monies to be paid to the contractor under the contract, but the rebasing must not result in the contracted activity being reduced to less than the highest number 6 of units of dental or orthodontic activity provided by the contractor in any one of the relevant financial years.*

(3) The conditions referred to in sub-paragraph (2) are—

> *(a) in respect of each relevant financial year—*
>
> > *(i) NHS England invited the contractor to participate in a mid-year review of its performance under the contract, pursuant to paragraph 58(5)(b), whether the contractor has engaged with this procedure or not,*
> >
> > *(ii) the contractor provided less than 96% of contracted activity,*
> >
> > *(iii) there have not been force majeure circumstances under the contract, which have caused the under delivery pursuant to subparagraph (ii),*
> >
> > *(iv) NHS England issued a breach notice to the contractor by reason of under delivery pursuant to sub-paragraph (ii), which has not been*

set aside, and no formal dispute is pending in respect of the circumstances that have given rise to the breach notice, and

(b) NHS England has not been able to agree with the contractor a permanent variation of the contract under paragraph 61(3).

(4) If NHS England decides to rebase a contract—

(a) it must serve a rebasing notice on the contractor and allow a minimum of 28 days, starting with the day the rebasing notice is served on the contractor, before taking any action pursuant to that notice, and

(b) it must specify in the rebasing notice a rebasing date it considers appropriate, which must be no earlier than 1st April in the financial year immediately following the financial year in which the rebasing notice is served on the contractor."

25. Paragraph 58 of Schedule 3, which is referred to in paragraph 61A(3)(a)(i) above, states as follows in respect of mid-year reviews:

"58.— (1) This paragraph and paragraph 59 apply where services are to be provided under the contract from 1st April in any financial year.

(2) In this paragraph and paragraph 59, references to requirements to provide units of dental activity or orthodontic activity are to such requirements under the terms of the contract giving effect to regulation 17 (units of dental activity) or 18 (units of orthodontic activity).

(3) NHS England shall, by 31st October in each financial year, determine the number of—

(a) units of dental activity; or

(b) units of orthodontic activity, that the contractor has provided between 1st April and 30th September of that financial year based on the data provided to it by virtue of paragraph 38.

(4) Where NHS England determines under sub-paragraph (3) that the contractor has, between 1st April and 30th September, provided less than 30 per cent of the total number of—

(a) units of dental activity; or

(b) units of orthodontic activity, that it is required to provide in that financial year, sub-paragraph (5) shall apply.

(5) Where this sub-paragraph applies, NHS England may—

(a) notify the contractor that it is concerned about the level of activity provided under the contract in the first half of the financial year, setting out—

(i) the number of units of dental activity or units of orthodontic activity (as the case may be) that it has determined that the contractor has provided; and

(ii) the percentage of the total number of units of dental activity or units of orthodontic activity (as the case may be) required to be provided during the financial year that the number in sub-paragraph (i) represents; and

(b) require in that notification that the contractor participate in a mid-year review of its performance in relation to the contract with NHS England.

(6) Where a mid-year review is required by NHS England pursuant to subparagraph (5), NHS England and the contractor shall discuss at that review—

(a) any written evidence the contractor puts forward to demonstrate that it has performed a greater number of units of dental activity or units of orthodontic activity during the first half of the financial year than those notified to it under sub-paragraph (5)(a)(i); and

(b) any reasons that the contractor puts forward for the level of activity in the first half of the financial year.

(7) NHS England 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.

(8) A copy of the final record of the mid-year review shall be sent to the contractor."

7. Rodericks' position

The EMPCT refer to Rodericks Application letter to NHS Resolution dated 18 March 2026 and Rodericks' position (outlined in points 26 to 28 copied below):

26. As set out above, pursuant to paragraph 61A(2) of Schedule 3 to the Regulations, the ICB is only entitled to rebase the Contract where the conditions at paragraph 61A(3) are met. Rodericks' position the conditions set out at paragraph 61A(3) have not been met and that the decision to rebase the Contract is therefore unlawful.

27. The ICB's position is that it has met the requirement to invite Rodericks to a midyear review by virtue of the fact that "a meeting was offered" in the Breach Notices issued to Rodericks. Insofar as it is understood, this appears to be a reference to the fact that the Breach Notices included the following statement: "If you do not agree with our decision, you should contact us within 28 days of this notice. If, after making every reasonable effort at the local resolution state, we are unable to resolve the dispute we will then provide you with the details of the next stages of dispute under the contract".

28. For the reasons which follow, the ICB's position is unsustainable:

a. What paragraph 61A(3)(a)(i) requires is that in respect of each relevant financial year the ICB "invited the contractor to participate in a mid-year review of its performance, pursuant to paragraph 58(5)(b), whether the contractor has engaged with this procedure or not" (emphasis added).

b. Reading paragraphs 61A(3)(a)(i) and 58(5)(b) together, the ICB is required to have provided a notification to Rodericks "that it is concerned about the level of activity provided under the contract in the first half of the year" (being

1 April to 30 September) and to have required "in that notification that the contractor participate in a mid-year review of its performance" (emphasis added).

c. A Breach Notice issued after the end of the financial year and relating to the delivery of UDAs over the whole course of that year cannot constitute a notice for the purposes of paragraph 58(5) which is specifically stated to relate to the first half of the year and to require inviting the contractor to a mid-year review. Evidently a mid-year review cannot take place after the year has finished.

d. It follows that, in circumstances where the ICB did not invite Rodericks to a mid-year review pursuant to paragraph 58(5) in all (or any) of the financial years in question it is not entitled to unilaterally rebase the Contract under paragraph 61A and is in breach of contract for unlawfully attempting to do so.

The EMPCT relies on paragraph 61A of Schedule 3 to the Regulations **[Document 14]** and confirms as follows in response to Rodericks' position:

Rebasing is permitted where the conditions in paragraph 61A(3) are satisfied, including:

a. The Contractor has delivered less than 96% of contracted activity in each relevant year;

b. Breach notices have been issued;

c. The Commissioner has invited the Contractor to participate in performance review processes;

d. The Commissioner has not been able to agree a variation with the Contractor.

The EMPCT considers that the processes followed are compliant with the points above.

In each relevant year, the EMPCT has:

a. Set out the Contractor's activity levels and achievement at both the mid-year point and at year end with the issue of review letters;

b. Issued formal breach notices identifying underperformance

c. Invited the Contractor to engage within 28 days in order to challenge or discuss the findings;

As part of the rebase process, the EMPCT has:

d. Offered further engagement and escalation mechanisms to consider the alternative proposals put forward by Rodericks. Their proposal to not proceed with the rebase was taken through governance and considered by the DAIG panel.

The steps followed by the EMPCT brought performance concerns clearly to Rodericks' attention and provided a structured opportunity to engage and respond to this.

With regards to specific points raised regarding the Mid-Year Review Requirement, the EMPCT relies on paragraph 58, Part 8 of Schedule 3 to the Regulations **[Document 15]** and confirms as follows in response to Rodericks' position:

Paragraph 61A(3)(a)(i) requires that the Commissioner:

"invited the contractor to participate in a mid-year review of its performance under the contract, pursuant to paragraph 58(5)(b), whether the contractor has engaged with this procedure or not"

The Regulation does not prescribe:

- A rigid form of invitation;
- A mandatory format for the review;
- Nor that a formal meeting must ultimately take place.

As part of the mid-year review processes, review letters were issued to Rodericks outlining their delivery for the years 2022-23 **[Document 16],** 2023-24 **[Document 17]** and 2024-25 **[Document 18]**.

The EMPCT refer to Rodericks Application letter to NHS Resolution dated 18 March 2026 and Rodericks' position (outlined in point 29 below):

29. Whilst it is not necessary to consider the position further in light of the ICB's clear failure to meet the conditions at paragraph 61A(3)(a), Rodericks also contends that the ICB has failed to meet the requirements at paragraph 61A(3)(b). As to this:

a. Paragraph 61A(3)(b) requires that the ICB has "not been able to agree with the contractor a permanent variation of the contract under paragraph 61(3)".

b. Paragraph 61(3) states that "both parties shall use their best endeavours to communicate and co operate with each other with a view to determining what (if any) variation should be made" to the number of UDAs.

c. Rodericks is concerned that the ICB has not used its best endeavours to communicate and co operate with it to try to agree a variation. As to this:

I. The meeting at which the proposed rebasing of the Contract was discussed took place before Rodericks had the opportunity to submit an action plan setting out how it proposed to increase delivery of UDAs in the future.

II. Whilst a second meeting took place on 13 January 2026, after Rodericks had submitted an action plan, its action plan was not discussed at all during that meeting, suggesting that the ICB had not properly considered Rodericks' recovery proposals.

III. During the meetings which took place between the parties, the ICB did not entertain any alternative proposals, remedial plans or collaborative solutions in order to try to reach mutual agreement with Rodericks as to a variation to the number of UDAs before deciding, unilaterally, to rebase the Contract.

IV. The explanation given to Rodericks for the decision to unilaterally rebase the Contract does not refer to any of the details in the action plan, suggesting that the plan was not substantively reviewed.

V. Moreover, the panel which met on 12 February 2026 did not seek any clarifications as to Rodericks' proposals nor was Rodericks provided with the opportunity to refine or strengthen its proposals on the basis of any concerns raised by the panel.

VI. The above factors give rise to a concern that the decision to rebase has been taken without proper consideration of all of the issues and that the ICB has not used best endeavours to try to agree a variation with Rodericks before taking unilateral action."

The EMPCT relies on paragraph 61A of Schedule 3 to the Regulations **[Document 14]** and confirms as follows in response to Rodericks' position:

Paragraph 61A(3)(b) requires the parties to use best endeavours to agree a variation.

This does not require:

- Agreement to be reached;
- Indefinite negotiation;
- Acceptance of proposals lacking sufficient evidential basis.
- The EMPCT did fully consider all of Rodericks' proposals. This included the business case which was shared this with the DAIG governance panel to reach a decision and the follow up email correspondence where a non-recurrent hold was requested.

With regards to the concerns raised regarding "best endeavours" the EMPCT considers that there has been appropriate engagement throughout the process.

With specific regard to the points raised by Rodericks the EMPCT can comment as follows:

c. Rodericks is concerned that the ICB has not used its best endeavours to communicate and co operate with it to try to agree a variation. As to this:

I. The meeting at which the proposed rebasing of the Contract was discussed took place before Rodericks had the opportunity to submit an action plan setting out how it proposed to increase delivery of UDAs in the future.

The initial conversation was an opportunity to talk in more detail regarding the rationale for the rebase. The EMPCT also confirmed as part of this meeting the

process by which Rodericks could submit their own proposals. As a result of this meeting, the EMPCT invited and received the delivery action plan (business case).

> *II. Whilst a second meeting took place on 13 January 2026, after Rodericks had submitted an action plan, its action plan was not discussed at all during that meeting, suggesting that the ICB had not properly considered Rodericks' recovery proposals.*

The EMPCT can confirm that the meeting on 13 January 2026 was not a meeting specifically to discuss rebases and was as confirmed by Rodericks within their representations "a standard quarterly meeting." The purpose of the meeting was to get updates on contracts across the East Midlands patch.

> *III. During the meetings which took place between the parties, the ICB did not entertain any alternative proposals, remedial plans or collaborative solutions in order to try to reach mutual agreement with Rodericks as to a variation to the number of UDAs before deciding, unilaterally, to rebase the Contract.*

The EMPCT can confirm that Rodericks was given the opportunity to suggest alternative proposals as part of their business case submission. Any options of alternative rebase values would have then been evaluated and considered.

> *IV. The explanation given to Rodericks for the decision to unilaterally rebase the Contract does not refer to any of the details in the action plan, suggesting that the plan was not substantively reviewed.*

The EMPCT can confirm that for each case presented to the panel, the action plan was substantively reviewed and evaluated, however the significance of the under delivery was a risk that was not countered by the information in the action plan.

> *V. Moreover, the panel which met on 12 February 2026 did not seek any clarifications as to Rodericks' proposals nor was Rodericks provided with the opportunity to refine or strengthen its proposals on the basis of any concerns raised by the panel.*

The EMPCT can confirm that had any clarification questions been raised by the panel, following the review of the action plan, these would have been shared with Rodericks for comment. However, there were no clarification questions posed as part of the DAIG meeting. The provider business case was shared with DAIG along with historic delivery data and current projections for the year 2025-26. DAIG also had sight of the rationale for rebasing and as such had the information required to make an informed decision.

> *VI. The above factors give rise to a concern that the decision to rebase has been taken without proper consideration of all of the issues and that the ICB has not used best endeavours to try to agree a variation with Rodericks before taking unilateral action."*

The EMPCT met with the Contractor to discuss performance and rebasing and invited and received a Delivery Action Plan (business case). Their case was reviewed and considered by a formal governance panel to ensure that the case was fully evaluated. All of Rodericks' subsequent communications were also reviewed, considered and

responded to. As such the EMPCT considers that Rodericks proposals were actively considered and accordingly, the requirement to use best endeavours was satisfied.

In conclusion Rodericks' proposal to not proceed with the rebase of the contract was reasonably rejected by the EMPCT and as such the decision of the EMPCT acting on behalf of the ICB to rebase the Contract with effect from 1 April 2026 should stand.

The EMPCT considers that process has been fair to the provider. As part of the process Rodericks':

- Received repeated notifications of underperformance;

- Was offered opportunities to engage and as part of this engagement attended meetings with the EMPCT and had the opportunity to submit a business case for consideration

The rebase decision itself is based on three consecutive years of significant underperformance and the lack of confidence in future delivery by the contract. The rebased figure reflects the highest level of delivery achieved and is in accordance with 61A(2) of the Regulations.

The EMPCT acts on behalf of the ICB as the Commissioner. The Commissioner is responsible for ensuring effective use of NHS resources and maximising patient access to dental services.

Persistently undelivered UDAs represent lost clinical capacity and as a result reduced access for patients. Therefore, rebasing enables the future reallocation of resources to providers able to deliver care and the alignment of commissioned activity with demonstrable capacity.

The decision was therefore necessary and proportionate in the public interest.

Should any further information be required from the EMPCT in order to determine this appeal, please do not hesitate to contact us using the details set out at the top of this letter."

Observations

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

3.3 In a letter dated 18 May 2026, HCR Law on behalf of the Contractor stated:

1. "We refer to your letter 5 May 2026, and the representations dated 24 April 2026 made by East Midlands Primary Care Team on behalf of the NHS Northamptonshire Integrated Care Board (the **ICB**) which were enclosed thereto.

2. This letter sets out Rodericks' observations on the ICB's representations. In circumstances where a large part of the ICB's letter merely repeats the background as set out in our letter of 18 March 2026, Roderick's comments are focused on the two issues in dispute, being:

    a. Whether the ICB complied with paragraph 61A(3)(a)(i) of Schedule 3 to the Regulations.

b. Whether the ICB complied with paragraph 61A(3)(b) of Schedule 3 to the Regulations.

Paragraph 61A(3)(a)(i)

3. Rodericks does not accept the ICB's summary of the requirements of paragraph 61(A)(3) at page 15 of its letter. In particular:

    a. It is not correct that the conditions include that *"The Commissioner has invited the Contractor to participate in performance review processes"*.

    b. As is subsequently recognised by the ICB on page 16 of its letter, what paragraph 61(A)(3) actually requires is that the Commission has *"invited the contractor to participate in a mid-year review of its performance of the contract pursuant to paragraph 58(5)(b)"* (emphasis added).

4. As to the ICB's statement that the Regulations do not provide a *"rigid form of interview"*, a *"mandatory format for the review"*, nor that *"a formal meeting must ultimately take place"*:

    a. Paragraph 58(6) states as follows:

    "Where a mid-year review is required by [the Commissioner] pursuant to sub-paragraph (5), [the Commissioner] and the contractor ***shall discuss at that review****…"* (emphasis added).

    b. Paragraph 58(7) requires that the Commissioner 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"* (emphasis added).

    c. Paragraph 58(7) requires that a *"copy of the final record of the mid-year review shall be sent to the contractor"*.

    d. It follows that it is clearly envisaged by the Regulations that the mid-year review will take the form of a discussion between the parties which will be followed up by a final written report of that discussion.

    e. Whilst Rodericks accepts that the condition at paragraph 61A(3)(a)(i) does not require that a formal meeting ultimately takes place, that paragraph does require the Commissioner to have invited the contractor to participate in a discussion.

5. Insofar as it is understood, the ICB's position appears to be that it met the requirement of paragraph 61A(3)(a)(i) by virtue of the fact that *"[a]s part of the mid-year review processes, review letters were issued to Rodericks outlining their delivery"*. Rodericks submits that this position misunderstands the requirements of paragraph 58(5)(b) and that the issuing of review letters does not in and of itself meet the requirements of paragraph 61A(3)(a)(i). As to this:

    a. The issuing of review letters is provided for in paragraph 58(5)(a) which states that, where the subcontractor has provided less than 30% of the contracted level of UDAs that it required to deliver in that financial year, the Commission may:

"notify the contractor that it is concerned about the level of activity provided under the contract in the first half of the financial year, setting out –

i. *the number of units of dental activity or units of orthodontic activity (as the case may be) that it has determined that the contractor has provided; and*

ii. *the percentage of the total number of units or units of orthodontic activity (as the case may be) required to be provided during the financial year that the number in sub-paragraph (i) represents"*

b. The condition at paragraph 61A(3)(a)(i) is concerned with paragraph 58(5)(b) which states that the Commissioner may:

"require in that notification that the contractor participate in a mid-year review of its performance…"

c. It follows that it is not enough for the ICB to have notified Rodericks that it was concerned about the level of activity provided in the first half the year, but it must also have required *"in that notification"* that Rodericks participate in a mid-year review.

6. The ICB has provided at Appendices 16 to 18 the mid-year letters it sent to Rodericks in respect of each of the years 2022-23, 2023-24 and 2024-25. For the reasons set out below, Rodericks submits that these letters did not meet the requirements of paragraph 61A(3)(a)(i) as they did not invite Rodericks to participate in a mid-year review in accordance with paragraph 58(5)(b). As to this:

a. The letter at Appendix 16 dated 2 December 2022 stated that for the year 2022-23 Rodericks was *"not required to participate in a mid-year review"*.

b. The letter at Appendix 17 dated 30 October 2023 stated that for the year 2023-24, Rodericks was *"required to complete an action plan"* and *"**may** be contacted by your local commissioning team to request that you participate in a formal mid-year review meeting"* (emphasis added). Rodericks submits that this passing reference to the possibility of being invited to a mid-year review meeting does not and cannot constitute a requirement *"that the contractor participate in a mid-year review of its performance"* pursuant to paragraph 58(5)(b), as interpreted in accordance with paragraph 58(6) which clarifies that the mid-year review is to take the form of a discussion.

c. The letter at Appendix 18 dated 31 October 2024 did not require Rodericks to participate in a mid-year review for the year 2024-25.

d. It follows that the ICB cannot be said to have complied with the requirement at paragraph 61A(3)(a)(i) that in respect of each financial year, the ICB invited Rodericks to participate in a mid-year review of its performance.

7. As to whether the ICB complied with paragraph 61A(3)(b) of Schedule 3 to the Regulations:

a. Rodericks maintains that the ICB cannot be said to have used *"best endeavours"* to communicate and co-operate with it with a view to determining what if any variation should be made to the number of UDAs in circumstances where the ICB did not give Rodericks any opportunity to discuss or refine its action plan.

b. As such, there was no meaningful engagement between the parties as to the ICB's concerns and Rodericks was not afforded the opportunity to propose practical mitigations to any concerns which the IBC still had as to its ability to deliver under the contract following review of its action plan.

8. For the reasons set out above and in our letter of 18 March 2026, Rodericks submits that the decision to unilaterally rebase the contract was taken unlawfully and should be immediately reversed."

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 parties (the "**Contract**").

4.2 I have considered whether local dispute resolution has taken place. On the information provided, both parties agree that local dispute resolution was engaged in and subsequently exhausted, following correspondence between the parties. Consequently, I will proceed to consider the matter before me.

4.3 I note that the dispute concerns the Commissioner's proposal to vary the Contract, rebasing the Contract in accordance with Paragraph 61A of Schedule 3 to the Regulations ("**Paragraph 61A**"). The Commissioner stated that due to underperformance against the Contractor's contractual delivery, by more than 4%, across three years, such rebasing was necessary to reduce the likelihood of any further underperformance. I note that under Paragraph 61 of Schedule 3 to the Regulations the parties can vary the Contract by way of agreement. However, in this case, the Contractor subsequently refused the rebasing, setting out its alternative position and reasons for disagreement. Nevertheless, the parties have been unable to reach an agreement in relation to rebasing the Contract, and as such the Commissioner has proposed to do so unilaterally, using the mechanism set out in Paragraph 61A.

4.4 I note that Paragraph 61A permits the Commissioner to reduce contracted activity, and to make related variations to the Contract, including in relation to the monies payable under the Contract, where all of the conditions in Paragraph 61A(3) are satisfied. As such, I consider it necessary to start by considering said conditions. Paragraph 61A(3)(a)(i) requires that in respect of each relevant financial year, the Commissioner should invite the Contractor to participate in a mid-year review of its performance under the Contract, pursuant to Paragraph 58(5)(b) of Schedule 3, whether or not the Contractor engaged with that procedure.

4.5 I note that there is a dispute between the parties as to whether this first condition has been met. Paragraph 61A defines the relevant financial years as any three consecutive financial years which immediately precede the financial year in which the rebasing notice is served on the Contractor. I consequently consider those years to be 2022/2023, 2023/2024, and 2024/2025. I note that the language of Paragraph

61A(3)(a)(i) is precise in its requirements and as such I will break down the relevant aspects and consider whether they have been met, based on the evidence provided.

4.6 I note that the Commissioner has provided me with the mid-year review letter for 2022/2023. The Contractor has commented in its observations that the letter itself notes that due to the Contractor having delivered more than 30% of its 2022/2023 contracted activity, it was not required to participate in a mid-year review.

4.7 I note that Paragraph 58(5)(b) of Schedule 3 to the Regulations states that, where the sub-section applies, a Commissioner may require a Contractor to participate in a mid-year review of its performance. The application of Paragraph 58(5) is set out in sub-paragraph (4), which specifies that it only applies where, between 1 April and 30 September, the Contractor has provided less than 30% of the total contracted activity that it was required to provide that financial year. I therefore consider that a mid-year review, for the purposes of Paragraph 61A, may only be properly carried out in circumstances where there is an under-delivery, and it is not a discretionary procedure that can be invoked by the Commissioner at will.

4.8 Given that, as per the Commissioner's evidence, the Contractor had provided more than 30% of its contracted activity, I consider that the Commissioner could not have required the Contractor to participate in a mid-year review for the year 2022/2023, in accordance with Paragraph 58(5)(b) of Schedule 3 to the Regulations.

4.9 I also note that a similar letter was sent for the year 2024/2025, and that the Contractor had during that year similarly provided 30% or more of its contracted activity. I consider that the same reasoning applies. As the Contractor had provided 30% or more of its contracted activity, the Commissioner could not have required the Contractor to participate in a mid-year review under Paragraph 58(5)(b) for the purposes of Paragraph 61A. I note that the letter alludes to the potential for the Contract to be rebased, but that this would not meet the requirements set out in the Regulations.

4.10 For the sake of completeness, I note that the Contractor did deliver less than 30% of its total contracted activity for the financial year 2023/2024, as per the Commissioner's evidence. However, I also note that there are also deficiencies in this letter. The Contractor states that the language used in the letter represents the mere possibility of an invitation to a mid-year review and therefore does not constitute the requisite requirement to attend, as envisaged by Paragraph 58(5)(b). I have therefore considered the language of the letters, as against the Regulations.

4.11 I note that the letter does not itself require the Contractor to participate in a mid-year review. Rather, it indicates that a review may occur following receipt of an action plan from the Contractor. I have not been provided with any evidence that a mid-year review was subsequently offered or held, nor any evidence as to whether an action plan was submitted. Equally, I have not been provided with evidence of any subsequent invitation to participate in a Paragraph 58(5)(b) mid-year review in that year. I do not consider that a reference to the possibility that a review may occur following receipt of an action plan is the same as a requirement to participate in a mid-year review under Paragraph 58(5)(b).

4.12 I also note that the Commissioner has stated in its representations that the Regulations do not prescribe a mandatory format for the mid-year review. I do not consider that to be wholly correct. The Contractor, in its observations, has stated that Paragraph 58 does contain several requirements for what a mid-year review must

entail. I consider that the Commissioner is right that the Regulations do not prescribe a mandatory template for the review, *per se*. However, I agree with the Contractor that Paragraph 58 does prescribe certain requirements for the review itself.

4.13 The Commissioner and Contractor must discuss any written evidence put forward by the Contractor as to the level of activity delivered in the first half of the year, together with any reasons given for that level of activity. The Commissioner must then prepare a draft record for comment, have regard to any comments received, produce a final written record and send that record to the Contractor. I have also had regard to the Policy Book, as referred to by the parties. The Policy Book is consistent with that approach and adds that the meeting may take place by telephone or virtually, but must be recorded. Accordingly, while the review need not follow a prescribed template, it is not sufficient simply to refer to the possibility of a review occurring at some later stage.

4.14 It is unclear to me whether the Commissioner was stating that the letters to the Contractor constituted part of the mid-year review or whether they were an invitation to engage in a mid-year review. I do not consider that the letters themselves could meet the requirements set out in Paragraph 58 of Schedule 3 to the Regulations. I also consider that those provisions impose procedural requirements for the review.

4.15 As such, I do not consider that the letters from the years 2022/2023, 2023/2024, or 2024/2025 demonstrate that the Contractor was invited to participate in a mid-year review under Paragraph 58(5)(b) for the purposes of Paragraph 61A.

4.16 I note that the Commissioner has also set out that the breach notices issued for each of the relevant years contained wording which allowed for the Contractor to engage within 28 days in order to challenge or discuss the findings. I note that the Commissioner states that this also constituted an invitation to engage in a review. I have therefore also reviewed the relevant breach notices.

4.17 I consider that, by their own description, each of the breach notices is related to a year-end review carried out, rather than a mid-year review. Having considered the wording of Paragraph 61A, I consider that the review required by the Regulations is a mid-year review, not a year-end review. Due to the fact that the breach notices are clearly separate from the mid-year review notices, I do not consider it possible for them to meet the requirements of Paragraph 61A(3)(a)(i). However, upon reviewing the correspondence between the parties, I am mindful that there appears to be some confusion as to the requirements of said paragraph.

4.18 Both parties have made reference to the Policy Book, which I have therefore reviewed. I note that section 8.4.6 of the Policy Book states that, where agreement cannot be reached, the Commissioner has the ability to take unilateral action to recurrently reduce the annual contract value and associated activity as an alternative to contract termination. In setting out what the Commissioner must be able to demonstrate, that section refers to the Commissioner having "*attempted to hold an annual or mid-year review with the Contractor for each year of under-performance*". That wording is materially different from Paragraph 61A of the Regulations, which I have referred to previously.

4.19 I consider that this difference in wording is likely to have contributed to the misunderstanding between the parties. The Contractor appears, in its correspondence, to have relied on the Policy Book as setting out the process which the Commissioner was required to follow. The Commissioner then also appears to

have approached the matter by reference to the Policy Book, and in particular by reference to the broader concept of an annual or mid-year review. However, the Policy Book cannot alter the conditions set out in the Regulations. I consider that, to the extent that the Policy Book is inconsistent with, or less precise than, Paragraph 61A, the Regulations must prevail.

4.20 I do not consider that an annual review, year-end reconciliation, or other general performance management process can satisfy Paragraph 61A(3)(a)(i). Those processes may be relevant to whether the Contractor under-delivered. They may also be relevant to breach notices, recovery of overpayments, or the Commissioner's attempts to agree a consensual variation. They are not, however, the step required by Paragraph 61A.

4.21 I therefore do not consider that any reference contained within the relevant breach notices to inviting the Contractor to respond within 28 days can satisfy the necessary requirements of the Regulations for unilateral rebasing of the Contract.

4.22 Having determined that the Commissioner has not demonstrated that the Contractor was invited to participate in a mid-year review, it follows that the condition in Paragraph 61A(3)(a)(i) was not satisfied. As I consider that the conditions in Paragraph 61A(3) are cumulative, that is sufficient for me to determine the dispute. It is therefore unnecessary that I consider any further each of the remaining Paragraph 61A conditions, although I note that nothing in this determination prevents the parties from seeking to agree a variation under Paragraph 61 if they consider that appropriate.

4.23 For the reasons set out above, I agree with the Contractor that the Commissioner was not entitled to rely on Paragraph 61A to unilaterally rebase the Contract.

5 DECISION

5.1 I determine that the Commissioner was not entitled to vary the Contractor's Contract under Paragraph 61A of Schedule 3 to the Regulations. The Contract therefore should remain unvaried, subject to any further agreement between the parties.

Head of Appeals
NHS Resolution