

- To: • To All NHS primary care dental contract holders
- cc. • Regional directors of commissioning
• Regional directors of primary care and public health
• ICB primary care leads

NHS England
Wellington House
133-155 Waterloo Road
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19 June 2023

Dear colleagues,

NHS dental year-end 2022/23 arrangements and statement following GDC v Williams Court of Appeal Judgement

Year-end processes and guidance 2022/23

NHS England has today published [year end guidance for reconciliation of GDS/PDS contracts for 2022/23](#). Within this we are confirming that to support practices during the ongoing recovery of dental services and maximise access for patients we are waiving our rights to financial recovery at the usual contract tolerance level of 96% and have set a revised lower performance tolerance of 90% for contractors delivering mandatory services. This will be for 2022/23 only and seeks to support contractors by recognising that pandemic measures continued to affect capacity for many practices in the early part of 2022/23. Orthodontic services have been working to usual contracting arrangements since 1 April 2022 and the performance tolerance remains unchanged.

This means that any un-delivered activity between 90 to 100% of that contracted will be carried forward into 2023/24 contract year. Where 90% of the total annual contract activity has not been delivered, financial recovery will apply as normal.

If contractors do not wish to take up this offer they should notify their commissioner within 28 days of receipt of their year-end letter.

Contracts which exited the prototype programme on 1 April 2022

The full year income protection threshold for practices exiting the prototype programme was 90% for 2022/23, with the variable cost adjustment applied to non-delivered activity above this level, as set out previously. In line with the principles for a revised tolerance threshold for other contracts as described above, contractors that have undelivered activity between 80% to 90% will be allowed to carry forward the undelivered activity to 2023/24. As per the previous announcement delivery below 75% will be subject to a normal financial recovery.

Contractors that have undelivered activity between 80% to 90% who do not wish to carry forward under-delivered activity or who have delivered activity volumes below the 90% performance threshold but above the minimum threshold of 75% will be subject to partial financial recovery as previously communicated.

All ex-prototype practices will return to usual contractual arrangements in 2023/24.

As [previously communicated](#), in line with the return to usual contracting arrangements, activity delivered by the dental foundation trainees from 1 July 2022 will not count towards the scheduled activity of the trainer's mandatory services contract.

GDC v Williams Court of Appeal Judgement

Today NHS England and Department of Health and Social Care have published a short statement (annex 1) responding to this judgement. This will be shared with colleagues via the NHS BSA. We continue to work on the wider implications of this judgement and will issue further guidance in due course. However, in the interim we continue to remind colleagues that the ruling does not change the principle that patients should be able to receive clinically necessary treatment needed to keep their mouth, teeth and gums healthy and free of pain through NHS dental treatment. Decisions about which treatment is appropriate should be based on clinical assessment and judgment.

May I take this opportunity to thank you for your hard work and commitment in continuing to maintain and deliver high quality dental care for patients.

Yours sincerely,



Ali Sparke

Director for Pharmacy, Optometry, Dentistry and the NHS Standard Contract
NHS England

Annex 1: Statement on GDC v Williams Court of Appeal Judgement

A recent judgement from the [Court of Appeal](#) as a result of an appeal brought by the General Dental Council (GDC) was handed down on the 5th May 2023. The key issue examined within this appeal was the mixing of NHS and private treatment (top-up payments for the same procedure) and whether this was permissible on the same tooth. A commonly held understanding in the dental sector is that such mixing and top-up payments on the same tooth are not permissible.

The outcome of this case was that the Court of Appeal reached the conclusion, from a detailed consideration of the relevant legislation, that the mixing of NHS and private treatment was permissible in relation to a single tooth. It concluded that Regulation 22 and paragraph 10 of Schedule 3 to the NHS (General Dental Services Contracts) Regulations 2005 and the NHS (Dental Charges) Regulations 2005, read together, do not prohibit the mixing of NHS and private treatment on the same tooth under certain circumstances and with the informed agreement of the patient.

Whilst this was the conclusion of the Court, fundamentally the ruling does not change the principle that patients should be able to receive any clinically necessary treatment needed to secure the oral health of the patient through NHS dental treatment, with decisions about which treatment is appropriate based on clinical assessment and judgment. Nor does it alter the obligation on dentists to be clear and transparent with patients about the services available to them on the NHS, so that patients can make an informed choice as to whether they wish to pay privately for dental treatment.

We recognise that many dental teams will now be considering this judgment and its implications for their own practice. The Department of Health and Social Care, NHS England and the Chief Dental Officer for England are currently considering the implications of this judgement and intend to review the existing guidance and Regulations around charges for dental care in response to this case. We will issue a further statement setting out our intended actions once this review has concluded, which may include but may not be limited to proposed changes to the existing Regulations and guidance.