



## Business continuity considerations

Challenges will be created on many fronts not least anticipated staff absences due to illness and self-isolation. School closures and childcare issues will also challenge many businesses. Whilst public health remains everyone's primary concern, economic challenges will also impact on the long-term viability of services and have potential employment ramifications.

### **Resources:**

For the latest information from NHS England and NHS Improvement (including the CDO letters of preparedness):

<https://www.england.nhs.uk/coronavirus/publication/preparedness-letters-for-dental-care/>

For the latest BOS information and resources for orthodontic teams and patients:

<https://www.bos.org.uk/COVID19-BOS-Advice/COVID19-BOS-Advice>

For the latest BDA information and support:

<https://bda.org/advice/Coronavirus/>

Government guidance on the furlough scheme can be found at:

<https://www.gov.uk/government/publications/coronavirus-job-retention-scheme-step-by-step-guide-for-employers>

The following general advice may be of help to orthodontic teams:

- Consider setting up remote access to your software system if possible and remote diversion to the phones to allow working from home where possible.
- Most practices are now working with skeleton staff with many staff being furloughed. Where attendance is considered necessary consider splitting into teams to alternate attendance and reduce the impact of possible infection. Each team should ideally consist of a balanced mix of Clinician/ Nurse/ Reception staff etc.
- Consider setting up a Google drive/ Dropbox/Microsoft teams (or other shared cloud-based system) so that all team members can access documentation required during this period. A WhatsApp group or similar social media group may also allow you all to communicate effectively.
- Determine how procedures will be dealt with such as emergencies, and ensure clear protocols are available to all staff. Providers should also be mindful to offer continuous support and reassurance to existing patients, even those without problems so that they feel supported during this difficult time.

- NHSE are now working on setting up hubs for urgent dental care with separate hubs for asymptomatic and symptomatic patients. These will operate out of existing dental practices, CDS sites and some secondary care sites with additional expenses being met by the NHS. Orthodontic emergencies should be triaged by providers and supported through the 3A's approach where appropriate- advice, analgesia and antibiotics. The BOS has provided various resources to assist with this. In extreme cases, should an appointment be required then patients should be directed towards the appropriate emergency hub. Although organised through the NHS, these will also provide support for private patients also in extreme emergencies. Referral will be made via a locally agreed mechanism which may include the use of electronic referral. It is likely that local MCN's will be consulted with respect to orthodontic support for the hubs. Consider supporting other local providers, for example with emergency services in the event that such practices cannot offer a service for a period of time. Regular local liaison is to be encouraged with a view to sharing resources and materials if necessary.
- Within practices, cross -collaboration is encouraged between performers to manage each other's patients if someone is subject to enforced absence.
- It is not necessary to inform CQC about any reduction in clinical hours. They state:
  - *"There is no need for practices to notify CQC if they reduce their services to urgent and emergency dental care as many are doing at present. CQC understand the rationale behind practices making this change. A notification would create an unnecessary burden for providers and the CQC."*
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- Ensure that all members of staff take annual leave pro rata during this period as when you return you will need all hands-on deck!
- As a Provider, review the members of the team that are working, the numbers required and if necessary, consider furloughing some of the employees to ease the financial burden of numerous staff at time when income will be reducing.

Support for [Employers here](#):

<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses>

Support for Employees [here](#) : <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-guidance-for-employees>

- The government remains optimistic that the worst of this pandemic will pass within 12 weeks. As the crisis eases and restrictions are lifted there will inevitably be a need to increase capacity to address the backlog of delayed treatment but also to address targets. The lifting of restrictions is likely to be phased with continued restrictions on capacity and social distancing measures. It remains to be seen whether NHS targets and income will be phased in line with this. Currently discussions are taking place between NHSE and dental leads with respect to the return to work strategy.

Providers should give some thought to how this extra capacity need will be addressed, whilst working within the phased restrictions which may remain in place. Some practices are already

working towards a more flexible working pattern for staff, offsetting prolonged absence now against the potential need for extra hours in the future. This approach also helps with continued employment and reassurance for team members.

- Check if your practice insurance covers such eventualities – keep careful records of financial and other losses to support this claim. Consider creating a trackable code in your software system and log it against each patient that is affected by this pandemic to allow you to report the impact it has had on your business. Otherwise keep a simple spreadsheet or notebook.
- Contact your indemnity company to consider reducing your indemnity fees as your clinics reduce. Most companies are suspending or refunding the weeks currently not worked.

# Financial Impact, Contract management and Government Support Measures

(see also table 1 in appendix)

## England

### **Force Majeure re: year-end reconciliation 2019/2020.**

GDS and PDS orthodontic contracts does have a clause in them that details *Force Majeure*. This covers pandemics. From the PDS template this reads:

*350. Neither party shall be responsible to the other for any failure or delay in performance of its obligations and duties under this Agreement which is caused by circumstances or events beyond the reasonable control of a party. However, the affected party must promptly on the occurrence of such circumstances or events—*

*350.1. inform the other party in writing of such circumstances or events and of what obligation or duty they have delayed or prevented being performed; and*

*350.2. take all action within its power to comply with the terms of this Agreement as fully and promptly as possible.*

*Unless the affected party takes such steps, clause 350 shall not have the effect of absolving it from its obligations under this Agreement. For the avoidance of doubt, any actions or omissions of either party's personnel or any failures of either party's systems, procedures, premises or equipment shall not be deemed to be circumstances or events beyond the reasonable control of the relevant party for the purposes of this clause, unless the cause of failure was beyond reasonable control. "*

Where a force majeure event such as the current pandemic has resulted in under performance, primary care providers should notify contract manager, ideally by the end of March, who can then formally apply for relief as part of the year end process that NHS BSA, Dental Services carry out for the whole of England. Contract managers have the authority to advise NHS BSA Dental Services not to issue breach notices at year end. Providers should record cancellations, clinic closures and staff absences which may have accounted for the under-performance. Significant under-performance prior to and unrelated to the Covid-19 pandemic may still be subject to clawback.

### **Contracts and funding advice from the CDO's "3<sup>rd</sup> letter of preparedness" issued 25<sup>th</sup> March 2020**

<https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2020/03/issue-3-preparedness-letter-for-primary-dental-care-25-march-2020.pdf>

#### **"1. 2019-20 contract reconciliation**

We recognise that in most years dental activity is usually higher during the month of March and that this year the majority of contractors may have been impacted because of COVID-19. We can confirm that year end reconciliation will therefore operate in the following manner:

- For the purposes of calculating year end contract delivery, we will consider the year to be March 2019 – February 2020, and we will apply March 2019 data instead of March 2020;
- For contracts delivering above 96% over this period we will then operate normal year end reconciliation with the ability to carry forward activity to 2020; and

- For contracts delivering below 96% over this period we will enter into normal clawback position up to 100% of total contract value (TCV).

## **2. 2020-21 contracts: cashflow and reconciliation**

We will take immediate steps to revise the operation of the 2020-21 contract to reflect service disruption due to COVID19 for practices who are participating as required in the COVID response. The approach will aim to achieve the following:

- Maintaining cash flow to provide immediate stability and certainty for dental practices;
- Protecting the availability of staff to provide essential services during the response period to COVID-19;
- Actively enabling staff time that is no longer required for routine dental activity to be diverted to support service areas with additional activity pressures due to COVID-19;
- Maintaining business stability to allow a rapid return to pre-incident activity levels and service model once the temporary changes cease; and
- Fairly recompensing practice for expenses incurred

We will therefore take the following steps:

### *Cashflow*

We will continue to make monthly payments in 2020-21 to all practices that are equal to 1/12th of their current annual contract value.

### *Contract value and reconciliation*

We will progress our work with the BDA to finalise an approach to contract value and reconciliation in 2020-21 that takes account of the following principles:

- Contract delivery and year end payment for the period of the COVID-19 response should be assumed to have been maintained at a level that allows continued employment of staff (despite reduced actual activity);
- In return for this certainty, this will be conditional upon practices being required to offer all available staff capacity to other areas as outlined in section C, "Workforce" below;
- A requirement on practices to ensure that all staff including associates, non-clinical and others continue to be paid at previous levels;
- An agreed and fair reduction for any variable costs associated with service delivery (e.g. in recognition of reduced consumable costs) will be applied to all contract values; These arrangements will operate over a fixed number of months with an agreed end date;
- Practices benefiting from continued NHS funding will not be eligible to seek any wider government assistance to small businesses which could be duplicative."

### **BOS Comments:**

There were some immediate concerns about the proposed methodology for reconciling the contract year 2019/20. The CDO's comments also raise a number of other concerns.

- Unlike general dental practices, for orthodontic practices it is not necessarily true that activity is higher during March. In fact, as many orthodontic practices have waiting lists of patients ready for treatment, the often is usually the case with targets having been met before the final contract month of the year. Therefore, in many cases there will have been little new activity during March 2019 and this month may not be fair representation of anticipated activity in March 2020. Some practices may actually be disadvantaged by using this figure compared to figures from a shortened month in 2020.

- Practices in the Southern region and London have started new contracts at some point since April 2019 following a procurement exercise. Few if any practices will have the same annual target of UOA's and in some cases this will have changed dramatically. Therefore, activity during March 2019 is not a valid comparison.
- For new providers who have started contracts in 2019, there will be no recordable activity in March 2019.
- For practices offering in-house payment plans for private treatment, some patients may look to suspend their payments and consideration should be given to how best to handle this. Many practices use a third-party finance solution in which case the patients should contact the third-party provider. Many such companies such as Hitachi are open to patients taking payment holidays.
- Clarity is still needed in terms of the expectations regarding uoa delivery once coronavirus restrictions start to lift.

The 4<sup>th</sup> letter of preparedness, issued 15<sup>th</sup> April, offered some clarity on these issues.

<https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2020/03/C0282-covid-19-dental-preparedness-letter-15-april-2020.pdf>

### **2019/20 contract reconciliation and clawback**

“A number of practices have queried the application of the March 2019-February 2020 activity period for the purposes of calculating 2019/20 contract reconciliation. This is a particular issue where activity levels in March 2020 had been anticipated to be higher than March 2019, or where the practice had opened after 1 March 2019. In recognition of these circumstances, practices may agree with their commissioner to use the following activity from the Compass system as the basis for 2019/20 contract reconciliation:

a) 11 months April 2019 to February 2020

plus

b) in agreement with commissioners, an additional month that may be one of:

- March 2019 (default)
- March 2020 or
- average UDA delivery over an appropriate three-month period in 2019/20

agreed with their commissioner.

Any clawback repayments relating to contract year 2019/20 may be payable over the financial year, with full balance payable by 31 March 2021.”

### **BOS Comments:**

- Whilst the more flexible approach to end of year reconciliation is welcome, it still does not cover all possible scenarios and there are examples of providers who had planned activity in their appointment books to hit target but for obvious reasons could not do so and for whom none of the other scenarios apply. This option is being explored but please advise us if you are affected.
- There is still no confirmation as to the anticipated reduction in monthly fees in line with reduced overheads (largely materials) during lockdown. In NI, Wales and Scotland this is 80%
- There is no clarity on how the lockdown period impacts on the annual UOA targets.

## **Mixed-practices, furloughing and government support measures**

The income for the vast majority of orthodontic practices comprises a mixture of NHS and private income. For some, particularly those with wind down contracts, the NHS component actually forms a small part of the practice income. Some clarity has now emerged in terms the support mechanisms available.

On the [gov.uk](https://www.gov.uk) site

<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

it states with respect to the Coronavirus Job Retention Scheme and furloughing staff-

"In a small number of cases, for example where organisations are not primarily funded by the government and whose staff cannot be redeployed to assist with the coronavirus response, the scheme may be appropriate for some staff."

### **BDA**

"One of the conditions of the NHS payment is that practices benefiting from this continued NHS funding will not be eligible to seek any wider government assistance to small businesses which could be duplicative. This caused a lot of concern for NHS practices, especially those whose NHS contract value is a relatively small proportion of their income.

On Thursday 2 April 2020, NHS England clarified that mixed practices can claim for furloughed workers for part of the time, in respect of private income and still receive their NHS income. NHS England has said that it will be asking of evidence of the portion of NHS/private income used in any applications for additional support.

The amount of money claimed under the furloughed workers scheme should be in proportion to the private income of the practice.

Staff cannot be furloughed and paid from NHS payments at the same time. They should be either furloughed on 80% pay (subject to agreement) or paid in full in accordance with the new NHS income conditions."

### **BOS Comments:**

In line with the above statements it would therefore seem reasonable that mixed NHS-private orthodontic practices can continue to receive NHS payments and also benefit from other support mechanisms such as the Job Retention Scheme but only in proportion to the NHS- Private income split. Some providers report that they have already done this. Staff cannot be part paid from NHS money and part furloughed at the same time but can be furloughed for part of the lockdown period (for a minimum period of three weeks) and employed for a separate period.

For more BOS guidance on the furloughing process and other legal issues see:

<https://www.bos.org.uk/Portals/0/Public/docs/Advice%20Sheets/COVID19%20FACTSHEETS/BOS%20ARTICLE%20COVID%2015%20April.pdf>

## Wales

Unlike Northern Ireland and Scotland, in Wales, primary care orthodontics is funded under a PDS model.

The Welsh Government has provided guidance on practice continuity for all dental practices. All practices will have 4% waived in lieu for the last two weeks of March 2020, so will not receive clawback if they have made 90% of UDA/UOAs (or equivalent in contract reform practices). It is suggested that the Welsh Government will allow practices further relief if they fail to reach their UDA/UOA targets and the monitoring of targets will be relaxed.

For the 2020/21 contract year the Welsh Government has offered 80% of the NHS ACV for the three-month period from April to June. However, this reduction is higher than the reduction in overheads during this time assuming staff continue to be paid at the same level.

Scotland and Northern Ireland still adopt an item of service model for remuneration of primary care orthodontics and as such different arrangements apply.

## Scotland

The financial measures issued by the Scottish Government on 30 March included the suggestion that dentists should receive 80% of the average income from items of service and patient contributions.

Following the CDO's recent letter outlining revised financial support for NHS dentistry in Scotland, the Scottish Government has issued a memorandum setting out more details about the funding package.

The key features are:

The financial support measures which have now be put in place will provide contractors providing GDS with 80 per cent of their NHS gross item of service income. This will equate to their average monthly NHS item of service income in the 2019/20 financial year but will now crucially include the NHS patient charge element normally paid directly to the practice. The 80 per cent NHS gross item of service top-up payment will be determined as follows:

- if the contractor's income has been stable over 2019/20 financial year, subject to seasonal variation, the 12-month period will be used to calculate the average monthly NHS gross item of service payment;
- some contractors may only have been working in Scotland for a short time and will not have a full 12 months earnings in 2019/20 to calculate the top-up payment. In such cases the top-up will be based on an average of their relevant NHS gross item of service payments that are available;
- some contractors will have moved practice within the last year and will not therefore have a full 12 months NHS earning in their current practice. In such cases the top-up will be calculated as an average of the contractor's NHS gross item of service payments in their current practice;
- any contractor who is on maternity or sick leave at the time the financial support measures are put in place will continue to receive maternity and sickness payments until the end of their entitlement period.

Payments for NHS commitment status, General Dental Practice Allowance, continuing care and capitation payments will continue.

It is a condition of the financial support measures that practices ensure that people can make contact with a dental professional during normal working hours. Practice teams should make every effort to triage, advise and reassure patients who have a dental problem. NHS Boards will ensure that practices have



details of the referral pathway to urgent care centres. It is also a condition of the financial support measures that there must be no consequential loss of workforce in the practice as contractors and their practice staff will be required to assist the wider NHS, including the Public Dental Service, when asked by the NHS Board.

Contractors must immediately advise their local NHS Board if their associateship agreement or any other arrangement with a practice has been terminated or put into abeyance whilst the current financial support measures are in place. In these circumstances the financial support for that contractor will cease with immediate effect.

Previous guidance advised that practices would be required to submit a weekly NHS activity record sheet to their NHS Board. This was introduced at time when it was expected that dental practices would continue to provide routine treatment and would allow NHS Boards to monitor activity in their area. As this position has now changed and routine treatment will no longer be provided there is no longer a need for these. Your NHS Board will advise you if this position changes and practices require to start submitting these returns.

Practices were required to submit a Business Continuity Plan to their NHS Board by 31 March 2020. Any practices that have not submitted their plan to their Board should do so as a matter of urgency.

### **Northern Ireland**

- Support measures start from March 2020 through to the end of the outbreak.
- Support payments will be 80% of the shortfall in Item-of-Service income for 2020 compared with the same month in 2019.
- In the event that a practice closes, clinicians and their staff must make themselves available to assist the wider NHS if asked by the HSCB. This is a condition of financial support.
- Following the outbreak, if a practice's activity significantly increases when compared to previous years, some of the support payments may be clawed back over the period 2021-22 and 2023-24.
- The amount of clawback will be up to a maximum of 5% of the practice's previous year's annual item-of-service income.
- The clawback will not apply to practices which provide significant support to the wider NHS.
- Allowances and capitation payments will continue to be paid during 2020-21.

### **Help for associates**

The BDA has set up a pay dispute service to support member associates during this time. Details can be found at:

<https://bda.org/advice/Coronavirus/Pages/associates-coronavirus.aspx>

Corporate bodies and practice owners with NHS contracts will continue to be paid assuming certain conditions are met. One of those is that they are obliged to pass on income due to associates. Practices are also required to support the wider NHS pandemic effort, and this is likely to involve associates if NHS money is to be passed on. Of course, we and the BDA expect the overwhelming majority of corporates or practice owners to pay associates appropriately.

If this is not the situation for you, the BDA will take up this issue on your behalf and liaise constructively with your provider.

## Appendix 1:

<b>Specific Coronavirus Support</b>					
	<b>Employees</b>	<b>Employers</b>	<b>Sole Traders</b>	<b>Businesses</b>	<b>Notes</b>
<b>Wages</b>	Job Retention Scheme - Up to 80% to be funded by the government for those that are 'laid off'	Job Retention Scheme - Up to 80% to be funded by the government for those that are 'laid off'	Not Eligible	Job Retention Scheme - Up to 80% to be funded by the government for those that are 'laid off'	This may not be available for Providers who are receiving an NHS income
<b>Sick Pay</b>	Paid from Day One at a rate of £94.25 per week. Online isolation notes now available from NHS website	For businesses with fewer than 250 employees, the cost of providing 14 days of Statutory Sick Pay per employee will be refunded by the Government in full.	Not Eligible	For businesses with fewer than 250 employees, the cost of providing 14 days of Statutory Sick Pay per employee will be refunded by the Government in full.	
<b>Business Rates</b>			Business rates holiday for 12 months for those in the retail, hospitality and leisure sectors.	Business rates holiday for 12 months for those in the retail, hospitality and leisure sectors.	Clarification still awaiting
<b>Grants</b>			£10,000 grant for ALL small businesses whose business property currently qualifies for small business rate relief or rural rate relief.  £25,000 for businesses in the hospitality, leisure and retail sector whose rateable value is between £15,001 - £51,000.	£10,000 grant for ALL small businesses whose business property currently qualifies for small business rate relief or rural rate relief.  £25,000 for businesses in the hospitality, leisure and retail sector whose rateable value is between £15,001 - £51,000.	
<b>Loans</b>			Business Interruption Loans available from 23rd March for up to £5m and interest free for the first 12 months.	Business Interruption Loans available from 23rd March for up to £5m and interest free for the first 12 months.	
<b>HMRC</b>		VAT payments deferred until June 2020.  Dedicated helpline to organise 'time to pay' arrangements for other HMRC liabilities 0800 0159 559	VAT payments deferred until June 2020.  HMRC Time to Pay Scheme, Self-assessment payments on account due in July 2020 have been delayed until January 2021.  Dedicated helpline to organise 'time to pay' arrangements for other HMRC liabilities	VAT payments deferred until June 2020.  Dedicated helpline to organise 'time to pay' arrangements for other HMRC liabilities 0800 0159 559	
<b>Benefits</b>	Universal credit allowances to help with loss of earnings. Amounts in line with sick pay.		Universal credit allowances to help with loss of earnings. Amounts in line with sick pay.		