

Section Seven – NHS Dental & Penalty Charges and Debt Recovery Rules

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2. Purpose and scope

This document outlines the process for applying penalty charges and carrying out patient debt recovery operations in respect of NHS dental charges.

3. Definitions

Administrative Easement

There are exceptional circumstances where it would not be in the public interest to apply a penalty charge and/or recover the NHS dental charge, although the patient's liability is established.

An administrative easement may apply to the penalty charge only, the NHS dental charge and the penalty charge, or the NHS dental charge where the patient has a defence against the penalty charge.

Claim

In this document, this term refers to a claim made via the County Court.

Claimant

If a claim is made by the NHSBSA via the County Court for the payment of an outstanding debt, the NHSBSA is referred to as the claimant. The claimant will be referred to as the "NHS Business Services Authority" on Court documents as the Dental Services is not a separate legal entity.

Debt	<p>The total amount of NHS dental charges, penalty charges, surcharges, recoverable court costs and any bank charge that is unpaid.</p> <p>The NHSBSA does not have any discretion to vary the amounts of the original NHS charge, penalty, surcharge and court fees. The debtor is either liable for these charges or not.</p>
Debt notice	A formal written notice that is issued to the debtor stating that it has been established that a debt exists that must be paid and gives the amount of, and reason for, the debt - if a penalty charge is applied this is the penalty notice.
Debtor	The patient that is liable for a debt.
Declaration	the form (PR/PRW or the back of FP17/FP17W) signed by the patient in accordance with the regulations to declare whether or not they have to pay NHS dental charges in respect of a course of treatment. If this declaration has not been completed properly for a course of treatment then the dentist's claim was not made in accordance with the regulations.
Defence	The patient has a defence under the legislation if he/she shows that they did not act wrongfully, or with any lack of care, in respect of the charge in question. A defence only applies to the penalty charge.
Defendant	If a claim is made by the NHSBSA via the County Court for the payment of an outstanding debt, the debtor is referred to as the defendant.
Did not act with any lack of care	<p>The person did not avoid the original charge by just being reckless or careless about their obligation to pay, i.e. they did not take the normal amount of care that could be expected of a person in their circumstances.</p>
Did not act wrongfully	The wrongful act occurs as soon as the patient or their representative claims help with NHS charges to which they are not entitled and then signs and completes the declaration.
DWP	Department of Work & Pensions.
Easement	See Administrative Easement.
EXP-BAU	Base sample identified for pilot comparison purposes. Treatment bands 1, 2 & 3
EXP-EX1	Pilot sample where Experian have indicated individuals whom will settle debts quickly without the need to progress through the debt recovery process and the courts. Treatment Bands 1, 2 & 3
Judgment Debtor	Once a County Court Judgment has been entered the debtor is referred to as the Judgment Debtor - For the purposes of this document no distinction is necessary and the term "debtor" is used to refer to both categories.
Letter before action	A formal letter that notifies the debtor that if the debt is not paid within seven calendar days the NHSBSA will start debt recovery proceedings through the County Court. If a penalty notice was issued the letter before action will also notify the debtor that a surcharge is now payable.
NHS dental charge	<p>A charge <i>made</i> to a patient for NHS dental services set out in the NHS regulations for Dental Charges. The charge is <i>made</i> and <i>recovered</i> by the dentist; if the charge is not <i>recovered</i> by the dentist it can be <i>recovered</i> by the NHSBSA acting under directions from the Secretary of State and the National Assembly for Wales. The phrases <i>made</i> and <i>recovered</i> have specific meanings in the regulations. The NHSBSA does not <i>make</i> the charge, the NHSBSA only <i>recovers</i> the charge.</p> <p>The charge that will be recovered will be the charge calculated by the Scheduling System minus any charge already collected from the patient by the provider prior to the patient being challenged by the NHSBSA.</p>

NHS Protect	NHS Protect will be the recipient of information relating to patients who receive a second or subsequent Penalty notice letter
Penalty charge	A penalty charge made in accordance with the NHS regulations for Dental Charges. The amount of the penalty charge will be whichever is the lesser of £100 or the NHS dental charge element that was not paid multiplied by five.
Penalty notice	A notice issued in accordance with the NHS regulations for Dental Charges notifying the debtor that a penalty charge is payable. A penalty notice is a variation of the Debt notice (see above).
NHSBSA	The Finance tower lead and deputies will be responsible for this policy area.
Surcharge	A surcharge made in accordance with the NHS regulations for Dental Charges where a debt is not paid within 28 calendar days. The amount of the surcharge will be 50% of the penalty charge. A surcharge can only be applied if a penalty notice has been issued.
Vulnerable group	<div style="background-color: black; width: 100%; height: 100%; min-height: 300px;"></div>

Unless stated otherwise, references to a number of days mean calendar days.

4. References

Civil Procedure Rules

The National Health Service (Dental Charges) Regulations 1989 (as amended)

The National Health Service (Dental Charges) Regulations 2005 (as amended)

The National Health Service (Dental Charges) (Wales) Regulations 2006 (as amended)

The National Health Service (Penalty Charges) Regulations 1999

The National Health Service (Penalty Charges) (Wales) Regulations 2001

5. General

It is policy to recover charges which have been inappropriately paid on behalf of patients and to collect penalty charges and surcharges where appropriate. This will seek to minimise the cost to public funds and the duration of the debt recovery process, while treating debtors fairly and consistently. The NHSBSA will take into account the individual circumstances of debtors and will deal sympathetically with debtors who are in vulnerable groups.

A penalty charge is a fine, albeit a civil one, for committing a wrongful act or acting negligently.

Unless specified the actions and decisions in this document will be taken by Capita, who are responsible for carrying out patient debt recovery operations.

The NHSBSA will make decisions on policy changes that are not covered by existing rules and the NHSBSA will work with Capita for all policy and rule development, utilising the RFIA process where it is likely that changes made to policy or process will affect penalty revenue collection to allow both parties to fully impact assess any proposed changes. A joint review should be conducted at least every six months or as soon as possible where a new situation arises or where there are problems identified with the existing rules.

6. Determining liability

The verification process will be carried out prior to any debt recovery or penalty charges being issued.

Entitlement to a remission will be confirmed if the patient proves entitlement to one of the appropriate benefits at any time on or between the dates of acceptance and completion.

6.1. Criminal offence

There is a criminal offence for repeated or persistent evasion of NHS charges. A patient is not liable for a penalty charge if he/she is convicted of a criminal offence for evasion of the same charges or vice versa.

Where a patient is determined to be liable to a penalty charge on a second or subsequent occasion, the patient's details will be passed to the NHS Protect in addition to the penalty charge.

6.2. Penalty charges

A penalty charge will be applied unless the patient has a defence (see 6.3) or an administrative easement (see 6.4) is appropriate.

If the patient pays the patient charge to the provider or the NHSBSA after being challenged by the NHSBSA, e.g. sent a questionnaire, the patient will still be liable to a penalty charge. If the patient paid the charge to the provider, it will be recovered from the provider.

If the patient does not reply to the questionnaire a penalty will be applied. If the case has an origin code of EXP-BAU or EXP-EX1 a penalty will be applied if patient's address is confirmed.

If the questionnaire is 'returned to sender', a penalty will be applied if the patient's address can be confirmed.

Where more than one claim is selected for the same patient each claim will be considered in its own right where liability to a penalty charge is concerned, although they may be processed together for operational reasons. This could result in a patient being issued with a penalty charge for each claim.

Where there would normally be no charge to the patient under the two-month rule but the continuation box was not completed no further action will be taken because no charge should have been payable regardless of exemption/remission.

6.3. Defence under the legislation

The original NHS dental charge will be recovered unless it is appropriate to apply an administrative easement to that charge.

- The patient has a defence if there is **no evidence that they acted wrongfully**. This defence is based on fact: the patient (or their representative) either made the claim of they did not and the authorised/delegated officer either has evidence of this or they do not.

This defence only applies in respect of cases under source origin EXP-BAU or EXP-EX1:

- There is no signed declaration where the patient claims entitlement to help with NHS dental charges (either because it is missing, or the dentist fails to submit it) or the declaration is completed insufficiently or was not completed at all.
- The declaration has been signed by the dentist or an employee of the dental practice acting as the patient's representative. This is a conflict of interests.
- A defence will be considered on the grounds that the patient **did not act with any lack of care** in the following circumstances. Each case will be considered on its merits.

- [REDACTED]

- If the patient is in a **vulnerable group**, then they will be considered to have a defence.

The patient has a duty of care when making a declaration about whether they have to pay NHS charges and the following circumstances are **not** a defence under the legislation:

- Not reading the declaration before signing it;
- Not understanding what benefits they were on;
- The dental practice advised them incorrectly. The patient is entitled to complain about the dental practice by following the NHS Complaint process. If the patient claims that the practice advised them they did not have to pay, the dentist will be reminded of the exemption/remission categories;
- "The dental practice is supposed to ask for evidence of entitlement, if they had done this or they had known the evidence I showed was not valid, then I would not have made the claim." If the patient does not show appropriate evidence this is not a barrier to treatment, as long as they sign the declaration they do not have to pay and the dentist is only required to complete the 'evidence not seen' box.

Ignorance of the law is not sufficient on its own to provide a valid defence.

Hearsay evidence is not acceptable; it must be corroborated.

6.4. Administrative easements

- The patient has a defence against the penalty charge and an easement will also be applied to the original NHS dental charge in the following circumstances. The patient (or carer) will be informed that they are not exempt but we will not be taking any further action, relevant information about claiming help with health costs will be included.

- [REDACTED]

- The patient does not have a defence against the penalty charge, but consideration will be given to applying an easement to the penalty charge and recovering only the original NHS dental charge in the following circumstances. This will not be automatic and each case will be considered on its merits.

- An easement of the patient's and penalty charge will be applied in the following circumstances:

6.5. No debt recovery action

No action will be taken to recover a debt from the patient where:

- There is insufficient evidence that the patient was not entitled to help with the NHS dental charge. Each case will be considered on its merits.
 - The results of all the checks with the DWP were "not found".
 - The result of a check with the DWP was "not found" even though the information sent to them was taken from a DWP entitlement letter.
 - There is doubt about whether the data for the NHS exemption certificate the patient claims to have had would have been deleted when the check was carried out. The NHSBSA Help With Health Costs data retention policy will be borne in mind.
- The unpaid NHS dental charge is less than £10.

6.6. Combinations

Recover NHS dental charge	Easement of NHS dental charge	Apply penalty charge	Defence against penalty charge	Easement of penalty charge
✓		✓		
✓			✓	
✓				✓
	✓		✓	
	✓			✓

7. Establishing debts

A debt or penalty notice will be issued to the debtor. This establishes the debt by notifying the debtor that an unpaid NHS dental charge is due and, where appropriate, that a penalty charge is also payable. This notice will be sent to the debtor's last known address.

When a debt or penalty notice is issued, the patient will be sent an appropriate covering letter. Where the origin code is EXP-BAU or EXP-EX1 a copy of the declaration signed by the debtor will be included with the letter.

Once the debtor has been notified of a debt it is their responsibility to respond within the time limits specified. There is no obligation to issue reminders to the debtor other than to warn them that court action will be initiated if they do not comply.

Penalty charges and repayment of the original NHS dental charge will always be sought from the patient even if a representative signed the declaration.

8. Cancelling debts

If at any time during the debt recovery process, the debtor can provide evidence that he/she was entitled to help with the NHS dental charges for the selected course of treatment, the NHSBSA will cancel the debt and repay any amount paid. The NHSBSA will not pay any costs the debtor incurred in the process unless ordered to do so by a Court as it is the responsibility of the patient to show that they are entitled to help with NHS charges.

If the debtor can demonstrate that he/she did not commit a wrongful act or did not act with any lack of care when claiming help with NHS dental charges the NHSBSA will waive the penalty charge in which case the debtor will still owe the amount of the original NHS dental charge for the course of treatment and any recoverable Court fees.

If evidence is received that the debtor has been declared bankrupt the case will be closed unless an offer of payment has been made.

Where a debtor moves house and cannot be contacted the case will be closed unless there is information that the address is current. An address on the Clinical Spine Application will be taken as current unless there is other evidence that this is not the case. Where there is reason to think the debtor still lives at an address the debtor recovery process will continue.

Once a debt has been established, the debtor will be required to provide corroborating evidence before any part of the debt is cancelled.

9. Payment

Debtors are required to pay the debt in full within 28 calendar days of the penalty or debt notice. The NHSBSA does, however, recognise that the individual circumstances of debtors may make this difficult and if the debtor can show that this would cause undue hardship, payment in instalments will be considered. (See 11)

Debtors may use the following payment methods:

- Cheque or Postal Order
- Credit or Debit Card, over the telephone or via the web based payment facility
- Automatic payments e.g. Standing Order or bank transfer
- Personal on-line banking facility

Payments will be made to the usual GDS England and Wales accounts as appropriate.

Requests for deferred payment (after 28 calendar days) will only be granted in exceptional circumstances.. Where it is necessary to approve a deferred payment preference is for a token monthly instalment payment to be made on account rather than no payment.

10. No payment

10.1. After 28 days

Where payment in full is not received on site within 28 calendar days of the debt or penalty notice being issued to the debtor:

- A “letter before action” will be sent to the debtor. This letter will be sent to the debtor’s last known address. This letter will warn that debt recovery action may be initiated via the County Court if payment is not received.
- Where a penalty notice was issued a surcharge will be applied. A surcharge can only be applied where a penalty notice was issued.
- The debtor’s liability to a surcharge is not dependant on a “letter before action” being sent or on them being notified that the surcharge has been applied, as long as they have been notified of the circumstances in which they will become liable to such a charge (it is a legal requirement for the penalty notice to specify this).

However, there may be exceptions (See 11) if the debtor has:

- Been sent a payment agreement and is paying instalments and the specified time limit for replying has not been reached
- Been sent a financial assessment questionnaire and the specified time limit for replying has not been reached

10.2. 21 days after the Letter Before Action

[REDACTED]

[REDACTED]

- [REDACTED]

10.3. Debt Recovery via the County Court

Debt Recovery will be initiated via County Court under the following circumstances:

- The debtor is a “repeat offender” where it is found that they have incorrectly claimed two or more times
- Where there are exceptional circumstances that may warrant court action, these cases will be reviewed and agreed on a case to case basis

If one of the following applies court action will not be initiated.

- The outstanding debt is less than a band 1
- The debtor is in a vulnerable group
- [REDACTED]

11. Payment in instalments

The objective is to recover the debt as quickly as possible whilst taking account of the debtor's circumstances. The debtor is expected to pay as much as they can afford each month. It should, however, be borne in mind that the penalty charge is a fine, albeit a civil one, for committing a wrongful act or acting negligently. It is NHS policy that interest will not be charged on debts.

Payment in instalments will only be available if the total debt is greater than £75.

Instalments must be paid monthly and a payment must be made each month. The payment period may be negotiated with the debtor but must not exceed six months.

The first offer made to the debtor will be as follows.

Total debt	Maximum period
£75 - £200	Two months
£201 - £300	Three months
£301+	Four months

Go to 11.1 for permissible variations of the above.

The amount of each payment will be detailed in the instalment agreement.

The outstanding debt may be paid in full at any time to cancel the instalment agreement.

The preference is for instalment payments to be made by Standing Order.

The debtor must make the first payment within 14 calendar days of the debt/penalty notice being issued or on a pre-agreed date. If the first payment is not made within 14 calendar days or on a pre-agreed date then the instalment arrangement is void and action will be taken.(See 10)

If the debtor does not comply with the instalment agreement (see 11.3) the full outstanding debt becomes due immediately. An example of non-compliance is a missed or incomplete instalment payment. If a payment is received by a different method to that in the agreement, this will not be considered to be non-compliance.

The debtor may not take a "payment holiday" unless with prior agreed approval. Such arrangements will be discouraged but reasonable requests will be considered on condition that they are not open ended. Where it is necessary to approve a payment holiday a token payment would be preferred rather than no payment. All such arrangements must be confirmed in writing to the debtor.

11.1. Payment period variations

The payment period may be varied in the following circumstances:



- It is not in the public interest to cause or exacerbate the problems of people who already have severe financial problems and debts. It is also recognised that where a debtor already has County Court Judgements for debts or other priority debts then it is unlikely that a Court will make an order that is favourable to the NHSBSA in terms of the payment period.

Priority debts include: Rent, mortgage, tax, child maintenance, gas, electricity and water arrears.

In such circumstances the payment period will reflect the monthly amounts being paid to priority creditors. The objective is to recover as much of the debt as possible whilst minimising the costs.

- Where debtor is paying debts that relate to more than one claim, the payment periods do not have to run concurrently and the period can be extended where appropriate. For example, two debts of £130 could be paid over four months instead of two. All the debts should be covered by the same payment agreement.

The debtor will be required to complete a 'Financial Assessment questionnaire' with details of incomings and outgoings before the payment period can be varied. The debtor will be required to reply within seven calendar days. The reply will be assessed and no variation will be made if the debtor can afford to pay more.

The instalment arrangement may be reviewed periodically and the rate of repayment varied. The debtor will be notified in writing of any such variation. As part of this review the debtor may be asked for details of their current financial circumstances. Where a payment period is longer than 12 months, it will be reviewed every nine months and a Financial Assessment questionnaire will be sent to the debtor. If the questionnaire is not completed and returned with 28 days the instalment agreement will be void and the full outstanding amount will be due immediately.

There may occasionally be very exceptional circumstances not covered by this section where it is felt that a variation would be in the best interests of all parties.

11.2. Surcharges (penalty cases only)

An additional surcharge will not be applied where the debtor:

- Pays in full within 28 calendar days of the penalty notice; or
- Pays in full earlier than required by a payment agreement having complied with that agreement; or
- Makes the first payment within 14 calendar days of the agreement being sent and subsequently complies with that agreement, but only where the debtor responds to the penalty notice within calendar 28 days.

Where a surcharge has already been applied it will not be cancelled unless the debtor has a valid reason for not contacting the NHSBSA within 28 calendar days of receiving the penalty notice. Examples of valid reasons are being out of the country or in hospital for more than 21 out of the 28 calendar days. It is the debtor's responsibility to respond to the NHSBSA's request for payment.

The time taken to reply to the debtor will be taken into account when calculating the 28 calendar days. For example, if the debtor requests a payment agreement on day 21 but the agreement was not sent out until day 32, the debtor will be allowed 14 calendar days to make the first payment before incurring the surcharge.

The debtor's liability to a surcharge is not dependant on a "letter before action" being sent or on them being notified that the surcharge has applied, as long as they have been notified of the circumstances in which they will become liable to such a charge and the time limits they have to respond within.

11.3. Non-compliance with instalment agreement

If a debtor does not comply with an instalment agreement, the full outstanding debt becomes due immediately and the debtor will be notified in writing (the "default letter") within seven calendar days of the missed payment date that the agreement has not been complied with and that any arrears must be paid within seven calendar days otherwise further action will be taken.


Where a penalty notice was issued:

- More than 28 calendar days ago, a surcharge will be applied
- Less than 28 calendar days ago, the surcharge will be applied 28 calendar days after the penalty notice was issued unless the arrears are paid before that

Where a surcharge is added it will be spread evenly over the remaining payments. The payment period will not be extended.

Where a penalty notice was not issued, no surcharge can be applied.

If payment has not been made in full within 14 calendar days of the default letter:

- 
- Where the debtor does not comply with an instalment agreement that was made following a County Court Judgement, they will be notified in writing that enforcement action may be taken if the due payment is not received by return of post.
 - Otherwise go to 12.

12. Debt recovery via the County Court

The NHSBSA (the “claimant”) will make a “claim” against the debtor (the “defendant”) for the outstanding debt via the County Court Bulk Clearance Centre in Northampton.

Where Court action is taken the Civil Procedure Rules must be followed.

Every effort must be made to recover debts without using the County Court proceedings and if an agreement can be reached with the debtor to pay in full or by instalments without proceeding with Court action, this is the preferred course of action.

Also see 8.

Legal advice to the defendant should not be given at any time, as this would be a conflict of interests. The defendant should be advised to seek advice elsewhere but it is acceptable to suggest that such advice is available from the Citizens Advice Bureau.

12.1. Claims and judgments

The Court will normally allocate the claim to the “small claims track”.

Before making a claim via the County Court, the claimant must try to settle the claim with the defendant. The claim must be made in writing, with a warning that Court action may be taken, and the defendant given reasonable time to respond. The Court may penalise the claimant if this is not done. The debt/penalty notice and letter before action satisfy this requirement. The preceding sections of this document comply with these requirements.

Solicitors are not employed to assist with making claims.

The Court will normally serve the claim by sending it to the defendant by first class post. The Court will deem the claim to have been received on the second day after posting. The claimant has the right to serve the claim instead of the Court serving it, but this right will not be exercised other than where this is the only option.

The outcome to the claim being served will be as follows:

- The defendant decides to defend the claim and must file a defence with the Court within 14 calendar days of the claim being served: If the defendant requires more time to prepare a defence, the defendant may send an Acknowledgement of Service to the Court within 14 calendar days of service and then file the defence within 14 calendar days of the Acknowledgment of Service. If a defence is filed, the defendant may also make a Counter-claim against the claimant. Go to 12.3.
- The defendant admits the claim and pays the debt: The payment should be sent direct to the claimant not to the Court.

- The defendant admits the claim and proposes to the claimant that payment be made at a future date: Such an arrangement is only acceptable if the future date is within 28 calendar days, e.g. because the defendant needs to wait for their next salary or benefit payment. Otherwise the next offer will be to accept payment by instalments, See 12.2.
- The defendant admits the claim and offers to pay in instalments. See 12.2.
- The defendant has not responded to the claim 14 calendar days after the date the claim was served or date the defendant filed an Acknowledgment of Service and none of the preceding bullet points apply: The application for Judgement will be requested by Default.

The Court will notify the claimant when a defence or Acknowledgement of Service has been filed. If the defendant sends the admission form and/or payment to the Court, the Court will forward it on to the claimant.

Judgement must be applied for within six months otherwise the claim will be stayed and a fee is payable in order to obtain Judgement once the claim has been stayed.

When Judgment has been entered a letter will be sent to the defendant stating that if payment is not received in full within seven calendar days, enforcement action may start. If the debt has not been paid in full or an instalment agreement entered into within seven calendar days see 12.9

12.2. Offers of payment by instalments

Requests to pay in instalments will be considered, and actioned if in accordance with appropriate repayment options currently available. (See 11)

Where payment in instalments is accepted, application will be made to the Court for Judgement on Admission

Where an offer of payment is not acceptable, there should be reasons given and a Court official will decide what a reasonable arrangement will be and send a “judgment for claimant after determination” (an order for payment) to the claimant and defendant. In this case, this should be accepted, except that if the debt will not be repaid within 12 months, in some cases, the claimant can ask the court to reconsider. However, such requests must be made in writing to the Court giving reasons, and copied to the defendant; a Judge will then decide what is reasonable for the defendant to pay and enter a Judgment accordingly.

Where a defendant does not comply with a Judgment, they will be notified in writing that enforcement action may be taken if the due payment is not received by return of post. (see12.9)

12.3. Defence filed by debtor

Where the defendant files a defence against the claim the court will forward details of the defence.

Defences should be filtered and where a case discloses no reasonable ground for defending the claim an application will be made for these to be struck out before they get to a hearing..

An application will be made to strike out the defence and apply for Summary Judgement where it discloses no reasonable grounds for defending the claim:

- It consists of a bare denial or otherwise sets out no coherent statement of facts, or
- The facts it sets out, while coherent, would not even if true amount in law to a defence to the claim, or
- That the defence is bound to fail because of a point of law, or
- It is not relevant to the matter in hand, or
- It contains statements that we can show are not true on balance of probabilities

Where possible an attempt will be made to reach agreement with the defendant without a hearing. It is not appropriate to enter into mediation as the debts are statutory charges and cannot be varied and the penalty charge is a fine for acting wrongly or negligently. If the Court suggests mediation the NHSBSA will politely decline and notify the Court and the defendant that this is not appropriate.

If the claim is maintained a letter will be sent to the defendant stating this.

No one acting on behalf of the NHSBSA should offer any opinion or comment to the defendant as to what the decision of the Court may be.

If a hearing cannot be avoided, the case will be transferred to the defendant's local County Court and the Allocation Questionnaire will be completed accordingly and returned to the Court. It would not be appropriate to seek to transfer the claim to Eastbourne County Court.

The NHSBSA will not normally be represented at hearings. Where a preliminary hearing is to be held the NHSBSA will not be represented and the court will be asked if the case can be considered in one hearing.

The template approved by the NHSBSA will be used for statements.

No one acting on behalf of the NHSBSA should offer any opinion or comment to the defendant as to what the decision of the court may be.

12.4. Counter Claim filed by Debtor

Counter claims are automatically transferred out. A response will be sent to the defendant to seek clarification of the Counter Claim. When clarification is received a defence will be filed.

Where the defendant does not respond, the case is defended and a copy of the letter seeking clarification is sent to the court along with a request that the counter claim be struck out.

No one acting on behalf of the NHSBSA should offer any opinion or comment to the defendant as to what the decision of the court may be.

12.5 Applications for Judgement/Warrant to be set aside

Where a debtor makes an application for a Judgement or Warrant to be set aside, this will be dealt with in the same way as a defence. It should be noted that the time limits for responding may be much tighter than for a defence.

12.6. Appeals

There is no right of appeal against a small claims Judgment unless the Court made a mistake in law or there was a serious irregularity in the proceedings. Appeals will not be made unless authorised.

12.7. Court costs

Steps should be taken to recover from the debtor all reasonable costs that can be recovered.

12.8. Expenses

Claims for expenses for attending a County Court Small Claims hearing are appropriate except where the defendant does not attend with good reason and could not reasonably give the NHSBSA advance notice. For example: sudden bereavement, accident or ill health.

Where the court finds fully or partly in favour of the defendant the NHSBSA will only claim expenses where the expense was incurred because the defendant acted unreasonably. An example of unreasonable behaviour is where the defendant refuses to supply proof of entitlement until the court hearing.

12.9. Enforcement

Currently, there is no action taken to enforce Judgements.

No further action will be taken unless the debtor responds. The case will be kept open as long as payments are being received. If no payment is received for three months, the outstanding debt will not be pursued.

13. Receipts

Receipts will not be issued until the debt has been paid in full or unless payment is received by postal order or by debit/credit card where the streamline receipt will be issued. It is the debtor's responsibility to make payments and if they wish to confirm payment they can do this either by contacting their bank or credit card company.

14. Interest

No interest will be applied to debts.

15. Bank charges

Where a bank charge is incurred as a result of a failed payment (e.g. bounced cheque), the charge will be added to the outstanding debt.

16. Overpayments

Where a debtor pays more than is owed, the overpayment will be repaid unless it is less than £5, in which case it will only be repaid where the debtor requests it.

Section Eight - Benefit Eligibility Checks: Questionnaire Follow-Up Rules

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 - 7.1. No declaration - patient action
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 - 8.1. Provider does not reply after 28 days
 - 8.2. Provider confirms the patient did not pay for NHS treatment
 - 8.3. Provider confirms the patient paid for NHS treatment or treatment was not NHS

2. Purpose and scope

Rules for actions to be taken following Benefit Eligibility Checks questionnaire replies.

3. Definitions

BECS Benefit Eligibility Checks System

Non-contemporaneous PR form

A PR form (or FP17) that was not completed at the appropriate time, i.e. not at the start, end of the course of treatment or sometime between. Examples of this are:

The version of the PR form used was not printed until after the dates of treatment of the dates the patient signed the declaration.

A PR form is resubmitted with the dates added - this should be indicated by the dates of receipt stamped on the form and the photocopy of the form when it was submitted originally.

Patient declaration

The form (PR, FP17 or PDS1) signed by the patient in accordance with the regulations to declare whether or not they have to pay NHS dental charges in respect of a course of treatment. If this declaration has not been completed properly for a course of treatment then the provider has not complied with the regulations

Provider The holder of the contract/agreement. Could be a dentist, partnership or corporate body. For courses of treatment prior to 1/4/06 this means the dentist who provided the treatment

Relevant PR form

A PR form where the dates of the patient's signature match or coincides with the dates of treatment, or the CRN on the PR form matches the CRN for the course of treatment. Form FP17 may be used instead of a PR.

4. Actions required

Take the action specified in the table below.

Circumstance	Action
Patient admits that they were not entitled to help with the NHS charge in question	Origin codes EXP-BAU /EXP-EX1 request PR form or obtain a copy of FP17 and assess. See section 5 or 6 respectively
Patient does not supply any evidence or information that can be used to confirm their entitlement or to carry out an agency recheck	If origin code does not fall in either category

Patient did not reply to patient charges questionnaire and checks confirm address	process case for debt recovery.
Agency recheck following questionnaire is 'not confirmed'	
Patient claims/proves that they paid the NHS charge in question	Ask for a receipt or other proof if not already sent (unless the questionnaire indicated the patient does not have a receipt) EDI issue PR request/did patient pay letter (section 5) Paper FP17 – obtain image of claim and issue did patient pay letter as appropriate (section 6) Go to section 4.1
Patient claims that course of treatment in question was private	
Patient claims they did not receive NHS dental services on the dates in question	
Patient disputes treatment band for course of treatment in question	

Where the action is to assess the PR forms but the provider is no longer at the practice, go to section 5 instead.

4.1 Patient paid or private treatment action

If the patient has provided proof that they paid, the declaration states that the patient pays, or there is an indication that the treatment was provided privately: write to the provider and ask for confirmation of whether the patient actually paid and if so how much.

NHS treatment: Ask for consent for a schedule deduction for the amount the patient paid (or to retransmit with a patient charge if EDI) if the patient paid and say we will recover the money from the patient if not.

Private treatment: Ask for consent for a schedule adjustment to delete the course of treatment (or to retransmit with a request to delete the course of treatment if EDI) if the treatment was provided privately.

Copy and return the PR forms, if held.

Use letter: Did pt pay

5. Assessing PR forms

Write to the provider requesting all PR forms for the patient. As the PR forms are not required for a check on the provider a pre-paid envelope will be provided.

Use letter: PR request (batch)

When PR forms are received, assess and return them to the provider as quickly as possible. See also section 7.

Use letter: PR return (if no issues are being raised)

If no PR forms are received 18 days after the request send a reminder letter to the provider.

Use letter: PR reminder (batch)

If no PR forms are received 18 days after the reminder an event will be automatically created on BECS to notify the PCT/LHB. Go to section 7.1.

Use event: PR forms not received (batch)

6. Assessing FP17s

Pick the FP17 from the exception handler/image viewer. See also section 7.

7. Patient declaration actions

Take the action specified in the table below.

Problem	Action(s)
The relevant PR form is not received (but other or incomplete PR forms are sent)	Return any PR forms to provider without comment Go to section 7.1
A PR form is not completed in full	Return any PR forms to provider with letter: Declaration incomplete - PR Go to section 7.1
FP17 patient declaration is not completed in full	Send letter to provider: Declaration incomplete - other Go to section 7.1
The provider states that a PR form was not completed or is no longer available (within two years of the date of completion)	Return any PR forms to provider without comment Go to section 7.1
There is evidence that the dentist has submitted a PR form that is not contemporaneous	Return any PR forms to provider with letter: Non-contemporaneous PR Go to section 7.1
The patient completed the declaration to state that they had to pay for their dental treatment but the claim was submitted/processed as exemption/remitted	Write to the provider and ask whether the patient actually paid and if so how much. Ask for consent for a schedule deduction or to retransmit EDI claim with a patient charge if the patient paid. Say we will recover the money from the patient if not. Use letter: Did pt pay Go to section 8

7.1. No declaration - patient action

If the patient acknowledged on the questionnaire that they had NHS dental treatment on the dates in question, process the case for debt recovery using an appropriate D letter.

Otherwise, close the case as "defence and easement". Where the patient has replied to a questionnaire, written to us or telephoned, consideration will be given to sending an appropriate letter to the patient, e.g. "not exempt but NFA".

8. Did patient pay action

8.1. Provider does not reply after 28 days

If the provider does not reply after 28 days, send a reminder letter, if reply received process in accordance with the appropriate section.

Use letter: Did pt pay reminder

If the provider still does not reply 14 days after the reminder, log an event on BECS to notify the PCT/LHB and go to section 7.1.

Use event: Did pt pay? - no reply (batch)

Close the case as "did pt pay - no reply".

Thank the patient for replying and say that we are resolving the matter with the provider (if they have replied to a questionnaire, written to us or telephoned).

Close the case as "patient paid".

8.2. Provider confirms the patient did not pay for NHS treatment

If the provider confirms the patient did not pay for NHS treatment:

If the patient declaration is signed and dated to state that patient did not have to pay NHS charges, process as a potential penalty charge. Otherwise, process the case for debt recovery using letter D11.

8.3. Provider confirms the patient paid for NHS treatment or treatment was not NHS

If the provider confirms the patient paid for the NHS treatment in question, make the necessary adjustment to recover the charge from the provider.

If the provider confirms the treatment in question was not NHS, delete the claim to recover the UDA/UOAs.

Thank the patient for replying and say that we are resolving the matter with the provider (if they have replied to a questionnaire, written to us or telephoned).

Log an event on BECS to notify the PCT/LHB and go to section 7.1.

Use event: Patient paid, or
Private treatment
