

**Impact of COVID-19 on dental  
practices: what do practices need  
to know?**

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**CRS**  
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# COVID-19 and dental practices: what do you need to know?



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Helen advises on a broad range of corporate transactional work including public and private acquisitions and disposals, investments and joint ventures. She acts for business owners, high net worth individuals, family businesses and entrepreneurs.

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## An unclear situation

There is frustration amongst our clients and contacts by the lack of clarity provided to dentists during these extraordinary and unprecedented times. Dentists are concerned about the safety of patients and dental professionals when so little is known about COVID-19 contamination. Given developing evidence, many are nervous that the virus could be transmitted from asymptomatic patients needing urgent treatment. In these circumstances, continuing to advise that standard personal protective equipment is sufficient does not feel adequate and more clarity and support from the Chief Dental Officer is needed.

The Chancellor Rishi Sunak has pledged additional support for business, on top of measures set out in the budget. These include:

- A Coronavirus job retention scheme covering 80% of workers' salaries;
- Government-backed loans of £330 billion which have been made open to all businesses;
- Business interruption loans, with no interest for 6 months, will be available and;
- £10,000 extra cash grant for the smallest businesses.

NHS practices will now only be able to see patients requiring urgent care and they together with, in particular, mixed and private practices will face similar financial hardships that other industries will face. More needs to be done to clarify the application of the support packages announced by the Government to ensure the survival of all dental practices.

For NHS practices in England, the Chief Dental Officer and Director of Primary Care have issued a letter to try and help clarify the situation ("**Letter**"). Amongst other matters, the Letter sets out:

- changes to Primary Dental Care Services;
- clarification on the funding of NHS contracts and payments;
- workforce requirements to qualify for the funding arrangements; and
- the requirement to develop local Urgent Dental Care systems.

Our Dental Team have put together a summary of areas to think about and action – if any of these are applicable to you, please do get in touch. We would be very happy to discuss any issues and assist where we can.

## Practice Management: changes to Primary Dental Care Services

The Letter sets out 5 clear instructions for general dental practices and community dental services.

One of the areas where urgent clarification and coordination will be needed is the development of the Local Urgent Dental Care systems and how that will take into account practice closures, staffing levels specific expertise needed etc. The



### Will my insurance cover me/my practice?

We advise you to get in contact with your insurance provider to confirm whether you are covered for loss of earnings or business disruption due to COVID-19.

### Can we still sell our practice?

Yes. Sellers will not be penalised for these unprecedented circumstances. In particular, if you are operating an NHS practice, the NHS will continue to pay out under the contract even though UDAs/UOAs may not be fulfilled and there may not be clawbacks. That means there could still be a profitable business for sale.

Letter asks for Local Dental Networks, Commissioners and Local Dental Committees to work together with Dental Public Health to implement the required systems. Of all the strategies being implemented for the dental sector to deal with COVID-19, it is this area which will need the clearest leadership and focus to get it right and get it working, fast.

The BDA and ADG (Association of Dental Groups) have taken the lead in preparing a range of financial, workforce and urgent care related questions arising from the Letter and a response to that is awaited.

### Practice Management: cashflow, meeting the UDA targets & breach notices

Practices in England and Wales will understandably be concerned about meeting UDA obligations and the NHS have sought to address that in the Letter, although a number of questions remain and have been highlighted in the BDA/ADG's response to the NHS.

Whilst NHS practices can take some comfort from the Letter in terms of cashflow and future revenue, the same cannot be said for mixed and private practices, where the position remains unclear.

### "Force Majeure"

Most GDS and PDS contracts have a 'force majeure' clause to help a practice if it cannot meet its contractual obligations, because of something happening outside their control; known as a force majeure event.

The Welsh Government has provided guidance on practice continuity for all dental practices and details are currently under discussion for the ACV from April onwards. All practices will have 4% waived in lieu for the last two weeks of March, so will not receive clawback if they have made 90% of UDAs (or equivalent in contract reform practices).

COVID-19 can potentially amount to a force majeure event. If, because of issues with COVID-19, a dentist is ill or the practice has to close, the practice can claim that they have been prevented from meeting their UDA target because of a force majeure event.

If the practice has notified the area team of the force majeure event as required by the contract, the practice should not receive a breach notice for any breach arising from COVID-19. In England, at present, the underperformance due to COVID-19 is then carried into the next contract year. We will update you if we hear of any change to NHS England's position on this.

You must submit a force majeure notification **within five days** of a provider becoming ill or the practice closing to allow the circumstance to be considered at the year end. The NHS will supply the form.

### Redeployment of workforce

In order for NHS practices to benefit from the proposals for 2019/2020 and 2020/2021 contract years, the Letter makes clear that the practice is expected to use the extra capacity of its freed-up workforce to support those areas of the NHS set out in the Letter.



### Who should I tell if I close the practice?

**Inspecting body:** You will need to notify the relevant inspectorate if you close the practice for more than 24 hours. This is the CQC in England, the HIW in Wales etc.

**Relevant authority:** In England, you must send a closure notification to the Local Area Team (LAT) to prevent breaching your NHS contract. We recommend agreeing arrangements now for emergency cover with local practices in case they are needed and notify the LAT of these arrangements with your closure notification. In Wales, the Health Board should be notified. In Northern Ireland, the HSCB and RQIA should be told.

**Patients:** We also advise that you contact patients if the practice has to be closed.

What is not clear from the Letter is how the requirements will effect mixed practices where the NHS payments will not be sufficient to support all staff being redeployed. This needs to be urgently clarified.

It is not clear whether the emergency redeployment measures contained in the NHS' Letter can be taken as a government implemented policy or whether it is up to each individual practice to decide and what the impact of that might be on mixed practices.

For private practices, any changes to roles would require staff to consent (which may be express or implied if they simply go along with the request and carry out the alternative role). Any unilateral change to a role could otherwise amount to a repudiatory breach of contract, potentially giving staff grounds to resign with immediate effect and bring a claim (for an employee this may include a claim in an Employment Tribunal for constructive dismissal).

### What should staff do if my practice has to close?

NHS staff may be redeployed to other areas. See your nation's [most recent guidance for the most up-to-date information on this](#).

If your practice needs to close or reduce staffing levels, it may be that your staff can undertake other tasks. Each of the four UK nations are taking a slightly approach.

However, if there is no other work your staff can do during the period of closure or reduced access, you may need to:

- furlough employees under the Government's Job Retention Scheme;
- reduce their hours;
- lay them off temporarily; or
- make them redundant.

It is likely that any changes to terms would need to be agreed with your staff (subject to any exiting right under their contract of employment). Staff may choose to agree to changes if the alternative is redundancy.

### Other employment and health & safety issues to consider

We note a key aspect of the guidance provided by the Letter relates to staff safety. Safety is, of course, of paramount importance and may impact on an employee's ability to work. This may be of particular relevance when considering the PPE available to the workforce and the nature of the treatments being provided, noting that procedures using aerosols appear to be the most high risk.

Like any business, dental practices owe a duty of care to all staff and to provide a safe working environment. Government guidance as to best practice is being updated daily and all measures should be constantly reviewed. By way of example:

- Staff and clients should be advised that if they (or someone in their household) are displaying any symptoms they must not come into the practice and signs should be displayed to this effect.
- If employees are required to self-isolate and do not have any symptoms themselves, they would only be entitled to Statutory Sick Pay during such time, although employers should still consider paying full pay where possible.

- All staff and clients should be required to use hand sanitisers before entering the practice and physical contact should be kept to a minimum.
- All staff should be encouraged to wash their hands regularly.
- Practices should be deep cleaned on a regular basis and government guidance should be constantly reviewed.
- If staff have particular concerns about coming into work then practice owners should listen carefully and constantly review whether any further steps can be taken to protect staff. Consideration should also be given to more flexible working hours, avoiding staff having to travel on public transport in busy commuter times where possible, or extra parking being made available to staff.
- If staff refuse to come to work then consider any alternative arrangements, such as taking holiday or unpaid leave (although a business does not have to agree to this).

### How can we help?

We understand that these are extremely difficult and challenging times for everyone and want to be there to offer as much support as possible to our clients. Our Dental Team has established a team of experts across a range of legal disciplines to run emergency advice surgeries.

This service is coordinated by industry experts Helen Wong MBE, Jonathan Steele and Ben Smith. It offers clients a confidential hotline to connect with our team at any time to talk through any critical issues that you might be facing.

The advice surgeries will consist of 15-minute sessions designed to offer you legal and strategic support on the key issues and challenges that your business is facing. **All advice issued on the call will be free of charge.**

You will have access to experts in the following areas:

- Dentistry Law
- Regulatory
- Employment
- Corporate & Commercial
- Banking & Finance
- Insurance
- Litigation and Dispute Resolution
- Data Protection
- Reputational Protection

For more information, and if you would like to discuss how we can help you, please contact Helen Wong MBE or your usual Charles Russell Speechlys contact.

This is a rapidly developing situation with Government guidance changing on a regular basis. We will be keeping our website up to date with the latest information [here](#).



For more information, and if you would like to discuss how we can help you, please contact Helen Wong or your usual Charles Russell Speechlys contact.

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