

## **Dental Charge uplifts – Equality Analysis**

### **What policy is under consideration?**

1. Dental charges have existed in some shape or form since 1951 and are one of the NHS services that can be charged for under the National Health Service Act 2006 (2006 Act).
2. The 5% uplift implemented in 2016/17 and 2017/18 continues for 2018/19 with the aim of finding an appropriate balance between the costs paid by patients and those met by the NHS through the contributions of taxpayers. If this uplift was not implemented, resources from other parts of the NHS would need to be generated to make up the shortfall.
3. We will continue to ensure that those who are unable to pay, including children, nursing mothers, and those on certain benefits remain totally exempt from charges.

### **Background**

4. Prior to 2006, patient charges were set at 80% of the fee level paid by the NHS to dentists. Since 2006, there has been no formal link between charges and fee levels. Although not directly comparable as the system has changed, in 2016/17 charges were between 62% and 74% of fees. The proposed uplift is inclusive of the traditional annual inflationary rates. Revenue generated has been accounted for within the 2015 Spending Review. If this uplift was not implemented, resources from other parts of the NHS would need to be generated to make up the shortfall.
5. There will be no amendment to the exemption arrangements as a result of these changes. Children, nursing and pregnant women and those qualifying benefits will remain entirely exempt from charges and will not be impacted by these changes.
6. Even where patients do not qualify for exemption, but need support to access NHS dental services, there is an NHS Low Income Scheme in place to help patients with their health costs. Qualifying patients receive full or partial help towards costs of their NHS dental treatment.
7. In 2016/17, of the total number of NHS courses of dental treatment delivered, 53% were for paying adults. This means that the remaining 47% courses of treatment were delivered to patients who were fully or partly exempt from paying NHS dental charges. Therefore, the impact of this policy will only affect those of working age, with incomes above the thresholds for eligibility for help with health costs.
8. The charging framework for NHS treatment allows for multiple related treatments to be provided for with a single payment. This means a patient pays one charge for a whole course of treatment, depending on the level of treatment they require. The maximum band 3 charge applies to the small proportion of treatments that includes items such as crowns or bridges.

## Consideration of the Secretary of State's Duties

9. In considering these policy changes, Ministers must comply with the equality legislation, including their public sector equality duties under section 149 of the Equality Act 2010 (PSED), their general duties under the 2006 Act, which are included in sections 1 to 1G, and the Family Test.
10. Under the PSED, Ministers must have due regard to the impact of decisions on those people with the protected characteristics, which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In particular, they must have due regard to the need to:
  - Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
  - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
11. As part of this Equality Analysis we have considered each of the protected characteristics stated above, to ensure any new policy meets the above requirements.

### Age

12. Currently, there are exemption arrangements in place for children and young people. The proposed policy would not impact on those who are currently exempt, and therefore the following groups would continue to be exempt from NHS dental charges:
  - Those under 18;
  - Those under 19, and in full-time education.
13. Children and young people often need to access dental services more frequently than the general population, given the oral development experienced through youth. One report published by the British Dental Association (BDA)<sup>1</sup> found that '*by the age of five, more than a third of British children have suffered tooth decay, missing teeth or fillings*'. Even though the latest Public Health England oral health report of 5 year olds<sup>2</sup> shows this is improving, we still need to ensure that such groups within society can access dental treatment as and when it is necessary, to help reduce inequalities in dental health. The maintenance of current exemption arrangements for this age group means that these patients are protected from any uplift in dental charges, and can continue to access their dental treatment, as and when it is needed, at no cost.
14. Conversely, older patients may require additional care to maintain existing restorations. This can lead to an increase in dental treatment that can often be more complex and therefore more costly under the current banded system. However, patients are exempt from charges if they have been awarded Pension Credit Guarantee Credit which tops up

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<sup>1</sup> The British Dental Association Oral Health Inequalities Policy, *British Dental Association*, p2, (2009).

<sup>2</sup>[http://www.nwph.net/dentalhealth/14\\_15\\_5yearold/14\\_15\\_16/DPHEP%20for%20England%20OH%20Survey%205yr%202015%20Report%20FINAL%20Gateway%20approved.pdf](http://www.nwph.net/dentalhealth/14_15_5yearold/14_15_16/DPHEP%20for%20England%20OH%20Survey%205yr%202015%20Report%20FINAL%20Gateway%20approved.pdf)

weekly income if it's below £159.35 (for single people) or £243.25 (for couples). The qualifying age for state pension for men is 65. The qualifying age for state pension for women is currently being equalised with that of men and will have reached 65 by 8 November 2018. Therefore, those over these ages, who are on low income and receive Pension Credit Guarantee Credit, will not be impacted by this policy change.

15. The impact of this amendment to policy would mainly impact on those of working age, for whom a proportionate increase to their charges is considered feasible. Those on low incomes, and other protected groups, will remain exempt. Those not entitled to exemption but on low incomes may also be eligible to receive help with health costs (please see point 49 – 50 for more information on help with health costs).
16. Overall, the proposed amendment would not impact on the most vulnerable groups who are exempt from NHS dental charges. The proposal is likely to impact those of working age earning above the thresholds for exemption to help with health costs. We consider, in relation to this group, that this change is justifiable and proportionate. The proposed patient charge uplift are still below pre-2006 levels of charges when compared to fees, and will help generate the savings required of the Department in the light of the 2015 Spending Review. Given the pressures on public finances, it is right that those who can contribute do so, whilst maintaining exemptions and help with health costs for those with the greatest need. We believe that the differential negative impact on those of working age is justified for these reasons.

### **Disability**

17. Generally, those with a disability are not likely to need a greater volume of dental care than other groups, so should not be disproportionately adversely affected by this change on those grounds. However, dependent on the disability, individuals within this group may be exempt from paying dental charges. For example, those patients whose condition affects their ability to work may be in receipt of income based Employment and Support allowance. Alternatively they may hold a valid NHS tax credit exemption certificate, through receiving working tax credit which includes a disability element. If the patient holds this, he/she will be exempt from patient charges.

### **Gender reassignment (including transgender)**

18. We do not consider there to be any differential impact from the proposals for this group.

### **Pregnancy and maternity**

19. Women who are pregnant, or who have had a baby within the 12 months before treatment starts, are exempt from dental charges. The proposed policy change will not impact on this group as they will remain exempt.

### **Race**

20. While the links between oral health and ethnicity are complicated and often confounded by socio-economic status, there is evidence to suggest that the prevalence of certain oral

diseases is higher in some ethnic groups<sup>3</sup>.

21. It is possible that patients from ethnic minorities, particularly in more deprived areas, may need to access dental treatment more frequently, which could therefore cost more. However, the exemptions list does take low income into account.
22. Whilst there are no specific exemptions based on race, the patient's economic status is considered when dealing with patient charges. If the patient is in receipt of one of the qualifying benefits or has a low income they will be exempt from the charge (please see points 39 – 50 for more information on help with health costs). Qualifying benefits include:
  - income support;
  - income-based Jobseeker's Allowance;
  - income-related Employment and Support Allowance;
  - Pensions Credit Guarantee Credit;
  - qualifying tax credits; or
  - Universal credit, where the patient;
    - has no earnings or net earnings of £435 or less during the most recent assessment period; or
    - has no earnings or net earnings of £935 or less during the most recent assessment period and the Universal Credit award includes an element for a child and/or limited capability for work.
23. Patients are exempt from dental charges if they are included in an award that has both Pension Credit Guarantee Credit and Pension Credit Savings Credit.

#### **Religion or belief**

24. We do not consider there to be any differential impact from the proposals for this group.

#### **Sex**

25. We do not consider there to be any differential impact from the proposals for this group.

#### **Sexual orientation**

26. We do not consider there to be any differential impact from the proposals for this group.

#### **Eliminate discrimination, Advance equality of opportunity, Promote good relations between groups**

27. We do not believe that the proposed changes provide any opportunity to:
  - Eliminate discrimination, harassment and victimisation in relation to the protected characteristics;
  - Advance equality of opportunity; or

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<sup>3</sup> Marshman, Zoe, (2013), *Oral health and access to dental services for people from black and minority ethnic groups*.

Chestnutt, I.G, (2013), *Addressing oral health inequalities in the United Kingdom*.

- Promote good relations between groups.
28. Whilst a 5% increase in patient charge for dental treatment could be deemed significant to those patients who sit just above the exemptions list, there are schemes that can help for example, the NHS Low Income Scheme. Access to dental services should not be limited as a result of the uplift; and we believe that the exemptions and uplifts we have in place will help to prevent this. We want all patients to be in a position to access dental treatment, as and when it is needed. See points 39 – 50 for more detail on exemptions and the NHS Low Income Scheme.

### **Duties under sections 1 to 1G of the 2006 Act**

29. In considering the Secretary of State’s general duties under the 2006 Act, we believe the following duties are relevant to the proposals under consideration:
- Section 1(1) – the Secretary of State’s duty to promote a comprehensive health services, which requires that the Secretary of State must continue the promotion in England of a comprehensive health service designed to secure improvement –
    - (a) in the physical and mental health of the people of England; and
    - (b) in the prevention, diagnosis and treatment of illness;
  - Section 1B – the Secretary of State’s duty to have regard to the NHS Constitution; and
  - Section 1C – the Secretary of State’s duty to reduce health inequalities.

#### *Duty to promote a comprehensive health service (section 1(1) of the 2006 Act)*

30. The intention of this policy is to generate revenue, which can be invested in the NHS to ensure that it continues to provide a comprehensive health service.

#### *Duty to have regard to the NHS Constitution (section 1B of the 2006 Act)*

31. The Secretary of State’s duty to have regard to the NHS Constitution ensures that he has to bear in mind the principles, values, rights and pledges in the Constitution when he is discharging his functions in relation to the health service.
32. Through this duty, the Secretary of State must ensure that any policy proposals meet the principles of the NHS Constitution in scope. These principles are high-level ‘rules’ made by regulations, that govern the way that the NHS operates, and define how it seeks to achieve its purpose. In discharging his function regarding dental uplift charge, Secretary of State must ensure that:
- ***The “NHS provides a comprehensive service to all”***
  - ***“Access to service is based on clinical need, not an individual’s ability to pay. NHS services are free of charge, except in limited circumstances sanctioned by Parliament”.***
33. Limited circumstances are where charges are expressly provided for in legislation, as they are for NHS primary dental services. (Section 176 of the NHS Act 2006 allows for Secretary of State to make regulations imposing charges for dental services. Regulations

may provide for the making and recovery, in such manner as may be prescribed, of charges for relevant dental services.). We are maintaining current exemptions to dental charges, to allow patients to obtain treatment as and when they need it. By maintaining current exemptions, and providing continued help with health costs for those on low incomes, we are protecting the poorest and most vulnerable groups for whom cost can be the greatest disincentive to seeking dental care.

34. It is important that the NHS provides a comprehensive service to all, and is available to all. However, it is also important that the NHS receives the funding it needs to function efficiently and effectively. We believe that it is right that those who can contribute do so, whilst continuing to provide support where possible, for those in the greatest need. That is why we propose a proportionate increase of 5% for dental charges which we consider is fair and reasonable. Given the maintenance of current exemptions over this period, we consider that the changes should not significantly restrict the ability of people to access NHS dental services as and when they need it.

*Duty to reduce inequalities (section 1C of the 2006 Act)*

35. When exercising his functions in relation to the NHS, the Secretary of State must have regard to the need to reduce inequalities between the people of England with respect to the benefits that they can obtain from the NHS.
36. It is important to emphasise that this duty is separate from the PSED, and is about a need to reduce inequalities that may or may not be based on protected characteristics. Socio-economic impacts need therefore to be considered in terms of other socio-economic factors such as income, social deprivation and rural isolation.
37. Areas of greater socio-economic deprivation are more likely to have a greater proportion of people on low incomes who may struggle to afford the above inflation uplift to dental charges. Furthermore those from areas of greater socio-economic deprivation are more likely to suffer from poor oral health and therefore may have a greater than average need for dental treatment.
38. We have already touched upon socio-economic conditions earlier in this Equality Analysis. As outlined above, under current provision there are exemptions in place for those who may not be able to afford dental treatment, due to low income. These exemptions are set out at paragraph 39 – 50 below.

**Receiving income support**

39. Patients may be able to get income support if they meet all the eligibility criteria. The actual amount patients can receive depends on their circumstances, but if they qualify and have no income they will receive at least £57.90 a week. If patients are awarded income support, they will be exempt from paying dental charges.

**Receiving income-related Employment and Support Allowance**

40. Claimants whose illness or disability affects their ability to work and who have £16,000 or less in savings, may be able to claim income-related Employment and Support Allowance (ESA). A claimant may be able to work and earn and still receive income-related ESA, within certain limitations.

41. Patients are exempt from dental charges if they are or included in an award that has both contribution-based ESA and income-related ESA.

### **Receiving income-based Jobseeker's Allowance**

42. Patients who are unemployed and job-seeking may receive income-based Jobseeker's Allowance (JSA). If the patient does receive this, they are exempt from dental charges. To get income-based JSA:
- the patient must work less than 16 hours per week on average;
  - their partner (if they have one) must work less than 24 hours per week on average; and
  - the patient and their partner (if they have one) have £16,000 or less in savings between them.
43. Patients are exempt from dental charges if they are or included in an award that has both contribution-based JSA and income-related JSA.

### **Receiving tax credits**

44. Patients who are getting the following qualifying tax credits are exempt from NHS dental charges:
- Working Tax Credit and Child Tax Credit;
  - Working Tax Credit on its own which includes a disability element or severe disability element; or
  - Child Tax Credit on its own.
45. In each case, the family income for tax credits must be £15,276 or less. Adults in qualifying families will be sent an NHS Tax Credit Exemption certificate, which is usually valid for up to 7 months, and can be used to support a claim for exemption from NHS dental charges.

### **Universal Credit**

46. Universal Credit is a single system of means tested support for people of working-age in and out of work. UC will replace some existing means-tested benefits, including income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Working Tax Credit, Child Tax Credit and Housing Benefit. The amount of Universal Credit claimants get will depend on their circumstances and income.
47. A person is entitled to exemption from NHS dental charges if:
- They have an award of Universal Credit and had no earnings or net earnings of £435 or less during the most recent assessment period\*; or
  - They have an award of Universal Credit which includes an element for a child and/or limited capability for work, and had no earnings or net earnings of £935 or less during the most recent assessment period\*.

(\*the most recent assessment period will be the one that ended either before treatment began or when the patient was asked to pay.)

48. Exemptions will not change as a result of these proposals, and therefore we expect a similar percentage of exemptions as we saw in 2016/17 (47%).

### **The NHS Low Income Scheme**

49. The NHS Low Income Scheme provides income related help with health costs. The scheme is based broadly on Income Support rules and is available to anyone not already exempt via receipt of one of the qualifying benefits or tax credits listed above. Depending on their circumstances a claimant may qualify for full help (i.e. complete remission of an NHS charge) or partial help, where they may have to contribute an amount towards, for example, an NHS dental charge. In relation to uplifting dental charges, it is clear that those who will be impacted the most will be those patients who sit just above the thresholds outlined above, so the partial help provided in the NHS Low Income Scheme may mitigate the impact for those with income just above the criteria for full help. The scheme is designed so that patients can claim for a certificate before they need any treatment and are able to budget accordingly. Alternatively, if they have already paid dental charges, they can apply for a refund at the same time they apply for a certificate.
50. The current exemption entitlements, in addition to this scheme, should assist in ensuring that NHS dental treatment will remain available to the groups referred to above as and when it is required.

### **Family Test**

51. Whilst children will be exempt from any uplift in charges, working parents may be impacted by the change. However, given the current exemptions to charges and the availability of the low income schemes we do not foresee any significant impacts to families.
52. The list of exemptions to dental charges takes into account the economic condition of each patient. Furthermore, if patients lie just above the various exemptions thresholds, and are liable to pay the full amount for their dental treatment, the NHS Low Income Scheme may provide partial or full help with NHS dental charges, to enable those in need of dental treatment to afford it.
53. The proposed uplift in NHS dental charges will only create additional cost to the family where they are not exempt from charges or eligible for help with health costs and will relate only to the adults in the family.
54. There will be no impact on family formation as a result of this policy.
55. There will be no impact on families going through key transitions (such as becoming parents, getting married, fostering or adopting, bereavement, redundancy, new caring responsibilities or the onset of a long-term health condition) as a result of this policy.
56. There will be no impact on all family members' ability to play a full role in family life including with respect to parenting and other caring responsibilities.

57. There will be no impact on families before, during and after couple separation.
58. There will be no impact on those families most at risk of deterioration of relationship quality and breakdown.