

**NHS Prescriptions &
Dental Penalty
Charges Guide**

Document Control

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1 Purpose

This document outlines the process for applying penalty charges, surcharges and administrative easements.

2 Definition

Administrative easement

There are exceptional circumstances where it would not be in the patient's interest to apply a penalty charge, although the patient's liability is established.

An administrative easement may apply to the penalty charge, only where the patient has a compelling reason for having claimed exemption incorrectly.

There is no liability for a penalty charge where a patient can show that they did not act wrongfully, or with any lack of care, in respect of the charge in question.

A person who acted with a lack of care

The person avoided the original charge by 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, for instance they did not check that they were getting the correct type of benefit, or that their certificate was still valid.

A person who acted wrongfully

The wrongful act occurs when the patient or their representative claims help with NHS charges to which they are not entitled by completing and signing the declaration.

Penalty charge

A penalty charge is made in accordance with the National Health Service (Penalty Charge) Regulations 1999. The amount of the penalty charge shall be whichever is the lesser of £100 or the NHS dental charge / prescription charge element that was not paid multiplied by five. The original charge shall also be recovered.

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

Surcharge

A surcharge is made in accordance with the The National Health Service (Penalty Charge) Regulations 1999.

Where a person fails to pay the penalty charge within a period of 28 days, an additional surcharge of up to a maximum of £50 must be applied.

A surcharge can only be applied if a penalty charge notice has been issued. There are no powers to waive (or provide an easement of) the surcharge element only. This means that if a penalty charge is due and the 28 days for payment have elapsed, the surcharge must be applied. No extenuating circumstances can be considered for late payment.

Vulnerable group

The patient is considered to be in a vulnerable group where they:

Are deemed to have a long term health condition or disability that has affected their state of mind and/or ability to understand the form, due to a significant reason; were incapable of dealing with their own affairs at the time the treatment commenced.

A patient would not be in a vulnerable group because they suffer from stress, anxiety, depression unless it significantly affected their mental or physical ability, as above.

3 General

It is policy to recover dental and prescription charges where free NHS charges have been claimed and to collect penalty charges and surcharges where appropriate. The NHSBSA will take into account the individual circumstances of patients

4 Determining Liability

The verification process will be carried out prior to any request for recovery of dental / prescription charges and for penalty charges being issued.

Following the issue of a penalty charge notice, entitlement to a remission will be confirmed if the patient proves entitlement due to age, to one of the appropriate benefits/or that they had been issued with a valid certificate on the date of the initial examination / declaration on the prescription or dental form.

4.1 Criminal Offence

The NHS Act 2006 (section 194) allows for a fine of up to £2,500 (level 4 on the standard scale, Criminal Justice Act 1982) for those found guilty of knowingly making a false claim to exemption from dental charges.

This is a criminal offence, and generally used for repeated or persistent evasion of NHS charges. A patient is not liable for a penalty charge if they are convicted of a criminal offence for evasion of the same charges or, where a person pays a penalty charge they cannot be convicted under the provisions of section 194.

4.2 Penalty Charges

A penalty charge will be applied unless the patient has a defence, or an administrative easement is deemed appropriate. Where a penalty charge is not paid within 28 days a surcharge, of up to a maximum of £50 must be applied.

Where more than one claim is selected for the same patient, but not during the same Dental / Prescription Exemption Checking processing cycle, each claim will be considered in its own right where liability to a penalty charge is concerned.

4.3 Defence under Legislation

The National Health Service (Penalty Charge) Regulations 1999 set out that where a person fails to pay a National Health Service charge which they are liable to pay, they may be issued with a penalty charge notice.

The Regulations state that a person is not liable for a penalty charge (or surcharge) “if he shows that they did not act wrongfully, or with any lack of care” (Regulation 2(3)(g)(ii)).

Examples might include:

- (a) the patient did hold a relevant certificate but there had been a misspelling of their name;
- (b) they had entitlement via another exemption e.g. a qualifying DWP benefit;

Where a patient cannot demonstrate that they acted with due care, they may be liable for a penalty charge, but the NHSBSA may apply discretion in whether this should be pursued. In the following examples it has been agreed that no further action should be taken:

In the case of Dental:

- (a) if the patient is [REDACTED] then they will be considered to have a defence and will not be liable for the penalty charge.
- (b) subsequent easements will be taken into consideration on a case by case basis; however we may request evidence to be produced if the circumstances warrant it.

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 the benefits they were receiving.

In the case of Prescriptions:

(a) if the FP10 [REDACTED] the patient.

(b) if the patient is in a vulnerable group, then they will be considered to have a defence and will not be liable for the penalty charge.

Subsequent easements will be taken into consideration on a case by case basis; however we may request evidence to be produced if the circumstances warrant it.

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 the benefits they were receiving [REDACTED]

4.4 No debt recovery action

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

[REDACTED] Each case will be considered on its merits.