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28 September 2023

REF: SHA/26046

APPEAL AGAINST DECISION TO RECOVER AN OVERPAYMENT FROM HANCOCK AND AINSLEY LTD ("THE APPELLANT")

1 Outcome:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £6,042.00.

1.2 I note that neither party has submitted a claim for interest with regard to this dispute so I determine that no interest is payable on the sums to be paid from one party to another.

A copy of this decision is being sent to:

Hancock & Ainsley Ltd
NHS BSA on behalf of NHS England

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

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Email: nhsr.appeals@nhs.net

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APPEAL AGAINST DECISION TO RECOVER AN OVERPAYMENT FROM HANCOCK AND AINSLEY LTD ("THE APPELLANT")

1 INTRODUCTION

1.1 The Appellant appealed the decision of NHS England to recover an overpayment relating to the Medicines Delivery Service.

1.2 The Secretary of State for Health and Social Care, pursuant to the National Health Service Litigation Authority (Pharmaceutical Remuneration – Payment Disputes) (England) Directions 2022 (the "Payment Disputes Directions"), has directed that NHS Resolution determines this type of appeal on their behalf. I, as an authorised officer of NHS Resolution, have made this determination.

2 DECISION

The NHS Business Services Authority ("NHS BSA"), acting on behalf of NHS England, sent a decision to the Appellant on 1 June 2023 in respect of Hancock & Ainsley Ltd (ODS code FM788). The decision stated:

"Medicines Delivery Service - Post Payment Verification

2.1 The Pharmacy Provider Assurance Team, part of NHS Business Services Authority (NHSBSA), have been requested by NHS England (NHSE) to undertake a Post Payment Verification (PPV) exercise to provide assurance that pharmacy contractors have claimed correctly for the Medicines Delivery Service.

2.2 This service was originally commissioned across the country from 8th April 2020 and ran until 31st July 2020. Between April and July 2020, and in the months of November 2020 and January to March 2021 the Medicines Delivery Service was limited to those patients classed as Clinically Extremely Vulnerable (CEV) to Covid, who could be identified on the Summary Care Record as 'Shielded Patients'.

2.3 As part of the verification exercise, your pharmacy has been contacted by the Provider Assurance Team to request that you review all of your Medicine Delivery Service records in the months of November 2020, and January 2021 to March 2021.

2.4 To date your pharmacy has not provided evidence to demonstrate that the Medicine Delivery Service claims made during this time met the requirements set out in the

service specification, despite several attempts made by the NHSBSA Pharmacy Provider Assurance Team.

2.5 Attached is a timeline of correspondence with your pharmacy to date which was passed to the NHS England local Pharmaceutical Services Regulatory Committee (PSRC) to consider whether further action was necessary.

2.6 The NHS England Pharmaceutical Services Regulatory Committee has now reviewed this information and noted that:

2.6.1 FM788 - HANCOCK & AINSLEY LTD claimed 3,566 deliveries for the Medicines Delivery Service in the months of November 2020, and January 2021 to March 2021.

2.6.2 The NHSBSA Provider Assurance Team did not receive any evidence which demonstrated that the Medicine Delivery Service claims made in the months of November 2020, and January 2021 to March 2021 were to patients classed as Shielded only, and therefore could not verify that these claims met the requirements set out in the service specification.

2.6.3 HANCOCK & AINSLEY LTD was contacted on nine separate occasions by the NHSBSA Provider Assurance Team to request evidence to demonstrate that that [sic] the Medicine Delivery Service claims made during this time met the requirements set out in the service specification.

2.7 Having reviewed the information provided by the NHSBSA Provider Assurance Team, the NHS England Pharmaceutical Services Regulatory Committee has decided that an overpayment in relation to your November 2020, and January 2021 to March 2021 Medicines Delivery Service claims has occurred and has instructed recovery of this overpayment to be progressed in accordance with Regulation 94 (1) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

2.8 The table below outlines the monthly Medicine Delivery Service claims reimbursed to your pharmacy – HANCOCK & AINSLEY LTD – FM788 for the months of November 2020, and January to March 2021 and also the maximum number of deliveries your pharmacy may have claimed for the service during this period, along with the associated recovery value:

	November 2020	January 2021	February 2021	March 2021	Total
Pharmacy Delivery Claims	1,025	1,163	1,168	210	3,566
Max potential deliveries	814	815	720	813	3,162

2.9 Total recovery for November 2020, January 2021 – March 2021:

2.9.1 3,356 deliveries claimed – 2,349 maximum deliveries = 1,007 deliveries

2.9.2 1,007 deliveries x £6.00 = £6,042.00 deduction

2.10 Please note that the maximum number of deliveries and any resulting overpayment has been calculated using only the months of November 2020, January 2021 and February 2021. This is due to the number of claims made for these months being greater than the maximum number of deliveries that would have been eligible to claim for. The claims made for March 2021 were less than the maximum number of deliveries that would have been eligible so no deduction would be necessary for this month.

2.11 Total value to be recovered = £6,042.00 deduction.

Action Required

2.12 Please respond to this correspondence at nhsbsa.pharmacysupport@nhs.net to confirm your agreement for the overpayment to be recovered pursuant to Regulation 94(1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. Please send this confirmation by 1st July 2023.

2.13 Where you agree an overpayment has been made the amount over paid will be recovered by deduction from a future NHSBSA payment to you.

2.14 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by 1st July 2023.

2.15 Once the NHSBSA has received confirmation to recover the overpayment you will be notified of when this will take place. A record of this process will be kept on your NHS England contractor file.

2.16 Please be aware that failing to contact us by 1st July 2023 to agree that there has been an overpayment DOES NOT mean that the overpayment cannot be recovered. Instead, where you do not agree that an overpayment has been made you have a right of appeal to the Secretary of State against NHS England's decision. Should you choose to appeal then send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

NHS Resolution,
Primary Care Appeals,
10 South Colonnade,
Canary Wharf,
London,
E14 4PU

2.17 If there is no appeal within 30 days from the date of this letter, NHS England has requested that the NHSBSA Provider Assurance Team commence overpayment recoveries under Regulation 94(1) (b) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, on the basis that the final outcome of our investigation is that there has been an overpayment.

2.18 The NHSBSA will notify you of when the overpayment recovery will take place.

2.19 A record of this process will be kept on your NHS England contractor file.

2.20 For more information or for clarification of any of the details in the letter, please contact us by email at nhsbsa.pharmacysupport@nhs.net.

2.21 If you would prefer to speak to us via telephone/Microsoft Teams, please email nhsbsa.pharmacysupport@nhs.net to provide your contact details and a member of the team will get in touch as soon as possible

2.22 The proposed and future actions detailed in this letter are stipulated without prejudice.

2.23 Your co-operation is very much appreciated."

3 THE DISPUTE

In an email letter dated 30 June 2023 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 “We are submitting an appeal for the Medicines Delivery Service for Nov 2020- March 2021, in which you want to recover a payment £6,042.

3.2 We have explained numerous times and provided evidence of the deliveries done over the period in question. The total FINAL figures match, despite the variation in claims in some months, as explained in the previous email to NHSBSA.

3.3 The number of claims made by our pharmacy is incorrect on your data, however our pharmacy checked the Summary Care Records for patients qualifying for this service.

3.4 Your records show the following:

3.4.1 NOV 2020 - CLAIMED 1025

3.4.2 JAN 2021 - CLAIMED 1163

3.4.3 FEB 2021 - CLAIMED 1168

3.4.4 MARCH 2021 CLAIMED 210

3.4.5 Total claimed 3566

3.5 The correct figures should have been the following:

3.5.1 NOV 2020 – 814

3.5.2 JAN 2021 – 815

3.5.3 FEB 2021 – 720

3.5.4 MARCH 2021 – 813

3.5.5 Total to be claimed for 3162

3.6 I am unsure as to why there have been discrepancies. There may be some possible factors:

3.6.1 Some months claim may have gone in the next month especially feb/march 2021 as you can clearly see overclaimed in feb 2021, however underclaimed in march 2021.

3.6.2 This has been an adminstratrative [sic] error on our part, an explanation [sic] I can't seek as these coleagues [sic] have left the business, as this was over a year ago. [sic] The administrative part is that some months are over claim and some are under not sure why this has occurred when they checked summary care records. COVID was extremely stressful period, as we were thin with the level of staff. Various staff were off, either been positive to COVID or having symptoms of COVID, which warranted time off from work. Also extra stress was the rapid increase in customer footfall through the door, as they could not get an appointment to see a GP, this meant Pharmacy was their only viable option for healthcare. Working under these contraints [sic] can easily lead to administration error.

3.6.3 A administrative error on your part, has this happened to other pharmacies?

3.6.4 In light of this, NHSBSA is due payment for £2424 not 1007 deliveries x £6.00 = £6,042.00 deduction”

4 SUMMARY OF REPRESENTATIONS

This is a summary of representations received on the appeal.

4.1 The NHS BSA on behalf of NHS England stated:

4.1.1 "Please find attached the NHSBSA Pharmacy Provider Assurance Team's (NHSBSA PAT) representations in relation to SHA/ 26046 – Hancock & Ainsley Ltd (FM788) – Dispute regarding overpayment of November 2020 & January 2021 – March 2021 Medicines Delivery Service claim.

4.1.2 We have included the following:

4.1.2.1 The NHSBSA PAT's response to the contractor's appeal

4.1.2.2 A copy of the of the Service Announcements which outlined the service from 9th of April 2020;

4.1.2.3 A copy of the of the Service Announcements which outlined the service from 30th of June 2020;

4.1.2.4 Copies of the of the Service Announcements which outlined the service dated the 4th of November 2020 to 2nd of December 2020, and then from 5th of January 2021 to 31st of March 2021;

4.1.2.5 A timeline of correspondence between the NHSBSA PAT and the contractor;

4.1.2.6 Copies of the service specifications published 3rd of November 2020 and 19th of February 2021."

NHS BSA's response to the appeal

4.1.3 "Thank you for your letter of the 6th of July 2023 and for the opportunity to provide representations on the appeal.

Background

4.1.4 The Pharmaceutical Services (Advanced and Enhanced Services) (England) Directions 2013 (the "Advanced and Enhanced Services Directions") were amended on 27 March 2020 to require NHS England (NHSE) to commission a home delivery service from a pharmacy contractor who is to make a delivery of a prescription as mentioned in paragraph 22A(3)(a) or (b) of Schedule 4 to the Regulations. Paragraph 22A(3)(a) and (b) relate to deliveries to eligible patients in an area specified in an announcement made by NHSE with the agreement of the Secretary of State. The announcement must be to the effect that in order to assist in the management of the serious risk or potentially serious risk to human health, eligible patients are advised to stay away from pharmacy premises in the area specified, in the circumstances specified and for the duration of the period specified in the announcement.

4.1.5 The Advanced and Enhanced Services Directions go on to say that NHSE is directed to ensure there is a service specification for the home delivery service. A pharmacy contractor must comply with the requirements of the service specification.

4.1.6 As part of the national response to the COVID-19 Pandemic, NHSE commissioned a delivery service from community pharmacies to those patients classed as Clinically Extremely Vulnerable (CEV) or 'Shielded Patients' who were required to self-isolate at home. This group of people were at a very high risk of serious illness from COVID-19 infection and were asked to remain indoors for their own safety.

4.1.7 To allow these patients to receive their prescriptions, an Advanced service known as the Medicine Delivery Service (MDS) was commissioned to provide funding for deliveries of prescriptions to CEV patients. The service was limited to CEV patients when the service was initially commissioned. CEV patients could be identified on their Summary Care Record (SCR) as 'Shielded Patients.' Pharmacies should have also first established whether a friend, relative, carer or volunteer was available to collect the prescription on the patient's behalf before making and claiming for the delivery.

4.1.8 Contractors claimed for the service via the Manage Your Service (MYS) portal and for each delivery claimed as part of the Medicine Delivery Service, a payment of £6.00 (including VAT) was paid as part of the normal end of month process.

4.1.9 The Medicines Delivery Service was commissioned for both pharmacies and dispensing doctors across England from 9 April 2020 until 1st July 2020 in the first instance, but in the introductory letter – attached – it stated that this service may be extended as necessary as part of the Covid-19 response.

4.1.10 In its letter of 30 June 2020 – attached - NHSE announced that the service would be extended so that both pharmacies and dispensing doctors across England will be required to ensure shielded patients can receive a home delivery of their medicines until 31 July 2020. The letter went on to explain that "*The provision of this service throughout July will enable patients who are shielding time to make alternative arrangements for access to their prescription medications, after which both the essential and advanced pharmaceutical service, and both elements of the dispensing doctor COVID-19 home delivery service cease to be commissioned*."

4.1.11 Between 31 July 2020 and 5th October 2020, the MDS was not then commissioned for the vast majority of the country. There were small discrete areas of the country where lockdown restrictions remained in place where the service was commissioned. These were specified in further letters published by NHSE. As these are not relevant to this appeal these letters have not been included in this representation but can be provided should NHS Resolution wish to see them.

4.1.12 In the attached letter of 4th November 2020 NHSE announced that the service would be extended nationally, for all CEV patients on the SPL from 5th November 2020 until 3rd December 2020.

4.1.13 Following another National Lockdown, the attached NHSE letter dated 5th January 2021 announces that the service would be extended further from 5th January 2021 until 21st February 2021, again stating that "*Only patients on the government's shielded list living are eligible for this service. Appropriate checks should be made the Summary Care Record to ensure that the patient is eligible for this service*".

4.1.14 In the attached letter dated 19th February 2021, NHSE then announces that as the government shielding guidance had been extended up until 31st March 2021, the Medicines Delivery Service would therefore be commissioned for these CEV patients from 19th February 2021 until 31st March 2021.

4.1.15 This and subsequent letters were published by NHS England on its website at: https://www.england.nhs.uk/coronavirus/publication/preparedness-letters-for-community-pharmacy/.

4.1.16 Following the publication of each of these letters on the NHS Website the Pharmaceutical Services Negotiating Committee – the representative body for the community pharmacy sector, now known as Community Pharmacy

England, also sent an update to its members highlighting the change to the service specification. A summary of the updates that were provided by the PSNC can be found at https://cpe.org.uk/national-pharmacy-services/advanced-services/pandemic-delivery-service/pandemic-delivery-service-archive/.

November 2020 and January to March 2021 claims

4.1.17 In its letter from the 10th of April 2020, NHSE announced the commissioning of the Medicines Delivery Advanced Service, stating that patients who met the shielding criteria who were asked to stay at home and not attend community pharmacies, must be offered a home delivery option for their prescription items.

4.1.18 The letter clearly stated that the MDS was limited to those patients classed as CEV to Covid. Contractors were required to make appropriate checks to ensure that patients who received the MDS were on the CEV list e.g., patients could be identified on the SCR as 'Shielded Patients.' The letter also made clear that claims should only be made in the event that no friend, carer, relative, or volunteer is available to collect the prescription on the patient's behalf.

Appendix 1: Section 5. "The service is restricted to those patients who are covered by the shielding policy[1], as set out in Annex A, and will apply across the whole of England. Pharmacy contractors should be aware that GPs have the ability to remove or add patients to the list of those deemed most vulnerable as their clinical condition changes. Appropriate checks should therefore be made to ensure that the patient remains eligible for this service. The pharmacist can check this on the Summary Care Record."

Appendix 1: Section 6. "Patients who meet the eligible patient criteria, should be encouraged in the first instance to arrange for their medicines to be collected from the pharmacy and then delivered by family, friends or a carer."

4.1.19 During November 2020 and January to March 2021, the NHSE service specification made clear that the MDS remained limited to those patients classed as CEV to Covid, who could be identified on the SCR as 'Shielded Patients'. The service specification also states that claims should only be made in the event that no friend, carer, relative, or volunteer is available to collect the prescription on the patient's behalf.

Page 1: Background point 5. "The service is restricted to those patients who are covered by the shielding policy[1], and will apply only in areas where the Government has announced that local or national lockdown procedures are in place and are specified in the relevant announcement made by NHS England and NHS Improvement (NHSEI). Pharmacy contractors should ensure that they are fully aware of which geographies are in local lockdown at any given time. Pharmacy contractors should also be aware that GPs have the ability to remove or add patients to the list of those deemed most vulnerable as their clinical condition changes. Appropriate checks should therefore be made to ensure that the patient remains eligible for this service. The pharmacist can check this on the Summary Care Record".

Page 2: Background point 7. "Patients who meet the eligible patient criteria, should be encouraged in the first instance to arrange for their medicines to be collected from the pharmacy and then delivered by family, friends or a carer".

Page 2: Background point 9. "Where there is no family, friend, neighbour or carer, the pharmacy team must advise the patient of the potential for a local volunteer to act on their behalf who can collect the patient's prescription and deliver it to them. This must include local provision of volunteers[3] and NHS

Volunteer Responders[4], where either are available. 'NHS Volunteer Responders information for health professionals' is available in Annex A".

4.1.20 NHSBSA Pharmaceutical Provider Assurance (NHSBSA PAT), on behalf of NHSE, were requested to conduct a Post Payment Verification exercise to ensure that pharmacy contractors claimed correctly for the MDS between the months of November 2020 and January 2020 to March 2021 by only claiming for those patients classed as CEV.

4.1.21 The NHSBSA PAT looked at the claims for those contractors who were considered as outliers between the months of November 2020 and January to March 2021 and collated the NHS numbers of all patients who had a prescription dispensed by these pharmacies during this time. These NHS numbers were then provided to NHS Digital, who cross referenced them against the shielded patient list (SPL) and provided the NHSBSA PAT with the total number of patients who had a prescription dispensed at the pharmacy and who were identified as appearing on the SPL at any time.

4.1.22 The results showed the total amount of prescription forms dispensed to patients classed as 'Shielded' at these pharmacies during this time.

4.1.23 NHS Digital created and maintained the SPL which contained patients in England who were identified as being CEV, including patients identified by their GP or hospital specialist. The list was updated weekly from March 2020 to September 2021. The MDS was only commissioned for CEV patients on the SPL up until the end of March 2021.

4.1.24 The NHSBSA PAT provided the NHS numbers of all patients who had a prescription dispensed during November 2020 and January to March 2021 for those pharmacies that it had identified as outliers and these NHS Numbers were subsequently cross checked by NHS Digital against the SPL in November 2021.

4.1.25 The data obtained by the NHSBSA PAT includes any patient who was ever identified as being on the SPL throughout the course of the MDS being commissioned for CEV patients. Whilst this means that the number of CEV patients included in a review of the MDS over a fixed period of time is likely to be higher than the actual number of CEV patients on the SPL at that particular time (i.e., patients were added and removed throughout the time period as their CEV status changed) NHS England accepted this higher number to allow a fair and reasonable margin for modelling.

4.1.26 The prescription forms dispensed by the pharmacy to the CEV patients from this data during the time period being reviewed were then used for the NHSBSA modelling.

NHSBSA Modelling

4.1.27 For cases such as this one where the pharmacy did not provide any evidence to demonstrate that the MDS claims were to CEV patients only and so there is an absence of verifiable data, the NHSBSA PAT modelled the likely maximum number of potential deliveries to shielded patients, that the contractor could have made during November 2020 and January to March 2021. Ideally, the details of the CEV patients that the pharmacy had delivered to would be run against the list of patients which the pharmacy had dispensed to and were found to be included on the SPL, to do a simple comparison.

4.1.28 However as this was not possible, the potential number of deliveries has been determined based on the number of prescription forms dispensed to patients identified as being on the shielded patient list at any time and:

4.1.28.1 For EPS (Electronic Prescription Service) prescriptions - where the patient is identified as living in a care home then all prescriptions for shielded patients to that address on that day, regardless of the NHS number, are considered to be a single delivery. Where prior to the Covid pandemic, it was understood that pharmacies had already been delivering to care homes using any existing business models that they had in place, the NHSBSA PAT has still allowed a MDS fee for the first prescription to that address for each day.

4.1.28.2 For EPS prescriptions - where the patient address cannot be identified as being a care home, then all prescriptions for shielded patients to that NHS number on that day are considered to be a single delivery.

4.1.28.3 For Paper prescriptions – each prescription form for a shielded patient is considered to be a single delivery.

4.1.29 EPS prescriptions allow the NHSBSA PAT to see the dispensed date of a prescription, which enabled the modelling to count all prescriptions from a specific day as single delivery. Paper prescriptions however do not provide a dispensed date, only the month for which the prescription was submitted, therefore a MDS fee has been allowed for each paper prescription to a shielded patient, even though most patients will receive their monthly prescription forms as a single batch.

4.1.30 The NHSBSA PAT have applied a business logic to the modelling by only counting one MDS fee per day for EPS prescriptions to a shielded NHS number, as it would be expected that even if several separate prescription forms were dispensed to the same patient on a given day, these would still be delivered as part of the same journey in most cases.

4.1.31 These maximum potential figures should still be considered as an over-estimate, as it includes:

4.1.31.1 All CEV patients who ever appeared on the SPL so if a patient was removed from the list during the lockdown all prescriptions to the removed patient would still be included,

4.1.31.2 It does not account for any deliveries that would have been made by friends, family, carers or volunteers, as per the requirement in the service specification,

4.1.31.3 It allows a claim for all paper prescription forms dispensed each month even though for many of these patients the forms will have been received as a single batch, dispensed together and delivered to the patient all at once.

4.1.31.4The NHSBSA PAT allowing a fee each day for deliveries made to a care home, even where these would have already been covered by the pharmacy's usual business model.

4.1.32 This overestimate was accepted by NHSE as giving a fair margin, to enable a reasonable estimate of the deliveries that could be expected given that there may be operational difficulties in managing the deliveries e.g., out of stocks, missed deliveries, replacement of missing items etc.

4.1.33 The NHSBSA PAT model has been used when reviewing the claims of contractors in the absence of data from a pharmacy to show who their CEV patients were and the number of deliveries that were made to those patients during the claim periods investigated.

4.1.34 Table 1 below shows the results of this modelling for FM788 – HANCOCK & AINSLEY LTD.

4.1.35 Table 1

	November 2020	January 2021	February 2021	March 2021	Total
Pharmacy Delivery Claims	1,025	1,163	1,168	210	3,566
Max potential deliveries	814	815	720	813	3,162

PPV

4.1.36 In the Post Payment verification exercise undertaken by the NHSBSA PAT, FM788 – Hancock & Ainsley LTD, were identified as a potential outlier when comparing the number of MDS claims made in the months of November 2020, and January 2021 to March 2021 with the maximum potential number of deliveries that may have been claimed for CEV patients during this time. As a result, 9 contact attempts were performed by the NHSBSA PAT to engage with the pharmacy to request evidence to show the MDS claims made in the months of November 2020, and January 2021 to March 2021 were claimed for CEV patients only as specified within the service specification.

4.1.37 Emails were sent to the pharmacy shared NHS mail address pharmacy.fm788@nhs.net as required by NHSE. All listed pharmacies must have a valid shared NHSmail account that should be regularly monitored by the pharmacy team as part of their terms of service.

4.1.38 During phone calls, the contractor also provided NHSBSA PAT with additional email addresses all correspondence from this point was sent to pharmacy.fm788@nhs.net, arif@hancockandainsley.com and arif.aziz@hotmail.co.uk.

4.1.39 Phone calls to the pharmacy were also made to confirm receipt of these emails and phone call attempts were made to advise the pharmacy of the final 14-day response deadline.

4.1.40 The pharmacy did initially engage with the PPV process, however despite attempts made by the NHSBSA PAT, FM788 – Hancock & Ainsley LTD did not provide any evidence to demonstrate that the MDS claims made in the months of November 2020 and January 2021 to March 2021 were claimed correctly for eligible patients. As such the NHSBSA were then unable to verify that the deliveries claimed met the requirements set out in the service specification.

4.1.41 As the NHSBSA PAT had been unable to validate the deliveries claimed by the pharmacy during this time, the details of the case were passed to the NHSE regional team for their Pharmacy Services Regulation Committees (PSRC) to review. A decision was sought as to whether the deliveries made by the contractor were eligible for a payment under the terms of the Medicines Delivery Scheme at the time that the deliveries were made; and if they were not eligible, for the delivery fees that have been paid to be recovered under Regulation 94(1)(a) as an overpayment.

The PSRC decision

4.1.42 To assist with their review, the PSRC was provided with the service specifications relevant for the November 2020, and January 2021 to March 2021 period, which outlined the details of this advanced service and the dates which the service was extended.

4.1.43 The timeline of correspondence showing all the contacts the Provider Assurance team had, and attempted to have, with the pharmacy was also provided to the PSRC for review. This timeline has been provided to you in addition to this representation.

4.1.44 This illustrated that FM788 – Hancock & Ainsley LTD was not able to provide any evidence to demonstrate that the deliveries claimed for in the months of November 2020, and January 2021 to March 2021 were to shielded patients only and thus eligible for a MDS fee.

4.1.45 This was despite the repeated requests made by the NHSBSA to the contractor to provide such evidence.

4.1.46 Consequently, the PSRC accepted the NHSBSA modelling of expected deliveries and concluded that the pharmacy had claimed for deliveries in excess of the expected maximum which was considered possible for the period of November 2020, and January 2021 to March 2021, where only patients classed as 'shielding' were eligible met the requirements set out in the service specification.

4.1.47 Following this conclusion, the PSRC determined that the pharmacy was not entitled to the payment for which it had received.

4.1.48 Having made this decision, the PSRC then directed that as FM788 – Hancock & Ainsley LTD was not entitled to the payment that the overpayment should be reclaimed pursuant to Regulation 94(1)(a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.1.49 In making this decision the PSRC relied on the information that it had before it, following the extensive investigation undertaken by the NHSBSA and the repeated requests to the contractor for evidence of how the MDS claims made for the period of November 2020, and January 2021 to March 2021 met the requirements set out in the service specification.

4.1.50 In response to the contractor's appeal:

4.1.51 In their appeal, the appellant states; "*We are submitting an appeal for the Medicines Delivery Service for Nov 2020- March 2021, in which you want to recover a payment £6,042. We have explained numerous times and provided evidence of the deliveries done over the period in question. The total FINAL figures match, despite the variation in claims in some months, as explained in the previous email to NHSBSA*".

4.1.52 The contractor has not provided any evidence to date of the deliveries made by the pharmacy during November 2020 and January to March 2021, despite being requested to do so on 9 occasions via emails and telephone calls.

4.1.53 However, it is evidence that the deliveries made were to patients who were eligible for the services which is the key point that the appellant appears to have missed in their appeal. The appellant has not provided this at all during the initial investigation or in their appeal. The contractor may be counting written or verbal confirmations as evidence even though NHSBSA PAT requested actual claim evidence i.e., like a delivery log highlighting CEV deliveries which has not been provided.

4.1.54 The timeline of engagement with the contractor shows that there were several conversations with the pharmacy director, Syma Aziz, between 29.11.23 and 8.12.23 regarding the differences in the claims data, and the maximum claims expected by NHSBSA modelling that had been provided by the assurance team. Syma Aziz queried with the NHSBSA PAT as to whether the claims could

be amended as they believed they may have been incorrectly input [sic] for these months. The appellant requested clarification if some of the claims made in November 2020 and January and February 2021 could be added to the March 2021 claim as this month was lower than the maximum potential claims that could have been made. The appellant asked for a follow up call to confirm if this request was granted. The NHSBSA PAT followed up with a phone call to the appellant on 1st December 2022 to confirm claims made for the service cannot be changed retrospectively.

4.1.55 Syma Aziz then sent an email to the NHSBSA PAT on 13th December 2022 stating that "*the number of claims made by our pharmacy was incorrect on your data, however our pharmacy checked the Summary Care Records for patients qualifying for this service*." The email then goes on to state that the correct number of claims made by the pharmacy was the maximum potential claim figures which were modelled by the NHSBSA PAT and shared with the pharmacy in an email dated 8th November 2022.

4.1.56 For the avoidance of doubt, the data held by the NHSBSA confirming the number of MDS claims submitted by the contractor via the Manage Your Service (MYS) platform is shown in the following table – this has been confirmed by the MYS team and includes the number of deliveries submitted, the date the declaration was made on MYS and the Name of the person who submitted that claim:

F-Code	Submission	Name	Declaration Date	Declaration	Deliveries Made
FM788	Nov-20	Arif Aziz	04/12/2020	Yes	1025
FM788	Jan-21	Arif Aziz	05/02/2021	Yes	1163
FM788	Feb-21	Arif Aziz	05/03/2021	Yes	1168
FM788	Mar-21	Arif Aziz	05/04/2021	Yes	210

4.1.57 The maximum number of deliveries modelled by the NHSBSA PAT, shows the maximum number of deliveries that may have been claimed based on how many prescription forms were dispensed by the pharmacy to patients classed as CEV if they were then to have a delivery for those prescription items in that month. However, this figure should be seen as an overestimate, as it includes any patient who ever appeared on the SPL (and so may not have been classed as CEV at that time) and does not account for any deliveries that would have been made by friends, family, carers or volunteers, as per the requirement in the service specification. NHSE would still expect that a good proportion of these deliveries would have been covered by friends, family, volunteers without the need for a MDS fee to be claimed as was outlined in the service specification.

4.1.58 Taking the above into consideration, NHSE would consider that it is highly unlikely that the number of claims the pharmacy states it should have made is the exact same number as the maximum potential claims modelled by the NHSBSA PAT for each of the months in question and would again highlight that no evidence has been provided by the appellant to support this. Following the email from Syma Aziz the NHSBSA PAT had concerns about how the contractor had revised what should have been claimed for, and then arrived with exactly the same numbers as had been modelled by the NHSBSA. A call was had in early January and a follow up email was sent to the contractor on 13.01.23 advising of the need for evidence for the amended number of MDS claims, which patients were CEV and therefore eligible for the service, alongside the details of the MDS deliveries made. A follow up email was sent on 24.01.2023.

4.1.59 A final email was sent to the contractor on 09.02.23 advising the contractor that as there had been no evidence provided to demonstrate how the excess claims were eligible for the MDS payments the case was being referred to the PSRC.

4.1.60 A contractor is required to make their claims by the 5th day of the following month after they have made the delivery to eligible patients. The contractor submitted claims for 210 deliveries in March 2021, and been paid accordingly. The pharmacy are not able to retrospectively claim for deliveries made in March. Whilst the NHSBSA modelling suggests that 813 deliveries would have been the maximum that would have been expected from the prescription forms dispensed to CEV patients by the pharmacy in that month, this does not mean that this is the number of deliveries that were made. Nor does it mean that overclaims from previous months can then be "moved" from the month the claim was made to another month where the deliveries claimed were less that the NHSBSA modelling.

4.1.61 It was incumbent on the contractor to submit accurate claims based on eligible patients that it had delivered to in each month that it provided the service and to then have appropriate records for PPV to demonstrate that these claims met the service requirements. This the appellant has failed to do both during the PPV investigation and the subsequent appeal.

4.1.62 The appellant adds that the discrepancy in the data may be due to an administrative error on their part: "*This has been an administrative error on our part, an explanation I can't seek as these colleagues have left the business, as this was over a year ago. The administrative part is that some months are over claim and some are under not sure why this has occurred when they checked summary care records. COVID was extremely stressful period, as we were thin with the level of staff. Various staff were off, either been positive to COVID or having symptoms of COVID, which warranted time off from work. Also, extra stress was the rapid increase in customer footfall through the door, as they could not get an appointment to see a GP, this meant Pharmacy was their only viable option for healthcare. Working under these constraints can easily lead to administration errors*".

4.1.63 NHSE appreciate it was a very challenging time for pharmacy contractors serving their patients while at the same time rising to meet the challenge of the Pandemic and the new services commissioned. NHSE also appreciate that it has been an extremely busy time for pharmacies and are grateful for the work undertaken to protect vulnerable patients, however the service was only commissioned to support those patients identified as CEV as per the service specification. The PPV exercise has then tried to establish that pharmacies have been paid correctly for the provision of this commissioned service.

4.1.64 Considering the above, claims for deliveries fulfilled in March 2021 could not have been incorrectly claimed in advance of the February 2021 submission as this was made on the 5th day of March 2021 and it would not be possible to know how many MDS deliveries would be performed in March 2021 before the month was over.

4.1.65 At no point in the investigation, or within the appeal, has the appellant provided any evidence to demonstrate how the pharmacy checked the CEV status of the patients that it was claiming MDS fees for.

4.1.66 The appellant goes on to suggest there may have been an administration error on part of the NHSBSA; "*A administrative error on your part, has this happened to other pharmacies?*".

4.1.67 The data for the number of deliveries the pharmacy claimed is taken from the MYS data submitted by the contractor for the service. The service specification

states: "*Contractors must submit their claims for payment via the MYS platform by the 5th of the month after the service was provided. Claims for this service will not be accepted after the 5th of the following month*".

4.1.68 The NHSBSA PAT contacted the MYS team on 19th December 2022 to request the MDS claims information for FM788 for the months of November 2020 and January to March 2021, which confirmed the claims made by the pharmacy were submitted by the 5th of the following month:

F-Code	Submission	Name	Declaration Date	Declaration	Deliveries Made
FM788	Nov-20	Arif Aziz	04/12/2020	Yes	1025
FM788	Jan-21	Arif Aziz	05/02/2021	Yes	1163
FM788	Feb-21	Arif Aziz	05/03/2021	Yes	1168
FM788	Mar-21	Arif Aziz	05/04/2021	Yes	210

4.1.69 As previously stated, the data for the number of claims the pharmacy made was obtained from the MYS submissions made by the contractor, therefore this dismisses the suggestion the discrepancy is due to an administration error on the part of the NSHBSA. There have been no examples of the claim data held by the NHSBSA for other pharmacies being incorrect – if a pharmacy were to query the number of claims they made, the data can be checked with the MYS team and the date that the claims were submitted then used to locate the payment for these claims on the contractor's schedule of payments.

4.1.70 The appellant has stated; "*A check can also be made in our PMR system if you wish to visit*". This is the first occasion where the contractor has put forward this invitation, however NHSBSA are not in a position to review pharmacy evidence and why the contractor was requested to provide their evidence in the investigation directly to the NHSBSA.

4.1.71 It should be noted that the pharmacy contractor must maintain appropriate records to ensure effective ongoing service provision and to support post-payment verification. This should include, as a minimum, details of the eligible patients to whom a delivery was made under this service, including the postcode of the patient's address, and the date of the delivery, therefore the contractor was obligated to provide evidence at the request of the NHSBSA PAT.

4.1.72 The appellant stated, "*In light of this, NHSBSA is due payment for £2424 not 1007 deliveries x £6.00 = £6,042.00 deduction*".

4.1.73 The appellant has incorrectly calculated the number of claims to determine they believe the deduction from the NHSBSA should be £2,424.00 as opposed to £6,042.00, this is due to the appellant including the claims from March 2021 in their calculation. March 2021 was not included in the deduction as the number of claims made was less than the maximum potential claims that could have been made for that month. This was clearly explained in 3 separate emails sent to the appellant during the PPV process; "*Please note that the maximum number of deliveries and any resulting overpayment has been calculated using only the months of November 2020, January 2021 and February 2021. This is due to the number of claims made for these months being greater than the maximum number of deliveries that would have been eligible to claim for. The claims made for March 2021 were less than the maximum number of deliveries that would have been eligible so no deduction would be necessary for this month*".

4.1.74 At no point in the investigation, or within the appeal, has the appellant provided any evidence to demonstrate how the pharmacy checked the CEV status of

the patients that it was claiming MDS fees for, despite the multiple requests made by the NHSBSA PAT. As such NHSBSA respectfully submits that as the appellant has not provided any evidence to demonstrate that the MDS claims submitted were for deliveries only to CEV patients eligible for the MDS, then there is no substance to the appeal.

4.1.75 Furthermore, as part of their terms of service, all pharmacies were also required to ensure that CEV patients were able to have their medicines delivered either via patient representatives (friends, family, or NHS Volunteers) or via a delivery service organised by the pharmacy. As stated, on 3rd November 2020 Version 5 Service specification on page 2 (Background: point 7), "*7. Patients who meet the eligible patient criteria, should be encouraged in the first instance to arrange for their medicines to be collected from the pharmacy and then delivered by family, friends, or a carer*."

4.1.76 Throughout the PPV process or within the appeal, the appellant has not addressed this requirement of the service specification. It has not given any information on what processes were in place to determine whether a friend, carer, relative or volunteer was available to collect the prescription before going on to claim a MDS fee. No information has been provided to demonstrate that any level of conversation took place or what signposting was provided to patients before deciding that a delivery needed to be made under the MDS.

4.1.77 The maximum number of deliveries modelled by the NHSBSA PAT, shows the maximum number of deliveries that may have been claimed based on how many prescriptions were dispensed by the pharmacy to patients classed as CEV, however, NHSE would still expect that a good proportion of these deliveries would have been covered by friends, family, volunteers without the need for a MDS fee to be claimed as was outlined in the service specification.

4.1.78 In their appeal the appellant has not demonstrated that the deliveries made to the patients that it has claimed for under the MDS meet the eligibility criteria for the service as specified during the time period between the months of November 2020 and January to March 2021.

4.1.79 At no point in the investigation, or within the appeal, has the appellant provided any evidence to demonstrate how the pharmacy checked the CEV status of the patients that it was claiming MDS fees for, despite the multiple requests made by the NHSBSA PAT. As such NHSBSA respectfully submits that as the appellant has not provided any evidence to demonstrate that the MDS claims submitted were for deliveries only to CEV patients eligible for the MDS, then there is no substance to the appeal.

4.1.80 In their appeal the appellant has not demonstrated that the deliveries made to the patients that it has claimed for under the MDS meet the eligibility criteria for the service as specified during the time period of November 2020 and January to March 2021.

4.1.81 Therefore, NHSE maintains that FM788 – HANCOCK & AINSLEY LTD was not compliant with the requirements set out in the service specification in providing adequate records for the purposes.

4.1.82 The claims made by the pharmacy during November 2020 and January to March 2021 were in excess of the maximum potential that could have been claimed, when only patients classed as 'shielding' were eligible. As a consequence of having then been paid for these deliveries to ineligible patients an overpayment had been made. The decision to then recover the overpayment of £6,042.00 was then in accordance with the regulations.

Key points for consideration

4.1.83 NHSE respectfully asks that NHS Resolution considers the following key points when making its determination on the appeal:

4.1.83.1 The NHSE service specification clearly states that the MDS was restricted to CEV patients covered by the governments shielding policy in the months of November 2020 and January to March 2021. Appropriate checks should have been made by the pharmacy to confirm patient eligibility, which included checking the SCR.

4.1.83.2 The number of MDS claims made by the contractor in the months of November 2020 and January to March 2021 exceeds the maximum potential deliveries figure, which is based on the number of prescriptions dispensed to patients flagged as CEV on the SPL.

4.1.83.3Evidence was requested on 9 occasions, but none was provided to assist the NHSBSA PAT in their review and therefore the claims made by the pharmacy could not be validated.

4.1.83.4 Contractors were advised to retain evidence of deliveries made to CEV patients for post payment verification purposes, however throughout the PPV process, or within their appeal, the appellant has not provided any evidence to demonstrate that the claims made were for deliveries to patients classed as CEV only, and therefore met the requirements set out in the service specification.

4.1.83.5 The NHSBSA PAT modelling was carefully considered to give an overestimate of the maximum deliveries expected for a pharmacy. The margin of the overestimate in the modelling data was agreed with NHSE to allow for the operational difficulties that a pharmacy would be expected to incur in providing the MDS service.

4.1.83.6 Patients who appeared on the shielded patient list at any time were included in the NHSBSA modelling for the maximum potential deliveries that may have been made to eligible patients. The SPL contained the details of all the CEV patients that were ever recorded as being CEV. Therefore, even patients who had not been included in the list at the time the deliveries were made, were still included to produce the “maximum” numbers for the NHSBSA PAT modelling.

4.1.83.7 The contractor stated the correct claims were identical to the maximum potential claims based on the NHSBSA modelling, however this would be unlikely due to the modelling data being an overestimate as well as no evidence being provided to substantiate the assertion that the maximum potential claims are the correct figures.

4.1.83.8The data provided by the MYS team clearly evidences when the MDS declarations were made, the number of MDS deliveries being claimed and the person who submitted the declaration.

4.1.83.9 The service specification required the pharmacy to have first established whether a friend, relative, carer or volunteer was available to collect the prescription on the patient’s behalf before making a delivery and claiming for a MDS fee. It would be reasonable to assume that a proportion of the CEV patients that were identified as having prescriptions dispensed by the pharmacy would then have had their medicines delivered by a friend, relative, carer or volunteer. In the modelling undertaken by the NHSBSA PAT, these deliveries have not been removed from the “maximum” number of deliveries expected. This is to allow a reasonable and fair margin when calculating the numbers of deliveries that a pharmacy could have reasonably been

expected to make to support the MDS. The appellant has not referred to any checks that were made to use family, friends or volunteers during the PPV or appeal process.

4.1.83.10 The contractor claimed some deliveries were submitted in the wrong months, but no evidence has been provided to corroborate this.

4.1.83.11 The contractor has stated in the appeal they faced various difficulties during the months under review which may have led to administrative errors, however the contractor did not reach out to the NHSBSA to express these concerns at the time and as such were expected to carry out the service in accordance with the service specification by submitting their claims by the 5th of the following month. NHSE has no power to make payments to contractors outside of the statutory framework.

4.1.83.12 The contractor had numerous opportunities to provide evidence to demonstrate that the deliveries claimed met the requirements set out in the service specification. Only those contractors where no or insufficient evidence of meeting these requirements were referred to the regional PSRC.

4.1.83.13 The PSRC was presented with timelines of correspondence, showing all contact between the Provider Assurance team and the pharmacy.

4.1.83.14 The PSRC fully considered all information that it had before it when making its determination for the overpayment under regulation 94.

4.1.83.15 The decision to make an overpayment recovery is in line with regulations and there is nothing in the appeal to suggest otherwise.

4.1.84 In conclusion, NHS England maintains that FM778 – Hancock & Ainsley LTD was not compliant with the requirements set out in the service specification.

4.1.85 The claims made by the pharmacy during November 2020 and January to March 2021 were in excess of the maximum potential that could have been claimed, when only patients classed as 'shielding' were eligible. As a consequence of having then been paid for these deliveries to ineligible patients an overpayment had been made. The decision to then recover the £6,042.00 was then in accordance with the regulations.

4.1.86 Please let me know of you need anything further to help in these deliberations."

5 OBSERVATIONS

No observations were received by NHS Resolution in response to the representations received on appeal.

6 CONSIDERATION

6.1 Direction 2 of the Payment Disputes Directions directs me to determine a dispute in respect of the recovery of an overpayment from an NHS pharmacist under regulation 94(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services Regulations) 2013 (the "Regulations") which is in the nature of an appeal against a decision of NHS England that there has been an overpayment.

6.2 Direction 4 of the Payment Disputes Directions requires me to determine the appeal by dismissing it if:

6.2.1 NHS England has advised that an appeal must be brought within 30 days of the date the Appellant was notified of NHS England's decision and the appeal was not brought within that timescale; or

6.2.2 I am of the opinion that notification of the appeal contains no valid grounds of appeal (for example because it amounts to a challenge to the legality or reasonableness of the Payment Disputes Directions, the Regulations or the Drug Tariff).

6.3 I consider that I am not required to dismiss the appeal pursuant to Direction 4 as:

6.3.1 the NHS BSA advised the Appellant of a 30 days' timescale for appeal and the appeal was received within that timescale; and

6.3.2 the grounds of the appeal are valid.

6.4 Direction 6 of the Payment Disputes Directions states that I may determine the appeal without hearing any oral representations but if an appellant asks to make oral representations a hearing must be arranged unless I am satisfied that:

6.4.1 a hearing is unnecessary; or

6.4.2 I must dismiss the appeal by virtue of Direction 4.

6.5 The Appellant has not requested a hearing. On the basis of the information before me I have considered that it is unnecessary to hold an oral hearing.

6.6 I have before me the papers considered by the NHS BSA. I also have before me the responses to NHS Resolution's own statutory consultations.

6.7 I have considered further the requirements relating to the home delivery service referred to by the NHS BSA.

6.8 I note that the Pharmaceutical Services (Advanced and Enhanced Services) (England) Directions 2013 (the "Advanced and Enhanced Services Directions") were amended on 27 March 2020 to require NHS England to commission a home delivery service from a pharmacy contractor who is to make a delivery of a prescription as mentioned in paragraph 22A(3)(a) or (b) of Schedule 4 to the Regulations. Paragraph 22A(3)(a) and (b) relate to deliveries to eligible patients in an area specified in an announcement made by NHS England with the agreement of the Secretary of State. The announcement must be to the effect that in order to assist in the management of the serious risk or potentially serious risk to human health, eligible patients are advised to stay away from pharmacy premises in the area specified, in the circumstances specified and for the duration of the period specified in the announcement.

6.9 The Advanced and Enhanced Services Directions go on to say that NHS England is directed to ensure there is a service specification for the home delivery service. A pharmacy contractor must comply with the requirements of the service specification.

6.10 It is clear to me that the home delivery service is dependant in terms of eligibility of patients and the geographical areas in which it applies on the contents of announcements made by NHS England. The NHS BSA has provided copies of announcements made by NHS England.

6.11 I note the decision letter and subsequent appeal relates to deliveries made in the months of November 2020 and January 2021 to March 2021.

6.12 In relation to this period, the decision letter states:

6.12.1 *"FM788 - HANCOCK & AINSLEY LTD claimed 3,566 deliveries for the Medicines Delivery Service in the months of November 2020, and January 2021 to March 2021.*

The NHSBSA Provider Assurance Team did not receive any evidence which demonstrated that the Medicine Delivery Service claims made in the months of November 2020, and January 2021 to March 2021 were to patients classed as Shielded only, and therefore could not verify that these claims met the requirements set out in the service specification."

6.13 I note that the table at paragraph 2.8 above and the decision letter confirm that 3,566 deliveries were made and claimed for by the Appellant during November 2020 and January to March 2021. I further note that the table shows that the maximum potential deliveries for the same period total 3,162.

6.14 Whilst I note that the total deliveries is higher than the maximum potential deliveries, I note that the calculation at 2.9.1 is based on a figure of 3,356 deliveries made with a total maximum potential deliveries figure of 2,349. I note the comment from the NHS BSA in the decision letter at paragraph 2.10 that:

"… *the maximum number of deliveries and any resulting overpayment has been calculated using only the months of November 2020, January 2021 and February 2021. This is due to the number of claims made for these months being greater than the maximum number of deliveries that would have been eligible to claim for. The claims made for March 2021 were less than the maximum number of deliveries that would have been eligible so no deduction would be necessary for this month."*

6.15 I have proceeded on the basis of the calculation at 2.9.1 which is for the deliveries claimed in the months of November 2020, January 2021 and February 2021 (3,356) which is greater than the maximum number of potential deliveries for the same period (2,349).

6.16 As part of the national response to the Covid-19 pandemic, NHS England commissioned a delivery service from community pharmacies to those patients classed as Clinically Extremely Vulnerable (CEV) or 'Shielded Patients' who were required to self-isolate at home. This group of people were at a very high risk of serious illness from Covid-19 infection and were asked to remain indoors for their own safety.

6.17 The medicines delivery service was limited to those patients classed as CEV to Covid, who could be identified on the Summary Care Record as 'Shielded Patients'.

6.18 I note in its appeal, the Appellant sets out possible factors as to why there may be discrepancies with regard to the data and the deliveries made.

6.19 The Appellant states that "*some months claim may have gone in the next month*". I note the comments from the NHS BSA that "*A contractor is required to make their claims by the 5th day of the following month after they have made the delivery to eligible patients" and* "*the pharmacy is not able to retrospectively claim for deliveries made in March."* The NHS BSA goes on to state "*Whilst the NHS BSA modelling suggests that 813 deliveries would have been the maximum that would have been expected from the prescription forms dispensed to CEV patients by the pharmacy in that month, this does not mean that this is the number of deliveries that were made. Nor does it mean that overclaims from previous months can then be "moved" from the month the claim was made to another month where the deliveries claimed were less than the NHS BSA modelling*".

6.20 I note the service specification dated 9 April 2020, as provided to me by the NHS BSA, at Appendix 2 "Service Specification – Community Pharmacy Home Delivery Service During the COVID-19 outbreak" point 8.1, states "*The pharmacy contractor must maintain appropriate records to ensure effective ongoing service provision and to*

support post-payment verification. This should include, as a minimum, details of the eligible patients to whom a delivery was made under this service and the date of the delivery".

6.21 The NHS BSA has also provided a copy of the letter of 19 February 2021 "Home delivery of medicines and appliances during the COVID-19 outbreak" which states:

"Claims

Community pharmacy contractors can claim payment for delivery of medicines to CEV patients under the Community Pharmacy Home Delivery service on the Manage your service (MYS) | NHSBSA

Contractors must submit their claims for payment via the MYS platform by the fifth of the month after the service was provided. Claims for this service will not be accepted after the fifth of the following month. Payment for the essential service will be made automatically."

6.22 I note from the information provided by the NHS BSA that the Appellant submitted its claims for payment via MYS and that this has not been disputed by the Appellant. I further note that these claims were made in line with the specifications by the 5th of the following month.

6.23 I note that there is no information provided to me, from the Appellant which demonstrates that the claims made in any of the months were actually made after the date that they were claimed.

6.24 I am of the view that a contractor is not able to "carry over" deliveries from one month to another just to ensure that they remained below the maximum delivery model that the NHS BSA has used.

6.25 The Appellant goes on to state *"this has been an adminstratrative [sic] error on our part, an explaination [sic] I can't seek as these coleagues [sic] have left the business…".* I note that the NHS BSA has sought to contact the Appellant on at least 9 different occasions since the commencement of the Post Payment Verification and that the Appellant has not been able to provide any further information or evidence that those who inputted the data did so incorrectly. I appreciate the pressures on the NHS at the time of the Covid-19 pandemic and sympathise with the Appellant, however there is nothing provided by the Appellant to demonstrate that any errors were made when the claims were submitted using MYS.

6.26 I finally note that the Appellant seeks to claim for a total of 3,162 deliveries and that a repayment of £2,424.00 should be made to the NHS BSA rather than a repayment of £6,042.00. I note that in this scenario the Appellant has suggested that the NHS BSA is using incorrect figures and that the "correct figures" for the number of claims to be made are those shown above which mirror the potential maximum number of claims as set out in the NHS BSA model.

6.27 I note that the Appellant in seeking to offer a revised repayment is basing the number of claims for March 2021 on the maximum potential deliveries that the NHS BSA state could be claimed. I am mindful of the methodology used, as set out in the service specification, and that there is no provision for claims to be retrospectively inputted. I note that the pharmacy claimed for 210 deliveries in March 2021 and that this information was provided through the MYS portal. I note that the records, as provided by the NHS BSA are taken from MYS and that this data was supplied by the Appellant in the first instance.

6.28 I note the comments from the NHS BSA that "*A contractor is required to make their claims by the 5th day of the following month after they have made the delivery to eligible patients" and* "*the pharmacy is not able to retrospectively claim for deliveries made in*

March." I am of the view that the claims for March 2021 cannot be amended and as stated at 6.24, the claims over the maximum potential deliveries for November 2020, January 2021 and February 2021 cannot be carried forward to the next month.

6.29 As the pharmacy delivery claims for March 2021 are below the maximum potential deliveries then there is no overpayment for March 2021 and therefore there is no repayment due to the NHS BSA for March 2021.

6.30 I am of the view that I have not been provided with any information to demonstrate that the claims made in November 2020 and January 2021 to February 2021 were to patients classed as CEV or 'Shielded Patients' who were required to self-isolate at home.

6.31 I therefore consider that the deliveries above the maximum potential deliveries made in the period November 2020 and January 2021 to February 2021 by the Appellant are not eligible for a fee.

6.32 I agree with the NHS BSA that the decision to recover the overpayment is appropriate.

7 DECISION

7.1 I have had regard to the Payment Disputes Directions which provide me with three options:

7.1.1 dismiss the appeal and confirm the decision of NHS England; or

7.1.2 substitute for the decision any decision that NHS England could have taken when it took the decision; or

7.1.3 quash the decision, with or without remitting the matter to NHS England for it to take the decision again subject to such directions as NHS Resolution considers appropriate.

7.2 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £6,042.00.

7.3 I note that neither party has submitted a claim for interest with regard to this dispute so I determine that no interest is payable on the sums to be paid from one party to another.

Head of Appeals
NHS Resolution