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8 December 2023

FILE REF: SHA/26045

DECISION MAKING BODY: NHS CHESHIRE & MERSEYSIDE INTEGRATED CARE BOARD ("THE COMMISSIONER")

**PMS CONTRACTOR: DR J BERRY & DR N DIXON
BUNBURY MEDICAL PRACTICE
VICARAGE LANE, BUNBURY,
TARPORLEY, CHESHIRE CW6 9PE**

DISPUTE RESOLUTION – NATIONAL HEALTH SERVICE (PERSONAL MEDICAL SERVICES AGREEMENT) REGULATIONS 2015

RE: FINANCIAL RECOVERY RELATING TO PRESCRIPTIONS DISPENSED DURING THE PERIOD OCTOBER 2021 TO DECEMBER 2021

1 Outcome

1.1 I am satisfied that the Commissioner can recover payments relating to prescriptions dispensed during the period October 2021 to December 2021 as the Contractor has not demonstrated that it could not have known about the withdrawal of the temporary national approval to suspend the need for patient signatures on the back of prescriptions.

1.2 I note that neither party has submitted a claim for interest. I make no determination in this regard.

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DISPUTE RESOLUTION – NATIONAL HEALTH SERVICE (PERSONAL MEDICAL SERVICES AGREEMENT) REGULATIONS 2015

RE: FINANCIAL RECOVERY RELATING TO PRESCRIPTIONS DISPENSED DURING THE PERIOD OCTOBER 2021 TO DECEMBER 2021

1 INTRODUCTION

1.1 The above Contractor has referred the dispute in relation to its Personal Medical Services Agreement for dispute resolution under Paragraph 95, Schedule 5 of the NHS (Personal Medical Services Agreement) Regulations 2004.

1.2 The National Health Service (Personal Medical Services Agreements) Regulations 2015 (the "Regulations") came into force on 7 December 2015. The Regulations apply to an agreement to which the National Health Service (Personal Medical Services Agreements) Regulations 2004 applied immediately before this date. The Contractor's PMS Agreement indicates a commencement date of 1 April 2004 and I therefore consider that the Regulations apply to this dispute.

1.3 The Secretary of State for Health and Social Care has directed that NHS Resolution exercise the functions of dispute resolution on their behalf. I, as an authorised officer of NHS Resolution, have made this determination.

2 APPLICATION FOR DISPUTE RESOLUTION

2.1 By letter dated 16 June 2023 the Contractor applied to NHS Resolution, for dispute resolution.

2.2 I have had regard to the following documents made available to me in consideration of this matter to ensure the just, expeditious, economical and final determination of this dispute: -

2.2.1 The Contractor's application for dispute resolution dated 16 June 2023 with enclosures;

2.2.2 The Contractor's email to NHS Resolution dated 6 July 2023 providing further information;

2.2.3 The Contractor's email to NHS Resolution dated 12 July 2023 providing further information;

2.2.4 The Contractor's email to NHS Resolution dated 18 July 2023;

2.2.5 The Contractor's email to NHS Resolution dated 20 July 2023;

2.2.6 The Contractor's email to NHS Resolution dated 14 August 2023;

2.2.7 The Commissioner's emails to NHS Resolution dated 30 August 2023;

2.2.8 The Commissioner's email to NHS Resolution dated 15 September 2023 with representations; and

2.2.9 The Contractor's email dated 6 October 2023 with observations.

2.3 I have been provided with a copy of the Contractor's PMS Agreement by the Commissioner.

3 PARTIES SUBMISSIONS

3.1 The Contractor's application

"Statement describing the nature and circumstances of the dispute (with reference to the appropriate regulations or contract provisions)

Increased clawback against PPA statements relating to prescriptions dispensed at Bunbury Medical Practice during the period of Oct-Dec 2021 to the sum of £22,271.70. The Practice did not receive information highlighting the withdrawal of the temporary national approval to suspend the need for patient signatures on the back of prescriptions.

We have reviewed all our emails from the CCG and ICB teams. We have no record of such a communication being received from any party. The ICB (or any other party) has not provided any evidence of a communication being sent to the practice.

A copy of the original complaint letter has been provided as evidence along with this application.

Email correspondence relating to this matter have also been included as evidence to support our appeal.

A signed copy of the contract which is in dispute (please note section 9)

NHS Business Service Authority prescription service decision for suspension of patient signatures on prescriptions made by the Secretary of State for Health and Social Care.

What the applicant sees as the appropriate outcome of the dispute

Reimbursement of the claw back amount detailed in our initial complaint letter to NHSBSA.

Confirmation that local dispute resolution options have been exhausted

6th June 2023 – email from xxx, Assistant Chief Executive, NHS Cheshire and Merseyside, reaffirming that the decision applied by NHSBSA cannot be overturned by

NHSE or the ICB. A copy of this email has been provided as evidence along with this application.

It has been very frustrating to try to resolve this matter. The NHS system change from CCG to ICB and Place teams has been a considerable hindrance in terms of who to contact to try to get a resolution. It has also been very hard to gain an understanding of what local resolution process is in place at any given time.

It has been next to impossible to obtain details of the local process.

We were only able to gain the email from the ICB Assistant Chief Executive after direct contact.

A copy of the commissioner's decision letter (if applicable)

This was a MS Teams call with the previous Practice Manager of Bunbury Medical Practice on 1st August 2022 and we are unable to locate any confirmation email of the decision at this time.

Enclosed –

Initial complaint letter to the Chief Executive Officer of NHSBSA dated 13th June 2022;

Email correspondence from the customer relations team at NHSBSA and the accompanying letter they make reference to within (Drug Reimbursements Claimed using the Incorrect Prescriber Code) dated 28th June 2022;

Email correspondence from Alan Courtenay (previous Bunbury MP Practice Manager) to NHSBSA dated 11th July 2022;

Email correspondence from xxx, Deputy Practice Manager at Bunbury MP, to prescription services at NHSBSA dated 15th November 2022 ;

Email correspondence from xxx, to xxx, Chief Executive and Company Secretary at Cheshire LMC, dated 8th December 2022 (the letter referred to within is a copy of the initial complaint letter addressed to the Chief Executive Officer of NHSBSA dated 13th June 2022);

Email correspondence from xxx to xxx and xxx, Medical Director Cheshire LMC, dated 8th December 2022;

Email correspondence from xxx to xxx and xxx dated 19th January 2023;

Email correspondence from xxx to xxx, Assistant Chief Executive NHS Cheshire and Merseyside dated 26th April 2023;

Email correspondence from Dr John Berry, Senior Partner at Bunbury MP, to xxx dated 26th May 2023;

Email correspondence from Dr John Berry to xxx dated 6th June 2023;

Email correspondence from xxx to Dr John Berry dated 6th June 2023;

Email correspondence from Dr John Berry to xxx dated 6th June 2023;

Email correspondence from xxx to Dr John Berry dated 6th June 2023;

Email correspondence from Dr John Berry to xxx dated 6th June 2023;

Email correspondence from xxx to Dr John Berry dated 6th June 2023;

Email correspondence from Dr John Berry to xxx dated 6th June 2023;

Email correspondence from xxx to Dr John Berry dated 6th June 2023;

Email correspondence from xxx to xxx Practice Manager Bunbury MP."

3.2 The Commissioner's representations

"Thank you for your letter dated 1st September 2023 notifying us of the above application for dispute resolution from Bunbury Medical Practice.

In response to the question, you asked in your letter, I can confirm that so far as NHS England is concerned, a PMS agreement exists between it and the Contractors who are understood to be Dr John Berry and Dr Nicholas Dixon.

In response to the dispute resolution application from Bunbury Medical Practice, we note that the application is based around the Practice not receiving communication highlighting the withdrawal of the temporary national approval to suspend the need for patient signatures on the back of prescriptions, resulting in increased clawback against PPA statements relating to prescriptions dispensed at Bunbury Medical Practice during the period of Oct-Dec 2021 to the sum of £22,271.70.

For context, during the COVID pandemic, the Secretary of State temporarily suspended the need for patient signatures on prescription, dental and ophthalmic services forms. This suspension was put into force to last until 31st August 2021. The full details can be found at The National Health Service (Coronavirus) (Charges and Further Amendments Relating to the Provision of Primary Care Services During a Pandemic etc.) Regulations 2020 (legislation.gov.uk). Also copied in full as follows:

Amendment of the National Health Service (Charges for Drugs and Appliances) Regulations 2015

2.—(1) The National Health Service (Charges for Drugs and Appliances) Regulations 2015(**1**) are amended as follows.

(2) After regulation 10 insert—

"**Declarations, signatures and evidence of entitlement or of payment during a pandemic etc.**

10A.—(1) Where, by virtue of these Regulations, a person is required to make, provide, complete or sign any declaration, or provide any evidence (including by way of completing a form or providing a certificate), but as a consequence of a disease being, or in anticipation of a disease being imminently—

(a)pandemic; and

(b)a serious risk or potentially a serious risk to human health,

the Secretary of State has made an announcement to the effect that, in order to assist in the management of the serious risk or potentially serious risk to human health, for the period specified in the announcement, that requirement is to be waived or modified in the manner specified in the announcement, that requirement is waived or is as modified in the specified manner for the specified period.

(2) Modifications under paragraph (1) may include modifications imposing requirements on a person other than the person who, but for the announcement, would

be required to make, provide, complete or sign any declaration, or provide any evidence.

(3) An announcement under paragraph (1) may be withdrawn or amended at any time.".

The announcement regarding this suspension and it's subsequent withdrawal were published on the Department of Health and Social Care website: [Withdrawn] Suspension of patient signatures on prescription, dental and general ophthalmic services forms (extension) - GOV.UK (www.gov.uk)

A screenshot of this announcement is also provided.

As advised in an email to Dr Berry from xxx, Assistant Chief Executive, NHS Cheshire & Merseyside on 06/06/2023 at 17:27 and again at 18:06, this communication was not sent out by NHS Cheshire & Merseyside, nor Cheshire CCG as was, nor NHS England.

It was communicated directly to practices by the Department of Health and Social Care and by NHSBSA. It was also published on the Department of Health and Social Care website as stated above. A screenshot of this announcement is also provided.

Copies of these emails from xxx have been provided by Bunbury Medical Practice – attachment "RE Bunbury 01" and "RE Bunbury 03". I have also re attached both emails for ease of reference.

We would consider it unreasonable for Dr Berry to base an application for dispute resolution on the fact that one organisation has not provided evidence of communication by a 3rd party.

We would consider it the responsibility of Dr Berry to ascertain this information from the relevant 3rd party organisation.

There are 11 dispensing practices within Cheshire & Merseyside and 10 of these practices were aware of the change and followed the correct processes to ensure they received the correct reimbursements.

We would like to reiterate that the governance relating to dispensing doctors remuneration sits within the Drug Tariff in the same way it does for community pharmacies NHS Electronic Drug Tariff (nhsbsa.nhs.uk). As such NHSE (or the ICB by delegation) cannot overturn any decisions applied by NHSBSA. Dr Berry was informed of this in the email by xxx Assistant Chief Executive, NHS Cheshire & Merseyside on 06/06/2023. The extract from the Drug Tariff is copied below:

Part XVI - Notes on Charges

3. DISPENSING DOCTORS

Unless a completed declaration of entitlement to exemption or remission (see paragraphs 4 and 5) is made on the prescription form, the charges set out at (1) above are payable in respect of each item supplied by a dispensing doctor (apart from some circumstances where supply is made pursuant to a Serious Shortage Protocol, see further paragraph 1B). In order to secure exemption or remission from prescription charges when presenting a prescription form to a dispensing doctor, the patient, or a person on his behalf, must complete the declaration on the back of the prescription form. The regulations require them to do so, unless the exemption is for those aged under 16, or 60 and over and the date of birth is printed on the prescription form (see paragraph 5). Patients and their representatives are also not required to make a declaration or sign the back of the form if the item prescribed is provided free-of-charge as provided by legislation i.e. contraceptives (see paragraph 10.1) or treatment for a sexually transmitted infection (see paragraph 10.2). Patients and their representatives are not required to make a declaration or sign the back of the form or EPS token if a

real time exemption check by the doctor of electronic records that are managed by the NHSBSA for the purposes (amongst other purposes) of providing advice, assistance and support to patients or their representatives in respect of whether a charge is payable under these Regulations has confirmed that no charge is to be made and recovered.

Patients, or their representatives, are required to sign the prescription form to declare that a charge has been paid. Charges are retained by the dispensing practitioner whose payment for provision of pharmaceutical services is adjusted accordingly. In Wales: From 1 April 2007 there is no longer any requirement for a patient or their representative to sign the declaration on the reverse of a WP10 in order to secure exemption from paying a prescription charge.

When an item dispensed by a dispensing doctor is delivered to a patient outside the surgery, every reasonable effort should be made to obtain a signed declaration from the patient that they have either paid the charge or are exempt (except for any patients aged under 16, or 60 and over).

However, there will be occasions when repeat prescriptions are delivered to points outside the surgery, or for example for collection from village shops in rural areas. Where a patient is exempt from charges and it is not practical for the patient to sign the form, a dispensing doctor or responsible member of the practice team should mark the reverse of the form as "remote delivery" and sign the form.

Whilst we acknowledge and sympathise with difficulties Dr Berry has encountered when trying to raise this complaint with the NHS due [sic] the changes in organisations. Once he did connect with the correct team he was provided with a timely and informed response.

We do not feel that Dr Berry has provided any information in his dispute resolution application or associated documentation that could lead to any other outcome than the refusal of the reimbursement claim."

3.2 The Contractor's representations

3.2.1 None were received.

3.3 NHS England's observations

3.3.1 None were received.

3.4 The Contractor's observations

"Thank you for copying me into the letter received from xxx Head of Primary Care, in reply to our appeal regarding the ICB's decision not to refund us the prescription monies from 2021.

I am disappointed that xxx has not considered or investigated our case on an individual basis and specifically that he has simply cut and paste various rules and regulations. Furthermore, xxx has failed to provide evidence that we, as an independent contractor, were notified in writing or by email, that the temporary suspension for the need of patient signatures on the back of prescriptions, put in place during a worldwide pandemic, had been withdrawn. Xxx has stated that communications relating to this would have been sent by the Department of Health and Social Care and by NHSBSA, I feel it is inappropriate to state that we should try to ascertain this evidence ourselves when the refusal to reimburse, made by NHSE, is based heavily on this evidence and the assumption that Bunbury Medical Practice were made aware of the changes. I do not feel it unreasonable for this to be met with direct email thread evidence.

In addition, xxx comment that we should be reading a particular website is inappropriate, since I doubt that any practices are scouring the internet and Government websites for potential changes to their contract. At the time we were coping with the uncertainty of the pandemic, which added enormous pressure to General Practice, as well as delivering Covid vaccinations. This is akin to me giving my notice of the cessation of my practice on our practice website and not directly to yourselves.

Finally, to say no other practices have suffered is not sufficient evidence as they may have suffered and not complained. We therefore reject his comments as no evidence has been provided and we wish to continue with the appeal process."

4 CONSIDERATION

PMS Agreement

4.1 As part of my consideration of the application for NHS dispute resolution, I required an up-to-date version of the contract in dispute containing all variations agreed since the contract was signed. This was not provided by the Contractor although a copy of what appears to be an early unsigned PMS Agreement between the then Western Cheshire Primary Care Trust and Bunbury Medical Practice updated February 2008, was provided by the Commissioner.

4.2 Further, there is no disagreement between the parties on the version of the contract that is in place. When making its representations, the Commissioner also confirmed that insofar as it is concerned, a PMS Agreement exists between it and the Contractors who it understands to be Dr John Berry and Dr Nicholas Dixon. I have therefore assumed that the contract between the parties reflects the provisions of the Regulations in force at the relevant time and have proceeded to determine the dispute on that basis.

Local Dispute Resolution

4.3 I considered whether there is any evidence of the parties having engaged in local dispute resolution, prior to reference of the dispute to NHS Resolution. To this end I have noted the Contractor's application for dispute resolution includes that it first contacted the Commissioner on 6 June 2023. The Commissioner replied that the decision applied by NHSBSA cannot be overturned by NHS England or the Commissioner. I am satisfied that local dispute resolution has taken place.

Time limits for submitting the dispute.

4.4 I note from the information provided to me that the application for dispute resolution has been made within the time limits as set out in the Regulations. Also, no party has sought to argue otherwise.

Matter in dispute

4.5 The Contractor claims that it was entitled to receive payments for prescriptions dispensed during the period October 2021 to December 2021 to the sum of £22,271.70, as it did not receive information highlighting the withdrawal of the temporary suspension of the need for patient signatures on the back of prescriptions.

4.6 I note the Commissioner's comment that the announcement regarding the suspension and its subsequent withdrawal were published on the Department of Health and Social Care website and by NHSBSA.

4.7 I am grateful for the chronology of events and supporting emails provided by the Contractor which includes:

13 June 2022

4.8 The Contractor writes to NHSBSA having not received a reply from PCSE, asking the former to take immediate steps to resolve the matter of underpayment for PPA monies. The Contractor informs NHSBSA that the matter has been with PCSE for months.

4.9 The Contractor informs NHSBSA that for a period of time, the PPA statements it has received have sought to recover amounts assumed to have been paid by patients for their prescription at a much higher volume than usual. The Contractor states that it is unsure what may be the cause.

4.10 The Contractor provided a table of information showing the amounts deducted each month and a dramatic increase starting in payment month December 2021 and continuing until payment month March 2022.

4.11 The Contractor states that there has not been any significant change in the numbers of patients who pay for their prescriptions.

11July 2022

4.12 The Contractor's email to NHSBSA included: "*The main issue we have asked be rectified, is that we have had higher than usual deductions for prescriptions that would have been paid for by patients. The figures, over several months, are double what we would normally see as a deduction. I have attached the letter I sent to the CEO of NHSBSA – this details the specific issue I have raised. If the problem is one of endorsement then you checking them is unlikely to change your calculation. We would like to see the scripts as we can show you which ones were not paid for. You will see from the table in my letter that there is a huge change for a few months. I am sure you will agree that it would not be down to a change in prescription certificate status that would explain this – it is an admin matter. Please can you let me know how we can go forward so that we can show you where the discrepancies lie*."

15 November 2022

4.13 The Contractor sends an email to the LMC, stating that a decision had been made that the Contractor would not be reimbursed for prescriptions dispensed but not filled in on the back for October, November and December 2021. The Contractor asked how to appeal.

8 December 2022

4.14 Copy email from the LMC to Heathlands Medical Centre and Broken Cross Surgery: "*We have been alerted by one of our practices (dispensing) that they have been told they will not be reimbursed for prescriptions dispensed but not filled in on the back for the period October to November/December 2021. There has been a change in practice manager since then and we have not previously been involved since first advised about the issue in October this year. This is a significant sum of money for a rural practice. Is this something you could share with the dispensing practice lead on GPC and ask what the best course of action might be for the practice and/ or LMC. We only have the detail provided (so not very much in terms of the full timeline of events). I suspect the practice did not pick up on any communications about the post-Covid changes regarding signing the forms, hence the issue. Are they likely to win any action to try to recover the funding noted in their email/ letter? Is there anything we can do in practical terms to support them at this point? Or any further steps they can take?*"

26 April 2023

4.15 By email, the LMC asked the Commissioner: "*They [the Contractor] contacted the LMC seeking details of any appeal process. They are being bounced between the PPD/ former CCG etc. If this is truly a PPA issue they should have a right to appeal to NHS*

Resolutions (time limits permitting) once a final decision is notified in writing and any local resolution process has been resolved. Is there anything that can be done to support them?"

26 May 2023

4.16 Copy email from the Contractor to the Commissioner; "*You may remember me speaking to you at the LMC meeting at Nunsmere Hotel last month? I sent you an email at the time and xxx followed it up by sending his own to you. You said you were going to look into this and revert back to us. I wonder if you have had a chance to look into the situation?*

6 June 2023

4.17 Copy email from the Commissioner to the Contractor: "*Apologies for the delay. I am the right person, and will reply to you on this matter later today or tomorrow*."

6 June 2023

4.18 Copy of the Contractor's email to the Commissioner; "*As explained, there is no evidence that this contract variation [the cessation of the previous exemption of the signature on scripts due to Covid in autumn 2021] was communicated to us directly by the CCG [as was]. The amount, I believe without my notes to hand, is in the region of £25k, which continues to leave a significant dent in the practice finances. I look forward to your thoughts*."

6 June 2023

4.19 Copy email from the Commissioner to the Contractor: "*Apologies for the delay in coming back to your original discussion at the LMC event and subsequent email. I have spoken with the commissioning team and asked their advice on this matter. They have informed me that the governance relating to dispensing doctors remuneration sits within the Drug Tariff in the same way it does for community pharmacies https://www.drugtariff.nhsbsa.nhs.uk/#/00838270-DC/DC00838220/3.%20%20DISPENSING%20DOCTORS.*

4.20 *As such NHSE (or the ICB by delegation) cannot overturn any decisions applied by NHSBSA. You have said that the shortfall relates to October to December 2021, when the backs of scripts were not routinely getting signed due to Covid. However, it appears that the Department of Health suspended the exemption of the need for signatures on prescriptions with effect from 1st September 2021.*

4.21 *This decision was published on the DHSC website on 30 June 2021 https://www.gov.uk/government/publications/temporary-approval-to-suspend-the-need-for-signatures-on-prescriptions-dental-and-ophthalmic-forms-extension-to-31-august-2021/suspension-of-patient-signatures-on-prescription-dental-and-general-ophthalmic-services-forms-extension and was communicated out to all dispensing contractors, from NHSBSA and the Department of Health, via their registered email address. My apologies if this is not the response you were hoping for, but that it provides you with a full explanation as to why we are unable to refund the shortfall, and I understand that our position hasn't changed from communications you had previously with NHS England. I understand that your only option for appealing this decision now is via the Secretary of State*."

6 June 2023

4.22 The Contractor emailed the Commissioner: "*NHSBSA devolved their responsibility back to the CCG and did not decide anything. Indeed however you have not provided me evidence that NHSBSA or DOH directly contacted ourselves to that effect. I understand that before the involving Secretary of State I may now apply to NHS*

England via the complaints procedure since you have made your decision today. I am sorry that we as a dispensing rural practice were so under valued trying to provide a service in those difficult times."

6 June 2023

4.23 Email from the Commissioner to the Contractor: "*I appreciate you are disappointed, but not unreasonably I am not in a position to provide evidence of communication sent to you by a 3rd party. I can confirm that the other dispensing practices in Cheshire have not escalated this issue, which may suggest they were aware of it and made the changes in line with the guidance. For your information and consideration, the clarification I sought was from the NHSE commissioning and contracting team who were responsible for this issue at the time.*"

6 June 2023

4.24 By email to the LMC, the Contractor asks "*Please can you guide us to the formal appeal process now we have a decision*."

6 June 2023

4.25 Email from the LMC to the Contractor; "*From my understanding appeals are via NHS Resolutions these days (details in one of my earlier emails). They are probably 'the agents' for the Secretary of State. If you go on the NHS Resolutions web site, there is a good guide on 'what to do next'. So, I won't repeat here but happy to advise further if needed. You will need to give a chronological list of dates and actions (be prepared to forward emails or letters).*

4.26 *There is a time limit for submitting appeals which run from the date of the final decision notice to you. As you are a BMA member, I am sure you can approach them for some useful advice too. Hope that helps to get you started. I find it very disappointing that the likes of the CCG and ICB do not include details of how to appeal their decisions in any final decision letter. When I sat on the other side of the table, I always included this in any of my executive decisions (that forced me to make sure I was doing the right thing!)*."

The key issues

4.27 I note from the above information that the key issues in this dispute are:

4.27.1 Was the Contractor notified of the withdrawal of the temporary suspension of the need for patient signatures on the back of prescriptions;

4.27.2 Should the Contractor have been aware of the withdrawal of the temporary suspension of the need for patient signatures on the back of prescriptions; and

4.27.3 Was the Contractor entitled to receive the payments that are now subject to recovery.

4.28 I note the Contractor's claim that it has reviewed its emails from the Commissioner. The Contractor has no record of any communication being received indicating a withdrawal of the temporary suspension. As part of the dispute, the Commissioner has not provided confirmation that an email was sent by NHSBSA but I must also consider that this does not mean that the announcement regarding patient signatures was not accessible by other means e.g. the Department of Health and Social Care, NHSBSA website or other communications.

4.29 On 9 November 2023, at my request NHS Resolution asked the Commissioner to enquire of NHSBSA how it communicated both the suspension and the withdrawal of the suspension to GP practices. I note that in its covering email to NHS Resolution of

21 November 2023 the Commissioner has confirmed: *"NHSBSA have stated that the messaging was worked up jointly with PSNC and the DDA but the emails were sent out directly from the DDA as they held the appropriate email distribution list."*

4.30 I note the Commissioner contacted the Dispensing Doctors Association who provided a copy of its emailed newsletter. The newsletter includes the following: *"Please click the links to view all the news published since w/c August 31".* There are four headings with links; the relevant one to this application for dispute resolution being 'Dispensary Management'. Under this heading is the statement "*Prescriptions to be signed from tomorrow (Sept 1)*". I note that the link opens a page headed 'Dispensing Doctors Association'. Under the heading 'News' and 'Dispensary guidance news' it states as follows:

"Prescriptions to be signed from tomorrow (Sept 1) COVID infection control measure is lifted"

and

*"From 1 September 2021 patients (or their representatives) will again be **required** to sign the reverse of NHS prescription, dental and eye care forms or tokens for all prescriptions presented at the pharmacy on or after 1 September 2021.*

Since 1 November 2020 to 31 August 2021 the requirement for patient (or their representatives) signatures on NHS prescription, dental and eye care forms was temporarily suspended, along with certain EPS tokens in pharmacies."

4.31 NHS Resolution then wrote to the Contractor on 24 November 2023 to invite any comments that they may have on the above information provided by the Commissioner.

4.32 The Contractor's email dated 27 November 2023 states*: "Firstly, the Dispensing Doctors Association is not a statutory body. This an advisory group and does not bear any relation to our contract. We maintain it is the responsibility of the NHSE to ensure appropriate channels to confer contractual change rather than a newsletter that may or may not be read. This reply confirms evidence that the NHSE did not apply appropriate procedures for this change. Their original stance was that this was communicated directly to Practices by the Department of Health and Social Care and NHSBSA which is therefore incorrect by this subsequent submission. We therefore request full refund of the monies incorrectly charged and retain the right to legal action."*

4.33 I do not agree with the Contractor that an 'advisory group' is not an appropriate means by which to announce service changes. It would be the same group that communicated both the suspension and withdrawal of suspension.

4.34 The Contractor also doubts that any practices are scouring the internet and Government websites for potential changes linked to the delivery of services to patients. Whilst I have sympathy with the pressure that GP practices were under during the pandemic, national service announcements were prominent at the time of the pandemic. The Commissioner has provided me with the link to the announcement regarding the withdrawal of suspension.

4.35 I note the Commissioner's comment that this suspension was put into force and lasted until **31st August 2021** (my emphasis), the inference being that the Contractor should have known that the suspension was time barred. I place some weight on this and the need for the Contractor to be alive to changes in service provision.

4.36 As a result, I cannot accept the Contractor's assertion that monitoring of communications are outside the Contractor's responsibilities in ensuring the performance of its PMS Agreement.

4.37 Aside from the official announcements referred to above, I note a copy extract from the 'National Health Service England and Wales Electronic Drug Tariff' complied on behalf of the Department of Health and Social Care provided by NHSBSA, NHS Prescription Services [albeit a more up to date version than the events in question]. The heading 'Preface' includes "*To: General Medical Practitioners, Pharmacy Contractors, Appliance Contractors*".

4.38 An updated Drug Tariff is issued on the 1st day of the month. Part XVI 'Notes on Charges' has been highlighted in the Commissioner's representations. This is headed 'Dispensing Doctors' and contains reference to the circumstances where patients are required to sign prescriptions. The importance of the Drug Tariff [which varies little in its general composition month to month] to the Contractor's regular dispensing activities and that an amended version is regularly produced, in my view further undermines the Contractor's assertion that it was not aware because it was not informed of the end for the temporary suspension.

4.39 I note the Commissioner's reference to there being 11 dispensing practices within Cheshire & Merseyside and 10 of these practices were aware of the change and followed the correct processes to ensure they received the correct reimbursement. Be that as it may, I have placed no weight on this and considered the totality of factors involved in this dispute as set out above.

5 DECISION

5.1 I am satisfied that the Commissioner can recover payments relating to prescriptions dispensed during the period October 2021 to December 2021 as the Contractor has not demonstrated that it could not have known about the withdrawal of the temporary national approval to suspend the need for patient signatures on the back of prescriptions.

5.2 I note that neither party has submitted a claim for interest. I make no determination in this regard.

Head of Appeals
NHS Resolution