27 March 2024

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REF: SHA/26139

APPEAL AGAINST FRIMLEY ICB DECISION REGARDING A BREACH NOTICE AT PHARMACY BOND, G1 GOVERNORS HOUSE, 10 ALEXANDRA ROAD, FARNBOROUGH, HAMPSHIRE GU14 6BN

1 Outcome

1.1 Pursuant to paragraph 9(5)(b) of Schedule 3 to the Regulations, I substitute the decision of the Commissioner to issue the Breach Notice with the decision to issue a remedial notice with the same wording except for the changes below:

1.1.1 substitute all references to “breach notice” and “regulation 71” with reference to “remedial notice” and “regulation 70”;

1.1.2 substitute the requirement to not repeat the breach with the requirement to remedy the breach.

1.2 The Commissioner is required to review the information provided, and to confirm to the Appellant if the information is sufficient for its records, and therefore the breach has been remedied, within 14 days from the date of this determination.

A copy of this decision is being sent to:

Pharmacy Bond
Frimley ICB

NHS Resolution

REF: SHA/26139

APPEAL AGAINST FRIMLEY ICB DECISION REGARDING A BREACH NOTICE AT PHARMACY BOND, G1 GOVERNORS HOUSE, 10 ALEXANDRA ROAD, FARNBOROUGH, HAMPSHIRE GU14 6BN

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1 The Breach Notice

A Breach Notice dated 12 January 2024 was sent to Pharmacy Bond ("the Appellant") in respect of G1 Governors House, 10 Alexandra Road, Farnborough, Hampshire GU14 6BN. The Breach Notice stated:

1.1 "**Name of contractor**: Pharmacy Bond Ltd t/a Pharmacy Bond

1.2 **Address of premises**: G1 Governors House, 10 Alexandra Road, Farnborough, Hampshire GU14 6BN

1.3 **Date of inclusion in the pharmaceutical list for the area of Hampshire Health and Wellbeing Board:** 03/06/2013

1.4 **This is a breach notice issued under regulation 71 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.**

1.5 **Nature of the breach:**

1.6 Pharmacy Bond, G1 Governors House, 10 Alexandra Road, Farnborough, Hampshire GU14 6BN has not completed the clinical governance annual self-assessment of compliance for 2022/2023 in breach of Schedule 4 Paragraph 28 (2)(f)(ii) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

1.7 The pharmacy has not completed the Data Security and Protection Toolkit for 2022/23 by the deadline of 30th June 2023.

1.8 **You are required to not repeat the breach.**

1.9 You have the right to appeal to the Secretary of State against this breach notice. Should you choose to appeal, then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of receiving this notice to: nhsr.appeals@nhs.net or write to:

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

1.10 Please note that should you fail to comply with the requirements of this breach notice, we may take further action in relation to the inclusion in the Pharmaceutical List in respect of the above named premises. This may include removal of the premises from the pharmaceutical list under regulation 73 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended."

2 The Appeal

In an email dated 13 January 2024 addressed to NHS Resolution, the Appellant appealed against Frimley ICB's ("the Commissioner") decision. The grounds of appeal are:

2.1 "I am writing to appeal a breach notice issued on the 12th of January 2024 against PHARMACY BOND (FVE50).

2.2 PHARMACY BOND has been in operation for over a decade now, and I would like to stress that this is the first breach notice issued against PHARMACY BOND. I take this extremely seriously and I am very distressed by this breach notice.

2.3 There are several reasons why I believe the breach notice should be overturned.

2.3.1 We have actually been compliant with the data, security and protection took it [sic] **all along**

2.3.2 **This has now been promptly completed** and an email sent to Julia Booth to confirm this within 24 hours of receiving the breach of notice.

2.3.3 The breach was not done on purpose but an oversight and this will not happen again because I have now forwarded all mail from the shared NHS mail to an NHS email that I regularly check.

2.4 Although Pharmacy Bond is owned by two pharmacists, the other pharmacist [MA] has had very little involvement in the running of the pharmacy since 2020 and completely moved on and is now officially a silent partner since late 2021 leaving me to run the pharmacy single handed with the staff. I am under enormous pressure at work to keep the pharmacy running and offering one of the best services in the area. We have not closed a single day since over 10 years ago and including the covid period and it is not because we have been fortunate not have suffered setbacks because we have but despite that we have managed to keep the pharmacy running uninterrupted. Our core contracted hours are 40 hours a week, yet we open 47.5hrs per week out of choice because we believe there is a need for the extra hours and to offer a better service.

2.5 By issuing Pharmacy Bond a breach notice this directly undermines my personal efforts. To demonstrate my dedication to this contract and my job I will give you an examples.

2.6 I was served with Jury service in 2022. After a month of futile attempts to find a locum through several locum agencies I wrote to the summoning officer and eventually managed to get them to understand my situation and on 19/3/2022 [PK] (ref: 146858237) wrote me a letter excusing me from Jury service. I looked forward to Jury service all my life and was waiting for the day when I am called upon but had to turn it down due to unforgiving work commitments.

2.7 I was unfortunate enough to be involved in a minor car accident (although strong enough to set-off the driver airbag and side air bag) on my way to work in June of 2021. Fortunately, I had a locum that day but I was needed as this was intended to be a catch-up day as this was during the covid time. I wasn't hurt but I was obviously somewhat shaken. Despite my wife's efforts to get me to take the day off I was at work by just after 10am.

2.8 Around 2017 I had a kidney stone and had to be taken to the A&E of my local hospital by my wife. At the time, my business partner was still working with me so he was covering but despite that I was in work later that same day as soon as I was discharged.

2.9 I live 30 miles from work (in Uxbridge, UB8 3NE) and including my commutes I do no less than 60 hours a week. The accounting, the paperwork, writing letters like this, appealing the occasional parking fine on behalf of our drivers or paying it, dealing with banking, setting up new systems, changing PMR systems where necessary, dealing with staffing issues, paying salaries and the list goes on and on does not come out of the 60 hours but my own personal time after work and at weekends. I should probably mention I have a family too and three kids (12, 10 and 7) so when I am back home I have other commitments [sic].

2.10 When staff fall ill and I can't find cover it is always me who suffers the most. One of my dispensers had a miscarriage over the Christmas period of 2023 and was off for two

weeks (happy to send you proof of her sick note upon request). On top of that, my regular locum who does Thursdays for me was off during mid December 23 to first week of Jan 2024. I was down to myself and 1 other dispensing member of staff. I found myself leaving past 9pm on most days over that period to compensate.

2.11 I want to highlight that Pharmacy Bond is one of the very few pharmacies remaining which adopts a model that is ideal for the patient but not ideal for it's staff or pharmacists/owners because it is a model that is less profitable and involves much harder work. We do a very high number of dossette boxes (this is the weekly calendar trays) which are very time consuming and financially costly (hence why over 80% of pharmacies either don't do it at all or do very little). Over 50% of our patients are on dossette trays. We have brought this down from over 85% previously due to NHS cuts. We compensate for this by taking on private work such as travel vaccinations, phlebotomy and sexual health with Citydoc but once again this is putting more pressure on myself as locums are not able to offer this service unless I can find a regular locum who is willing to take on Citydoc's training.

2.12 The vast majority of our customers are elderly house-bound patients, vulnerable adults and many mental health patients. They are not an easy cohort to manage. Myself and my staff truly go the extra mile for these patients. Many of these elderly patients cannot get to the door so our drivers have to enter their property using the keysafe. Some of whom cannot be trusted with their meds so we have to leave in a designated place that holds a lockbox where the meds can be put. All these notes have to be entered on the PMR and on the pharmacy delivery software (and yes none of these softwares are integrated thus duplicating our work) and of course we are at the mercy of the next of kin or the carers to have given us correct key safe codes and accurate instructions. To provide this service one bears a tonne of responsibility, extra work and risk for zero more payments from the NHS.

2.13 Furthermore, the volatile market in the last year has been extremely disruptive. We get no less than 20 calls a day from patients calling around pharmacies for ADHD meds, previously HRT, avamys nasal spray, Ozempic, ezetimibe and many more lines. This is not a service we are paid for but nonetheless we do. This adds to our burden and eats into the none-existent [sic] spare time that we have.

2.14 I should stress that anything to do with IT within the pharmacy sector is unfortunately substandard and it is the pharmacist/manager that carries the burden of the IT shortcomings. Our PMR was with Pharmacy manager previously until sept 2022 when we switched to proscript connect. This is an extremely disruptive process that took me months to catch up and required many weekends of my time to ensure a smooth transition and it was anything but smooth in the end. Those companies are in many ways irresponsible and as far as I can see are unregulated to a large extent or at least not regulated enough. I am a pharmacist and not an IT professional and when I transition from one system to another it should be entirely their responsibility to ensure all data is transferred correctly and entirely. Private prescription data, responsible pharmacist log should be transferred correctly to the new system. I had to prompt them at every interval and in the end I am confident we lost at least 30% of our dispensing history despite their claim. The responsible pharmacist log was given to me in a file format I cannot open and this is after countless requests. I could not find a software on the internet to open it. I emailed them several months ago for a solution and still waiting. If I get inspected by the GPhC and they ask to see my historical responsible pharmacist book who would be held accountable? I stress over such matters because I care and I needn't to because I did everything in my power to abide by my responsibilities.

2.15 Prior to that I struggled with the management of pharmacy manager over their flawed electronic CD register which was making errors and persistently denied the flaws of their software until I started keeping a manual log along their electronic register and through screenshots I proved to them it was making errors. I'm certain I wasn't the only pharmacist. They admitted fault after no less than 2-3 months of complaints and irrefutable proof through screenshots. They officially took the CD register off the market

for over a year and until we moved over to proscript (that was one of the reasons we moved over to another PMR provider). To prove their incompetence to them it took some of my time and effort.

2.16 Accessing the NHS joined mail box needn't be a quiz. This is the procedure for accessing the NHS joined mail box for me:

2.16.1 Sign in to my personal NHS email

2.16.2 Click on the top right corner where my name and email address is

2.16.3 Click on "open another mailbox"

2.16.4 Enter "pharmacy" in the search box

2.16.5 Choose pharmacy.fve50@nhs.net bearing in mind there is a list of 4 other emails addresses and one of which is pharmacybond.fve50@nhs.net which is the incorrect one and because it is so closely resembles the correct one I can never remember which is which so I always end up repeating the above steps virtually everytime in order to access the joined nhs mail.

2.16.6 [Image provided]

2.17 I think you one [sic] would agree accessing the NHS joined mail box does not need to be this burdensome and complicated in this day and age. I have since December 2023 figured out an alternative way of accessing the emails which is to forward all mail to scripts.pharmacybond@nhs.net which I can access from Microsoft outlook on the work computers and my work mobile phone.

2.18 I think it is reasonable to say from the above account that being a community pharmacist in recent times is not a walk in the park. It is proving to be a never-ending struggle which at times really does make me reconsider my options. I simply cannot work harder or longer without killing myself. Therefore, I am concentrating on becoming more efficient and investing in technology which unfortunately, is not always proving to be rewarding and struggle-free which is why I stated above that nearly all IT in the pharmacy industry is substandard compared to other industries. At times it is a very disheartening industry to be in because even when you spend hard earned money you receive a flawed and substandard product which requires your time to compensate for its flaws counteracting the very reason for purchasing the product. The worst part of all and what really makes me angry is that when flaws are pointed out to them and even proved they are not willing to fix but are very keen to keep your monthly subscription payments coming.

2.19 I think I have said enough to paint a comprehensive picture of my industry and my situation in particular. I ask that you kindly look at my struggles and find it within you to overturn the breach notice."

3 Summary of Representations

This is a summary of representations received on the appeal.

3.1 THE COMMISSIONER

3.1.1 "Thank you for your letter dated 22 January 2024 regarding the appeal made by Pharmacy Bond Ltd against the decision to issue a breach notice for non-completion of the Data Security and Protection (DSP) Toolkit for 2022/23.

3.1.2 The appeal is made on the grounds that the Pharmacy has completed the DSP toolkit for 2022/23 and has provided a certificate from NHS Digital as proof of completion.

3.1.3 Community Pharmacy contractors are required to give assurances to the NHS annually on their data security and protection systems and procedures via the online assessment, the toolkit. The deadline for community pharmacies to complete the 2022/23 data and security protection toolkit was 30 June 2023

3.1.4 On 27 September 2023 an email was sent to the Pharmacy to advise them that records indicated they had not completed the toolkit (copy at Annex 1). They were then required to provide evidence that they had either completed the toolkit or to provide reasons for why they had not done so. No response was received from the Pharmacy.

3.1.5 On 11 October 2023 a second email was sent to the Pharmacy giving them a further opportunity to provide a response (copy at Annex 2), again no response was received from the Pharmacy.

3.1.6 When the Pharmaceutical Services Regulations Committee (PSRC) for Frimley Integrated Care Board on 29 November 2023 considered whether a breach notice should be issued or not, no evidence had been provided by the Pharmacy to demonstrate completion of the DSP toolkit."

4 Observations

4.1 THE APPELLANT

4.1.1 "With all due respect, I understand that we missed the deadline; however, the central point of my argument has been overlooked entirely. Despite the numerous emails sent by the NHS, resending them another 200 times would have made no difference, as I had not received any due to the technical issues outlined in my email, which I took considerable effort to elucidate (including providing screen shots for clarity). I respectfully request that my primary argument be duly considered in the decision-making process. While I acknowledge that this technicality is not solely the fault of the NHS and bears some responsibility on my end, it is essential to recognize that, as a pharmacist, my education did not include IT technology; rather, I acquired this knowledge on the job. Furthermore, the complexity of NHS IT systems is unlike any other and is not easily navigated by the average individual. Seeking assistance from the NHS is not a straightforward process, as contact information and personnel frequently change, and resolving even the simplest issue often requires extensive time and effort, which is a luxury in today's fast-paced pharmacy environment.

4.1.2 Additionally, since this is our first breach notice, I am unfamiliar with its potential consequences and thus am appealing against it on principle. I would greatly appreciate it if someone could provide clarification on what a breach notice entails and its potential ramifications."

5 Consideration

5.1 Under Regulation 71(1) "Breaches of terms of service: breach notices" of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), a Breach Notice may be issued:

71. *(1) Where an NHS chemist (C) breaches a term of service and the breach is not capable of remedy, the NHSCB may by a notice ("a breach notice") require C not to repeat the breach.*

5.2 In the Regulations an NHS Chemist means "*an NHS appliance contractor or an NHS pharmacist*". An NHS pharmacist is defined as "*a person included in a pharmaceutical list of the type referred to in regulation 10(2)(a);"*. Regulation 10(2)(a) states:

10(2) "Those lists (which are pharmaceutical lists) are

(a) a list of persons who undertake to provide pharmaceutical services in particular by way of the provision of drugs;"

5.3 The Regulations contain no definition as to what constitutes a breach of terms of service which is not capable of remedy.

5.4 The pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.

5.5 The Commissioner in its representations states that an email was sent to the Appellant on 27 September 2023 to advise that its records showed non-completion of the Data Security and Protection Toolkit. The Appellant was given the opportunity to provide evidence that it had either completed the toolkit or to provide reasons why it had not done so. The Commissioner sent a second email on 11 October 2023 providing the Appellant a further opportunity to respond. However I note its comments that no response was received to either email. The email address for these communications was pharmacy.fve50@nhs.net and that this address has not been disputed by the Appellant, although I note the difficulties the Appellant describes in accessing the relevant mailbox.

5.6 I am of the view that the Appellant had the opportunity to enter into local dispute resolution with the Commissioner but did not do so. There is no dispute raised by either party that the local dispute resolution process has not been exhausted. Given that both parties do not dispute that local dispute resolution has been exhausted I am content that I can deal with this matter.

5.7 The Appellant seeks to appeal against the decision of the Commissioner to issue the Breach Notice for its failure to complete the Data Security and Protection Toolkit for 2022/2023.

5.8 The Commissioner found the Appellant in breach of paragraph 28(2)(f)(ii), Schedule 4 of the Regulations, which states:

***28.**—(1) An NHS pharmacist (P) must, in connection with the pharmaceutical services provided by P, participate, in the manner reasonably required by the NHSCB, in an acceptable system of clinical governance **[F398**and for the promotion of healthy living**]**.*

*(2) For these purposes a system of clinical governance **[F399**and for the promotion of healthy living**]** is "acceptable" if it is considered acceptable by the NHSCB and comprises the following components—*

f) an information governance programme, which provides for—

ii) submission of an annual self assessment of compliance (to an approved level) with those procedures via approved data submission arrangements which allow the NHSCB to access that assessment;

and for the purposes of this sub-paragraph, "approved" means approved by the NHSCB.

5.9 The Breach Notice continued that the pharmacy has not completed the Data Security and Protection Toolkit for 2022/2023 by the deadline of 30th June 2023.

5.10 I note there is no dispute that the Appellant missed the deadline for submission.

5.11 The Appellant states that "*The breach was not done on purpose but an oversight and this will not happen again because I have now forwarded all mail from the shared NHS mail to an NHS email that I regularly check.*"

5.12 Whilst I am mindful of the Appellant's comments that it did not receive the emails sent, due to technical issues, I take this to mean that it had difficulties accessing the relevant mailbox; not that the emails were not sent or received into the relevant mailbox. Further there is no suggestion by the Appellant that there was a problem with the mailbox in question.

5.13 I note the difficulties the Appellant has experienced accessing its NHSmail mailbox and its comments that "*the complexity of NHS IT systems is unlike any other and is not easily navigated by the average individuals*".

5.14 Under the NHS Terms of Service, contractors must ensure that pharmacy staff have access to, and are able to send and receive NHSmail from, the pharmacy specific NHSmail mailbox. Therefore I am of the view that the responsibility lies with the Contractor, to make sure that its NHSmail mailbox is accessible and monitored by more than one member of staff as indicated above.

5.15 For reasons given above, I conclude that by failure to complete and submit the Data Security and Protection Toolkit within the timescale set by the Commissioner, the Appellant was in breach of paragraph 28(2)(f)(ii), Schedule 4 of the Regulations.

5.16 I next consider whether the failure to complete and submit the Data Security and Protection Toolkit is a breach which is capable of remedy. As noted in paragraph 5.3 above, the Regulations do not contain a definition as to what constitutes a breach of terms of service which is or is not capable of remedy. A common-sense interpretation is that a breach is unable to be rectified.

5.17 The Appellant was required to complete and submit the Data Security and Protection Toolkit. Completion of the toolkit even if not within the time period given would have remedied or rectified the breach. Further there is no timescale set out in this provision of the Regulations to complete and submit the toolkit. If there had been, the breach could not have been remedied.

5.18 The Appellant contends that it has "*been compliant with the data, security and protection took it [sic] all along*" and further that it has been "*promptly completed and an email sent to Julia booth to confirm this within 24 hours of receiving the breach of notice*." Therefore the Appellant has in its view, rectified the omission albeit later than required.

5.19 Under Regulation 70 of the Regulations, a remedial notice may be issued:

"70(1) Where an NHS chemist (C) breaches a term of service and the breach is capable of remedy, the NHSCB may by a notice ("a remedial notice") require C to remedy the breach."

5.20 I consider that both remedial and breach notices carry the same weight in terms of severity of possible consequence, with the difference being that a remedial notice requires the remedy of the breach, and the breach notice requires an NHS chemist to not repeat the breach. As the Appellant has failed to complete and submit the Data Security and Protection Toolkit by the deadline set by the Commissioner, it is entirely appropriate to require the Appellant to remedy the breach.

5.21 I am of the view that under NHS Resolution's powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of the Commissioner or substitute for that decision any decision that the Commissioner could have taken when it took that decision.

5.22 As a result of the comments I make above, I am of the view that:

5.22.1 the Appellant did not complete and submit the Data Security and Protection Toolkit by the deadline set by the Commissioner; and

5.22.2 such action constitutes a breach of the Appellant's terms of service by virtue of paragraph 28(2)(f)(ii), which is capable of remedy.

5.23 Although I am substituting the Commissioner's decision to issue the Breach Notice with a decision to issue a remedial notice, I note that the Appellant has completed and submitted the toolkit to the Commissioner. There is therefore no action for the Appellant to take.

5.24 I now consider it necessary for the Commissioner to review the information provided, and to confirm to the Appellant if the information is sufficient for its records, and therefore the breach has been remedied, within 14 days from the date of this determination.

6 Decision

6.1 Pursuant to paragraph 9(5)(b) of Schedule 3 to the Regulations, I substitute the decision of the Commissioner to issue the Breach Notice with the decision to issue a remedial notice with the same wording except for the changes below:

6.1.1 substitute all references to "breach notice" and "regulation 71" with reference to "remedial notice" and "regulation 70";

6.1.2 substitute the requirement to not repeat the breach with the requirement to remedy the breach.

6.2 The Commissioner is required to review the information provided, and to confirm to the Appellant if the information is sufficient for its records, and therefore the breach has been remedied, within 14 days from the date of this determination.

Head of Appeals
NHS Resolution