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4 October 2024

REF: SHA/26244

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM WHITTLESEY PHARMACY LTD ("THE APPELLANT")

1 **Outcome**:

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

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

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

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

1.2 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £69,750.00.

1.3 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.

A copy of this decision is being sent to:

Whittlesey Pharmacy Ltd
NHS BSA on behalf of NHS England

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

Tel: 0203 928 2000
Email: nhsr.appeals@nhs.net

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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM WHITTLESEY PHARMACY 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 20 June 2024 in respect of Whittlesey Pharmacy Ltd (ODS code FE819). The decision stated:

2.1 "**Medicines Delivery Service - Post Payment Verification**

2.2 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.

2.3 This service was originally commissioned across the country from 8th April 2020 and ran until 31st July 2020. In the months of April 2021 to March 2022 the Medicines Delivery Service (MDS) was limited to those patients who had been notified by Test and Trace to self-isolate. The Service was only available to people during their 10-day self-isolation period and who have provided their Test and Trace Account ID when requesting the service. Eligibility for Clinically Extremely Vulnerable (CEV) patients for the MDS ceased on the 31st March 2021 and therefore claims for deliveries to these patients after this date no longer qualified for a MDS payment.

2.4 Please find further information in this link to the service announcement – Coronavirus » Home delivery of medicines and appliances during the COVID-19 outbreak (england.nhs.uk)

2.5 As part of the verification exercise, your pharmacy has been contacted by the Provider Assurance Team to request that you review all of your Medicines Delivery Service records between the months of April 2021 to March 2022.

2.6 **To date your pharmacy has not provided evidence to demonstrate that the Medicines Delivery Service claims made during this time met the requirements set out in the service specification, i.e. that these claims for deliveries were to self-isolating patients. Therefore, the PAT are unable to verify that these claims were for deliveries to eligible patients. This is despite several attempts made by the NHSBSA Pharmacy Provider Assurance Team.**

2.7 The evidence is requested in accordance with Schedule 4 Part 4 paragraph 35 (4) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The NHSBSA Provider Assurance team have been authorised in writing by NHS England to request this information on their behalf.

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

2.9 The NHS England Pharmaceutical Services Regulations Committee has now reviewed this information and noted that:

2.9.1 FE819 – WHITTLESEY PHARMACY LIMITED claimed **9,820 Self- isolating and 1,805 CEV** deliveries for the Medicines Delivery Service in the months of April 2021 to March 2022.

2.9.2 The NHSBSA Provider Assurance Team did not receive any evidence which demonstrated that the Medicines Delivery Service claims made between the months of April 2021 to March 2022 were to patients who had been notified by Test and Trace to self-isolate and who had provided their Test and Trace Account ID when requesting the service, and therefore could not verify that these claims met the requirements set out in the service specification.

2.9.3 WHITTLESEY PHARMACY LIMITED was contacted on eight separate occasions by the NHSBSA Provider Assurance Team to request evidence to demonstrate that that the Medicines Delivery Service claims made during this time met the requirements set out in the service specification.

2.10 Having reviewed the information provided by the NHSBSA Provider Assurance Team, the NHS England Pharmaceutical Services Regulations Committee has decided that an overpayment in relation to your April 2021 to March 2022 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.

2.11 The tables below outline the monthly Medicines Delivery Service claims reimbursed to your pharmacy – **WHTTLESEY PHARMACY LIMITED** – **FE819** in the months of April 2021 to March 2022 for Self-isolating and CEV patients, along with the associated recovery values:

2.12 **Self-isolating claims.**

2.13 The table below shows MDS claims reimbursed to your pharmacy between April 2021 and March 2022 for Self-isolating patients.

	Apr 21	May 21	Jun 21	Jul 21	Aug 21	Sep 21	Oct 21	Nov 21	Dec 21	Jan 22	Feb 22	Mar 22	Total

Self-isolating claims paid	895	910	855	900	885	875	880	895	950	890	885	0	**9820**

2.14 9,820 Self-isolating claims paid x £6.00 **= £58,920.00.**

2.15 **CEV claims.**

2.16 The table below shows MDS claims reimbursed to your pharmacy between April 2021 and July 2021 for CEV patients.

	April 2021	May 2021	Jun 2021	July 2021	Total
CEV claims paid	895	910	N/A	N/A	**1,805**

2.17 Subsequently this has resulted in the following payment:

2.18 1,805 CEV claims paid x £6.00 **= £10,830.00.**

2.19 **Total recovery for April 2021 to March 2022**:

2.20 9,820 Self-isolating claims paid x £6.00 **= £58,920.00.**

2.21 1,805 CEV claims paid x £6.00 **= £10,830.00.**

2.22 **Total value to be recovered = £69,750.00 deduction**.

2.23 **Action Required**

2.24 1. Please respond to this correspondence at pharmacysupport@nhsbsa.nhs.uk 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 20th July 2024.**

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

2.26 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by 20th July 2024.

2.27 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.

2.28 2. **Please be aware that failing to contact us by 20th July 2024 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:

2.29 NHS Resolution
Primary Care Appeals
10 South Colonnade

Canary Wharf
London
E14 4PU

2.30 3. 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.

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

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

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

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

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

2.36 Your co-operation is very much appreciated."

3 THE DISPUTE

In an email dated 22 June 2024 and addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 "To whom it may concern

3.2 We sent an email on the 11th March 2024 regarding the medicines delivery service. The information you require has already been destroyed as stated over the phone on many occasions. Please read the email we sent:

3.3 To Whom It May Concern,

3.4 During the Covid-19 pandemic, the request for deliveries were increasing day after day. At the time just prior to the pandemic, we did about 100 deliveries a day. At lockdown, our deliveries increased by over three folds. We had to employ three drivers, not volunteers. Most people wanted the delivery service, however with limited capacity we limited the service to the elderly, disabled, vulnerable and patients who had tested positive for Covid-19.

3.5 For the delivery service, our written SOP was implemented and every patient SCR was checked to confirm eligibility for the delivery service. The details were logged onto handwritten delivery sheets. Our delivery claims were only for confirmed eligible patients. In total, including non-eligible patients for which we did not submit claims, we averaged approximately 6,500 total deliveries per month during the relevant period.

3.6 Care and nursing home deliveries alone increased during this period due to shielding and isolating patients who had contracted Covid-19. The rapid and significant delivery volume increase meant our delivery drivers were under immense pressure during the period, as was our pharmacy in dealing with the huge burden of deliveries. To manage

and reduce the overwhelming demand, we introduced a delivery charge in January 2023 after the pandemic for the requested deliveries.

3.7 Details were recorded of the eligible patients, to whom a delivery was made under this service, including the patient Test and Trace Account ID reference number, postcode of the patient's address, and the date of the delivery. The service specification, as far as we were aware, did not require the contractor to keep records for a particular period of time (for example, NMS service records have to be kept for 2 years). However after 3 years we no longer have access to the data to check eligibility as we did during the relevant period (additionally, many patients have since passed away).

3.8 With the intense, unprecedented nature of the pandemic period for all involved, we made our utmost effort to meet the demands of vulnerable patients and committed to the highest standards of service. We trust that our figures and your records fully fall in line together. We would be open for you to visit the pharmacy and discuss the delivery volume.

3.9 Thank you very much."

4 SUMMARY OF REPRESENTATIONS

4.1 NHS BSA, ON BEHALF OF NHS ENGLAND

4.1.1 "Thank you for your letter of the 27th of June 2024 and the opportunity to provide representations on the appeal.

4.1.2 **Background**

4.1.3 As part of the national response to the COVID-19 Pandemic, NHS England (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.

4.1.4 To allow these patients to receive their prescriptions, an Advanced service known as the Medicine Delivery Service (MDS) was created to provide funding for deliveries of prescriptions to CEV patients. The service was limited to CEV patients who could be identified on their Summary Care Record (SCR) as 'Shielded Patients'.

4.1.5 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.

4.1.6 The Medicines Delivery Service was commissioned from both pharmacies and dispensing doctors across England from 9th 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.

4.1.7 In its letter of 30th 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 31st July 2020. The letter informed contractors that the Government had published plans on 22nd June 2020 for a phased easing of the shielding advice to people who are clinically extremely vulnerable from 6th July 2020 however 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."

4.1.8 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/.

4.1.9 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 (CPE), also sent an update to its members highlighting the change to the service specification.

4.1.10 **April 2021 to March 2022 claims**

4.1.11 In the months of April 2021 to March 2022 the Medicines Delivery Service was limited to those patients who had been notified by Test and Trace to self-isolate. The Service was only available to people during their 10-day self-isolation period and who had provided their Test and Trace Account ID when requesting the service. Eligibility for Clinically Extremely Vulnerable (CEV) patients for the MDS ceased on the 31st of March 2021 and therefore claims for deliveries to these patients after this date no longer qualified as valid for a MDS payment.

4.1.12 The guidance stated that only self-isolators that have provided their Test and Trace Account ID reference number when requesting the service are eligible to receive it. A record of the Test and Trace Account ID reference number must be made and retained as part of the contractor's delivery record to ensure effective ongoing service provision, and for post-payment verification purposes. It also stated that pharmacies should familiarise themselves with the details of the service before making a claim.

4.1.13 Please find further information in this link to the service announcement - https://www.england.nhs.uk/coronavirus/documents/home-delivery-of-medicines-and-appliances-during-the-covid-19-outbreak-march-2021/.

4.1.14 The service specification also states that claims should only be made in the event that no friend, relative, carer or volunteer is available to collect the prescription on the patient's behalf.

4.1.15 NHSBSA Pharmaceutical Provider Assurance Team (NHSBSA PAT), on behalf of NHSE, were requested to conduct a Post Payment Verification exercise to ensure that pharmacy contractors claimed correctly for the Medicines Delivery Service between the months of April 2021 to March 2022 to ensure that all claims were for Self-Isolating patients and contractors had test and trace referral records available to substantiate those claims.

4.1.16 It was also raised that Manage Your Service (MYS) retained the functionality for contractors to submit claims for CEV patients. This functionality was retained to future proof the system in-case the response to the Pandemic and MDS changed again as NHSE felt it had been clearly communicated to pharmacy contractors around the change in the service. Once it became apparent that many contractors were still submitting claims for these ineligible patients, MYS was amended to ensure these claims were no longer automatically paid, however this did lead to the situation whereby in the months of April 2021 and May 2021, contractors were paid for those ineligible patient claims. Subsequently, NHSBSA PAT were requested to recover the identified

CEV claims, as there was no regulation to allow payments for those patients due to being ineligible.

4.1.17 In the Post Payment Verification (PPV) exercise undertaken by the NHSBSA PAT, FE819 – Whittlesey Pharmacy Limited were contacted on seven occasions between 06.12.23 and 27.02.24 to request evidence that the 9,820 Self-Isolating patient claims made between April 2021 and March 2022 were for deliveries made to eligible patients' self-isolating in response to a positive Covid test, as specified in the NHSE service announcements.

4.1.18 Alongside that, NHSBSA PAT outlined that FE819, Whittlesey Pharmacy Limited also incorrectly claimed for 1,805 CEV patients during the months of April and May 2021 to enquire if they were aware of the change in the service and that these patients were no longer eligible.

4.1.19 Emails were sent to the pharmacy shared NHS mail address pharmacy.fe819@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.

4.1.20 Several phone calls to the pharmacy were also made, to confirm receipt of these emails and to advise the pharmacy of the final 14-day response deadline.

4.1.21 NHSBSA PAT engaged with Pharmacy Manager, XXX during the PPV process. Throughout, XXX questioned the PAT requests for evidence and made several references to the length of time that had passed, asking why PAT were looking into the claims from two years ago. The Contractor claimed the Pharmacy was far too busy and had neither the time nor the resource to look for this information, inviting members of PAT to go to the Pharmacy and look for the information required. The Contractor confirmed on follow up calls that he had received PAT emails and seen them.

4.1.22 Despite these attempts made by the NHSBSA PAT, Whittlesey Pharmacy Limited did not provide any evidence to demonstrate that the 9,820 Medicine Delivery Service deliveries claimed for between April 2021 and March 2022 were made to self-isolating patients who had provided their test and trace referral number when requesting the service as specified in the service specification at this time.

4.1.23 As such the NHSBSA were then unable to verify that the deliveries claimed met the requirements set out in the service specification.

4.1.24 To avoid any doubt there is no dispute about these deliveries having been made, the engagement with the pharmacy was to confirm that the deliveries were made to patients who had been informed by Test and trace to self-isolate and were therefore eligible for the Medicine Delivery Service.

4.1.25 PAT were initially told by the contractor that the CEV claims were a mistake and had been entered incorrectly by a member of Pharmacy staff. The contractor asked for a payment plan to be taken into consideration. PAT advised it would need the agreement to a recovery of the CEV overpayment to be confirmed in writing. The written agreement was not received despite PAT covering this again in a recap email sent after the call as shown in the timeline.

4.1.26 As the NHSBSA PAT have been unable to validate the deliveries claimed by the pharmacy during this time, the details of the case were passed to the NHS England regional team for their Pharmacy Services Regulation Committee (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 Medicine 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.

4.1.27 **The PSRC decision**

4.1.28 To assist with their review, the PSRC was provided with the NHSE service announcements and the timeline of correspondence showing all contact the Provider Assurance team had with the pharmacy for review. This timeline has been provided to you in addition to this information.

4.1.29 The engagement showed that despite repeated requests made by the NHSBSA to the contractor over three months to provide such evidence, no evidence was forthcoming.

4.1.30 Consequently, the PSRC concluded that the NHSBSA had been unable to find any evidence to demonstrate that the 9,820 deliveries claimed by the contractor between April 2021 and March 2022 met the requirements set out in the service specification alongside the incorrectly claimed 1,805 claims made for CEV patients.

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

4.1.32 Having made this decision, the PSRC then directed that as Whittlesey Pharmacy Limited 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.

4.1.33 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 Medicine Delivery Service claims made for April 2021 to March 2022 met the requirements set out in the service specification.

4.1.34 **In response to the points made in the contractor's appeal:**

4.1.35 The service specification/Service Announcements states:

4.1.36 *'Only self-isolators that have provided their Test and Trace Account ID reference number when requesting the service are eligible to receive it. A record of the Test and Trace Account ID reference number must be made and retained as part of the contractor's delivery record to ensure effective ongoing service provision, and for post-payment verification purposes.'*

4.1.37 The appellant states "*Details were recorded of the eligible patients, to whom a delivery was made under this service, including the patient Test and Trace Account ID reference number, postcode of the patient's address, and the date of the delivery. The service specification, as far as we were aware, did not require the contractor to keep records for a particular period of time (for example, NMS service records have to be kept for 2 years). However after 3 years we no longer have access to the data to check eligibility as we did during the relevant period (additionally, many patients have since passed away)."*

4.1.38 The service specification is therefore clear that *a record of the Test and Trace Account ID reference number must be made and retained as part of the contractor's delivery record to ensure effective ongoing service provision, and for post-payment verification purposes. All contractors providing the service in line with the service specification would then have been aware that these records would be required should a contractor be required to provide evidence for the Post Payment Verification of service delivery eligibility.*

4.1.39 The NHSBSA acknowledge that the service specification does not advise of how long contractors were required to keep evidence for PPV purposes. However, in the appeal the contractor acknowledges that other service records were required to be kept demonstrating that the service had been delivered in accordance with the service requirements. Indeed, the contractor themselves highlight that they were aware of the requirement to keep records for Advanced Services such as the New Medicine Service (NMS) for at least 2 years as per The Pharmaceutical Services (Advanced and Enhanced Services) (England) Directions 2013 included in Part VIC Advanced Services (Pharmacy and Appliance Contractors)(England) of the Drug Tariff.

4.1.40 Records of other service provision are required to be kept for 3 years for other services e.g. the Blood Pressure Checking service. The service specification for the Blood Pressure Checking service can be found here - Advanced service specification: NHS community pharmacy hypertension case-finding advanced service (NHS community pharmacy blood pressure check service) (england.nhs.uk). It is therefore clear that records would be required to be retained for longer than two years.

4.1.41 It, therefore, appears incredulous that a contractor providing this service in accordance with the service requirements and knowing that records would be required for PPV purposes would then destroy such records without confirming that they would not be needed for such a PPV exercise.

4.1.42 It should also be noted that FE819 Whittlesey Pharmacy Limited has already been investigated for a PPV exercise of one of the earlier phases of the medicine delivery service. They were included in the PPV exercise reviewing claims made during January 2021 to March 2021 and were first contacted on the 8th November 2022, as they had been identified as a significant outlier in this phase of MDS. Despite repeated engagement with the contractor, they were unable to provide any evidence to verify that claims had been made for deliveries to eligible patients. As a result, the PSRC approved the recovery of the overpayment. Following the PSRC decision the contractor agreed to the recovery of this overpayment.

4.1.43 This point is made to demonstrate that the contractor was already aware of the PPV exercises being undertaken by the NHSBSA and so would have been aware of the need to retain evidence for any future PPV exercises. It also highlights that in the previous case the PPV exercise was closer to the time of the service delivery, yet the contractor was not able to provide evidence to demonstrate the eligibility of the claims that they had submitted for payment.

4.1.44 If the contractor was not able to provide evidence, then, as they either did not record the eligibility data or they did not retain it, then it would explain why they would not then be able to provide the necessary evidence for the PPV exercise for this phase either.

4.1.45 It should also be noted that engagement was initiated with Whittlesey Pharmacy Limited to request the evidence on 6th of December 2023. Even if the contractor had kept records but destroyed then after a 2-year retention period had passed then they should have been able to provide evidence for the months of December 2021 to March 2023.

4.1.46 During this time the contractor claimed for 2,725 deliveries to SI patients and yet despite the many attempts by the PAT to obtain evidence of service eligibility for these patients none was forthcoming.

4.1.47 Even if the contractor did believe that records of service eligibility should only have been required to have been kept for two years then the contractor should have been able to provide records for these later months.

4.1.48 The inability to provide records for these months, and the inability for the earlier PPV exercise in January to March 2021, provides compelling evidence that the contractor either did not record the eligibility data or they did not retain it, as required by the service specification.

4.1.49 FE819 Whittlesey Pharmacy Limited was identified as a significant outlier that needed to be included in the PPV exercise not just for a large volume of claims made by the pharmacy during the months that the service eligibility was for SI patients but also due to the consistently high levels of claims each month. In the 11 months reviewed during this PPV exercise, the contractors claims for the service ranged between 855 to 950 claims each month. This volume ensured that Whittlesey Pharmacy Limited across the final 12 months of the service was the third highest claiming pharmacy nationwide for MDS which as supported by the table below which highlights the claims being consistent and much larger than the national average claim for self-isolating deliveries each month.

	Apr 2021	May-21	Jun 2021	Jul-21	Aug 2021	Sep-21	Oct 2021	Nov 2021	Dec 2021	Jan 2022	Feb 2022	Mar 2022	Total
Self-isolating claims paid	895	910	855	900	885	875	880	895	950	890	885	0	**9820**
National monthly Average Claims for MDS	87.36	72.03	28.07	19.79	26.1	26.8	27.22	29.41	29.76	25.02	27.41	19.17	

4.1.50 This consistent nature of claiming does not follow the national pattern seen from the data for other contractors. Nor what we would expect to see for those patients who would be eligible for the deliveries as the claims suggest a consistent volume of positive Covid claims in their local area across the final 12 months of the service when the number of patients that were testing positive was declining hence the reason that the pandemic restrictions were easing.

4.1.51 Initially the contractor had advised PAT that some of the MDS deliveries were to Care Homes and would have been for multiple trips, so we enquired how this affected the service where the eligible patients were those being advised to self-isolate as the multiple deliveries to Care Homes was something used by some contractors to explain high volumes of CEV deliveries. During a phone call performed with PAT the contractor also stated that the Pharmacy made approximately 2,000 MDS deliveries a month during that period of time which, as we discussed with the contractor, we do not dispute the volume of deliveries performed, rather it is the eligibility of the patients for the commissioned MDS have been claimed for that is being investigated.

4.1.52 The appellant also stated in their appeal *"For the delivery service, our written SOP was implemented, and every patient SCR was checked to confirm eligibility for the delivery service. The details were logged onto handwritten delivery sheets. Our delivery claims were only for confirmed eligible patients. In total, including non-eligible patients for which we did not submit claims, we averaged approximately 6,500 total deliveries per month during the relevant period."*

4.1.53 The NHSBSA are not disputing the volume of deliveries performed instead rather the eligibility of the claims made by the pharmacy for the self-isolating patients. The information provided above states that information was kept as hand-written notes which the contractor has not been able to provide, and so has been unable to demonstrate how the eligibility was recorded.

4.1.54 The explanation from the contractor doesn't really explain the consistently high volume of claims, *"Care and nursing home deliveries alone increased during this period due to shielding and isolating patients who had contracted Covid-19. The rapid and significant delivery volume increase meant our delivery drivers were under immense pressure during the period, as was our pharmacy in dealing with the huge burden of deliveries. To manage and reduce the overwhelming demand, we introduced a delivery charge in January 2023 after the pandemic for the requested deliveries."* This does help us understand the pressure the pharmacy was under in performing prescription deliveries to patients. The NHSBSA are aware that many pharmacies provide a private service to patients to deliver prescriptions to their patients and that the demand for these services significantly increase both during and after the pandemic.

4.1.55 However, the NHS England commissioned service was restricted to eligible patients as defined in the relevant service announcement. The explanation provided by the contractor does not give NHSBSA PAT or NHSE any understanding of how the pharmacy confirmed the eligibility of the claims made during this final phased of the commissioned service.

4.1.56 Therefore, without any evidence being provided by the pharmacy which confirms that the deliveries made by Whittlesey Pharmacy Limited during this period were to eligible patients as outlined in the service specification, and the concerns about similar volume of claims being submitted each every [sic] month even though the national trend was that claims were reducing for the service each month, supports the decision of the PSRC that these claims were not performed to those patients identified as eligible under the Medicine Delivery Service from April 2021 onwards.

4.1.57 Further evidence of the contractor not following the service as outlined was the fact that the pharmacy did carry on claiming for CEV patient deliveries in April and May even though it was communicated to them via multiple methods that these claims were no longer eligible for the service after March 2021.

4.1.58 NHSE do not dispute that the deliveries were made, but it is not assured that the contractor was performing the necessary steps to only claims for those deliveries self-isolating patients who were eligible for the service. This eligibility would have been recorded in the record of their test and trace referral numbers as outlined in the service specification.

4.1.59 NHSBSA PAT engaged with the contractor on seven occasions prior to the PSRC decision. PAT spoke in length twice via a phone call and once more after the PSRC decision.

4.1.59.1 During an initial call on 7th December 2023, NHSBSA PAT spoke to the Contractor who was disgruntled that the Pharmacy was expected to search for the records and felt there was neither the time nor the resource to do this as well as send the amount of evidence PAT have asked for. The contractor offered that PAT were welcome to send a member of the Team to the Pharmacy to search the PMR for the information required. The contractor confirmed that the Pharmacy does not keep any electronic records of deliveries and would have only kept the paper documents for between 6 months and 2 years. The contractor said the Pharmacy would not send any documents through the post due to GDPR. In the recap email, PAT advised the contractor

of the NHS GDPR protocols. The contractor argued that nowhere in the Service Specification did it mention keeping the delivery records for a specific length of time. The contractor asked how the Pharmacy was now expected to identify their Self Isolating patients, NHSBSA PAT explained that the Pharmacy was required to have kept the patient's Test and Trace reference number, along with a postcode and delivery date as stated in the Service Specifications. The contractor advised that the Pharmacy made a note on a patient's PMR which identified them as self-isolating and had received a delivery. NHSBSA PAT asked the contractor to look for some documentation for evidence and send a sample to PAT to review, during this conversation the contractor suggested a sample of 10-20 patients.

4.1.59.2 A Follow up [sic] call was made by NHSBSA PAT on 23rd January 2024 as no evidence or an agreement to a recovery had been received. During this phone call when PAT asked if the contractor had a sample of evidence, the contractor asked again how to find the Test and Trace reference number? NHSBSA PAT asked how the Pharmacy would have recorded it and the contractor confirmed that the reference number would have been recorded on the delivery sheets that the Pharmacy drivers used. However, these would have been destroyed after six months. Once again, the contractor said he would welcome a member of NHSE to visit the Pharmacy to search through the Pharmacy paperwork.

4.1.59.3 The contractor told us in a conversation that there would have been a delivery sheet containing the Test and Trace ID reference number and patient delivery details that the Pharmacy's delivery drivers kept, however, these documents were destroyed after six months due to Covid protocols in the pharmacy which prevented staff from handling multiple paper documents even with them being aware of PPV activity being performed on MDS claims from being included in previous samples. The only electronic information the Pharmacy kept would have been a note on a patient's PMR that identified them as self-isolating and had received a delivery, but that note had since been deleted from the PMR.

4.1.60 In these conversations the NHSBSA have been informed that records were made of patient eligibility for the MDS on the delivery notes, but they were then destroyed either six months after the event, or two years after the event. Either way none of these records were available for review even though less than two years had passed since the last four months on claims were submitted.

4.1.61 The notes were kept on the pharmacy PMR system identifying self-isolating patients that had received a delivery, but again that these notes were also destroyed.

4.1.62 The NHSBSA were therefore unable to verify that the deliveries claimed for were eligible under the Medicine Delivery Service. The NHSBSA also did not have agreement from the pharmacy that an overpayment had been made and could be recovered, and so had no alternative but to refer the case to the PSRC.

4.1.63 NHS England appreciate that it has been an extremely busy time for pharmacies and are grateful for the work undertaken to protect vulnerable patients. However, only those pharmacies delivering to patients covered by the NHSE announcements between the months of April 2021 to March 2022 were still eligible to claim for the Medicine Delivery Service. Pharmacies choosing to deliver to patients outside of the eligibility did so outside of the scope of the Medicine Delivery Service and therefore the costs for these deliveries would

need to be met by means other than claiming under the Medicine Delivery Service.

4.1.64 Therefore, NHS England maintains that Whittlesey Pharmacy Limited was not compliant with the requirements set out in the service specification and their claims for deliveries to patients during April 2021 to March 2022 were to patients who were ineligible for this advanced service at that time and that is the only way the pharmacy could maintain such a consistent volume of claims for the service. 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 £58,920.00 overpayment for self-isolating claims was then in accordance with the regulations as well as the £10,830.00 paid for the ineligible CEV claims made by the contractor.

4.1.65 **Key points for consideration**

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

4.1.66.1 The NHSE service announcement was very clear that the Medicines Delivery Service was limited to only those patients who had been notified by Test and Trace to self-isolate and was only available to people during their 10-day self-isolation period. Also, patients must have provided their Test and Trace Account ID when requesting the service.

4.1.66.2 Contractors were advised to retain records for post payment verification purposes.

4.1.66.3 From 1st April 2021 NHS England did not commission a delivery service for CEV patients. Any claims submitted for delivery to CEV patients were not then eligible for payment. Those claims submitted and paid are therefore an overpayment and have been treated as such.

4.1.66.4 NHS England has no power to make payments to pharmacy contractors outside of the statutory framework of eligible patients set out in the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, the service specification and the Drug Tariff.

4.1.66.5 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.

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

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

4.1.66.8 The appeal has not provided any evidence to suggest that the deliveries claimed for during this phase were made to patients eligible for the Medicines Delivery Service.

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

4.1.67 Having considered these matters NHS England and Improvement respectfully suggests that NHS Resolution conclude that the decision made by the PSRC in respect of the £69,750.00 overpayment recovery from Whittlesey Pharmacy Limited was fair and in accordance with the regulations.

4.1.68 Please let me know of [sic] you need anything further to help in these deliberations."

5 OBSERVATIONS

5.1 THE APPELLANT

5.1.1 "I am writing to address the issues raised in your recent communication concerning certain matters that require clarification.

5.1.2 Firstly, with regard to the investigation pertaining to financial transactions subsequent to the merger between Whittlesey Pharmacy and Boots Pharmacy, it is important to note that following the merger, operational changes occurred, including the transition to a new organisation data service (ODS) due to the disabling of the MYS system. Consequently, the tracking of deliveries for the months of January and February 2021 may have temporarily been recorded under the new ODS code rather than the Boots code. This change was necessitated by the structural adjustments post-merger, which hindered the immediate input of deliveries under the former Boots ODS code. The aforementioned circumstances led to the deliveries being attributed to the new ODS code. Any insinuation of undue claims for deliveries conducted during this period is unsubstantiated, as these activities were bona fide responsibilities of the premises. Moreover, attempts to pursue clarification from the former Boots Pharmacy entity proved unfruitful due to their cessation of operations and lack of engagement on this matter. I encourage a review of the records on your end, particularly the Boots ODS code and Whittlesey Pharmacy code in relation to the Covid-related deliveries from January to March 2021.

5.1.3 Secondly, the assertion in your correspondence implying that Whittlesey Pharmacy has made fictitious claims constitutes a serious aspersion on the reputation of our establishment. An audit of 1234 New Medicine Service (NMS) cases was recently conducted, affirming the thoroughness of our evidential submissions. Regrettably, the failure to acknowledge this verification in your communication, alongside insinuations of previous unsubstantiated claims, raises concerns about the comprehensiveness of your investigations. It is imperative to recognise that during the period in question; Whittlesey Pharmacy was undergoing an ownership transition, a circumstance that may have influenced the administrative processes. It is therefore incumbent upon your department to conduct a diligent review to rectify any misapprehensions and dispel unwarranted accusations.

5.1.4 Lastly, the declaration attributing a two-year retention period for all NMS records, including delivery service logs, appears to misconstrue the practical constraints faced by entities engaging in extensive delivery operations. Given the substantial volume of deliveries managed, the logistical challenges associated with maintaining records for such an extended duration are formidable. Consequently, a prudent data management policy necessitates the disposal of non-essential records after a period of six months from the initial delivery date. The service specification for the NMS service mandates that the contractor retains the data for a period of two years. In contrast, the Covid delivery service specification lacks explicit guidance on the duration for data retention. In the event that a definite timeframe for data retention was necessary, NHSBSA ought to have delineated this within the service specification.

5.1.5 I trust that the elucidation provided above will facilitate a clearer understanding of the circumstances under discussion. I urge a conscientious review of the matters raised and a collaborative effort to ensure the equitable resolution of these issues."

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 I note that the NHS BSA has indicated that the deliveries that are covered by the decision on overpayment are those made in the period April 2021 to March 2022. These were split into 9,820 deliveries to those who were self-isolating and 1,805 deliveries to those who were Clinically Extremely Vulnerable (CEV).

6.11 A copy of the specifications and guidance for the 'Home delivery of medicines and appliances during the COVID-19 outbreak' dated 16 March 2021 have been provided to me by the NHS BSA, who has also provided a number of NHS England announcements.

6.12 I note the NHS BSA states that "*In the months of April 2021 to March 2022 the Medicines Delivery Service was limited to those patients who had been notified by Test and Trace to self-isolate*" and that "*Eligibility for Clinically Extremely Vulnerable (CEV) patients for the MDS ceased on the 31st of March 2021 and therefore claims for deliveries to these patients after this date no longer qualified as valid for a MDS payment.*"

6.13 One of the announcements provided to me is dated 16 March 2021 and states the following:

6.13.1 "*To help provide support to people who have been notified of the need to self-isolate by Test and Trace, the Community Pharmacy Home Delivery Service and the Dispensing Doctor Home Delivery Service will be commissioned from 16 March 2021 to 30 June 2021 (inclusive) for anyone living in England who has been notified by Test and Trace to self-isolate. Upon receiving contact from Test and Trace, the individual is provided with a unique Test and Trace Account ID, which is an 8-character mix of letters and numbers.*

6.13.2 *This service is only available to people during their 10-day self-isolation period and who have provided their Test and Trace Account ID when requesting the service.*"

6.14 Similarly, an announcement dated 29 September 2021 states:

6.14.1 "*To help provide support to people who have been notified of the need to self-isolate by NHS Test and Trace, the Community Pharmacy Home Delivery Service and the Dispensing Doctor Home Delivery Service will be commissioned from 1 October 2021 to 31 March 2022 (inclusive) for anyone living in England who has been notified by NHS Test and Trace to self-isolate. Upon receiving contact from NHS Test and Trace, the individual is provided with a unique NHS Test and Trace Account ID, which is an 8-character mix of letters and numbers.*

6.14.2 *This service is only available to people during their 10-day self-isolation period and who have provided their NHS Test and Trace Account ID when requesting the service.*"

6.15 I do not appear to have been provided with an announcement relating to the period 1 July 2021 to 30 September 2021. However I note that there is no dispute that the Community Pharmacy Home Delivery Service was commissioned during the period April 2021 to March 2022 inclusive and that it was only available to people during their 10-day self-isolation period who had provided their NHS Test and Trace Account ID when requesting the service.

6.16 The specifications and guidance provided state:

6.16.1 "*Pharmacy contractors should ensure that they are only delivering to eligible patients in the areas specified in the announcement in place at that time when they are acting in accordance with this service specification. Appropriate checks should be made to ensure that the patient remains eligible for this service, which may include checks on the summary care record.*"

6.17 I note the NHS BSA states that it was "*requested to conduct a Post Payment Verification exercise to ensure that pharmacy contractors claimed correctly for the Medicines Delivery Service between the months of April 2021 to March 2022 to ensure that all claims were for Self-Isolating patients and contractors had test and trace referral records available to substantiate those claims.*"

6.18 I further note the NHS BSA's comments that the Manage Your Service (MYS) system had retained functionality for contractors to submit claims for delivering to CEV patients, which had led to claims being submitted for ineligible patients during the months of April and May 2021. The MYS service had subsequently been amended to ensure such claims could not be automatically paid. The NHS BSA states that it was therefore requested to recover those CEV claims which had been paid in error, given that those patients were ineligible.

6.19 The NHS BSA has provided a timeline detailing its contact with the Appellant between 6 December 2023 and February 2024, in order to request evidence that the 9,820 claims made between April 2021 and March 2022 were for deliveries made to eligible patients as details in the service specification. The NHS BSA states that it also outlined to the Appellant that it had incorrectly claimed for deliveries to 1,805 patients during April and May 2021 and enquired whether it was aware of the change to the service.

6.20 I note that the service specifications state:

6.20.1 "*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.*"

6.21 I note the Appellant's appeal begins "*We sent an email on the 11th March 2024 regarding the medicines delivery service. The information you require has already been destroyed as stated over the phone on many occasions.*" The appeal goes on to repeat the email sent to the NHS BSA on 11 March and states "*Details were recorded of the eligible patients, to whom a delivery was made under this service, including the patient Test and Trace Account ID reference number, postcode of the patient's address, and the date of the delivery. The service specification, as far as we were aware, did not require the contractor to keep records for a particular period of time (for example, NMS service records have to be kept for 2 years). However after 3 years we no longer have access to the data to check eligibility as we did during the relevant period (additionally, many patients have since passed away).*"

6.22 I note in response the NHS BSA has acknowledged that the service specification does not specify for how long contractors should keep records of the deliveries made, however it notes that the Appellant appears aware of the requirement to keep records for Advanced Services such as NMS (for two years). It also refers to the requirement to keep records for the Blood Pressure Checking Service for three years and considers that "*It is therefore clear that records would be required to be retained for longer than two years.*"

6.23 I have noted the issues raised regarding the change of ownership undergone by the pharmacy and the investigation of claims made during the period January 2021 to March 2021, however I am of the view that this is not a relevant matter for consideration with regard to the claims made during the period April 2021 to March 2022.

6.24 I note the NHS BSA's comments that "*engagement was initiated with Whittlesey Pharmacy Ltd to request the evidence on 6th of December 2023*" and that "*Even if the contractor had kept records but then destroyed after a 2-year retention period had passed then they should have been able to provide evidence for the months of December 2021 to March 2023* [sic]."

6.25 I note that in response to this point the Appellant highlights the challenges faced by pharmacies in retaining records and comments that "*the declaration attributing a two-year retention period for all NMS records, including delivery service logs, appears to misconstrue the practical constraints faced by entities engaging in extensive delivery operations. Given the substantial volume of deliveries managed, the logistical challenges associated with maintaining records for such an extended duration are formidable.*"

6.26 I note that the NHS BSA has highlighted the volume of deliveries made by the Appellant compared to the national average, although it does not dispute that the deliveries were made, rather the eligibility of the claims made by the Appellant for self-isolating patients.

6.27 It is unhelpful that the service specification did not identify a requirement for the records to be retained for a set period. I also sympathise with the challenges faced by pharmacies in retaining records, noting in particular the Appellant's comments regarding the paper copies of the delivery notes. I note that the Appellant has stated that a "*a prudent data management policy necessitates the disposal of non-essential records after a period of six months from the initial delivery date.*"

6.28 However, I am of the view that the key question for this appeal is whether the Appellant's record retention was reasonable. In the absence of any specified time period, the requirement in the specification is absolute – appropriate records must be maintained. But it is not reasonable to expect a pharmacy to keep records forever so it is appropriate to imply into the wording that records will be kept for a reasonable time period, taking into account the reasons expressly stated for maintaining records. Those reasons are to ensure effective ongoing service provision and to support post payment verification. The former would likely fall away once service provision ceases but the latter clearly extends after the provision of service and after payment has been received. The key question is therefore, knowing that records were to be maintained for post payment verification, whether the policy of the Appellant to destroy records when it did was reasonable.

6.29 I consider that the Appellant was aware that other similar services had, at least, a two year retention period, due to its own statements in recognition of the NMS service. I note that the Appellant has not provided any data management policy to evidence what its actual retention period for relevant records were. I further note that the explanation on why a six month retention policy would be reasonable are due to either, or both, practical constraints and logistical challenges, and/or due to Covid protocols which prevent staff handling paper documents. I note that, in its Representations, the NHS BSA notes that the records were destroyed "*either six months after the event or two years*…".

6.30 Having regard to the classification of the records as "*non-essential*" by the Appellant, I consider that this was contraindicated by the fact that the specification was clear that the records were necessary for post-payment verification. I also note the Appellant's awareness of this information, due to its reliance on it in its grounds of appeal. I consider that a six month retention period may be reasonable for some non-essential records, however, due to the importance of these records in relation to the service specification, I do not consider that it would be reasonable to treat the Community Pharmacy Home Delivery Service records in the same manner.

6.31 I do not consider it reasonable that, where a service specification expressly requires records to be maintained to support post payment verification, a pharmacy should be

entitled to apply a very short retention period without confirmation that there will be no post payment verification, and especially in circumstances where similar services require a substantially longer period.

6.32 As I have noted, the Appellant has not expressly stated what its retention policy was for the records. The NHSBSA indicated that in conversations with the Appellant, the NHSBSA was informed that records were made of patient eligibility for the MDS on the delivery notes, but they were then destroyed either six months after the event, or two years after the event. I must consider the possibility that a two year retention policy was in place. To that end, I note that the Appellant was first contacted by the NHS BSA on 7 December 2023. I also note that the Community Pharmacy Home Delivery Service was in operation until March 2022. Therefore, at the time of first contact the Appellant should have had, in its possession, at least records from December 2021 to March 2022. I note that the Appellant has not been able to provide evidence from this period. I note that, even where the records were not provided at that time, this contact should have made it evident to the Appellant to not destroy any further records.

6.33 I consider that had any evidence, at all, relating to these months been provided then this would have been enough to verify that claims were only made in accordance with the requirements of the service specification, noting that the NHS BSA's representations state that a sample of patients would have been sufficient. However, the Appellant has stated that the information "*has already been destroyed*". I do not consider that this destruction was in accordance with the service specification, as, even if the Appellant had applied a two year retention period, some of the necessary details would still have existed on 7 December 2023 when the Appellant was contacted. As a six month retention was too short and a two year retention policy, as suggested by the Appellant in conversation with the NHS BSA, does not appear to have been adhered to, I consider that the Appellant should have been able to provide the necessary information for post-payment verification by the NHS BSA. As it has not done so, I consider that the NHS BSA's decision to recover the overpayment is the only appropriate outcome.

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 £69,750.00.

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