

18 October 2024

REF: SHA/26274

**APPEAL AGAINST BLACK COUNTRY ICB DECISION
REGARDING A BREACH NOTICE AT CARTERS
CHEMIST, 30 CARTERS GREEN, WEST BROMWICH,
WEST MIDLANDS, B70 9LW**

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

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

1 Outcome

- 1.1 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I confirm the decision of the Commissioner to issue the Breach Notice.

A copy of this decision is being sent to:

Carters Green Clinic and Business Centre Ltd
Office of the West Midlands, on behalf of Black Country ICB

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1 The Breach Notice

A Breach Notice dated 23 July 2024 was sent to Carters Green Clinic and Business Centre Ltd ("the Appellant") in respect of 30 Carters Green, West Bromwich, West Midlands, B70 9LW.

- 1.1 **"Name of Contractor: Carters Green Clinic & Business Centre Ltd t/a Carters Chemist**
- 1.2 **Address of Premises: 30 Carters Green, West Bromwich, West Midlands B70 9LW**
- 1.3 **Date of inclusion in the pharmaceutical list for the area of Sandwell Health and Wellbeing Board 01 March 2021**
- 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 The 2023-24 CPAF was carried out in accordance with the new NHS Regulations introduced at the end of 2020 and it is a requirement of the Terms of Service that contractors complete the process. See below for the relevant Regulation:

Terms of Service of NHS Pharmacists, Schedule 4, Paragraph 35 – Inspections and access to information

(5) P must, at the request of the NHSCB or a person authorised in writing by the NHSCB to make the request, send to the NHSCB or that person by means of an electronic communication, a duly completed questionnaire, which is –

(a) In a format approved by the NHSCB; and

(b) For the purpose of enabling NHSCB, or a person authorised in writing by the NHSCB, to determine whether or when it is necessary or expedient for a person authorised in writing by the NHSCB to undertake an inspection of P's premises pursuant to sub-paragraph (1).

- 1.7 The initial invitation to complete the CPAF Screening Questionnaire was sent, via email, on behalf of the ICB by NHSBSA, to you on 03 July 2023 with a deadline for completion until no later than 11:59pm 30 July 2023. The CPAF Screening Questionnaire was to be completed via the MYS Portal within the specified timescale.
- 1.8 Reminders were sent weekly, via email, from NHSBSA, on the following dates:

- 1.9 Initial Invite - 03/07/2023
- 1.10 Reminder - 10/07/2023
- 1.11 Reminder - 17/07/2023
- 1.12 Reminder - 23/07/2023
- 1.13 Final Reminder - 26/07/2023
- 1.14 No response was received and you failed to submit the CPAF Screening Questionnaire.
- 1.15 Further action was taken and the CPAF Pre-Visit Questionnaire was sent, via email, on behalf of the ICB by NHSBSA, to you on 06 November 2023 with a deadline for completion until no later than 11:59pm 17 December 2023. The CPAF Pre-Visit Questionnaire was to be completed via the MYS Portal within the specified timescale.
- 1.16 Reminders were sent weekly, via email, from NHSBSA, on the following dates:
- 1.17 Initial Invite - 06/11/2023
- 1.18 Reminder - 13/11/2023
- 1.19 Reminder - 20/11/2023
- 1.20 Reminder - 27/11/2023
- 1.21 Reminder - 04/12/2023
- 1.22 Final Reminder - 07/12/2023
- 1.23 You failed to submit the completed CPAF Pre-Visit Questionnaire.
- 1.24 You are required not to repeat the breach again.
- 1.25 You have a right of appeal to the Secretary of State against the issuing of 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 the date of this notice to:
- 1.26 Via email to: nhsr.appeals@nhs.net
- 1.27 Or, in writing to:

NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU
- 1.28 Please note that should you fail to comply with the requirements of this breach notice we reserve the right to exercise our powers to take further action in relation to your inclusion in the pharmaceutical list in respect of the above named premises.
- 1.29 This may include removal of the premises from the pharmaceutical list under Regulation 73 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013."

2 The Appeal

In an email dated 5 August 2024 addressed to NHS Resolution, the Appellant appealed against the Black Country ICB's ("the Commissioner") decision. The grounds of appeal are:

- 2.1 "This email is being written in response to the breach notice email received by Carters Chemist, 30 carters Green, West Bromwich, West Midlands B70 9LW. Due to not having access to the pharmacy mailbox, please consider this an appeal against the decision. The nature of the breach in the email received is detailed below:
 - 2.1.1 *'The 2023-24 CPAF was carried out in accordance with the new NHS Regulations introduced at the end of 2020 and it is a requirement of the Terms of Service that contractors complete the process...No response was received and you failed to submit the CPAF Screening Questionnaire.'*
- 2.2 Unfortunately, the pharmacy did not have access to the pharmacy shared mailbox (pharmacy.fjc04@nhs.net) during this time period, therefore none of the initial nor reminder emails were received in store by any members of staff. There were ongoing issues encountered while trying to gain access to the NHS account and for this reason, we did not receive correspondence detailing that the CPAF questionnaire was open and ready to submit. Had the reminder emails been received, it can be assured that all CPAF questionnaires would have been completed promptly and during the given time frame.
- 2.3 The screening questions for 2024/25 CPAF have been completed and we will ensure this will not happen again.
- 2.4 I look forward to hearing from you."

3 Representations

No representations were received on the appeal.

4 Consideration

- 4.1 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, NHS England may by a notice ("a breach notice") require C not to repeat the breach.
- 4.2 I note that 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;"
- 4.3 The Regulations contain no definition as to what constitutes a breach of terms of service which is not capable of remedy.
- 4.4 I note that the pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.

4.5 I note that the Breach Notice was issued pursuant to Regulation 71(1) and is compliant with the requirements of a breach notice as it includes the nature of the breach and an explanation of the Appellant's right of appeal under Regulation 77(1)(c).

4.6 The Breach Notice states:

"The initial invitation to complete the CPAF Screening Questionnaire was sent, via email, on behalf of the ICB by NHSBSA, to you on 03 July 2023 with a deadline for completion until no later than 11:59pm 30 July 2023. The CPAF Screening Questionnaire was to be completed via the MYS Portal within the specified timescale.

Reminders were sent weekly, via email, from NHSBSA, on the following dates:

Initial Invite - 03/07/2023

Reminder - 10/07/2023

Reminder - 17/07/2023

Reminder - 23/07/2023

Final Reminder - 26/07/2023

No response was received and you failed to submit the CPAF Screening Questionnaire.

Further action was taken and the CPAF Pre-Visit Questionnaire was sent, via email, on behalf of the ICB by NHSBSA, to you on 06 November 2023 with a deadline for completion until no later than 11:59pm 17 December 2023. The CPAF Pre-Visit Questionnaire was to be completed via the MYS Portal within the specified timescale.

Reminders were sent weekly, via email, from NHSBSA, on the following dates:

Initial Invite - 06/11/2023

Reminder - 13/11/2023

Reminder - 20/11/2023

Reminder - 27/11/2023

Reminder - 04/12/2023

Final Reminder - 07/12/2023

You failed to submit the completed CPAF Pre-Visit Questionnaire."

4.7 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. Given that there is no dispute raised by either party that the local dispute resolution process has not been exhausted, I am content that I can deal with this matter.

4.8 I note that the Appellant seeks to appeal against the decision of the Commissioner to issue the Breach Notice for its failure to complete and submit the CPAF Screening Questionnaire and subsequently the CPAF Pre-Visit Questionnaire.

4.9 I note that "Inspections and access to information" is found in Schedule 4, Part 4, "Other Terms of Service" under Paragraph 35 and states:

35. Inspections and access to information

(5) P must, at the request of NHS England or a person authorised in writing by NHS England to make the request, send to NHS England or that person by means of an electronic communication, a duly completed questionnaire, which is –

(a) in a format approved by NHS England; and

(b) for the purpose of enabling NHS England, or a person authorised in writing by NHS England to determine whether or when it is necessary or expedient for

a person authorised in writing by NHS England to undertake an inspection of P's premises pursuant to sub-paragraph (1).

- 4.10 According to the Breach Notice the screening questionnaire was sent via email to the Appellant on 3 July 2023 with a deadline for completion no later than 11.59pm on 30 July 2023. The Breach Notice further states that reminders for its completion were sent weekly via email on 10 July, 17 July, 23 July and 26 July 2023. I note that the Appellant did not submit the questionnaire in time.
- 4.11 I note further that according to the Breach Notice the Pre-visit questionnaire was sent via email to the Appellant on 6 November 2023 with a deadline for completion no later than 11.59pm on 17 December 2023. The Breach Notice further states that reminders for its completion were sent weekly via email on 13 November, 20 November, 27 November, 4 December and 7 December 2023. The Appellant did not submit the questionnaire in time.
- 4.12 I have not been provided with copies of the initial or reminder emails that were sent to the Appellant or confirmation of which email address they were sent to. I note however that the Appellant has referred to "the pharmacy shared mailbox" in its appeal and that there is no suggestion from the Appellant that the Commissioner did not use the email address referred to in order to send the initial or reminder emails.
- 4.13 I note that Schedule 4, Part 4, Paragraph 29C states:
- Contact via NHSmail, pharmacy profiles and the Central Alerting System*
- 29C.—(1) An NHS pharmacist (P) must ensure that pharmacy staff at pharmacy premises (including locums) have access to, and are able to send and receive NHSmail from, a premises specific NHSmail account.*
- (2) P must ensure that at least two members of the pharmacy staff have live, linked NHSmail accounts to the premises specific NHSmail account (unless fewer than two members of the pharmacy staff are engaged in the provision of NHS services).*
- 4.14 Given the above terms of service, it is clear that the Appellant has a responsibility to ensure that its NHS mailbox is accessible and monitored by more than one member of staff as indicated.
- 4.15 I note the Appellant's comment that "Unfortunately, the pharmacy did not have access to the pharmacy shared mailbox (pharmacy.fjc04@nhs.net) during this time period, therefore none of the initial nor reminder emails were received in store by any members of staff. There were ongoing issues encountered while trying to gain access to the NHS account and for this reason, we did not receive correspondence detailing that the CPAF questionnaire was open and ready to submit." The Appellant has not provided any detail regarding the problems it was experiencing in accessing the shared mailbox, or whether it was attempting to seek help regarding the issues.
- 4.16 It appears that the Appellant did not have access to the mailbox for at least July and November 2023, which is not an insignificant period of time, particularly if it includes the months in between. Given the responsibility placed on the Appellant by the terms of service as noted above, I consider that it would be reasonable to expect the Appellant to notify the Commissioner where it is experiencing extended disruption to the use of its mailbox.
- 4.17 I note the Appellant's comment that the screening questions for the 2024/25 CPAF have been completed, however this is not relevant to the consideration of this dispute.
- 4.18 As a result of the comments I make above, I am of the view that:

- 4.18.1 the Appellant did not complete the CPAF Screening Questionnaire or the CPAF Pre-visit Questionnaire by the required deadlines;
- 4.18.2 such action constitutes a breach of the Appellant's terms of service as set out in paragraph 35(5) of Schedule 4 to the Regulations; and
- 4.18.3 the Commissioner was entitled to issue the Breach Notice.

5 Decision

- 5.1 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.
- 5.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I confirm the decision of the Commissioner to issue the Breach Notice.

Head of Appeals
NHS Resolution