

13 November 2024

REF: SHA/26276

**APPEAL AGAINST NOTTINGHAM AND
NOTTINGHAMSHIRE ICB DECISION REGARDING A
BREACH NOTICE AT LATE NIGHT YEW TREE LTD T/A
YEW TREE PHARMACY, 57-59 YEW TREE LANE,
SOLIHULL B91 2NX**

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 substitute the decision of NHS England to issue a breach notice with a decision to not issue a breach notice.

A copy of this decision is being sent to:
Late Night Yew Tree Ltd t/a Yew Tree Pharmacy
Nottingham and Nottinghamshire ICB

Advise / Resolve / Learn

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Tel: 0203 928 2000
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1 The Breach Notice

A Breach Notice dated 23 July 2024 was sent to Late Night Yew Tree Ltd t/a Yew Tree Pharmacy ("the Appellant") in respect of 57-59 Yew Tree Lane, Solihull B91 2NX. The Breach Notice stated:

- 1.1 **"Name of Contractor:** Late Night Yew Tree Ltd t/a Yew Tree Pharmacy
- 1.2 **Address of Premises:** 57-59 Yew Tree Lane, Solihull B91 2NX
- 1.3 **Date of inclusion in the pharmaceutical list for the area of Solihull Health and Wellbeing Board:** 31 January 2023
- 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:
- 1.7 **Terms of Service of NHS Pharmacists, Schedule 4, Paragraph 35 – Inspections and access to information**

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

 - (a) In a format approved by the NHSCB [sic]; and*
 - (b) For the purpose of enabling NHSCB [sic], or a person authorised in writing by the NHSCB [sic], to determine whether or when it is necessary or expedient for a person authorised in writing by the NHSCB [sic] to undertake an inspection of P's premises pursuant to sub-paragraph (1).*
- 1.8 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.
- 1.9 Reminders were sent weekly, via email, from NHSBSA, on the following dates:

- 1.9.1 Initial Invite - 03/07/2023
- 1.9.2 Reminder - 10/07/2023
- 1.9.3 Reminder - 17/07/2023
- 1.9.4 Reminder - 23/07/2023
- 1.9.5 Final Reminder - 26/07/2023
- 1.10 This was complete and submitted within the timeframe.
- 1.11 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.
- 1.12 Reminders were sent weekly, via email, from NHSBSA, on the following dates:
 - 1.12.1 Initial Invite - 06/11/2023
 - 1.12.2 Reminder - 13/11/2023
 - 1.12.3 Reminder - 20/11/2023
 - 1.12.4 Reminder - 27/11/2023
 - 1.12.5 Reminder - 04/12/2023
 - 1.12.6 Final Reminder - 07/12/2023
- 1.13 You failed to submit the completed CPAF Pre-Visit Questionnaire.
- 1.14 You are required not to repeat the breach again.
- 1.15 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:
 - 1.15.1 Via email to: nhsr.appeals@nhs.net
 - 1.15.2 Or, in writing to: NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU
- 1.16 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. 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 6 August 2024 and addressed to NHS Resolution, the Appellant appealed against Nottingham and Nottinghamshire ICB's ("the Commissioner") decision. The grounds of appeal are:

- 2.1 "This email is in response to the breach notice against **Yew Tree Pharmacy: Re: Breach Notice: FLV81 – Late Night Yew Tree Ltd t/a Yew Tree Pharmacy, 57-59 Yew Tree Lane, Solihull B91 2NX.**

- 2.2 I received the breach notice via email on **23/07/2024** with a PDF attachment detailing the reasons why the breach notice was issued. I have attached the breach notice with this email for ease of reference.
- 2.3 I would like to initially provide you with some contexts in terms of the pharmacy setup from **1st February 2023 to date**.
- 2.4 *Late Night Yew Tree Ltd* initially set up a 100hr pharmacy in 2012 and was trading at 49 Yew Tree Lane SOLIHULL B91 2NX. In 2022 we held discussions with Lloyds Pharmacy and enquired the purchase of their branch at 57-59 Yew Tree Lane SOLIHULL B91 2NX. You will notice this branch was a few doors away from the 100hr pharmacy. We agreed the purchase of the Lloyds pharmacy and acquired the branch in February 2023. Late Night Yew Tree Ltd had granted permission from NHS contract team to allow the closure of the 100hr pharmacy as of March 2023.
- 2.5 On acquiring the new branch I had to set up new accounts for a number of IT platforms which including [sic] a new NHS pharmacy email account (Shared Mail Box). In order to get this set up pharmacies are requested to submit the request on the NHS IT portal. I did this on a number of occasions but was unable to get a pharmacy email account set up. I had been in constant communication with the NHS email help desk (please see *SMB email 1* attached SMB = Shared Mail Box)). NHS email help desk then accepted that the information I was inputting in the portal was correct but for some reason it was not creating a NHS email for the branch. As noted in the *SMB email 2* NHS helpdesk state that they would create the new email address manually and I provided them the additional information they asked for. This was on the **18th November 2023**. On **10 December 2023** I had a reply from NHS email help desk that a new email SMB has been created as noted in *SMB email 3* attached.
- 2.6 The breach notice states that emails were sent initially for completion of the CPAF screening questionnaire on 4 separate dates in July 2023 which I **did not** receive as I did not have a pharmacy email address set up as discussed in my evidence above. However I did complete the CPAF screening questionnaire before the deadline of 31/07/2023 as I was aware this had to be completed from the time I had the 100hr pharmacy open at the old site.
- 2.7 The breach notice also details that the Pharmaceutical Services Regulatory Committee (PSRC) then sent emails in November 2023 on 5 separate occasions and the last final notice email on 07th December 2023 for completion of the CPAF Pre-Visit Questionnaire. The committee states that I failed to submit this when requested.
- 2.8 I subsequently received the breach notice via the pharmacy email address on 23/07/2024. I also received a paper copy of the breach notice via post a few days after.
- 2.9 *Please kindly note that the request to complete the CPAF Pre-Visit Questionnaire was sent **only** through one form of communication (i.e. email) and the breach notice was sent by two different forms of communication (email AND post).*
- 2.10 I am challenging the basis for the breach notice in line with the evidence I have detailed earlier. If you follow the timeline, the pharmacy did not have a pharmacy email setup until **10th December 2023**. This delay in setting up the email was not due to the lack of effort from my side but IT issues from the NHS email portal.
- 2.11 The committee need to provide proof of what email address was used to communicate the requests to the pharmacy. As the pharmacy was a new acquisition at the time of the requests the pharmacy did not have an email address associated with it.
- 2.12 I would also raise issue with why was the pharmacy only contacted with the final notice using one form of communication (i.e. email). Why was the pharmacy not contacted by telephone or a postal reminder notice (as we did for the breach notice notification).

- 2.13 As a pharmacy owner I have always embraced and fully accepted my legal contractual obligations and have never intentionally neglected any responsibilities. The CPAF screening questionnaire for 24/25 was completed on **20th July 2024** prior to the email being sent regarding the breach notice which shows I always have complied with my contractual obligations.
- 2.14 I hope you will review my appeal and quash the breach notice issued against the company Late Night Yew Tree Ltd T/A Yew Tree Pharmacy.
- 2.15 If you require any further information please do not hesitate to contact me.”

3 **Representations**

No representations were received by NHS Resolution on the appeal. Given that no representations were received and having reviewed the information before me, I decided it was appropriate to enable the parties to provide further information on certain discrete issues. I sent the following to both parties:

- 3.1 “I am providing the parties to this dispute an opportunity to make further comments on certain specific matters in relation to the CPAF Pre-Visit Questionnaire.
- 3.2 I am giving the Commissioner the opportunity to:
- 3.2.1 Submit a copy of the initial invite sent on 6 November 2023 and details of the email address and/or postal address to which it was sent;
 - 3.2.2 Submit a copy of the reminders sent on 13, 20 and 27 November and 4 and 12 December 2023 and details of the email address and/or postal address to which they were sent; and
 - 3.2.3 Explain why, if the initial invite and reminders were sent by email only, why the breach notice was sent by post and email.
- 3.3 Additionally, I am giving the Appellant the opportunity to:
- 3.3.1 Submit confirmation of the NHS pharmacy email address associated with Yew Tree Pharmacy (FLV81);
 - 3.3.2 Provide copies of any other correspondence with NHSmail/ NHS email help desk including the initial email referred to in “SMB email 1” with the ticket reference number: INC35237683; and
 - 3.3.3 Provide confirmation of whether an alternative temporary email address was used between February 2023 and 10 December 2023 to receive communications from the Commissioner.
- 3.4 The parties have 10 days from the date of this letter to provide the information above. On receipt of any additional comments within this timescale, I will consider whether it is appropriate to provide the other party with a chance to provide final observations on those comments. We will then make a final determination on this appeal.”

4 **Further Representations**

- 4.1 The Appellant
- 4.1.1 “I am responding with further evidence as requested. I was asked to respond to 3 points within the letter. I will link them as point 1, 2 and 3 from top to bottom.
 - 4.1.2 Point 1

- 4.1.3 The NHS email associated with Yew Tree Pharmacy is: nhspharmacy.FLV81@nhs.net. This is the email address created for the pharmacy in December 2023.
- 4.1.4 Point 2
- 4.1.5 Please find attached a number of supporting emails including the initial email sent to NHS email help desk.
- 4.1.6 Attachment 1 - This was initial email sent on 5th March 2023 requesting help as the portal for requesting a new NHS shared email for the pharmacy was not working. Also linked with this is the 2nd email sent as the request on the portal was still not working.
- 4.1.7 Attachment 2 - This is the email I sent in response to NHS email help desk requesting further information to help create a new SMB for the pharmacy.
- 4.1.8 Attachment 3 - Between March 2023 and the email attachment 3 there was a number of phone call conversations to help set up the SMB. What ever [sic] the error was setting up the SMB NHS email help desk delayed the whole process as they would repeatedly ask me to request it via the portal - however the portal was not allowing me to submit the request.
- 4.1.9 Following this communication the SMB was created soon after on the 10/12/2023 as noted previously with my initial appeal documents.
- 4.1.10 Attachment 4 - Between February 2023 and 10th December 2023 there was no NHS SMB email address which forms the basis of this appeal. However I had been using my personal NHS email address - rashid.mahmood4@nhs.net. This email address was used to set up the Yew Tree Pharmacy NHS online account. I was using my personal NHS email for all communications with NHS staff and NHS England. Attachment 4 shows an email sent to NHS England directed to Elaine rogers as I needed help with setting up one of the services. This email was sent in April 2023.
- 4.1.11 I was not contacted by NHS by any other form of communication ie phone call or letter to confirm the NHS email associated with the pharmacy during the period in question. As noted I used my personal NHS email for all communications with the NHS.
- 4.1.12 I did not anticipate the creation of the new SMB to take this length of time as every time I contacted NHS email help desk I believed the problem would be resolved. However with my experience the NHS help desk system is not the most efficient system when resolving issues, especially IT related issues.
- 4.1.13 I hope the additional information provided in this email is useful.
- 4.1.14 If you require any further support from me please do not hesitate to contact me.”
- 4.2 The Commissioner
- 4.2.1 “The initial pre-launch notification was issued directly by the ICB team following a notification from the NHSBSA that at that time they did not have a shared nhs.net mailbox for the pharmacy on record. I have attached a copy of this email sent 21 July 2023. This email was sent to yewtree@chemist.com.
- 4.2.2 NHSBSA manage the CPAF process by issuing the emails to all contractors and sharing the collated responses to regional/ICB teams.

- 4.2.3 Please see attached email named CPAF 23/24 received in response to my request for the dates email notifications issued to the pharmacy contractors.
- 4.2.4 I did not receive any further notice of contractors whom the NHSBSA were unable to contact.
- 4.2.5 I am not aware of the service agreement with the NHSBA [sic] but to my knowledge they have never posted correspondence to pharmacies in England in relation to CPAF.
- 4.2.6 Neither NHS regional teams nor ICB teams receive copies of the individual emails issued to contractors.
- 4.2.7 Any correspondence in relation to potential sanction notices are sent by Royal Mail recorded delivery as a means to track and ensure receipt.
- 4.2.8 I am not aware of the date of activation of the pharmacy shared nhs.net account, but have sourced from a second party that this is nhspharmacy.flv81@nhs.net."

5 Observations

Having reviewed the representations received, I allowed both parties to provide final observations.

5.1 The Appellant

- 5.1.1 "The NHS contract team has shown in the evidence attached that my new branch did not have an NHS shared mail box email. They have proven my point that I have been making, the new branch did not have an NHS shared mail box (have detailed extensively reason [sic] why - out of my control and submitted evidence). The other party have just proved to you that the emails they state they sent to me on 5 separate occasions and the reason the breach notice was issued was to NO email address as they did not have an email address for the new branch.
- 5.1.2 The email address they refer to yewtree@chemist.com is a non-secure email address which was set up when the old branch (FVX05) was set up in 2012 but has not been used due to the issuing of the NHS shared mail box email for all pharmacies few years ago. I did not see the email they refer to detailing the list of pharmacies that the NHS contract team do not have NHS shared mail box for. Furthermore the email they refer to which was sent to yewtree@chemist.com was a generic email asking for pharmacies to complete their CPAF (initial) questionnaire (which I did anyway as detailed before in my evidence) as they do not hold an NHS shared mail box email address. As this was a generic email it was not asking me for anything specific as referred to in the breach notice. It was NOT the 5 reminder emails they refer to in the breach notice. One could also pose the question that if yewtree@chemist.com was the email address that was listed for communication then why was the reminder emails not sent to this email address??
- 5.1.3 They have provided evidence of reminder emails being sent but they bounced back which I suspect due to no NHS shared email box.
- 5.1.4 My final point being, why did my branch not get a final letter notice for submission of pre-visit questionnaire knowing that they did not hold an NHS shared mail box address. If they have provided evidence that they did not hold an NHS email address and the initial reminder emails sent have bounced back, another form of communication should have been initiated i.e. letter by post or phone call.

- 5.1.5 I hope I have made my points clear but if you require any clarification on any of them please do not hesitate to contact me.”

Having reviewed the observations received, I decided it was appropriate to invite the Commissioner to contact the NHS BSA and request certain information. I sent the following to the Commissioner:

- 5.1.6 “I require certain information to be able to make a fair and just determination. Please can you contact the NHS BSA and request them to provide the following information:

a copy of the initial invite sent on 6 November 2023 and details of the email address to which it was sent;

a copy of the reminders sent on 13, 20 and 27 November and 4 and 12 December 2023 and details of the email address to which they were sent;

a copy of any delivery and/or read receipts received in relation to the emails referred to above.

On receipt of any additional information, I will consider whether it is appropriate to provide the Contractor with a chance to provide final observations on those comments.”

- 5.1.7 I note that no response has been received.

6 Consideration

- 6.1 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.

- 6.2 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;”

- 6.3 The Regulations contain no definition as to what constitutes a breach of terms of service which is not capable of remedy.
- 6.4 I note that the pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.
- 6.5 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).
- 6.6 The Breach Notice states “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: 6 November 2023, 13 November 2023, 20 November 2023, 27 November 2023, 4 December 2023, 7 December 2023. You failed to submit the completed CPAF Pre-Visit Questionnaire. You are required not to repeat the breach again.” Although I have not been provided with copies of the communication sent, the Appellant does not dispute that these communications were sent but that they were not received in the pharmacy’s NHS mailbox as the account was not active.

- 6.7 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.
- 6.8 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 Pre-Visit Questionnaire. I note that the Appellant completed the CPAF Screening Questionnaire, as confirmed in the Breach Notice. I note this was as a result of the Appellant knowing that they would need to do this from owning a previous pharmacy.
- 6.9 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

(1) An NHS pharmacist (P) must allow persons authorised in writing by the NHS England to enter and inspect P’s pharmacy premises at any reasonable time, for the purposes of—

(a) ascertaining whether or not P is complying with the requirements of this Schedule;

(b) auditing, monitoring and analysing—

(i) the provision made by P, in the course of providing pharmaceutical services, for patient care and treatment, including any arrangement made with a person in respect of provision of appliances, and

(ii) the management by P of the pharmaceutical services P provides, where the conditions in sub-paragraph (2) are satisfied.

(2) The conditions are that—

(a) reasonable notice of the intended entry has been given;

(b) the Local Pharmaceutical Committee for the area where the pharmacy premises are situated have been invited to be present at the inspection, where this is requested by P;

(c) the person authorised in writing (X) carries written evidence of X’s authorisation, which X produces on request; and

(d) X does not enter any part of the premises used solely as residential accommodation without the consent of the resident.

(3) P must, at the request of the NHS England or of X, allow it or X access to any information which it or X reasonably requires—

(a) for the purposes mentioned in sub-paragraph (1); or

(b) in the case of the NHS England, in connection with its functions that relate to pharmaceutical services.

(4) P must, at the request of the NHS England, send to the NHS England by means of an electronic communication of the type specified in the request any information to which a person authorised in writing by the NHS England would have access during an inspection of P's pharmacy premises pursuant to sub-paragraph (1), if—

(a) P has that information in a form which means it may be sent by that form of electronic communication; or

(b) it is reasonable for the NHS England to request that P convert that information into a form which means that it may be sent by that form of electronic communication (and the NHS England does so request).

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

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

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

(6) Before information is requested pursuant to sub-paragraph (5), the NHS England must consult the person who is, for the time being, the person consulted under section 165(1)(a) of the 2006 Act, in respect of pharmaceutical remuneration of NHS pharmacists on the terms of the request.

- 6.10 The Appellant purchased the former Lloyds Pharmacy at 57-59 Yew Tree Lane Solihull B91 2NX in February 2023. I further note the Appellant had a 100 hour pharmacy at 49 Yew Tree Lane Solihull B91 2NX which closed in March 2023. I note there is no dispute in this regard.
- 6.11 I note that under Schedule 4, paragraph 29C of the Regulations, there is a requirement for NHS Pharmacists to have a premises specific NHSmail account. There is no dispute from the Appellant that the Commissioner sought to contact the pharmacy on several occasions throughout November and December 2023 to complete the CPAF Pre-Visit Questionnaire. I have not been provided with a copy of the emails or reminders that were sent during this period however I have been provided with a copy of the email of 21 July 2023 inviting certain pharmacies, including the Appellant's pharmacy, to complete the CPAF Screening Questionnaire. I understand that the NHS BSA manage the CPAF process and usually issue this email however this particular email was sent directly by the Commissioner to the Appellant as the NHS BSA "did not have a shared nhs.net mailbox for the pharmacy on record." I note this email was sent to yewtree@chemist.com. I understand that there is no dispute in relation to completion of the CPAF Screening Questionnaire however this is still relevant as it provides evidence of how the Commissioner corresponded with the Appellant at this time. I consider this point further below.
- 6.12 I note the Appellant states that "yewtree@chemist.com is a non-secure email address which was set up when the old branch (FVX05) was set up in 2012 but has not been used due to the issuing of the NHS shared mail box email for all pharmacies few [sic] years ago." I further note that the Appellant has confirmed that the NHS email associated with its pharmacy is nhspharmacy.flv81@nhs.net and was created on 10 December 2023. The Commissioner has also confirmed that the email address associated with the Appellant's pharmacy now is nhspharmacy.flv81@nhs.net but cannot confirm an activation date.

- 6.13 As I have not been provided with a copy of the emails sent to the Appellant's pharmacy in relation to the CPAF Pre-Visit Questionnaire, I cannot be certain which email address they were sent to however I must consider the information before me. The email of 21 July 2023 referred to at 6.11 above confirms that the NHS BSA did not have a shared nhs.net mailbox for the Appellant's pharmacy on record at this time. The email address nhspharmacy.flv81@nhs.net was not created until 10 December 2023 (as confirmed in "SMB email 3" provided by the Appellant) and therefore the emails cannot have been sent to this email address. The Appellant has confirmed that between February 2023 and the NHSmail account being created in December 2023, rashid.mahmood4@nhs.net was used to communicate with the Commissioner. I note "attachment 4" is an email from the Appellant to the Commissioner sent on 12 April 2023 where the Appellant used this email address.
- 6.14 In the absence of information to the contrary, I am of the view that it is highly likely that the Commissioner sent emails in relation to the CPAF Pre-Visit Questionnaire to the same email address they sent the CPAF Screening Questionnaire to i.e. yewtree@chemist.com.
- 6.15 Having determined which address the emails relating to the CPAF Pre-Visit Questionnaire were sent to, I now must consider if this was a reasonable approach for the Commissioner to adopt. As noted above, the Appellant states that yewtree@chemist.com was associated with the FVX05 branch and has not been used since the introduction of NHSmail for all pharmacies. I note FVX05 is the ODS code associated with the Appellant's former pharmacy that closed in March 2023 and FLV81 is the ODS code associated with the Appellant's new pharmacy which is the subject of the Breach Notice.
- 6.16 Whilst I appreciate the Commissioner's endeavours to send correspondence to yewtree@chemist.com, the Commissioner should have been acutely aware that this email address was associated with a different pharmacy which had subsequently closed. Furthermore, the Commissioner should be aware of the Terms of Service of NHS Pharmacists and the requirement under Schedule 4, paragraph 29C to not have sent correspondence to a non-secure email address. Even though the Appellant did not have an NHSmail account associated with their pharmacy at this time, the Appellant was using an the NHSmail address rashid.mahmood4@nhs.net. It may have been open to the Commissioner to have used this email address as an alternative, mindful that the Appellant had not indicated that it should be used for premises specific correspondence.
- 6.17 Following a point raised by the Appellant, I requested that the Commissioner confirm why the Breach Notice was sent by post and email when the initial invite and reminders were sent by email only. In response, the Commissioner stated *"I am not aware of the service agreement with the NHSBA but to my knowledge they have never posted correspondence to pharmacies in England in relation to CPAF"* and further *"any correspondence in relation to potential sanction notices are sent by Royal Mail recorded delivery as a means to track and ensure receipt."* I am not going to consider this further but I trust this answers the Appellant's question.
- 6.18 I must now look at the timeline in relation to the creation of the NHSmail account associated with the Appellant's pharmacy. I requested the Appellant to provide copies of any correspondence with NHSmail/NHS email helpdesk. I have summarised a chronology of events below which includes the further information provided by the Appellant:
- 6.18.1 The Appellant acquired the pharmacy in February 2023.
- 6.18.2 On 5 March 2023, the Appellant emailed pharmacyadmin@nhs.net with a query regarding a passcode following an unsuccessful request on the portal for a new NHSmail shared mailbox for the Appellant's pharmacy.

- 6.18.3 On 10 April 2023, the IT Service Desk replied to the Appellant with an answer to the query.
- 6.18.4 Between 10 April 2023 and 12 April 2023, the Appellant spoke to a member of the IT Service Desk who advised the Appellant to provide specific information by email.
- 6.18.5 On 12 April 2023, the Appellant provided the information to the IT Service Desk by email.
- 6.18.6 Between March 2023 and 18 November 2023, the Appellant states that *“there was a number of phone call conversations to help set up the SMB”*.
- 6.18.7 On 18 November 2023, the Appellant provided information to the IT Service Desk following a request for information on the same date.
- 6.18.8 On 28 November 2023, the IT Service Desk advised that they would create the shared mail box manually.
- 6.18.9 On 12 December 2023, the account for nhspharmacy.FLV81@nhs.net was created.
- 6.19 I note the Appellant states in their appeal that *“[the] delay in setting up the email was not due to the lack of effort from my side but IT issues from the NHS email portal.”* Whilst it is clear that the Appellant faced some problems with creating the NHSmail account, it is not clear why there was a significant delay in trying to resolve the issue from 12 April 2023 to 18 November 2023. I acknowledge that the Appellant states there were numerous phone calls between the IT Service Desk and the Appellant during this period but I do not consider 6 months to be a reasonable amount of time, given it was 8 months at this point since the Appellant acquired the pharmacy. I do not have sufficient information to ascertain whether the delay was the Contractor, IT Service Desk or both.
- 6.20 Taking all of the above into account, I consider that there is some fault to be placed on both parties here. Under Schedule 4, paragraph 29C of the Regulations, there is a requirement for NHS Pharmacists to have a premises specific NHSmail account. The Appellant could have been more productive to prevent a delay of 10 months. Conversely, the Commissioner should not have sent the reminder to an email address that it knew or should have known was not associated with the Appellant's current pharmacy. The Commissioner could have communicated with the Appellant using the individual NHSmail account although I am conscious that this email address was used for an altogether separate purpose. For the last two reasons, I consider it appropriate to substitute a decision to issue the Breach Notice with a decision to not issue a breach notice.
- 6.21 I have no information before me as to whether the Commissioner still requires the pharmacy to complete the CPAF Pre-Visit Questionnaire.
- 6.22 I note that both parties have confirmed the pharmacy premises specific email address for the Appellant's pharmacy is nhspharmacy.FLV81@nhs.net. I consider that the Commissioner can now indicate to the Appellant via this email address whether it requires the CPAF Pre-Visit Questionnaire to be completed.

7 Decision

- 7.1 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 NHS England or substitute for that decision any decision that NHS England could have taken when it took that decision.

- 7.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I substitute the decision of NHS England to issue a breach notice with a decision to not issue a breach notice.

Head of Appeals
NHS Resolution