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19 November 2024

REF: SHA/26278

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM SECRET POTIONS LTD t/a GREEN CROSS PHARMACY (FJX53) ("THE APPELLANT")

1 Outcome:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £21,810.

1.2 I note that neither party has submitted a claim for interest with regard t 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:

Secret Potions Ltd t/a Green Cross Pharmacy
NHS BSA on behalf of NHS England

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

Tel: 0203 928 2000
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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM SECRET POTIONS LTD t/a GREEN CROSS PHARMACY (FJX53) (“THE APPELLANT”)

1 INTRODUCTION

1.1 The Appellant appealed the decision of NHS England to recover an overpayment relating to the Blood Pressure Checking Service (BPCS) – Post Payment Verification.

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 11 July 2024 in respect of Green Cross Pharmacy (ODS code FJX53). The decision stated:

2.1 “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 Blood Pressure Checking Service.

2.2 This service was originally commissioned as an advanced service from 1st October 2021 that could be carried out by Pharmacists & Pharmacy Technicians, however from the 1st of December 2023 amendments were implemented to allow the service to also be carried out by suitable trained and competent pharmacy staff.

2.3 As part of the verification exercise, your pharmacy has been contacted by the Provider Assurance Team to request that you review all your Blood Pressure Checking Service records between March 2022 and August 2023.

2.4 To date your pharmacy has not provided evidence to demonstrate that the Blood Pressure Checking Service claims made during this time met the requirements set out in the service specification, despite several attempts made by the NHSBSA Pharmacy Provider Assurance Team.

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

2.6 The NHS England Pharmaceutical Services Regulatory Committee has now reviewed this information and noted that:

2.6.1 FJX53 – Green Cross Pharmacy claimed 1584 Blood Pressure Checks and 36 Ambulatory Blood Pressure Monitoring Checks between March 2022 and August 2023.

2.6.2 FJX53 – Green Cross Pharmacy was contacted on several occasions by the NHSBSA Provider Assurance Team to request evidence to substantiate the claim or agree to the recovery but did not receive sufficient evidence.

2.6.3 FJX53 – Green Cross Pharmacy provided partial evidence 320 [sic] Blood Pressure Checks and 6 Ambulatory Blood Pressure Monitoring Checks between March 2022 and August 2023 that was able to be analysed and verified. The value of these verified claims has been deducted from the Total Recovery Value.

2.7 Having reviewed the information provided by the NHSBSA Provider Assurance Team, the NHS England Pharmaceutical Services Regulatory Committee (PSRC) has decided that an overpayment in relation to your March 2022 to August 2023 Blood Pressure Checking 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.

2.8 The below table outlines the months reviewed and the associated recovery value:

Period reviewed	Total Recovery Value
March 22 – Aug 23	£21,810.00

2.9 Action Required

2.9.1 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 10th August 2024.

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

2.9.3 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by 10th August 2024.

2.9.4 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.

2.9.5 Please be aware that failing to contact us by 10th August 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: NHS Resolution, Primary Care Appeals, 10 South Colonnade, Canary Wharf, London, E14 4PU

2.9.6 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.

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

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

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

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

3 THE DISPUTE

In an email dated 7 August 2024 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 "Thank you for your email and for providing the summary of our Blood Pressure Checking Service Records.

3.2 I do not agree that an overpayment has been made and wish to appeal to the Secretary of State against NHS England's decision.

3.3 Enclosed are the following documents:

3.3.1 Mitigating circumstances related to a flood at our storage site

3.3.2 Video evidence of the cellar where the forms were stored

3.3.3 Third-party Google searches of floods in our area

3.3.4 Assurance that the quality of our pharmacy services were not affected by the flood

3.3.5 Documentation provided from other sites (on request) where we have met all requirements, including:

3.3.5.1 Millers Pharmacy (FRL56) in Stoke On Trent, where we provided over 3000 BP consent forms were requested and & provided

3.3.5.2 Packmoor Pharmacy (FCK23), demonstrating our processes and adherence to service specifications as a company

3.4 Thank you for considering my appeal.

3.5 After thorough review and consideration of the information provided, we respectfully disagree with the assertion that an overpayment has occurred. We assure you that all Blood Pressure (BP) and Ambulatory Blood Pressure Monitoring (ABPM) checks were conducted in full compliance with the specifications outlined for the Hypertension Case Finding Service.

3.6 However, upon further investigation, we discovered a significant mitigating circumstance that affected our ability to provide complete evidence for the specified period. Regrettably, the actual paperwork relating to and evidencing the service was stored at our pharmacy in Chesterfield. Greencross is a health centre pharmacy with little or no storage. Tragically, the entire area, including our cellar where the documents were stored, was flooded, resulting in over 5 feet of water inundating the space. This unfortunate incident garnered national attention.

3.7 As a consequence of this natural disaster, we lost access to the paperwork required to substantiate the claims made for the Blood Pressure Checking Service during the Oct-Dec 22 period. Despite our best efforts to safeguard the documentation, the flood damage rendered it irretrievable.

3.8 Furthermore, we can provide evidence of the extensive works carried out as a result of the flood, along with pictures and video of the documents being stored in the affected cellar. These documents would demonstrate the severity of the situation and substantiate our inability to provide the requested evidence.

3.9 We understand the importance of accurate record-keeping and compliance with service specifications. As a company, we prioritise maintaining comprehensive records, exemplified by our recent provision of over 3000 forms to the BSA for a very similar request at our pharmacy in Longton (Millers Pharmacy FRL56), Stoke On Trent. We are also more than willing to collaborate with you to identify these patients and discuss the matter further if necessary.

3.10 Given this unforeseen circumstance and our commitment to transparency and cooperation, we kindly request your understanding and flexibility in reconsidering the recovery of the alleged overpayment. We are dedicated to working closely with you to explore alternative solutions and ensure that the matter is resolved amicably.

3.11 Please advise on the preferred method for submitting additional information or any specific documentation requirements to support our case further.

3.12 Thank you for your attention to this matter, and we look forward to your understanding and cooperation

3.13 This is the video [Appendix A] of taken after the flood water had reseeded. [sic] The water in the cellar exceeded 5 feet.

3.14 I am also sending you some images depicting the condition of our premises both before and after the recent flooding incident. [Appendix B] The floodwaters reached a height of approximately 5 feet above the floor level, and these images, along with the accompanying video, were captured once the floodwaters had significantly receded.

3.15 Additionally, I have reached out to the contractor responsible for conducting the extensive cleanup and restoration work following the initial efforts made by our pharmacy staff. I anticipate receiving the invoice and confirmation of the completed works shortly, upon which I will promptly forward it to you.

3.16 Thank you for your understanding and support during this challenging time."

4 SUMMARY OF REPRESENTATIONS

This is a summary of representations received on the appeal.

4.1 The NHS BSA on behalf of NHS England stated:

4.1.1 “Thank you for your letter of the 13th August 2024 and the opportunity to provide representations on the appeal.

Background

4.1.2 The Blood Pressure Checking Service (BPCS) was commissioned by NHS England as an advanced service from 1st October 2021 as part of the Long-Term NHS plan.

4.1.3 This service was to be carried out by Pharmacists and Pharmacy Technicians, and then, from the 1st December 2023, amendments were implemented to allow the service to also be carried out by suitable trained and competent pharmacy staff.

4.1.4 The aims and objectives of the BPCS are: -

4.1.4.1 to identify people aged 40 years or older, or at the discretion of the pharmacist people under the age of 40, with high blood pressure (who have previously not had a confirmed diagnosis of hypertension), and to refer them to general practice to confirm diagnosis and for appropriate management.

4.1.4.2 at the request of a general practice to undertake ad hoc clinic and ambulatory blood pressure measurements.

4.1.4.3 to promote healthy behaviours to patients.

4.1.5 Contractors providing this service were eligible for a setup fee of £440.00 and for each claim as part of the Blood Pressure Checking Service, a payment of £15.00 was paid for a Blood Pressure check and a payment of £45.00 for each appropriate Ambulatory Blood Pressure Monitoring (ABPM). Contractors claimed for this payment via Manage Your Service (MYS) each month.

4.1.6 In addition, incentive fees were paid to pharmacies across 2021/22, 2022/23 and 2023/24. An incentive fee of £1,000 was available in the first year of service provision, followed by a payment of £400 in subsequent years if the pharmacy reached the specified threshold for those years.

4.1.7 The incentive payment was triggered by reaching the following thresholds:

4.1.7.1 5 ABPM checks in 2021/22

4.1.7.2 15 ABPM checks in 2022/23

4.1.7.3 20 ABPM checks in 2023/24

4.1.8 Full guidelines are detailed in the ‘Advanced service specification – NHS community pharmacy hypertension case-finding advance service V2.3 November 2023. [copy provided – Appendix C]

Post Payment Verification

4.1.9 The NHSBSA Pharmaceutical Provider Assurance Team (PAT), on behalf of NHSE, were requested to conduct a Post Payment Verification (PPV) exercise to ensure that pharmacy contractors had claimed correctly for the period October 2022 to December 2022. If contractors were for any reason unable to provide the requested evidence or did not engage with the request, there was potential to request evidence across the entire time period of March 2022 to August 2023.

4.1.10 Communications were sent via email to those contractors that had been identified as being amongst the highest claimers during October 2022 to December 2022, to request the contractors provide their records to the NHSBSA to review the Blood Pressure checks and Ambulatory Blood Pressure Monitoring (ABPM) records for October 2022 to December 2022.

4.1.11 As stated in the Service Specification accurate record keeping is an essential part of the service provision. The necessary records required for reimbursement must be kept for a period of three years to demonstrate service delivery in accordance with the service specification, and to assist with post-payment assurance activities. These records must be provided by a contractor when requested by the NHSBSA Provider Assurance Team.

4.1.12 The service specification also states that all test results must be sent via NHSmail or other secure digital process to patients' general practices for entry into the patient record of the service specification for all test outcomes (Page 22, Annex E), the following information should be sent: -

4.1.12.1 Pharmacy name, address and ODS code

4.1.12.2 Patient name

4.1.12.3 Patient date of birth

4.1.12.4 Patient address

4.1.12.5 Patient NHS number

4.1.12.6 Date of clinic reading*

4.1.12.7 Clinic reading (systolic/diastolic) *

4.1.12.8 Date ABPM device fitted*

4.1.12.9 ABPM reading (average daytime systolic/diastolic) *

4.1.12.10 ABPM reading (average night-time systolic/diastolic) *

4.1.12.11 ABPM reading (average 24hr systolic/diastolic) *

4.1.13 In the Post Payment Verification (PPV) exercise undertaken by the NHSBSA PAT, FJX53 – Green Cross Pharmacy was contacted on 7 occasions between 11th October 2023 and 4th Dec 2023 to request the records for the blood pressure checks claimed for during October 2022 to December 2022.

4.1.14 The lack of records for service delivery in the period October 2022 to December 2022 raised concerns about the service period over the longer term. As a result, it was decided to request records for March 2022 to August 2023.

4.1.15 From September 2023 the process changed for submitting claims for service delivery changes, and pharmacies have been able to submit their entries for the Blood Pressure Checking Service on a live system named Pharm Outcomes. Therefore, the PPV exercise on this occasion only included claims made up to the end of Aug 2023 prior to the change in the process.

4.1.16 The NHSBSA PAT contacted Green Cross Pharmacy on a further 5 occasions between 19th December 2023 and 19th March 2024 to request records for March 2022 to August 2023.

4.1.17 Emails were sent to the pharmacy shared NHS mail address pharmacy.fjx53@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. The NHSBSA PAT also communicated with Mr. [RM], Superintendent Pharmacist and Director from Green Cross Pharmacy ([RM]@nhs.net) on 5 occasions between 22nd March 2024 and 3rd May 2024.

4.1.18 FJX53 Green Cross Pharmacy did engage with the PPV request from the PAT and were able to provide several attachments digitally in the form of excel spreadsheets which included the details of the Blood Pressure (BP) readings that had been completed. The PAT reviewed this evidence provided which included records for 220 BP claims and 6 ABPM claims. However, this evidence did not match the claims submitted, as it was significantly less than the volume claimed and paid to the contractor. The 6 ABPM checks claimed between October to December 2022 were verified, leaving 602 of the 822 BP checks claimed that could not be verified.

4.1.19 The PAT advised Green Cross Pharmacy of the discrepancy between the number of claims made and the evidence provided and requested them to provide any evidence held for the BP claims where no evidence was forthcoming. In response to this request Green Cross Pharmacy responded on the 29th of November 2023 and stated 'the reason the attachments do not match the figures is because we were asked by the surgeries to physically take over some of the results to them, rather than 'bombarding' them with emails which may not get answered. So, every single blood pressure reading was received by the surgeries either via email or by handing them a physical reading.'

4.1.20 The PAT responded by requesting for further clarification of what format the physical readings were given to the GP surgery and if a record had been retained by Green Cross Pharmacy before the records were passed to the GP surgery. Within this email PAT also asked if the surgery would still have any of these records available that could potentially be forwarded as evidence for the missing 602 blood pressure claims still outstanding.

4.1.21 In a follow up telephone call with Green Cross Pharmacy in response to PAT's email the pharmacy again confirmed no more evidence was available from either themselves or the surgery for the outstanding 602 claims within the period Oct – Dec 2022. This confirmed that between Oct and Dec 2022 Green Cross Pharmacy had failed to keep a record of the service delivery for PPV as required within the service specification.

4.1.22 No records were available for the readings that the PAT had been informed had been sent to the GP surgery via email or physical paper copies, despite other claims in the same period being recorded digitally which had been provided to the PAT on the original request.

4.1.23 Having verified the partial evidence the PAT confirmed with Green Cross Pharmacy that the figures did not match and asked again if they had any further evidence to demonstrate that the service delivery claimed for the three months of October, November and December 2022. Green Cross Pharmacy in response reiterated that the reason the spreadsheets do not match their figures was because they were asked by the surgeries to physically take over some of the results, stating 'we can only assume any records done manually had not been entered into the spreadsheet'. So, they were advising that every single blood pressure reading was received by the surgeries either via email or by handing them a physical reading however no record of these readings had been kept by the pharmacy as outlined per the service specification.

4.1.24 Green Cross Pharmacy were also made aware that it is the contractor's responsibility to be able to provide evidence of claims when requested by the NHSBSA for post payment verification. In cases where evidence is not available or does not demonstrate that the service activity was delivered, and so these claims cannot be verified, they may be referred to the Pharmaceutical Services Regulations Committee (PSRC) to decide whether an overpayment has been made.

4.1.25 It should be noted that the service requirement is for the pharmacy to retain records of service provision for PPV purposes. However, PAT suggested that Green Cross Pharmacy should see if the records they had said they shared with the GP practice could be provided as evidence of service delivery to help NHS England in their decision making.

4.1.26 On the 4th Dec 2023, the PAT placed a phone call to Green Cross Pharmacy to confirm if they could provide any further evidence in addition to what they had already provided for the period Oct – Dec 2022. The pharmacy reiterated that no further evidence can be provided.

4.1.27 As Green Cross Pharmacy were unable to provide records to validate the claims made during October to December 2022, the PAT sent an email to request their records from when they started providing the service in March 2022 until August 2023 when they began using Pharm Outcomes. This totalled 1,584 BP claims and 36 ABPM claims for the period March 2022 until August 2023.

4.1.28 Green Cross Pharmacy provided further spreadsheets that listed patients they believed they may have performed BP checks on whilst running the Covid Clinics in October 2022 to December 2022. Although PAT had now requested evidence of claims for the larger period of March 2022 – August 2023, Green Cross Pharmacy only responded around the initial 3 sample months. However, these spreadsheets contained the Covid Vaccination provision date, ODS code, initials, patient link, age and postcode, i.e. the records of who they provided Covid Vaccinations to. These records did not contain the details of any blood pressure check undertaken. The service specification (detailed on page 2), outlines that the patients diastolic and systolic readings should be kept in any records of service provision but these were not included in the spreadsheet, therefore the PAT were unable use [sic] the additional information provided to verify the claims made and so it was reiterated to Green Cross Pharmacy that the PAT still required evidence to verify both the claims for October to December 2022 and the further claims from March 2022 – Aug 2023.

4.1.29 The PAT then sent an email on the 5th of February 2024 to Green Cross Pharmacy advising them that due to the missing BP readings this additional evidence could not be used to verify the claims and asked for any further information available that contained the BP readings (ref line 18 on the 'FJX53 Timeline').

4.1.30 Following no response to this e-mail a telephone call was made to the pharmacy on the 14th of March 2024 in which the caseworker spoke to Mr [NM] of Green Cross Pharmacy, to confirm if no further evidence could be supplied the case would need to be escalated to PSRC (ref line 19 'FJX53 Timeline). Green Cross Pharmacy confirmed on this call no further evidence can be provided for the period of March 2022 – Aug 2023 and were therefore informed that in the PAT's view an adjustment would need to be made.

4.1.31 The adjustment letter was emailed to Green Cross Pharmacy on the 19th March 2024 containing full details of the adjustment total and full breakdown.

4.1.32 Almost six months after the investigation began and after being informed that the PAT would need to refer the case onto PSRC, PAT then received an email from Mr [RM] on 22nd March 2024 which stated that ‘entries were made via Pharm Outcomes from September '23 to present day and these were entered 'live'' and also stated “However, upon further investigation, we discovered a significant mitigating circumstance that affected our ability to provide complete evidence for the specified period. Regrettably, the actual paperwork relating to and evidencing the service was stored at our pharmacy in Chesterfield.”. In this email Green Cross Pharmacy suggested that the records were not kept in these premises but were kept at another site managed by the same owners of the pharmacy (Brimington Pharmacy), and this alternative site had been damaged by a flood for which they forwarded newspaper articles and a video of the local area post flood.

4.1.33 NHSE and its agent NHSBSA need to be rigorous when undertaking assurance of claims for NHS funding and so are cautious when presented with “new” evidence so late in an investigation. The PAT were surprised to learn about the storage of records for Green Cross Pharmacy at an alternative premises in Chesterfield so late in the day. Such a significant event must have had an impact on both that pharmacy and the rest of the pharmacies in the group, that the staff at Green Cross Pharmacy must have been aware of this when the PPV exercise started in October 2023. It is, therefore, highly questionable that it was only discovered late in March 2024 “that the flood damage rendered it (the missing records) irretrievable”.

4.1.34 Attempts were made to contact Mr. [RM] via telephone with voicemails being left and Mr. [RM] returned PAT’s call on 3rd May 2024. The caseworker explained to Mr. [RM] that the case would be escalated to PSRC as Green Cross Pharmacy had confirmed they were unable to provide suitable evidence for BP and ABPM claims that had been made between March 2022 and Aug 2023.

4.1.35 In an email of 28th of March the PAT were informed that severe flooding in the Chesterfield area had affected a different pharmacy in the group (Brimington Pharmacy), where the pharmacy believed the records from FJX53 Green Cross Pharmacy had been transported to for storage. The email included evidence of a serious flood and significant damage to this sister store of Green Cross Pharmacy. This evidence was not disputed by the PAT and was provided to the PSRC of the ICB to help with their decision making.

4.1.36 However, it was noted that the evidence provided about the flood from Green Cross Pharmacy identifies that the flooding occurred on or around 20 October 2023 as storm Babet hit. Despite this damage Green Cross Pharmacy were then still able to engage with PAT and provide the records for 220 BP checks and the 6 ABPM claims on 24 October 2023, and raised no concerns at this point about the flood that had so recently happened at its sister store and the impact this would have had on Green Cross Pharmacy and storage of Green Cross Pharmacy’s operational records.

4.1.37 It would seem reasonable that if Green Cross Pharmacy and its operational record keeping processes had been affected by the flood at its other store, that occurred only four days earlier, that this would have been included in evidence provided to the PAT at that time. Or indeed in subsequent interactions between the two. It seems odd, to say the least, that such a significant problem was not included in any of the numerous interactions between October 2023 and March 2024 that no mention was made of the storage issues at Brimington pharmacy.

4.1.38 As FJX53 Green Cross Pharmacy was unable to provide any more evidence to substantiate their claims the details of the case were passed to their NHS England local Pharmacy Services Regulations Committee (PSRC) for review.

4.1.39 The case of FJX53 Green Cross Pharmacy was escalated to PSRC for review on 15th May 2024. To assist with their review, the PSRC was provided with the timeline of correspondence showing all contact the PAT had with Green Cross Pharmacy. This timeline has been provided to you in addition to this representation.

4.1.40 The engagement showed that repeated requests were made by NHSBSA PAT to Green Cross Pharmacy via both numerous emails and telephone calls requesting evidence of their BP records for the claims submitted during the sample period of October 2022 to December 2022. Green Cross Pharmacy were unable to provide sufficient evidence to substantiate their claims made. Green Cross Pharmacy provided evidence to enable verification of only 220 BP claims and 6 ABPM claims for the period of October – December 2022 and advised they were unable to provide evidence to demonstrate that the service was delivered for the remaining 602 BP claims.

4.1.41 No explanation was provided by the pharmacy as to why the evidence for these 220 BP clams and 6 ABPM were available, whereas the remaining outstanding evidence was not. If the pharmacy had been affected with some records being destroyed in the flood occurring at Brimington Pharmacy, as stated much later by the pharmacy, surely this would have been the time to raise these concerns.

4.1.42 To make this scenario even harder to understand is that the 220 BP claims provided were split between the three months Oct – Dec 2022 (59 in Oct, 146 in Nov and 15 in Dec). This demonstrated that throughout the sample period there had been records to verify some of the claims made for each of the months in the sample, but not all of them.

4.1.43 Green Cross Pharmacy in their original response stated the evidence was not kept as these were given to the local GP surgery via paper copies or emails for which neither the pharmacy nor the GP surgery were able to provide record of as required to do so under the service specification.

4.1.44 As Green Cross Pharmacy were unable to provide evidence for the remaining 602 BP claims made in the sample period of October – December 2022, on the 19th December 2023 Green Cross Pharmacy were then asked to produce evidence for the full-service period of March 2022 – August 2023 for which NHS England had asked the PPV exercise to be carried out for.

4.1.45 Table 1 shows all the claims made for the Blood Pressure Checking service from March 2022 to August 2023, including the claims made during the initial period of October 2022 to December 2022, which PAT requested to review for the PPV exercise. Also included in the table are the number of BP and ABPM claims that the PAT were able to verify from the evidence provided.

Month	BP Checks Claimed	No. of BP checks verified	ABPM Checks Claimed	No. of ABPM checks verified
March 2022	4	0	0	0
April 2022	2	0	0	0
May 2022	2	0	0	0
June 2022	105	0	0	0
July 2022	700	0	0	0
August 2022	73	0	0	0
September 2022	99	0	0	0
October 2022	361	59	0	0
November 2022	436	146	2	2

December 2022	25	15	4	4
January 2023	36	0	5	0
February 2023	26	0	2	0
March 2023	43	0	5	0
April 2023	90	0	3	0
May 2023	48	0	2	0
June 2023	59	0	0	0
July 2023	35	0	4	0
August 2023	40	0	9	0
Totals	*1,584*	*220*	*36*	*6*

4.1.46 Following receiving the original evidence PAT did receive further evidence in the form of spreadsheets of data containing patient details that Green Cross Pharmacy believed may have had a BP check carried out when the pharmacy delivered their Covid vaccination, however as this contained no details of the BP claim readings, PAT were unable to use this data to verify the claims. This additional evidence if including the previous verified evidence did not match what the pharmacy claimed across the original three month sample as this only included a further 650 patients and without the BP claim readings it unfortunately did not provide the assurance on the claims even if we ignore the fact that PAT had at the point requested 18 months' worth of evidence from Green Cross Pharmacy. PAT were informed by Green Cross Pharmacy that no further evidence could be provided for any BP claims made between March 2022 – August 2023 other than the evidence of the 220 BP and 6 ABPM claims previously sent.

4.1.47 Following an email sent by the PAT on 19th March 2024 highlighting that without receiving all the evidence for the claims made for the service, PAT would be unable to give assurance to NHS England on the level of activity claimed. Therefore, the PAT would need to refer the case onto PSRC for a decision on this case. This was almost six months after the investigation began and it was only at this point that the PAT received an email from Green Cross Pharmacy that suggested the records were being kept at an alternative pharmacy (Brimington Pharmacy) which had been damaged by local flooding and made the records irretrievable.

4.1.48 The PAT attempted to contact Mr. [RM] on numerous occasions via telephone with voicemails being left, subsequently Mr. [RM] returned PAT's call on 3rd May 2024. The PAT explained to Mr. [RM] that the case would be escalated to PSRC as Green Cross Pharmacy had confirmed they were unable to provide any further suitable evidence for the BP and ABPM claims that had been made between March 2022 and Aug 2023.

4.1.49 Consequently, the PSRC concluded that the NHSBSA had only been provided with evidence of 220 BP claims and 6 ABPM claims to demonstrate the BP and ABPM claims made by Green Cross Pharmacy between March 2022 and Aug 2023 and therefore had not met the requirements as set out in the service specification for the outstanding 1,364 BP claims and 30 ABPM claims. Following this conclusion, the PSRC determined that Green Cross Pharmacy was liable for an adjustment to the payment for which it had received.

4.1.50 Having made this decision, the PSRC then directed that as FJX53 Green Cross Pharmacy was not entitled to the payment and that the overpayment should be reclaimed pursuant to Regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

In Response to the contractor's appeal

4.1.51 FJX53 Green Cross Pharmacy was identified as one of the highest claimers during October 2022 – December 2022 within the following categories:

4.1.51.1Multiple High BP Results, Low number of ABPMs Completed

4.1.51.2Very High BP Result

No. of BP Checks	Very High BP result	ABPMs
822	32	6

4.1.52 As stated in section 5.3 and 5.4 on page 11 of the 'Advanced Service Specification – NHS community hypertension case-finding advance service', an essential part of the service was to maintain accurate records for a period of three years to demonstrate service delivery in accordance with the service specification, and to assist with post payment assurance activities. Without these records the pharmacy does then not comply with an essential part of the service.

4.1.53 The PAT initiated its first correspondence with Green Cross Pharmacy on the 11th October 2023 requesting the evidence for the total claims made for the service between October 2022 and December 2022 totalling 822 BP claims and 6 ABPM claims. Green Cross Pharmacy did engage with request however upon receipt of the evidence it was discovered that only evidence for 220 BP claims and all 6 of the ABPM claims had been provided. Although PAT appreciated the engagement with the request this meant that from what Green Cross Pharmacy claimed for the service the evidence provided was 602 BP claims short.

4.1.54 From the evidence provided covering 220 BP claims & 6 ABPM claims this evidence took the form of a digital excel spreadsheet. The spreadsheet contained information outlined in the service specification necessary for post payment verification activity purposes including name, date of birth, address, diagnostic reading and systolic reading, date of reading and the patients NHS number. Due to this level of detail the PAT were able to verify these claims and gave that information to PSRC to form part of their decision, however the PAT also outlined that it had received no explanation from Green Cross Pharmacy to explain why only this evidence was available and for the remaining 602 claims still outstanding no evidence was forthcoming in this original response.

4.1.55 Following the PAT's initial review of the evidence provided we performed numerous communications with Green Cross Pharmacy to request the evidence which was missing and we were informed unfortunately that the outstanding evidence could not be provided due to the paper copies being sent direct to the GP surgery and therefore no records had been kept by the pharmacy and at no point where we informed that the evidence was being stored off site in an alternative pharmacy.

4.1.56 In their appeal, Green Cross Pharmacy stated they manage other pharmacies for which documentation was provided where they met all the service requirements to show good record keeping practice as part of their day-to-day operations as well as an understanding of record keeping and maintaining comprehensive records. These other pharmacies mentioned included 'Millers Pharmacy (FRL56) in Stoke on Trent, and Packmoor Pharmacy (FCK23), - demonstrating our processes and adherence to service specifications as a company. As a company, we prioritise maintaining comprehensive records, exemplified by our recent provision of over 3000 forms to the BSA for a very similar request at our pharmacy in Longton (Millers Pharmacy FRL56), Stoke on Trent.' Green Cross Pharmacy is part of a small chain, Secret Potions Ltd, which also includes Millers Pharmacy (FRL56) and Packmoor Pharmacy (FCK23) which are referenced in the appeal.

4.1.57 The NHSBSA PAT did contact FRL56 about the Blood Pressure Checking Service for the months of October 2022 to December 2022, and they did provide their records for review. The PAT reviewed the records provided and from these were able to verify the information in this case. They did not have the same issue as Green Cross Pharmacy that evidence was given to the GP practice and therefore unavailable.

4.1.58 For the other pharmacy branch mentioned Packmoor Pharmacy (FCK23), this case is currently ongoing, and the PAT cannot confirm at this stage the information provided by FCK23 is sufficient to verify all the claims in the sample. However, PAT can confirm that they have been able to provide some digital evidence to demonstrate meeting the service requirement similarly to FRL56.

4.1.59 Both FRL56 and FCK23 have provided digital copies of the patient consent forms via Egress (which is a secure file sharing platform) that contained all the required details listed in the service specification. This contrasts significantly with the evidence provided by Green Cross Pharmacy which were several email attachments in the form of an excel spreadsheet and no records of consent forms.

4.1.60 In addition, neither of these pharmacies reported that their evidence was given to their local GP practice(s) and was therefore unavailable.

4.1.61 The PAT acknowledges that the evidence provided by Millers Pharmacy (FRL56) was comprehensive and that as a result it was able to verify the claims submitted by the pharmacy for the sample period requested but respectfully, submits that this does not then necessarily mean that all pharmacies in the group would keep records to the same high standard.

4.1.62 It was only on the 22nd March 2024 after PAT has raised the idea the case would need to be referred onto PSRC that the PAT received an email in response to this communication that appeared to contradict early responses that the records had been sent directly to the GP surgery. In this email the PAT were informed there had been severe flooding in the Chesterfield area which had affected a different pharmacy (Brimington Pharmacy), but this is where Mr. [RM] believed the records from FJX53 Green Cross Pharmacy had been transported to and stored.

4.1.63 Although the PAT have received substantial evidence of the pharmacy affected by the flood, no evidence has been provided to demonstrate that to show that the requested records of service delivery for Green Cross Pharmacy had been stored at Brimington pharmacy and destroyed in the flood. The provision of records to verify some of the initial sample appears to directly contradict the assertion that the service records for the Blood Pressure Checking Service undertaken by Green Cross Pharmacy were then stored at Brimington before the flood.

4.1.64 NHSE and PAT appreciates this is a regrettable event for the pharmacy however, no reference to this flood was mentioned during the initial correspondence with Green Cross Pharmacy. The pharmacy was first contacted on 11th October 2023 to request they provide their Blood Pressure records for review, and the pharmacy did engage throughout the process via email and phone calls.

4.1.65 Green Cross Pharmacy then goes on to state it was these mitigating circumstances that affected their ability to provide complete evidence for the

BP claims that they were unable to provide evidence for. The pharmacy refers to a flood in the area where they kept the documents that were being stored.

'The actual paperwork relating to and evidencing the service was stored at our pharmacy in Chesterfield. Greencross is a health centre pharmacy with little or no storage. Tragically, the entire area, including our cellar where the documents were stored, was flooded, resulting in over 5 feet of water inundating the space. This unfortunate incident garnered national attention. As a consequence of this natural disaster, we lost access to the paperwork required to substantiate the claims made for the Blood Pressure Checking Service during the Oct-Dec 22 period. Despite our best efforts to safeguard the documentation, the flood damage rendered it irretrievable.'

4.1.66 Although the PAT do not dispute that the flooding has taken place, we would stress our concerns that this event made known the investigating team until several months after the fact. [sic] Green Cross Pharmacy gave no explanation to why their difficulties with a flood at a sister store was raised so late in the investigation.

4.1.67 Green Cross Pharmacy provided evidence that was available upon our request at the start of the investigation. This evidence was provided in digital form suggesting that if it kept further records, they would be kept in the same format. Yet the pharmacy's later representations suggests that it was paperwork that it lost in the flood at its sister store. The keeping of paper records for this service had not been suggested as a factor by Green Cross Pharmacy until the communication on the 30th of March which unfortunately was many months into our assurance activity.

4.1.68 The total payment made for the Blood Pressure Checking Service to FJX53 – Green Cross Pharmacy for the period from March 2022 – August 2023 was £25,380.00. During this time period the service was yet to go live on Pharm Outcomes (launched Sept 2023) and therefore as detailed in the service specification, contractors were expected to keep records of their service delivery data.

4.1.69 Green Cross Pharmacy were only able to provide evidence from the period March 2022 – August 2023 for 220 BP readings which at £15.00 per reading, totalled £3,300.00 and 6 ABPM readings at £45.00 per reading totalling £270.00. As this evidence had been able to be verified, PSRC agreed with the recommendation to deduct the £3,570.00 for these verified claims for which evidence was provided from the overall total of £25,830.00 claimed by Green Cross Pharmacy for March 2022 – August 2023. This leaves a total of £21,810.00 that the PSRC have recommended is recovered from FJX53 Green Cross Pharmacy as shown in table 2.

Total Value of all claims paid (Mar'22 – Aug'23)	Total Value of all claims Verified (Mar'22 – Aug'23)	Recommended recover value for claims unverified
£25,830.00	£3,750.00	£21,810.00

4.1.70 NHS England maintains that FJX53 - Green Cross Pharmacy was not compliant with the requirements set out in the service specification and as such are unable to provide assurance on the claims made for the Blood Pressure Checking Service from March 2022 to August 2023. As a consequence of having then been paid for these claims, an overpayment had been made. The decision to then recover the £21,810.00 overpayment was then in accordance with the regulations.

Key points for consideration

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

4.1.71.1 The Blood Pressure Checking Service specification is clear that all the evidence must be via NHSmail or other secure digital process to patients' general practices for entry into the patient records. It is the contractor's responsibility to be able to provide evidence of claims when requested by the NHSBSA for post payment verification.

4.1.71.2 NHS England has no power to make payments to pharmacy contractors outside of the statutory framework set out in the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, the service specification, and the Drug Tariff. 4.

4.1.71.3 The NHSBSA records for Green Cross Pharmacy show they had not submitted the evidence required to verify all of their BP claims in the initial sample period of October – December 2022. When the scope of the assurance exercise was externed to March 2022 – August 2023 no further evidence was provided to verify any of the additional claims reviewed. The NHSBSA have provided numerous opportunities for Green Cross Pharmacy to provide further evidence to demonstrate that they had met the requirements set out in the service specification.

4.1.71.4 The PSRC was presented with a timeline of correspondence, showing all contact between the Provider Assurance Team and Green Cross Pharmacy.

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

4.1.71.6 The appeal from FJX53 Green Cross Pharmacy does not include any evidence to demonstrate the service claims were made in accordance with the service specification.

4.1.71.7 The evidence provided of the flood damage at the Brimington store is not disputed. However, it is not accepted that this is the reason that the Green Cross Pharmacy was unable to provide the necessary records of service delivery.

4.1.71.8 FJX53 Green Cross Pharmacy has not provided any further evidence to suggest that the decision taken by the PSRC that the pharmacy did not meet the readings requirements of the Blood Checking Service, also follows that the PSRC decision that an overpayment has been made is also in line with the Drug Tariff.

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

4.1.71.10 FJX53 Green Cross Pharmacy can only provide evidence for September 2023 to the present day as this is when it officially went live on Pharm Outcomes.

4.1.72 Having considered these matters, NHS England respectfully suggests that NHS Resolution conclude that the decision made by the PSRC, in respect of the £21,810.00 overpayment recovery from Green Cross Pharmacy (FJX53), was fair and in accordance with the regulations."

5 OBSERVATIONS

5.1 THE APPELLANT

5.1.1 “Thank you for your email and for outlining the key points regarding the appeal. I appreciate the opportunity to respond and to clarify our position regarding the alleged overpayment for the Blood Pressure Checking Service at Green Cross Pharmacy (FJX53).

5.1.2 Please see below our response to the points raised:

Secure NHSmail Communication for Evidence Submission

5.1.3 We fully acknowledge that the service specification requires the submission of evidence via NHSmail or other secure digital processes. However, it should be noted that while all of our claims were made in compliance with these requirements, the paperwork for the claims in question was destroyed due to an unforeseen and unprecedented natural disaster.

5.1.4 Due to us being involved in the first wave of the Covid-19 vaccination programme, we were vaccinating as many as 1000 (and at times more) patients per day from the world famous Trent Bridge Cricket Ground. This resulted in the majority of these patients returning for their booster doses, at which point eligible patients were offered flu vaccinations and had their blood pressure measured under the blood pressure case finding service. We tried to email the surgeries with the results, but unfortunately, the surgeries were overwhelmed with emails and asked us to only send details of patients with higher than normal readings. This is what we did, and we kept paper copies of **all** attending patients, including those for Covid, flu, and eligible blood pressure checks. This was a mammoth task, and we accumulated boxes of consent forms. This situation was the same at all our sites, including Green Cross Pharmacy. As mentioned, Green Cross Pharmacy is located within a Health Centre and has little to no storage facilities, so this paperwork was stored at our Brimington Pharmacy. One of the main reasons for using Brimington Pharmacy for storage was that the responsible person running the clinics at both Green Cross and Brimington Pharmacy was the same. Please note that a digital platform such as Pharmoutcomes was not available for logging this information at the time, so we had to use paper and NHS mail. Once the platform became available, it was utilised, as reflected in the digital data readily available and presented to the NHS when requested.

NHS England’s Powers to Make Payments

5.1.5 We fully respect that NHS England must operate within the statutory framework. Our appeal is not asking for exceptions to be made to this framework but rather that the circumstances of the flood, which led to the unavailability of our documentation, be taken into account when considering the recovery of funds. We believe that this event constitutes a genuine mitigating circumstance that warrants consideration. Please the response to point 1 above.

Lack of Evidence for Claims

5.1.6 We contest that we did not submit the evidence required for verification during the specified period. We have consistently provided evidence of compliance for the Blood Pressure Checking Service at our other sites, such as Miller's Pharmacy in Stoke-on-Trent, which handled over 3,000 BP checks. These records and systems are identical to those that were in place at Green Cross Pharmacy. The only reason we are unable to provide records for the requested period is due to the destruction caused by flooding, which was beyond our control. I have no doubt that we will find and supply the requested consent forms for Packmoor Pharmacy too.

Correspondence Timeline

5.1.7 We appreciate the NHSBSA's effort in maintaining consistent communication regarding this matter. However, we believe that despite our best efforts to communicate the challenges faced due to the flood, our mitigating circumstances were not fully considered during these correspondences.

PSRC Consideration

5.1.8 While the PSRC has reviewed the information presented, we believe that the full impact of the flood and its ramifications on our ability to comply with document provision was not given the weight it deserved in the final determination. The circumstances were unprecedented, and as a company with a strong history of compliance, this situation is an anomaly. Please refer to answer to Point 1 above

Service Specification Adherence

5.1.9 While the appeal may not include additional documentation due to the destruction of our records, we have formally offered to work alongside the NHS to contact the patients involved in the claims. We are fully confident these patients will confirm that blood pressure checks were conducted and that the necessary advice was provided, thereby offering real-world confirmation of our service delivery. Additionally, I have instructed all team members to confirm that every service—including Covid vaccinations, flu vaccinations, and the blood pressure case-finding service — was executed in strict adherence to service specifications. With over 30 years of continuous operation since 1990, we have consistently upheld the highest standards of diligence and responsibility, without exception. I will enclose the confirmations of all the senior staff that the all [sic] blood pressures were carried out as required by the specification of the hypertension case finding service.

Flood Damage at Brimington

5.1.10 It is highly concerning that the flood damage — substantiated by third-party verification — is not being accepted as a valid reason for our inability to produce records. We must stress that this was a natural disaster beyond our control, and it is entirely unreasonable to expect us to have foreseen or prevented the destruction of these records. As detailed in point 1, we were compelled to use an alternative storage site due to the large volume of paperwork generated, and the lack of digital solutions at the time meant we could not send all blood pressure readings to GP practices via NHS email. These circumstances were unavoidable, and the expectation otherwise is unrealistic.

Compliance with Blood Pressure Service Requirements

5.1.11 We unequivocally affirm that the pharmacy met all requirements of the Blood Pressure Checking Service, despite the unfortunate loss of documentation due to the destruction of records. The fully documented service delivery at our other sites — where all operations adhered strictly to the service specifications — must be considered a clear reflection of our practices and compliance at Green Cross Pharmacy during the relevant period. I am confident that the records from our Packmoor Pharmacy will be retrieved, though the process of locating the specific dates involves navigating through a significant volume of paperwork. This situation mirrors that of Millers Pharmacy, where we successfully scanned and submitted over 3,000 consent forms as requested — an undertaking that required considerable investment of time and staffing resources.

Overpayment Recovery

5.1.12 We disagree with the decision to recover the full amount of £21,810.00, given the extraordinary circumstances. We believe that the destruction of records due to flooding is a valid reason for being unable to provide the requested documentation and that the recovery decision should be reconsidered in light of this.

PharmOutcomes System

5.1.13 We went live on PharmOutcomes in September 2023, which ensures secure and robust record-keeping moving forward. Unfortunately, prior to this, our paper records were lost due to the flood, which we have continuously communicated. Please refer to replies above.

5.1.14 In conclusion, we respectfully ask that NHS Resolution carefully reconsider the decision made by the PSRC. We have always operated in full compliance with service specifications, and it is only due to the unforeseen natural disaster that we are unable to provide all required documentation. We remain committed to cooperating fully with NHS England and the NHSBSA to resolve this matter and ensure that a fair outcome is achieved.

5.1.15 Thank you for your time and consideration."

6 Primary Care Appeals also received emails from 16 other pharmacies in the Secret Potions Ltd group which were all in support of the appeal by Green Cross Pharmacy and stated:

6.1 "I would like to formally confirm that the hypertension case-finding services carried out by Secret Potions Ltd at # Pharmacy in # have always been, and continue to be, conducted in full accordance with the service specifications. We have ensured that every aspect of the service, from blood pressure checks to patient advice, meets the required standards.

6.2 I am confident that patients who participated in this service will verify that blood pressure checks were performed and that the appropriate advice was given, providing real-world evidence of our service delivery.

6.3 Name: X

6.4 Position: X

6.5 With over 30 years of continuous operation since 1990, Secret Potions Ltd has consistently upheld the highest standards of diligence and responsibility, without exception."

7 **UNSOLICITED COMMENTS**

7.1 Dr Allison Gardner, Member of Parliament for Stoke-on-Trent South

7.1.1 "I am writing in support of my constituent, Mr [M], who has lodged an appeal against a decision by NHS England to deduct payments to him in respect of blood pressure tests carried out between October and December 2022.

7.1.2 Mr [M] routinely stores the paperwork related to these tests in the cellar of his Chesterfield pharmacy. I understand, however, that these premises were subject to floods which left the storeroom under five feet of water. As a result of this incident, Mr [M] was unable to retrieve the paperwork that you requested.

7.1.3 Mr [M] is insistent that the tests were carried out in full compliance with the appropriate specifications and, as you know, he has previously provided you with both photographic and video evidence of the flood damage to the storeroom. I understand that evidence of the floods was also reported by independent media. This evidence is attached for your attention.

7.1.4 Mr [M] also tells me that he has offered to collaborate with yourselves in order to identify those patients who underwent the tests.

7.1.5 I would be grateful, therefore, if you could reconsider your decision to seek the recovery of the alleged overpayment taking account of the facts that Mr [M] has set out."

7.2 SP Recruitment Ltd

7.2.1 "My name is [PG], and I own a recruitment company specialising in providing staff to meet the diverse needs of healthcare providers. We supply physiotherapists, nurses, technicians, counter assistants, vaccinators, and reception staff to nursing homes, GP surgeries, pharmacies, and other NHS and private organisations.

7.2.2 I have worked with Secret Potions ltd for several years, providing staff for their vaccination clinics. We have supplied personnel ranging from individual vaccinators to entire teams consisting of ushers (greeting staff), data entry personnel, vaccinators, and sanitising personnel. Our teams have supported several Secret Potions pharmacies, including Green Cross Pharmacy, Millers Pharmacy, Packmoor Pharmacy, and Milton Pharmacy.

7.2.3 During the first wave of COVID-19 vaccinations, Secret Potions was vaccinating as many as 1,000 patients per day across several sites, and we facilitated this by providing additional staff to support the clinics.

7.2.4 For the Hypertension Case Finding service, my team identified eligible patients and signposted them into the service. Later, when the service specification allowed, we also conducted the blood pressure readings. I can confirm that all blood pressure readings were performed in line with the service specification, with appropriate advice given as needed. If these patients are contacted, they will be able to confirm this."

8 CONSIDERATION

8.1 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.

8.2 Direction 4 of the Payment Disputes Directions requires me to determine the appeal by dismissing it if:

8.2.1 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

8.2.2 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).

8.3 I consider that I am not required to dismiss the appeal pursuant to Direction 4 as:

8.3.1 the NHS BSA advised the Appellant of a 30 days' timescale for appeal and the appeal was received within that timescale; and

8.3.2 the grounds of the appeal are valid.

8.4 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:

8.4.1 a hearing is unnecessary; or

8.4.2 I must dismiss the appeal by virtue of Direction 4.

8.5 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.

8.6 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.

8.7 I note that I have been provided by the NHS BSA with a copy of the service specification which is dated November 2023 and is titled "Advanced service specification: NHS community pharmacy hypertension case-finding advance service (NHS community pharmacy blood pressure check)". I note that there is no dispute between the parties that this specification applies and that the Appellant signed up to the service as set out in the specification.

8.8 The NHS BSA commenced the Post Payment Verification exercise (PPV) on 11 October 2023 when they were requested to ensure that pharmacies had claimed correctly for the period October 2022 to December 2022. If pharmacies were unable to provide the requested information for the relevant period then there was a potential to extend the period for which evidence was required to cover the period March 2022 to August 2023.

8.9 It is accepted by the NHS BSA and the Appellant that the process for submitting claims for the Blood Pressure Checking service changed with effect from September 2023 when pharmacies were then able to submit their claims electronically via PharmOutcomes. The PPV exercise only includes claims up until the end of August 2023, prior to the change in the process to a fully digital submission via PharmOutcomes.

8.10 It is also accepted by both parties that between 11 October 2023 and 3 May 2024 the pharmacy and the Superintendent Pharmacist who is also a Director of Green Cross Pharmacy was contacted by the NHS BSA a total of 17 times.

8.11 The Appellant was able to provide some information regarding the Blood Pressure Checks and Ambulator Blood Pressure Monitoring Checks, as shown in the table above at 4.1.45 for the period October 2022 to December 2022. The NHS BSA have confirmed that this was analysed and verified and that these verified claims have been deducted from the total recovery value that the NHS BSA are seeking from the Appellant.

8.12 The Appellant does not agree with the total overpayment of £21,810 for the period March 2022 to August 2023 and has sought to appeal this decision.

8.13 I am mindful of the specification and in particular Section 5 "Data and information management" of the specification which states:

5.1 Before blood pressure measurements are taken, verbal consent must be sought from the patient and recorded in the pharmacy's clinical record for the service. The patient should also be advised of the following information sharing that will take place:

5.2 The pharmacy contractor must maintain appropriate records to ensure effective ongoing service delivery using an NHS assured IT system for the service.

5.3 Data from the NHS assured IT system will be submitted to the MYS portal via an application programming interface and will be used by the NHSBSA for payment and post-payment verification purposes. Some of this data, which has been anonymised, will be shared with NHS England for service evaluation and research purposes.

- *The sharing of information between the pharmacy and the patient's general practice to allow the appropriate recording of the blood pressure reading in their general practice record.*

- *The sharing of information about the service with NHS England as part of service monitoring and evaluation.*

- *The sharing of information about the service with the NHSBSA and NHS England for the purpose of contract management and as part of post-payment verification.*

5.4 Records of the data reported to the NHSBSA's MYS portal should be retained for three years for post payment verification purposes.

5.5 The pharmacy contractor will ensure that a notification of the provision of the service is sent to the patient's general practice on the day of provision or on the following working day. Where possible, this should be sent as a structured message in real-time via the NHS assured IT system. In the absence of an automated digital solution or if there is a temporary problem with the system, this should be sent via NHSmail or hard copy.

5.6 The data to be shared with the general practice and NHSBSA are set out in Annex F.

5.7 All relevant records must be managed in line with Records Management Code of Practice for Health and Social Care." [hyperlink not working]

8.14 I note that the Appellant was able to provide some information to the NHS BSA and therefore must have had some of the information required saved in the relevant format as detailed at 5.2 "*must maintain appropriate records to ensure effective ongoing service delivery using an NHS assured IT system for the service."*

8.15 I note that for the period October 2022 to December 2022 spreadsheets were provided by the Appellant and the NHS BSA was able to verify some of the figures, however due to these figures on the spreadsheet not matching the figures claimed for, the Appellant was asked for more information. The NHS BSA confirmed that the Appellant had cited the reason for the discrepancy as "*they were asked by the surgeries to physically take over some of the results, stating 'we can only assume any records done manually had not been entered into the spreadsheet'. So they were advising that every single blood pressure reading was received by surgeries either via email or by handing them a physical reading however no record of these readings has been kept by the pharmacy as outlined per the service specification*."

8.16 I note that the Appellant confirms this in later submissions as well as acknowledging that the "*service specification requires submission by NHSmail or other secure digital processes*". The Appellant states that the reason why they kept paper copies of all these records was "*we tried to email the surgeries with the results, but unfortunately the surgeries were overwhelmed with emails and asked us to only send details of patients with higher than normal readings. This is what we did, and we kept paper copies of **all** attending patients, including those for Covid, flu and eligible blood pressure checks."* The Appellant goes on to state "*Green Cross pharmacy is located* *within a health centre and has little to no storage facilities so this paperwork was kept at our Brimington Pharmacy."*

8.17 I am mindful of the Appellant's comments that the GP practice wished for the information to be taken in paper format during COVID, however I have no information before me as to how long this lasted and whether this was the case for the whole of the period in question or only part of it.

8.18 I am mindful of Annex E of the specification "sending results to general practice" which details the information to be sent to general practices and states:

"1. All test results must be sent via NHSmail or other secure digital process to patients' general practices for entry into the patient record. For all test outcomes, the following information should be sent:

- *Pharmacy name, address and ODS code*
- *Patient name*
- *Patient date of birth*
- *Patient address*
- *Patient NHS number*
- *Date of clinic reading**
- *Clinic reading (systolic/diastolic)**
- *Date ABPM device fitted**
- *ABPM reading (average systolic/diastolic)**

** Send appropriate data, which will vary depending on the individual circumstances of the patient, e.g. a referral by a general practice for ABPM will not have clinic readings undertaken."*

8.19 I am of the view that storing paper records or "walking them round to the GP practice" as stated by the Appellant is not in accordance with the specification and in particular the criteria as set out above "*all test results must be sent via NHSmail or other secure digital process to patient's general practices for entry into the patient record…"*

8.20 Whilst the Appellant has been able to provide some information this raises questions as to why these particular records had been saved electronically and only for a small sample of patients. I note that the Appellant has been unable to provide any further electronic evidence of records and confirms, in their appeal, that they had paper records.

8.21 Further I consider that the Appellant should have been aware that they could be asked for this information as Section of 8 of the specification "Monitoring and post-payment verification" states:

"*…*

8.3 It is the contractor's responsibility to be able to provide evidence of claims when requested by the NHSBSA for post-payment verification.

8.4 In cases where evidence is not available or does not demonstrate that the service activity was delivered, and so these claims cannot be verified, they may be referred to the Pharmaceutical Services Regulations Committee (PSRC) to decide whether an overpayment has been made.

…

8.7 Accurate record keeping is an essential part of the service provision. The necessary records specified in the service specification required for reimbursement must be kept *for a period of three years to demonstrate service delivery in accordance with the service specification, and to assist with post-payment assurance activities. These records must be provided by a contractor when requested by the NHSBSA Provider Assurance Team."*

8.22 The Appellant in their appeal provides information regarding mitigating circumstances, in the form of evidence regarding a flood in another of the pharmacies in the company.

8.23 There is no dispute from any party that there was a flood in Brimington in Chesterfield which affected the Brimington Pharmacy, as can be seen from the video evidence of the cellar and the various news articles provided by the Appellant on appeal.

8.24 Given the severity of the flood which occurred at the Brimington pharmacy in October 2023 together with the confirmation from the Appellant that the same person responsible for the record keeping at Green Cross Pharmacy was also responsible for the record keeping at Brimington pharmacy, this individual and the Superintendent Pharmacist/Director of Green Cross Pharmacy would have been aware of the impact of the flood at the Brimington pharmacy on, amongst other things, its ability to provide evidence for PPV purposes.

8.25 I am therefore unsure why the Appellant did not mention this incident straight away as to why they were not able to provide the records after the initial contact was made by the NHS BSA in October 2023 and further, why it was not mentioned by the Appellant until March 2024. I am of the view that it is highly unlikely in the circumstances that the Appellant would not have been aware of the flooding and the damage that had been caused to the storage of records.

8.26 I note that the Appellant states "*as a consequence of this natural disaster, we lost access to the paperwork required to substantiate claims made for the Blood Pressure Checking Service during the Oct-Dec 22 period*". I note from the table provided by the NHS BSA that some information was provided by the Appellant for the period October 2022 to December 2022 and that some of the checks have been verified however no information for any other month has been provided. The Appellant, whilst stating that they lost access to the paperwork for the period October 2022 to December 2022 has not provided any reasons as to why they were unable to provide any further information for the period March 2022 to September 2022 or from January 2023 to August 2023.

8.27 With regard to the flood and the storage of paper records, I am of the view that the Appellant should have known which records were being stored off site at an alternative storage place and that in the circumstances they should have been able to provide this information to the NHS BSA when they were being asked for this information between October 2023 and December 2023, or failing being able to provide this information, the Appellant should have been in a position to advise the NHS BSA of the mitigating circumstances by November 2023.

8.28 I note that the Appellant has offered to contact patients who received the service, however without any records I am unsure how the Appellant will be able to find this information. Further, contacting a patient after the event does not show compliance with the record keeping as set out in the specification as the Appellant would not be able to provide the level of detail required by the NHS BSA to verify the claims.

8.29 It is not a matter for the patients to be contacted – the Appellant should have retained a digital record of all patients who attended the service, as set out in the service specification.

8.30 I am of the view that the Appellant did not follow the specification for the digital storing of records and that the inability of the Appellant to provide this information to the NHS BSA when requested, as part of the PPV exercise, was compounded by any paper records that the Appellant did retain being destroyed by the flood.

8.31 I note the assertions from other pharmacies in the Secret Potions Group of pharmacies that they all completed their records and have their records to hand. I note that a PPV exercise is being carried out with regard to a couple of other pharmacies within the Secret Potions Group, however I take no view on these as that is not a matter before me. Further, I take no view on any of the pharmacies which have not been selected for a PPV exercise and completed and submitted all of their paperwork in accordance with the specification as this is not being challenged and does not therefore form part of this dispute. I am of the view that each case is being looked at on its own merits and it is only the records for Green Cross Pharmacy which are in question.

8.32 I am of the view, given that the Appellant has been unable to provide digital records for those patients who attended the service, that the Appellant does not qualify for payment in line with the service specification.

8.33 I agree with the NHS BSA that the decision to recover the overpayment is appropriate.

9 DECISION

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

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

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

9.1.3 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.

9.2 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £21,810.

9.3 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