17 December 2024

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REF: SHA/26306

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM ELGON (ENFIELD) LTD t/a ELGON CHEMIST LTD (FMD42) ("THE APPELLANT")

1 Outcome:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £22,176.

1.2 I note that neither party has submitted a claim for interest with regard to this dispute so I determine that no interest is payable on the sums to be paid from one party to another.

A copy of this decision is being sent to:

Elgon (Enfield) Ltd t/a Elgon Chemist Ltd (FMD42)
NHS BSA on behalf of NHS England

8th Floor
10 South Colonnade
Canary Wharf
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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM ELGON (ENFIELD) LTD t/a ELGON CHEMIST LTD (FMD42) ("THE APPELLANT")

1 INTRODUCTION

1.1 The Appellant appealed the decision of NHS England to recover an overpayment relating to the Medicines Delivery Service.

1.2 The Secretary of State for Health and Social Care, pursuant to the National Health Service Litigation Authority (Pharmaceutical Remuneration – Payment Disputes) (England) Directions 2022 (the "Payment Disputes Directions"), has directed that NHS Resolution determines this type of appeal on their behalf. I, as an authorised officer of NHS Resolution, have made this determination.

2 DECISION

The NHS Business Services Authority ("NHS BSA"), acting on behalf of NHS England, sent a decision to the Appellant on 12 August 2024 in respect of Elgon (Enfield) Ltd (ODS code FMD42). The decision stated:

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

2.2 The Pharmacy Provider Assurance Team, part of NHS Business Services Authority (NHSBSA), have been requested by NHS England (NHSE) to undertake a Post Payment Verification (PPV) exercise to provide assurance that pharmacy contractors have claimed correctly for the Medicines Delivery Service.

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

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

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

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

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

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

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

2.9.1 FMD42 – ELGON (ENFIELD) LTD claimed **3,324 Self-Isolating (SI) and 372 CEV** deliveries for the Medicines Delivery Service in the months of April 2021 to March 2022.

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

2.9.3 ELGON (ENFIELD) LTD was contacted on (Number of occasions) [sic] separate occasions by the NHSBSA Provider Assurance Team to request evidence to demonstrate that that the Medicines Delivery Service claims made during this time met the requirements set out in the service specification.

2.10 Having reviewed the information provided by the NHSBSA Provider Assurance Team, the NHS England Pharmaceutical Services Regulations Committee has decided that an overpayment in relation to your April 2021 to March 2022 Medicines Delivery Service claims has occurred and has instructed recovery of this overpayment to be progressed in accordance with Regulation 94 (1) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

2.11 The tables below outline the monthly Medicines Delivery Service claims reimbursed to your pharmacy – ELGON (ENFIELD) LTD – FMD42 in the months of April 2021 to March 2022 for Self-isolating and CEV patients, along with the associated recovery values:

2.12 **Self-isolating claims**

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

	Apr 21	May 21	Jun 21	Jul 21	Aug 21	Sep 21	Oct 21	Nov 21	Dec 21	Jan 22	Feb 22	Mar 22	Total
Self isolating	96	301	200	341	336	358	224	280	278	288	304	318	3,324

claims period													

2.14 3,324 Self-isolating claims paid x £6.00 **= £19,944.00**

2.15 **CEV claims**

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

	April 2021	May 2021	June 2021	July 2021	Total
CEV Claims paid	372	n/a	n/a	n/a	372

2.17 Subsequently this has resulted in the following payment:

2.18 372 CEV claims paid x £6.00 **= £2,232.00.**

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

2.20 3,324 Self-isolating claims paid x £6.00 **= £19,944.00**

2.21 372 CEV claims paid x £6.00 **= £2,232.00.**

2.22 **Total value to be recovered = £22,176.00 deduction**.

2.23 **Action Required**

2.24 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 11th September 2024.**

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

2.26 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by 11th September 2024.

2.27 Once the NHSBSA has received confirmation to recover the overpayment you will be notified of when this will take place. A record of this process will be kept on your NHS England contractor file.

2.28 **Please be aware that failing to contact us by 11th September 2024 to agree that there has been an overpayment DOES NOT mean that the overpayment cannot be recovered.** Instead, where you do not agree that an overpayment has been made you have a right of appeal to the Secretary of State against NHS England's decision. Should you choose to appeal then send a concise and reasoned statement of the grounds for your appeal **within 30 days of the date of this letter** to nhsr.appeals@nhs.net or:

2.28.1 NHS Resolution, Primary Care Appeals, 10 South Colonnade, Canary Wharf London, E14 4PU

2.29 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.

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

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

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

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

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

2.35 The NHS BSA provided a copy of the timeline referred to in the decision.

3 THE DISPUTE

In an email dated 8 September 2024 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 "To Whom It May Concern,

3.2 The Pharmacy Provider Assurance Team, part of the NHS Business Services Authority (NHSBSA), has been requested by NHS England (NHSE) to undertake a Post Payment Verification (PPV) exercise. This exercise aims to provide assurance that pharmacy contractors have correctly claimed for the Medicines Delivery Service. The appeal is for both my branches based at FMD42 (Elgon Chemist) and FH734 (Zara Pharmacy)

3.3 The question remains is the request for information valid and is the timeframe in which it has been made is reasonable and acceptable. The request comes over two years after the services were rendered.

3.4 Issues with Service Specification and Retention Requirements

3.4.1 The specification of the Medicines Delivery Service fails to state a retention period for the records. It assumes contractors are aware of the statutory requirement to retain records for six years. However, expecting a small pharmacy to retain such records for six years without clear instructions is unreasonable.

3.4.2 The specification should have clearly stated the required retention period and emphasized that contractors must be prepared to provide the requested information within that timeframe.

3.5 General Pharmacy Record-Keeping Practices

3.5.1 In general, most pharmacy records (such as NMS records, private scripts, responsible pharmacist logs, and fridge temperatures) are securely kept for two years. This is a widely followed practice among pharmacy contractors. Retaining records beyond this period would necessitate substantial storage space, which is impractical for many small pharmacies. Therefore, it is unreasonable for the NHS to request records two and a half years after the fact.

3.6 Challenges Faced During the COVID-19 Pandemic

3.6.1 During the COVID-19 pandemic, pharmacies faced unprecedented challenges. Staff shortages due to positive COVID-19 results, increased demand for deliveries from vulnerable patients, and the necessity to maintain extended hours all contributed to an extremely difficult working environment. One of our pharmacy owners and our regular pharmacy manager was unable to attend the pharmacy for four months due to vulnerability.

3.6.2 The cessation notice for the Medicines Delivery Service was not prominently communicated. There were no calls or Teams meetings to clarify how and when to stop the service. This lack of clear communication further exacerbated the challenges we faced during this period.

3.7 Current Request for Information

3.7.1 The current request for information, made two and a half years after the claims were submitted, is unreasonable given that not justification [sic] or any evidence based decision to request the information after two and a half years. The service has been provided, drivers have been paid, and the patients have benefitted. To now request this information and potentially reclaim funds is unreasonable. The NHS should honor [sic] and pay for the services provided during these exceptional times. Our pharmacy team along with other contractors went out of our ways to support the NHS to see these difficult times through. This financial punishment is not the way to reward such hard times and work carried our [sic] by pharmacies.

3.8 Service Process and Documentation

3.8.1 Delivery Records: Highlighting the process we followed in providing the service. The records being requested were documented on delivery sheets and in a diary, with bag labels generated for patients—one with a trace and track number recorded on the delivery sheet and another label for the driver's drop sheet (without the trace and track number).

3.8.2 Record Destruction: Records were destroyed about October 23 . We use a 2 year period following any service for destroying records. The shredding of information is carried out in the pharmacy as we have invested in a large industrial shredder on site.

3.9 Retention of Delivery Logs

3.9.1 Existing Records: We are still looking for the diary of delivery dairy [sic] (FOLLOWING A MAJOR REFIT OF THE PHARMACY JAN 24 TO APRIL 24) but these will not have the Tarce [sic] and Track (T & T) but will have patient delivery records. We have tried to connect with patients who we recall deliveries were made to at the time and we did try and look if any NHS Test and Trace (T&T) patient references were recorded on the patients records on the computer under the patient details which we now do for any additional information on the patient. We have looked in these logs to demonstrate compliance with recording requirements but the T & T records were done as a manual record on the labels and stuck on delivery sheets at the point.

3.9.2 Patient’s PMR: No T & T references were added to the patient’s PMR, which would served [sic] as additional evidence of your record-keeping process and an improvement in the process to consider for any future SLA.

3.10 Standard Operating Procedures (SOPs)

3.10.1 We had an SOP for delivering of medicines during the pandemic by volunteers and the pandemic delivery service

3.11 Overlap Between Services

3.11.1 Service Transition: There was an overlap between deliveries for self-isolating (SI) patients under NHS T&T and the decommissioning of deliveries to clinically extremely vulnerable (CEV) patients.

3.11.2 I recall a system letter confirming the introduction of the SI patients component but the stopping of the CEV service was not loud enough for contractors at the time.

3.11.3 Agree during my claim period in dispute for CEV there was no service hence all claims on this should not be allowed but I do believe and request the payments are allowed as the service was provide to patients and costs have been involved to myself as a contractor, I should not be punished and the amounts involved are small and request as a gesture of goodwill these payments are not deducted.

3.11.4 In just, to our error the notification to these services when stopped could have simply be voiced by way of a simple phone call or even a repeated email to question why we were was continuing to claim when the service had stopped ,,.... Question could have been raised if the claim was connected to any previous months. What I am questioning is how loud and strong was the stopping element relayed to contractors during really difficult times. Also a time when contractors went a long way to support NHS patient services rather then close our doors. There was a lot going on in pharmacy at that moment with messages from all sources and we feel the messages coming through should have been more prominent ans verbal [sic].

3.12 Retention Period Challenge

3.12.1 No Specified Retention Period: I emphasize to the appeal unit that the service specification for the pandemic medicines delivery service did not specify a retention period. Reference Section VIC of the Drug Tariff, which requires record retention for post-payment verification purposes but does not specify a time frame.

3.12.2 Comparison with Other Services: I highlight that, in the absence of a stated retention period, the pharmacy owner is responsible for deciding a reasonable retention period. Compare this with other services available at the time, such as the NHS Flu service, New Medicine Service, and Community Pharmacist Consultation Service, where retention periods ranged from 2 to 3 years, or were not specified at all.

3.12.3 Reasonable Retention Period: We as a contractor would like to say that retaining records for a short period, such as 3 months for delivery logs, would have been reasonable, especially given the urgency and demands of the pandemic. We also as a contractor and tax payers see this as reasonable as any body policing these payments should be checking and screening these payments much earlier NOT THREE YEARS LATER.

3.13 Supporting References

3.13.1 I am happy at the request of the appeal unit to send a copy of my SOP and if located the dairy [sic] of the driver. There is also the guidance documents which I referred to such as the CPCW Recommendations for the Retention of Pharmacy Records and the SPS guide on additional services records in community pharmacy, to support our argument for a reasonable retention period being shorter then what the NHSBSA is saying . Was this service level when launched checked by the NPA or CPE as the error not to include a specific period od [sic] retention would have been corrected by the two bodies.

3.14 Conclusion

3.15 The delay of two and a half years in requesting this information has not been justified by the NHS team.

3.16 Recovering monies for a needed and provided service, especially given the exceptional circumstances, is unacceptable.

3.17 We strongly urge the appeals committee to reject this request for repayment and rule in my favor. [sic]

3.18 As a contractor did provide the service and have paid employees and contractors to provide the service. I respect the later [sic] is not in question then is it correct to punish the pharmacy contractor when the service was provided in line with the SLA and following our SOP but the failure to keep to keep records of the service was not in line with what now and today being decided that 3 years is a reasonable period when no period was stated in the SLA."

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:

"Background

4.1.1 As part of the national response to the COVID-19 Pandemic, NHS England (NHSE) commissioned a delivery service from community pharmacies to those patients classed as Clinically Extremely Vulnerable (CEV) or 'Shielded Patients' who were required to self-isolate at home. This group of people were at a very high risk of serious illness from COVID-19 infection and were asked to remain indoors for their own safety.

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

4.1.3 Contractors claimed for the service via the Manage Your Service (MYS) portal and for each delivery claimed as part of the Medicine Delivery Service, a payment of £6.00 (including VAT) was paid as part of the normal end of month process.

4.1.4 The Medicines Delivery Service was commissioned from both pharmacies and dispensing doctors across England from 9th April 2020 until 1st July 2020 in the first instance, but in the introductory letter – attached – it stated that this service may be extended as necessary as part of the Covid-19 response.

4.1.5 In its letter of 30th June 2020 - attached - NHSE announced that the service would be extended so that both pharmacies and dispensing doctors across England will be required to ensure shielded patients can receive a home delivery of their medicines until 31st July 2020. The letter informed contractors that the Government had published plans on 22nd June 2020 for a phased easing of the shielding advice to people who are clinically extremely vulnerable from 6th July 2020 however went on to explain that "the provision of this service throughout July will enable patients who are shielding time to make alternative arrangements for access to their prescription medications, after which both the essential and advanced pharmaceutical service, and both elements of the

dispensing doctor COVID-19 home delivery service cease to be commissioned."

4.1.6 This and subsequent letters were published by NHS England on its website at: https://www.england.nhs.uk/coronavirus/publication/preparedness-letters-for-community-pharmacy/.

4.1.7 Following the publication of each of these letters on the NHS Website the Pharmaceutical Services Negotiating Committee (PSNC) – the representative body for the community pharmacy sector, now known as Community Pharmacy England (CPE), also sent an update to its members highlighting the change to the service specification.

April 2021 to July 2021/March 2022 claims

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

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

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

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

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

4.1.13 Manage Your Service (MYS) put in place new functionality to enable contractors to claim for the delivery of the MDS to SI patients. In doing so it retained the functionality for contractors to submit claims for CEV patients to future proof the system in-case the response to the Pandemic and MDS changed again at some point in the future and required the MDS provision for CEV patients. DHSE, NHSE and PSNC agreed the wording of the communication regarding this change to the service expecting that this would be sufficient for those contractors delivering the service to understand the changes in patient eligibility.

4.1.14 However, MYS became aware that contractors continued to claim for deliveries to CEV patients. Once it became apparent that many contractors were still submitting claims for these ineligible patients, MYS was amended to ensure

these claims were no longer automatically paid. CEV claims submitted after May 2021 were not paid and only claims for deliveries to SI patients were processed for payment.

4.1.15 Despite the changes to the MYS functionality, it remained the situation that the majority of claims for CEV patients submitted for April 2021 and May 2021 saw contractors paid in effect for ineligible patient claims, deliveries to SI patients were the only eligible claims that were valid from April 2021 onwards. Subsequently, NHSBSA PAT were requested to recover the identified CEV claims, as there was no regulation to allow payments for patients who were ineligible for the service.

4.1.16 In the Post Payment Verification (PPV) exercise undertaken by the NHSBSA PAT, FMD42 – Elgon Chemist were contacted on ten occasions between 6th December 2023 and 24th May 2024 to request evidence that the 3,324 Self-Isolating patient claims made between April 2021 and March 2022 were for deliveries made to eligible patients' self-isolating in response to a positive Covid test, as specified in the NHSE service announcements. Although PAT appreciate some time had passed since the claims were made if the pharmacy had a two-year retention period policy for retaining records as stated in the appeal, then that point had not passed for the claims submitted for deliveries made in December 2021 to March 2022 being reviewed, and yet still no evidence was forthcoming.

4.1.17 Alongside that, NHSBSA PAT outlined that FMD42 – Elgon Chemist also incorrectly claimed for 372 CEV patients during the month of April 2021 and advised that claims for deliveries to CEV patients after March 2021 were ineligible for payment.

4.1.18 Emails were sent to the pharmacy's shared NHS mail address pharmacy.fmd42@nhs.net as required by NHSE and from 4th January 2024, all emails were also sent to the appellants email address: [JL]. All listed pharmacies must have a valid shared NHS mail account that should be regularly monitored by the pharmacy team as part of their terms of service.

4.1.19 NHSBSA PAT engaged with Elgon Chemist during the PPV process. A Microsoft Teams meeting was proposed early within our engagement to discuss the MDS PPV exercise, however due to various factors concerning the pharmacy, the call would have to be delayed until February 2024. Following multiple attempts by the PAT to confirm a date for the Microsoft Teams meeting, it was eventually scheduled for 4th April 2024.

4.1.20 The Microsoft Teams meeting between the PAT, Mr Lakhani (manager of Elgon Chemist) and a member of Mr Lakhani's local LPC took place on 4th April 2024 as planned. On this call, Mr Lakhani co-operated with the conversation, in conjunction with guidance from the LPC contact. A discussion on how the pharmacy recorded the MDS evidence took place which Elgon Chemist explained that it was in accordance with the service specification and the Test and Trace ID numbers were recorded when deliveries were requested and stated they were unaware of the change to the service which occurred after March 2021, with CEV patients no longer being eligible. It should be noted that the announcement of the service extension made clear the requirement for Test and Trace ID numbers to be retained for SI patients with eligibility for CEV patients no longer being available. Elgon Chemist confirmed the documents were shredded after two years, as per the pharmacy's policy for record retention.

4.1.21 Despite the attempts made by the NHSBSA PAT, Elgon Chemist did not provide any evidence to demonstrate that the 3,324 Medicine Delivery Service deliveries claimed for between April 2021 and March 2022 were made to self-

isolating patients who had provided their Test and Trace referral number when requesting the service as specified in the service specification at this time.

4.1.22 The PAT can appreciate it was a challenging time for pharmacy contractors however it is unclear how the communication regarding CEV patients no longer being eligible was missed while the pharmacy was aware that self-isolating patients were now the eligible patients for the service. The announcement of SI patient eligibility was made in March 2021. This announcement, previously shared above within this appeal, also outlined that CEV patients would no longer be eligible for the service. Having the awareness that SI patients were eligible also suggests that the pharmacy was aware that Test and Trace referral numbers was the directed evidence that contractors must now maintain for this service.

4.1.23 During the Microsoft Teams call it was stated Elgon Chemist continued to claim for CEV patients because they did not recall any obvious notices stating the service had ended for CEV patients when submitting claims onto the MYS system. This information is contradictory however as it was in the same announcement that NHS England outlined the service being available for self-isolating patients, so the PAT are unsure as it wasn't explained by Elgon Chemist how they were aware of the eligibility of self-isolating patients however unaware that CEV patients were no longer eligible.

4.1.24 It was queried by Elgon Chemist how the ability to claim for CEV patients was not removed on MYS to prevent incorrect claims. The PAT explained the change on MYS to allow claims for Self-Isolating patients was the most important need and MYS had to prioritise this change while wanting to retain the functionality to submit CEV claims in case the service changed again, and CEV patients were once again eligible. It was only once the PAT became aware contractors were not following the guidance that steps were taken to ensure the ineligible CEV claims were not paid automatically, and this came into effect after the May 2021 claims. The PAT advised claims could still be made on MYS for CEV patients after May 2021 however pharmacies were no longer paid as the functionality of automatic payment for those claims had come into effect.

4.1.25 The PAT then raised the question of how the pharmacy identified the difference in claims between patients categorised as CEV and those that were SI claims, which the pharmacy was unable to answer. Mr Lakhani was also unaware that his CEV claims made for deliveries from April 2021 onwards and claimed after May 2021 had not been paid.

4.1.26 Either way despite the engagement with the pharmacy, Elgon Chemist was not able to provide records to demonstrate that the claims submitted for the MDS for April 2021 onwards were for patients eligible for the service at that time.

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

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

4.1.29 As the NHSBSA PAT have been unable to validate the deliveries claimed by the pharmacy during this time and Elgon Chemist did not accept the proposed recoveries, it was agreed the details of the case would be passed to the NHS England regional team for their Pharmacy Services Regulations Committee (PSRC) to review. The PSRC procedure was clearly explained to Mr Lakhani during the Microsoft Teams call, along with the advice if there was any

additional information regarding the MDS claims which they would like to be included in the review, to inform the PAT of this prior to the PSRC referral being made. The PAT received no further information. A decision was sought as to whether the deliveries made by the contractor were eligible for a payment under the terms of the Medicine Delivery Service at the time that the deliveries were made; and if they were not eligible, for the delivery fees that have been paid to be recovered under regulation 94 (1) (a) as an overpayment.

The PSRC decision

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

4.1.31 The engagement showed that despite repeated requests made by the NHSBSA to the contractor over five months to provide evidence of patient eligibility for the service claims submitted, no such evidence was forthcoming even with the flexibility afforded to Elgon Chemist by the PAT to accommodate the pharmacy related factors which were delaying the requested Microsoft Teams meeting.

4.1.32 Consequently, the PSRC concluded that the NHSBSA had been unable to find any evidence to demonstrate that any one of the 3,324 deliveries claimed by the contractor between April 2021 and March 2022 for deliveries to SI patients met the requirements set out in the service specification alongside the incorrectly claimed 372 claims made for CEV patients.

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

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

4.1.35 In making this decision the PSRC relied on the information that it had before it, following the extensive investigation undertaken by the NHSBSA and the repeated requests to the contractor for evidence of how the Medicine Delivery Service claims made for April 2021 to March 2022 met the requirements set out in the service specification.

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

4.1.37 The service specification/Service Announcements states:

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

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

4.1.40 In their appeal, Elgon Chemist have stated: "*The records being requested were documented on delivery sheets and in a diary, with bag labels generated for patients - one with a trace and track number recorded on the delivery sheet and another label for the driver's drop sheet (without the trace and track number)*". However, they then confirm, *"Records were destroyed about October 23. We use a 2-year period following any service for destroying records. The shredding of information is carried out in the pharmacy as we have invested in a large industrial shredder on site*".

4.1.41 It should be noted that engagement was initiated with Elgon Chemist to request the evidence on 6th December 2023. As quoted above, the contractor has stated they use a 2-year period before destroying records, therefore if records had been kept and then destroyed after a 2-year retention period had passed, there should have been evidence available for the months of December 2021 to March 2022 when we first made contact regarding the MDS PPV review, as this is within the 2-year period. The statement in the appeal states the pharmacy shredded the requested records in October 2023, meaning the evidence for the latter months of the service would have been destroyed in advance of a 2-year retention period the pharmacy claims to follow.

4.1.42 The assurance engagement with the contractor commenced on 6 December 2023. During the months of December 2021 to March 2022, Elgon Chemist claimed for 1,188 deliveries to SI patients and yet despite attempts by the PAT to obtain evidence of service eligibility for these patients, none was forthcoming for these months that were still within the 2-year record retention period that the contractor says it worked to.

4.1.43 Even if the contractor did believe that records of service eligibility should only have been required to have been kept for two years, then the contractor should have been able to provide records for these later months. Elgon Chemist also states in their appeal of an expectation of keeping evidence for six years is unreasonable however we are unsure how they have come to the figure of six years as our PPV activity was initiated long before this proposed length of time.

4.1.44 The inability to provide records for these months provides compelling evidence that the contractor either did not record the eligibility data or they did not retain it, as stipulated in the service specification. Elgon Chemist dispute the post-payment verification activity we are performing in their appeal, "*We as a contractor would like to say that retaining records for a short period, such as 3 months for delivery logs, would have been reasonable, especially given the urgency and demands of the pandemic. We also as a contractor and tax payers see this as reasonable as any body policing these payments should be checking and screening these payments much earlier NOT THREE YEARS LATER*".

4.1.45 It needs to be acknowledged that assurance of all services was suspended during COVID to reduce the burden on contractors as NHS England and the PAT appreciated this was a difficult time. The assurance activity performed by the PAT was only restarted in April 2021 and only then by asking contractors to perform a self-review. This engagement approach failed to amend the behaviour of those contractors submitting very large claims and those claiming for ineligible patients, so it wasn't until June 2022 that assurance activity on MDS began in earnest by requesting evidence from contractors and escalating those contractors without sufficient evidence to PSRC. Since that time the PAT has been working through the backlog of assurance work which has resulted in the delay in performing the PPV work sooner on MDS, but this has entailed reviewing multiple thousands of contractors around their MDS claims.

4.1.46 It should be noted that throughout the investigation the contractor was not able to provide evidence to support the eligibility of a single claim submitted for the

MDS service. Neither did they provide any SOP's or their record retention policy to help the PAT undertaking the assurance exercise.

4.1.47 Elgon Chemist was identified as a significant outlier that needed to be included in the PPV exercise not just for a large volume of claims made by the pharmacy during the months that the service eligibility was for SI patients but also due to the consistently high levels of claims each month. In the 12 months reviewed during this PPV exercise, the pharmacy's claim for the service ranged between 96 to 341 claims each month. This volume ensured that Elgon Chemist across the final 12 months of the service was the sixteenth highest claiming pharmacy nationwide for MDS, this is supported by table 1 below which highlights the claims being consistent and much larger than the national average claim for self-isolating deliveries each month.

4.1.48 Table 1 – Monthly SI claims made by Elgon Chemist in comparison to national monthly average

	Apr 21	May 21	Jun 21	Jul 21	Aug 21	Sep 21	Oct 21	Nov 21	Dec 21	Jan 22	Feb 22	Mar 22
Self-isolating claims paid	96	301	200	341	336	358	224	280	278	288	304	318
National monthly average claims for MDS	87.36	72.03	28.07	19.79	26.1	26.8	27.22	29.41	29.76	25.02	27.41	19.17

4.1.49 This consistent nature of claiming does not follow the national pattern seen from the data for other contractors. It would be reasonable to expect to see a decline in the number of claims being submitted when the number of patients that were testing positive was declining, hence the reason that the pandemic restrictions were easing. The claiming pattern from Elgon Chemist was a consistent volume of MDS claims in their local area across the final 12 months of the service. This would suggest regular new patients with positive Covid tests being advised to self-isolate to maintain a similar volume of claims each month. There was no evidence provided to suggest this was the case. The PAT reviewed claims submitted from other pharmacies in the same area which are not consistent and as demonstrated by the national monthly average claims in table 1 above, showed a decline in claims and were nowhere near as high as those claimed by Elgon Chemist. March 2022 saw the national monthly average claim at its lowest level in the 12-month period, however Elgon Chemist's claim for this month was significantly higher than the national average.

4.1.50 In the appeal, Elgon Chemist states: "*I emphasize to the appeal unit that the service specification for the pandemic medicines delivery service did not specify a retention period. Reference Section VIC of the Drug Tariff, which requires record retention for post-payment verification purposes but does not specify a time frame*".

4.1.51 NHSBSA PAT acknowledges that whilst the service specification is clear that records need to be kept for PPV purposes, it does not advise of exactly how long contractors were required to keep such evidence. However, it is also unclear how this contractor formed the opinion that records only needed to be retained for two years.

4.1.52 Section VIC of the Drug Tariff contains the Pharmaceutical Services (Advanced and Enhanced Services) (England) Directions 2013. Throughout the directions there are repeated requirements for records to be retained for post payment verification purposes without the reference to a time scale for retention.

4.1.53 For the New Medicines Service there is a time scale mentioned in paragraph 7- ongoing **conditions of arrangements**:

(l) P ensures that a written record (which may be an electronic record) of each consultation carried out by or on behalf of P as part of P's New Medicine Service is prepared by the registered pharmacist who carried out the consultation and includes the approved data ("approved" for these purposes means approved by the NHSCB).

(m) P provides information from those records to the NHSCB or the Secretary of State, on request, in the manner approved for this purpose, and for the purposes approved, by the NHSCB; and (n) P keeps a copy of the record mentioned in sub-paragraph (l) for at least 2 years from the date on which the service intervention is completed or discontinued.

4.1.54 Records of other service provision are required to be kept for 3 years for other services e.g. the Blood Pressure Checking service. see Advanced service specification: NHS community pharmacy hypertension case-finding advanced service (NHS community pharmacy blood pressure check service) (england.nhs.uk).

4.1.55 Elgon Chemist themselves recognises that keeping records for two or three years is usual practice:

4.1.56 "***Comparison with Other Services**: I highlight that, in the absence of a stated retention period, the pharmacy owner is responsible for deciding a reasonable retention period. Compare this with other services available at the time, such as the NHS Flu service, New Medicine Service, and Community Pharmacist Consultation Service, where retention periods ranged from 2 to 3 years, or were not specified at all*".

4.1.57 It is therefore clear that records being kept for 2 years only is not uniform and there is the precedence that evidence would be required to be retained for longer than two years. It, therefore, appears incredulous that a contractor providing this service in accordance with the service requirements and knowing that records would be required for PPV purposes would then destroy such records without confirming that they would not be needed for such a PPV exercise. It becomes even harder to believe that these records were then destroyed in October 2023, as suggested by Elgon Chemist, given that this is not then two years after the end of their claim's submissions.

4.1.58 As has been highlighted in a previous appeal against a PSRC decision, SHA/26244: "*In the absence of any specified time period, the requirement in the specification is absolute – appropriate records must be maintained*".

4.1.59 The PAT, as previously stated do not dispute the deliveries taking place so when in their appeal Elgon Chemist state "*The service has been provided, drivers have been paid, patients have benefitted and the NHS should honour and pay for the services provided*.", NHSE and the PAT can appreciate that a delivery service has taken place however private i.e. non NHS funded delivery services are pre-existing services performed by many pharmacies. The assurance that NHSE is seeking is that the claims for the NHS funded service was delivered to eligible patients only.

4.1.60 Elgon Chemist have advised within the appeal: "*We had an SOP for delivering of medicines during the pandemic by volunteers and the pandemic delivery service*". The Standard Operating Procedure (SOP) included within the appeal documents states the following information in regard to obtaining consent for the delivery:

4.1.61 "*Obtaining consent*

All consent forms/written records of verbal consent should include:

- *Date consent was given*
- *A telephone and/or mobile contact number for the patient*
- *Details of patient exemption and associated expiry date (if applicable)*
- *Authorisation for delivery to a specified person other than the patient (if applicable).*

4.1.62 It is unclear if this has been included to demonstrate the information Elgon Chemist recorded when receiving delivery requests, however there is no specific reference that Test and Trace ID numbers are to be documented on the consent forms/written records, furthermore most of the highlighted text throughout the SOP refers to shielding patients as the Summary Care Record (SCR) is referenced. The document upon our review seemed designed for a previous period of MDS activity around identifying CEV patients rather than applicable for the period we are performing our assurance activity on from April 2021 onwards. It should also be noted, the SOP does not mention the term '*Test and Trace*' at all; therefore, the inclusion of this document appears irrelevant to the appeal in relation to the SI claims.

4.1.63 In their appeal, Elgon Chemist raises concerns regarding the communication to the change in service; "*There were no calls or Teams meetings to clarify how and when to stop the service. This lack of clear communication further exacerbated the challenges we faced during this period*". As the pandemic was ever-changing and amendments had to be implemented quickly, it would not have been feasible for NHS England to contact every pharmacy contractor and dispensing doctor in England via telephone or video call to inform of these changes before they came into effect. Service announcements were a reliable method which is evidenced in the fact Elgon Chemist states in their appeal; "*I recall a system letter confirming the introduction of the SI patients component but the stopping of the CEV service was not loud enough for contractors at the time*."

4.1.64 Table 2 combines the claims that were submitted for both SI and CEV patients by Elgon Chemist and shows they continued to claim for CEV patients each month from April 2021 until the end of the service in March 2022, which suggests they may not have been aware CEV patients were no longer eligible.

4.1.65 Table 2 - April 2021 to March 2022 MDS claims submitted

	Apr 21	May 21	Jun 21	Jul 21	Aug 21	Sep 21	Oct 21	Nov 21	Dec 21	Jan 22	Feb 22	Mar 22	Total
Self-isolating claims	96	301	200	341	336	358	224	280	278	288	304	318	3,324
CEV claims	372	130	86	86	67	71	92	123	93	72	129	137	1,458
Total claims submitted	468	431	286	427	403	429	316	403	371	360	433	455	4,782

4.1.66 Payments for CEV claims were no longer automatically paid from May 2021, however this raises the question if Elgon Chemist ever queried why they did not receive full payment for their submitted MDS claims from May 2021 if they believed this cohort of patients were still eligible? If the 1,086 CEV claims made between May 2021 and March 2022 had been paid, Elgon Chemist would have received a total of £6,516.00 alone for deliveries to CEV patients. The total number of MDS claims combined between April 2021 and March 2022 is similar to the volume of CEV claims prior to April 2021, in the months when CEV patients were the only eligible cohort. Elgon Chemist had a consistent volume of MDS claims and there is no expected fluctuation observed in the number of claims, despite CEV patients no longer being eligible, this poses the question how Elgon Chemist identified which MDS claims were for CEV patients, and which were for SI patients when claiming essentially for two services, something that has not been clarified by Elgon Chemist to date.

4.1.67 Both the claims for deliveries to CEV patients when the service was not commissioned for this cohort of patients, and the large number of claims for deliveries to SI patients in the month of April 2021 led to this pharmacy being classed as an outlier, and for their inclusion in the PPV exercise for the final phase of the service.

4.1.68 Following the amendment to the MYS portal in June 2021, claims for the provision of service to CEV patients were not paid, it should also be acknowledged that some pharmacies did not receive payment for May 2021 claims for reasons such as late submissions. Elgon Chemist appeared to be unaware of this situation as it continued to claim for the service to CEV patients, as well as claiming for deliveries to SI patients.

4.1.69 Elgon Chemist have stated in the appeal; "*In just, to our error the notification to these services when stopped could have simply be voiced by way of a simple phone call or even a repeated email to question why we were was continuing to claim when the service had stopped*". For clarification, the payments system is built upon a high level of trust, and it is only when a contractor is classed as an outlier or chosen to be randomly sampled that evidence is requested to support the claims in the terms of the service as outlined in the service specification. Elgon Chemist had not been considered an outlier for the previous samples or identified for random sampling.

4.1.70 Elgon Chemist also highlighted: "*There was a lot going on in pharmacy at that moment with messages from all sources and we feel the messages coming through should have been more prominent ans [sic] verbal*".

4.1.71 NHSE worked with DHSC and PSNC throughout the pandemic to try and get the balance right but appreciate that they may not have got the balance right in each situation. However, following the change to the service in April 2021 most pharmacy contractors stopped claiming for deliveries to CEV patients. This suggests that the majority of pharmacy contractors were fully aware of the change to the eligible patient group, and it was only a minority that did not.

4.1.72 Ultimately however the appeal around these contractors' rests on the key information that these patients were no longer eligible for the service so these claims are ineligible for payment and should be recovered as they fall outside the statutory framework for payment.

4.1.73 Only claims for deliveries to SI patients covered by the NHSE announcements between the months of April 2021 to March 2022 were still eligible to claim for the Medicine Delivery Service. Pharmacies choosing to deliver to non-eligible patients did so outside of the scope of the Medicine Delivery Service and

therefore the costs for these deliveries would need to be met by means other than claiming under the Medicine Delivery Service.

4.1.74 In the appeal, Elgon Chemist refers to a delivery diary, "*We are still looking for the diary of delivery dairy (FOLLOWING A MAJOR REFIT OF THE PHARMACY JAN 24 TO APRIL 24) but these will not have the Tarce and Track (T & T) but will have patient delivery records. We have tried to connect with patients who we recall deliveries were made to at the time and we did try and look if any NHS Test and Trace (T&T) patient references were recorded on the patients records on the computer under the patient details which we now do for any additional information on the patient. We have looked in these logs to demonstrate compliance with recording requirements but the T & T records were done as a manual record on the labels and stuck on delivery sheets at the point*".

4.1.75 The PAT appreciate the work of the pharmacy in trying to find records to respond to our request for evidence which demonstrates how the claims were for eligible patients. However, the service eligibility was for deliveries to SI patients only. These will be patients identified by test and trace who will then only be isolating for ten days, and who will then not be the same patients each month. During the time the service was available to SI patients only, the pharmacy submitted claims for over 3,324 deliveries. The vast majority of these would then be different patients. The fact that the pharmacy has not found one record that demonstrates eligibility for these patient delivery claims is overwhelming.

4.1.76 The PSRC considered that Elgon Chemist had not provided any evidence to demonstrate that the claims it had submitted between April 2021 and March 2022 were for deliveries to patients eligible for the MDS. As a result, the decision determined that the £19,944.00 payment for SI claims and the £2,232.00 paid for the ineligible CEV claims were over payments and should then be recovered from the contractor.

Key points for consideration

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

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

4.1.77.2 Contractors were advised to retain evidence of deliveries made to Self-isolating patients as highlighted in the service announcements for post payment verification purposes.

4.1.77.3 Throughout the investigation Elgon Chemist were unable to provide any evidence to enable NHSE to be assured that the service was provided to eligible patients in accordance with the service specification. In particular, 1,188 records for deliveries claimed and paid for the months of December 2021 – March 2022 should have been available, as this was within the 2-year retention period the pharmacy states they adhere to, when our engagement with Elgon Chemist began on 6th December 2023.

4.1.77.4 Elgon Chemist's large quantity of claims placed the pharmacy as the sixteenth highest claimer for MDS nationally from April 2021 – March

2022, thus making them a significant outlier. The consistent volume of claims did not reflect the national trend seen in the data for other contractors or exhibit the reality that the number of Covid cases nationally were decreasing, particularly in the later months of the service.

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

4.1.77.6 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.

4.1.77.7 The contractor had numerous opportunities to provide evidence to demonstrate that the deliveries claimed met the requirements set out in the service specification. Only those contractors where no or insufficient evidence of meeting these requirements were referred or recommended to take the case to the regional PSRC.

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

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

4.1.77.10 The appeal has not provided any evidence to suggest that the deliveries were made to patients eligible for the Medicines Delivery Service. The deliveries then claimed were not eligible for the Medicines Delivery Service payments resulting in an overpayment to the pharmacy.

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

4.1.78 Having considered these matters NHS England and Improvement respectfully suggests that NHS Resolution conclude that the decision made by the PSRC in respect of the £22,176.00 for both CEV and SI overpayment recovery from Elgon Chemist was fair and in accordance with the regulations."

5 OBSERVATIONS

No observations were received by NHS Resolution in response to the representations received on appeal.

6 CONSIDERATION

6.1 Direction 2 of the Payment Disputes Directions directs me to determine a dispute in respect of the recovery of an overpayment from an NHS pharmacist under Regulation 94(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services Regulations) 2013 (the "Regulations") which is in the nature of an appeal against a decision of NHS England that there has been an overpayment.

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

6.2.1 NHS England has advised that an appeal must be brought within 30 days of the date the Appellant was notified of NHS England's decision and the appeal was not brought within that timescale; or

6.2.2 I am of the opinion that notification of the appeal contains no valid grounds of appeal (for example because it amounts to a challenge to the legality or reasonableness of the Payment Disputes Directions, the Regulations or the Drug Tariff).

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

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

6.3.2 the grounds of the appeal are valid.

6.4 Direction 6 of the Payment Disputes Directions states that I may determine the appeal without hearing any oral representations but if an appellant asks to make oral representations a hearing must be arranged unless I am satisfied that:

6.4.1 a hearing is unnecessary; or

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

6.5 The Appellant has not requested a hearing. On the basis of the information before me I have considered that it is unnecessary to hold an oral hearing.

6.6 I have before me the papers considered by the NHS BSA. I also have before me the responses to NHS Resolution's own statutory consultations.

6.7 I have considered further the requirements relating to the home delivery service referred to by the NHS BSA.

6.8 I note that the Pharmaceutical Services (Advanced and Enhanced Services) (England) Directions 2013 (the "Advanced and Enhanced Services Directions") were amended on 27 March 2020 to require NHS England to commission a home delivery service from a pharmacy contractor who is to make a delivery of a prescription as mentioned in paragraph 22A(3)(a) or (b) of Schedule 4 to the Regulations. Paragraph 22A(3)(a) and (b) relate to deliveries to eligible patients in an area specified in an announcement made by NHS England with the agreement of the Secretary of State. The announcement must be to the effect that in order to assist in the management of the serious risk or potentially serious risk to human health, eligible patients are advised to stay away from pharmacy premises in the area specified, in the circumstances specified and for the duration of the period specified in the announcement.

6.9 The Advanced and Enhanced Services Directions go on to say that NHS England is directed to ensure there is a service specification for the home delivery service. A pharmacy contractor must comply with the requirements of the service specification.

6.10 I note that the NHS BSA has indicated that the deliveries that are covered by the decision on overpayment are those made in the period April 2021 to March 2022. These were split into 3,324 deliveries to those who were self isolating and 372 deliveries to those who were Clinically Extremely Vulnerable (CEV).

6.11 A copy of the specifications and guidance for the 'Home delivery of medicines and appliances during the COVID-18 outbreak' dated 16 March 2021 have been provided to me by the NHS BSA.

6.12 I note the NHS BSA states that "*In the months of April 2021 to March 2021 the Medicines Delivery Service was limited to those patients who had been notified by Test*

and Trace to self isolate" and that "*Eligibility for Clinically Extremely Vulnerable (CEV) patients for the MDS ceased on the 31st March 2021 and therefore claims for the deliveries to those patients after this date no longer qualified as valid for a MDS payment."*

6.13 One of the NHS England announcements which has been provided to me, dated 16 March 2021, states the following:

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

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

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

6.15 The specifications and guidance provided state:

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

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

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

6.18 In relation to deliveries to CEV patients, I note the Appellant in its appeal states "*I recall a system letter confirming the introduction of the SI patient component but the stopping of the CEV service was not loud enough for contractors at the time."*

6.19 I note the comments from the NHS BSA that the information regarding the ceasing of the delivery to CEV patients was contained within the same announcement to contractors in which they were advised that they could commence claiming for self-isolating patients. The NHS BSA has also referred to the specification and guidance issued to contractors on 16 March 2021 and comments that "*The guidance stated that only self-isolators that have provided their Test and Trace Account ID reference number when requesting the service are eligible to receive it."*

6.20 The Appellant states in their appeal "*Agree during my claim period in dispute for CEV there was no service hence all claims on this should not be allowed …"* but goes on to state "…*but I do believe and request the payments are allowed as the service was provided to patients and costs have been involved to myself as a contractor, I should not be punished and the amounts involved are small and request as a gesture of goodwill these payments are not deducted."*

6.21 There is no dispute between parties that these deliveries were carried out, however I am of the view that there is no provision within the guidance or specification for a "gesture of goodwill" to be exercised. The Appellant is not entitled to receive payment for a service that was not commissioned and therefore I consider that the NHS BSA should make the necessary arrangements for recovery of the monies in relation to CEV claims.

6.22 In relation to self-isolating patients, the NHS BSA has provided a timeline detailing its contact with the Appellant between 6 December 2023 and 4 June 2024, in order to request evidence that the 3,324 claims made between April 2021 and March 2022 were for deliveries made to eligible patients as details in the service specification.

6.23 I note that the service specifications state:

6.23.1 "*The pharmacy contractor must maintain appropriate records to ensure effective ongoing service provision and to support post-payment verification. This should include, as a minimum, details of the eligible patients to whom a delivery was made under this service, including the postcode of the patient's address, and the date of the delivery.*"

6.24 In its appeal the Appellant states:

6.24.1 *"Overlap Between Services*

Service Transition: There was an overlap between deliveries for self-isolating (SI) patients under NHS T&T and the decommissioning of deliveries to clinically extremely vulnerable (CEV) patients.

I recall a system letter confirming the introduction of the SI patients component but the stopping of the CEV service was not loud enough for contractors at the time."

6.25 And further:

6.25.1 *"Existing Records: We are still looking for the diary of delivery dairy [sic] (FOLLOWING A MAJOR REFIT OF THE PHARMACY JAN 24 TO APRIL 24) but these will not have the Tarce [sic] and Track (T & T) but will have patient delivery records. We have tried to connect with patients who we recall deliveries were made to at the time and we did try and look if any NHS Test and Trace (T&T) patient references were recorded on the patients records on the computer under the patient details which we now do for any additional information on the patient. We have looked in these logs to demonstrate compliance with recording requirements but the T & T records were done as a manual record on the labels and stuck on delivery sheets at the point*."

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

6.27 I note the comment from the NHS BSA that "*the announcement of the service extension made clear the requirement for Test and Trace ID numbers to be retained for SI patients with eligibility for CEV patients no longer being available."*

6.28 I note the NHS BSA's response that *"The PAT can appreciate it was a challenging time for pharmacy contractors however it is unclear how the communication regarding CEV patients no longer being eligible was missed while the pharmacy was aware that self-isolating patients were now the eligible patients for the service. The announcement of SI patient eligibility was made in March 2021. This announcement, previously shared above within this appeal, also outlined that CEV patients would no longer be eligible for the service. Having the awareness that SI patients were eligible also suggests that the pharmacy was aware that Test and Trace referral numbers was the directed evidence that contractors must now maintain for this service."*

6.29 The question being asked of the Appellant was to review their claims and provide evidence to support the claims made for the relevant period. Simply because the records have been destroyed does not mean that the Appellant did not collect the relevant information in relation to these claims. That being said, if the records were not retained in line with the service specification, then I do not consider that the lack of records should result in the benefit of the Appellant.

6.30 I note that the Appellant co-operated with NHS BSA and that a meeting was held between the Appellant and NHS BSA. During the discussion the Appellant confirmed that they recorded the Test and Trace ID numbers but again stated that they were unaware of the change to the service which occurred after March 2021 with CEV patients no longer being eligible.

6.31 The Appellant has not been able to provide any evidence and further they concede that the diary "*will not have the Tarce [sic] and Track (T&T)".* I also note the Appellant's comments that they have tried to contact patients and whilst I am of the view that this would provide a form of evidence that the correct details were recorded, I do not consider that this would satisfy the requirements for the purpose of the post-payment verification.

6.32 With regard to the retention of information, I note that in the appeal, the Appellant states:

6.32.1 *"The question remains is the request for information valid and is the timeframe in which it has been made is reasonable and acceptable. The request comes over two years after the services were rendered.*

Issues with Service Specification and Retention Requirements

The specification of the Medicines Delivery Service fails to state a retention period for the records. It assumes contractors are aware of the statutory requirement to retain records for six years. However, expecting a small pharmacy to retain such records for six years without clear instructions is unreasonable.

The specification should have clearly stated the required retention period and emphasized that contractors must be prepared to provide the requested information within that timeframe.

General Pharmacy Record-Keeping Practices

In general, most pharmacy records (such as NMS records, private scripts, responsible pharmacist logs, and fridge temperatures) are securely kept for two years. This is a widely followed practice among pharmacy contractors. Retaining records beyond this period would necessitate substantial storage space, which is impractical for many small pharmacies. Therefore, it is unreasonable for the NHS to request records two and a half years after the fact."

6.33 And further states:

6.33.1 *"Current Request for Information*

The current request for information, made two and a half years after the claims were submitted, is unreasonable given that not justification or any evidence based decision to request the information after two and a half years. The service has been provided, drivers have been paid, and the patients have benefitted. To now request this information and potentially reclaim funds is unreasonable. The NHS should honor [sic] and pay for the services provided during these exceptional times. Our pharmacy team along with other contractors went out of our ways to support the NHS to see these difficult times through. This financial punishment is not the way to reward such hard times and work carried our by pharmacies."

6.34 The NHS BSA has acknowledged that the service specification does not specify for how long contractors should keep records of the deliveries made but relies on the caveat that records must be retained for post payment verification and goes on to state "*it is also unclear how this contractor formed the opinion that records only needed to be retained for two years."*

6.35 It is unhelpful that the service specification did not identify a requirement for the records to be retained for a set period. I also sympathise with the challenges faced by pharmacies as referred to by the Appellant. However, I am of the view that the Appellant should have been aware of the requirement of the service specification to retain records for any post-payment verification.

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

6.37 I do not consider it reasonable that, where a service specification expressly requires records to be maintained to support post payment verification, a pharmacy should be entitled to apply a particular retention period without confirmation that there will be no post payment verification.

6.38 I note the Appellant's comments that "*Records were destroyed about October 23 . We use a 2 year period following any service for destroying records. The shredding of information is carried out in the pharmacy as we have invested in a large industrial shredder on site*." I must consider the possibility that a two year retention policy was in place. To that end, I note the NHS BSA states that "*1,188 records for deliveries claimed and paid for the months of December 2021 – March 2022 should have been available, as this was within the 2-year retention period the pharmacy states they adhere to, when our engagement with Elgon Chemist began on 6th December 2023."* I note the Appellant has not been able to provide evidence from this time period. I note that even where the records were not provided at that time, this contact should have made it clear to the Appellant to not destroy any further records.

6.39 I consider that had any evidence, at all, relating to these months been provided then this might have enabled the Appellant to evidence that claims were made in accordance with the service specification. However, the Appellant has stated that "*the shredding of information is carried out in pharmacy".* I do not consider that this destruction was in accordance with the service specification, as even if the Appellant had applied a two year retention period, some of the necessary details would still have existed on 6 December 2023 when the Appellant was contacted. I consider that the

Appellant should have been able to provide the necessary information for post-payment verification by the NHS BSA. As it has not done so, I consider that the NHS BSA's decision to recover the overpayment is the only appropriate outcome.

7 DECISION

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

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

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

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

7.2 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £22,176.

7.3 I note that neither party has submitted a claim for interest with regard to this dispute so I determine that no interest is payable on the sums to be paid from one party to another.

Head of Appeals
NHS Resolution