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

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

10 January 2025

REF: SHA/26347

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM VAKANI LOCUMS LTD (FGA80) ("THE APPELLANT")

1 **Outcome**:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £32,514.00.

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:

Vakani Locums Ltd
NHS BSA on behalf of NHS England

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

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

REF: SHA/26347

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM VAKANI LOCUMS LTD (FGA80) ("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 18 September 2024 in respect of Vakani Locums Ltd (ODS code FGA80). 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 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 FGA80 – Vakani Locums Ltd claimed **5,009 self-isolating deliveries and 410 CEV deliveries** for the Medicines Delivery Service in the months of April 2021 to March 2022.

2.9.2 The NHSBA 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 cold not verify that these claims met the requirements set out in the service specification.

2.9.3 Vakani Locums Ltd was contacted on 10 separate occasions by the NHSBSA Provider Assurance Team to request evidence to demonstrate 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 (PSRC) 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 processed in accordance with Regulation 94(1) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The PSRC also emphasized that if the pharmacy needs any support, they are encouraged to reach out and engage with Community Pharmacy Lincolnshire who are available to help.**

2.11 The tables below outline the monthly Medicines Delivery Service claims reimbursed to your pharmacy – **Vakani Locums Ltd – FGA80** in the months of April 2021 to March 2022 for Self-isolating and CEV patients, along with the associated recovery values.

Self-isolating claims

2.12 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	Sept 21	Oct 21	Nov 21	Dec 21	Jan 22	Feb 22	Mar 22	Total
Self-isolating	410	439	425	455	435	450	455	450	510	495	485	0	5,009

claims paid													

2.13 5,009 self-isolating claims paid x £6.00 = £30,054.00

CEV claims

2.14 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	410	n/a	n/a	n/a	410

2.15 Subsequently this has resulted in the following payment:

2.16 410 CEV claims paid x £6.00 = **£2,460.00 deduction.**

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

2.17.1 5,009 Self-isolating claims paid x £6.00 = **£30,054.00**

2.17.2 410 CEV claims paid x £6.00 = **£2,460.00**

2.17.3 **Total value to be recovered = £32,514.00 deduction.**

2.18 **Due to the size of the recovery, we can offer the option to split this into 6 payments as detailed below.**

2.19 The adjustment will be applied to your schedule of payments over 6 months, as shown in the table below.

Adjustment	**Schedule of Payments**	**Payment date**
£5,419.00	August 2024	1st November 2024
£5,419.00	September 2024	29th November 2024
£5,419.00	October 2024	31st December 2024
£5,419.00	November 2024	31st January 2025
£5,419.00	December 2024	28th February 2025
£5,419.00	January 2025	1 April 2025

2.20 **Action required**

2.21 1. Please respond to this correspondence at pharmacysuport@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) Regulation 2013. **Please send this confirmation by 18th October 2024.** Where you agree an overpayment has been made the amount over paid will be recovered by deductions from a future [sic] NHSBSA payments as shown above. If you have any concerns regarding the deduction of would like to discuss an alternative approach to recovering the overpayment, please contact us by 18th October 2024.

2.22 Once the NHSBA 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.

2.23 **2. Please be aware that failing to contact us by 12th October 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

2.23.1 NHS Resolution

Primary Care Appeals

10 South Colonnade

Canary Wharf

London

E14 4PU

2.24 3. If there is no appeal within 30 days from the date of this letter, NHS England has requested that the NHSBSA Provider Assurance Team commence overpayment recoveries under Regulation 94(1)(b) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, on the basis that the final outcome of our investigation is that there has been an overpayment.

2.25 The NHSBSA will notify you of when the overpayment recovery will take place. A record of this process will be kept on your NHS England contractor file.

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

2.27 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.

2.28 The proposed and future actions detailed in this letter are stipulated without prejudice. Your co-operation is very much appreciated."

3 THE DISPUTE

In an email dated 10 October 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 regarding the Post Payment Verification (PPV) exercise for the Medicines Delivery Service.

3.2 We wish to clarify our position regarding the claims made for self-isolating deliveries. Firstly, we acknowledge that the 410 CEV claims made in April 2021 were incorrect, stemming from a duplication error by a colleague in the context of the April self-isolating claims. We fully accept responsibility for this mistake and are agreeable to the NHSBSA recovering the overpayment related to these 410 CEV claims.

3.3 However, we strongly contest the recovery of the self-isolating claims. These claims were made in strict accordance with the service specifications, ensuring that all deliveries were completed for eligible self-isolating patients. We meticulously maintained records, including Test and Trace numbers on our delivery logs, and only counted deliveries made within the designated 10-day period following a patient’s confirmation of a positive COVID-19 status.

3.4 The high number of self-isolating claims can be attributed to our response to the unprecedented demand during the pandemic. We employed additional delivery drivers – up to five at times, compared to our usual two. This enabled us to manage a significant volume of deliveries not only for our pharmacy but also for the two doctor dispensaries in Stamford, namely St Mary’s and Sheepmarket Surgery.

3.5 Our extensive coverage area is noteworthy, as it encompasses not just Stamford but also numerous surrounding villages, including Ufford, Uffington, Bainton, Pillsgate, Ashton, Southorpe, Barnack, Tallington, Tinwell, Wothorpe, Collyweston, Duddington, Ketton, Easton on the Hill, Rhyall, Pickworth, Essendine, Carlby, Belmesthorpe, Great Casteron, Tolethorpe, and Wansford. Additionally, we extended our delivery services to towns such as Bourne, Market Deeping, Peterborough, and Yaxley. This extensive service area inherently led to a higher volume of claims during this period.

3.6 Regrettably, we encountered a catastrophic event on December 19, 2022 when a flood caused by an incident in the apartment above resulted in significant damage to our pharmacy. This unprecedented flood destroyed over £100,000 worth of medication and rendered more than 95% of our pharmacy records unsalvageable. Given that our pharmacy operates on a single floor, all paper records; including those critical to the Medicines Delivery Service were irreparably damaged. The incident garnered attention in both local and national media, and we have attached various pieces of evidence regarding that illustrate the extent of the damage.

3.7 https://www.chemistanddruggist.co.uk/CD136668/How-my-pharmacy-responded-to-a-nightmare-flood-before-Christmas/

3.8 https://www.lincsonline.co.uk/stamford/news/staff-praised-for-work-after-flood-9291490/

3.9 Since that devasting event, we have been actively digitizing [sic] our records to improve our documentation processes. However, the loss of physical documentation has severely limited our ability to provide the requested evidence for the self-isolating deliveries made during the specified period.

3.10 It is crucial to recognise that the circumstances surrounding our claims were influenced by this catastrophic event. We operated under conditions that may have affected our administrative processes, and we believe this context should be taken into account. Therefore, we respectfully urge your department to conduct a thorough and diligent review to rectify any misunderstandings and dispel any unwarranted accusations regarding our claims.

3.11 In light of all the information provided, we firmly contest the recovery of the overpayment related to the self-isolating claims, asserting that we operated within the guidelines set forth in the service specification. We believe that the only claims requiring considering for repayment is the CEV claim, which we have acknowledged.

3.12 In conclusion, we request that you quash the decision regarding the overpayment, with or without remitting the matter to NHS England. We look forward to the opportunity for further dialogue to ensure a fair and equitable resolution to these issues.

3.13 Thank you for your attention to this matter, and we appreciate your understanding."

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 16th October 2024 and the opportunity to provide representations on the appeal.

Background

4.1.2 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.

4.1.3 To allow these patients to receive their prescriptions, an Advanced service known as the Medicines 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'.

4.1.4 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 part as part of the normal end of month process.

4.1.5 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.

4.1.6 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 has 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".

4.1.7 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/.

4.1.8 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

4.1.9 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.

4.1.10 The guidance stated only that 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.

4.1.11 Please 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/.

4.1.12 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.

4.1.13 The 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.

4.1.14 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.

4.1.15 However, MYS became aware that contractors continued to claim for deliveries to CEV patients. Once it became apparent that many contractors were 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.

4.1.16 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 were the only eligible claims that were valid from April 2021 onwards. Subsequently, NHSBSA PAT were required to recover the identified CEV claims, as there was no regulation to allow payments for patients who were ineligible for the service.

4.1.17 In the Post Payment Verification (PPV) exercise undertaken by the PAT, FGA80 – Vakani Locums Ltd were contacted on 10 occasions between 6th December 2023 and 26th March 2024 to request evidence that the 5,009 Self-Isolating patient claims made between April 2021 and March 2022 were for deliveries made to eligible patients' self-isolating in response to a positive Covid test, as specified in the NHSE service announcements.

4.1.18 The PAT outlined that Vakani Locums Ltd also incorrectly claimed for 410 CEV during the month of April 2021 and advised that claims for deliveries to CEV patients after March 2021 were ineligible for payments.

4.1.19 Emails were sent to the pharmacy's shared NHS mail address pharmacy.fga80@nhs.net as required by NHSE. From 7th December 2024 all future emails were sent to the Appellant's email address Ehsan.hussain2@nhs.net as per his request.

4.1.20 The PAT sent the initial email on 6th December 2023, and a swift response was received from Mr Hussain; he immediately emailed us to request a call "to discuss the case". On this call Mr Hussain explained that on 19th December 2022 the pharmacy had "suffered a catastrophic flood" and because of this "the pharmacy paperwork was rendered unsalvageable". Mr Hussain then followed this call with an email as requested on 7th December in which he fully explained the circumstances of the floor and the damage which it had caused. In this email he also accepted that the pharmacy had inadvertently claimed incorrectly for the 410 CEV claims from April 2021 which were paid once beyond the end of the service. In this email Mr Hussain also provided reasons which he believe has caused his claims to "appear high". In response to the points raised in his email the NHSBSA PAT requested a teams call with the Appellant to discuss this in more detail.

4.1.21 To discuss the information provided the PAT followed up the email with a further Teams call on December 19 2024 [sic]. The meeting, which lasted approximately one hour, was attended by Andrew Green, the Provider Assurance Pharmaceutical Services Service Delivery Manager, and Diane White, the Provider Assurance Pharmaceutical Services Caseworker. In this meeting the PAT explained to Mr Hussain that as it stands with no evidence being available, we would be unable to give assurance to NHSE that the claims were made in line with the service specification, therefore it Mr Hussain wished to add any further information around the case to be included to send that onto ourselves before we refer the case onto PSRC.

4.1.22 In response to this Mr Hussain stated “that as long as he feels like a considered and fair process is undertaken to look at his case and it is taken into consideration that he genuinely had a flood and lost the paperwork, then he is happy to continue with this process, if the decision is made to recover money and this is justified he is happy to go along with this as he does not have the time, energy or the evidence available to justify each and every claim”.

4.1.23 This discussion along with all questions and responses, was documented and shared with Mr Hussain for his review and approval before being included in the timeline provided to PSRC for their decision on the case. In case of any doubt, the PAT can confirm that the PSRC had this information when it considered its decision.

4.1.24 The NHSBSA PAT appreciates that this was a difficult time for the pharmacy and would like to thank Mr Hussain and his pharmacy team for their dedication and hard work throughout this period. Their efforts ensured the pharmacy remained operational and continued to provide essential care to its patients despite the difficult circumstances.

4.1.25 It is important to stress that the PAT are not disputing that the flood took place instead Vakani Locums Ltd were included in an assurance activity reviewing MDS and were unable to provide the requested evidence in support of their claims. Although the PAT have sampled Vakani Locums Ltd previously and recoveries were made that is not the only reasons they were sampled over the time period requested as they were also one of the highest claimers nationwide for the service during the months where we requested evidence.

4.1.26 It should be noted that the PAT have previously engaged with Vakani Locums Ltd as part of its MDS assurance activity and we raise this point to highlight that during these PPV engagements the pharmacy did not provide evidence to demonstrate that their claims were only for deliveries made to eligible patients and instead agreed to the proposed recovery figures. These PPV engagements were made prior to the flood on December 19, 2022. The PAT therefore contest the assertion made by the contractor that they “meticulously maintained records” for the MDS.

4.1.27 Between August and October 2020, the MDS was commissioned only for deliveries made to patients in areas of the country subject to local lockdown restrictions, which were specified in service announcements. Only pharmacies providing delivery services to patients affected by these local lockdowns were eligible to continue to claim for the delivery service. Despite this Vakani Locums Ltd claimed for the provision of the service, although they were not based in an area of the country affected by a regional lockdown. Over the three months where the service was not commissioned in their area the pharmacy claimed and were paid for 871 incorrect MDS claims. The pharmacy was initially contacted on 28th October 2021 to request that the pharmacy reviewed their MDS records for August to October 2020. Multiple attempts were made by the PAT to contact the pharmacy however no reply was received until 21st March 2022 in which they requested to speak with the NHSBSA. They also indicated an overpayment may have been made. A call was made to the pharmacy on 23rd March 2022 to discuss the local lockdowns [sic] restrictions at this time. The pharmacy then understood they did not fall within one of these local lockdown areas and subsequently agreed to the recovery as the claims had been made incorrectly. As a result, the PAT performed a recovery totalling £5,226.00. No evidence was seen from this pharmacy across any of the

previous PPV sample periods, as the pharmacy promptly agreed to both previous recoveries without any evidence being provided.

4.1.28 Additionally, in a separate assurance activity the PAT contacted Vakani Locums Ltd regarding the MDS claims submitted during January to March of 2021. The PAT were requested by NHSE to contact this pharmacy as NHSBSA modelling, based on the total amount of prescription forms dispensed by the pharmacy suggested that the patients classed as 'Shielded' at the pharmacy during this time, and therefore eligible for the service was significantly lower than the number of deliveries that the pharmacy claimed for. During the ensuing engagement, the pharmacy was not able to provide evidence to demonstrate the claims they submitted were for deliveries to eligible patients, as a result the pharmacy agreed to a recovery for the 307 claims highlighted from the data as excessive.

4.1.29 It is important to stress that both recoveries took place with agreement from Vakani Locums Ltd without any evidence being provided. As these recoveries were agreed there was no referral to the PSRC for a decision. The absence of supporting evidence for the claims in these investigations suggests that the pharmacy would not have had the evidence to demonstrate that the claims made between April 2021 and February 2022 were for eligible patients, even if the flood had not caused such damage to the pharmacy.

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 as part of the PAT's representation to this appeal.

4.1.31 Consequently, the PSRC concluded that the NHSBSA had been unable to find any evidence to demonstrate that any one of the 5,009 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 410 claims made for CEV patients.

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

4.1.33 Having made this decision, the PSRC then directed that as Vakani Locums Ltd 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.

4.1.34 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.

4.1.35 The PSRC considered that Vakani Locums Ltd 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 £30,054.00 payment for SI claims and the £2,460.00 paid for the ineligible CEV claims were over payments [sic] and should then be recovered from the contractor. They also offered the contractor

the option of a payment plan repaying this total over six equal instalments of £5,419.00.

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

4.1.36 The PAT acknowledge and appreciate that in their response Vakani Locums Ltd accepted responsibility that the 410 CEV claims paid in April 2021 were for ineligible patients and therefore should be recovered.

4.1.37 For self-isolating claims, the service specification/ service announcements [sic] 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 the case of SI claims from April 2021 to March 2022 this evidence to demonstrate that these service claims were for deliveries to SI patients only is not available for the PAT to verify the claims for Vakani Locums Ltd. Without a single piece of evidence, the PAT are unable to verify that the actions suggested by Vakani Locums Ltd were indeed in place before the evidence was destroyed in the flood as suggested. In their response Vakani Locums Ltd state: -

4.1.41 *"We strongly contest the recovery of the self-isolating claims. These claims were made in strict accordance with the service specifications, ensuring that all deliveries were completed for eligible self-isolating patients. We meticulously maintained records, including Test and Trace numbers on our delivery logs, and only counted deliveries made within the designated 10-day period following a patient's confirmation of a positive COVID-10 status."*

4.1.42 Again, this cannot be verified. What is evident is the consistently high level of claims submitted each month for the first eight months and then a higher level of claims in the last three months that the service was claimed. During the time the service was available to SI patients only, the pharmacy submitted claims for over 5,009 deliveries. The vast majority of these deliveries would then be different patients, as each patient was only eligible for a delivery during their 10-day self-isolation period. This volume of claims for SI claims alone resulted in this pharmacy being the fifth highest claimer nationwide across the final 12 months of the service, and despite not submitting a claim for March 2022.

4.1.43 During this time Vakani Locums Ltd also claimed the identical volume of claims for CEV patients as for SI claims across 11 of the 12 months as shown in the table below. As noted, earlier payments for CEV claims were no longer automatically paid by the NHSBSA from May 2021, however the pharmacy continued to claim for these. They have agreed that the CEV claims from April

2021 were for ineligible patients and to recover that sum however, this continued claiming for CEV patients does undermine further the argument made by Vakani Locums Ltd in that they "*meticulously maintained records*" and "*only counted deliveries made within the designated 10-day period following a patients confirmation of a positive COVID-19 status*".

4.1.44 On the point of the high number of SI claims made by Vakani Locums Ltd in their response they state: -

4.1.45 *"The high number of self-isolating claims can be attributed to our response to the unprecedented demand during the pandemic. We employed additional delivery drivers—up to five at times, compared to our usual two. This enabled us to manage a significant volume of deliveries not only for our pharmacy but also for the two doctor dispensaries in Stamford, namely St Mary's and Sheepmarket Surgery. Our extensive coverage area is noteworthy, as it encompasses not just Stamford but also numerous surrounding villages, including Ufford, Uffington, Bainton, Pillsgate, Ashton, Southorpe, Barnack, Tallington, Tinwell, Wothorpe, Collyweston, Duddington, Ketton, Easton on the Hill, Ryhall, Pickworth, Essendine, Carlby, Belmesthorpe, Great Casterton, Tolethorpe, and Wansford. Additionally, we extended our delivery services to towns such as Bourne, Market Deeping, Peterborough, and Yaxley. This extensive service area inherently led to a higher volume of claims during this period".*

4.1.46 The PAT do not dispute that high volumes of deliveries may have been made at this time and acknowledge that the list of areas covered that Vakani Locums Ltd state they deliver to. However, that does not necessarily mean that this would lead to a high volume of eligible patients for MDS when the service is limited to SI patients only at a time when the number of COVID positive patients was falling rapidly after the end of the pandemic.

4.1.47 Nor would it explain the regular consistent claiming which took place month after month for SI claims. NHSE and the PAT can appreciate that an extensive delivery service has been in place however private i.e. non-NHS funded delivery services are pre-existing services performed by many pharmacies. The assurance that NHSE and the PAT were seeking was that the claims for the NHS funded service was for deliveries to eligible patients only, and without evidence we are unable to assure this.

4.1.48 Vakani Locums Ltd have argued that how they were capturing the required eligibility evidence as outlined in the service specification for April 2021 onwards, however if they were doing so it would be reasonable to ask how they failed to realise CEV claims were no longer eligible for the service as this was covered in the same announcement covering the change in the service and yet they continued to claim for CEV patients as well. Following the change to the service in April 2021 most pharmacy contractors stopped claiming for deliveries to CEV patients. This suggests that most pharmacy contractors were fully aware of the change to the eligible patient group, but this was something that does not appear to have been understood by Vakani Locums Ltd.

4.1.49 The Table below highlights the exact duplication of claims made by Vakani Locums Ltd and it also shows how the pharmacy stood out as an outlier for both separate services compared to the national averages and when reviewing all claims made by the pharmacy for MDS this becomes more distinct as counting all claims made by the pharmacy that would mean they were the third highest claiming pharmacy for the service nationwide.

	Apr 21	Mary 21	Jun 21	Jul 21	Aug 21	Sept 21	Oct 21	Nov 21	Dec 21	Jan 22	Feb 22	Mar 22
Self-isolating claims	410	439	425	455	435	450	455	450	510	495	485	0
CEV claims	410	439	425	455	435	450	455	450	510	495	485	0
Total claims submitted	820	878	850	910	870	900	910	900	1020	990	970	0
National monthly average of claims combined CEV and SI*	87.36	72.03	28.07	19.79	26.10	26.8	27.22	29.41	29.76	25.02	27.41	19.17

4.1.50 *This data is from the overall national claim data across the final 12 months of the service, as the PAT can differentiate between the claims as it includes the details around which claims were paid which after May 21 was only the self-isolating claims.

4.1.51 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.

4.1.52 The claiming pattern from Vakani Locums Ltd as shown in the table and chart above 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 in the table above, showed a decline in claims and were nowhere near as high as those claimed by Vakani Locums Ltd.

4.1.53 MDS claims made by Vakani Locums Ltd were also consistent during the previous year of April 2020 to March 2021 when eligible patients were those classed as CEV however unlike the majority of pharmacies nationwide, Vakani Locums Ltd actually increased the volume of consistent claims after the change in service which occurred in April 2021. With the nature of positive test and trace results depending on rates of positive COVID tests across the country spikes in activity would be expected however Vakani Locums Ltd actually increased their monthly claiming volume after April 2021, for both CEV and SI claims and these consistently ranged between 410 to 510 which as shown in the table above is significantly higher in each of months claimed than the monthly national average.

4.1.54 Another question that was unanswered from the engagement with Vakani Locums Ltd was if the pharmacy had any explanation as to why it submitted a

consistent volume of claims for 11 months between April 2021 and February 2022, only for that to drop to zero claims in the month of March 2022.

4.1.55 The main reason provided by Vakani Locums Ltd why evidence was not available was the fact a flood occurred in December 2022. "*Regrettably, we encountered a catastrophic event on December 19, 2022, when a flood caused by an incident in the apartment above resulted in significant damage to our pharmacy. This unprecedented flood destroyed over £100,000 worth of medication and rendered more than 95% of our pharmacy records unsalvageable. Given that our pharmacy operates on a single floor, all paper records; including those critical to the Medicines Delivery Service were irreparably damaged. The incident garnered attention in both local and national media, and we have attached various pieces of evidence regarding the flood that illustrate the extent of the damage*."

4.1.56 The PSRC considered that Vakani Locums Ltd 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 £30,054.00 payment for SI claims and the £2,460.00 paid for the ineligible CEV claims were over payments and should then be recovered from the contractor.

Key points for consideration

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

4.1.57.1 NHSE service announcement was clear that the Medicines Delivery Service. The was limited [sic] 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.

4.1.57.2 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.

4.1.57.3 The PSRC was presented with a timeline of correspondence, showing all contact between the Provider Assurance Team and Vakani Locums Ltd.

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

4.1.57.5 The large quantity of SI claims submitted by Vakani Locums Ltd made the pharmacy the fifth highest claimer for SI claims nationally from April 2021 – March 2022. If the submitted CEV claims are included, which were not paid, they were the third highest claimers nationwide. 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.

4.1.57.6 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.

4.1.57.7 The contractor had numerous opportunities to provide evidence to demonstrate that the deliveries claimed met the eligibility requirements set out in the service specification. They were unable to do this for any of the claims submitted. Only those contractors where no or insufficient evidence of meeting these requirements were referred or recommended to take the case to the regional PSRC.

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

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

4.1.57.10 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.

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

4.1.58 Having considered these matters NHS England respectfully suggests that NHS Resolution conclude that the decision made by the PSRC in respect of the £32,514.00 for both CEV and SI overpayment recovery from Vakani Locums Ltd was fair and in accordance with the regulations.

4.1.59 Please let me know of you need anything further to help in these deliberations."

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 5,009 to those who were self-isolating and 410 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-10 outbreak' dated 16 March 2021 has been provided to me by the NHS BSA.

6.12 I note that the NHS BSA states that "*In the months of April 2021 to March 2022 the Medicines Delivery Service was limited to those patients who had been notified by Test*

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

6.13 One of the 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 has 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 check son 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 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 it "*acknowledge[s] that the 410 CEV claims made in April 2021 were incorrect, stemming from a duplication error by a colleague in the context of the April self-isolating claims. We fully accept responsibility for this mistake and agreeable to the NHSBSA recovering the overpayment related to these 410 CEV claims*". I note that the NHS BSA acknowledge this statement by the Appellant and agree that the overpayment should therefore be recovered.

6.19 As there is no dispute that the CEV claims were inputted by the Appellant in error, and that there was no entitlement for monies to be paid, I consider that the NHS BSA should make the necessary arrangements for recovery of the monies in relation to CEV claims (£2,460.00).

6.20 I note that the Appellant wishes to appeal the recovery of overpayments in relation the self-isolating patients and I will therefore proceed to consider this.

6.21 In relation to self-isolating patients, I note the information provided by the NHS BSA to demonstrate that the Appellant had previously engaged in a MDS assurance activity and an overpayment was recovered in respect of this. Whilst I appreciate the NHS BSA providing the background information, I consider that the previous overpayment did not progress to an appeal and therefore I am only able to consider the information in relation to the matter before me, that being the MDS payments for April 2021 to March 2022.

6.22 I note that the service specifications state:

6.22.1 *"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.*"

6.23 In its appeal, the Appellant states:

6.23.1 "*We strongly contest the recovery of the self-isolating claims. These claims were made in strict accordance with the service specifications, ensuring that all deliveries were completed for eligible self-isolating patients. We meticulously maintained records, including Test and Trace numbers on our delivery logs, and only counted deliveries made within the designated 10-day period following a patient's confirmation of a positive COVID-19 status*."

6.24 And further:

6.24.1 "*Regrettably, we encountered a catastrophic event on December 19, 2022, when a flood caused by an incident in the apartment above resulted in significant damage to our pharmacy… Given that our pharmacy operates on a single floor, all paper records; including those critical to the Medicines Delivery Service were irreparably damaged."*

6.25 There is no dispute from any party that there was a flood at the Appellant's premises on 19 December 2022, as is highlighted in the news articles provided by the Appellant with the appeal. I note that the Appellant states that the flood was fairly severe and damaged "*over £100,000 worth of medication and rendered more than 95% of [the] pharmacy records unsalvageable*".

6.26 Given the Appellant has not provided any evidence to support its claims, I conclude that none of the 5% of salvaged records relate to the MDS. In this regard, I note that within the internal paperwork received from the NHS BSA which include minutes of the Teams call on 19 December 2023 [referred to at 4.1.21 above] the Appellant noted that "*the only thing which [he] has from around that time that did survive as it was digital is the PMR records"*.

6.27 I consider that had any evidence, at all, relating to the months in question been provided then this might have enabled the Appellant to evidence that claims were made in

accordance with the service specification. However, the events of the flood has meant that the Appellant is unable to do so and it, by its own admission, did not create or maintain any digital records relating to the MDS. This leaves me in a difficult position because the Appellant claims to have had *'meticulously maintained'* paper records, but the unfortunate event of the flood has created a situation where the Appellant cannot evidence the claims, in paper form and that this is exacerbated by the lack of digital records.

6.28 Whilst I am sympathetic to the Appellant's position, I am of the view, given that the Appellant has been unable to provide any records for those patients who received a delivery under the self-isolation criteria, the Appellant does not qualify for payment in line with the service specification.

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

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 £32,514.00.

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

Head of Appeals
NHS Resolution