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

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

28 January 2025

**REF: SHA/ 26400**

**APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM HJ EVERETT (CHEMIST) LIMITED T/A EVERETTS PHARMACY ("THE APPELLANT")**

1 Outcome:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £522.00 in relation to claims made for CEV patients.

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:

HJ Everett (Chemist) Limited t/a Everetts Pharmacy
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/ 26400**

**APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM HJ EVERETT (CHEMIST) LIMITED T/A EVERETTS PHARMACY ("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 19 November 2024 in respect of HJ Everett (Chemist) Limited t/a Everetts Pharmacy (ODS code FER36). 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 July 2021 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 July 2021.

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 [enclosed] 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 **FER36 – HJ EVERETT (CHEMIST) LIMITED** claimed 18 self isolating and 87 CEV deliveries for the Medicines Delivery Service in the months of April 2021 to July 2021.

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 July 2021 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 **HJ EVERETT (CHEMIST) LIMITED** was contacted on 9 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 July 2021 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 – **HJ EVERETT (CHEMIST) LIMITED – FER36** in the months of April 2021 to July 2021 for Self-isolating and CEV patients, along with the associated recovery value:

| | **April 2021** | **May 2021** | **June 2021** | **July 2021** | **Total** |
|---|---|---|---|---|---|
| Self-isolating claims paid | 15 | 0 | 0 | 3 | **18** |
| CEV claims paid | 87 | N/A | N/A | N/A | **87** |

2.12 Subsequently this has resulted in the following overpayment:

2.13 87 CEV claims paid x £6.00 = £522.00

2.14 **Total recovery for April 2021 – July 2021:**

2.15 87 CEV claims paid x £6.00 = £522.00

2.16 **Total value to be recovered = £522.00 deduction**.

2.17 **Action Required**

2.18 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 19th December 2024.**

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

2.20 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by **19th December 2024.**

2.21 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.

2.22 **2.Please be aware that failing to contact us by 19th December 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 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.

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

2.27 For more information or for clarification of any of the details in the letter, please contact us by email at pharmacysupport@nhsbsa.nhs.uk, alternatively you can contact us on 0300 330 1295.

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

2.29 Your co-operation is very much appreciated."

## 3 THE DISPUTE

In an email dated 22 November 2024 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 "I wish to appeal the attached PPV reclaim of funding for the Covid home delivery service.

3.2 I have also attached my detailed response, but have been asked to provide a concise response, as such:

3.3 The service was supplied in good faith during the month of March within the service specification.

3.4 Partial claim for the month of March was made in April due to extenuating circumstances – the claiming pharmacist manager had been off work ill in hospital (further detail attached).

3.5 Evidence for the service was paper based at the time, and the service stated it to be kept for 2 years – we kept this for 3 years before shredding, thus no evidence remains or should be expected to be provided, and I have asked for my specific recollections, as a long standing Superintendent of a highly reputable and long standing Independent Community Pharmacy group to be used as evidence.

3.6 The workload and extraordinary factors around this post lockdown period I have also recalled in the attached previous replies to try to portray the human factor involved at this busy period.

3.7 I would be very happy to discuss any detail by telephone or video call if it helps with the understanding of the appeal."

Email of 22 July 2024 addressed to NHS BSA:

3.8 "Firstly let me clarify the position of evidence – as stated, we did have evidence (paper-based) of these CEV deliveries – the service specification said to keep for 6 months, and we kept for 2 years (as we do for Advanced services) and then shredded, so as not to keep for excessive time as per GDPR regulations.

3.9 To even ask for this evidence after 3 years, I believe is looking for an unreasonable excuse to deny payment. Please discount this misleading request.

3.10 We admit to submitting some of March 2021 claims late, as the pharmacist making the claims was in hospital (with a [redacted by NHSR). As the deliveries were made in good faith under the service in March it was our only option to claim them – what was the correct course of action for these claims, out of interest, for any future difficult situations like this?

3.11 I apologise that none of the other branch staff felt they had authority to submit this information – the pharmacist in question very much lead and ran the branch by his own actions.

3.12 As mentioned in previous emails, the March month after lockdown was an exceptionally busy period, and as a company we were centralising our delivery service to this head office branch, and changing to a website based delivery system (ProDelivery Manager) which we still use. Hence the large number of deliveries put on during March, and these that fell into April 2021.

3.13 The 187 deliveries claimed in March were counted and added in good time and the 87 submitted in April (but actually done in March) were found and added by the pharmacist [AR] after discharge from hospital. To give an idea of the physicality of 'finding' these deliveries, they were patient bag labels stuck to a NPA delivery book, and then stored.

3.14 This type of physical evidence that you have been asking for was sent for shredding over a year ago, but my memory of this time is clear, due to a number of exceptional and distressing events:

3.15 [AR] ill – initially thought to be a [redated by NHSR] by his GP, then admission to hospital, stabilised by IV antibiotics, as a [redacted by NHSR].

3.16 The bust [sic] post lockdown period will stay with me for a long time – keeping all 11 of our pharmacies open during the entire Covid period (when many pharmacies locally couldn't), serving the community with an extensive home delivery service including volunteers (note the volunteers were delivering to non-isolating/CEV patients). We did a huge number of deliveries in our area, never at any charge, and the goodwill of the community will always be remembered and make me proud.

3.17 And opening all of our pharmacies for the directed Bank Holidays of Easter and May 2021, and working these shifts myself, when the demand was unprecedented at the time, including multiple end of life prescriptions for local care homes, as Covid deaths remained high. (As an ironic note, we do find that a normal daily workload now is the same as this unprecedented level then, but we have adapted our staff and working practice in the the [sic] 3 years hence).

3.18 I give these memories partly as a picture for the reason of the slightly late submission, and partly to show that this is my evidence as the hard copy evidence has been rightly destroyed and should be discounted."

3.19 ["FER36 MDS Timeline April 21 – July 21 enclosed"].

## 4 SUMMARY OF REPRESENTATIONS

This is a summary of representations received on the appeal.

4.1 The NHS BSA on behalf of NHS England stated:

4.1.1 "Thank you for your letter of the 26th of November 2024 and the opportunity to provide representations on the appeal.

4.1.2 **Background**

4.1.3 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.

4.1.4 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'.

4.1.5 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.

4.1.6 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.

4.1.7 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."

4.1.8 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/.

4.1.9 Following the publication of each of these letters on the NHS Website the Pharmaceutical Services Negotiating Committee – 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.

4.1.10 **April 2021 to March 2022 claims**

4.1.11 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 March 2021 and therefore claims for deliveries to these patients after this date no longer qualified as valid for a MDS payment.

4.1.12 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 acquaint themselves with the details of the service before making a claim.

4.1.13 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/.

4.1.14 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.

4.1.15 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.

4.1.16 It was also raised that Manage Your Service (MYS) retained the functionality for contractors to submit claims for CEV patients. This functionality was retained to future proof the system in-case the response to the Pandemic and MDS changed again as NHSE felt it had been clearly communicated to pharmacy contractors around the change in the service. 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, however this did lead to the situation whereby in the months of April 2021 and May 2021, contractors were paid for those ineligible patient claims. Subsequently, the NHSBSA PAT were requested to recover the identified CEV claims, as there was no regulation to allow payments for those patients due to being ineligible.

4.1.17 In the Post Payment Verification (PPV) exercise undertaken by the NHSBSA PAT, FER36 – Everetts Pharmacy were contacted on 10 occasions between 22nd February 2024 and 22nd July 2024 to outline that the 87 CEV claims made between April 2021 and July 2021 were for deliveries made to ineligible patients' as the ability to claim for CEV patients under the MDS had ended in March 2021 and from that point only self-isolating patients in response to a positive Covid test were eligible for the service, as specified in the NHSE service announcements. For this case 18 self-isolating claims were also submitted in April 2021 however we did not ask for any evidence of those claims as the volume was low.

4.1.18 After confirming the correct address to use emails were sent to the pharmacy's shared NHS mail address pharmacy.fer36@nhs.net as required by NHSE, and later during our communication emails were also sent to timbaker@everettspharmacy.co.uk. All listed pharmacies must have a valid shared NHSmail account that should be regularly monitored by the pharmacy team as part of their terms of service.

4.1.19 The NHSBSA PAT engaged with Tim Baker, who the PAT were advised was the superintendent pharmacist managing Everetts Pharmacy during the PPV process. At several points of engagement Tim outlined that the CEV claims submitted in April were for deliveries actually performed in March 2021, and that these claims had been made in good faith belatedly due to pharmacist illness alongside the burden of post-lockdown workload for pharmacies.

4.1.20 Mr Baker states in the appeal that these extra 87 claims “were found and added by the pharmacist (AR) after discharge from hospital”. Mr Baker was not able to provide any evidence to demonstrate that the claims were for patients eligible for the service in March only that “they were patient bag labels stuck to a NPA delivery book, and then stored.”

4.1.21 Despite the numerous attempts made by the NHSBSA PAT, Everetts Pharmacy did not provide any evidence to demonstrate that the 87 Medicine Delivery Service deliveries claimed for by 5th May were actually for deliveries to CEV patients who they delivered to in March 2021.

4.1.22 CEV patients were eligible for deliveries under the medicine’s delivery service in March, but it was also that claims for such deliveries must be made by the 5th of the following month i.e. 5th April.

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

4.1.24 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 were eligible for the Medicine Delivery Service and that evidence was available in support of those claims.

4.1.25 As the NHSBSA PAT have been unable to validate the deliveries claimed by the pharmacy during this time, Everetts Pharmacy did not accept the proposed recovery and requested the details of the case were passed to the NHS England regional team for their Pharmacy Services Regulation Committee (PSRC) to review. 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 Scheme 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.

4.1.26 **The PSRC decision**

4.1.27 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 to you in addition to this information.

4.1.28 The engagement showed that despite repeated requests made by the NHSBSA to the contractor to provide evidence of patient eligibility for the service claims submitted, no evidence was forthcoming.

4.1.29 Consequently, the PSRC concluded that the NHSBSA had been unable to find any evidence to demonstrate that the 87 deliveries claimed for CEV patients by the contractor actually occurred in the month of March 2021 rather than April 2021 and therefore the claims made in April were incorrectly claimed as the patients were no longer eligible.

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

4.1.31 Having made this decision, the PSRC then directed that Everetts Pharmacy was not entitled to the payment the overpayment should be reclaimed pursuant

to Regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.1.32 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 July 2021 met the requirements set out in the service specification.

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

4.1.34 The service specification/Service Announcements from April 2021 state:

4.1.35 '*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.'*

4.1.36 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.*

4.1.37 We include this information to establish that all claims for the MDS from April 2021 should be for patients self-isolating with supporting test and trace referral evidence. Everetts Pharmacy did claim for self-isolating patients during the time period we are reviewing however, those claims are not a part of our assurance activity and instead it was only the 87 CEV claims made in April 2021 that we requested further explanation and evidence around.

4.1.38 In their appeal Everetts Pharmacy state: *"The service was supplied in good faith during the month of March within the service specification. Partial claim for the month of March was made in April due to extenuating circumstances – the claiming pharmacist manager had been off work ill in hospital."*

4.1.39 The PAT would highlight this key passage from the MDS service specification *10.4. In line with the Drug Tariff, claims for payments for this service must be received by the NHSBSA by the 5th day of the following month*. The PAT acknowledge that Everetts Pharmacy may have been facing difficulties at this time. However, it maintains that it is not able to accept that the 87 claims "found" were for deliveries to eligible patients without evidence that demonstrates that this was indeed the case. Throughout the investigation the contractor has failed to produce any evidence to support his argument that the claims were for eligible patients.

4.1.40 6.20.1 of the service specification states *"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."*

4.1.41 There was a substantial increase in the claim for CEV patients submitted by Everetts Pharmacy for March 2021 that should be noted.

4.1.42 This claim in itself would have been significantly against the national trend that was seeing a decrease in the claims for deliveries to MDS patients at this time. However, if the additional 87 claims were for deliveries in March 2021 instead of April 2021, as claimed, then this would have made the overall claims for March so much higher, and therefore more of an outlier. No explanation was provided by Everetts Pharmacy in response when asked why there would have been such an increase.

4.1.43 *Table 1 – November 2020 to April 2021 CEV claims paid.*

| | **November 2020** | **December 2020** | **January 2021** | **February 2021** | **March 2021** | **April 2021** |
|---|---|---|---|---|---|---|
| CEV claims submitted | 38 | 57 | 91 | 119 | 187 | 87 |

4.1.44 Everetts Pharmacy go on to state that *"Evidence for the service was paper based at the time, and the service stated it to be kept for 2 years – we kept this for 3 years before shredding, thus no evidence remains or should be expected to be provided, and I have asked for my specific recollections, as a long standing Superintendent of a highly reputable and long standing Independent Community Pharmacy group to be used as evidence."*

4.1.45 The PAT would dispute the accuracy of this statement provided by Everetts Pharmacy as they say they kept this evidence for 3 years before shredding it, our assurance activity is reviewing the 87 CEV claims made in April 2021 which Everetts Pharmacy state is from March 2021 instead. However, our engagement with the pharmacy was initiated before a three-year time period as our initial communication with the pharmacy as shown in the timeline started in February 2024.

4.1.46 The PAT would also state the point raised about the service specification stating evidence is to be kept only for two years is incorrect as that information was not actually covered in the MDS service specification. Also, this statement contradicts previous information provided by Everetts Pharmacy which is included in their appeal and can be seen from the timeline of engagement. In the email from 22nd July 2024 Everetts Pharmacy had a different interpretation of the service specification, as in that response they state: *"the service specification said to keep for 6 months, and we kept for 2 years (as we do for Advanced services) and then shredded, so as not to keep for excessive me as per GDPR regulations."*

4.1.47 The PAT appreciate that these are just inconsistencies in the statements made by the contractor, and is not objective evidence, but there was none provided by the contractor whether that be paper records of the patient eligibility, delivery dates or SOPs from the time detailing the process undertaken by the pharmacy to ensure deliveries were made to eligible patients or even for its record destruction processes.

4.1.48 6.20.1 of the service specification states *"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."*

4.1.49 The NHSBSA acknowledge that the service specification does not specify for how long contractors should keep records of the deliveries made, but this is not unique to this service.

4.1.50 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 retained for post payment verification purposes without the reference to a time scale for retention.

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

4.1.52 (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).

4.1.53 (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

4.1.54 (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.

4.1.55 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).

4.1.56 It is therefore clear that records being kept for 2 or 3 years only is not uniform and there is the precedence that evidence would be required to be retained for longer than two years.

4.1.57 It, therefore, appears incredulous that a contractor providing this service in accordance with the service requirements and knowing that a late claim has potentially been submitted which evidence would be required for PPV purposes would then destroy such records without confirming that they would not be needed for such a PPV exercise.

4.1.58 NHSE and the PAT do appreciate the pressures pharmacies can be under as Everetts Pharmacy has raised workload and extraordinary factors as a reason behind their MDS claiming however, the assurance activity is a consistent national approach where pharmacy contractors are treated equally. The assurance activity has a potential outcome of the recovery of public money which has been claimed for deliveries that the PAT has not been able to verify were to eligible patients. The MDS was set up so that public money should be restricted to the provision of delivery services to eligible patients only. The NHS has a duty to ensure that public money is spent appropriately, the assurance

activity is to ensure that. The PAT have undertaken the assurance of the MDS in a systematic and consistent approach across all of the contractors it has identified as “anomalies” in their pattern of claiming for the service. Engagement with the anomalous contractors has then been undertaken to enable them to provide evidence of delivering in line with the service specification and then claiming for that service provision for eligible patients. It is only those pharmacies that have not been able to provide evidence to verify their claims that are then followed up in accordance with Regulation 94 of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.1.59 In light of all this information NHS England maintains that Everetts Pharmacy was not compliant with the requirements set out in the service specification and their claims for deliveries to CEV patients during April 2021 were to patients who were ineligible for this advanced service at that time. Ultimately however the appeal rests on the key information that these CEV patients actually had the deliveries performed in March 2021 but were claimed in April 2021, which goes against the information in the service specification and should be recovered as they fall outside the statutory framework for payment. Alongside this point the PSRC considered that Everetts Pharmacy had not provided any evidence to demonstrate that the claims it had submitted in April 2021 were correctly following the service specification. As a result, the decision determined that the £522.00 payment for the ineligible CEV claims were over payments and should then be recovered from the contractor.

4.1.60 **Key points for consideration**

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

4.1.61.1 The NHSE service announcement was very clear that the Medicines Delivery Service was limited from April 2021 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.

4.1.61.2 Contractors were advised to retain evidence of MDS deliveries as highlighted in the service announcements for post payment verification purposes.

4.1.61.3 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.

4.1.61.4 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.

4.1.61.5 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 to the regional PSRC.

4.1.61.6 The service specification is precise in its language in that claims "must" be made by the 5th of the following month therefore even if evidence was provided there would still be a question around whether these claims were incorrect as they have been submitted late and to a volume significantly higher than previous months.

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

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

4.1.61.9 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.

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

4.1.62 Having considered these matters NHS England respectfully suggests that NHS Resolution conclude that the decision made by the PSRC in respect of the £522.00 overpayment recovery from Everetts Pharmacy was fair and in accordance with the regulations.

4.1.63 Please let me know if 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 It is clear to me that the home delivery service is dependant in terms of eligibility of patients and the geographical areas in which it applies on the contents of announcements made by NHS England. The NHS BSA has provided copies of announcements made by NHS England.

6.11 I note that the NHS BSA has indicated that the deliveries that are covered by the decision are those made in the period April to July 2021 inclusive. These were split into 18 deliveries to those who were self-isolating and 87 deliveries to those who were Clinically Extremely Vulnerable (CEV). I further note that the NHS BSA states *"Everetts Pharmacy did claim for self-isolating patients during the time period we are reviewing however, those claims are not a part of our assurance activity and instead it was only the 87 CEV claims made in April 2021 that we requested further explanation and evidence around."* I therefore limit my consideration to those payments in relation to CEV patients only.

6.12 A copy of the specification and guidance for the 'Home delivery of medicines and appliances during the COVID-19 outbreak' dated 16 March 2021 have been provided to me by the NHS BSA, who has also provided a number of NHS England announcements.

6.13 I note 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 March 2021 and therefore claims for deliveries to these patients after this date no longer qualified as valid for a MDS payment."* which has not been disputed by the Appellant.

6.14 The specifications and guidance provided state:

6.14.1 *"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."*

6.15 I note 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."*

6.16 I further 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.

6.17 The NHS BSA has provided a timeline detailing its contact with the Appellant between 27 February 2024 to 22 July 2024, in order to request evidence that the claims made between April 2021 to July 2021 were for deliveries made to eligible patients as detailed in the service specification.

6.18 I note that the service specification states:

6.18.1 *"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."*

6.19 I note in its appeal, the Appellant contends that *"Evidence for the service was paper based at the time, and the service stated it to be kept for 2 years – we kept this for 3 years before shredding, thus no evidence remains or should be expected to be provided, and I have asked for my specific recollections, as a long standing Superintendent of a highly reputable and long standing Independent Community Pharmacy group to be used as evidence. The workload and extraordinary factors around this post lockdown period I have also recalled in the attached previous replies to try to portray the human factor involved at this busy period."*

6.20 I note in response the NHS BSA states *"The PAT would dispute the accuracy of this statement provided by Everetts Pharmacy as they say they kept this evidence for 3 years before shredding it, our assurance activity is reviewing the 87 CEV claims made in April 2021 which Everetts Pharmacy state is from March 2021 instead. However, our engagement with the pharmacy was initiated before a three-year time period as our initial communication with the pharmacy as shown in the timeline started in February 2024"* and also highlights an inconsistency by referring to an email of 22 July 2024 (provided in the timeline of correspondence) in which the Appellant states *"the service specification said to keep for 6 months, and we kept for 2 years (as we do for Advanced services) and then shredded, so as not to keep for excessive me as per GDPR regulations."* The NHS BSA states that *"Contractors were advised to retain evidence of MDS deliveries as highlighted in the service announcements for post payment verification purposes".* I also note the NHS BSA refers to the requirement to keep records for the Blood Pressure Checking Service for three years and Advanced Services such as NMS for two years and considers that *"It is therefore clear that records being kept for 2 or 3 years only is not uniform and there is the precedence that evidence would be required to be retained for longer than two years."*

6.21 On the information provided to me, it is unclear where the Appellant has come to the conclusion that "*the service stated it to be kept for 2 years"* and further *"the service specification said to keep for 6 months"* as I note the service specification is silent on this point. I also note the NHS BSA has acknowledged that the service specification does not specify for how long contractors should keep records of the deliveries made and relies on the caveat that records must be retained for post payment verification. I do sympathise with the challenges faced by pharmacies in retaining records and note the Appellant's reasoning for destroying the evidence as *"as per GDPR regulations"* and the further reasoning in an embedded email dated 6 July 2024 within the timeline of correspondence *"due to a shop refit".*

6.22 The NHS BSA has also highlighted the volume of deliveries made by the Appellant compared to the national average, although it does not dispute that the deliveries were made, rather the eligibility of the claims.

6.23 I sympathise with the Appellant regarding the *"number of exceptional and distressing events"* outlined in the email of 22 November 2024 provided with its appeal. However, I am of the view that the key question for this appeal is whether the Appellant's record retention was reasonable. In the absence of any specified time period, the requirement in the specification is absolute – appropriate records must be maintained. But 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.

6.24 I consider that the Appellant was aware that other similar services had, at least, a two year retention period, due to its own statements in recognition of Advanced Services. I note that the Appellant has not provided any data management policy to evidence what its actual retention period for relevant records were or which specific provision of GDPR it is referring to. 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 short retention period without confirmation that

there will be no post payment verification, and especially in circumstances where similar services require a longer period.

6.25 I further note the NHS BSA highlights 10.4 of the service specification which states:

6.25.1 *"In line with the Drug Tariff, claims for payments for this service* ***must*** *be received by the NHSBSA by the fifth day of the following month."*

6.26 I note the Appellant states that *"The service was supplied in good faith during the month of March within the service specification. Partial claim for the month of March was made in April due to extenuating circumstances – the claiming pharmacist manager had been off work ill in hospital*" and further *"The 187 deliveries claimed in March were counted and added in good time and the 87 submitted in April (but actually done in March) were found and added by the pharmacist* [AR] *after discharge from hospital. To give an idea of the physicality of 'finding' these deliveries, they were patient bag labels stuck to a NPA delivery book, and then stored"*. In response, I note the NHS BSA states *"…claims for payments for this service must be received by the NHSBSA by the 5th day of the following month. The PAT acknowledge that Everetts Pharmacy may have been facing difficulties at this time. However, it maintains that it is not able to accept that the 87 claims "found" were for deliveries to eligible patients without evidence that demonstrates that this was indeed the case. Throughout the investigation the contractor has failed to produce any evidence to support his argument that the claims were for eligible patients"* and further that *"Despite the numerous attempts made by the NHSBSA PAT, Everetts Pharmacy did not provide any evidence to demonstrate that the 87 Medicine Delivery Service deliveries claimed for by 5th May were actually for deliveries to CEV patients who they delivered to in March 2021."* The NHS BSA then goes on to state *"However, if the additional 87 claims were for deliveries in March 2021 instead of April 2021, as claimed, then this would have made the overall claims for March so much higher, and therefore more of an outlier."* The service specification expressly requires claims for payment to be submitted by the fifth day of the following month and whilst I sympathise with the situation the Appellant has outlined, in my view there has to be a contingency plan in place for situations where the pharmacist is not available.

6.27 I note the NHS BSA's comments in relation to the Appellant's failure to provide any details regarding the process for confirming a patient's eligibility. I consider that where the records have been destroyed it is impossible to validate if any process was followed. Therefore, I do not consider that the Appellant's failure to explain its adherence to the service specification is either beneficial or detrimental to this appeal.

6.28 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 requirements of the service specification. However, as I have noted, the Appellant has not expressly stated what its retention policy was for the records and due to the evidence provided, I must consider the possibility that a 6 month or two year retention policy was in place which in the Appellant's view, was the reason why *"the hard copy evidence has been rightly destroyed".* I do not consider that this destruction was in accordance with the service specification, as, the Appellant has not set out a reasonable basis for applying this period. I also do not consider that submitting the claims on the 5th day of the second month is in accordance with the service specification.

6.29 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.

6.30 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 £522.00 in relation to claims made for CEV patients.

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**