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28 March 2025

REF: SHA/26454

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM LISTER CHEMISTS (FP275) ("THE APPELLANT")

1 **Outcome**:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £3,106.33.

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:

Lister Chemists
NHS BSA on behalf of NHS England

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

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Email: nhsr.appeals@nhs.net

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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM LISTER CHEMISTS (FP275) ("THE APPELLANT")

1 INTRODUCTION

1.1 The Appellant appealed the decision of NHS England to recover an overpayment relating to the Pharmacy Quality Scheme.

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 13 December 2024 in respect of ODS code FP275. The decision stated:

2.1 "The Pharmacy Provider Assurance Team, part of the NHS Business Services Authority (NHSBSA), have been requested by NHS England to undertake a Post Payment Verification (PPV) exercise to provide assurance that pharmacy contractors have claimed correctly for the Pharmacy Quality Scheme (PQS).

2.2 As part of the Medicines Safety and Optimisation Domain, contractors were required to carry out an anticoagulation audit and submit the audit data by 31 March 2024.

2.3 Additionally, as part of the Prevention Domain, contractors were required to declare that they had shared their anonymised antibiotic checklist data and their anonymised TARGET treating your infections review data or that they had no patients identified as suitable by 31 March 2024.

2.4 Following a review of your pharmacy's 2023/24 PQS claim for the above domains, no audit data was submitted by your pharmacy for the TARGET treating your infections leaflets/TARGET antibiotic checklist and Anticoagulant audits on the Manage Your Service (MYS) data collection tool by the end of 31 March 2024.

2.5 Exceptionally, we contacted your pharmacy by email on the 4th July 2024 and on the 29th July 2024 to highlight that NHS England had instructed the NHSBSA to re-open the data collection tool via MYS for one week only, from **09:00 on Monday 29th July 2024 to 16:00 on Monday 5th August 2024**. This was to provide contractors who had previously made a PQS declaration that audit data would be submitted by 31 March 2024 with a further opportunity to submit their **already collected data** via the MYS data collection tool. The NHSBSA has identified that your pharmacy has **not used** the additional opportunity to submit the required audit data.

2.6 As no relevant audit data has been submitted, it appears that an overpayment in relation to your PQS payment has occurred.

2.7 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.

2.8 **Having reviewed the information provided by the NHSBSA, the NHS England Pharmaceutical Services Regulations Committee has decided that an overpayment in relation to your PQS Declaration Payment 23/24 has occurred and has instructed recovery of this overpayment to be progressed in accordance with Regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.**

2.9 The below table outlines the recovery amount.

ODS code	Recovery amount (£)
FP275	£3,106.33

2.10 **Action Required**

2.11 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 12th January 2025,** where you agree an overpayment has been made the amount over paid will be recovered by deduction from a future NHSBSA payment to you.

2.12 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.

2.13 **Please be aware that failing to contact us by 12th January 2025 deadline 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:

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

2.14 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. 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."

3 **THE DISPUTE**

By email dated 10 January 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 “Thank you for your detailed response regarding the recovery of the overpayment for the Pharmacy Quality Scheme (PQS) 2023/24. I appreciate the opportunity to review the findings and provide further clarification.

3.2 I respectfully reiterate my appeal against the decision to recover the overpayment of £3,106.33.

3.3 While I understand the details provided in your correspondence and acknowledge the outlined steps and communications, I would like to again highlight the specific extenuating circumstances that led to the data submission not being completed within the required timelines:

3.3.1 Our pharmacy team has worked hard to gather all required data (this has been previously evidenced) and input this on to MYS. I physically witnessed my dispenser do this and we both worked together to ensure this was submitted before the deadline. Due to what must be a technical issue this data that we inputted was not processed, which came as a huge surprise to us.

3.3.2 The pharmacy sector continues to face unprecedented challenges, including increased workload and resource limitations. Despite these challenges, my team and I remained committed to meeting all PQS requirements and obligations to the best of our ability. It would be incredibly disheartening if our team's efforts are not recognised and we are penalised. Of course, going forward, we will ensure this doesn't happen again.

3.4 In light of the above, I kindly request that my appeal be given full consideration and that the recovery of the overpayment be withdrawn pending a thorough review. I am more than willing to provide any additional supporting evidence or discuss the matter further if required.

3.5 I sincerely hope that NHS England and NHSBSA can take into account the exceptional circumstances surrounding this situation and the genuine efforts made by my team to comply with PQS requirements.

3.6 Thank you for your time and understanding. I look forward to your response.”

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 dated the 10th January 2025 and the opportunity to provide representations on the appeal.

4.1.2 **Background**

4.1.3 The Pharmacy Quality Scheme (PQS) forms part of the Community Pharmacy Contractual Framework (CPCF). The full details and requirements of the scheme are outlined in Part VIIA Pharmacy Quality Scheme (England) of the Drug Tariff. It supports delivery of the NHS Long Term Plan and rewards community pharmacy contractors that deliver quality criteria in three quality domains: clinical effectiveness, patient safety and patient experience.

4.1.4 Participation in the scheme was optional, and contractors could choose whether to participate in the whole scheme or in only one or two of the quality domains. The contractors were then rewarded for completion of each of the dimensions that they fully completed. All of the requirements in each domain had to be met to be eligible for the payment attached for that domain.

4.1.5 Contractors participating in the PQS 2023/24 were required to declare their performance against three quality domains on a day of their choosing during the declaration window; to be completed via the NHSBSA Manage Your Service (MYS) Portal. The declaration window was open between 09.00 on 5th February 2024 and 23.59 on 1st March 2024. Contractors had until the end of 31st March 2024 to complete some elements of the PQS. Where this was the case, they were asked to declare that the requirements of the criterion will be met by the end of 31st March 2024.

4.1.6 The three below quality domains were required to be completed by contractors:

4.1.6.1 Medicines and Safety Optimisation

4.1.6.2 Respiratory

4.1.6.3 Prevention

4.1.7 The Medicines and Safety Optimisation domain and the Prevention domain required contractors to submit audits by 31st March 2024. On the day of declaration, pharmacy contractors should have confirmed that they will have submitted audit data for the Medicines and Safety Optimisation, specifically the Anticoagulant Audit and Prevention domains which include the Target Antibiotic Checklist and Target Treating Your Infection leaflets by this date.

4.1.8 For the PQS 2023/24, contractors were required to confirm in their declaration that they will have the evidence that they have met the gateway criterion and quality criteria that they were claiming for by the end of 31st March 2024. The evidence of meeting the requirements of the gateway criterion and each domain should be retained for two years as it may be required for post-payment verification purposes.

4.1.9 **Target Antibiotic checklist**

4.1.10 By the end of 31st March 2024, contractors should have implemented, into their day-to-day practice, the recommendations for community pharmacy from the first TARGET antibiotic checklist review from the PQS 23/24 found in the Findings from the antimicrobial stewardship initiatives report. Contractors should have reviewed their current practice using the TARGET antibiotic checklist, in order that they provide tailored advice to patients and promote antibiotic awareness and stewardship.

4.1.11 This review should have been completed by the end of 31st March 2024 and carried out over four weeks with a minimum of 25 patients; or up to eight weeks if the minimum number of patients are not achieved within four weeks. Contractors should have a record of the start and end date of the review as they were required to enter this information into the MYS application when they made their declaration. Data received from MYS indicated that some contractors started the submission but did not complete it.

4.1.12 In the extremely unlikely event that a contractor was unable to complete the antibiotic review due to not having identified any eligible patients during the audit period, the contractor would still have been eligible for payment if they could evidence that they had robustly attempted to identify suitable patients. They would have needed to declare that no patients have been identified as being suitable for review on the data collection tool on MYS by the end of 31st March 2024.

4.1.13 When making a declaration for this criterion, contractors must have confirmed the following on the MYS application:

4.1.13.1 A declaration that by the end of 31st March 2024 the contractor will have completed the TARGET Antibiotic Checklist review.

4.1.13.2 The start and end date of the review period.

4.1.13.3 A declaration that the contractor will have notified the patient's prescriber where concerns are identified.

4.1.13.4 A declaration that by the end of 31st March 2024, the contractor will have shared their anonymised data or have declared that no patients have been identified as being suitable for review via the data collection tool on the NHSBSA MYS application.

4.1.14 **Target Treating your infection leaflet**

4.1.15 Contractors should have reviewed the recommendations of the 2023/24 TARGET Treating Your Infection leaflet data collection report, which will be published alongside new data collection sheets by 1st September 2023 by NHS England prior to completing the 2023/24 review.

4.1.16 This review must have been completed by the end of 31st March 2024 and must be carried out over four weeks with a minimum of 15 patients for each leaflet, or up to eight weeks if the minimum number of patients are not achieved within four weeks for each leaflet. The data from the leaflets must have been submitted via the MYS data collection tool by the end of 31st March 2024. The contractor must have entered the start and finish dates of the data collection period on the MYS application at the point of declaration (which may be different from the date data is first entered on the MYS portal).

4.1.17 Where no patients were identified for the review, the contractor would still be eligible for payment if they can evidence that they have robustly attempted to identify suitable patients. This might be demonstrated through action plans, training or SOPs. They would have need to declare no patients have been identified as being suitable for review on the data collection tool on MYS by the end of 31st March 2024. Information from the NHSBSA dispensing data will be checked to confirm this declaration.

4.1.18 When making a declaration for this criterion, contractors must have confirmed the following on the MYS application:

4.1.18.1 A declaration that by the end of 31st March 2024 the contractor will have completed the TARGET treating your infections leaflets review.

4.1.18.2 The start and end date of the review period.

4.1.18.3A declaration that where concerns are identified when completing the review, the patient's GP practice will be promptly notified.

4.1.18.4A declaration that by the end of 31st March 2024, the contractor will have shared their anonymised data or have declared that no patients have been identified as being suitable for review via the data collection tool on the NHSBSA MYS application.

4.1.19 **Anticoagulant Audit**

4.1.20 By the end of 31st March 2024, contractors must have implemented into their day-to day practice, the findings and recommendations for community pharmacy from the 2023/24 PQS anticoagulant audit found in the Community pharmacy oral anticoagulant safety audit 2023/24 report.

4.1.21 The pharmacy must also have completed the revised audit, including notifying the patient's GP where concerns are identified, sharing their anonymised data with NHS England, and incorporating any learning from the audit into future practice by the 31st March 2024.

4.1.22 The audit must have been carried out over two weeks with a minimum of 15 patients or four weeks if 15 patients are not achieved within two weeks, and there must be a follow up of any patient that is referred to their prescriber to identify what actions were taken. Contractors should have made a record of the start and end date of the audit as they were required to enter this information into the MYS application when they make their declaration. Contractors must have completed the anticoagulant audit by the end of 31st March 2024.

4.1.23 When making a declaration for this criterion, the following information must have been reported on the MYS application:

4.1.23.1A declaration that by the end of 31st March 2024 the contractor will have completed the anticoagulant audit.

4.1.23.2The start and end date of the audit period (which may be different from the date data are first entered on the MYS data collection tool).

4.1.23.3A declaration that where concerns are identified when completing the audit, that the patient's GP was/will be promptly notified.

4.1.23.4A declaration that by the end of 31st March 2024 the contractors will have shared their anonymised data or have declared that no patients have been identified as being suitable for audit via the data collection tool on the MYS application.

4.1.24 To support contractors to successfully complete the PQS NHS England published guidance in June 2023. This guidance made it clear to contractors the necessity of reporting the audit data for the Medicines safety an optimisation domain on page 10, and the data for the Prevention audits on page 25.

4.1.25 **Re-opening of the Audit Data Collection Tool**

4.1.26 Following the completion of the 2023/24 PQS it had been identified that over 15% of the pharmacies that had claimed for the audit criteria had done so

without submitting their audit data. This would then have meant that the claims for these pharmacies for the audit criteria would not have met the service specification outlined in Part VIIA of the Drug Tariff.

4.1.27 NHS England were aware that the number of pharmacies who had failed to submit audit data was far higher than in previous years. Representations had been made to NHS England suggesting that this was, at least in part, due to the added pressures contractors were under in February and March to deliver the Pharmacy First Service, a new service introduced on 31st January 2024.

4.1.28 As a result, NHS England agreed with Department Health and Social Care (DHSC) and Community Pharmacy England (CPE) to re-open the audit data submission window for one week and give the contractors who failed to submit their audit data one extra opportunity to meet this requirement of the PQS.

4.1.29 NHS England instructed the NHSBSA to reopen the data collection tool via MYS for one week only, from 09:00 on Monday 29th July 2024 to 16:00 on Monday 5th August 2024. This was to provide contractors who had previously declared that they would submit their audit data by 31st March 2024, with an exceptional, final additional opportunity to submit their already collected data through the MYS data collection tool.

4.1.30 The Provider Assurance Team (PAT) sent emails to contractors on 4th July 2024, and again on 29th July 2024, to those contractors identified as not having submitted their audit data. The decision to reopen the MYS audit data tool was made to allow these contractors a second opportunity to submit their already collected data. Lister Chemists (FP275) received both these emails, as evidenced in the timeline.

4.1.31 These emails had been agreed between DHSC, NHSE and CPE. The emails were explicit that this was the final chance for contractors, who had not submitted audit data before 31 March 2024 to do so, and if they failed to take this extra opportunity their PQS payments for the relevant domain would be recovered:

4.1.32 **"If the NHSBSA does not receive the required audit data between 09:00 on Monday 29th July 2024 to 16:00 on Monday 5th August 2024 via the MYS data collection tool, contractors will have their PQS payment for the domain in question recovered by the NHSBSA Provider Assurance Team."**

4.1.33 **Post Payment Verification**

4.1.34 The Pharmacy Provider Assurance Team (PAT), part of the NHS Business Services Authority, had been requested by NHS England to undertake a Post Payment Verification (PPV) exercise to provide assurance that pharmacy contractors have claimed correctly for the Pharmacy Quality Scheme, specifically the three audits laid out above.

4.1.35 Once the deadline of 31st March 2024 for submitting all audit data claims had passed, the PAT identified contractors who had claimed for PQS but had not submitted the required audit data on MYS. As outlined in the section above these results were shared with NHS England, DHSC and CPE and a decision was made to reopen the data submission window and give contractors a final opportunity to submit their data audit data.

4.1.36 To ensure all affected contractors were aware of the reopening of the submission window emails were sent to these contractors on 4th July 2024 and 29th July 2024 informing them that NHSBSA records show they had failed to submit the necessary audit data, and to allow these contractors to submit their already collected data, the MYS data collection tool would be reopened from 09:00 on 29th July 2024, to 16:00 on 5th August 2024.

4.1.37 As part of the PPV activity, after the submission window had closed, emails were then sent to all contractors who had not utilised the additional opportunity to submit the necessary audit data. This email outlined that NHSBSA records indicated that these contractors had still not submitted the required audit data on MYS despite a second opportunity to do so. The NHSBSA do not believe that a data submission can be made without it leaving a digital record that the MYS system would have retained. However, to give the contractor every opportunity to provide evidence of meeting the data submission requirements, these emails offered the contractors a chance to either provide evidence of their audit data submission in the form of an email confirmation or to agree to the recovery of their PQS payment.

4.1.38 Where a contractor did not agree to the outlined recovery, they were referred to the Pharmaceutical Services Regulations Committee (PSRC) for review. Contractors who did not respond to any of the PAT's requests via email or telephone were also escalated to the PSRC for review.

4.1.39 Lister Chemists (FP275) were contacted via email to the premises specific shared NHSmail account (pharmacy.fq275@nhs.net) on the 17th September 2024 to request evidence that the required audit data was submitted, with a deadline date to respond with the required evidence of submission by the 1st October 2024. The PAT received no response from the contractor by the 1st October 2024. On the 3rd October 2024, Lister Chemists (FP275) were contacted via email again, explaining the need for the PPV process, and included the email sent on the 17th September 2024. The email sent on the 3rd October 2024 had a deadline to respond with any evidence of submission of the audit data by the 16th October 2024.

4.1.40 NHS England have directed the PAT to use premises specific shared NHSmail address for all communication to contractors as there is a regulatory requirement for contractors to ensure they regularly check their mailbox (The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 Schedule 4 paragraph 29C). NHS England guidance reminds staff of the need to regularly check the premises specific NHSmail account and respond accordingly to emails that have been received.

4.1.41 A telephone call was made to Lister Chemists (FP275) on 18th October 2024 to advise that the PAT had sent emails to the pharmacy's premises specific shared email address and the final email sent, dated 3rd October 2024, required a response by 16th October 2024. The contractor advised that they did not have access to the shared email pharmacy.fp275@nhs.net and requested we forward the email to listerschemist.rugby@nhs.net and amitsingh.gill@nhs.net. The follow up email from 3rd October 2024 was re-sent to pharmacy.fp275@nhs.net, listerschemist.rugby@nhs.net and amitsingh.gill@nhs.net which was received and read whilst on a telephone call with the contractor. The contractor confirmed they would look into the email over the weekend and were advised that as the deadline for response on Wednesday 16th October 2024 had now passed, a response was required.

4.1.42 An email was received from Lister Chemists (FP275) using the email address listerschemist.rugby@nhs.net on 21st October 2024 who apologised for not replying to our previous emails sent to pharmacy.fp275@nhs.net. They confirmed that their pharmacy conducted the Medicines Safety and Optimisation Domain of PQS within the required time frame. Their pharmacy as part of the Prevention Domain, also claimed they shared the anonymised antibiotic checklist data and their anonymised TARGET treating your infections review data. They believe this data was submitted on MYS. They were extremely sorry for not using the additional time frame to submit the data on MYS, and requested we please let them know what further details we require. They confirmed their pharmacy have collected all required paper evidence for the submissions to be made.

4.1.43 An email was sent to Lister Chemists (FP275) on 22nd October 2024 stating we appreciate that they had completed the work in the pharmacy, however the audit evidence needed to be submitted on the MYS data collection tool as outlined in the Drug Tariff Part VIIA. As no evidence was submitted on MYS, we asked the pharmacy to confirm that they agree to the recovery of the overpayment of £3,103.33 [sic]. They were informed if they disagreed with the recovery of an overpayment, then their case will be referred to the Pharmaceutical Services Regulations Committee (PSRC) for them to decide on whether an overpayment should be reclaimed pursuant to Regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.1.44 A further email was sent to Lister Chemists (FP275) on 30th October 2024 advising that following a review of the pharmacy's 2023/24 PQS claim, there was no evidence that the audit data was submitted by their pharmacy for the TARGET treating your infections leaflets, TARGET antibiotic checklist or the Anticoagulant audit on the Manage Your Service (MYS) data collection tool by the end of 31st March 2024 as required for PQS or by 5th August 2024 for the final opportunity to submit. Attached was a timeline of correspondence with the pharmacy. The case was due to be referred to the NHS England local Pharmaceutical Services Regulatory Committee (PSRC) for review. A response was required no later than Wednesday 13th November 2024

4.1.45 A telephone call was made to Lister Chemists (FP275) on 11th November 2024 where they were advised of the email sent on the 30th October 2024. The contractor confirmed they had received the email and had intended to respond that night; however, they did have a few questions regarding what evidence could be supplied. We advised the submission window had now closed on MYS, and we are unable to accept any further submissions. We advised the contractor of the deadline for response on Wednesday 13th November 2024.

4.1.46 We received several emails from Lister Chemists (FP275) on 13th November 2024 where they supplied paper evidence and asked that this was accepted as proof they had completed all of the required audits. They stated they feel it is unfair to recover £3,106.33 when their team took the necessary steps to fulfil the PQS requirements, and all data was collected in the pharmacy. The NHSBSA were unable to accept paper evidence as the Drug Tariff Part VIIA clearly states contractors must submit their evidence on the MYS data collection tool.

4.1.47 The contractor stated that they were unaware of the additional reminders that this data had not been submitted on MYS due to a lack of access to the email address pharmacy.fp275@nhs.net. It was only when a call was made that they

realised the NHSBSA had not received the evidence via MYS. Given these circumstances, they respectfully requested that NHSBSA reconsider any overpayment recovery, as they believe their pharmacy has met the PQS requirements.

4.1.48 Due to no agreement to the recoveries, an email was sent to Lister Chemists (FP275) on 14th November 2024 advising the pharmacy their case was due to be sent to PSRC. A call was made on the 15th November 2024 to confirm the email had been received. The contractor advised they would look into this and respond by Thursday 21st November 2024.

4.1.49 A telephone call was received at 13:13 on 15th November 2024 from Lister Chemists (FP275) where the contractor advised they do not agree with the recovery. The NHSBSA requested they confirm they do not agree with the recovery in writing. An email received at 13:59 on 15th November 2024 from Lister Chemists (FP275) confirmed in writing they wished to appeal the overpayment.

4.1.50 Lister Chemists (FP275) failed to respond to any of the PAT's initial requests to show evidence of their submitted audit data and do not agree to the recovery of the overpayment. They would like to highlight that any failure to submit data on time was not due to negligence but rather due to technical challenges faced with the system and lack of timely communication access. The details of the case were passed to the NHS England Regional Team for their PSRC to review. A decision was sought as to whether an overpayment had occurred.

4.1.51 **Pharmaceutical Services Regulation Committee (PSRC) Decision**

4.1.52 The case of Lister Chemists (FP275) was escalated to PSRC for review on the 6th December 2024 as no evidence to demonstrate the required audit data was submitted had been received. The contractor had stated in writing that they had submitted the data however they could not provide evidence of this and did not agree to a recovery. A timeline of correspondence showing all contact the PAT had with the pharmacy was also provided to the PSRC for review. This included where the contractor had initially verbally requested the escalation to PSRC. Written confirmation from the contractor to escalate was requested by the PAT with a deadline to respond of the 15th November 2024. This was received via email on the 15th November 2024.

4.1.53 This timeline has been provided to you in addition to this representation.

4.1.54 This timeline clearly illustrates that Lister Chemists (FP275) did not provide any evidence to demonstrate they had submitted the required audit data within the required dates or agreed for a recovery of the overpayment made regarding PQS. This was despite repeated requests made by the PAT to the contractor to provide such evidence or agree to the recovery.

4.1.55 PSRC concluded that as no evidence was submitted to demonstrate that Lister Chemists (FP275) had submitted the audit data as required for PQS, either originally or in the extra opportunity it had been given, the pharmacy was not entitled to the payment and the overpayment should be reclaimed pursuant to Regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.1.56 In making this decision, the PSRC relied on the information that was provided by the PAT and the repeated requests to the contractor for evidence of the audit data submission.

4.1.57 **In Response to the contractor's appeal**

4.1.58 The appellant states:

4.1.59 **"***Our pharmacy team has worked hard to gather all required data (this has been previously evidenced) and input this on to MYS.*

4.1.60 *I physically witnessed my dispenser do this and we both worked together to ensure this was submitted before the deadline. Due to what must be a technical issue this data that we inputted was not processed, which came as a huge surprise to us.".*

4.1.61 As per the Drug Tariff Part VIIA – PQS 2023/24 contractors are required to carry out an Anticoagulation audit and submit the audit data by 31st March 2024. Additionally, as part of the Prevention Domain, contractors were required to declare that they had shared their anonymised antibiotic checklist data and their anonymised TARGET treating your infections review data or that they had no patients identified as suitable by 31 March 2024**.** Lister Chemists (FP275) did not submit any audit data by the 31st of March 2024.

4.1.62 The NHSBSA has no record of Lister Pharmacy (FP275) submitting the audit data for either the Anticoagulant audit, anonymised antibiotic checklist data and their anonymised TARGET treating your infections review data or that they had no patients identified as suitable by 31st March 2024. Despite the numerous attempts requesting Lister Pharmacy (FP275) for any evidence of data submission the appellant has not provided any evidence of audit data submission either.

4.1.63 Lister Chemists (FP275) were contacted by the PAT on the 4th July 2024, to inform them that the pharmacy had missing the original opportunity to submit their audit data regarding their PQS declaration, and to give the pharmacy a further opportunity to submit their already collected data via the MYS collection tool. This window of opportunity ran from 9:00 on Monday the 29th July 2024 to 16:00 on Monday the 5th August 2024. A delivery complete notification which pertains to this email was received by the PAT on the 4th of July 2024.

4.1.64 Again, a reminder email of the opportunity to submit the missing data was emailed to Lister Chemists (FP275) on the 29th of July 2024 A delivery complete notification which pertains to this email was received by the PAT on the 29th of July. Lister Chemists Lister Chemists (FP275) did not submit any audit data by Monday the 5th of August 2024.

4.1.65 The PAT are unable to confirm or deny that the pharmacy were able to access their shared NHSmail account. However, it would re-iterate that it has been agreed with NHSE that all correspondence relating to contractor Post Payment Verification should be sent to the premises shared NHSmail address, as it is a regularity requirement that this email address is checked regularly and to respond accordingly to emails that have been received.

4.1.66 The PAT would therefore respectively submit that if the contractor is stating that they did not see the emails that were sent by the PAT to inform them of the additional opportunity to submit data then the fault for this lies with the

contractor and not with the process of dissemination this information. It should be noted that the appellant is not suggesting that their inability to access the follow up emails sent by the NHSBA on the 4th and 29th of July is relevant to their appeal.

4.1.67 Emails received from Lister Chemists (FP275) requesting to submit the data after the deadlines had passed were first received by the PAT on the 18th of October 2024, the appellant confirms this date in their grounds to appeal. The PAT team informed the contractor that the data collection tool on MYS is now closed, and accepting their audit data after the 5th August 2024 was not possible.

4.1.68 The PAT does not dispute that the appellant has data that it claims meet the scheme requirements, however it should be noted that this data has not been submitted on the MYS data collection tool, and so cannot confirm that this is the case.

4.1.69 If Lister Chemists (FP275) had submitted the required evidence on the MYS data collection tool by the 31st March 2024 or the 5th August 2024, The MYS system would have automatically sent a confirmation email that would have been sent to the shared NHSmail premises account of the pharmacy.

4.1.70 Having undertaken the audit is only part of the requirements for meeting the audit criteria requirements of the PQS. To meet the requirements of the scheme it is also essential that contractors submitted their audit data as outlined in the service specification.

4.1.71 The PAT acknowledges the statement from the appellant that he witnessed the actions of the dispenser in trying to submit the audit data however there is no record of any data submission from this pharmacy for audits for this PQS held by MYS. This is despite the fact that MYS does have a record of the pharmacy making their separate PQS declaration to say that it has met the requirements of the scheme that is necessary for claiming payment. It is unclear from the appeal what technical problems the pharmacy was having for their data submission, but it would not appear to be with the MYS system as evidenced by their successful PQS Declaration submission. The information held by PAT confirms the pharmacy started the data recording of the audit data on the MYS data collection tool, however the finalised data was never submitted on the MYS data collection tool in accordance with the Drug Tariff Part VIIA.

4.1.72 The appellant also states:

4.1.73 *“The pharmacy sector continues to face unprecedented challenges, including increased workload and resource limitations. Despite these challenges, my team and I remained committed to meeting all PQS requirements and obligations to the best of our ability. It would be incredibly disheartening if our team's efforts are not recognised, and we are penalised. Of course, going forward, we will ensure this doesn't happen again”.*

4.1.74 The PAT appreciate that the completion of all the requirements for the PQS may have been more challenging for the appellant due to increased workload. However, the PAT, NHSE England [sic] and the ICB has a duty to ensure that payments claimed for the service are in accordance with the service specification. In this case, unfortunately this was not the case and as a result the ICB made the decision that the claims made for the audit criteria did not meet the service specification and so had to be recovered.

4.1.75 **Key points for consideration**

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

4.1.77 The Pharmacy Quality Scheme service specification outlined in Drug Tariff Part VIIA and the published guidance is very clear that only those contractors that submitted the required audit data by the 31st March 2024 were eligible for a PQS payment for those domains.

4.1.78 To support contractors to meet the scheme requirements for the audit criteria NHS England, DHSC and CPE agreed an additional window as an exceptional, final opportunity for contractors to submit their audit data.

4.1.79 The NHSBSA sent multiple emails informing contractors of the reopening of the MYS data collection tool. The contractor therefore had another opportunity to submit the missing audit data as evidence. NHS England have directed the PAT to use premises specific shared NHSmail address for all communication to contractors as there is a regulatory requirement for contractors to ensure they regularly check their mailbox (The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 Schedule 4 paragraph 29C). NHS England guidance reminds staff of the need to regularly check the premises specific NHSmail account and respond accordingly to emails that have been received.

4.1.80 The NHSBSA records for this contractor show they started the data recording of the audit data on the MYS data collection tool, however the finalised data was never submitted on the MYS data collection tool in accordance with the Drug Tariff Part VIIA by the 31st March 2024 or by the 5th August 2024 when the data collection tool was reopened. However, the contractor had successfully used the MYS system to submit their PQS declaration

4.1.81 Emails were sent to the contractor to provide evidence to demonstrate that they had submitted the required audit data. Only those contractors who did not submit any audit data for either Anticoagulant audit, Target treating your infections leaflet and Target antibiotic checklist, or fail to engage with the process were referred to the regional PSRC.

4.1.82 The PSRC were presented with a timeline of correspondence, showing all contact between the Provider Assurance Team and the pharmacy.

4.1.83 The PSRC fully considered all information they had been presented with when making its determination for the overpayment under regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.1.84 Irrespective of the contractors' personal circumstances noted within the appeal from Lister Chemists (FP275), it does not include any evidence that the audit data was submitted on MYS.

4.1.85 The Appellant has not provided any additional evidence to indicate that the PSRC's decision stating that the contractor failed to submit the necessary audit data for PQS as outlined in the Drug Tariff Part VIIA was incorrect. Since the PSRC determined that the audit data was not submitted, it logically follows that their decision regarding an overpayment is also consistent with the Drug Tariff Part VIIA.

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

4.1.87 Having considered these matters, NHS England respectfully suggests that NHS Resolution conclude that the decision made by the PSRC, in respect of the £3,106.33 overpayment recovery from Lister Chemists (FP275), was fair and in accordance with regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013."

4.1.88 [The NHS BSA provided a copy of the Pharmacy Quality Scheme Guidance 2023/24 and the timeline referred to above.]

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 The Appellant seeks to appeal against the decision of NHS England that an overpayment has occurred and to recover the sum of £3,106.33.

6.8 The NHS BSA has provided a copy of the Pharmacy Quality Scheme Guidance 2023/24 and the contents and application of this have not been disputed by the Appellant. I note the references to the Drug Tariff in the guidance and the NHS BSA's comments on this appeal. I have reviewed the March 2024 version of the Drug Tariff and I am satisfied that it contains the same requirements and dates as the guidance.

6.9 I note the Pharmacy Quality Scheme (PQS) forms part of the Community Pharmacy Contractual Framework (CPCF).

6.10 The NHS BSA explains that *"Participation in the scheme was optional, and contractors could choose whether to participate in the whole scheme or in only one or two of the quality domains. The contractors were then rewarded for completion of each of the dimensions that they fully completed. All of the requirements in each domain had to be met to be eligible for the payment attached for that domain.*

6.11 *Contractors participating in the PQS 2023/24 were required to declare their performance against three quality domains on a day of their choosing during the declaration window; to be completed via the NHSBSA Manage Your Service (MYS) Portal. The declaration window was open between 09.00 on 5th February 2024 and 23.59 on 1st March 2024. Contractors had until the end of 31st March 2024 to complete some elements of the PQS. Where this was the case, they were asked to declare that the requirements of the criterion will be met by the end of 31st March 2024*.

6.12 *The three below quality domains were required to be completed by contractors:*

6.12.1 *Medicines and Safety Optimisation*

6.12.2 *Respiratory*

6.12.3 *Prevention"*

6.13 There is no dispute between the parties that the Appellant signed up to partake in the PQS.

6.14 The NHS BSA went on to state that "*following completion of the 2023/24 PQS it had been identified that over 15% of the pharmacies that had claimed for the audit criteria had done so without submitting their audit data. This would then have meant that the claims for these pharmacies for the audit criteria would not have met the service specification outlined in Part VIIA of the Drug Tariff.*

6.15 *NHS England were aware that the number of pharmacies who had failed to submit audit data was far higher than in previous years. Representations had been made to NHS England suggesting that this was, at least in part, due to the added pressures contractors were under in February and March to deliver the Pharmacy First Service, a new service introduced on 31st January 2024.*

6.16 *As a result, NHS England agreed with Department Health and Social Care (DHSC) and Community Pharmacy England (CPE) to re-open the audit data submission window for one week and give the contractors who failed to submit their audit data one extra opportunity to meet this requirement of the PQS.*

6.17 *NHS England instructed the NHSBSA to reopen the data collection tool via MYS for one week only, from 09:00 on Monday 29th July 2024 to 16:00 on Monday 5th August 2024. This was to provide contractors who had previously declared that they would submit their audit data by 31st March 2024, with an exceptional, final additional opportunity to submit their already collected data through the MYS data collection tool.*

6.18 *The Provider Assurance Team (PAT) sent emails to contractors on 4th July 2024, and again on 29th July 2024, to those contractors identified as not having submitted their audit data. The decision to reopen the MYS audit data tool was made to allow these contractors a second opportunity to submit their already collected data. Westbury Pharmacy (FQP28) received both these emails, as evidenced in the timeline."*

6.19 I have been provided with copy emails and reminders that were sent to the Appellant as well as confirmation of the email address that was used and that delivery receipts had been provided. I note in comments from the NHS BSA, the Appellant claimed it was unaware of the reminder emails due to lack of access to the shared mailbox pharmacy.fp275@nhs.net. I take this to mean that it did not access the relevant mailbox for whatever reason; not that the initial emails or reminders were not sent or received into the premises specific mailbox as set out in the Regulations.

6.20 I note that the NHS BSA had been requested to undertake a Post Payment Verification (PPV) exercise to provide assurance that pharmacy contractors have claimed correctly for the PQS, specifically the three audits laid out above.

6.21 The NHS BSA states that "*As part of the PPV activity, after the submission window had closed, emails were then sent to all contractors who had not utilised the additional opportunity to submit the necessary audit data. This email outlined that NHSBSA records indicated that these contractors had still not submitted the required audit data on MYS despite a second opportunity to do so. The NHSBSA do not believe that a data submission can be made without it leaving a digital record that the MYS system would have retained. However, to give the contractor every opportunity to provide evidence of meeting the data submission requirements, these emails offered the contractors a chance to either provide evidence of their audit data submission in the form of an email confirmation or to agree to the recovery of their PQS payment.*

6.22 *Lister Chemists (FP275) were contacted via email to the premises specific shared NHSmail account (pharmacy.fp275@nhs.net) on the 17th September 2024 to request evidence that the required audit data was submitted, with a deadline date to respond with said evidence of submission by the 1st October 2024. The PAT received no response from the contractor by the 1st October 2024. On the 3rd October 2024, Lister Chemists (FP275) were contacted via email again, explaining the need for the PPV process, and included the email sent on the 17th September 2024. The email sent on the 3rd October 2024 had a deadline to respond with any evidence of submission of the audit data by the 16th October 2024."*

6.23 I note the decision letter states that *"Following a review of your pharmacy's 2023/24 PQS claim for the above domains, no audit data was submitted by your pharmacy for the TARGET treating your infections leaflets/TARGET antibiotic checklist and Anticoagulant audits on the Manage Your Service (MYS) data collection tool by the end of 31 March 2024.*

6.24 *Exceptionally, we contacted your pharmacy by email on the 4th July 2024 and on the 29th July 2024 to highlight that NHS England had instructed the NHSBSA to re-open the data collection tool via MYS for one week only, from 09:00 on Monday 29th July 2024 to 16:00 on Monday 5th August 2024. This was to provide contractors who had previously made a PQS declaration that audit data would be submitted by 31 March*

2024 with a further opportunity to submit their already collected data via the MYS data collection tool. The NHSBSA has identified that your pharmacy has not used the additional opportunity to submit the required audit data.

6.25 *As no relevant audit data has been submitted, it appears that an overpayment in relation to your PQS payment has occurred."*

6.26 I note there is no dispute from the Appellant that the deadline to provide evidence to demonstrate meeting the quality criteria they have claimed for, as set out in the guidance and Drug Tariff, was the 31 March 2024, and further that the portal was reopened from 29 July to 5 August 2024, to allow contractors a further opportunity to submit the relevant evidence.

6.27 The Appellant states that its pharmacy team worked hard to gather all required data and input this on to MYS. The Appellant states "*I physically witnessed my dispenser do this and we both worked together to ensure this was submitted before the deadline. Due to what must be a technical issue this data that we inputted was not processed, which came as a huge surprise to us*." I note the NHS BSA's response that if "*Lister Chemists (FP275) had submitted the required evidence on the MYS data collection tool by the 31st March 2024 or the 5th August 2024, The MYS system would have automatically sent a confirmation email that would have been sent to the shared NHSmail premises account of the pharmacy."*

6.28 Further the NHS BSA states that "*there is no record of any data submission from this pharmacy for audits for this PQS held by MYS. This is despite the fact that MYS does have a record of the pharmacy making their separate PQS declaration to say that it has met the requirements of the scheme that is necessary for claiming payment. It is unclear from the appeal what technical problems the pharmacy was having for their data submission, but it would not appear to be with the MYS system as evidenced by their successful PQS Declaration submission. The information held by PAT confirms the pharmacy started the data recording of the audit data on the MYS data collection tool, however the finalised data was never submitted on the MYS data collection tool in accordance with the Drug Tariff Part VIIA*."

6.29 I note the Appellant has not provided any evidence to show there were any technical issues affecting the MYS portal at the time of its purported submission.

6.30 I note the portal for submissions also reopened following NHS England's recognition that a number of pharmacies had not provided the data by the initial deadline of 31 March 2024. The Appellant was contacted by the NHS BSA using its premises specific NHSmail account as detailed above.

6.31 I note that under Schedule 4, Part 4, Paragraph 29C "Contact via NHSmail, pharmacy profiles and the Central Alerting System" states:

***29C**.—(1) An NHS pharmacist (P) must ensure that pharmacy staff at pharmacy premises (including locums) have access to, and are able to send and receive NHSmail from, a premises specific NHSmail account.*

(2) P must ensure that at least two members of the pharmacy staff have live, linked NHSmail accounts to the premises specific NHSmail account (unless fewer than two members of the pharmacy staff are engaged in the provision of NHS services).

6.32 Given the requirements in paragraph 29C, it is clear that the Appellant has a responsibility to ensure that its premises specific NHS mailbox is accessible and monitored by more than one member of staff. Had this been the case, the

aforementioned correspondence from the NHS BSA may have been identified and actioned at the relevant time.

6.33 The Appellant has not, at the time of the NHS BSA's original request, provided any evidence to support the claim for payment nor has it done since, including during this appeal. Whilst I am sympathetic to resourcing issues the pharmacy sector is facing, I note that sign-up to the PQS is optional and further that the guidance is clear in that to qualify for payment, data needs to be submitted on the MYS portal.

6.34 I am of the view that the Appellant did not meet the initial deadline of 31 March 2024, or the second deadline window of 29 July to 5 August 2024, to submit its data on the MYS portal, and as such, it did not fulfil the requirements to qualify for payment.

6.35 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 £3,106.33.

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