NHS Resolution

23 April 2025

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REF: SHA/26367

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM WAREMOSS LTD (KAMSONS PHARMACY) (FAG93) ("THE APPELLANT")

1 **Outcome**:

1.1 I substitute the decision of NHS England to recover the overpayment of £1,456.00, with the decision to recover an overpayment of £3,780.00.

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

A copy of this decision is being sent to:

Waremoss Ltd
NHS BSA on behalf of NHS England

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

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

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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM WAREMOSS LTD (KAMSONS PHARMACY) (FAG93) ("THE APPELLANT")

1 INTRODUCTION

1.1 The Appellant appealed the decision of NHS England to recover an overpayment relating to the New Medicine Service as part of 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 18 October 2024 in respect of Kamsons Pharmacy (ODS code FAG93). The decision stated:

2.1 **"New Medicine Service - Post Payment Verification**

2.2 The Pharmacy Provider Assurance Team, part of 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 New Medicines Service. As part of this verification exercise, your pharmacy was requested to provide New Medicines Service records for the period **April 2021** to **March 2022.**

2.3 Our records show that your pharmacy claimed a total of **1,374** NMS during this time, however the evidence provided by the pharmacy means the Provider Assurance Team were not able to verify **52** of the claims made.

2.4 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.

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

2.5.1 KAMSONS PHARMACY was contacted on **11** separate occasions by the NHSBSA Provider Assurance Team to request evidence to substantiate the claim or agree to the recovery but did not receive sufficient evidence.

2.6 **Having reviewed the information provided by the NHSBSA PAT, the NHS England Pharmaceutical Services Regulations Committee has decided that an overpayment in relation to your NMS 2021/22 claims 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.

2.7 The below table outlines the recovery amount.

ODS code	Recovery amount
FAG93	1.456.00

2.8 **Action Required**

2.9 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 17th November 2024.** Where you agree an overpayment has been made the amount over paid will be recovered by deduction from a future NHSBSA payment to you.

2.10 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by **17th November 2024.**

2.11 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.

2.12 **Please be aware that failing to contact us by 17th November 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

2.13 nhsr.appeals@nhs.net or:

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.

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

2.16 If you would prefer to speak to us via telephone/Microsoft Teams, please email pharmacysupport@nhsbsa.nhs.uk to provide your contact details and a member of the

team will get in touch as soon as possible. The proposed and future actions detailed in this letter are stipulated without prejudice.

2.17 Your co-operation is very much appreciated."

3 THE DISPUTE

In a letter dated 29 October 2024 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 "In an email dated 18th October 2024, NHSBSA on behalf of NHS England, stated that it will deduct £1,456.00 from this pharmacy's NHS account.

3.2 I wish to appeal this decision on the basis

3.2.1 of the process undertaken,

3.2.2 the unclear nature of the decision,

3.2.3 that there are no grounds to make such a deduction.

3.3 Despite at least five substantive emails to the NHSBSA providing evidence and answering their queries, no final definitive response was ever received and instead of a response to my points, an email was sent from the NHSBSA saying that the NHS England Pharmaceutical Services Regulations Committee (NHSE PRSC) has "*reviewed the information and noted that we were contacted on eleven occasions to request evidence to substantiate the claim or agree to the recovery but did not receive sufficient evidence. Having reviewed the information…an overpayment in relation to NMS 2021/22 claims has occurred and…(there will be) a recovery amount of £1,456.00".*

3.4 The unclear nature of the decision and the opaqueness of the process are demonstrated by the following:

3.4.1 My last communication with the NHSBSA was ignored and the process went straight to deciding to deduct £1,456 rather than to answer, acknowledge or even state that they disagree with my points. I have enclosed a copy of my letter dated 19th August 2024, in a response to an email dated 9th August from the NHSBSA.

3.4.2 The NHSE PRSC at no time communicated with me or gave me any opportunity to present evidence to answer the queries raised.

3.4.3 Despite a request sent to the NHSBSA, at the time of writing, there have been no minutes for the meeting of the NHS PRSC supplied.

3.4.4 I have now waited over ten days for the minutes but am not confident that even if they do arrive, they will arrive before the time limit on this appeal expires.

3.4.5 I have been given no contact details for the NHSE PRSC to even ask them directly.

3.4.6 Not only have there been no minutes, there has been no rationale for the decision.

3.4.7 It is my belief that the members of the NHS PRSC did not open all of the 26 email attachments sent to them in an Excel spreadsheet by the NHSBSA.

3.4.8 It appears that the NHS PRSC may have just *rubber stamped* the recommendation of the NHSBSA because they state that they contacted us eleven times, without stating that we made sensible and coherent responses to all of their requests.

3.4.9 The rubber stamping of the NHSBSA's recommendation means that the NHSBSA, in effect, have been allowed to act as both investigator and jury. This combination goes against the natural principles of justice in which these roles should be separated

3.5 Throughout the process we have worked promptly and openly with the NHSBSA. For example, their last email requesting evidence on 9th August was answered within six working days.

3.6 The NHSBSA however, took five months from receiving the evidence to responding. We sent the required evidence on 14th November 2023 and the first response from the NHSBSA was on 26th April 2024. During this five month delay, the pharmacist manager left our employment and moved away, so making queries more difficult to deal with had the process not been so unnecessarily extended by the NHSBSA. Such lengthy delays in responding made it more difficult for us to respond, let alone that the NHSBSA were requesting information about historical NMS undertaken over three years ago from today.

3.7 I am able to send you the raw data showing the NMS undertaken. Should you require it, please let me know and how you would like to receive it. As it contains patients sensitive information, I would first need clarity that NHS Resolution comes under the *Secretary of State for Health* in the consent that patients give prior to receiving the service.

3.8 However, I would hope that the NHSBSA would agree that 1374 claims were made and that correct evidence was received for 1369. We fully accept that there were 5 duplicate claims mistakenly made and that we should be deducted monies for those 5.

3.9 It is my belief that the NHSE PRSC accept that evidence of 1369 was supplied but that their issue is that the dates do not all exactly equate to the date of the claim. Unfortunately as there were no minutes or rationale given by the NHSE PRSC for the proposed deduction then I am still uncertain that this is the actual reason or whether they misunderstood that this was the period that catch-up NMS could be undertaken.

3.10 My letter to them makes it clear the reasons why the dates might not exactly match. A NMS process started in one month will often not be completed until the next or the following month. There are occasions when patients require additional face to face or phone-call follow ups, after the funded NMS process is completed and in these cases the forms will be kept to one side whilst the unfunded process is ongoing so that patients, e.g. those still having difficulties using their inhaler, have further follow ups.

3.11 Paragraph 27 of The Service Specification for NMS, published September 2021 on the NHSBSA website at

https://www.nhsbsa.nhs.uk/sites/default/files/2021-10/B0936%20%20Service%20Specification%20%20NHS%20New%20Medicine%20Service%20%28NMS%29%20advanced%20service%20%28003%29.pdf

simply states that NMS claims should be claimed for monthly, **in accordance with the usual Drug Tariff claims process**. The usual Drug Tariff claims process for a prescription written in March may be that the prescription is not submitted for payment until April, May, June, July or later because of a variety of reasons such as the patient collecting late, patients having an "owing" which they take time to redeem, medication

being unavailable for months from wholesalers or FP10 prescriptions having to be returned to the prescriber for handwritten amendments, eg for missing endorsements such as SLS, before submitting for payment.

3.12 Assuming it is the dates that the NHS PRSC has an issue with then I contend that the NMS service dates often need to be extended for a number of reasons, as outlined above.

3.13 When evidence for 1374 NMS was asked for and 1369 were correctly supplied and accepted then it is unreasonable to deduct £1456 for unknown reasons.

3.14 I request that you quash the decision of the NHS PRSC"

[The Appellant provided a copy of their letter to NHSBSA dated 19 August 2024 in response to NHSBSA's email dated 9 August 2024. That email had notified the Appellant of NHSBSA's intention to recommend the deduction of 52 NMS for the year ending March 2022 to the ICB.]

The Appellant's letter to the NHS BSA dated 19 August 2024

3.15 "Re: FAG93 - New Medicine Service – Post Payment Verification 21/22

3.16 Thank you for your email dated 9th August which you asked for a response to by the end of this week.

3.17 You state that you intend to recommend the deduction of 52 NMS for the year ending March 2022 to the ICB.

3.18 I do not accept your proposal and my reasons are as follows. Firstly may I state what I believe we both agree on and where there has been confusion about dates.

3.19 Now that you have shown me the evidence, I accept that are 5 duplicate claims.

3.20 **What we agree on:**

3.20.1 1374 NMS claims were made by the pharmacy

3.20.2 You requested evidence for these 1374 claims

3.20.3 You accept correct evidence has been received for 1369 NMS claims

3.20.4 We both agree that 5 claims were accidentally duplicated

3.20.5 I have stated that you may deduct the value of 5 NMS claims

3.20.6 I do not agree with your belief that you deduct the value of 52 NMS claims instead.

3.21 **Issue with dates**

3.21.1 You originally wanted to look at NMS from over 2 years before your initial email, which goes against Information Governance requirements for patient sensitive information not to keep records longer than necessary. When this was pointed out to you, you accepted this.

3.21.2 You believed that the date of dispensing was the month in which the claim had to be made.

3.21.3 I explained that the NMS process can take many weeks and, in some cases, months. The date of dispensing will not necessarily match up with the date of claiming.

3.21.4 I explained that even where dates of interventions/follow-ups are made that additional calls by the pharmacist and/or visits to the pharmacy and discussions with the pharmacist will occur. The dates of these may not be noted on the consent form as these are additional to the standard engagement/intervention/follow up process.

3.21.5 Therefore the dates may not exactly equate to the date of claiming. In the same way that a prescription dispensed on the 30th of a month may actually be collected and/or claimed in the next month or even the month after.

3.21.6 On 12th July 2024 you stated "*A consistent approach must be made across all evidence, therefore the handwritten date has been processed for each form*" which is not in keeping with the way the service operates and is the reason why you want to deduct more than 5 NMS.

3.21.7 I also explained that the long delay in requesting the audit data has meant that the pharmacist manager at the time no longer works with us and has moved away so making resolving queries more difficult than if more recent NMS were requested.

3.21.8 This was exacerbated by the delay of 5 months it took from sending you the evidence of the NMS undertaken to it being processed by yourselves and queries received. The evidence was submitted on 14th November 2023 and the first response from yourselves was on 26th April 2024. During this five month delay, the pharmacist manager moved away.

3.22 I therefore consent to a deduction of 5 NMS claims.

3.23 I appreciate that many hours of your time has gone into this but when you have asked for evidence of 1374 NMS and agreed that you have received evidence for 1369 I do not consider that you should deduct more than 5 NMS."

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 1st November 2024 and the opportunity to provide representations on the appeal.

4.1.2 **Background to the New Medicines Service**

4.1.3 The New Medicine Service (NMS) forms part of the Advanced Services within the Community Pharmacy Contractual Framework (CPCF). This service provides support to all patients, with the inclusion of carers who have appropriate consent and parents/guardians of younger children, who are taking a newly prescribed medicine to manage a long-term condition (LTC). Therefore, helping them to appropriately improve their medication adherence and self-manage their LTC.

4.1.4 The NMS helps to promote multidisciplinary working between the pharmacy, the patient's GP practice in addition to any other professionals involved in their

care. The service intends to promote the early identification of any issues arising from newly prescribed medicines and therefore supports patients to discuss any issues with their prescriber or pharmacist who may refer them back to their prescriber.

4.1.5 Pharmacies who take part in the scheme, must ensure that they meet minimum requirements set out in the advanced service specification. The requirements of contractors wishing to provide the New Medicine Service is set out in the advanced service specification and can also be seen within Annex A;

4.1.6 **Post Payment Verification**

4.1.7 NMS claims for the 2021/22 financial year were analysed for Post Payment Verification (PPV), and 400 contractors were identified for the PPV sample. Contractors were selected for one of the following reasons;

4.1.7.1 they made claims which were only in the final 3 months of the financial year,

4.1.7.2 they had greater than 650 claims in 2021-2022,

4.1.7.3 they had the highest percentage increase in claims from the previous year or they are a Well Pharmacy.

4.1.8 There were also several other pharmacies who were not outliers but were selected at random to be included in the sample.

4.1.9 After being identified for the PPV process, contractors receive an initial email requesting that they provide evidence for the NMS claims made between April 2021 and March 2022, contractors are expected to provide evidence which substantiates all of the claims made by the pharmacy during the claim period. If evidence is missing or duplicate claims are made, the NHSBSA is therefore unable to provide assurance to NHS England that the service is being conducted correctly, and therefore is required to make a recovery of any overpayments which have been made to the contractor.

4.1.10 FAG93, Kamsons Pharmacy, were initially approached with a request to provide evidence on 4th October 2023 with a deadline of 18th October 2023 provided. Kamsons Pharmacy had submitted 1,374 claims for payment via Manage Your Service (MYS) during the sample period for payment, therefore they were asked to provide evidence to validate the claims in question. The pharmacy was advised that the Pharmacy Provider Assurance Team (PAT), were able to accept paper consent forms which could either be scanned by the pharmacy and provided digitally, or the contractor could send these with their monthly prescription batch to be scanned in by our office. If the NMS events were recorded digitally the PAT were also able to accept a report run from the pharmacy's PMR system. As per Page 11 of the NMS service specification, section "Data collection and reporting requirements" the PAT requested that the evidence included the following information:

4.1.10.1 Dates of the NMS

4.1.10.2 Patient Name

4.1.10.3 Patient Address

4.1.10.4 Patient NHS Number

4.1.10.5Patient Date of Birth

4.1.11 Following the initial email, which notified the contractor that they had been selected for the NMS PPV process no email response was received before the deadline, and therefore a phone call was attempted on the 24th of October 2023. Due to the call not being answered by the contractor, a follow-up email was sent on the 24th of October 2023 with the evidence request email attached and a deadline provided of 7th of November 2023.

4.1.12 An email was received on the 26th of October 2023 stating that the contractor was *"gathering the information for [The Provider Assurance Team] and will have it to [the Provider Assurance team] in due course. However, in accordance with the guidance we have the records from the last 2 years, so [Kamsons Pharmacy] have from October 2021- March 2022, due to clinical governance SOPs".*

4.1.13 A reply was sent to the contractor on the 26th of October 2023 stating that PAT would await the submission of their NMS evidence between the months of October 2021 and March 2022. PAT also stated that we would request that no more evidence regarding NMS is destroyed in relation to this period whilst this PPV case was ongoing. The contractor was also asked whether the evidence would be submitted via physical submission or email as both options were available depending on how the pharmacy captured its NMS evidence. An email was received from the contractor on the 3rd of November 2023 apologising for the submission delay and clarifying that the evidence would be received by the end of the next week.

4.1.14 A response was sent on the 3rd of November 2023 welcoming the forthcoming submission of evidence.

4.1.15 An email was received from the contractor on the 14th of November with evidence attached. The evidence was then processed and upon completion of that review PAT found that:

4.1.15.1 898 pieces of individual claim evidence was submitted in support of the 988 NMS claims submitted by Kamsons Pharmacy between October 2021 and March 2022

4.1.15.2 From the 898 individual pieces of evidence submitted, 21 could not be used to verify claims due to duplicate patient information. This is when multiple NMS claims are submitted for the same patient on the same day

4.1.15.3 A further 14 pieces of evidence could not be used to verify claims due to containing dates in later months than the claims were made. An opportunity was given to the contractor to provide any further evidence that may be pertinent.

4.1.16 Below is an example of duplicate evidence found in Kamsons Pharmacy's evidence batch.

Kamsons pharmacy
Jubilee Health Centre Shotfield
Wallington
SM6 0HY

4.1.17 Consent to participate in the:

4.1.18 NHS New Medicines Service

Patient name	###########
Address NHS number Date of birth Phone number Mobile no NMS Drug name	######## ######## 6202 #### #### ##### Gliclazide 80mg tabs Ramipril 10mg caps Simvastatin 20mg tabs

4.1.19 I agree that the information obtained during the service can be shared with:

4.1.19.1My doctor (GP) to help them provide care to me

4.1.19.2NHS England (the national body that manages pharmacy and other health services) to allow them to make sure the service is being provided properly by the pharmacy

4.1.19.3NHS England, NHS Business Services Authority (NHSBSA) and the Secretary of State for Health to make sure the pharmacy is being correctly paid by the NHS for the service they give me.

4.1.19.4Signature

4.1.19.5Date 20 December 2021

Kamsons pharmacy
Jubilee Health Centre Shotfield
Wallington
SM6 0HY

4.1.20 Consent to participate in the:

4.1.21 NHS New Medicines Service

Patient name	###########
Address NHS number Date of birth Phone number Mobile no	######## ######## 6202 #### #### ##### Amlodipine10mg tabs

NMS Drug name	Empagliflozin 25mg tabs Metformin MR 500mg tabs

4.1.22 I agree that the information obtained during the service can be shared with:

4.1.22.1 My doctor (GP) to help them provide care to me

4.1.22.2 NHS England (the national body that manages pharmacy and other health services) to allow them to make sure the service is being provided properly by the pharmacy

4.1.22.3 NHS England, NHS Business Services Authority (NHSBSA) and the Secretary of State for Health to make sure the pharmacy is being correctly paid by the NHS for the service they give me.

4.1.22.4 Signature

4.1.22.5 Date 20 December 2021

4.1.23 The same patient information is included on both patient consent forms, along with the same date included for all three stages of the NMS process. As stated, this is deemed as an incorrect claim under NMS service specification provision. We can provide duplication evidence for other cases should the Appeals Panel require it.

4.1.24 **First breakdown of non-verified claims reasoning**

4.1.25 **[Table provided]**

	Claims paid	**Duplicate evidence**	**Shortage of evidence**	**Deduction**
October 2021	101	4	57	-61
November 2021	95	4	0	-4
December 2021	200	2	0	-2
January 2022	200	0	53	-53
February 2022	177	0	0	0

March 2022	210	0	0	0
Total	983	10	110	-120

4.1.26 Following analysis and review of the evidence provided by the appellant, a proposed recovery value letter was sent to the contractor on the 26th of April 2024 detailing a proposed overpayment recovery of £3,360 – 120 NMS claims.

4.1.27 Due to a lack of response from the contractor, a call was made on the 9th of May 2023. The contractor stated that they would speak to [MD] and [RV] regarding the recovery value letter.

4.1.28 On 9th May 2024, PAT received an email from [MD] expressing disagreement with the findings of PAT's PPV exercise. In his response, [M] noted that evidence from October 2021 had not been submitted and requested that examples of the evidence used for October 2021 be sent back to him to provide clarity. Furthermore, [M] requested that the information pertaining to the alleged duplicate claims also be forwarded to him for [M] to look further into. [M] also stated that, as the evidence is now over two years old, it should be destroyed in accordance with Information Governance guidance. [M] requested a response by 23rd May 2024 and asked for a copy of the process that the Provider Assurance Team has agreed upon with Community Pharmacy England regarding the PPV, as he expressed concerns about the length of time it has taken to reach a conclusion.

4.1.29 To clarify PAT's approach: when we initially requested evidence for the PPV exercise, we asked for documentation from April 21 to March 22. However, due to [M] informing PAT that the pharmacy only had October 21 to March 22 evidence available, the PPV date range was narrowed to reflect this. This was due to the contractor's understanding of the 2-year evidence retention rule. Upon review of the evidence, there was a significant lack of evidence submitted to support October claims. [M] stated that only November 21 to March 22 had been submitted. As a result of this, PAT agreed to narrow the PPV date range even further. Consequently, any available evidence for October 2021 was then used to cross-verify claims from November 2021, which helped minimise the possibility of unverified NMS (New Medicine Service) claims for that month.

4.1.30 A response was sent to the contractor on the 16th of May 2024 apologising for the delay between the evidence submission and the recovery value letter being sent. We detailed to the appellant at that stage how the significant volume of evidence received in each sample can necessitate considerable time for processing and digitising the evidence so that an accurate summary can be shared back with them for confirmation, resulting in delays. With consent form submissions, all information is manually typed, including dates, names, NHS numbers and prescribed drugs. The evidence check is then peer-checked by a PAT colleague, with a breakdown of the findings being calculated following this. This is a far lengthier process than if, for example, a Patient Medical Record is submitted digitally and therefore does not necessitate manual data entry.

4.1.31 After a thorough review of the contractor's initial submission, we identified significant gaps in the evidence provided for the October period. Recognising the challenges in documentation, we took a proactive approach to streamline the audit process by adjusting the scope of verification.

4.1.32 To facilitate a more manageable review, we narrowed the required verification period from the original October-March timeframe to November-March. This modification substantially reduced the volume of documentation the contractor needed to produce, effectively lessening the administrative burden while maintaining the core objectives of the audit.

4.1.33 We demonstrated flexibility by accepting the limited October evidence to support the verification of November claims. This approach was requested by the contractor and it not only simplified the contractor's verification process but also showed PAT's commitment to a collaborative and pragmatic resolution. By strategically reframing the audit parameters, PAT enabled the contractor to focus on substantiating a more focused set of claims, without compromising the overall integrity of the audit.

4.1.34 An email was then sent to the contractor on the 29th of May clarifying that a new evidence check was being performed.

4.1.35 After comparing the initial breakdown to the second breakdown, there is a notable difference in the amount of duplicates found. This discrepancy occurred due to a conversation with the contractor, requesting that instead of using the printed date, which was the approach taken initially, that PAT apply the handwritten ('Follow-up') dates that appeared on the evidence. As a result, we reprocessed the entirety of the evidence, adjusting the dates to reflect the handwritten ones rather than the printed ones. During this reprocessing, more duplicates were identified in PAT's verification process.

4.1.36 A further recovery value letter detailing the results of the follow-up evidence check was sent to the contractor on the 20th of June 2024, detailing a proposed overpayment recovery of £1,456.00 – 52 NMS claims. The letter explains that there were still multiple examples of duplicates in the evidence along with a surplus of evidence submitted dated March 2022 and a lack of evidence submitted dated February 2022 and that this evidence surplus in March 2022 could not retrospectively be used to verify the February 2022 claims. NMS claims must be submitted by the 5th of each month. While activities may span beyond this deadline, only forward-carrying of evidence is permitted (e.g., October activities can be included in November's submission). Backward-carrying of claims does not meet the Drug Tariff requirements. Claims can only be submitted for service delivery completed in that month, a contractor could not submit a claim in February, for activity it is going to undertaken [sic] in March, therefore March's surplus evidence cannot be applied to February's submission.

4.1.37 It is important to note that the total recovery value of £1,456.00 is lower than the original estimate. This reduction is largely due to the continued engagement and collaboration with PAT. As we streamlined the audit process by reducing the verification period from October-March to November-March because contractors must keep their NMS clinical documents for a minimum of 2 years and after noting gaps in October's documentation. We accepted limited October evidence to support November claims, demonstrating flexibility while maintaining audit integrity. This adjustment reduced the administrative burden on the contractor.

4.1.38 PAT's ongoing involvement and the additional clarifications provided have enabled a more accurate assessment, which ultimately led to a reduction in the recovery amount compared to the initial findings.

4.1.39 A response was received from the contractor on the 3rd of July 2024 disputing the excess evidence that was not used to verify claims and determining that their calculation for a recovery would be 3 NMS, which the contractor states they would not consider worth either their or PAT's time in recovering. Kamsons Pharmacy took this stance even though PAT had been clear in previous communication as outlined in this response that monthly NMS claims are required to be claimed by the 5th of the following month therefore evidence with dates several months after the fact cannot be used to validate NMS claims from earlier months. [M] then again requested a copy of the process agreed with Community Pharmacy England, including the appeals process which at this point is already suggesting the case will be referred onto PSRC as the contractor disagreed with PAT's findings from our evidence review.

4.1.40 A response was sent to the contractor on the 12th of July 2024 reiterating that evidence can only be carried forward to verify claims and not retroactively so contractors cannot overclaim in later months to make up the difference from months already submitted. This is in place to avoid, for example, an NMS consent form containing March 2024 dates being used to verify a NMS claim from November 2023. Alongside this the requested duplicate evidence was also attached and an explanation of the PSRC escalation and appeals process provided. Per the Service as outlined in footnote 7 of Page 7, concurrent prescriptions are addressed under a single service instance: *"If more than one medicine covered by the service is prescribed at the same time, that instance of the service will cover all those medicines."* Therefore, duplicate evidence cannot be used.

4.1.41 An email was received from the contractor on the 28th of July 2024 again disagreeing with the NMS PPV results and stating that they will seek advice from Community Pharmacy England (CPE) and reply to The Provider Assurance Team after the contractor receives a reply from CPE.

4.1.42 Due to a lack of response, a PSRC escalation warning email was sent to the contractor with a deadline provided of the 23rd of August 2024. A timeline of correspondence was also attached, including all events that occurred during the PPV process and all emails exchanged between Kamsons Pharmacy and PAT.

4.1.43 A reply was received on the 19th of August detailing their thoughts regarding the PPV results. The contractor states that upon further investigation, their determination is that the overpayment recovery should be for 5 NMS claims due to the amount of evidence submitted in relation to the claim amount.

4.1.44 The PAT figures are accurate, as we adhere strictly to the guidelines outlined in our Standard Operating Procedure and agreed by NHS England (NHSE). We ensure that no evidence is duplicated and that all evidence falls within the correct time frame. The PAT process involves multiple stages of verification: initially, evidence is scanned in, followed by processing by a caseworker. The findings are then reviewed by a second caseworker for peer verification. Finally, the Senior Caseworker produces a comprehensive breakdown of the findings. This multi-step approach guarantees the accuracy and completeness of all evidence received.

4.1.45 The contractor also expressed concerns about being "out of the loop" regarding the process. However, as no further evidence or additional

information was provided to clarify the situation, PAT escalated the case to PSRC for an unbiased review to ensure a fair and impartial resolution.

4.1.46 **Pharmaceutical Services Regulations Committee (PSRC) Decision**

4.1.47 To assist with their review, the PSRC was provided with the NMS service specification, a summary of PAT's PPV procedure, along with 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.

4.1.48 The engagement showed that despite multiple detailed explanations of the reasoning behind the proposed adjustment, the contractor insisted that the submitted evidence necessitated an adjustment equating 3 NMS claims – not the proposed 52 NMS claims.

4.1.49 Consequently, the PSRC concluded that the NHSBSA had not received sufficient evidence to verify all the claims made. As a result, on October 17th, the PSRC issued their decision, determining that the pharmacy was not entitled to the full payment previously received, and instructed that the amount owed be recovered.

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

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

4.1.52 **Response to the contractor's appeal**

4.1.53 The PAT conducts assurance activities on behalf of NHSE to verify that pharmacy contractors are delivering services correctly and maintaining appropriate evidence to support their claims. Our aim is to ensure contractors comply with service specifications and provide services appropriately. For example, in the case of the NMS, certain claims may be deemed incorrect or unsuitable if they do not align with the service specification. To facilitate this process, PAT requests evidence from contractors, as outlined in the service specification, which also requires this evidence to be shared as part of any Post Payment Verification exercise.

4.1.54 As discussed already in this response PAT were unable to obtain evidence in support of each of the NMS claims made by Kamsons Pharmacy after multiple engagement attempts and unfortunately PAT also came across several examples of incorrect NMS claims which were not following the service specification provision.

4.1.55 The following discrepancies were identified in the submitted evidence:

4.1.55.1 Multiple instances of duplicate documentation were provided

4.1.55.2 Documentation from subsequent periods (e.g., March NMS records) were incorrectly submitted to validate activities from prior periods (e.g., November)

4.1.56 From the response from Kamsons Pharmacy it appears they base the appeal on three key factors:-

4.1.56.1*"I wish to appeal this decision on the basis*

4.1.56.1.1 *of the process undertaken,*

4.1.56.1.2*the unclear nature of the decision,*

4.1.56.1.3 *that there are no grounds to make such a deduction"*

4.1.57 For the first basis of the appeal from Kamsons Pharmacy they dispute the process undertaken by PAT, suggesting the process PAT follow for assurance activity is flawed. This process was agreed following conversations with NHSE to create a fair and consistent national approach and provides multiple engagement attempts to give pharmacy contractors the opportunity to respond to requests by either providing evidence or further explanation. PAT made no decisions on cases unless agreed in writing by the contractors themselves. Where there is dispute or disagreement in any case, the decision is referred onto the ICB's PSRC to decide on the case in question. As shown in the timeline of the case, PAT's initial email outlines exactly what is being requested from Kamsons Pharmacy as part of the NMS PPV activity, it states how much the pharmacy has claimed for in terms of NMS and the volume of evidence which is expected by PAT.

4.1.58 Kamsons Pharmacy state in their appeal that:- "*Despite at least five substantive emails to the NHSBSA providing evidence and answering their queries, no final definitive response was ever received".* In response, the PAT do not dispute that Kamsons Pharmacy engaged with the PPV process as the timeline clearly shows they did. However, all the requested evidence was not forthcoming, and Kamsons disagreed with points raised by PAT so the case was referred onto PSRC. In support of the PPV process for NMS, PAT would state many pharmacy contractors have been able to provide the requested evidence and the success of pharmacy contractors meeting the expectations of this advanced service is something PAT regularly feedback to NHSE.

4.1.59 On the point of the process undertaken Kamsons Pharmacy also state that they expected a response to their email sent to the NHSBSA dated 19th August 2024 before being forwarded to PSRC. The email was received from Kamsons Pharmacy in response to a PSRC warning email sent to the contractor dated 9th August 2024 which contains the statement *"Please review the correspondence in the attached timeline and respond to us no later than 23rd August 2024 at pharmacysupport@nhsbsa.nhs.uk with any evidence or any representations you wish to be provided to PSRC for consideration".* As all points made in the attached letter had already been responded to in prior correspondence, the letter was deemed as Kamsons Pharmacy evaluating their perspective in order to be fairly represented to PSRC.

4.1.60 In response to the point raised in Kamsons Pharmacy's appeal regarding the "unclear nature" of the decision, PAT asserts that communications with the pharmacy consistently outlined the stages of the investigation and what further evidence was required to enable the claims submitted to be verified, and that this was the information that would be shared with the PSRC unless Kamsons had further evidence to be considered. As stated earlier, the contractor was given opportunities to submit any additional evidence or information they wished to be considered by the ICB.

4.1.61 In their appeal, Kamsons Pharmacy claimed: “The NHSE PRSC at no time communicated with me or gave me any opportunity to present evidence to answer the queries raised.” PAT disagrees with this assertion and points to the engagement timeline as evidence. When no further evidence was forthcoming, PAT clearly communicated the intention to escalate the case to the PSRC and explicitly provided Kamsons Pharmacy the opportunity to submit any additional information they wanted NHSE to review.

4.1.62 The contractor has argued that the process is not transparent. In response the PAT make clear that it plays a critical role in engaging with contractors throughout the process. Contractors, including Kamsons Pharmacy, are expected to participate in this engagement as part of their Terms of Service. 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 and that the NHSBSA PAT have been authorised in writing by NHS England to request this information on their behalf.

4.1.63 The PAT has included the timeline of engagement, which is the summary of the investigation that it has undertaken with the contractor to obtain the necessary evidence to provide assurance that all claims have been made in accordance with the service specification. However, the final decision on such cases rests with the PSRC, which does not engage directly with contractors but relies on the materials and evidence gathered during the PAT-led process

4.1.64 Kamsons Pharmacy has accused Southwest London’s ICB (Integrated Care Board) PSRC of “rubberstamping” the NHSBSA’s conclusions, suggesting that the NHSBSA acted as “both investigator and jury.” PAT firmly refutes this allegation. The PPV process is conducted impartially and without prejudice. After reviewing the full timeline of correspondence between the PAT and Kamsons Pharmacy, the PSRC concluded that Kamsons Pharmacy failed to claim within the eligible claiming parameters for the NMS service. Consequently, the PSRC agreed to recover the overpayments of NMS claims where the contractor either did not provide adequate evidence or failed to comply with the service specification guidance.

4.1.65 The NHSBSA regards Kamsons Pharmacy’s accusations as a claim that Southwest London ICB failed to perform due diligence, a claim which we strongly reject. The PSRC cannot reach a decision without thoroughly reviewing all correspondence between PAT and Kamsons Pharmacy. This is why a complete timeline of communications is provided to the PSRC, and all interactions during the process are meticulously documented. PAT’s recommendations to the PSRC are made fairly, in strict compliance with the Drug Tariff and the service specifications. Ultimately, the decision rests with the PSRC and PAT would action that decision as instructed.

4.1.66 Kamsons Pharmacy also requested minutes from the PSRC meeting. Southwest London ICB was consulted regarding this request, and a PSRC representative clarified that all submitted documentation, including letters from the contractor, was reviewed before the PSRC decided to reclaim the overpayments. It was emphasised that the PAT does not receive notes or minutes from PSRC meetings, making Kamsons Pharmacy’s request for this information unfeasible.

4.1.67 Nevertheless, the PSRC representative shared an extract from the meeting minutes, which stated: *“NMS recoveries were discussed. It was noted that there had not been an agreement between the NHSBSA and the contractor, as the NHSBSA could not reconcile all evidence provided against the claims made. The PSRC considered the information provided and determined that if*

the NHSBSA could not reconcile the evidence, the funds should be reclaimed." This extract was forwarded to Kamsons Pharmacy on November 12, 2024.

4.1.68 Regarding the appellant's claim that there were no grounds for the adjustment, the explanation has been provided to Kamsons Pharmacy on multiple occasions. Specifically, the evidence submitted did not align with the dates of the claims. While Kamsons Pharmacy correctly stated that they submitted a substantial amount of evidence to support their claims, a detailed review revealed discrepancies. Some evidence could not be used to verify the claims, which prevented NHS England from assuring that the NMS advanced service was being appropriately claimed. Consequently, the recovery process was initiated for these incorrect claims.

4.1.69 Kamsons Pharmacy also highlighted a five-month gap between submitting evidence and receiving the initial recovery value letter. While this is accurate, the time required to process accounts varies depending on the volume and nature of the evidence. In this case, the submission involved a substantial amount of evidence, primarily consent forms rather than a PMR Summary Report. Processing such evidence is more time-consuming as it requires manual data entry and multiple peer checks to ensure accuracy. Kamsons Pharmacy was provided with contact details for PAT and could have engaged with the team at any point during the process. We had already advised Kamsons that the PPV case was underway and although there are no statutory timeframes in place for completion of that case, it is only right that PAT takes the time to ensure that evidence is correctly evaluated and that an accurate assessment is made, for the benefit of all parties.

4.1.70 NHS England maintains that whilst most the claims submitted were able to be verified Kamsons Pharmacy failed to meet the requirements outlined in the service specification for the rest. Some claims reviewed did not adhere to the guidance in the service specification, resulting in 120 payments for NMS claims or duplicate claims. As stated in the NMS Service Specification *"If more than one medicine covered by the service is prescribed at the same time, that instance of the service will cover all those medicines."* This overpayment was appropriately identified, and the PSRC, based on the evidence and engagement timeline, agreed with the decision to recover £1,456.00.

4.1.71 We consider the decision to recover the funds was fair, in compliance with the regulations, and supported by the documented interactions and evidence review conducted by the NHSBSA.

4.1.72 **Key points for consideration**

4.1.73 We respectfully ask that NHS Resolution considers the following key points when making its determination on the appeal:

4.1.74 As part of the Post Payment Verification process conducted by the Provider Assurance team, contractors are allowed to carry forward any extra evidence into future months. This accommodates situations where a contractor provides the NMS service but delays claiming for it until the following month.

4.1.75 The contractor has requested that evidence dated March 2022 be used to verify claims for February 2022. However, this request cannot be fulfilled as the claim is not valid. Claims submitted for February ie by the 5 March, should be for activity undertaken up to and including February as required in the Drug Tariff and reflected in the NMS Service Specification on page 15. Evidence can only be carried forward to verify claims and not retroactively so contractors

cannot overclaim in later months to make up the difference from previous months already submitted.

4.1.76 PAT demonstrated multiple examples of co-operation with the pharmacy including processing written dates as opposed to printed dates and reducing the sampled date range to November 2021 to March 2022 despite the contractor initially stating that evidence would be provided for October 2021 to March 2022.

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

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

4.1.79 Having carefully considered these matters, the NHS Business Services Authority Provider Assurance Team respectfully recommends that NHS Resolution uphold the PSRC's decision regarding the recovery of the £1,456.00 NMS overpayment from Kamsons Pharmacy, as it was fair and compliant with the applicable regulations.

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

5 OBSERVATIONS

5.1 The Appellant

5.1.1 "Thank you for your letter dated 23rd December 2024 inviting observations on the comments supplied by NHS Pharmaceutical Services [sic].

5.1.2 I note that the NHSBSA acceptance [sic] that there was 5 month delay from receiving the evidence before they responded to it with figures they accepted were wrong. I also note the NHSBSA's acceptance that they asked for evidence outside of the 2 year requirement for data retention.

5.1.3 I note that the NHSBSA state that "*Kamsons Pharmacy engaged with the process*" and in point 3 on the final page state "*PAT* (The NHSBSA) *demonstrated multiple examples of co-operation with the pharmacy.*" I agree with these statements.

5.1.4 I note that there was no response from NHS England and there was an extensive response received from the NHS Business Services Authority (NHSBSA).

5.1.5 I note that just a brief extract of minutes of the NHS England Pharmaceutical Services Regulation Committee (PRSC) was included but that there was no evidence from them that they did anything other than accede to the NHSBSA's request for a deduction. Point 4 on the final page of the NHSBSA letter states "*the PRSC was presented with timelines of correspondence, showing all contact between the Provide Assurance Team and the pharmacy*" which indicates that they were reliant on the timelines provided by the NHSBSA rather than the raw evidence provided.

5.1.6 I note the chart provided by the respondent on page 6 of their response with a summary of the deductions that they propose, which is a summary of the Excel spreadsheet reproduced in small print above it. I have reproduced their chart, in a clearer form, below:

Date	NMS Claims paid	NMS Evidence accepted by NHSBSA	Difference
April 2021	50	50	0
May 2021	51	51	0
June 2021	73	73	0
July 2021	74	74	0
August 2021	69	69	0
September 2021	69	69	0
October 2021	101	101	0
November 2021	95	85	-10
December 2021	200	194	-6
January 2022	200	198	-2
February 2022	177	143	-34
March 2022	210	263	+53
Total	**1369**	**1370**	**+1**

5.1.7 **As you can see, over the financial year, using the NHSBSA's own figures, there is a marginal discrepancy.**

5.1.8 If one reads the evidence from the NHSBSA, then you could easily be misled into believing that the pharmacy has been wrongfully claiming for lots of duplicate NMS. This is not the case. In most cases the so-called duplicates are where a patient's medicines did not fit on one form and two forms were printed out in order to have a paper record of all of a patient's medicines. It does not mean that a wrongful claim was therefore made.

5.1.9 The NHSBSA reprints two NMS forms on page 3 of their letter stating that it is duplicate evidence and that "*the same patient information is included on both patient consent form, along with the same date for all three stages of the NMS process*" with the implication that this is a wrongful claim.

5.1.10 I agree that it is the same patient and the same dates but if you look carefully at the NHSBSA letter you will see that it is for different medicines. The reason two forms are enclosed is that both paper forms were retained in order to keep a complete paper record of all of this patient's newly prescribed medicines, so that the pharmacist could remember to talk about all of these medicines when they spoke to the patient. The figures on the above chart show that the total amount of evidence submitted compensates for all of these so-called "duplicates".

5.1.11 The overall discrepancy in NMS claims made and evidence accepted over the year is around a third of one percent, using the NHSBSA Provider Assurance Team's own figures, after their clearly thorough checks. This demonstrates that there are not a widespread number of duplicate submissions.

5.1.12 I accept that there were some duplicate entries, despite these being offset by other evidence, and in order to bring this issue to a mutually acceptable conclusion, I previously agreed that the NHSBSA may deduct 5 NMS.

5.1.13 Unfortunately, throughout the process dates have been an issue with the NHSBSA. They firstly did not appreciate the NHS England Service Specification requirement to retain data for two years and the Information Governance issues, alongside the NHS Data Security and Protection Toolkit issues, associated with keeping it for longer (page 2 of NHSBSA response letter).

5.1.14 Secondly the NHSBSA initially did not understand the, sometimes lengthy, NMS processes of dispensing, engagement, intervention and follow-up. Hence the date of dispensing printed on the NMS form would often not be the same month as the date of submission as the NMS form.

5.1.15 Their initial analysis, which took five months, produced their chart entitled "*First breakdown of non-verified claims reasoning*" on page 4 of their letter which excluded over twice the number of NMS claims their revised chart entitled "*Second breakdown…*" on page 6 did.

5.1.16 The reason for this vast change can be confirmed by reading the first paragraph on page 6 of the NHSBSA's letter, underneath their revised chart. In this paragraph they explain why their first analysis was so wrong because of their misunderstanding of the process and the dates.

5.1.17 I refer the NHS Resolution Pharmacy Appeals Committee [sic] to the chart above, that it is clear, using the NHSBSA's own figures, that there is a minute difference between claims made, claims paid and evidence accepted and respectfully request that NHS Resolution approve this 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 note the NHS BSA's representations on appeal include the following undisputed background points to the New Medicines Service:

6.7.1 The New Medicine Service (NMS) forms part of the Advanced Services within the Community Pharmacy Contractual Framework (CPCF). This service provides support to all patients, with the inclusion of carers who have appropriate consent and parents/guardians of younger children, who are taking a newly prescribed medicine to manage a long-term condition (LTC).

6.7.2 The NMS helps to promote multidisciplinary working between the pharmacy, the patient's GP practice in addition to any other professionals involved in their care.

6.7.3 The service intends to promote the early identification of any issues arising from newly prescribed medicines.

6.7.4 Pharmacies who take part in the scheme, must ensure that they meet minimum requirements set out in the advanced service specification.

6.8 Further regarding the scheme, the NHS BSA's representations on the appeal include*: "After being identified for the PPV process, contractors receive an initial email requesting that they provide evidence for the NMS claims made between April 2021 and March 2022, contractors are expected to provide evidence which substantiates all of the claims made by the pharmacy during the claim period. If evidence is missing or*

duplicate claims are made, the NHSBSA is therefore unable to provide assurance to NHS England that the service is being conducted correctly, and therefore is required to make a recovery of any overpayments which have been made to the contractor."

6.9 The NHS BSA has provided a copy timeline showing a number of communications between the parties between 4 October 2023 and 20 September 2024.

6.10 The timeline heading includes a summary which states that the Appellant had been contacted to verify 1,374 NMS claims made during the period 2021 to 2022. Further that the NHS BSA's Provider Assurance Team had contacted the Appellant on eleven occasions between 4 October 2023 and 9 August 2024 in relation to this but to date had not received satisfactory evidence.

6.11 In its earliest attempt (4 October 2023) to contact the Appellant, the NHS BSA's email outlines the PPV exercise for NMS and requested that the pharmacy provide evidence to support the claims made between the time period April 2021 to March 2022. Alternatively, if the Appellant believes that that they had inadvertently claimed for NMS, to inform the NHS BSA accordingly.

6.12 It was not until 26 October 2023 that the Appellant replied informing the NHS BSA that it only had evidence for the period October 2021 to March 2022 having destroyed other evidence due to clinical governance SOPs. I note that the NHS BSA emailed the Appellant on 26 October 2023 welcoming the submission by the Appellant of evidence for the period October 2021 to March 2022.

6.13 The NHS BSA received evidence from the Appellant by email dated 14 November 2023. I note the NHS BSA reviewed the evidence provided and noted that the number of NMS claims made was 988. The evidence breakdown showed 120 claims to be recovered worth a total of £3,360.00.

6.14 On 26 April 2024 the NHS BSA sent a recovery value letter to the Appellant.

6.15 On 9 May 2024 the NHS BSA received an email from the Appellant querying the results of the NMS PPV and not accepting the overpayment recovery.

6.16 On 16 May 2024 the NHS BSA sent an email to the Appellant providing more detail of the PPV results and proposing a re-evaluation of the evidence.

6.17 On 26 May 2024 the NHS BSA received an email responding to the points made in the previous email and awaiting results of the new review.

6.18 Onn 20 June 2024 the NHS BSA sent an email to the Appellant with renewed PPV results and further explanation.

6.19 On 3 July 2024 the Appellant sent an email to the NHS BSA stating that it believed the adjustment should be for 3 claims and requested further information on a duplicate patient and the PSRC/appeals process.

6.20 I note that by email to the Appellant dated 12 July 2024 the NHS BSA clarified the reasoning behind the proposed overpayment recovery figure and provided the requested information.

6.21 By email to the NHS BSA dated 28 July 2024 the Appellant disagreed with the PSRC's assessment and stated that they would consult CPE and respond accordingly.

6.22 I note the NHS BSA's email to the Appellant dated 9 August 2024 stated that due to the lack of agreement, the PPV would be forwarded to the PSRC for review.

6.23 I note the Appellant's email, to the NHS BSA dated 19 August 2024 providing a detailed version of their perspective regarding the proposed overpayment recovery.

6.24 I note that on 20 September 2024, the NHS BSA sent an email to PSRC containing details of the PPV, including a full timeline of correspondence between the Provider Assurance Team and the Appellant. NMS PPV Summary and Service specification documents were also attached.

6.25 On the 18 October 2024, the PSRC made a decision to recover the monies.

6.26 Given the detailed timeline as above, I am satisfied that the parties had engaged with each other regarding the matter in dispute although no agreement was reached on certain points.

6.27 I next considered how the number of claims for NMS and the size of the overpayment had been reached. I consider that neither party has adequately explained the evidence provided or the process by which that evidence was analysed in order to reach the conclusions that it did.

6.28 I note the copy 'Advanced Service Specification – NHS New Medicine Service (NMS)' version 1.0 dated September 2021, was provided to me by the NHS BSA (the "Specification"). Point 26 on page 14 of the specification states: *"Contractors must report the following data (collated from their clinical records for the service) on a quarterly basis to the NHSBSA. The NHSBSA collect this data on behalf of NHS England and NHS Improvement and the process for submitting the data is described on the NHSBSA website. Contractors must submit the data to the NHSBSA within 10 working days from the last day of the quarter the data refers to (last day of June, September, December, and March)."* It is clear therefore that the NHS BSA, for its calculation of payments for the NMS service, relies on data provided by pharmacies.

6.29 Page 15 of the Specification states:

6.29.1 *"27.Claims for payments for this service should be made monthly to the NHS Business Services Authority, in accordance with the usual Drug Tariff claims process.*

6.29.2 *28. A payment will be made in line with the Drug Tariff determination for the service based on the total number of completed NMS provisions claimed in the month."*

6.30 Claims made by the Appellant in line with the above, are subject to 'Post Payment Verification Process.' The NHS BSA made the following comments in their representations on appeal outlining the 'triggers' for the process and reasons why the Appellants pharmacy (among several others) met that criteria.

6.30.1 *"NMS claims for the 2021/22 financial year were analysed for Post Payment Verification (PPV), and 400 contractors were identified for the PPV sample. Contractors were selected for one of the following reasons;*

6.30.1.1they made claims which were only in the final 3 months of the financial year,

6.30.1.2they had greater than 650 claims in 2021-2022,

6.30.1.3they had the highest percentage increase in claims from the previous year or they are a Well Pharmacy."

6.30.2 *"FAG93, Kamsons Pharmacy, were initially approached with a request to provide evidence on 4th October 2023 with a deadline of 18th October 2023 provided. Kamsons Pharmacy had submitted 1,374 claims for payment via Manage Your Service (MYS) during the sample period for payment, therefore they were asked to provide evidence to validate the claims in question*."

6.31 Having been identified by the Post Payment Verification Process, the NHS BSA then adopts the following process:

6.31.1 The Appellant received an initial email requesting that they provide evidence for the NMS claims made between April 2021 and March 2022;

6.31.2 The Appellant was expected to provide evidence which substantiates all of the claims made by the pharmacy during the claim period.

6.31.3 If evidence is missing or duplicate claims are made, the NHS BSA is therefore unable to provide assurance to NHS England that the service is being conducted correctly, and therefore is required to make a recovery of any overpayments which have been made to the contractor.

6.32 I note that the Appellant had submitted 1,374 claims for payment via Manage Your Service (MYS) during the sample period for payment. They were therefore asked to provide evidence to validate the claims in question.

6.33 As per page 11 of the Specification, section "Data collection and reporting requirements" the NHS BSA requested that the Appellant provide the following information:

6.33.1 Dates of the NMS;

6.33.2 Patient Name;

6.33.3 Patient Address;

6.33.4 Patient NHS Number;

6.33.5 Patient Date of Birth

6.34 The Appellant had informed the NHS BSA on 26 October 2023, that "*in accordance with the guidance we have the records from the last 2 years, so [Kamsons Pharmacy] have from October 2021- March 2022, due to clinical governance SOPs".* The NHS BSA's response to the Appellant was that *"PAT would await the submission of their NMS evidence between the months of October 2021 and March 2022."*

6.35 On 14 November 2023, an email was received by the NHS BSA from the Appellant with evidence attached.

6.36 I am of the view that the process thus far followed by the NHS BSA as part of its Post Payment Verification Process could be clearly understood by the Appellant.

6.37 As noted above, the Appellant had informed the NHS BSA that it no longer had records beyond 2 years [before October 2021] due to its clinical governance SOPs. Furthermore, the Appellant states that the Advanced Service Specification – NHS New Medicines Service specifies a 2 year retention period. However, Page 11 of the Specification states: *"Pharmacy records for the service will be maintained to support the delivery of the service and audit. Pharmacy contractors will need to maintain records of the following for each patient who receives the NMS".* In my view, the

requirement in the specification is absolute – appropriate records must be maintained. I consider that the Appellant should have been able to provide the necessary information for post-payment verification by the NHS BSA. However the fact remains that these were not available prompting the NHS BSA to accept supporting evidence in respect of the period October 2021 to March 2022. As the NHS BSA did not dispute the data retention policy followed by the Appellant at the time, I will not consider whether or not the Appellant should have retained the records for a longer period.

6.38 I note that despite the Appellant stating that it in fact had evidence from October 2021, in an email of 21 May 2024, they then later clarified that they had not, in fact, submitted any evidence in relation to October 2021. I further note that the NHS BSA, upon being informed of this information, and acting upon their discretion, made the decision to only focus on the dates from November 2021 to March 2022. I consider that it was under no obligation to do this, and that this act demonstrates a high level of willingness to cooperate with the Appellant as part of the process. As the NHS BSA has decided to have regard only to this period of time, I will only consider the appeal in relation to November 2021 to March 2022.

6.39 I note that the Appellant has provided me with copies of the evidence that it submitted to the NHS BSA. I note that this consists of a bundle of scanned copies of consent forms ("Consent Forms") and a spreadsheet of NMS Claims. The Consent Forms have handwritten notes on the first page of each denoting the month to which the claim forms are being submitted for, a number of phone calls and a number of forms. The purpose of these numbers has not been explained to me. However, I note that when combining the two figures, the total number is equivalent to the NMS claims made for that particular month, as per the table provided by the NHS BSA.

6.40 A further issue with both parties comments are that neither felt it necessary to explain that the claims made by the Appellant were a combination of both NMS claims and Catch-Up NMS claims, as per section 21 to 26 of the Specification. I consider that this point is essential in allowing for any understanding of the evidence provided by the Appellant. The Catch-Up NMS was allowed from 1 September 2021 and 31 March 2022. I note that the Specification specifically envisages that intervention may take place at the same time as the contacting of the patient. I, therefore, conclude that "telephone calls" in the Claim Forms refers to these situations whereby a patient was contacted regarding a medicine that was prescribed between 1 April 2020 and 31 August 2021 and the telephone call did not necessitate any further meeting. This, I conclude, explains why there is no paper consent form. I note that the separate spreadsheet provided by the Appellant lists the information required by the NHS BSA alongside "date called". I assume that these, therefore, should correspond with the "telephone calls" figure, and be the evidence of that number, consequently I conclude that this spreadsheet relates to Catch-Up NMS claims, only.

6.41 I consider it concerning that neither party thought it necessary to explain the evidence upon which this appeal rests. However, having now established the evidence which relates to the claim I can now proceed to consider the points raised by the Appellant.

6.42 Firstly, I note that the Appellant states that one of the reasons for bringing the appeal is due to the process undertaken by the NHS BSA. The Appellant has stated that "*no final definitive response was ever received*." However, I consider it unclear how this statement could be true. I consider that, as per the timeline of correspondence I have provided above that the Appellant was repeatedly informed of the outcome and the reasons for it. It is unclear how the answer could have been more definitive than it was, or what criteria the finality of any decision was being measured by. Conversely, I note that the Appellant received the decision of the NHS England Pharmaceutical Services Regulations Committee (“PSRC”), which itself was a final decision, but disputes this as well.

6.43 To that end, I note that the Appellant has stated that it had no opportunity to provide evidence to the PSRC. However, this I consider to be based on the Appellant's misunderstanding of the process. I note that on 9 August 2024 the NHS BSA emailed the Appellant specifically stating they should respond with "any evidence or any representations you wish to be provided to PSRC." The Appellant did so on 19 August 2024. I note that the Appellant has stated that the NHS BSA did not respond to this email, whilst the NHS BSA has explained that it did not do so because it deemed the letter to be the Appellant's representations to the PSRC. I note that the NHS BSA's email of 9 August 2024 is clear. The "Response Required" element is both in bold and underlined, it also clearly explains the PSRC process and underlying Regulations. I note that in its response the Appellant notes that it was given a deadline. I find it difficult to understand how the deadline was identified, but not the surrounding wording which explained what the deadline was in relation to.

6.44 I consider that, in these circumstances, it is logical to conclude that the letter received from the Appellant was representations for the PSRC, rather than continued communications with the NHS BSA which warranted a response. I also consider that the NHS BSA's clear explanation of the process directly contradicts the Appellant's assertions to the contrary. As such, I conclude that the Appellant had an opportunity to provide evidence to the PSRC, and knew of the process.

6.45 The Appellant also states that it requires the meeting minutes from the PSRC. I note that the NHS BSA provided these as part of its representations. I am also unclear as to how the minutes impact the procedure itself. I note that the Appellant has, without basis, stated that, not only do they doubt that the PSRC had regard to the evidence provided, but that the NHS BSA's decision may have been "*rubber stamped*".

6.46 I consider that these two statements would require a significant degree of proof to demonstrate this being the case, as it casts serious aspersions regarding both the reliability and integrity of the PSRC. I note that there is no explanation as to the basis of these statements, only the Appellant's doubts. I note that the NHS BSA has stated that it has confirmed with the PSRC that it did have regard to all of the evidence provided by both parties. As such, I consider that it is unlikely the PSRC would blatantly disregard information provided to it for consideration.

6.47 Additionally, I note that the Appellant was sent the evidence that the NHS BSA was providing to the PSRC, and was given the opportunity to respond. Whilst it does appear that the Appellant misunderstood this email, I consider that it was reasonably clear, and so any failure to engage with the process is entirely due to the fault of the Appellant. They had indeed been given the opportunity to submit their own evidence and comment, which put them in a position equal to that of the NHS BSA as regards to being an "investigator".

6.48 In light of there being no evidence to support the Appellant's statements, and the NHS BSA's statements to the contrary, I do not consider that the PSRC had no regard to the evidence, merely "rubber stamped" the decision nor that the NHS BSA was acting as both "investigator and juror".

6.49 Given my analysis of each of the points raised by the Appellant I do not consider that the process undertaken provides grounds to quash the decision of the NHS England in this matter.

6.50 I will next turn to the unclear nature of the decision. As I have already considered, the finality of the decision I find difficult to take issue with and the Appellant has not adequately explained why it did not seem final to them. I therefore conclude that this issue has to do with the rationale behind the decision. Having reviewed the statements made by the NHS BSA I consider it clear that there are two issues with the Appellant's evidence regarding the NMS claims, the first being that there is an issue with the dates

on the Consent Forms and the months for which those claims were made, and secondly an issue with duplication.

6.51 I note that the Appellant appears to have not understood the issue that the NHS BSA were raising with the dates. This is made clear at paragraph 3.10 above and from their letter of 19 August 2024. In their appeal the Appellant alludes to the reasons why the dates might not align, due to the NMS starting in one month but being completed in the next. In their letter, I note that they mention the dispensing dates not aligning with the claimed month.

6.52 I note that the NHS BSA has explained that they instead used the handwritten dates that appeared on the evidence for the second round of processing, and that this was relied on in relation to the overpayment which was submitted to the PSRC. However, the Appellant, in its observations still stated that the date of dispensing would be different to the date of the NMS claim submission. The Appellant acknowledges that the second breakdown, however, resolves this problem. I note that, the Appellant uses this change to explain the difference between the two breakdowns, but does not then go on to explain why, when using the method that they prescribed, the figures still do not align with the claims they made.

6.53 I note that neither party has plainly stated at what point in the NMS process a contractor should make a claim. Having regard to the Specification it envisages three clear stages in the NMS process, on page 7, those being patient engagement, intervention and follow-up. As the Appellant has alluded to, it then only says, on page 15, that payment should be made monthly. However, it also states that they will be made in line with the Drug Tariff. I note that the Drug Tariff then states that "a monthly payment will be paid for each completed full service intervention" at paragraph 2 of Part VIC. I therefore consider that the date at which a claim can be made must properly be when the Specification indicates that the intervention is complete.

6.54 I note that this will occur during the initial intervention if, in the clinical judgement of the pharmacist, intervention by the patient's prescriber is required. Otherwise this takes place during the follow up when any of the three outcomes in paragraph 19 occur (exit from service, pharmacist and patient agree solution, or referral to the GP practice for review). I also refer back to my comments in regards to the Catch-up NMS that it can be completed during the initial contact.

6.55 Having then reviewed the Appellant's statements, I note that they have not set out at which point they make each NMS claim. The letter of 19 August 2024 seems to suggest that events continue to occur outside the NMS three stage process, but not what the consequences of these later events are for the claim. Whilst I agree with the Appellant, based on my understanding of the Specification, that the date of dispensing will not match up with the date of claiming, I would expect that either the date of intervention or follow-up would do, as necessary. As I have noted, this letter is predicated on the idea that the NHS BSA were relying on the date of dispensing, which, as per its representations, it was not. I note, having regard to the breakdowns provided by both parties that the issue of dates not aligning with the month claimed in only occurs in February 2022. To that end, I have reviewed the table created by the NHS BSA against the evidence provided by the Appellant.

6.56 Having regard to each of the consent forms in the PDF with the first page marked "*Feb 22*", I note that it states there are 49 forms and 128 phone calls. Each of the consent form has an "I" with some additionally having an "F" date. I have assumed that "I" represents an intervention, as per the Specification and that "F" must therefore be a follow-up. Based on the Drug Tariff, the latter of these two dates should align with the month the claim was made. I note that all of the 14 for which consent was obtained in February had an "I" or an "F" date in March. The remaining 35 all had the consent obtained in March, and a date in the same month. In addition to this I note that two

forms had neither an "I" nor an "F" date, and one of these lacked a patient signature. However, as these claims were already excluded due to the date issue I will not consider these additional issues further.

6.57 I note that the Appellant has not sought to explain why these claims were made in February, given that the intervention had not been completed. I also note the NHS BSA's comments that only forward-carrying evidence is permitted, not backward-carrying, having reviewed the correspondence I can confirm that this was also explained to the Appellant on 12 July 2024. Given the wording of the Drug Tariff regarding when payment will be paid, I consider that the NHS BSA's position must be correct. In consequence of this, I consider that any of those claims dated March 2022 cannot be used to verify claims made in February 2022. Therefore, all 49 consent forms used to evidence claims in February 2022 by the Appellant should be, and properly were, excluded and can only, properly, be considered as evidence for March.

6.58 As this represents the entirety of the evidence excluded due to having a date outside of the month for which it was claimed, I consider that the NHS BSA's reasoning for excluding the evidence was explained and correct. This is based on the emails provided to the Appellant, the Specification and the Drug Tariff. When combined with the NHS BSA's representations this becomes even more clear.

6.59 I note the table provided by the Appellant and their comments that there is only a "*marginal discrepancy*" and a "*minute difference*". However, this table only takes into account the totality of the differences and, due to there being a surplus of evidence provided for March, this obscures the differences for the other months. I note the NHS BSA's approach looked at the claims made in each month, not the claims on the whole. I consider that this aligns with the Drug Tariff and Specification. Consequently, I conclude that viewing the claims in their totality misrepresents the actual data and so, taking a monthly view of the information, I consider that there is more than a minimal difference.

6.60 I next considered the issue of duplicates. I note that in the Specification, at footnote 7, page 7, it specifically states that "If more than one medicine covered by the service is prescribed at the same time, that instance of the service will cover all those medicines." In its Observations the Appellant has stated that they "accept there were duplicate entries". I also note that they have repeatedly stated a willingness to accept that there were 5 that should be deducted. I consequently consider that it is accepted by both parties that footnote 7 of the Specification applies to the claims, and that it precludes claims where more than one medicine is prescribed at the same time, described generically as "duplicates".

6.61 The Appellant has not explained exactly which 5 of the "duplicates" it has accepted and which others it is disputing. I note that on 20 June 2024 the NHS BSA provided to the Appellant a complete list of each of the duplicate patients which it was basing recovery on, and the corresponding date provided for that claim.

6.62 I note that the Appellant has not commented on this list, and therefore, I am further unclear as to which of these individuals they dispute being duplicates. I have had regard to the Appellant's statements covering the number of prescriptions that can fit on a single consent form, however, I am mindful of the wording in the Specification. As such I consider that the use of additional forms does not result in the ability to make additional claims, if the prescription was made at the same time. Therefore, I have reviewed the names provided by the NHS BSA against the Consent Forms provided by both parties as evidence of the claims.

6.63 In regard to the Consent Forms, I have had to determine at what point in time footnote 7 of the Specification was referring to. I have taken this to be the earliest date provided on the form (other than date of birth). Following this I had regard to the list of duplicate

names provided by the NHS BSA to the Appellant, and confirmed if two consent forms, with the same initial date, for the same patient, had been submitted. In doing so I was able to confirm each of the names provided by the NHS BSA, except for one. However, I also noted an additional duplicate form under a name (with initials MD) which the NHS BSA appears to have omitted. Therefore, I consider that, in regard to the Consent Forms, the NHS BSA has correctly sought recovery for the correct number of claims which did not meet the Specification, i.e. where two forms with the same initial date were submitted by the Appellant for the same patient.

6.64 As part of reviewing the names I noted that several of them related to the Catch-Up NMS claims instead of the Consent Forms. I therefore had regard to the table of Catch-Up NMS claims provided by both parties and considered the information in relation to the patients indicated as duplicates by the NHS BSA. I note that footnote 7 equally applies to the Catch-Up NMS service, as it is specifically stated to "follow the standard NMS path as described above". I also consider that the Catch-Up NMS service is a subcategory of the NMS Service and, as such, should meet the same requirements, additionally I do not consider that there is any other good reason to depart from the previously stated rule.

6.65 I noted that for the names which the NHS BSA claimed were duplicates in this table it was the "Date Called" date which was the same between patient entries. As I have had regard to, footnote 7 of the Specification states that it is if the medicine was "prescribed at the same time" which renders it a single instance of the service, and hence a duplicate. Consequently, I consider that the "Date Called" being the same for two claims made for the same individual does not render it a single instance of the service. The Specification clearly would allow that, if medicines were prescribed at different times, then two claims could be made for two calls made on the same day.

6.66 However, I note the additional line, within the spreadsheet provided, labelled "DateAdded". Having regard to the Specification, for Catch-Up NMS claims the medicine claimed for must have been newly prescribed during the date range of "1st April 2020 and 31st August 2021". Therefore, to be an eligible claim the Appellant must be able to demonstrate that the medicines were newly prescribed during that period.

6.67 I note that each of the "DateAdded" dates fall perfectly between the range indicated in the Specification, with the first claims date being "01/04/2020 09:57" and the last being "31/08/2021 18:06". I consequently consider that these dates represent the prescribed dates of the medicines for the purposes of footnote 7 of the Specification.

6.68 On this basis, I have re-considered each of the claims made in the Catch-Up NMS table and deemed that, where the “DateAdded” date and the patient are the same, then these represent medicines prescribed at the same time, and so should properly be considered a single instance of the service, as per footnote 7. As the parties have both agreed that such duplications warrants recovery of an overpayment I have recalculated the figures, based on the evidence provided. Where a patient had multiple claims made for medicines, all prescribed on the same day, I have counted only the first call as a valid claim and included the rest as duplicates. On this basis I have calculated the following figures:

Dates	**Nov**	**Dec**	**Jan**	**Feb**	**March**
Paper Consent Form Evidence	96	56	54	0	85
Catch-up NMS Evidence		144	145	144	178
Claims shown in Evidence	96	200	199	144	263

Paper Consent Forms Duplicate	11	4	1	0	2
Catch-Up NMS Duplicates	0	16	41	29	51
Total Duplicates	11	20	42	29	53
Total Claims Evidenced	85	180	157	115	210
NMS Claimed by Appellant	95	200	200	177	215
Number of Unevidenced Claims	10	20	43	62	5
Recovery	280	560	1204	1736	0

6.69 I consider that these figures accurately reflect the amount of suitable recovery from the Appellant on the basis of the Specification. I note that these figures do not align with the amounts sought by either party. However, I consider this is the inevitable consequence of reviewing the Catch-Up NMS duplicates, as the Appellant has sought in its appeal. I am mindful that the NHS BSA's conclusion was incorrect. However, I consider that I must apply the Specification to the evidence provided, even where this comes at the detriment of the Appellant. I consider that there is no other sensible way of interpreting the evidence provided and to make this determination in any other manner would involve ignoring the wording of the Specification.

6.70 I also note that, despite all of the "DateAdded" that I have identified being on the same day, the Catch-Up NMS calls took place at varying intervals. I also consider that it would have been prudent for the Appellant to inquire about all medicines issued on a single call, whereas I can see no evidence that this was done and instead calls were made for each individual prescription across multiple months. As an example two prescriptions were made to an individual on 23 April 2020, at the same exact minute. However, the date called is 7 December 2021 for one of these and 17 February 2022 for the other. It is unclear why this should be the case. I am mindful that this clearly could and should have been both performed as a single instance of the service and claimed as such. I have been provided no clear reason why it has not been.

6.71 In these circumstances, I must conclude that the total overpayment to be recovered from the Appellant should be £3,780.00 rather than the £1,456.00 as calculated by the NHS BSA.

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 substitute the decision of NHS England to recover the overpayment of £1,456.00, with the decision to recover an overpayment of £3,780.00.

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

Head of Appeals
NHS Resolution