

1 April 2025

REF: SHA/26448

**APPEAL AGAINST NHS NOTTINGHAM AND
NOTTINGHAMSHIRE ICB DECISION REGARDING A
BREACH NOTICE AT OAKWOOD PHARMACY (FMF17),
14 CHURCH STREET, MANSFIELD, WOODHOUSE,
NOTTINGHAMSHIRE, NG19 8AH**

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

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

1 Outcome

- 1.1 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations, I confirm the decision of the Commissioner to issue the Breach Notice.

A copy of this decision is being sent to:

Oakwood Pharmacy (the Appellant)
Nottingham and Nottinghamshire ICB

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1 The Breach Notice

A Breach Notice dated 3 January 2025 was sent to Ascent (Mansfield) Oakwood Pharmacy ("the Appellant") in respect of 14 Church Street, Mansfield, Woodhouse, Nottinghamshire, NG19 8AH.

- 1.1 "Please see the enclosed breach notice which has been issued to the above-named pharmacy.
- 1.2 Please be aware that failure to comply with breach notices may result in the implementation of formal contract sanctions, which could include the withholding of all or part of the remuneration payable to the pharmacy or termination of a contract.
- 1.3 Please contact me should you have any questions"

Breach Notice

- 1.4 **"Name of contractor: Ascent (Mansfield) Limited**
- 1.5 **Address of premises: Oakwood Pharmacy, 14 Church Street, Mansfield Woodhouse, Nottinghamshire, NG19 8AH (FMF17)**
- 1.6 **Date of inclusion in the pharmaceutical list for the area of Nottinghamshire County Health and Wellbeing Board: 28 June 2023**
- 1.7 This is a Breach notice issued under regulation 71 of the National Health Services (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 1.8 **Nature of the breach**
- 1.9 Schedule 4, Part 4, Paragraph 35 (5) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended states that a pharmacy must at the request of The East Midlands Primary Care Team (on behalf of Nottingham and Nottinghamshire Integrated Care Board) or person authorised in writing by of The East Midlands Primary Care Team (on behalf of Nottingham and Nottinghamshire Integrated Care Board) to make the request, send to The East Midlands Primary Care Team or that person by means of an electronic communication, a duly completed questionnaire.
- 1.10 In order to demonstrate compliance with the community pharmacy assurance framework, of The East Midlands Primary Care Team (on behalf of Nottingham and Nottinghamshire Integrated Care Board) and NHS BSA on behalf of The East Midlands Primary Care Team (on behalf of Nottingham and Nottinghamshire Integrated Care

Board) requested completion of the full questionnaire on a number of occasions (08 October 2024, 15 October 2024 and 21 October 2024), However, the pharmacy failed to submit the full questionnaire by the deadline and has provided no valid reason why. The questionnaire closed on 17 December 2024 therefore the breach of the terms of service is incapable of remedy.

- 1.11 The East Midlands Primary Care Team (on behalf of Nottingham and Nottinghamshire Integrated Care Board) therefore referred this matter of non-compliance to the Pharmaceutical Services Regulations Committee on 18 December 2024. The PSRC found the pharmacy to be in breach of the terms of service for failure to provide a duly completed questionnaire when requested and as the breach was incapable of remedy then the decision was made to issue a breach notice.
- 1.12 The East Midlands Primary Care Team (on behalf of Nottingham and Nottinghamshire Integrated Care Board) have therefore found Ascent (Mansfield) Limited, Oakwood Pharmacy, 14 Church Street, Mansfield Woodhouse, Nottinghamshire, NG19 8AH to be in breach under Regulation 71, in respect of the breach of; Schedule 4, Part 4, Paragraph 35 (5) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended.
- 1.13 You have a right of appeal to the Secretary of State against the issuing of this breach notice Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this notice to nhsr.appeals@nhs.net or:
 - 1.13.1 Primary Care Appeals, NHS Resolution, 8th Floor 10 South Colonnade, Canary Wharf, London, E14 4PU
- 1.14 Please note that should you fail to comply with the requirements of this breach notice we reserve the right to exercise our powers to take further action in relation to your inclusion in the pharmaceutical list in respect of the above named premises. This may include removal of the premises from the pharmaceutical list under regulation 73 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended.”

2 The Appeal

In an email dated 7 January 2025 addressed to NHS Resolution, the Appellant appealed against Nottingham and Nottinghamshire ICB's ("the Commissioner") decision. The grounds of appeal are:

- 2.1 “I am writing to sincerely apologise for failing to meet the deadline for submitting the October CPAF questionnaire as requested. I deeply regret this oversight and understand that a breach notice has been issued, which I take full responsibility for.
- 2.2 I fully appreciate the importance of adhering to contractual obligations. Unfortunately, due to miscommunication and an increase in work pressure we missed the initial emails and then later thought that the CPAF October Questionnaire did not apply to us as we had recently completed a full CPAF questionnaire and had a successful visit from the East Midland Primary Care Team. I assure you that this was not intentional, and I am taking steps to ensure that this situation does not occur again.
- 2.3 I kindly request the opportunity to appeal this matter and work with you to find a resolution to address the inconvenience caused. Please let me know if there is any additional information you require from me.

- 2.4 Once again, I sincerely apologise for any disruption caused and appreciate your understanding and consideration of this appeal. I am committed to making the situation right. I have attached the questionnaire.
- 2.5 Thank you for your understanding. I look forward to your response.”
- 2.6 [Enclosure: Community Pharmacy Assurance Framework (CPAF) document].

3 **Summary of Representations**

This is a summary of representations received on the appeal.

3.1 THE COMMISSIONER

- 3.1.1 “Schedule 4, Part 4, Paragraph 35 (5) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended states that a pharmacy must at the request of the commissioner or a person authorised by the commissioner to make the request, send to the commissioner or that person by means of an electronic communication, a duly completed questionnaire.
- 3.1.2 Community pharmacies are governed by The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and the Community Pharmacy Contractual Framework (CPCF). Part of the CPCF is the Community Pharmacy Assurance Framework (CPAF).
- 3.1.3 The East Midlands Primary Care Team on behalf of the 5 ICBs use the CPAF to monitor community pharmacy contractors’ compliance with the terms of the Community Pharmacy Contractual Framework (CPCF).
- 3.1.4 The CPAF consists of all pharmacy contractors being requested to complete a short screening questionnaire, which consists of 10 questions for which the pharmacy contractor is asked to self-assess against certain aspects of their terms of service. When answering the questions contractors should select the statements that most closely match what happens in their pharmacy.
- 3.1.5 Historically the completion of the CPAF was not a compulsory function however, as a result of NHS regulations introduced at the end of 2020, completion of CPAF is now a requirement of the Terms of Service and therefore, it is a regulatory requirement to complete the CPAF Screening Questionnaire on an annual basis. Contractors must have completed the Screening Questionnaire within the required time of 01 July 2024 and midnight 31 July 2024 and, if required, the full CPAF questionnaire. The full CPAF questionnaire ran from the 01 October until midnight on 31 October 2024.
- 3.1.6 The commissioner and the NHS BSA on behalf of the commissioner, have contacted the pharmacy on a number of occasions, each of the communications informed the pharmacy that the questionnaire was now a regulatory requirement and that failure to complete the questionnaire would result in a referral to the Pharmaceutical Services Regulations Committee and that this referral may result in the issue of a breach notice.
- 3.1.7 Additional reminders are also posted on other mediums such as community pharmacy England website [2023/24 Community Pharmacy Assurance Framework \(CPAF\) screening questionnaire has opened - Community Pharmacy England \(cpe.org.uk\)](#) and the NHS BSA website [Community](#)

[Pharmacy Assurance Framework \(CPAF\) | NHSBSA](#) . Each of these websites detail how the questionnaire could be completed and the dates in which it should have been completed.

- 3.1.8 NHS BSA contacted the pharmacy on a number of occasions (08 October 2024, 15 October 2024 and 21 October 2024) giving the pharmacy an opportunity to complete the questionnaire within the timeframe. However, the pharmacy failed to engage and provide any mitigating circumstances as to why they failed to complete the questionnaire.
- 3.1.9 An email from the pharmacy was sent to the NHS Resolutions team on 07 January 2025 explaining that non completion of the questionnaire was an oversight. The East Midlands Primary Care Team do sympathise with the situation explained in the email and the appeal; however, the questionnaire has now been compulsory since 2021 and forms part of the pharmaceutical regulations and the terms of service. With regard to the problems mentioned within the appeal including staff issues, the pharmacy could have contacted their LPC representative or made contact with any of the East Midlands Primary Care Team to gain support.
- 3.1.10 I would like to take this opportunity to respond to any further representations provided by Oakwood Pharmacy, 14 Church Street, Mansfield Woodhouse, Nottinghamshire, NG19 8AH."

4 Observations

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

5 Consideration

- 5.1 Under Regulation 71(1) "Breaches of terms of service: breach notices" of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), a Breach Notice may be issued:

71. (1) Where an NHS chemist (C) breaches a term of service and the breach is not capable of remedy, NHS England may by a notice ("a breach notice") require C not to repeat the breach.

- 5.2 I note that in the Regulations an NHS Chemist means "*an NHS appliance contractor or an NHS pharmacist*". An NHS pharmacist is defined as "*a person included in a pharmaceutical list of the type referred to in regulation 10(2)(a);*". Regulation 10(2)(a) states:

10(2) "Those lists (which are pharmaceutical lists) are

(a) a list of persons who undertake to provide pharmaceutical services in particular by way of the provision of drugs;"

- 5.3 The Regulations contain no definition as to what constitutes a breach of terms of service which is not capable of remedy.
- 5.4 I note that the pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.

5.5 I note that the Breach Notice was issued pursuant to Regulation 71(1) and is compliant with the requirements of a breach notice as it includes the nature of the breach and an explanation of the Appellant's right of appeal under Regulation 77(1)(c).

5.6 The Breach Notice states:

5.6.1 *"In order to demonstrate compliance with the community pharmacy assurance framework, of The East Midlands Primary Care Team (on behalf of Nottingham and Nottinghamshire Integrated Care Board) and NHS BSA on behalf of The East Midlands Primary Care Team (on behalf of Nottingham and Nottinghamshire Integrated Care Board) requested completion of the full questionnaire on a number of occasions (08 October 2024, 15 October 2024 and 21 October 2024), However, the pharmacy failed to submit the full questionnaire by the deadline and has provided no valid reason why. The questionnaire closed on 17 December 2024 therefore the breach of the terms of service is incapable of remedy."*

5.7 I am of the view that the Appellant had the opportunity to enter into local dispute resolution with the Commissioner but did not do so. I note that there is no dispute raised by either party that the local dispute resolution process has not been exhausted. I am content that I can deal with this matter.

5.8 The Appellant seeks to appeal against the decision of the Commissioner to issue the Breach Notice for its failure to complete and submit the Community Pharmacy Assurance Framework (CPAF) questionnaire.

5.9 I note that "Inspections and access to information" is found in Schedule 4, Part 4, "Other Terms of Services" under Paragraph 35 and states:

35. Inspections and access to information

(1) An NHS pharmacist (P) must allow persons authorised in writing by NHS England to enter and inspect P's pharmacy premises at any reasonable time, for the purposes of—

(a) ascertaining whether or not P is complying with the requirements of this Schedule;

(b) auditing, monitoring and analysing—

(i) the provision made by P, in the course of providing pharmaceutical services, for patient care and treatment, including any arrangement made with a person in respect of provision of appliances, and

(ii) the management by P of the pharmaceutical services P provides, where the conditions in sub-paragraph (2) are satisfied.

(2) The conditions are that—

(a) reasonable notice of the intended entry has been given;

(b) the Local Pharmaceutical Committee for the area where the pharmacy premises are situated have been invited to be present at the inspection, where this is requested by P;

(c) the person authorised in writing (X) carries written evidence of X's authorisation, which X produces on request; and

(d) X does not enter any part of the premises used solely as residential accommodation without the consent of the resident.

(3) P must, at the request of NHS England or of X, allow it or X access to any information which it or X reasonably requires—

(a) for the purposes mentioned in sub-paragraph (1); or

(b) in the case of NHS England, in connection with its functions that relate to pharmaceutical services.

(4) P must, at the request of NHS England, send to NHS England by means of an electronic communication of the type specified in the request any information to which a person authorised in writing by NHS England would have access during an inspection of P's pharmacy premises pursuant to sub-paragraph (1), if—

(a) P has that information in a form which means it may be sent by that form of electronic communication; or

(b) it is reasonable for NHS England to request that P convert that information into a form which means that it may be sent by that form of electronic communication (and NHS England does so request)

(5) P must, at the request of NHS England or a person authorised in writing by NHS England to make the request, send to NHS England or that person by means of an electronic communication, a duly completed questionnaire, which is –

(a) in a format approved by NHS England; and

(b) for the purpose of enabling NHS England, or a person authorised in writing by NHS England to determine whether or when it is necessary or expedient for a person authorised in writing by NHS England to undertake an inspection of P's premises pursuant to sub-paragraph (1).

(6) Before information is requested pursuant to sub-paragraph (5), NHS England must consult the person who is, for the time being, the person consulted under section 165(1)(a) of the 2006 Act, in respect of pharmaceutical remuneration of NHS pharmacists on the terms of the request.

5.10 I note the Commissioner's comments that the CPAF is used to monitor compliance with the terms of the Community Pharmacy Contractual Framework (CPCF). The first stage of the CPAF process consists of a questionnaire of 10 questions which pharmacy contractors are asked to consider and self-assess against certain aspects of the terms of service.

5.11 The Commissioner states that the screening questionnaire ran from 1 to 31 July 2024 and the full questionnaire ran from 1 to 31 October 2024. The Commissioner further states that it contacted the Appellant on three occasions during October 2024. The Commissioner comments that additional reminders detailing the deadlines and how to complete the questionnaire were also posted on other mediums such as the Community Pharmacy England website and the NHS BSA website. Links have been provided in the Commissioner's representations and have not been disputed by the Appellant. I note that no response was received from the Appellant by the

Commissioner and the matter was therefore referred to the Pharmaceutical Services Regulation Committee. The Breach Notice was subsequently issued. The Commissioner states that *“an email from the pharmacy was sent to the NHS Resolutions team on 07 January 2025 explaining that non completion of the questionnaire was an oversight.”* The Appellant stated in its appeal that *“Unfortunately, due to miscommunication and an increase in work pressure we missed the initial emails and then later thought that the CPAF October Questionnaire did not apply to us as we had recently completed a full CPAF questionnaire and had a successful visit from the East Midland Primary Care Team.”*

5.12 I note that the Appellant has not responded to dispute the Commissioner’s comments above. In its appeal, the Appellant states *“I am writing to sincerely apologise for failing to meet the deadline for submitting the October CPAF questionnaire as requested. I deeply regret this oversight and understand that a breach notice has been issued, which I take full responsibility for.”*

5.13 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).

5.14 Given the above requirements, it is clear that the Appellant has a responsibility to ensure that its NHSmail box is accessible and monitored by more than one member of staff. This does not appear to have happened and therefore communications on several occasions relating to the questionnaire were not responded to.

5.15 I have had regard to the Appellant’s comments regarding the oversight to submit the questionnaire and that the Appellant had included the completed CPAF with its appeal. I am of the view that the responsibility lies with the Appellant to make sure that it checks its emails regularly and has an understanding of the CPAF requirements, which have been in place since 2021. It is unfortunate that it did not contact the Commissioner at any stage to seek clarification on receipt of repeated emails to provide the completed questionnaire.

5.16 As a result of the comments I make above, I am of the view that:

5.16.1 the Appellant did not complete the CPAF Questionnaire by the required deadline;

5.16.2 such action constitutes a breach of the Appellant’s terms of service as set out in paragraph 35(5) of Schedule 4 to the Regulations; and

5.16.3 the Commissioner was entitled to issue the Breach Notice.

6 Decision

6.1 I am of the view that under NHS Resolution’s powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of NHS England or

substitute for that decision any decision that NHS England could have taken when it took that decision.

- 6.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations, I confirm the decision of the Commissioner to issue the Breach Notice.

Head of Appeals
NHS Resolution