

2 April 2025

REF: SHA/26450

**APPEAL AGAINST HERTFORDSHIRE AND WEST
ESSEX ICB DECISION REGARDING A BREACH NOTICE
AT GATE2PHARMA LTD (FA631), UNIT 18B, WELTECH
BUSINESS CENTRE, THE RIDGEWAY, WELWYN
GARDEN CITY, HERTFORDSHIRE, AL7 2AA**

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:

Gate2Pharma Ltd
Hertfordshire and West Essex ICB

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1 The Breach Notice

A Breach Notice dated 30 December 2024 was sent to Gate2Pharma Ltd ("the Appellant") in respect of Unit 18b, Weltech Business Centre, The Ridgeway, Welwyn Garden City, Hertfordshire, AL7 2AA:

- 1.1 **"Name of contractor: Gate2Pharma Ltd**
- 1.2 **Address of premises: Unit 18b, Weltech Business Centre, The Ridgeway, Welwyn Garden City, Hertfordshire, AL7 2AA (FA631)**
- 1.3 **Date of inclusion in the pharmaceutical list for the area of Hertfordshire and West Essex Health and Wellbeing Board: 20 May 2016**
- 1.4 **This is a breach notice issued under Regulation 71 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the 2013 regulations).**
- 1.5 **Nature of the breach:**
- 1.6 Failure of Gate2Pharma Ltd, which includes the superintendent, to notify Hertfordshire and West Essex Integrated Care Board (ICB), in writing within 7 days of the matters arising, that [SH], superintendent:
 - 1.6.1 became the subject of an investigation into her professional conduct by both the police and the General Pharmaceutical Council (as required by paragraph 31(1)(i), Schedule 4 of the 2013 regulations)
- 1.7 You are required to not repeat the breach again.
- 1.8 **Appeals:**
- 1.9 You have a right of appeal to the Secretary of State against Hertfordshire and West Essex ICB's decision. Should you choose to appeal then either complete the online form available on the NHS Resolution website www.resolution.nhs.uk or 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:
- 1.10 Primary Care Appeals
NHS Resolution
8th Floor
10 South Colonnade

Canary Wharf
London
E14 4PU

- 1.11 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 Hertfordshire and West Essex ICB's ("the Commissioner") decision. The grounds of appeal are:

- 2.1 "This letter constitutes an appeal against the Breach Notice issued under Regulation 71 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the 2013 Regulations).
- 2.2 The Breach Notice cites Paragraph 31(1)(i) of the 2013 Regulations, which states: "become the subject of any investigation into their professional conduct by any licensing, regulatory or other body." The Notice specifically refers to a police investigation.
- 2.3 We contend that this Breach Notice is unjustified for the following reasons:
- 2.3.1 **Lack of Immediate Notification:** The Director of Gate2Pharma was not aware of the specific details of the police investigation, including any charges or cautions. The Director was only informed of the superintendent pharmacist's reporting to the General Pharmaceutical Council (GPhC) and the police on 21 October 2024. Gate2Pharma was aware of the upcoming GPhC hearing scheduled for 11 November 2024 and intended to inform NHS England immediately following the hearing, which occurred on 13 November 2024.
- 2.3.2 **Local Resolution Not Attempted:** The Breach Notice appears to have been issued without any attempt at local resolution, which is considered best practice.
- 2.3.3 **Misinterpretation of Regulation 71:** Regulation 71(1) states that NHS England "may" issue a Breach Notice, not that they "must."
- 2.3.4 **Prior NHS England Awareness:** NHS England was already aware of the police and GPhC investigation involving the superintendent pharmacist through the visit of Controlled Drugs Accountable Officer, [JN], with the police on 23 October 2024.
- 2.4 Given these points, we believe the issued Breach Notice is disproportionate and unjustified. We request that the Breach Notice be withdrawn. We would appreciate the opportunity to provide any additional information that may be required."

3 Local dispute resolution

In view of the Appellant's comments regarding local dispute resolution, the Commissioner was invited to provide comments on the matter. In a letter dated 29 January 2025, the Commissioner stated:

- 3.1 "Please note that from the 01 April 2023, community pharmacy contracting and commissioning has been delegated to Integrated Care Boards (ICBs). Hertfordshire and West Essex (HWE) ICB are hosting the function on behalf of the six East of England ICBs.
- 3.2 Please find below information we wish to be considered in response to your letter dated 10 January 2025. Your letter explains that Gate2Pharma Ltd (the Appellant) have appealed the ICB's decision to issue a breach notice and the Appellant has stated 'Local Resolution Not Attempted'.
- 3.3 HWE ICB refute this statement and can confirm that local resolution was undertaken.
- 3.4 HWE ICB contacted the Appellant on 6 November 2024 after being informed by NHS England's Controlled Drugs Accountable Officer that the superintendent (SI) had been arrested by the police, possibly accepted a police caution, and was under investigation by the General Pharmaceutical Council (GPhC).
- 3.5 The Appellant was advised that the ICB had no record of being notified of the arrest, possible caution and investigation into their SI in line with paragraphs 31(1)(c) and (i), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the 2013 regulations).
- 3.6 The Appellant was also informed that they were being contacted in line with regulation 69, Local dispute resolution, before any contractual action was considered to ascertain why they had failed to inform the ICB. The Appellant was asked to provide details of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately when that investigation or those proceedings took place or are to take place and any outcome, in line with paragraph 31(1), Schedule 4.
- 3.7 This information was requested under paragraph 35(4), Schedule 4 of the 2013 regulations.
- 3.8 [RS], a Director of Gate2Pharma Ltd, responded on 14 November 2024 stating the following:
- 3.9 *"On 21 October 2024, I was informed by our Superintendent Pharmacist, [SH], that she had been arrested by the police. I was unaware whether she had been cautioned and was told that she had not been charged therefore regulation 31 (1) (c) does not apply. I was made aware in this same information that she was being investigated by GPhC although I believe she continued working as a pharmacist. I was unaware that I had to inform you as according to the regulation 31 (1) (i).*
- 3.10 *Please note we do not have details of the investigation or proceedings because they were brought by another pharmacy in an area outside of East of England. While we are unaware of the specific details of the investigation, we are assured that no misconduct has occurred within our pharmacy. We are currently taking immediate steps to address this situation, including submitting a change of superintendent form to the PCSE online portal."*
- 3.11 Copies of emails are attached to this correspondence for review by NHS Resolution.

- 3.12 The ICB hopes this letter and associated correspondence assures NHS Resolution that local dispute resolution did take place. We will wait to hear from you about next steps and timeframes should you wish us to make further representations on the matters raised in the Appellant's letter of appeal."

Having considered the contents of the Commissioner's letter, it was determined that it was appropriate to proceed with the circulation of the appeal. The matter of local dispute resolution will be considered below.

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 The Commissioner

- 4.1.1 "Please note that from the 01 April 2023, community pharmacy contracting and commissioning has been delegated to Integrated Care Boards (ICBs). Hertfordshire and West Essex (HWE) ICB are hosting the function on behalf of the six East of England ICBs.
- 4.1.2 Please find below information we wish to be considered in response to your letter 7 February 2025 against the decision by HWE ICB to issue a breach notice to Gate2Pharma Ltd (the Appellant) for failure to notify in writing, within 7 days of becoming aware that their Superintendent Pharmacist (SI) became the subject of an investigation into their professional conduct by both the police and the General Pharmaceutical Council (as required by paragraph 31(1)(i), Schedule 4 of the 2013 regulations).
- 4.1.3 We wish to make the following representations.
- 4.1.4 The Appellant has stated that the breach notice *'is unjustified for the following reasons'* and we shall respond to each in turn:
- 4.1.5 **Lack of Immediate Notification**
- 4.1.6 The ICB notes that whilst undertaking local dispute resolution (attached) the Appellant responded on 14 November 2024 stating that the SI informed them that they had been arrested by the police, and they were also made aware by the SI that they were being investigated by the General Pharmaceutical Council (GPhC). The Appellant states that they were *'unaware that I had to inform you as according to the regulation 31 (1) (i)'*.
- 4.1.7 The ICB notes that whilst the Appellant states that they were unaware that they had to inform the ICB this does not negate the regulatory requirement to inform the ICB in writing, within 7 days of becoming aware that their SI became the subject of an investigation into their professional conduct by both the police and the GPhC.
- 4.1.8 **Local Resolution Not Attempted**
- 4.1.9 The ICB refutes this and following the letters dated 10 January 2025 and 7 February 2025 from NHS Resolution (attached) this has been addressed. NHS Resolution confirmed that they had considered *'it appropriate to proceed with the circulation of the appeal, on the basis that local dispute resolution has been attempted'*.

4.1.10 **Misinterpretation of Regulation 71(1)**

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.

4.1.11 The Appellant references that the ICB has misinterpreted Regulation 71(1) noting that the ICB “may” issue a breach, not “must” issue a breach. To confirm, there is no misunderstanding or misinterpretation of Regulation 71(1) by the ICB. The ICB is aware that it may issue a breach, and it has exercised its right to do so.

4.1.12 **Prior NHS England Awareness**

4.1.13 The ICB notes that the regulatory requirement is that the Appellant is required to inform the ICB that their SI became the subject of an investigation into their professional conduct, and this is not negated due to other individuals within the NHS being aware.

4.1.14 The ICB remains of the opinion that there has been a breach of paragraph 31(1)(i), Schedule 4.

4.1.15 The ICB were correct in issuing the breach notice.”

4.2 The Appellant

4.2.1 “Thank you for providing us with the ICB's letter dated 29 January 2025, in response to our appeal against the breach notice issued on 18 December 2024. We appreciate the opportunity to provide further representations.

4.2.2 We acknowledge the ICB's assertion that local resolution was attempted on 6 November 2024. However, we maintain that this attempt was insufficient and did not adhere to best practices for local dispute resolution negating the purpose of a genuine resolution process.

4.2.3 **Addressing the ICB's Points:**

4.2.4 **Notification Delay:**

4.2.4.1 We acknowledge the delay in notifying the ICB within the stipulated 7-day period following the initial notification from our former Superintendent Pharmacist. However, we reiterate that the incident in question occurred at another pharmacy location, outside of our direct operational control.

4.2.4.2 We emphasise our commitment to transparency and compliance. We promptly provided all requested evidence to the police and the Controlled Drugs Accountable Officer (CDAO), fulfilling our obligations to these relevant authorities.

4.2.4.3 The period in question was exceptionally challenging. We were simultaneously navigating a complex situation involving the police and GPhC investigation, while also actively seeking a new Superintendent Pharmacist in anticipation of potential suspension. This dual challenge placed significant strain on our resources and contributed to the notification delay.

4.2.4.4 Furthermore, we were under the impression that the CDAO would directly inform the ICB, as is customary practice. The subsequent 12-day delay in internal communication, which was entirely beyond our control, further exacerbated the situation.

4.2.5 Local Resolution:

4.2.5.1 We maintain that the initial contact from the ICB, made concurrently with the breach notice, did not constitute a meaningful attempt at local resolution. A genuine local resolution process requires a collaborative and open dialogue aimed at resolving issues before formal action is taken. The ICB's initial communication did not provide an opportunity for such a dialogue.

4.2.5.2 We point to our prompt response on 14th November 2024 to the ICB's request for information, as evidence that we were willing to engage with them.

4.2.6 Regulation 31(1)(i) and Interpretation:

4.2.6.1 We understand the ICB's interpretation of Regulation 31(1)(i). However, we reiterate that our initial lack of awareness regarding the necessity to report the investigation, as it occurred at a different pharmacy, contributed to the delay.

4.2.6.2 We feel that the issuing of a breach notice, in this instance, was disproportionate, given the circumstances and our active cooperation with other relevant authorities.

4.2.7 Prior Awareness:

4.2.7.1 We reiterate that the ICB was already made aware of the police and GPhC investigation through the CDAO's visit with the police on 23 October 2024. This prior awareness further calls into question the necessity of the immediate breach notice.

4.2.8 Key Points for Consideration:

4.2.8.1 We acted in good faith throughout this process, cooperating fully with all relevant authorities.

4.2.8.2 The circumstances surrounding the incident were complex and challenging, involving events outside of our direct control.

4.2.8.3 We have taken immediate steps to rectify the situation, including the submission of a change of Superintendent Pharmacist form.

4.2.8.4 We feel that the ICB has not considered the full context of the situation, and the actions that we have taken to rectify the situation.

4.2.8.5 We reiterate that we were willing to cooperate with the ICB, and that the initial contact made by the ICB, was not a genuine attempt at local resolution.

4.2.9 We respectfully request that the breach notice be withdrawn, considering the mitigating circumstances and our commitment to regulatory compliance. We

are prepared to provide any further information required to support our position.”

5 Observations

5.1 The Commissioner

5.1.1 “I refer to your letter dated 12 March 2025. Please find below the observations of the ICB in response to the representations received from Gate2Pharma Ltd (the Appellant).

5.1.2 Notification Delay

5.1.3 The ICB notes that the Appellant states in their appeal that they *‘were unaware that they had to inform the ICB’* and that they have acknowledged in their representations the *‘delay in notifying the ICB within the stipulated 7-day period following the initial notification from our former Superintendent Pharmacist. However, we reiterate that the incident in question occurred at another pharmacy location, outside of our direct operational control’*.

5.1.4 The ICB notes that this does not negate the regulatory requirement set out in paragraph 31(1)(i), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (the Regulations):

31. (1) An NHS pharmacist (P) and, where P is a body corporate, every director and superintendent of P must, within 7 days of its occurrence, inform the NHSCB in writing if they—

(i) become the subject of any investigation into their professional conduct by any licensing, regulatory or other body;

5.1.5 The Appellant states in their representation that they provided all evidence to the police and the Controlled Drugs Accountable Officer (CDAO) *‘fulfilling our obligations to these relevant authorities’*. The Appellant also states that they *‘were under the impression that the CDAO would directly inform the ICB, as is customary practice’*.

5.1.6 It is not customary practice for the CDAO to inform the commissioner. The regulatory requirement is that it is the responsibility of the body corporate to inform the commissioner that their superintendent (SI) became the subject of an investigation into their professional conduct. This is not negated due to other individuals within the NHS being aware of the position.

5.1.7 The ICB recognises that the period in question was very challenging for the Appellant, and we appreciate that a range of evidence was requested from the police, the CDAO and the General Pharmaceutical Council (GPhC). Whilst we understand the pressures, the very nature that these agencies were involved reflects the severity and seriousness of the situation. As commissioner, it is imperative we are informed promptly, hence the 7-day timescale set within the Regulations (as opposed to 30 days used elsewhere in the Regulations).

5.1.8 Local Resolution

5.1.9 The Appellant states that the initial contact from the ICB was made concurrently with the issuing of the breach notice. This is incorrect. The ICB contacted the Appellant on 6 November 2024 to establish why they had failed

to inform the ICB that their SI had been arrested by the police and was being investigated by the GPhC within 7 days of its occurrence.

5.1.10 The Appellant responded on 14 November 2024 stating that they were unaware that they had to inform the ICB in line with paragraph 31(1)(i), Schedule 4.

5.1.11 A paper was presented to the Pharmaceutical Services Regulations Committee, who sit on behalf of all six ICBs in the East of England Region, on 18 December 2024 where the decision was made to issue the breach notice under Regulation 71. The breach notice was issued on 31 December 2024.

5.1.12 The Regulations envisage proactive provision of information by the body corporate within a set timescale and that was not adhered to. Given that the deadline to provide the information has now passed, whilst the ICB has now been informed, it is not possible to remedy the failure to provide the information within the timescale. The ICB also notes that the requirement to notify the ICB is not within 7 days of the request to provide it, rather it is within 7 days of its occurrence.

5.1.13 **Paragraph 31(1)(i) and interpretation**

5.1.14 The ICB remains of the opinion that it was correct in exercising its right to issue a breach notice under Regulation 71(1) 'Breaches of terms of service: breach notices' of 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.

5.1.15 As referenced above, whilst the ICB recognises that the Appellant has cooperated with the police, the CDAO and the GPhC, the ICB's position is that the issuing of a breach notice was appropriate and proportionate.

5.1.16 **Prior Awareness**

5.1.17 The Appellant states '*we reiterate that the ICB was already made aware of the police and GPhC investigation through the CDAO's visit with the police on 23 October 2024. This prior awareness further calls into question the necessity of the immediate breach notice*'.

5.1.18 The ICB was made aware of the situation by the CDAO when called to a meeting with the CDAO team, the police and the GPhC. The reliance cannot be on third party organisations to inform the commissioner. The obligation and regulatory requirement is with the Appellant.

5.1.19 NHS Resolution will note our previous comments in relation to timeframes associated with issuing the breach notice. It was not immediate.

5.1.20 **Keys points for Consideration**

5.1.21 The ICB notes the Appellant does not feel that dispute resolution was attempted. The ICB notes the previous correspondence from NHS Resolution on this matter, specifically the letter dated 7 February 2025 where NHS Resolution confirms that dispute resolution has been attempted.

5.1.22 Whilst the ICB is sympathetic to the situation that has occurred, the ICB remains of the opinion that there has been a breach of paragraph 31(1)(i), Schedule 4. The ICB were correct in issuing the breach notice."

5.2 No observations were received from the Appellant.

6 Consideration

6.1 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.

6.2 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;"

6.3 The Regulations contain no definition as to what constitutes a breach of terms of service which is not capable of remedy.

6.4 The pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.

6.5 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).

6.6 The Breach Notice states:

6.7 *"Failure of Gate2Pharma Ltd, which includes the superintendent, to notify Hertfordshire and West Essex Integrated Care Board (ICB), in writing within 7 days of the matters arising, that [SH], superintendent:*

- became the subject of an investigation into her professional conduct by both the police and the General Pharmaceutical Council (as required by paragraph 31(1)(i), Schedule 4 of the 2013 regulations)*

You are required to not repeat the breach again."

6.8 I note the Appellant's comment that *"The Breach Notice appears to have been issued without any attempt at local resolution, which is considered best practice."*

6.9 I note that the Commissioner contacted the Appellant by email on 6 November 2024, having been made aware by NHS England's Controlled Drugs Accountable Officer (CDAO) that the Appellant's superintendent pharmacist had been *"arrested by the police, possibly accepted a police caution, and was under investigation by the General Pharmaceutical Council (GPhC)."* The Commissioner's email states:

- 6.9.1 *"It has been brought to our attention that your Superintendent Pharmacist, [SH], has been arrested by the police and possibly accepted a police caution and is currently being investigated by the GPhC."*
- 6.9.2 *According to our records we do not believe that Gate2Pharma Ltd have notified the ICB of the arrest, possible caution and investigation in line with paragraphs 31(1)(c) and (i), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the 2013 regulations) respectively.*
- 6.9.3 *We are contacting you in line with regulation 69 of the 2013 regulations to ascertain why you have failed to inform us. We also ask that you provide us with details of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately when that investigation or those proceedings took place or are to take place, and any outcome.*
- 6.9.4 *We are requesting this information under paragraph 35(4), Schedule 4 of the 2013 regulations and ask for a response **by no later than 5pm on Thursday 14th November 2024**. If in fact you have informed the ICB of the investigations on [SH], please provide a copy of the email for our records by the same date."*
- 6.10 The Appellant responded to the Commissioner by email dated 14 November 2024, stating:
- 6.10.1 *"On 21 October 2024, I was informed by our Superintendent Pharmacist, [SH], that she had been arrested by the police. I was unaware whether she had been cautioned and was told that she had not been charged therefore regulation 31 (1) (c) does not apply. I was made aware in this same information that she was being investigated by GPhC although I believe she continued working as a pharmacist. I was unaware that I had to inform you as according to the regulation 31 (1) (i).*
- 6.10.2 *On Monday 11 November 2024 I received notification from [SH] that she had been suspended by GPhC at a hearing held on that day. Please take this email as notification of the suspension from GPhC of our Superintendent Pharmacist, [SH] within the required seven days' notice period in line with regulation 31 (1) (m).*
- 6.10.3 *Please note we do not have details of the investigation or proceedings because they were brought by another pharmacy in an area outside of East of England. While we are unaware of the specific details of the investigation, we are assured that no misconduct has occurred within our pharmacy.*
- 6.10.4 *We are currently taking immediate steps to address this situation, including submitting a change of superintendent form to the PCSE online portal.*
- 6.10.5 *Please be assured that patient safety and pharmacy operations remain our top priorities. We continue to take steps to ensure compliance with regulatory requirements.*
- 6.10.6 *Thank you for your understanding."*
- 6.11 I consider that the purpose of engaging in local dispute resolution pursuant to Regulation 69 is to allow the parties to attempt to resolve any perceived disputes between them prior to the Commissioner issuing of a notice. Whilst this was a brief

attempt at local dispute resolution, on the basis of the information provided to me, I consider that there was no scope for further local dispute resolution in this matter.

6.12 The Appellant seeks to appeal against the decision of the Commissioner to issue the Breach Notice for its failure to notify the Commissioner that its superintendent pharmacist became the subject of an investigation into their professional conduct by the police and the General Pharmaceutical Council.

6.13 I note that 'Duty to provide information about fitness matters as they arise' is found at Schedule 4, paragraph 31(1) which states:

31.—(1) *An NHS pharmacist (P) and, where P is a body corporate, every director and superintendent of P must, within 7 days of its occurrence, inform NHS England in writing if they—*

- (a) are convicted of any criminal offence in the United Kingdom;*
- (b) are bound over following a criminal conviction in the United Kingdom;*
- (c) accept a police caution in the United Kingdom;*
- (d) have, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging them absolutely (without proceeding to conviction);*
- (e) have accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal) or a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);*
- (f) have been convicted of an offence elsewhere than in the United Kingdom where the originating events, if they took place in England, could lead to a criminal conviction in England;*
- (g) are charged in the United Kingdom with a criminal offence, or are charged elsewhere than in the United Kingdom with an offence where the originating events, if they took place in England, could lead to a criminal conviction in England;*
- (h) are notified by any licensing, regulatory or other body of the outcome of any investigation into their professional conduct, and there is a finding against them;*
- (i) become the subject of any investigation into their professional conduct by any licensing, regulatory or other body;*
- (j) become the subject of any investigation into their professional conduct in respect of any current or previous employment, or are notified of the outcome of any such investigation and any finding against them;*
- (k) become the subject of any investigation by the NHS BSA in relation to fraud;*
- (l) become the subject of any investigation by another primary care organisation which might lead to their removal from a relevant list; or*
- (m) are removed, contingently removed or suspended from, refused inclusion in or conditionally included in any relevant list for a reason relating to unsuitability, fraud or efficiency of service provision,*

and must give details of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately when that investigation or those proceedings took place or are to take place, and any outcome.

- 6.14 There is no dispute that the Appellant did not notify the Commissioner of the investigation by the GPhC concerning its superintendent pharmacist within 7 days of becoming aware of the investigation.
- 6.15 I note the Appellant's statement that "*The Director was not aware of the specific details of the police investigation, including any charges or cautions. The Director was only informed of the superintendent pharmacist's reporting to the General Pharmaceutical Council (GPhC) and the police on 21 October 2024. Gate2Pharma was aware of the upcoming GPhC hearing scheduled for 11 November 2024 and intended to inform NHS England immediately following the hearing, which occurred on 13 November 2024.*" The Appellant's notification to the Commissioner was submitted by email dated 14 November 2024, in response to the Commissioner's email dated 6 November 2024. This notification took place 24 days after the Appellant first became aware of the superintendent pharmacist being the subject of an investigation by the GPhC on 21 October 2024.
- 6.16 The Appellant states that "*We acknowledge the delay in notifying the ICB within the stipulated 7-day period following the initial notification from our former Superintendent Pharmacist. However, we reiterate that the incident in question occurred at another pharmacy location, outside of our direct operational control.*" I do not consider that the occurrence of the events under investigation having taken place at a different pharmacy negates the Appellant's duty to notify the Commissioner in accordance with paragraph 31(1)(i) when it became aware of the investigation.
- 6.17 The Appellant comments that it was visited by the CDAO and the police on 23 October 2024 and that "*we were under the impression that the CDAO would directly inform the ICB, as is customary practice. The subsequent 12-day delay in internal communication, which was entirely beyond our control, further exacerbated the situation.*" I note the Commissioner states that it was made aware of the situation when called to a meeting with the CDAO team, the police and the GPhC, however argues that "*It is not customary practice for the CDAO to inform the commissioner. The regulatory requirement is that it is the responsibility of the body corporate to inform the commissioner that their superintendent (SI) became the subject of an investigation into their professional conduct. This is not negated due to other individuals within the NHS being aware of the position.*" Whilst I note that the Appellant was under pressure at the time to co-operate with the police, the CDAO and the GPhC, I concur with the Commissioner that it is the responsibility of the Appellant to notify the Commissioner in accordance with the Regulations.
- 6.18 I note that it is not clear from the information before me whether at the time the Appellant became aware that the police were involved in the matter, the superintendent pharmacist was convicted of a criminal offence, accepted a police caution or was charged with a criminal offence. My reading of paragraphs 31(1)(a), (c) and (g) are that these are criminal matters. I am therefore unable to consider whether the failure to notify the Commissioner regarding the police investigation constitutes a breach of paragraph 31(1)(a), (c) or (g). However, the inclusion of '*other body*' in paragraph 31(1)(i) is sufficiently broad to encompass police investigations.
- 6.19 As a result of the comments I make above, I am of the view that:

- 6.19.1 the Appellant did not notify the Commissioner of the investigation by the GPhC concerning its superintendent pharmacist within 7 days of becoming aware of the investigation;
- 6.19.2 such action constitutes a breach of the Appellant's terms of service as set out in paragraph 31(1)(i) of Schedule 4 to the Regulations; and
- 6.19.3 the Commissioner was entitled to issue the Breach Notice.

7 Decision

- 7.1 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 the Commissioner or substitute for that decision any decision that the Commissioner could have taken when it took that decision.
- 7.2 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**