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

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

22 April 2025

**REF: SHA/26459**

**APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM RUXLEY PHARMACY (FVC59) ("THE APPELLANT")**

1 Outcome:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £1,775.04

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:

Ruxley Pharmacy
NHS BSA on behalf of NHS England

8th Floor
10 South Colonnade
Canary Wharf
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E14 4PU

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**REF: SHA/26459**

**APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM RUXLEY PHARMACY (FVC59) ("THE APPELLANT")**

## 1 INTRODUCTION

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

1.2 The Secretary of State for Health and Social Care, pursuant to the National Health Service Litigation Authority (Pharmaceutical Remuneration – Payment Disputes) (England) Directions 2022 (the "Payment Disputes Directions"), has directed that NHS Resolution determines this type of appeal on their behalf. I, as an authorised officer of NHS Resolution, have made this determination.

## 2 DECISION

The NHS Business Services Authority ("NHS BSA"), acting on behalf of NHS England, sent a decision to the Appellant on 13 January 2025 in respect of Ruxley Pharmacy (ODS code FVC59). The decision stated:

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

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

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

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

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

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

2.7 Attached is a timeline of correspondence with your pharmacy to date which was passed to the NHS England local Pharmaceutical Services Regulations Committee (PSRC) to consider whether further action was necessary.

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

2.9 The below table outlines the recovery amount.

| ODS Code | Recover amount (£) |
|---|---|
| FVC59 | £1,775.04 |

Action Required

2.10 Please respond to this correspondence at pharmacysupport@nhsbsa.nhs.uk to confirm your agreement for the overpayment to be recovered pursuant to Regulation 94(1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. Please send this confirmation by 12th February 2025 Where you agree an overpayment has been made the amount over paid will be recovered by deduction from a future NHSBSA payment to you.

2.11 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 12th February 2025 to agree that there has been an overpayment DOES NOT mean that the overpayment cannot be recovered. Instead, where you do not agree that an overpayment has been made you have a right of appeal to the Secretary of State against NHS England's decision. Should you choose to appeal then send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or: NHS Resolution, Primary Care Appeals, 10 South Colonnade, Canary Wharf, London, E14 4PU.

2.13 If there is no appeal within 30 days from the date of this letter, NHS England has requested that the NHSBSA Provider Assurance Team commence overpayment recoveries under Regulation 94(1) (b) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, on the basis that the final outcome of our investigation is that there has been an overpayment. The NHSBSA will notify you of when the overpayment recovery will take place. A record of this process will be kept on your NHS England contractor file."

## 3 THE DISPUTE

In an email dated 13 January 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 “I wanted to make an appeal against a recovery of overpayment in regard to the Pharmacy Quality Scheme for the year 2023/24. The pharmacy in question is Ruxley Pharmacy, 2 Ruxley Lane, Epsom, KT19 0JA.

3.2 I have been told that my pharmacy did not submit audit data for the TARGET antibiotic checklist on the Manage Your Service (MYS) data collection tool on two separate occasions.

3.3 The first window of opportunity closed 31st March 2024. I was confident at this time that the required data had been submitted because after submitting the data I was shown a screen saying "thank you for your submission" or something to this effect.

3.4 I later received an email on the 4th July 2024 saying that we had missed a submission and that another opportunity would come up between dates Monday 29th July and Monday 5th August. This alone confused me as I was sure I had submitted first time around.

3.5 On Monday 29th July, I logged back into the MYS portal and clicked onto the Pharmacy Quality Scheme TARGET antibiotic checklist audit data tab. On here, our pharmacy data had already been logged in so I assumed that I had not clicked submit by mistake the first time around. I clicked through the data and clicked submit once again at the end. My regret here is that I did not take a screenshot or picture and the end page which showed the data submission.

3.6 Regretfully, I also did not check whether I had received a confirmation email as I assumed the submission must have gone through this time.

3.7 I am now being told that a recovery of £1775.04 is to be made against my pharmacy for not submitting data.

3.8 I find this upsetting because I know we have done the work required and been onto MYS twice to submit our data. Furthermore, we keep hard copies of the surveys we do as proof that the audit data has been collected. We also use these copies to log the data into the portal.

3.9 When I tried to explain that we have the survey data in the pharmacy as proof, I was told this cannot be used as evidence. If I do not have a confirmation email or picture of the submission it is impossible for me to state my case fairly. How can we be sure there wasn't a technical issue with the submission?

3.10 At Ruxley Pharmacy we have always completed the PQS work in a timely manner and keep our evidence on file. It takes a lot of time and effort on our part and it's extremely frustrating to not even be offered the chance to show our evidence in cases such as this. It also makes me wonder if there is a point to keeping evidence on file because in this case we could have made up all of the data on MYS and submitted knowing hard copy evidence will never be looked at.

3.11 I would just like to ask that the survey evidence our pharmacy collected can be taken into consideration. I can arrange for this to be sent via email or in the post. Please let me know if this is possible.

3.12 If I knowingly made a mistake I would certainly be happy to accept recovery of overpayment, but on this occasion I must fight my corner and insist that this is simply not the case.

3.13 I appreciate you taking to time to read this appeal and I look forward to hearing from you.”

4 **PROCEDURAL MATTER**

4.1 Primary Care Appeals used its discretion under the Payment Disputes Directions and sought representations from the Appellant giving it the opportunity to provide any evidence which it has in support of the appeal submission.

5 **SUMMARY OF REPRESENTATIONS**

This is a summary of representations received on the appeal.

5.1 The NHS BSA on behalf of NHS England stated:

5.1.1 "Thank you for your letter dated the 13th January 2025 and the opportunity to provide representations on the appeal.

**Background**

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

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

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

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

5.1.5.1 Medicines and Safety Optimisation

5.1.5.2 Respiratory

5.1.5.3 Prevention

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

5.1.7 For the PQS 2023/24, contractors were required to confirm in their declaration that they will have the evidence that they have met the gateway criterion and quality criteria that they were claiming for by the end of 31st March 2024. The

evidence of meeting the requirements of the gateway criterion and each domain should be retained for two years as it may be required for post-payment verification purposes.

**Target Antibiotic checklist**

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

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

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

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

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

5.1.11.2 The start and end date of the review period.

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

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

**Target Treating your infection leaflet**

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

5.1.13 This review must have been completed by the end of 31st March 2024 and must be carried out over four weeks with a minimum of 15 patients for each leaflet, or up to eight weeks if the minimum number of patients are not achieved within four weeks for each leaflet. The data from the leaflets must have been submitted via the MYS data collection tool by the end of 31st March 2024. The

contractor must have entered the start and finish dates of the data collection period on the MYS application at the point of declaration (which may be different from the date data is first entered on the MYS portal).

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

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

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

5.1.15.2 The start and end date of the review period.

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

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

**Anticoagulant Audit**

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

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

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

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

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

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

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

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

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

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

5.1.21 Following the completion of the 2023/24 PQS it had been identified that over 15% of the pharmacies that had claimed for the audit criteria had done so without submitting their audit data. This would then have meant that the claims for these pharmacies for the audit criteria would not have met the service specification outlined in Part VIIA of the Drug Tariff.

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

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

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

5.1.25 The Provider Assurance Team (PAT) sent emails to contractors on 4th July 2024, and again on 29th July 2024, to those contractors identified as not having submitted their audit data. The decision to reopen the MYS audit data tool was made to allow these contractors a second opportunity to submit their already collected data. Ruxley Pharmacy (FVC59) received both these emails, as evidenced in the timeline.

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

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

**Post Payment Verification**

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

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

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

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

5.1.31 Since no relevant audit data had been submitted on MYS, and no evidence of a submission had been presented, the outcome of the PPV investigation would recommend that an overpayment regarding their PQS payment had occurred.

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

5.1.33 Ruxley Pharmacy (FVC59) were contacted via email to the premises specific shared NHSmail account (pharmacy.fvc59@nhs.net) on the 17th September 2024 to request evidence that the required audit data was submitted, with a deadline date to respond with said evidence of submission by the 1st October 2024.

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

5.1.35 Ruxley Pharmacy (FVC59) responded to the PAT by email on 18th September 2024 confirming that they had received our email. Ruxley Pharmacy (FVC59) stated that they had filled in the information from all surveys and submitted them on MYS before 31st March 2024, and then again when the MYS portal was reopened between 29th July and 5th August. The contractor stated that on both occasions they reached a confirmation page, but that they did not receive a confirmation email following their submission. The contractor stated that they and the staff spent a lot of time speaking to patients and trying to get surveys completed.

5.1.36 The contractor expressed alarm that this data was not received and that they were being accused of claiming an overpayment. The contractor stated that they had hard copies of the audit data.

5.1.37 The PAT responded to Ruxley Pharmacy (FVC59) by email on 18th September 2024 explaining that we were unable to accept paper copies of the audit data as the Drug Tariff Part VIIA clearly stated that contractors must submit their evidence on the MYS data collection tool and asked whether the contractor took a screenshot to confirm submission of the Target Antibiotic Checklist.

5.1.38 Ruxley Pharmacy (FVC59) responded to the PAT by email on 19th September 2024 confirming that they did not have any screenshots confirming submission of the Target Antibiotic Checklist. The contractor stated that when the MYS data collection tool reopened, the system asked them to complete the respiratory tract infection (RTI) and urinary tract infection (UTI) surveys. The contractor stated that the information previously entered was still there, so they selected “no further entries”. They stated that the next page said something approximating “thank you for your submission”. The contractor stated that they were not asked for any other data, and that they assumed the data must have been submitted. They confirmed the only confirmation they had was for the anticoagulant checklist.

5.1.39 The PAT responded to Ruxley Pharmacy (FVC59) by email on 23rd September 2024, confirming that we sent emails on 4th July 2024 and 29th July 2024 to remind contractors that the data collection tool would be reopened from 29th July 2024 to Monday 5th August 2024 to allow for resubmission of their data, and that this data could **only** be collected via the MYS data collection tool as clearly stated in the Drug Tariff Part VIIA. The PAT confirmed that as Ruxley Pharmacy (FVC59) had not submitted their TARGET Antibiotic Checklist audit data, and the NHSBSA had not received the TARGET Antibiotic Checklist audit data for Ruxley Pharmacy (FVC59) within the above window, an overpayment had occurred. The PAT asked Ruxley Pharmacy (FVC59) to confirm whether they agreed to the recovery of the overpayment. The PAT advised that should Ruxley Pharmacy (FVC59) not agree that an overpayment had occurred, we would escalate the case to their ICB’s PSRC who would make a determination on whether an overpayment had occurred.

5.1.40 Ruxley Pharmacy (FVC59) responded to the PAT by email on 24th September 2024 confirming that they did not agree that an overpayment had been made. The contractor stated that they resubmitted the data on 29th July 2024. The contractor stated again that they did not receive a confirmation email from MYS and reiterated that they submitted the data for the TARGET Antibiotic Checklist before the initial deadline and also when the MYS data collection tool was reopened. The contractor asked for their data to be checked on MYS as when the MYS data collection tool reopened, all their entered data was already there. The MYS data collection tool does not allow contractors to submit their evidence a second time if it had previously been submitted. It would have not been possible for the contractor to submit the audit data before the 31st March

2024, and again when the data collection tool reopened by the 5th August 2024. Therefore, PAT sought to recover the overpayment because the TARGET Antibiotic Checklist audit was not submitted.

5.1.41 The PAT responded to Ruxley Pharmacy (FVC59) by email on 24th September 2024 advising that we had checked the MYS data and confirmed that Ruxley Pharmacy (FVC59) had not submitted any data for the TARGET Antibiotic Checklist. The PAT advised the contractor that the Drug Tariff Part VIIA clearly stated contractors must submit their evidence on the MYS data collection tool and paper copies cannot be accepted.

5.1.42 Ruxley Pharmacy (FVC59) responded to the PAT by email on 24th September 2024, asking what they could do at this stage, and stating that when the MYS data collection tool reopened, the only available survey to submit was the RTI and UTI checklist. The contractor confirmed that they had no confirmation email for the RTI and UTI checklist. The PAT can confirm that a confirmation email was sent on 29/07/2024 to [XX]@nhs.net for the UTI and RTI audits, as confirmed by our data team. The respiratory tract infection (RTI) and urinary tract infection (UTI) checklists relate to a different audit within the Prevention domain of the PQS. For this case, the PAT has proposed to recover the overpayment because the TARGET Antibiotic Checklist audit was not submitted. The contractor also stated that there was no option to submit data for the TARGET Antibiotic Checklist. The contractor stated that they know they submitted the TARGET Antibiotic Checklist before March 2024 because they kept physical copies and ticked them off when entered online. The contractor expressed that they felt it was unfair to lose the whole domain payment.

5.1.43 The PAT further responded to Ruxley Pharmacy (FVC59) by email on 25th September 2024 advising the contractor that the NHSBSA can only accept as evidence the confirmation email from the Target Antibiotic Checklist audit submission. The PAT confirmed the data collection tool on MYS has now closed, and that no further data could be submitted. The PAT reiterated that during the second submission window from the 29th July to the 5th August 2024, the NHSBSA received audit data from over 1,000 contractors, as requested by NHSE. The PAT stated that as the NHSBSA did not receive Ruxley Pharmacy (FVC59)'s audit data for the TARGET Antibiotic Checklist audit within the specified timeframe, this has resulted in an overpayment. Ruxley Pharmacy (FVC59) was advised that if they disagreed with the determination of an overpayment, the case would be escalated to the ICB's PSRC, who would review the case and make a final determination on whether an overpayment occurred.

5.1.44 The PAT asked Ruxley Pharmacy (FVC59) to confirm if they accept the overpayment and agreed to a recovery and we offered the contractor the option for the payment recovery to be taken in three instalments.

5.1.45 Ruxley Pharmacy (FVC59) responded to the PAT by email on 27th September 2024, confirming that they disagreed with the overpayment, because they had the evidence on site. They stated that it did not make sense to keep evidence of their work if it was not considered for situations such as this. The contractor also stated that they felt it did not make sense that they did not receive confirmation for the RTI and UTI audit submissions.

5.1.46 The PAT responded to Ruxley Pharmacy (FVC59) by email on 1st October 2024 confirming receipt of the email on 27th September 2024 and advised that the case would now be escalated to their ICB's PSRC for them to review.

5.1.47 Ruxley Pharmacy (FVC59) has failed to respond to any of the PAT's requests for evidence of their submitted audit data and disputes the recovery of the overpayment. They assert that they submitted all the audit data through MYS. The details of this case were referred to the NHS England Regional Team for review by their PSRC. A decision was sought as to whether they agreed an overpayment had occurred.

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

5.1.48 The case of Ruxley Pharmacy (FVC59) was escalated to PSRC for review on the 5th December 2024 as no evidence to demonstrate the required audit data was submitted had been received. A timeline of correspondence showing all contact the PAT had with the pharmacy was also provided to the PSRC for review.

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

5.1.50 This timeline clearly illustrates that, despite repeated requests by the PAT, Ruxley Pharmacy (FVC59) did not provide any evidence to demonstrate that they had submitted the required audit data within the required dates or agreed for a recovery of the overpayment made regarding PQS

5.1.51 PSRC concluded that as no evidence was submitted to demonstrate that Ruxley Pharmacy (FVC59) had submitted the TARGET antibiotic checklist audit data as required for PQS, either originally or in the extra opportunity it had been given, the pharmacy was not entitled to the payment for the Prevention domain of the PQS. Therefore, an overpayment should be reclaimed pursuant to Regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

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

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

*5.1.53* The appellant states:

*"I was confident at this time that the required data had been submitted because after submitting the data I was shown a screen saying "thank you for your submission" or something to this effect."*

5.1.54 The contractor has not provided evidence to the PAT to support that their TARGET Antibiotic Checklist audit was submitted. If Ruxley Pharmacy (FVC59) had submitted their TARGET Antibiotic Checklist audit data during the initial audit window of the 31st March 2024, or submitted their TARGET Antibiotic Checklist audit data during the reopening of the audit window by the 5th August 2024, a confirmation email would have automatically been received by the pharmacy.

5.1.55 The appellant states:

*"I later received an email on the 4th July 2024 saying that we had missed a submission and that another opportunity would come up between dates Monday 29th July and Monday 5th August. This alone confused me as I was sure I had submitted first time around."*

5.1.56 Once the deadline of 31st March 2024 for submitting all audit data claims had passed, Ruxley Pharmacy (FVC59) was identified by the PAT as a contractor who had claimed for PQS but had not submitted the required audit data on MYS. Emails were sent to Ruxley Pharmacy (FVC59) on 4th July 2024 and 29th July 2024 informing them that NHSBSA records show they had failed to submit the necessary audit data. To allow Ruxley Pharmacy (FVC59) to submit their already collected data, the MYS data collection tool would be reopened from 09:00 on 29th July 2024, to 16:00 on 5th August 2024. If Ruxley Pharmacy (FVC59) had submitted their TARGET Antibiotic Checklist audit data during the initial audit window of the 31st March 2024, or submitted their TARGET Antibiotic Checklist audit data during the reopening of the audit window by the 5th August 2024, a confirmation email would have automatically been received by the pharmacy.

5.1.57 The PAT did not receive any communication from Ruxley Pharmacy (FVC59) regarding any system errors with the MYS data collection tool either up to the 31st March 2024 or during the week commencing 29th July 2024. The PAT were not aware of any technical issues with the MYS data collection tool that would affect Ruxley Pharmacy (FVC59) submitting their audit data.

*5.1.58* The appellant states:

*"On Monday 29th July, I logged back into the MYS portal and clicked onto the Pharmacy Quality Scheme TARGET antibiotic checklist audit data tab. On here, our pharmacy data had already been logged in so I assumed that I had not clicked submit by mistake the first time around. I clicked through the data and clicked submit once again at the end. My regret here is that I did not take a screenshot or picture and the end page which showed the data submission."*

*5.1.59* This is in contradiction to what the appellant said in emails to the PAT on 19th September 2024, where they stated:

*"When the portal re-opened, it was asking me to fill in the information for respiratory tract infection (RTI) and urinary tract infection (UTI) surveys. It already had the information previously entered (which was more than 15) so I selected no further entries and the next page said thank you for your submission (or something to that effect). I wasn't asked for any other data. I assumed after this the data must have been submitted."*

5.1.60 The (RTI) and (UTI) checklists relate to a different audit within the Prevention domain of the PQS. For this case, the PAT seeks to recover the overpayment for the TARGET antibiotic audit only, as this was not submitted.

*5.1.61* In addition, this also contradicts what the appellant said in an email to the PAT on 24th September 2024, where they stated:

*"When the MYS portal reopened for submissions the only available survey to submit was the RTI and UTI checklist, but even for this I have no confirmation email. There was no option to submit data for the TARGET antibiotic checklist, but I know we did this before March because we keep physical copies and tick them off when entered online."*

5.1.62 The appellant may not recall clearly which screens and audits they accessed when the MYS portal reopened. If Ruxley Pharmacy (FVC59) had submitted their TARGET Antibiotic Checklist audit data during the initial audit window of the 31st March 2024, or submitted their TARGET Antibiotic Checklist audit data during the reopening of the audit window by the 5th August 2024, a confirmation email would have automatically been received by the pharmacy.

5.1.63 The appellant states:

*"Regretfully, I also did not check whether I had received a confirmation email as I assumed the submission must have gone through this time. I am now being told that a recovery of £1775.04 is to be made against my pharmacy for not submitting data. I find this upsetting because I know we have done the work required and been onto MYS twice to submit our data."*

5.1.64 If Ruxley Pharmacy (FVC59) had submitted their TARGET Antibiotic Checklist audit data during the initial audit window of the 31st March 2024, or submitted their TARGET Antibiotic Checklist audit data during the reopening of the audit window by the 5th August 2024, a confirmation email would have automatically been received by the pharmacy. Without this email confirmation, the PAT cannot substantiate the claims from Ruxley Pharmacy (FVC59) that the audits were submitted.

5.1.65 The appellant states:

*"Furthermore, we keep hard copies of the surveys we do as proof that the audit data has been collected. We also use these copies to log the data into the portal. When I tried to explain that we have the survey data in the pharmacy as proof, I was told this cannot be used as evidence."*

*"At Ruxley Pharmacy we have always completed the PQS work in a timely manner and keep our evidence on file. It takes a lot of time and effort on our part and it's extremely frustrating to not even be offered the chance to show our evidence in cases such as this. It also makes me wonder if there is a point to keeping evidence on file because in this case we could have made up all of the data on MYS and submitted knowing hard copy evidence will never be looked at. I would just like to ask that the survey evidence our pharmacy collected can be taken into consideration. I can arrange for this to be sent via email or in the post.*

*Please let me know if this is possible."*

5.1.66 The PAT does not dispute that the appellant has this data, however it should be noted that this data has not been submitted on the MYS data collection tool and so cannot confirm that this is the case. Having undertaken the audit is only part of the requirements for meeting the audit criteria requirements of the PQS. To meet the requirements of the scheme it is also essential that contractors submitted their audit data as outlined in the service specification.

5.1.67 The Drug Tariff Part VIIA clearly states contractors must submit their evidence on the MYS data collection tool. The PQS guidance 6.1.4a also clearly states that "*A declaration that by the end of 31st March 2024, the contractor will have shared their anonymised data or have declared that no patients have been identified as being suitable for review via the data collection tool on the NHSBSA MYS application*."

5.1.68 The NHSBSA did not receive audit data from Ruxley Pharmacy (FVC59) for the TARGET Antibiotic Checklist on the MYS data collection tool by the end of 31st March 2024, or when the MYS portal was reopened between Monday 29th July 2024 to 16:00 on Monday 5th August 2024. If Ruxley Pharmacy (FVC59) had submitted the required evidence on the MYS data collection tool by the 31st March 2024 or the 5th August 2024, a confirmation email would have automatically been received by the pharmacy.

5.1.69 The PAT, NHS England and the ICB has a duty to ensure that payments claimed for the service are in accordance with the service specification. In this case, unfortunately, that was not the case and as a result the ICB made the decision that the claims made for the audit criteria did not meet the service specification and so had to be recovered.

*5.1.70* The appellant states:

*"If I do not have a confirmation email or picture of the submission it is impossible for me to state my case fairly."*

5.1.71 The contractor has confirmed that they did not receive a submission confirmation email which would have confirmed the audit data had been submitted on the MYS data collection tool.

*5.1.72* The appellant states:

*"How can we be sure there wasn't a technical issue with the submission?"*

5.1.73 The MYS team did not report any failings with the MYS data collection tool either up to the 31st March 2024 or during the week commencing 29th July 2024. The PAT did not receive any communication from Ruxley Pharmacy (FVC59) regarding any system errors with the MYS data collection tool either up to the 31st March 2024 or during the week commencing 29th July 2024. The PAT were not aware of any technical issues with the MYS data collection tool that would affect Ruxley Pharmacy (FVC59) submitting their audit data.

5.1.74 The appellant finally states:

*"If I knowingly made a mistake I would certainly be happy to accept recovery of overpayment, but on this occasion I must fight my corner and insist that this is simply not the case."*

5.1.75 Irrespective of whether the mistake was made unknowingly, the NHSBSA did not receive audit data from Ruxley Pharmacy (FVC59) for the TARGET Antibiotic Checklist on the MYS data collection tool by the end of 31 March 2024, or when the MYS portal was reopened between Monday 29th July 2024 to 16:00 on Monday 5th August 2024 as stated in the Drug Tariff Part VIIA. Without an email confirmation, the PAT cannot substantiate the claims from Ruxley Pharmacy (FVC59) that the Target Antibiotic Checklist audit was submitted.

5.1.76 Therefore, we consider that an overpayment of £1,775.04 has occurred.

**Key points for consideration**

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

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

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

5.1.80 The NHSBSA sent multiple emails informing contractors of the reopening of the MYS data collection tool. The contractor therefore had another opportunity to submit the missing audit data as evidence.

5.1.81 The NHSBSA records for this contractor show they had not submitted the relevant audit data on MYS by the 31st March 2024 or by the 5th August 2024 when the data collection tool was reopened. Emails were sent to the contractor to provide evidence to demonstrate that they had submitted the required audit data. Only those contractors who did not submit any audit data for either Anticoagulant audit, Target treating your infections leaflet and Target antibiotic checklist, or failed to engage with the process were referred to the regional PSRC.

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

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

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

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

5.1.86 Having considered these matters, NHS England respectfully suggests that NHS Resolution conclude that the decision made by the PSRC, in respect of the £1775.04 overpayment recovery from Ruxley Pharmacy (FVC59), was fair and in accordance with regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

5.1.87 Please let us know if you need anything further to help in these deliberations."

5.2 THE APPELLANT

5.2.1 "I am writing in response to the following appeal: SHA/ 26459 - RUXLEY PHARMACY (FVC59) - APPEAL REGARDING OVERPAYMENT

5.2.2 Firstly, I would like to thank you for allowing me the opportunity to present the evidence collected by our pharmacy for the pharmacy quality scheme "prevention" category.

5.2.3 I have attached the guidance contractors received for the 2023/24 PQS requirements. It is from page 21 on this guidance where the "Prevention" criteria are stated.

5.2.4 I have been told on two separate occasions that Ruxley Pharmacy has not submitted data for the TARGET antibiotic checklist. My appeal relates to the fact that I'm certain I filled in the data for these checklists on the MYS portal before 31st March 2024.

5.2.5 When the portal reopened on Monday 29th July 2024, the data was already pre-filled so I clicked through to the end submission page. The contractor guidance is copied below:

*"This review must be completed by the end of 31 March 2024 and carried out over four weeks with a minimum of 25 patients; or up to eight weeks if the minimum number of patients are not achieved within four weeks. Contractors should make a record of the start and end date of the review as they will be required to enter this information into the MYS application when they make their declaration."*

5.2.6 To support my appeal, I have attached the surveys collected by Ruxley Pharmacy between 1st December 2023 and 31st January 2024. It was from these surveys that I submitted the data onto the MYS portal. I did not receive a confirmation email which I didn't think to look for at the time of submission.

5.2.7 I also didn't receive a confirmation email for the TARGET treating your infection UTI and RTI leaflet data. Again, I am certain I entered this data before 31st March 2024 and also when the portal reopened Monday 29th July 2024. Even without the confirmation email, this criteria didn't appear to come into question which I thought was strange. Nevertheless, I have attached the leaflets we filled in for the following criteria:

*"This review must be completed by the end of 31 March 2024 and must be carried out over four weeks with a minimum of 15 patients for each leaflet, or up to eight weeks if the minimum number of patients are not achieved within four weeks for each leaflet. The data from the leaflets must be submitted via the MYS data collection tool by the end of 31 March 2024"*

5.2.8 Hopefully the scans I have sent through are clear enough to read. Please let me know if any of it is unclear or requires sending again.

5.2.9 We try to keep our PQS requirement evidence in a file on site in case it is required for inspection or to use for cases such as this. My main frustration was the fact that this isn't taken into consideration, so I appreciate the chance offered to send it across."

## 6 OBSERVATIONS

### 6.1 THE APPELLANT

6.1.1 "Thank you for the clarification, I had assumed the recommendations at the end of the letter were for the final decision.

6.1.2 There are a couple of observations I would like to make is regarding the following statement:

6.1.3 Firstly, Mr [LH] writes the following:

*"The (RTI) and (UTI) checklists relate to a different audit within the Prevention domain of the PQS. For this case, the PAT seeks to recover the overpayment for the TARGET antibiotic audit only, as this was not submitted"*

6.1.4 I have stated myself that I did not receive confirmation emails for the data submitted regarding the RTI and UTI checklists and also the TARGET antibiotic audits. If the recovery of overpayment is for the TARGET antibiotic

checklists only, would the PAT be able to confirm that they did receive our submission data for the RTI and UTI checklists?

6.1.5 Because if this is the case, I didn't receive the confirmation email. Given that these confirmation emails are required for my proof, it is very difficult for me to argue my case. This leads to my next observation which is the following statement made:

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

6.1.6 If I don't have any confirmation emails for my data submissions, how can I possibly show additional evidence? I have scanned each TARGET antibiotic checklist and RTI/UTI survey undertaken and provided this as evidence. If I had known I needed to take screenshots or pictures of the submissions for situations like this, I would have done so.

6.1.7 I know in myself that I saw the follow up emails to resubmit data and went onto the MYS portal during the required timeframes to make sure everything had been submitted.

6.1.8 I would also like to reiterate that this is the only issue that has come into question regarding PQS submissions from Ruxley Pharmacy. We make a conscious effort to follow all the of the requirements that are asked of pharmacy contractors for the PQS criteria and do so by keeping a physical audit trail of our work. Hopefully, this has been reflected through seeing our completed TARGET checklist forms as well as the RTI/UTI surveys.

6.1.9 Thank you once again for allowing me to state my case."

## 7 CONSIDERATION

7.1 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.

7.2 Direction 4 of the Payment Disputes Directions requires me to determine the appeal by dismissing it if:

7.2.1 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

7.2.2 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).

7.3 I consider that I am not required to dismiss the appeal pursuant to Direction 4 as:

7.3.1 the NHS BSA advised the Appellant of a 30 days' timescale for appeal and the appeal was received within that timescale; and

7.3.2 the grounds of the appeal are valid.

7.4 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:

7.4.1 a hearing is unnecessary; or

7.4.2 I must dismiss the appeal by virtue of Direction 4.

7.5 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.

7.6 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.

7.7 The Appellant seeks to appeal against the decision of NHS England that an overpayment had occurred and to recover the sum of £1,775.04.

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

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

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

*Contractors participating in the PQS 2023/24 were required to declare their performance against three quality domains on a day of their choosing during the declaration window; to be completed via the NHSBSA Manage Your Service (MYS) Portal. The declaration window was open between 09:00 on 5th February 2024 and 23:59 on 1st March 2024. Contractors had until the end of 31st March 2024 to complete some elements of the PQS. Where this was the case, they were asked to declare that the requirements of the criterion will be met by the end of 31st March 2024.*

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

- *Medicines and Safety Optimisation*
- *Respiratory*
- *Prevention"*

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

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

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

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

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

*The Provider Assurance Team (PAT) sent emails to contractors on 4th July 2024, and again on 29th July 2024, to those contractors identified as not having submitted their audit data. The decision to reopen the MYS audit data tool was made to allow these contractors a second opportunity to submit their already collected data. Ruxley Pharmacy (FVC59) received both these emails, as evidenced in the timeline."*

7.13 I have been provided with copy emails and reminders that were sent to the Appellant as well as confirmation of the email address that was used and delivery receipts have also been provided. There is no dispute between the parties that these were sent electronically and to the premises specific email account as set out in the Regulations.

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

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

*Ruxley Pharmacy (FVC59) were contacted via email to the premises specific shared NHSmail account (pharmacy.fvc59@nhs.net) on the 17th September 2024 to request evidence that the required audit data was submitted, with a deadline date to respond with said evidence of submission by the 1st October 2024."*

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

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

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

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

7.18 The Appellant states *"…On Monday 29th July, I logged back into the MYS portal and clicked onto the Pharmacy Quality Scheme TARGET antibiotic checklist audit data tab. On here, our pharmacy data had already been logged in so I assumed that I had not clicked submit by mistake the first time around. I clicked through the data and clicked submit once again at the end. My regret here is that I did not take a screenshot or picture and the end page which showed the data submission.*

*Regretfully, I also did not check whether I had received a confirmation email as I assumed the submission must have gone through this time."*

7.19 I note the further statements from the Appellant in this regard, however I have not been provided with any evidence to demonstrate that this was the case and the submission was made, as set out in the Guidance, by the relevant deadlines.

7.20 I note the comments from the NHS BSA that "*The MYS team did not report any failings with the MYS data collection tool either up to the 31st March 2024 or during the week commencing 29th July 2024. The PAT did not receive any communication from Ruxley Pharmacy (FVC59) regarding any system errors with the MYS data collection tool either up to the 31st March 2024 or during the week commencing 29th July 2024. The PAT were not aware of any technical issues with the MYS data collection tool that would affect Ruxley Pharmacy (FVC59) submitting their audit data.*"

7.21 I note the comments from the Appellant that it did not receive confirmation emails for the other two domains within the PQS, the "RTI" and "UTI" checklists. However, I note that the NHS BSA has confirmed that "*a confirmation email was sent on 29/07/2024 to [XX]@nhs.net for the UTI and RTI audits, as confirmed by our data team. The respiratory tract infection (RTI) and urinary tract infection (UTI) checklists relate to a different audit within the Prevention domain of the PQS. For this case, the PAT has proposed to recover the overpayment because the TARGET Antibiotic Checklist audit was not submitted.*"

7.22 I note that there is no dispute that the Appellant submitted the information of the RTI and UTI checklists and that this has been confirmed by the NHS BSA, however I am mindful that these relate to the Prevention domain of the PQS and that "*the PAT seeks to recover the overpayment for the TARGET antibiotic audit only, as this was not submitted.*"

7.23 The NHS BSA goes on to state "*If Ruxley Pharmacy (FVC59) had submitted their TARGET Antibiotic Checklist audit data during the initial audit window of the 31st March 2024, or submitted their TARGET Antibiotic Checklist audit data during the reopening*

*of the audit window by the 5th August 2024, a confirmation email would have automatically been received by the pharmacy.*" The NHS BSA again reiterates that "*the PAT were not aware of any technical issues with the MYS data collection tool that would affect Ruxley Pharmacy (FVC59) submitting their audit data."*

7.24 I note the reference to the Guidance and in particular the reference to section 6.1.4.a which states:

*6.1.4.a TARGET Antibiotic Checklist*

*When making a declaration for this criterion, contractors must confirm the following on the MYS application:*

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

*• The start and end date of the review period.*

*• A declaration that the contractor has notified the patient's prescriber where concerns are identified.*

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

7.25 I note that the Guidance goes on to state, under "Payments and declarations" that

*Submitting a declaration is an essential part of the scheme and it enables the efficient management of the payment process. The submission of a declaration for completing any of the quality requirements of the scheme, both accurately and within the timescales outlined in the Drug Tariff, is a significant part of demonstrating that the quality requirements have been met. Consequently, any contractor who fails to successfully submit their declaration during the declaration period will not be eligible for a PQS payment.*

7.26 Whilst I note that the Appellant has retained hard copy records and this is commended, in order for the declaration to be complete "*contractors must confirm the following on the MYS application …*" and further *"…the contractor will have shared their anonymised data or have declared that no patients have been identified as being suitable for review via the data collection tool on the NHSBSA MYS application."*

7.27 The NHS BSA state "*The PAT does not dispute that the appellant has this data, however it should be noted that this data has not been submitted on the MYS data collection tool and so cannot confirm that this is the case. Having undertaken the audit is only part of the requirements for meeting the audit criteria requirements of the PQS. To meet the requirements of the scheme it is also essential that contractors submitted their audit data as outlined in the service specification.*"

7.28 As set out in the Guidance, there is no provision for hard copies of the relevant audit to be submitted. All data collected should have been submitted via the MYS application. I am mindful that submitting the declaration is an essential part of the scheme and that this is more than demonstrating that hard copies of documents have been retained.

7.29 Given the above requirements, I am of the view that, even though sign-up to the service was optional, once a pharmacy has chosen to sign-up it is the Appellant's responsibility to ensure that it is familiar with the requirements of the service that it has signed-up to

provide, which includes how information should be uploaded and the relevant dates that this should be done by.

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

7.31 I agree with the NHS BSA that the decision to recover the overpayment is appropriate.

## 8 DECISION

8.1 I have had regard to the Payment Disputes Directions which provide me with three options:

8.1.1 dismiss the appeal and confirm the decision of NHS England; or

8.1.2 substitute for the decision any decision that NHS England could have taken when it took the decision; or

8.1.3 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.

8.2 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £1,775.04.

8.3 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**