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24 April 2025

REF: SHA/26469

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM RAVENOR PHARMACY (FLK52) ("THE APPELLANT")

1 Outcome:

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

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

A copy of this decision is being sent to:

Ravenor Pharmacy
NHS BSA on behalf of NHS England

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

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Email: nhsr.appeals@nhs.net

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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM RAVENOR PHARMACY (FLK52) ("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 15 January 2025 in respect of Ravenor Pharmacy (ODS code FLK52). 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 claims 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**. 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**.

2.3 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 & Anticoagulant audit on the Manage Your Service (MYS) data collection tool by the end of **31 March 2024**.

2.4 Exceptionally, we contacted your pharmacy by email on the 04/07/2024 to highlight that NHS England had instructed the NHSBSA to re-open the data collection 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.

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

2.6 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.

2.7 **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.**

2.8 The below table outlines the recovery amount.

ODS Code	Recovery amount (£)
FLK52	£3,106.33

2.9 **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) Regulation 2013. **Please send this confirmation by 14th 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 14th February 2025 deadline to agree that there has been an overpayment DOES NOT mean that the overpayment cannot be recovered.** Instead, where you do not agree that an overpayment has been made you have a right of appeal to the Secretary of State against NHS England's decision. Should you choose to appeal then send a concise and reasoned statement of the grounds for your appeal **within 30 days of the date of this letter** to nhsr.appeals@nhs.net or:

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

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

3 THE DISPUTE

In an email dated 16 January 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 “We hereby lodge an appeal to stop the recovery of PQS payments made to our pharmacy.

3.2 We DID provide the required data.

3.3 In this time of extreme financial uncertainty on pharmacy there is no logical reason for not entering the data especially when all the information was collected by our pharmacy team.

3.4 I have listed below the letter I wrote to the recovery team.

3.5 Further to your email dated 15/01/2025 please note that NO OVERPAYMENT has been made to our pharmacy. All the data for the PQS was entered and submitted on time. We even re-entered the data when the window was reopened and we were contacted. As far as I am aware no email confirmations have been ever received upon data entry.

3.6 I urge you to recheck the data entry system and verify when the data was submitted. We require proof of this date as we are 100% compliant.

3.7 Looking back at our PQS claims history you can check that this sort of thing does not happen to us.

3.8 Logically why would we not submit the data when we have the data within the required timescale.

3.9 We urge you to check and prove when the data was submitted as otherwise we will be lodging a formal appeal.

3.10 I urge you to reasoning and not reclaim this PQS payment made to us.”

4 SUMMARY OF REPRESENTATIONS

This is a summary of representations received on the appeal.

4.1 The NHS BSA on behalf of NHS England stated:

4.1.1 “Thank you for your letter dated the 16th January 2025 and the opportunity to provide representations on the appeal.

4.1.2 **Background**

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

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

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

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

4.1.6.1 Medicines and Safety Optimisation

4.1.6.2 Respiratory

4.1.6.3 Prevention

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

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

4.1.9 **Target Antibiotic checklist**

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

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

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

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

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

4.1.13.2 The start and end date of the review period.

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

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

4.1.14 **Target Treating your infection leaflet**

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

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

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

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

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

4.1.18.2 The start and end date of the review period.

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

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

4.1.19 **Anticoagulant Audit**

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

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

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

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

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

4.1.23.2 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).

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

4.1.23.4 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.

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

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

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

4.1.27 NHS England were aware that the number of pharmacies who had failed to submit audit data was far higher than in previous years. Representations had been made to NHS England suggesting that this was, at least in part, due to

the added pressures contractors were under in February and March to deliver the Pharmacy First Service, a new service introduced on 31st January 2024.

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

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

4.1.30 The Provider Assurance Team (PAT) sent emails to contractors on 4th July 2024, and again on 29th July 2024, to those contractors identified as not having submitted their audit data. The decision to reopen the MYS audit data tool was made to allow these contractors a second opportunity to submit their already collected data. Ravenor Pharmacy (FLK52) received both these emails, as evidenced in the timeline.

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

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

4.1.33 **Post Payment Verification**

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

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

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

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

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

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

4.1.40 NHSBSA records for Ravenor Pharmacy (FLK52) show they had submitted the relevant audit data for the TARGET treating your infections leaflet audit, however no submission was received for the TARGET Antibiotic Checklist audit and the Anticoagulant audit, despite making a PQS declaration.

4.1.41 Ravenor Pharmacy (FLK52) were contacted via email to the premises specific shared NHSmail account (pharmacy.FLK52@nhs.net) on the 17th September 2024 to request evidence that the TARGET Antibiotic Checklist audit and the Anticoagulant audit data was submitted, with a deadline date to respond with said evidence of submission by the 1st October 2024.

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

4.1.43 On the 30th September 2024, Ravenor Pharmacy (FLK52) contacted PAT explaining they had already submitted the audit data on MYS when the MYS data collection tool reopened week commencing Monday 29th July. The contractor stated that they didn't submit the first time, however when the window reopened, they submitted the data they had saved previously.

4.1.44 Ravenor Pharmacy (FLK52) were contacted on 4th October 2024 via email again, explaining the need for the PPV process, and included the email sent on the 17th September 2024. The email sent on the 4th October 2024 had a deadline to respond with any evidence of submission of the TARGET Antibiotic Checklist audit and the Anticoagulant audit data by the 16th October 2024. Ravenor Pharmacy (FLK52) was also made aware that the attachments sent to PAT on 30th September 2024 could not be opened and explained we would need a confirmation email or a screenshot to show the TARGET Antibiotic Checklist audit and the Anticoagulant audit had been submitted on the MYS data collection tool.

4.1.45 A telephone call was made to Ravenor Pharmacy (FLK52) to advise that the PAT had sent emails to the pharmacy's premises specific shared email address and the final email sent, dated 4th October 2024, required a response by 16th October 2024. The contractor confirmed that he was aware of the email and would respond by 21st October 2024.

4.1.46 Ravenor Pharmacy (FLK52) emailed on 21st October 2024, explaining that they only have paper copies of the audit data, and they believe there was a technical issue on the MYS portal. The contractor felt that the paper copies should be sufficient evidence of proof the audits were carried out.

4.1.47 An email response was sent on 29th October 2024 to Ravenor Pharmacy (FLK52) confirming the dates PAT sent the reminder emails to the pharmacy regarding submitting the missing TARGET Antibiotic Checklist and Anticoagulant audit data on the MYS data collection tool. The contractor was made aware if they should disagree with the determination of an overpayment, that we would escalate their case to their ICB's PSRC for review.

4.1.48 Ravenor Pharmacy (FLK52) failed to respond to the email sent on 29th October 2024.

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

4.1.50 The case of Ravenor Pharmacy (FLK52) 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.

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

4.1.52 This timeline clearly illustrates that Ravenor Pharmacy (FLK52) did not provide any evidence to demonstrate they had submitted the required audit data within the required dates or agreed for a recovery of the overpayment made regarding PQS. This was despite repeated requests made by the PAT to the contractor to provide such evidence or agree to the recovery.

4.1.53 PSRC concluded that as no evidence was submitted to demonstrate that Ravenor Pharmacy (FLK52) had submitted the audit data as required for PQS, either originally or in the extra opportunity it had been given, the pharmacy was not entitled to the payment for the audit sections 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.

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

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

4.1.56 The appellant states:

4.1.57 *"We did provide the required data. In this time of extreme financial uncertainty on pharmacy there is no logical reason for not entering the data especially when all the information was collected by our pharmacy team."*

4.1.58 As per the Drug Tariff Part VIIA – PQS 2023/24 contractors are required to carry out an Anticoagulation audit and submit the audit data by 31st March 2024. Additionally, as part of the Prevention Domain, contractors were required to declare that they had shared their anonymised Antibiotic Checklist data and their anonymised TARGET treating your infections review data or that they had no patients identified as suitable by 31 March 2024.

4.1.59 Ravenor Pharmacy (FLK52) did not submit any audit data for the TARGET Antibiotic Checklist or Anticoagulant audit by the 31st of March 2024.

4.1.60 Ravenor Pharmacy (FLK52) were contacted by the PAT on the 4th July 2024, to inform them that the pharmacy had missed the original opportunity to submit their audit data regarding their PQS declaration, and to give the pharmacy a further opportunity to submit their already collected data via the MYS collection tool. This window of opportunity ran from 9:00 on Monday the 29th July 2024 to 16:00 on Monday the 5th August 2024. A delivery complete notification which pertains to this email was received by the PAT on the 4th of July 2024.

4.1.61 Again, a reminder email of the opportunity to submit the missing data was emailed to Ravenor Pharmacy (FLK52) on the 29th of July 2024. A delivery complete notification which pertains to this email was received by the PAT on the 29th of July.

4.1.62 Ravenor Pharmacy (FLK52) did not submit any audit data for the TARGET Antibiotic Checklist or Anticoagulant audit by the 5th of August 2024.

4.1.63 Our Data & Insight team have confirmed that Ravenor Pharmacy (FLK52) submitted audit data for the TARGET treating your infections leaflet audit. 30 patients were submitted for the TARGET treating your infections leaflet audit on the 26th July 2024. No audit data however was submitted for the TARGET Antibiotic Checklist or Anticoagulant audit, in accordance with the Drug Tariff Part VIIA. If Ravenor Pharmacy (FLK52) had submitted the data for the TARGET Antibiotic Checklist and Anticoagulant audit, a confirmation email would have been sent to the contractor.

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

4.1.65 The appellant states:

4.1.66 *"Further to your email dated 15/01/2025 please note that NO OVERPAYMENT has been made to our pharmacy. All the data for the PQS was entered and submitted on time. We even re-entered the data when the window was reopened, and we were contacted. As far as I am aware no email confirmations have been ever received upon data entry."*

4.1.67 *I urge to you recheck the data entry system and verify when the data was submitted. We require proof of this date as we are 100% compliant."*

4.1.68 Our Data & Insight team have rechecked the data and confirmed that Ravenor Pharmacy (FLK52) submitted audit data for the TARGET treating your infections leaflet audit. 30 patients were submitted for the TARGET Treating

your infections leaflet audit on the 26th July 2024. No audit data was submitted for the TARGET Antibiotic Checklist or Anticoagulant audit, in accordance with the Drug Tariff Part VIIA. If Ravenor Pharmacy (FLK52) had submitted the data for the TARGET Antibiotic Checklist and Anticoagulant audit, a confirmation email would have been sent to the contractor.

4.1.69 The Drug Tariff Part VIIA clearly states contractors must submit their evidence on the MYS data collection tool. The PQS guidance 4.1.4 Bullet point 4, 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."

4.1.70 The NHSBSA did not receive audit data from Ravenor Pharmacy (FLK52) for the TARGET Antibiotic Checklist and Anticoagulant audit on the MYS data collection tool by the end of 31st March 2024, or when the MYS data collection tool was reopened between Monday 29th July 2024 to Monday 5th August 2024. If Ravenor Pharmacy (FLK52) 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.

4.1.71 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 Ravenor Pharmacy (FLK52) 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 Ravenor Pharmacy (FLK52) submitting their audit data.

4.1.72 The appellant argues that:

4.1.73 *"Looking back at our PQS claims history you can check that this sort of thing does not happen to us. Logically why would we not submit the data when we have the data within the required timescale. We urge you to check and prove when the data was submitted as otherwise, we will be lodging a formal appeal."*

4.1.74 Irrespective of the contractors' strong compliance record of the PQS noted within the appeal from Ravenor Pharmacy (FLK52), our Data & Insight team have confirmed that Ravenor Pharmacy (FLK52) did not submit the audit data for the TARGET Antibiotic Checklist or Anticoagulant Audit. If Ravenor Pharmacy (FLK52) had submitted the data for the TARGET Antibiotic Checklist and Anticoagulant audit, a confirmation email would have been sent to the contractor.

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

4.1.76 The Drug Tariff Part VIIA clearly states contractors must submit their evidence on the MYS data collection tool. The PQS guidance 4.1.4 Bullet point 4, 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."

4.1.77 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.

4.1.78 **Key points for consideration**

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

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

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

4.1.82 The NHSBSA sent multiple emails informing contractors of the reopening of the MYS data collection tool. The contractor was therefore aware that they had had this final opportunity to submit the missing audit data as evidence.

4.1.83 The NHSBSA records for this contractor show they had not submitted the relevant audit data for the TARGET Antibiotic Checklist and Anticoagulant audit data on the MYS data collection tool by the 31st March 2024 or by the 5th August 2024 when the data collection tool was reopened. However, the contractor had successfully used the MYS system to submit their PQS declaration and audit data for the TARGET treating your infections leaflet audit.

4.1.84 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 who failed to engage with the process were referred to the regional PSRC.

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

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

4.1.87 Irrespective of the contractors' personal circumstances and previous strong compliance with the PQS noted within the appeal from Ravenor Pharmacy (FLK52), it does not include any evidence that the audit data was submitted on MYS.

4.1.88 The Appellant has not provided any additional evidence to indicate that the PSRC's decision stating that the contractor failed to submit the necessary audit data for PQS as outlined in the Drug Tariff Part VIIA was incorrect. Since the

PSRC determined that the audit data was not submitted, it logically follows that their decision regarding an overpayment is also consistent with the Drug Tariff Part VIIA.

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

4.1.90 Having considered these matters, NHS England respectfully suggests that NHS Resolution conclude that the decision made by the PSRC, in respect of the £3,106.33 overpayment recovery from Ravenor Pharmacy (FLK52), was fair and in accordance with regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

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

5 OBSERVATIONS

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

6 CONSIDERATION

6.1 Direction 2 of the Payment Disputes Directions directs me to determine a dispute in respect of the recovery of an overpayment from an NHS pharmacist under regulation 94(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services Regulations) 2013 (the "Regulations") which is in the nature of an appeal against a decision of NHS England that there has been an overpayment.

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

6.2.1 NHS England has advised that an appeal must be brought within 30 days of the date the Appellant was notified of NHS England's decision and the appeal was not brought within that timescale; or

6.2.2 I am of the opinion that notification of the appeal contains no valid grounds of appeal (for example because it amounts to a challenge to the legality or reasonableness of the Payment Disputes Directions, the Regulations or the Drug Tariff).

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

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

6.3.2 the grounds of the appeal are valid.

6.4 Direction 6 of the Payment Disputes Directions states that I may determine the appeal without hearing any oral representations but if an appellant asks to make oral representations a hearing must be arranged unless I am satisfied that:

6.4.1 a hearing is unnecessary; or

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

6.5 The Appellant has not requested a hearing. On the basis of the information before me I have considered that it is unnecessary to hold an oral hearing.

6.6 I have before me the papers considered by the NHS BSA. I also have before me the responses to NHS Resolution's own statutory consultations.

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

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

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

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

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

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

6.12.1 *Medicines and Safety Optimisation*

6.12.2 *Respiratory*

6.12.3 *Prevention"*

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

6.14 The NHS BSA went on to state that "*following 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 have then meant that the claims for these pharmacies for the audit criteria would not have met the service specification outlined in Part VIIIA of the Drug Tariff.*

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

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

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

6.18 *The Provider Assurance Team (PAT) sent emails to contractors on 4th July 2024, and again on 29th July 2024, to those contractors identified as not having submitted their audit data. The decision to reopen the MYS audit data tool was made to allow these contractors a second opportunity to submit their already collected data. Ravenor Pharmacy (FLK52) received both these emails, as evidenced in the timeline."*

6.19 I have been provided with copy emails and reminders that were sent to the Appellant as well as confirmation of the email address that was used and that delivery receipts had been provided.

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

6.21 The NHS BSA states that "*As part of the PPV activity, after the submission window had closed, emails were then sent to all contractors who had not utilised the additional opportunity to submit the necessary audit data. This email outlined that the 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 records 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 recover of their PQS payment.*

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

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

6.24 The Appellant states that "*All the data for the PQS was entered and submitted on time. We even re-entered the data when the window was reopened and we were contacted. As far as I am aware no email confirmations have been ever received upon data entry*".

6.25 Further the NHS BSA states that "*Our Data & Insight team have rechecked the data and confirmed that Ravenor Pharmacy (FLK52) submitted audit data for the TARGET treating your infections leaflet audit. 30 patients were submitted for the TARGET Treating your infections leaflet audit on the 26th July 2024. No audit data was submitted for the TARGET Antibiotic Checklist or Anticoagulant audit, in accordance with the Drug Tariff Part VIIA. If Ravenor Pharmacy (FLK52) had submitted the data for the TARGET*

Antibiotic Checklist and Anticoagulant audit, a confirmation email would have been sent to the contractor."

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

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

6.28 I note the NHS BSA states that it "*did not receive audit data from Ravenor Pharmacy (FLK52) for the TARGET Antibiotic Checklist and Anticoagulant audit on the YMS data collection tool by the end of 31st March 2024, or when the MYS data collection tool was reopened between Monday 29th July 2024 to Monday 5th August 2024. If Ravenor Pharmacy (FLK52) 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"*. The NHS BSA has already acknowledged some data was submitted but not data which is relevant to the financial recovery.

6.29 The Appellant has not, at the time of NHS BSA's original request, provided any evidence to support the claim for payment nor has it done so since, including during this appeal. Whilst I am sympathetic to the financial uncertainty faced currently in the pharmacy sector, I note that sign up to the PQS is optional and further that the guidance is clear in that to qualify for payment, data needs to be submitted on the MYS portal. The Appellant has previously participated in the PQS and should have been aware of timely and accurate data submission.

6.30 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 its data on the MYS portal and, as such, it did not fulfil the requirements to qualify to payment.

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

7 DECISION

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

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

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

7.1.3 quash the decision, with or without remitting the matter to NHS England for it to take the decision again subject to such directions as NHS Resolution considers appropriate.

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

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

Head of Appeals