NHS Resolution

8 April 2025

REF: SHA/26480

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM BLISS CHEMIST (FCX89) ("THE APPELLANT")

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

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

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:

Bliss Chemist
NHS BSA on behalf of NHS England

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

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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM BLISS CHEMIST (FCX89) ("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 8 January 2025 in respect of ODS code FCX89. 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 on the 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	Recovery amount (£)
FCX89	£1,775.04

2.10 **Action Required**

2.11 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 7th 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.

2.12 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.

2.13 **Please be aware that failing to contact us by 7th 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:

2.13.1 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

By email dated 21 January 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 “I am writing in response to your correspondence dated [insert date], regarding the recovery of an overpayment for the 2023/24 Pharmacy Quality Scheme (PQS) declaration. We wish to appeal the decision and request reconsideration of the recovery action for the following reasons.

3.2 Our superintendent pharmacist at the time, [Mr HS], was responsible for ensuring the submission of audit data for the relevant PQS domains. Unfortunately, due to his lack of familiarity with digital processes, he mistakenly believed that the audit data had been submitted as required by 31 March 2024. Despite receiving reminders in July 2024 regarding the re-opening of the data collection tool, Mr [S] failed to take the necessary corrective action.

3.3 This error was entirely due to human oversight and a misunderstanding of the submission process. The audits were completed in full, but the data were not submitted via the Manage Your Service (MYS) tool. We acknowledge this as a serious lapse and have since taken the following actions to prevent recurrence:

3.3.1 **Leadership Change:** Mr [S] has been removed from the superintendent role, and he left the organisation in January 2025.

3.3.2 **Improved Oversight:** We have appointed a new superintendent pharmacist who is experienced with regulatory processes and submissions.

3.3.3 **Internal Safeguards:** Additional checks and reminders have been implemented to ensure timely and accurate submissions for all future PQS requirements.

3.4 Our organisation has a long-standing history of compliance with PQS requirements across all three of our branches. This incident represents an isolated case of human error rather than systemic failure or negligence.

3.5 The proposed recovery amount of £1,775.04 is significant and poses a severe financial strain on our small NHS organisation, which is already facing challenges to remain afloat. We are committed to delivering high-quality care to our community and have always prioritised compliance with NHS standards.

3.6 Given the circumstances, we respectfully request that NHSBSA reconsider the recovery of the overpayment, taking into account our previously strong compliance record and the mitigating factors of human error.

3.7 If a full waiver is not possible, we kindly request an alternative arrangement, such as a reduced recovery amount or instalment plan, to minimise the financial impact on our organisation.

3.8 We deeply regret this oversight and reaffirm our commitment to ensuring this does not happen again. We remain available to provide any further information or clarification needed to assist with your review.

3.9 Thank you for considering our appeal, and we hope for a compassionate resolution to this matter.”

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 10th 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 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.

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. Lister Chemists (FP275) 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 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:

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 Bliss Chemist (FCX89) show they had submitted the relevant audit data for the Anticoagulant audit and TARGET treating your infections leaflet audit, however no submission was received for the TARGET Antibiotic Checklist audit, despite making a PQS declaration.

4.1.41 Bliss Chemist (FCX89) were contacted via email to the premises specific shared NHSmail account (pharmacy.fcx89@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.

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 PAT received a telephone call from Bliss Chemist (FCX89) Mr Shah on 18th September 2024 informing that they thought that they had submitted their audit data and stated that he will go back and check again and call the PAT back. PAT received a further telephone call on 30th September 2024 from Bliss Chemist (FCX89) asking what evidence they needed to provide as they had done the audit. The PAT advised the contractor that they will need to provide their PQS audit confirmation submission email from the MYS Portal in relation to the Antibiotic checklist audit.

4.1.44 On the 2nd October 2024, Bliss Chemist (FCX89) were contacted 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 2nd October 2024 had a deadline to respond with any evidence of submission of the audit data by the 16th October 2024.

4.1.45 Bliss Chemist (FCX89) using email address sonal.davda@nhs.net replied on the 15th October 2024 to the email sent on the 2nd October 2024 explaining that their superintendent Hitesh Shah had been trying to sort this with the PAT. They asked if PAT could advise them on the process of the investigation. The PAT replied on 15th October 2024 stating that the PAT had received a telephone call from Mr Hitesh Shah stating that he thought he had submitted the audit, and that he would go back and check then call back. The PAT confirmed that they received another telephone call asking what evidence was required, and the PAT advised that we can only accept the confirmation email from the MYS Portal, as per the Drug Tariff Part VIIA

4.1.46 Bliss Chemist (FCX89) using email address sonal.davda@nhs.net replied on 15th October 2024 informing PAT that they were sorry the pharmacy had not progressed this case further, and they had written to the MYS team, but the team did not respond to their request. Mr Davda informed us that he had spoken with the MYS team, and they had confirmed they had received the audit data, and they were trying to ascertain what had happened. However, the pharmacy was limited in their resources and that they would appreciate any help or collaboration between the PAT and the MYS team to get to the bottom of this. Mr Davda added in his summary that they did submit the data and the MYS team confirmed this, however, did not have a confirmation email. The MYS team to our knowledge has no record of the pharmacy receiving an email confirming the Antibiotic Checklist audit had been submitted. Bliss Chemist (FCX89) asked for PAT to advise what to do, given that they were not IT experts and the NHS departments were difficult to communicate with and was there anything the PAT could suggest they do. The NHSBSA were not aware of any technical issues that would have affected Bliss Chemist (FCX89) submitting their audit data. 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.

4.1.47 The PAT replied on 15th October 2024 informing the contractor that after liaising with our colleagues, we could confirm that that audit data was not submitted for the Antibiotic checklist audit, and that if they think they had submitted the data, to provide the confirmation submission email as evidence.

4.1.48 Bliss Chemist (FXC89) replied on 15th October 2024 thanking PAT for clarifying this. They informed the PAT that the mistake in not submitting was clearly a clerical error on their part as they have the data in the pharmacy and is there anything possible that can be done about it now. Bliss Chemist (FXC89) told the PAT that it seemed like such a shame for their pharmacy and

dispensing team to lose out on the payment given they had done so much work to fulfil all the other PQS requirements and missed out on one submission. They informed the PAT that they knew they had been given a couple of reminders previously to submit the audit data. They informed the PAT that now with the right person in charge they can assure that in future they would adhere to the deadlines. They informed PAT that they do have 2 other branches and that they submitted their audit data while abroad on holiday as that was the day the portal was re-opened, and that they would have done it for the other branch (FXC89), if their superintendent had made them aware. They informed the PAT that they had made personnel changes accordingly but if the PAT could help, they would be grateful.

4.1.49 The PAT replied on the 15th October 2024 explaining that the MYS data collection tool had now closed and no further data could be submitted, and asked the contractor if they agree to the recovery of the overpayment.

4.1.50 Bliss Chemist (FCX89) replied on 15th October 2024 thanking the PAT for the reply and that he understands our position. He informed the PAT that he cannot agree with the recovery of the overpayment and that he would like to appeal, despite that this was due to a clerical error on their part.

4.1.51 The PAT replied on the 16th October 2024 thanking Mr Sonal Davda for his email and for the confirmation that they do not agree with the recovery of the overpayment, and that the PAT will now refer their case to the ICB's PSRC.

4.1.52 Bliss Chemist (FCX89) failed to respond to any of the PAT's requests to provide evidence of their submitted audit data. They have then confirmed that whilst the audit work was completed, they failed to submit the data on the MYS data collection tool due to a clerical error on their part.

4.1.53 The details of the case were passed to the NHS England Regional Team for their PSRC to review. A decision was sought as to whether an overpayment had occurred.

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

4.1.55 The case of Bliss Chemist (FCX89) was escalated to PSRC for review on the 23rd December 2024 as no evidence to demonstrate the required audit data was submitted had been received. The contractor had stated in writing they did not submit the data due to a clerical error on their part and no agreement to a recovery had been received by 16th October 2024. A timeline of correspondence showing all contact the PAT had with the pharmacy was also provided to the PSRC for review. This included where the contractor had indicated in an email on 15th October 2024 that their case be escalated to PSRC.

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

4.1.57 This timeline clearly illustrates that Bliss Chemist (FCX89) 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.

4.1.58 PSRC concluded that as no evidence was submitted to demonstrate that Bliss Chemist (FCX89) 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.

4.1.59 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.

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

4.1.61 The appellant states:

4.1.62 *"Our superintendent pharmacist at the time, [Mr HS], was responsible for ensuring the submission of audit data for the relevant PQS domains. Unfortunately, due to his lack of familiarity with digital processes, he mistakenly believed that the audit data had been submitted as required by 31 March 2024. Despite receiving reminders in July 2024 regarding the re-opening of the data collection tool, Mr [S] failed to take the necessary corrective action.*

4.1.63 *This error was entirely due to human oversight and a misunderstanding of the submission process. The audits were completed in full, but the data were not submitted via the Manage Your Service (MYS) tool. We acknowledge this as a serious lapse and have since taken the following actions to prevent recurrence:"*

4.1.64 *A*s per the Drug Tariff Part VIIA – PQS 2023/24 contractors are required to carry out the Target Antibiotic checklist review 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 or that they had no patients identified as suitable by 31 March 2024*.*

4.1.65 Bliss Chemist (FCX89) submitted the relevant audit data for the Anticoagulant audit and TARGET treating your infections leaflet audit, however no submission was received for the TARGET Antibiotic Checklist audit by 31st of March 2024.

4.1.66 Bliss Chemist (FCX89) 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 July 2024.

4.1.67 Again, a reminder email of the opportunity to submit the missing data was emailed to Bliss Chemist (FCX89) on the 29th July 2024. A delivery complete notification which pertains to this email was received by the PAT on the 29th July.

4.1.68 Bliss Chemist did not submit any audit data for the Target Antibiotic Checklist by Monday the 5th August 2024.

4.1.69 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. This the appellant has confirmed they failed to do. The appellant has therefore confirmed that they did not meet the audit criteria requirements that they have claimed for and were not eligible for the associated PQS payments.

4.1.70 The appellant argues that:

4.1.71 *"Our organisation has a long-standing history of compliance with PQS requirements across all three of our branches. This incident represents an isolated case of human error rather than systemic failure or negligence."*

4.1.72 As per the Drug Tariff Part VIIA – PQS 2023/24 contractors are required to carry out the Target Antibiotic Checklist review 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 or that they had no patients identified as suitable by 31 March 2024.

4.1.73 Bliss Chemist (FCX89) submitted the relevant audit data for the Anticoagulant audit and TARGET treating your infections leaflet audit, however no submission was received for the TARGET Antibiotic Checklist audit by 31st of March 2024.

4.1.74 Bliss Chemist 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 July 2024.

4.1.75 Again, a reminder email of the opportunity to submit the missing data was emailed to Bliss Chemist on the 29th July 2024 A delivery complete notification which pertains to this email was received by the PAT on the 29th July.

4.1.76 Bliss Chemist did not submit any audit data for the Target Antibiotic Checklist by Monday the 5th August 2024.

4.1.77 Irrespective of human error and the contractors' strong compliance record of the PQS noted within the appeal from Bliss Chemist (FCX89), they have confirmed that they failed to submit the required audit data as required in the Drug Tariff Part VIIA

4.1.78 The appellant states:

4.1.79 *"Given the circumstances, we respectfully request that NHSBSA reconsider the recovery of the overpayment, taking into account our previously strong compliance record and the mitigating factors of human error.*

4.1.80 *If a full waiver is not possible, we kindly request an alternative arrangement, such as a reduced recovery amount or instalment plan, to minimise the financial impact on our organisation."*

4.1.81 The PAT appreciate that the appellant had previously a strong compliance record regarding the PQS submissions, however, the mitigating factor of human error cannot be considered as the Target Antibiotic Checklist audit data was not submitted in the allocated timeframe on the MYS data collection tool, in accordance with the Drug Tariff Part VIIA. Therefore, an overpayment of £1,775.04 has occurred.

4.1.82 The PAT does not dispute that the appellant may have this data. 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. This the appellant has confirmed they failed to do. The appellant has therefore confirmed that they did not meet the audit criteria requirements that they have claimed for and were not eligible for the associated PQS payments.

4.1.83 The PQS is an optional scheme, and contractors do not need to take part. When a contractor chooses to take part and claim the benefits that the scheme provides for successful completion of the requirements the PAT, NHSE 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.

4.1.84 **Key points for consideration**

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

4.1.86 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.

4.1.87 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.

4.1.88 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.

4.1.89 The NHSBSA records for this contractor show they had not submitted the relevant TARGET Antibiotic Checklist audit data on MYS 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 Anticoagulant audit and TARGET treating your infections leaflet audit.

4.1.90 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 the Target antibiotic checklist, or who failed to engage with the process were referred to the regional PSRC.

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

4.1.92 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.

4.1.93 Irrespective of human error or the contractors' strong compliance record of the PQS noted within the appeal from Bliss Chemist (FCX89), they have confirmed that the Target Antibiotic checklist audit was not submitted in accordance with the Drug Tariff Part VIIA.

4.1.94 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.

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

4.1.96 Having considered these matters, NHS England respectfully suggests that NHS Resolution conclude that the decision made by the PSRC, in respect of the £1,775.04 overpayment recovery from Bliss Chemist (FCX89), was fair and in accordance with regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. "

4.1.97 [The NHS BSA provided a copy of the Pharmacy Quality Scheme Guidance 2023/24 and the timeline referred to above.]

5 OBSERVATIONS

5.1 The Appellant

5.1.1 "Thank you for your email with information about NHS England's representations.

5.1.2 My only observation is that I do not dispute the facts in this case – which NHSE keep reiterating - I fully accept that an error was made by my superintendent pharmacist, [HS]. Mr [S] is an experienced pharmacist, having been on the register for over 40 years. However along with his vast clinical experience, he lacks skill and familiarity with the newer processes including online submissions. Unfortunately, I was unaware of the fact that he had not fully complied with the PQS requirements, as he mistakenly thought he had completed all the required tasks. He therefore ignored the reminder emails from NHSE, thinking that they were circular emails and did not apply to us.

5.1.3 Whilst acknowledging the above, I ask the Appeals team to take into consideration the hard work and effort taken by Mr [S] and the rest of the team, to complete the PQS tasks. I would be grateful if you could consider the fact

that the tasks were completed, but they were just not uploaded to the portal in the correct manner. This will never reoccur as Mr [S] no longer works with our company, and the rest of the team have learned from this experience.

5.1.4 Requiring us to pay back the c£1700 would create a deficit in our income, which is already thinly spread. It would affect my ability to keep up with my monthly outgoings, including rent, rates, staff wages amongst others. NHSE do not provide adequate compensation for this amount to be easily recoverable by us as we are already under a lot of financial pressure whilst we strive to serve the community to the best of our abilities.

5.1.5 Finally, NHSE have mistakenly referred to me as Mr [SD] throughout their representation, please note that I am female."

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 £1,775.04.

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 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.

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 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.*

6.11 *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*.

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 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.*

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 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 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.

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. Westbury Pharmacy (FQP28) 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. 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.

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 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."*

6.22 I note the decision letter states that *"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.*

6.23 *Exceptionally, we contacted your pharmacy by email on the 4th July 2024 and on the 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.*

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

6.25 I note there is no dispute from the Appellant that the deadline to provide evidence to demonstrate meeting all 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.

6.26 There is no dispute from the Appellant that they did not submit all the information required, as set out in the PQS guidance, by the relevant deadlines.

6.27 The Appellant states that the omission of information "*was entirely due to human oversight and a misunderstanding of the submission process. The audits were completed in full, but the data were not submitted via the Manage Your Service (MYS) tool*." Further "*Our organisation has a long-standing history of compliance with PQS requirements across all three of our branches. This incident represents an isolated case of human error rather than systemic failure or negligence*."

6.28 However, I note that the guidance is clear in that to qualify for payment, data needs to be submitted for all criteria on the MYS portal. The Appellant having had previous involvement in the PQS, should have been familiar with the requirements of the service that it signed up to provide. I also note that the Appellant submitted some data relevant for the Anticoagulant audit and TARGET treating your infections leaflet audit, but did not submit the relevant data for the TARGET Antibiotic Checklist audit.

6.29 Further 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 using its premises specific NHSmail account as detailed above.

6.30 I note that under Schedule 4, Part 4, Paragraph 29C "Contact via NHSmail, pharmacy profiles and the Central Alerting System" states:

***29C**.—(1) An NHS pharmacist (P) must ensure that pharmacy staff at pharmacy premises (including locums) have access to, and are able to send and receive NHSmail from, a premises specific NHSmail account.*

(2) P must ensure that at least two members of the pharmacy staff have live, linked NHSmail accounts to the premises specific NHSmail account (unless fewer than two members of the pharmacy staff are engaged in the provision of NHS services).

6.31 Given the requirements in paragraph 29C, it is clear that the Appellant has a responsibility to ensure that its premises specific NHS mailbox is accessible and monitored by more than one member of staff. Had this been the case, the aforementioned correspondence from the NHS BSA may have been identified by another member of staff and actioned at the relevant time.

6.32 The Appellant has not, at the time of the NHS BSA's original request, provided any evidence to support the claim for payment nor has it done since, including during this appeal.

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

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

6.35 I note the Appellant requests an alternative arrangement to repay the monies, such as an instalment plan to minimise the financial impact on its organisation. I do not have the power to direct the NHS BSA as to how it obtains repayment but encourage the NHS BSA to appropriately consider the Appellant's request.

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 £1,775.04.

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

Head of Appeals
NHS Resolution