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

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

9 April 2025

REF: SHA/26482

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM GOOSNARGH PHARMACY (FE483) ("THE APPELLANT")

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £1,331.28.

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:

Goosnargh Pharmacy
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 GOOSNARGH PHARMACY (FE483) ("THE APPELLANT")

1 INTRODUCTION

1.1 The Appellant appealed the decision of NHS England to recover an overpayment relating to the Anticoagulant data as part of 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 20 January 2025 in respect of Goosnargh Pharmacy (ODS code FE483). 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 Target antibiotic checklist data and their anonymised TARGET treating your infections leaflets 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 Anticoagulant Audit on the Manage Your Service (MYS) data collection tool by the end of 31 March 2024.

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

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

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

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

2.9 The below table outlines the recovery amount.

ODS Code	Recovery amount (£)
FE483	£1,331.28

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 19th 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. If you prefer you may pay the recovery by **6 monthly** instalments.

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 19th February 2025 to agree that there has been an overpayment DOES NOT mean that the overpayment cannot be recovered.** Instead, where you do not agree that an overpayment has been made you have a right of appeal to the Secretary of State against NHS England's decision. Should you choose to appeal then send a concise and reasoned statement of the grounds for your appeal **within 30 days of the date of this letter** to nhsr.appeals@nhs.net or:

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.

2.15 For more information or for clarification of any of the details in the letter, please contact us using the details below.

2.16 Email us: pharmacysupport@nhsbsa.nhs.uk

2.17 Telephone: 0300 330 1295

2.18 Your co-operation is very much appreciated."

3 THE DISPUTE

In two emails dated 22 January 2025 and 28 January 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

Email dated 22 January 2025

3.1 "I have received an email regarding Recovery of Overpayment of £1331.28 for no audit data on Anticoagulant data was submitted. This was submitted and in July when I spoke to someone from NHSBSA they said they could see it on the system, but the send button was not send from our end [sic]. This was done.

3.2 I would like to appeal this and disagree with this overpayment recovery, so could you provide me with the procedures to be followed and if it is possible to phone me on [redacted]."

Email dated 28 January 2025

3.3 "I have attached the Anticoagulant Audits which was entered on MYS at the time of the deadline, but for some reason it was sat on the system and did not go through to where it was meant to go to.

3.4 Please note as there is a maximum file size I can attach. Therefore I have attached the first 5 audits in this email and will send a further 2 emails with the rest of the audits. Altogether there is 15 audits.

3.5 We got contacted by someone who said they did not receive the Audit and there would be a short window of opportunity to re enter the Anticoagulant data. This was done by us and then we got contacted again saying it was not received again and we had missed the window. We had entered it in that week because we all remember moaning about having to do it again and myself and my senior dispenser entered it on MYS. The person who contacted me said she could clearly see it was on the system, but not come through to the other end and I said then what is the problem if you can see it. Would you like me to post them and you will get it the next day, so you can see we have done all the work or I can scan them all and send it to you now.

3.6 She was adamant that it was too late, but she will do her best to explain to her higher management to help us. Then about 5 months later we get this email about recovery of money, for work which we had done already. We cannot be held responsible for any IT issues which may have occurred anywhere along the line.

3.7 I have been doing PQS since inception and never had any issues at all. My staff worked really hard on all the PQS's and generally anyway and to be told that payment will be recovered, due to a possible IT glitch is grossly unfair and demoralising for the whole team. I trust you will take the right course of action. Everyone is aware of the current plight of Pharmacies and if we get unfair cutbacks like these on top of all the other cutbacks it impacts on the staff and patients eventually."

3.8 [Enclosures 15 redacted Anticoagulant Audit forms]

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 22nd 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. Goosnargh Pharmacy (FE483) 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 Goosnargh Pharmacy (FE483) show they had submitted the relevant audit data for the TARGET Antibiotic Checklist audit and TARGET treating your infections leaflet audit, however no submission was received for the Anticoagulant audit, despite making a PQS declaration.

4.1.41 Goosnargh Pharmacy (FE483) were contacted via email to the premises specific shared NHSmail account (pharmacy.fe483@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 A telephone call was made to Goosnargh Pharmacy (FE483) on 10th October 2024 and the PAT spoke to [NV] (Superintendent Pharmacist) to advise that the PAT had sent emails to the pharmacy's premises specific shared email address and the final email sent, dated 17th September 2024, required a response by 1st October 2024. [NV] claimed they had completed the Anticoagulant audit. PAT advised that our Data & Insight team had confirmed that no submission had been entered on the MYS data collection tool for the Anticoagulant audit. [NV] informed PAT that he did not believe this data and the decision to recover an overpayment should be overturned, as they had done all the work and added it to the MYS data collection tool, however, did not submit it.

4.1.44 Goosnargh Pharmacy (FE483) requested they can send the data by post now. The PAT explained this was not possible as the Drug Tariff Part VIIA clearly states the audit data must have been submitted on the MYS data collection tool, and this is longer possible as the window on the MYS data collection tool closed on Monday 5th August 2024 at 16:00. The PAT reiterated the PPV process, and that as no audit data had been submitted for the Anticoagulant audit submission, asked if the contractor agreed an overpayment had occurred and could the PAT proceed with a recovery. The contractor did not agree with the recovery of the payment for the Anticoagulant audit.

4.1.45 Goosnargh Pharmacy (FE483) failed to respond to any of the PAT's requests to provide evidence of their submitted audit data on the MYS data collection tool. They have then confirmed that whilst the audit work was completed, they failed to submit the Anticoagulant audit data on the MYS data collection tool in accordance with the Drug Tariff Part VIIA.

4.1.46 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.

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

4.1.48 The case of Goosnargh Pharmacy (FE483) was escalated to PSRC for review on the 15th January 2025 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.

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

4.1.50 This timeline clearly illustrates that Goosnargh Pharmacy (FE483) 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.

4.1.51 PSRC concluded that as no evidence was submitted to demonstrate that Goosnargh Pharmacy (FE483) had submitted the Anticoagulant 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.

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

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

4.1.54 The appellant states:

4.1.55 *"I have received an email regarding Recovery of Overpayment of £1331.28 for no audit data on Anticoagulant data was submitted. This was submitted and in July when I spoke to someone from NHSBSA they said they could see it on the system, but the send button was not sent from our end. This was done."*

4.1.56 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 31st March 2024

4.1.57 Goosnargh Pharmacy (FE483) submitted the relevant audit data for the Antibiotic checklist and TARGET treating your infections leaflet audit, however no submission was received for the Anticoagulant audit by 31st of March 2024.

4.1.58 Goosnargh Pharmacy (FE483) 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 29th July 2024 to 16:00 on Monday 5th August 2024. A delivery complete notification which pertains to this email was received by the PAT on the 4th July 2024.

4.1.59 Again, a reminder email of the opportunity to submit the missing data was emailed to Goosnargh Pharmacy (FE483) on the 29th July 2024. A delivery complete notification which pertains to this email was received by the PAT on the 29th July 2024.

4.1.60 Goosnargh Pharmacy did not submit any audit data for the Antibiotic audit by Monday 5th August 2024. Our records show that Goosnargh Pharmacy (FE483) did start the Anticoagulant audit on the MYS data collection tool, however this data was not submitted in accordance with the Drug Tariff Part VIIA. If this data was submitted, a confirmation email would have been sent to the contractor.

4.1.61 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 payment.

4.1.62 The appellant argues that:

4.1.63 *"I have attached the Anticoagulant Audits which was entered on MYS at the time of the deadline, but for some reason it was sat on the system and did not go through to where it was meant to go to. Please note as there is a maximum file size I can attach. Therefore, I have attached the first 5 audits in this email and will send a further 2 emails with the rest of the audits. Altogether there is 15 audits."*

4.1.64 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.

4.1.65 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."

4.1.66 The NHSBSA did not receive audit data from Goosnargh Pharmacy (FE483) for the 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 Goosnargh Pharmacy (FE483) 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.

4.1.67 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.

4.1.68 The appellant states:

4.1.69 *"We got contacted by someone who said they did not receive the Audit and there would be a short window of opportunity to re-enter the Anticoagulant data. This was done by us and then we got contacted again saying it was not received again and we had missed the window. We had entered it in that week because we all remember moaning about having to do it again and myself and my senior dispenser entered it on MYS. The person who contacted me said she could clearly see it was on the system, but not come through to the other end and I said then what is the problem if you can see it. Would you like me to post them and you will get it the next day, so you can see we have done all the work or I can scan them all and send it to you now.*

4.1.70 *She was adamant that it was too late, but she will do her best to explain to her higher management to help us. Then about 5 months later we get this email about recovery of money, for work which we had done already. We cannot be held responsible for any IT issues which may have occurred anywhere along the line."*

4.1.71 If Goosnargh Pharmacy (FE483) had submitted the required evidence on the MYS data collection tool by the 31st March 2024 or the 5th August 2024, the MYS system would have automatically sent a confirmation email to the contractor.

4.1.72 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 Goosnargh Pharmacy (FE483) 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 Goosnargh Pharmacy (FE483) submitting their audit data.

4.1.73 The PAT acknowledges the statement from the appellant that he and his senior dispenser entered the data on the MYS data collection tool. Our Data & Insight team have confirmed Goosnargh Pharmacy (FE483) completed the Antibiotic Checklist audit and TARGET treating your infections leaflet audit, with confirmation emails being sent to [xx]@nhs.net. For the Antibiotic Checklist audit, data for 16 patients were submitted on the 30th July 2024. For the TARGET treating your infections leaflet audit, data for 30 patients were submitted on the 30th July 2024. For the Anticoagulant audit, data for 15 patients was entered onto the MYS data collection tool, however this data was never submitted in accordance with the Drug Tariff Part VIIA. If Goosnargh Pharmacy (FE483) had submitted their Anticoagulant audit data during the initial audit window of the 31st March 2024, or submitted their Anticoagulant audit data during the reopening of the audit window by the 5th August 2024, a confirmation email would have automatically been received by the pharmacy.

4.1.74 It is unclear what IT issues the pharmacy was speaking about as it would not appear to be with the MYS system, as evidenced by their successful submissions of the TARGET Antibiotic Checklist audit and TARGET treating your infections leaflet audit. The information held by PAT confirms the pharmacy started the data recording of the Anticoagulant audit data on the MYS data collection tool, however the finalised data was never submitted on the MYS data collection tool in accordance with the Drug Tariff Part VIIA.

4.1.75 The appellant states:

4.1.76 *"I have been doing PQS since inception and never had any issues at all. My staff worked really hard on all the PQS's and generally anyway and to be told that payment will be recovered, due to a possible IT glitch is grossly unfair and demoralising for the whole team. I trust you will take the right course of action. Everyone is aware of the current plight of Pharmacies and if we get unfair cutbacks like these on top of all the other cutbacks it impacts on the staff and patients eventually."*

4.1.77 Irrespective of the contractors' strong compliance record of the PQS and personal circumstances noted within the appeal from Goosnargh Pharmacy

(FE483), they have confirmed that they failed to submit the required audit data in accordance with the Drug Tariff Part VIIA and the PQS Service specification.

4.1.78 The NHSBSA did not receive audit data from Goosnargh Pharmacy (FE483) for the 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, in accordance with the Drug Tariff Part VIIA.

4.1.79 It is unclear what IT issues the pharmacy was speaking about as it would not appear to be with the MYS system, as evidenced by their successful submissions of the TARGET Antibiotic Checklist audit and TARGET treating your infections leaflet audit. The information held by PAT confirms the pharmacy started the data recording of the Anticoagulant audit data on the MYS data collection tool, however the finalised data was never submitted on the MYS data collection tool in accordance with the Drug Tariff Part VIIA.

4.1.80 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.

4.1.81 **Key points for consideration**

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

4.1.82.1 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.

4.1.82.2 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.

4.1.82.3 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.

4.1.82.4 The NHSBSA records for this contractor show they had not submitted the relevant 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. Emails were sent to the contractor to provide evidence to demonstrate that they had submitted the required audit data. Only those contractors who did not submit any audit data for either Anticoagulant audit, TARGET treating your infections leaflet and TARGET Antibiotic checklist, or failed to engage with the process were referred to the regional PSRC.

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

4.1.82.6 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.

4.1.82.7 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.

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

4.1.82.9 Having considered these matters, NHS England respectfully suggests that NHS Resolution conclude that the decision made by the PSRC, in respect of the £1,331.28 overpayment recovery from Goosnargh Pharmacy (FE483), was fair and in accordance with regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

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

5 OBSERVATIONS

5.1 THE APPELLANT

5.1.1 "I have realised what the problem is. The emails that have been [sic] to Goosnargh Pharmacy [FE483] to request submission of the Audit DATA were being sent to the shared NHS mail ACCOUNT pharmacy.fe483@nhs.net which is was not [sic] our shared premises email. Our shared premises e mail has always been LGMCH.PHARMACY.FE483@NHS.NET. Hence , why I was unable to respond to any e-mails as I never received them. Had I received these reminder emails to submit ANTICOGULANT data on the lgmch.pharmacy.fe483@nhs.net which we thought we had already done, then I would have been in a position to re submit them.

5.1.2 I am perplexed that the Antibiotic audit data went through, but not the Anticoagulant data. Here in GOOSNARGH we have very poor internet network. Most of the patients have to go outside the shop to get a signal. It is possible the Signal may have dropped when we submitted the data, thus not gone through. Your *[NHS BSA's*] records show that as stated in your [*NHS BSA's*] reply that we did start the Anticoagulant data on MYS DATA COLLECTION TOOL, but I am still PUZZLED as to why the data did not get submitted on the MYS. My dispenser *[#redacted by NHS Resolution]* inputted them all in as I was doing it with her, so it is possible that it may have been an IT glitch.

5.1.3 Furthermore because our shared premises mail was lgmch.pharmacy.fe483@nhs.net we did not get any reminder e-mails. I had been trying to get the other premises email (pharmacy.fe483@nhs.net) sorted for months, but not succeeded and only 6 weeks ago with the help of Lancashire LPC I have finally managed to get this email working as the shared premises mail.

5.1.4 In fact I now have two shared premises emails ???

5.1.4.1 Lgmch.pharmacy.fe483@nhs.net

5.1.4.2 pharmacy.fe483@nhs.net

5.1.5 So I would like to appeal to you in the light of having done Anticoagulant Audit work and the issues aforementioned above to please respectfully not deduct the sum of £1331.28.

5.1.6 If we had not done the work then fair enough, but we did the work and the opportunities that were sent to us in September and October were sent to the wrong NHS SHARED PREMISES MAIL."

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 £1,331.28.

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 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*.

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. Goosnargh Pharmacy (FE483) received both these emails, as evidenced in the timeline*."

6.19 I have been provided with a timeline which contains all the original emails and reminders that were sent to the Appellant as well as confirmation of the email addresses that were used as well as delivery receipts.

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 *NHSBSA records for Goosnargh Pharmacy (FE483) show they had submitted the relevant audit data for the TARGET Antibiotic Checklist audit and TARGET treating your infections leaflet audit, however no submission was received for the Anticoagulant audit, despite making a PQS declaration*.

6.23 *Goosnargh Pharmacy (FE483) were contacted via email to the premises specific shared NHSmail account (pharmacy.fe483@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*."

6.24 I note that the timeline shows that the Appellant was contacted via email address pharmacy.fe483@nhs.net along with a delivery receipt on 4 July 2024 which outlined that the pharmacy had missing data regarding their PQS declaration which it should have submitted via the MYS data collection tool by 31 March 2024. This email was then resent to goosnarghpharmacy859@hotmail.com on 8 July 2024.

6.25 On 9 July 2024 the Appellant replied from the Hotmail email address to the NHS BSA stating: "*We had already submitted the Anticoagulant and the UTI & RTI in December last year. Can you check your records please and let us know*."

6.26 In response, on 9 July 2024, the NHS BSA replied to the Hotmail email address stating: "*We have checked our records, and it shows that you have entered your data to the audits and only* ***partially saved it***.

6.27 *Once, the audits are re-opened on the dates* ***09:00 on Monday 29th July 2024 to 16:00 on Monday 5th August 2024****, please can you add your missing data and submit them on the MYS Portal*."

6.28 In my opinion the email of 9 July 2024 from the NHS BSA clearly states there is partially saved information which needed to be completed. At this point it was the Appellant's responsibility to check the information and add any missing data between 29 July and 5 August 2024.

6.29 The fact that the Appellant was now aware of the missing data mitigates the possible issue with the premises specific email address.

6.30 I am mindful that the Regulations are clear that the NHS BSA must send emails electronically to the premises specific email address as set out in the Regulations. Whilst there is a dispute over which address was the correct premises specific email address, a further email was sent to a different email address (Hotmail) from which the Appellant responded. The Appellant was therefore aware, on 8 July 2024, that the premises specific email address held by the NHS BSA was pharmacy.fe483@nhs.net. Further, that the NHS BSA considered that the records were partially saved and needed to be submitted between 29 July and 5 August 2024.

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

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

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

6.34 I note the Appellant disputes that it received any reminder emails as it says the NHS BSA used the incorrect email address. Whilst reminder emails appear to have been sent to pharmacy.fe483@nhs.net, the Appellant was not unaware that action needed to be taken on the basis of the email on 8 July 2024 to the Appellant's Hotmail email address where the reminder was resent. . The NHS BSA was right to assume it had the correct details as it continued to receive delivery receipts from pharmacy.fe483@nhs.net. Further, it is the responsibility of the Appellant to ensure it provides the correct address for receiving correspondence by email.

6.35 Whilst I am sympathetic to the Appellant who has completed the work, it has not submitted the required information despite the additional window for submissions being reopened.

6.36 NHS BSA state: "*Goosnargh Pharmacy did not submit any audit data for the Antibiotic audit by Monday 5thAugust 2024. Our records show that Goosnargh Pharmacy (FE483) did start the Anticoagulant audit on the MYS data collection tool, however this data was not submitted in accordance with the Drug Tariff Part VIIA. If this data was submitted, a confirmation email would have been sent to the contractor."*

6.37 The Appellant should have received confirmation emails for each correctly submitted piece of information. I have not been provided with any such supporting information or evidence of an issue at the time the Appellant purports to have sent the data.

6.38 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. I also note the Appellant submitted some data relevant for the TARGET Antibiotic Checklist audit and TARGET treating your infections leaflet audit, but did not submit the relevant data for the Anticoagulant audit.

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

6.40 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 £1,331.28.

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