

2 May 2025

REF: SHA/ 26473

**APPEAL AGAINST WEST YORKSHIRE ICB DECISION
REGARDING A BREACH NOTICE AT VILLAGE
PHARMACY, 5 HASTINGS COURT, COLLINGHAM,
WETHERBY, WEST YORKSHIRE LS22 5AW**

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1 Outcome

- 1.1 Pursuant to paragraph 9(5)(b) of Schedule 3 to the Regulations, I substitute the decision of the Commissioner to issue the Breach Notice with the decision to issue a remedial notice with the same wording except for the changes below:
 - 1.1.1 substitute all references to “breach notice” and “regulation 71” with reference to “remedial notice” and “regulation 70”;
 - 1.1.2 substitute the requirement to not repeat the breach with the requirement to remedy the breach within the notice period; and
 - 1.1.3 the Commissioner must indicate to the Appellant how and in what format the questionnaire should be completed. The timescale for remedy will be 30 days from the date of that communication.

A copy of this decision is being sent to:
Village Pharmacy
West Yorkshire ICB

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1 The Breach Notice

A Breach Notice dated 7 January 2025 was sent to Village Pharmacy (“the Appellant”) in respect of 5 Hastings Court, Collingham, Wetherby, West Yorkshire LS22 5AW

1.1 “Breach Notice

1.2 **Name of Contractor:** THE VILLAGE PHARMACY (COLLINGHAM) LIMITED

1.3 **Pharmacy Address:** 5 HASTINGS COURT, COLLINGHAM, WETHERBY

1.4 **Date of inclusion in the pharmaceutical list for the area of Leeds Health and Wellbeing Board:**01/12/1993

1.5 As of 7 January 2025, we hereby serve you notice in line with Regulation 71 (1) and (2) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. West Yorkshire Integrated Care Board (WYICB) considers you to be in breach of:

1.5.1 **Paragraph 35, Schedule 4 and paragraph 25(3), Schedule 5** to the Regulations entitle the commissioner to have access to information from the contractor that is reasonably required for the purposes of monitoring the provision of pharmaceutical services.

1.5.2 **Paragraph 35(4), Schedule 4** requires pharmacy contractors, where asked to do so by the commissioner, to submit any information to which a person authorised in writing by the commissioner would have access to during a visit carried out under **paragraph 35(1), Schedule 4**. The information is to be provided in the electronic format specified in the commissioner’s request.

1.6 **Nature of the breach: West Yorkshire Integrated Care Board (WYICB) considers you to be in breach of these regulations because** - The pharmacy failed to complete the mandatory CPAF Screening Survey via the MYS portal by 31 July 2024.

1.7 Throughout July, weekly e-mail reminders to complete the survey were sent to your pharmacy by NHS BSA and by the Pharmacy contracts team at WYICB. In addition, both Community Pharmacy England (CPE) and Community Pharmacy West Yorkshire (CPWY) had also issued reminders via bulletins.

1.8 We are satisfied that we have made every reasonable effort to communicate and co-operate with a view to resolving the issues presented, ahead of serving this breach notice.

- 1.9 Accordingly, WYICB is satisfied that it is now necessary to serve a breach notice to resolve this issue.
- 1.10 You are required to not repeat the breach again.
- 1.11 You have a right of appeal to the Secretary of State against the issuing of this breach notice. Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this notice via email to: nhsr.appeals@nhs.net
- 1.12 Or in writing to:
- 1.13 NHS Resolution
Primary Care Appeals service
7&8 Wellington Place
Leeds
LS1 4AP
- 1.14 Please note that whilst we have determined that payment withholdings will not apply in respect of this breach, should you fail to comply with the requirements of this breach notice we reserve the right to exercise our powers to take further action in relation to the withholding of payments and your inclusion in the pharmaceutical list in respect of the above-named premises.
- 1.15 This may include removal of the premises from the pharmaceutical list under regulation 73 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.”

2 The Appeal

In a letter dated 19 January 2025 addressed to NHS Resolution, the Appellant appealed against West Yorkshire ICB's ("the Commissioner") decision. The grounds of appeal are:

- 2.1 “I am extremely upset to have received the Breach of Contract notice (7/1/25) from WYICB.
- 2.2 I have been a contractor for over 30 years and a qualified pharmacist for almost 40 years during which time I am proud to say has been unblemished up until this point.
- 2.3 Whilst I accept I failed to complete the CPAF screening questionnaire in the allotted time frame I genuinely thought I had completed it until I received a call from the WYICB after the closing date.
- 2.4 [redacted by NHSR]
- 2.5 [redacted by NHSR]
- 2.6 [redacted by NHSR]
- 2.7 [redacted by NHSR]
- 2.8 I hope you will take into consideration these genuinely mitigating circumstances and consider withdrawing the Breach of Contract notification.”

3 Summary of Representations

This is a summary of representations received on the appeal.

3.1 The Commissioner

- 3.1.1 “Thank you for your recent correspondence to the ICB regarding an appeal received against the above breach notice for failure to complete the mandatory CPAF Screening Survey via MYS, within the required timescales.
- 3.1.2 I can confirm the breach notice was approved at the Pharmaceutical Services Regulations Committee (PSRC) on 30th October 2024 and was issued to the pharmacy on the 7th January 2025.
- 3.1.3 PSRC was provided with the reasons given by the pharmacy as to why the deadline was missed which in this case was confusion with the DSPT that they had completed by 30 June, the contractor mistook this as completion of CPAF.
- 3.1.4 PSRC considered that throughout July 2024, weekly e-mail reminders to complete the survey were sent to the pharmacy by NHS BSA and by the Pharmacy contracts team at WYICB. In addition, both Community Pharmacy England (CPE) and Community Pharmacy West Yorkshire (CPWY) had also issued reminders via bulletins.
- 3.1.5 PSRC therefore viewed them to be in breach of:
 - 3.1.5.1 **Paragraph 35, Schedule 4 and paragraph 25(3), Schedule 5** to the Regulations entitle the commissioner to have access to information from the contractor that is reasonably required for the purposes of monitoring the provision of pharmaceutical services.
 - 3.1.5.2 **Paragraph 35(4), Schedule 4** requires pharmacy contractors, where asked to do so by the commissioner, to submit any information to which a person authorised in writing by the commissioner would have access to during a visit carried out under **paragraph 35(1), Schedule 4**. The information is to be provided in the electronic format specified in the commissioner’s request.
- 3.1.6 I hope this helps with the appeal, however please do not hesitate to contact me should you wish to discuss further.”

4 Observations

The following observations were received by NHS Resolution in response to the representations received on appeal.

4.1 The Appellant

- 4.1.1 “I’m not sure I understand the reason for sending it as the issues mentioned in the letter from the ICB I am well aware of and my response to them & you was to go someway [sic] to explaining how I have been feeling over the last year & [redacted by NHSR]. This is why I believe I failed to connect with the reminders that were sent to me as I was completely detached .
- 4.1.2 I await your reponse [sic] & [redacted by NHSR] or just accepted the statement from the ICB?”.

5 Consideration

- 5.1 Under Regulation 71(1) “Breaches of terms of service: breach notices” of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”), a Breach Notice may be issued:

71. (1) Where an NHS chemist (C) breaches a term of service and the breach is not capable of remedy, NHS England may by a notice (“a breach notice”) require C not to repeat the breach.

- 5.2 I note that in the Regulations an NHS Chemist means “an NHS appliance contractor or an NHS pharmacist”. An NHS pharmacist is defined as “a person included in a pharmaceutical list of the type referred to in regulation 10(2)(a);”. Regulation 10(2)(a) states:

10(2) “Those lists (which are pharmaceutical lists) are

(a) a list of persons who undertake to provide pharmaceutical services in particular by way of the provision of drugs;”

- 5.3 The Regulations contain no definition as to what constitutes a breach of terms of service which is not capable of remedy.
- 5.4 I note that the pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.
- 5.5 I note that the Breach Notice was issued pursuant to Regulation 71(1) and is compliant with the requirements of a breach notice as it includes the nature of the breach and an explanation of the Appellant’s right of appeal under Regulation 77(1)(c).
- 5.6 The Breach Notice states:

5.6.1 “Throughout July, weekly e-mail reminders to complete the survey were sent to your pharmacy by NHS BSA and by the Pharmacy contracts team at WYICB. In addition, both Community Pharmacy England (CPE) and Community Pharmacy West Yorkshire (CPWY) had also issued reminders via bulletins.”

- 5.7 I am of the view that the Appellant had the opportunity to enter into local dispute resolution with the Commissioner but did not do so. I note that there is no dispute raised by either party that the local dispute resolution process has not been exhausted. I am content that I can deal with this matter.

- 5.8 The Appellant seeks to appeal against the decision of the Commissioner to issue the Breach Notice for its failure to complete and submit the Community Pharmacy Assurance Framework (“CPAF”) screening questionnaire (or survey as it is referred to by the Commissioner).

- 5.9 I note that “Inspections and access to information” is found in Schedule 4, Part 4, “Other Terms of Services” under Paragraph 35 and states:

35. Inspections and access to information

(1) An NHS pharmacist (P) must allow persons authorised in writing by NHS England to enter and inspect P’s pharmacy premises at any reasonable time, for the purposes of—

(a) ascertaining whether or not P is complying with the requirements of this Schedule;

(b) auditing, monitoring and analysing—

- (i) the provision made by P, in the course of providing pharmaceutical services, for patient care and treatment, including any arrangement made with a person in respect of provision of appliances, and*
- (ii) the management by P of the pharmaceutical services P provides, where the conditions in sub-paragraph (2) are satisfied.*

(2) The conditions are that—

- (a) reasonable notice of the intended entry has been given;*
 - (b) the Local Pharmaceutical Committee for the area where the pharmacy premises are situated have been invited to be present at the inspection, where this is requested by P;*
 - (c) the person authorised in writing (X) carries written evidence of X's authorisation, which X produces on request; and*
 - (d) X does not enter any part of the premises used solely as residential accommodation without the consent of the resident.*
- (3) P must, at the request of NHS England or of X, allow it or X access to any information which it or X reasonably requires—*
- (a) for the purposes mentioned in sub-paragraph (1); or*
 - (b) in the case of NHS England, in connection with its functions that relate to pharmaceutical services.*
- (4) P must, at the request of NHS England, send to NHS England by means of an electronic communication of the type specified in the request any information to which a person authorised in writing by NHS England would have access during an inspection of P's pharmacy premises pursuant to sub-paragraph (1), if—*
- (a) P has that information in a form which means it may be sent by that form of electronic communication; or*
 - (b) it is reasonable for NHS England to request that P convert that information into a form which means that it may be sent by that form of electronic communication (and NHS England does so request)*
- (5) P must, at the request of NHS England or a person authorised in writing by NHS England to make the request, send to NHS England or that person by means of an electronic communication, a duly completed questionnaire, which is –*
- (a) in a format approved by NHS England; and*
 - (b) for the purpose of enabling NHS England, or a person authorised in writing by NHS England to determine whether or when it is necessary or expedient for a person authorised in writing by NHS England to undertake an inspection of P's premises pursuant to sub-paragraph (1).*

(6) *Before information is requested pursuant to sub-paragraph (5), NHS England must consult the person who is, for the time being, the person consulted under section 165(1)(a) of the 2006 Act, in respect of pharmaceutical remuneration of NHS pharmacists on the terms of the request.*

- 5.10 I note the deadline for completing the CPAF screening questionnaire was 31 July 2024 and that throughout July weekly reminders were sent to the Appellant to ask them to complete it. The Commissioner comments that additional reminders were also posted on other mediums such as by Community Pharmacy England and Community Pharmacy West Yorkshire via bulletins. I note the comment from the Commissioner that *“PSRC was provided with the reasons given by the pharmacy as to why the deadline was missed which in this case was confusion with the DSPT that they had completed by 30 June, the contractor mistook this as completion of CPAF.”* I note that the Breach Notice was subsequently issued.
- 5.11 I note in its appeal, the Appellant states *“I have been a contractor for over 30 years and a qualified pharmacist for almost 40 years during which time I am proud to say has been unblemished up until this point. Whilst I accept I failed to complete the CPAF screening questionnaire in the allotted time frame I genuinely thought I had completed it until I received a call from the WYICB after the closing date”*. The Appellant then goes on to detail personal matters and asks me to *“take into consideration these genuinely mitigating circumstances and consider withdrawing the Breach of Contract notification”*.
- 5.12 The Appellant asks me to take their personal circumstances into account rather than accepting the Commissioner’s position. Whilst I sincerely sympathise with the situations the Appellant has faced over the last few years and offer my condolences, I have to consider the provisions set out in the Regulations and it is clear that the Appellant did not complete the CPAF screening questionnaire by the required deadline which constitutes a breach of the Appellant’s terms of service as set out in paragraph 35(5) of Schedule 4 to the Regulations.
- 5.13 I next consider whether the failure to complete the CPAF screening questionnaire is a breach which is capable of remedy. As noted in paragraph 5.3 above, the Regulations do not contain a definition as to what constitutes a breach of terms of service which is or is not capable of remedy. A common-sense interpretation is that a breach is unable to be rectified.
- 5.14 The Appellant was required to complete the screening questionnaire. Completion of the questionnaire, even if not within the time period given, would have remedied or rectified the breach. Further I note there is no timescale set out in this provision of the Regulations to submit the screening questionnaire. If there had been, the breach could not have been remedied.
- 5.15 Under Regulation 70 of the Regulations, a remedial notice may be issued:
- “Where an NHS chemist (C) breaches a term of service and the breach is capable of remedy, NHS England may be a notice (“a remedial notice”) require C to remedy the breach.”*
- 5.16 I consider that both remedial and breach notices carry the same weight in terms of severity of possible consequences, with the difference being that a remedial notice requires the remedy of the breach, and the breach notice requires an NHS chemist to not repeat the breach. As the Appellant has failed to complete the questionnaire within the timescale set by the Commissioner, it is entirely appropriate to require the Appellant to remedy the breach.

- 5.17 Under NHS Resolution's powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of the Commissioner or substitute for that decision any decision that the Commissioner could have taken when it took that decision.
- 5.18 As a result of the comments I make above, I am of the view that:
- 5.18.1 the Appellant did not complete the CPAF screening questionnaire within the timescale set by the Commissioner; and
- 5.18.2 such action constitutes a breach of the Appellant's terms of service by virtue of Regulation 35, which is capable of remedy.
- 5.19 As I am substituting the Commissioner's decision to issue the Breach Notice with a decision to issue a remedial notice, I determine that the Appellant is required to remedy the breach by providing the information requested (and therefore completing the questionnaire). In this regard, I note that Regulation 70(3) requires the notice period for remedying the breach to be not less than 30 days of the date on which the Commissioner indicates to the Appellant that the remedial action should be undertaken.
- 5.20 To be clear, the Commissioner must indicate to the Appellant how and in what format the questionnaire should be completed. The timescale for remedy will be 30 days from the date of that communication.

6 Decision

- 6.1 Pursuant to paragraph 9(5)(b) of Schedule 3 to the Regulations, I substitute the decision of the Commissioner to issue the Breach Notice with the decision to issue a remedial notice with the same wording except for the changes below:
- 6.1.1 substitute all references to "breach notice" and "regulation 71" with reference to "remedial notice" and "regulation 70";
- 6.1.2 substitute the requirement to not repeat the breach with the requirement to remedy the breach within the notice period; and
- 6.1.3 the Commissioner must indicate to the Appellant how and in what format the questionnaire should be completed. The timescale for remedy will be 30 days from the date of that communication.

**Head of Appeals
NHS Resolution**