8th Floor
10 South Colonnade
Canary Wharf
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7 May 2025

REF: SHA/26500

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM BENCHILL PHARMACY (FTA58) ("THE APPELLANT")

1 **Outcome**:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £1,580.00.

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:

Benchill Pharmacy
NHS BSA on behalf of NHS England

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

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

REF: SHA/26500

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM BENCHILL PHARMACY (FTA58) ("THE APPELLANT")

1 INTRODUCTION

1.1 The Appellant appealed the decision of NHS England to recover an overpayment relating to the New Medicine Service 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 4 February 2025 in respect of Benchill Pharmacy (ODS code FTA58). The decision stated:

2.1 "The Pharmacy Provider Assurance Team, part of 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 New Medicines Service. As part of this verification exercise, your pharmacy was requested to provide New Medicines Service records for the period October 2022 to March 2023.

2.2 Our records show that your pharmacy claimed a total of 79 NMS during this time, however the evidence provided by the pharmacy means the Provider Assurance Team were not able to verify 79 of the claims made.

2.3 Attached (in following email) 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.

2.4 The NHS England Pharmaceutical Services Regulations Committee has now reviewed this information and noted that:

2.4.1 Benchill Pharmacy was contacted on 37 separate occasions by the NHSBSA Provider Assurance Team to request evidence to substantiate the claim or agree to the recovery but did not receive a response or sufficient evidence.

2.5 Having reviewed the information provided by the NHSBSA PAT, the NHS England Pharmaceutical Services Regulations Committee has decided that an overpayment in relation to your NMS 2022/23 claims 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.

2.6 The below table outlines the recovery amount.

ODS Code	Recovery amount
FTA58	£1,580.00

Action Required

2.7 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 Thursday 6th March 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.

2.8 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by Thursday 6th March 2025.

2.9 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.

2.10 Please be aware that failing to contact us by Thursday 6th March 2025 to agree that there has been an overpayment DOES NOT mean that the overpayment cannot be recovered. Instead, where you do not agree that an overpayment has been made you have a right of appeal to the Secretary of State against NHS England's decision. Should you choose to appeal then send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or: NHS Resolution, Primary Care Appeals, 10 South Colonnade, Canary Wharf, London, E14 4PU.

2.11 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.

2.12 For more information or for clarification of any of the details in the letter, please contact by email at pharmacysupport@nhsbsa.nhs.uk

2.13 If you would prefer to speak to us via telephone/Microsoft Teams, please email pharmacysupport@nhsbsa.nhs.uk to provide your contact details and a member of the team will get in touch as soon as possible.

2.14 The proposed and future actions detailed in this letter are stipulated without prejudice.

2.15 Your co-operation is very much appreciated."

3 THE DISPUTE

In an email dated 5 February 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 "I am appealing the decision of recouping the money for NMS we did provide but could not provide evidence as we had a flood in the Pharmacy premises.

3.2 I strongly disagree that Nhsbsa [sic] is recouping money for October 2022-December 2022 along with January 2023 – March 2023, as I had already notified you that due to flooding of the Pharmacy premises I was unable to provide the evidence you requested. Therefore I should not be penalized for not providing evidence for both sets of date ranges.

3.3 A more fair decision would have been to recoup NMS money for January 2023- March 2023 as you were already notified that we couldn't provide evidence for the previous dates. If I had originally agreed that I can't provide evidence for October 2022-dec 2022 then I would have been penalized just for them 3 months only and not for the 6 months of October 2022 to March 2023.

3.4 As you can see the amount of prescriptions we generally dispense per month, the claims were negligible to what we could claim for.

3.5 As it is a very difficult time for Pharmacies at the moment, due to underfunding of remuneration, I would like you to reconsider the amount of money you intend to recover from us, as this would put additional financial pressure on us as a business."

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 11th February 2025 and the opportunity to provide representations on the appeal.

Background to the New Medicines Service

4.1.2 The New Medicine Service (NMS) forms part of the Advanced Services within the Community Pharmacy Contractual Framework (CPCF). This service provides support to all patients, with the inclusion of carers who have appropriate consent and parents/guardians of younger children, who are taking a newly prescribed medicine to manage a long-term condition (LTC). Therefore, helping them to appropriately improve their medication adherence and self-manage their LTC.

4.1.3 The NMS helps to promote multidisciplinary working between the pharmacy, the patient's GP practice in addition to any other professionals involved in their care. The service intends to promote the early identification of any issues arising from newly prescribed medicines and therefore supports patients to discuss any issues with their prescriber or pharmacist who may refer them back to their prescriber.

4.1.4 Pharmacies who take part in the scheme, must ensure that they meet minimum requirements set out in the advanced service specification. The requirements of contractors wishing to provide the New Medicine Service are set out in Annex A of this letter and in the advanced service specification.

Post Payment Verification

4.1.5 NMS claims for the 2022/23 financial year were analysed for Post Payment Verification (PPV) and 383 contractors were identified for the PPV sample. Contractors were selected for one of the following reasons:

4.1.5.1 Outliers' ones with the largest NMS claims

4.1.5.2 Claimed 100% in the last 3 months

4.1.5.3 Requested/Targeted – ICB/Counter Fraud requests

4.1.5.4 96 that were included in previous samples but were never asked for evidence due to 2-year retention period

4.1.6 There were also several other pharmacies who were not outliers but were selected at random to be included in the sample.

4.1.7 After being identified for the PPV process, contractors received an initial email requesting that they provide evidence for the NMS claims made between October 2022 and March 2023. Contractors are expected to provide evidence which substantiates all of the claims made by the pharmacy during the claim period. If evidence is missing or duplicate claims are made, the NHSBSA (NHS Business Services Authority) is unable to provide assurance to NHS England that the service is being conducted correctly and therefore is required to make a recovery of any overpayments which have been made to the contractor.

4.1.8 FTA58, Benchill Pharmacy, were initially approached with a request to provide evidence on 6th August 2024 with a deadline of 26th August 2024 provided. Benchill Pharmacy had submitted 41 claims (between Oct-Dec 22) for payment via Manage Your Service (MYS) during the sample period for payment; therefore they were asked to provide evidence to validate the claims in question. The pharmacy was advised that the Pharmacy Provider Assurance Team (PAT) were able to accept paper consent forms which could either be scanned by the pharmacy, provided digitally, or the contractor could send these with their monthly prescription batch to be scanned by our office. If the NMS events were recorded digitally the PAT were also able to accept a report produced from the pharmacy's PMR system. As per Page 11 of the NMS service specification, section "Data collection and reporting requirements", the PAT requested that the evidence included the following information:

4.1.8.1 Dates of the NMS

4.1.8.2 Patient Name

4.1.8.3 Patient Address

4.1.8.4 Patient NHS Number

4.1.8.5 Patient Date of Birth

4.1.9 The initial email, which notified the contractor that they had been selected for the NMS PPV process, had failed to deliver, so contact was made with the pharmacy to request an alternative email address. The initial email was then resent to the alternative email address ([XX]@nhs.net) however no evidence was received. A follow up email was then sent to the contractor ([XX]@nhs.net and pharmacy.fta58@nhs.net) on 30th August 2024 with an extended deadline of 13th September 2024 to allow the contractor time to gather their evidence together and initial emails were attached.

4.1.10 A call was made to the contractor on 9th September 2024 and communication was with [K] who explained that [Kx] does not have access to emails as he was awaiting a verification code. [K] requested the initial email to be resent to his own email address ([XXX]@nhs.net) and he would respond by Friday 13th September. He also provided [Kx]'s mobile number should the PAT need to make further contact. The initial and follow-up emails, along with a reminder of the deadline were then emailed to [K].

4.1.11 Two attempts to call the contractor on their pharmacy number were made on 13th September at 14:35 and 14:36 but there was no answer.

4.1.12 PAT allowed the pharmacy two extra days due to the weekend and then attempted a further call to the pharmacy on 16th September at 13:55 which was successful. Contact was made with [K] who informed the PAT that [Kx] now has the email and if anything further needed to be discussed to contact him via their other pharmacy on [telephone number redacted]. On the same day at 15:27 a call was made to this pharmacy, and [J] informed the PAT that [Kx] was in a meeting and to call back the next day. PAT requested if a message could be passed onto [Kx] to advise him that the deadline for evidence submission had passed.

4.1.13 On 17th September PAT called the alternate pharmacy and spoke to [Kx] who advised they had a flood and some of the paper consent forms had been destroyed. He said he would verify what he could but would like some additional time due to this. [Kx] went on to explain that everything is now electronic as they have updated the system. The deadline was extended until 1st October. [Kx] requested contact to be made via his mobile number now as it is easier to get through to him.

4.1.14 Chase up calls were made to [Kx]'s mobile on 25th September due to the deadline approaching. Due to the calls not being answered a voice mail was left. A further call was made to the alternate pharmacy's number on 26th September but there was no answer. PAT then attempted to call Benchill Pharmacy's own number but that was also unsuccessful.

4.1.15 As no further contact was received, an ICB (integrated care board) warning letter was sent on 2nd October 2024. (If a contactor engages with the PAT but then stops; this leads to the pharmacy being referred to their ICB for consideration of a breach of their Terms of Service. NHS England consider this letter to be the initial stage of the dispute resolution process that may result in the issuing of a breach notice. A timeline of correspondence with the pharmacy is also attached in the email. Non-engagement with the ICB could lead to the information being provided to Pharmaceutical Services Regulations Committee (PSRC) of the ICB with the recommendation that they decide the pharmacy have failed to deliver the Terms of Service pursuant to Schedule 4 Part 4 paragraph 35 (4) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. Where necessary, PSRC may also consider whether any further action is needed.)

4.1.16 The timeline of correspondence was included in this letter and a deadline of 16th October was given for the contractor to provide a response or the evidence that was requested. A response was received from [Kx] on 2nd October stating that the evidence was not salvageable due to the severe leak. He was able to provide evidence of the leak if required.

4.1.17 Following this information, the PAT requested the second part of the NMS process. If the PAT were unable to verify the contractor with the evidence from October – December 2022, then a further request is made for the evidence

from January – March 2023. An email was sent to the contractor stating this on 2nd October and a deadline of 16th October was provided.

4.1.18 On 14th October multiple attempts to call the contactor were made, including to [Kx]'s mobile which rang a couple of times then went straight to voicemail. On the 3rd attempt of calling the pharmacy number we spoke to [M] who informed us [Kx] and [K] were not at the pharmacy, and we would get through to [Kx] if we called his mobile, but this failed again.

4.1.19 Contact was made with [K] on 15th October where PAT asked to speak to [Kx]. [K] went to check if he was available but advised the PAT to contact [Kx]via his mobile phone. The mobile number was called shortly after however was no answer and a voicemail was left. The PAT then called [K] back and asked to leave [Kx] a message that deadline was approaching.

4.1.20 Due to the absence of a response, a PSRC (Pharmaceutical Services Regulations Committee) warning letter was then sent to pharmacy.fta58@nhs.net, [XXX]@nhs.net and [XX]@nhs.net on 17th October. The Timeline of correspondence was also attached, and a deadline of 31st October was given.

4.1.21 Contact was made on 25th October with [Kx] as we were approaching the deadline. [Kx] stated the email may have gone into the junk folder or may have got lost as he receives many emails. As per [Kx]'s request the PSRC warning and request for January – March evidence was sent to all email addresses once again. A delivery receipt was received for [XXX]@hotmail.com.

4.1.22 After two attempts to call the contractor, a response was received on 30th October via an email from [Kx] stating that he cannot provide evidence for January – March 23 due to the leak. A recovery proposal email was then sent on 1st November as the PAT still had not received any evidence and therefore had been unable to verify the NMS claims made. The contractor was informed that between October 2022 – March 2023, 79 NMS were claimed by the pharmacy and this equivalates to £1,580. A deadline of 15th November was given to the contractor to agree there had been an overpayment which should be recovered, as no evidence had been provided to assure NHSE that the NMS service had been delivered in line with the service specification. The contractor was also informed that if they did not agree to the £1,580 recovery, we would then proceed with referring the case to PSRC. Multiple calls were made after this and on 18th November 2024 the contractor responded stating he cannot provide evidence for January – March 2023 and they have a very busy pharmacy dispensing over 12,000 items a month. An email was sent to contractor on 20th November stating this NMS sample is only for October 2022 – March 2023 and not for anything outside of this period. The PAT reminded the contractor of the recovery value and advised that the case will now be referred to PSRC. A delivery receipt was received for [XXX]@hotmail.com.

4.1.23 The case was then referred to PSRC (2nd December 2024).

Pharmaceutical Services Regulations Committee (PSRC) Decision

4.1.24 To assist with their review, the PSRC was provided with the NMS service specification, a summary of PAT's PPV procedure, along with the timeline of correspondence showing all contact the Provider Assurance team had with the pharmacy for review. This timeline has been provided to you in addition to this information.

4.1.25 Consequently, the PSRC concluded that the NHSBSA had not received any evidence to verify the claims made. As a result, on 3rd February 2025, the PSRC issued their decision, determining that the pharmacy was not entitled to the full payment previously received, and instructed that the amount owed be recovered.

4.1.26 Having made this decision, the PSRC then directed that as Benchill Pharmacy was not entitled to the full payment, that the overpayment should be reclaimed pursuant to Regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.1.27 In making this decision, the PSRC relied on the information that it had before it, following the extensive investigation undertaken by the PAT and the repeated requests to the contractor for evidence of how the New Medicine Service claims made for October 2022 to March 2023 met the requirements set out in the service specification.

Response to the contractor's appeal

4.1.28 The PAT conducts assurance activities on behalf of NHSE to verify that pharmacy contractors are delivering services correctly and maintaining appropriate evidence to support their claims.

4.1.29 The aim is to ensure contractors comply with service specifications and provide services appropriately. For example, in the case of the NMS, certain claims may be deemed incorrect or unsuitable if they do not align with the service specification. To facilitate this process, PAT requests evidence from contractors, as outlined in the service specification, which also requires this evidence to be shared as part of any Post Payment Verification exercise.

4.1.30 As shown above. the PAT were unable to verify the contractor due to no evidence being submitted for either of the requested months. From the response from Benchill Pharmacy it appears they base the appeal on two key factors:

4.1.30.1 A flood in the pharmacy premises.

4.1.30.2 Recovering the money for the full 6-month period and not just 3 months

4.1.31 Whilst the PAT appreciate a flood in the Pharmacy may have happened, the NHSBSA are required to provide NHSE with assurance that the NMS were carried out in accordance with the Service Specification.

4.1.32 The NHSBSA PAT are directed by NHSE to ensure that all contractors in the NMS PPV process are adhering to the service specification and evidence should be retained by contractors for at least 2 years, as stated in *The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 – "P keeps a copy of the record mentioned in sub-paragraph (l) for at least 2 years from the date on which the service intervention is completed or discontinued*."

4.1.33 Evidence is requested in accordance with Schedule 4 Part 4 paragraph 35 (4) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and the NHSBSA PAT have been authorised in writing by NHSE to request this information on their behalf. Contractors, including Benchill Pharmacy, are expected to participate in this engagement as part of their Terms of Service.

4.1.34 It is a contractor's responsibility to retain records and be able to provide them for PPV purposes. The PAT understands that the ability for the contractor to have been able to do this may have been made more difficult if a flood had occurred at the pharmacy. However, no evidence has been provided as to how the records for the 79 NMS undertaken were kept and were then damaged. Furthermore, no evidence has been provided of damaged records to support their assertion that the lack of records was due to water damage. Whilst the PAT is sympathetic to the situation that the pharmacy may have found itself in due to the flood, it would still need objective evidence to be able to provide to NHSE when it undertakes a PPV investigation. As no such evidence was provided, the PAT could not assure NHSE that the claims were made in accordance with the service specification and were obliged to inform the PSRC of the ICB that an overpayment had been made and should be recovered. Upon reviewing all this information, PSRC subsequently agreed with the findings and instructed the PAT to recover the overpayment.

4.1.35 Although the appellant has said their processes have been revised since and records are kept electronically; the PAT still have no evidence from the contractor to help in its investigation to verify that the claims between October 2022 – March 2023 were valid and in accordance with the service specification. In this instance it would only be fair to recover the money for the claims made during this time.

4.1.36 The PAT also accept a wide range and formats of evidence such as paper consent forms or digital forms and request minimal amounts of information such as

4.1.36.1 Dates of the NMS

4.1.36.2 Patient Name

4.1.36.3 Patient Address

4.1.36.4 Patient NHS Number

4.1.36.5 Patient Date of Birth

4.1.37 The PAT co-operate with pharmacies and allow for multiple deadline extensions to enable them to submit their evidence. The PAT caseworkers also process any paper consent forms.

4.1.38 The PAT believe that they remained fair and consistent with the contractor allowing for multiple deadline extensions and attempts to contact the pharmacy before escalating to PSRC. The contractor had ample notice and was aware of the process they were being asked to undertake. Throughout this, contact from the pharmacy was limited and there was in-consistent co-operation.

4.1.39 The NMS PPV sample for 2022 – 2023 was a period of 6 months (Oct-March) for all contractors involved however, the process was streamlined to ease pressure on contractors. The PAT initially requested 3 months of evidence (Oct – Dec) and if the NMS claimed could be verified then it is assumed that records would be available for the full six months and so no further investigation is undertaken. However, where no evidence or insufficient evidence is provided for verification, then the next 3 months of evidence (Jan – March) is requested. The contractor was given the opportunity to provide both sets of evidence which they failed to do. As there was no evidence provided, the NHSBSA was obliged to refer the case to PSRC with the recommendation that an overpayment had been made for the 6 months covering the PPV. The

NHSBSA PAT and NHSE, do not deem a leak to be an exceptional reason for no NMS evidence being provided by the contractor.

4.1.40 In the appeal the contractor states that the claims were “negligible” to what they could claim for. The total number of claims calculated for recovery are 79 and the value this equivalates to is £1,580. The PAT do not consider that these claims are negligible and as these claims could not be verified as complying with the service specification, made a recommendation to the PSRC of the ICB that they should be recovered. The ICB accepted this recommendation and directed that the claims should be recovered as part of their responsibility to protect public funds.

Key points for consideration

4.1.41 We respectfully ask that NHS Resolution considers the following key points when making its determination on the appeal:

4.1.41.1 The contractor was provided with many opportunities and ample time to deliver evidence between August 2024 and November 2024.

4.1.41.2 The contractor failed in following guidance for NMS where evidence should be retained for a minimum of 2 years.

4.1.41.3 PAT demonstrated multiple examples of co-operation with the pharmacy including multiple calls and emails and extensions of deadlines.

4.1.41.4 The PSRC was presented with timelines of correspondence, showing all contact between the Provider Assurance team and the pharmacy.

4.1.41.5 The PSRC fully considered all information that it had before it when making its determination for the overpayment under regulation 94.

4.1.41.6 The PAT and NHSE do not agree that a leak is an acceptable reason not to provide evidence for the NMS within the requested period; the PAT are unable to assure NHSE the service has been claimed and delivered in accordance with the service specification.

4.1.42 Having carefully considered these matters, the NHS Business Services Authority Provider Assurance Team respectfully recommends that NHS Resolution uphold the PSRC’s decision regarding the recovery of the £1,580.00 NMS overpayment from Benchill Pharmacy, as it was fair and compliant with the applicable regulations.

4.1.43 Please let me know of you need anything further to help in these deliberations.”

5 OBSERVATIONS

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

6 CONSIDERATION

6.1 Direction 2 of the Payment Disputes Directions directs me to determine a dispute in respect of the recovery of an overpayment from an NHS pharmacist under Regulation 94(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services Regulations)

2013 (the "Regulations") which is in the nature of an appeal against a decision of NHS England that there has been an overpayment.

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

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

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

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

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

6.3.2 the grounds of the appeal are valid.

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

6.4.1 a hearing is unnecessary; or

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

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

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

6.7 I note the NHS BSA's representations on appeal include the following undisputed background points to the New Medicines Service:

6.8 *"The New Medicine Service (NMS) forms part of the Advanced Services within the Community Pharmacy Contractual Framework (CPCF). This service provides support to all patients, with the inclusion of carers who have appropriate consent and parents/guardians of younger children, who are taking a newly prescribed medicine to manage a long-term condition (LTC). Therefore, helping them to appropriately improve their medication adherence and self-manage their LTC.*

6.9 *The NMS helps to promote multidisciplinary working between the pharmacy, the patient's GP practice in addition to any other professionals involved in their care. The service intends to promote the early identification of any issues arising from newly prescribed medicines and therefore supports patients to discuss any issues with their prescriber or pharmacist who may refer them back to their prescriber.*

6.10 *Pharmacies who take part in the scheme, must ensure that they meet minimum requirements set out in the advanced service specification."*

6.11 Further regarding the scheme, the NHS BSA's representations include: "*After being identified for the PPV process, contractors received an initial email requesting that they*

provide evidence for the NMS claims made between October 2022 and March 2023. Contractors are expected to provide evidence which substantiates all of the claims made by the pharmacy during the claim period. If evidence is missing or duplicate claims are made, the NHSBSA (NHS Business Services Authority) is unable to provide assurance to NHS England that the service is being conducted correctly and therefore is required to make a recovery of any overpayments which have been made to the contractor."

6.12 The NHS BSA has provided a copy of the timeline showing a number of communications between the parties between 7 August 2024 and 11 February 2025. The timeline includes copy emails and reminders that were sent to the Appellant as well as confirmation of the email addresses that were used and delivery receipts have also been provided. There is no dispute between the parties that these were sent electronically and to the premises specific email account as set out in the Regulations. In addition, I note that following various telephone calls with the Appellant and members of their pharmacy team, emails were also sent to alternative email addresses.

6.13 The timeline heading includes a summary which states that the Appellant had been contacted to verify its NMS claims made during the period of October 2022 – December 2022 and January 2023 - March 2023. Further that the NHS BSA's Provider Assurance Team had contacted the pharmacy on 37 occasions between 7 August 2024 and 20 November 2024 in relation to this but had to date received no response.

6.14 In its earliest attempt (7 August 2024) to contact the Appellant, the NHS BSA's email outlines the PPV exercise for NMS and requested that the pharmacy provide evidence to support the claims made during the period October 2022 to December 2022. Alternatively, if the Appellant believed that they had inadvertently claimed for NMS, they were to inform the NHS BSA accordingly.

6.15 It was not until 2 October 2024 that the Appellant replied informing the NHS BSA that it was unable to provide any evidence for the period October 2022 to December 2022 "*due to the fact that we had a severe leak from the top of the building*" which resulted in damage to the building and that "*the NMS paperwork you require to inspect has been damaged and is not salvageable*."

6.16 I note that as the evidence of the original time period was not available, the NHS BSA, in an email of 2 October 2024, sought evidence from the Appellant for the time period January 2023 to March 2023.

6.17 The NHS BSA's email to the Appellant of 20 November 2024 stated that "*as you are unable to provide any evidence due to the water leak issue*" the PPV would be forwarded to the PSRC for review.

6.18 On 2 December 2024 the NHS BSA sent an email to PSRC containing details of the PPV including a full timeline of correspondence between the Provider Assurance Team and the Appellant.

6.19 On 3 February 2025, the PSRC made a decision to recover the monies.

6.20 Given the detailed timeline, I am satisfied that the parties had engaged with each other regarding the matter in dispute although no agreement was reached.

6.21 The Appellant seeks to appeal against the decision of NHS England that an overpayment has occurred and to recover the sum of £1,580.00.

6.22 I note that I have been provided by the NHS BSA with a copy of the service specification, version 1.0 which is dated September 2021 and is titled "Advanced Service Specification – NHS New Medicine Service (NMS)" ("the specification") as well

as a copy of the "Annex A" which sets out the requirements of contractors who wished to provide the NMS. I note that there is no dispute between the parties that this specification applies and that the Appellant signed up to the service as set out in the specification.

6.23 Point 26 on page 14 of the specification states:

"Contractors must report the following data (collated from their clinical records for the service) on a quarterly basis to the NHSBSA. The NHSBSA collect this data on behalf of NHS England and NHS Improvement and the process for submitting the data is described on the NHSBSA website. Contractors must submit the data to the NHSBSA within 10 working days from the last day of the quarter the data refers to (last day of June, September, December, and March)." It is clear therefore that the NHS BSA, for its calculation of payments for the NMS service, relies on data provided by pharmacies."

6.24 Page 15 of the specification states:

"27. Claims for payments for this service should be made monthly to the NHS Business Services Authority, in accordance with the usual Drug Tariff claims process.

2 28. A payment will be made in line with the Drug Tariff determination for the service based on the total number of completed NMS provisions claimed in the month."

6.25 Claims made by the Appellant in line with the above, are subject to 'Post Payment Verification Process.' The NHS BSA made the following comments in their representations on appeal outlining the 'triggers' for the process and reasons why the Appellant's pharmacy (among several others) met that criteria.

"*NMS claims for the 2022/23 financial year were analysed for Post Payment Verification (PPV) and 383 contractors were identified for the PPV sample. Contractors were selected for one of the following reasons:*

1. *Outliers' ones with the largest NMS claims*
2. *Claimed 100% in the last 3 months*
3. *Requested/Targeted – ICB/Counter Fraud requests*
4. *96 that were included in previous samples but were never asked for evidence due to 2-year retention period.*

FTA58, Benchill Pharmacy, were initially approached with a request to provide evidence on 6th August 2024 with a deadline of 26th August 2024 provided. Benchill Pharmacy had submitted 41 claims (between Oct-Dec 22) for payment via Manage Your Service (MYS) during the sample period for payment; therefore they were asked to provide evidence to validate the claims in question."

6.26 The Appellant was initially asked to provide evidence to validate the 41 claims made between October 2022 and December 2022.

6.27 I note the comments from the NHS BSA that "*The pharmacy was advised that the Pharmacy Provider Assurance Team (PAT) were able to accept paper consent forms which could either be scanned by the pharmacy, provided digitally, or the contractor could send these with their monthly prescription batch to be scanned by our office. If the NMS events were recorded digitally the PAT were also able to accept a report produced from the pharmacy's PMR system."*

6.28 As per page 11 of the specification, section "Data collection and reporting requirements" the NHS BSA requested that the Appellant provide the following information:

6.28.1 Dates of the NMS;

6.28.2 Patient Name;

6.28.3 Patient Address;

6.28.4 Patient NHS Number;

6.28.5 Patient Date of Birth

6.29 I note that the original deadline of 26 August 2024 to provide this information was extend to 13 September 2024 to allow the Appellant to gather the relevant information. Despite various attempts to contact the Appellant, via different methods, including alternative email addresses and telephone numbers, the information was not provided within the relevant deadlines set out by the NHS BSA.

6.30 The Appellant, in a phone call of 17 September 2024, advised the NHS BSA that they "*had a flood*". I note that this is reiterated by the Appellant in an email to the NHS BSA dated 2 October 2024, in response to a further request from the NHS BSA for evidence that the claims were made in accordance with the service specification. The Appellant stated "*I have now been able to conclude the paperwork you requested for the specific time frame is not accessible by us. This is due to the fact that we had a severe leak from the top of the building. This resulted in the some parts of the building being damaged along with the contents of the building. I can confirm that the NMS paperwork you require to inspect has been damaged and is not salvageable."* [sic]

6.31 I note that, as the Appellant was unable to provide the relevant information as requested by the NHS BSA for the initial period, the NHS BSA sought further information and in a follow up email of 2 October 2024 stated "*As we are unable to provide NHS England with any assurance these claims were made correctly, we now request that you provide the records for the NMS claims for the months of January 2023 to March 2023, a total of 38 claims. These records can either be digital in the form of a PMR report or Patient consent forms*."

6.32 In an email of 30 October 2024 the Appellant stated "*I am emailing to update you that we are unable to provide the evidence relating to our NMS for the period you have requested. This is due to the fact we had a water leak which resulted in water damage to the Pharmacy premises in April 2024."*

6.33 The Appellant offered to provide evidence of NMS consents after April 2024, however the NHS BSA confirmed that as the PPV exercise was for the period October 2022 to March 2023 they would not be able to accept any evidence from outside of this time period, which is in line with the specification.

6.34 I note the comments from the Appellant regarding the flood at the premises and, as result of this, they were unable to provide the relevant information for the period October 2022 to December 2022. I further note the comments from the Appellant, on appeal, that *"I had already notified you that due to flooding of the Pharmacy premises I was unable to provide the evidence you requested. Therefore I should not be penalized for not providing evidence for both sets of date ranges."*

6.35 I note that the Appellant has not been able to provide any evidence regarding the NMS events that were completed. I further note that, apart from the statement from the Appellant, no evidence regarding the flood, i.e. how the records were kept and how they then came to be damaged within the pharmacy premises, has been provided.

6.36 I am also mindful that, whilst the flood occurred in April 2024, the Appellant did not respond to the NHS BSA with this information until September 2024. I am of the view

that, if the flood had done as much damage as suggested by the Appellant, they would have been aware of this in August 2024 when the initial request from the NHS BSA was received. I am therefore unsure why the Appellant did not mention this incident straight away, or confirm the date that this occurred, so as to explain why they were not able to provide the records after the initial contact was made by NHS BSA in August 2024. I am of the view that it is highly unlikely in the circumstances that the Appellant would not have been aware of the flooding and the damage that had been caused to the storage of records.

6.37 Whilst I note that it was permissible for paper records to be kept, this was offset by the fact that any records held by the Appellant at the time the service was provided were damaged beyond recovery.

6.38 Unfortunately it appears that the Appellant has not been able to provide any information to substantiate the claims made. Whilst I note the comments from the Appellant that they should not be penalised for both periods, in the absence of any information the NHS BSA is unable to complete the PPV.

6.39 I further note the comment from the Appellant with regard to the volume of prescriptions dispensed and the number of claims made, however I am mindful that this is not a relevant consideration within the specification and that after signing up to participate in the scheme the Appellant should have been aware of what it would entail and should have been able to keep the information accordingly.

6.40 I also note the comments from the Appellant that if they had agreed that they were unable to provide the records for the period October 2022 to December 2022 then it would only be these months for which the NHS BSA would have sought an overpayment. I am of the view however that there is no way of knowing how the NHS BSA would have responded to this and as such, I am only able to consider the decision of NHS England that is before me. I note that the decision of the PSRC, on presentation of all of the information by the NHS BSA, was to instruct the NHS BSA to recover the full amount for the period October 2022 to March 2023.

6.41 I note from the information before me that there is no dispute from the Appellant that they are not able to provide the information as requested and set out in the specification.

6.42 In these circumstances, I am of the view, given that the Appellant has been unable to provide any records for those patients who utilised the NMS service, that the Appellant does not qualify for payment in line with the service specification.

6.43 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 £1,580.00.

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