22 May 2025

REF: SHA/26505

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM COHENS CHEMIST (FAW42) ("THE APPELLANT")

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

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

1 Outcome:

1.1 I quash the decision of NHS England and remit the matter to NHS England for it to take the decision again and, in doing so, consider the September 2022 data.

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:

Cohens Chemist
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

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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM COHENS CHEMIST (FAW42) ("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 27 January 2025 in respect of Cohens Chemist (ODS code FAW42). 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 **639** NMS during this time, however the evidence provided by the pharmacy means the Provider Assurance Team were not able to verify **31** of the claims made.

2.3 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.

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

2.4.1 **COHENS CHEMIST** was contacted on **8** separate occasions by the NHSBSA Provider Assurance Team to request evidence to substantiate the claim or agree to the recovery but did not receive 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
FAW42	£868.00

2.7 **Action Required**

2.7.1 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 26th February 2025** Where you agree an overpayment has been made the amount over paid will be recovered by deduction from a future NHSBSA payment to you.

2.7.2 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.

2.7.3 **Please be aware that failing to contact us by 26th 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:

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

2.7.4 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.

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

2.9 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.

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

2.11 Your co-operation is very much appreciated."

2.12 [Enclosure Timeline re correspondence].

3 **THE DISPUTE**

In an email dated 7 February 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 “I write to appeal the recovery outlined in the email below from pharmacysupport@nhsbsa.nhs.uk

3.2 We appeal on the grounds that this decision in [sic] unreasonable when the pharmacy has provided the service to patients in good faith with the expectation of reimbursement.

3.3 The only factor that has not been precisely in line with the service specification is the months that claims were sent against the evidenced provision dates.

3.4 The service specification allows for professional discretion throughout each stage on the timing of the engagement, intervention and follow up. This should also be the case for claim dates when the service specification allows so much variation.

3.5 NHSBSA in the attached email [See paragraphs 2.1 to 2.11 above] suggested that we provide an additional 3 months of evidence from other months. What is the purpose of this exercise in providing additional months, if it is to not demonstrate that we have provided services below or line with we have been reimbursed across the whole timeframe? If every month has to be so precise, this request is redundant.

3.6 We also must raise that we have cases where our pharmacies provide more services than they have actually claimed for in these verification exercises, and it doesn’t work in our favour with an additional payment.

3.7 We feel that we have demonstrated that the pharmacy has not provided services below what it has been paid. No grace or common sense is being applied by NHSBSA at a time when pharmacies are under great financial strain and pressure. This level of recovery threatens the viability to operate a pharmacy when there have been a significant number of closures relating to the current contract and funding arrangements. This type of NHS bureaucracy is counter-productive on both sides and it is with regret that so much time has been spent on this exercise.

3.8 I hope you can consider our appeal given the fact the pharmacy has provided these services across the timeframe given as evidence.”

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 10th February 2025 and the opportunity to provide representations on the appeal.

4.1.2 **Background**

4.1.3 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.

4.1.4 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.

4.1.5 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 at Annex A [Appendix A] of this letter and in the advanced service specification.

4.1.6 **Post Payment Verification**

4.1.7 The sample size of 383 refers to the contingent of contractors designated for post-payment verification, each selected based on specific criteria. In this sample the criteria for selection of contractors for PPV was:

4.1.7.1 Outliers - contractors with the largest volume of NMS claims

4.1.7.2 Random selection of contractors

4.1.7.3 Those who had claimed 100% of the NMS for the sample period in the last 3 months

4.1.7.4 Requested/Targeted – lead by ICB/Counter Fraud requests

4.1.7.5 96 contractors that were included in previous samples but were never asked for evidence due to 2-year retention period.

4.1.8 Considering the 2-year retention period written within the Drug Tariff, we requested NMS evidence from September 2022 – March 2023, splitting this into 3 months evidence per request. As we were unable to verify the contractor, we requested a further 3 months. Please note, before requesting the additional 3 months, the contractor was given the opportunity to provide clarification or further evidence as we were unable to verify them. As we were still unable to verify the NMS service was completed in line with the Drug Tariff & Service Specification. The local PSRC decided that an overpayment had therefore occurred. As part of the recovery process, we will perform the necessary financial adjustment and re-sample the contractor in the future along with providing feedback to the contractor.

4.1.9 In this sample, we allowed contractors a tolerance of 5%. This means that if the unverified NMS total was 5% or less, it may be verified. The 5% tolerance pertains to the amount the contractor was paid, rather than the total amount of claims and NMS evidence submitted for verification.

4.1.10 Assurance analysts were responsible for furnishing the requisite data for the sample, along with categorising each contractor according to predefined classifications.

4.1.11 Upon completion of the post-payment verification process for most accounts, we will request a fresh sample from the analytical team.

4.1.12 **FAW42** – **Cohens Chemist**, were initially approached with a request to provide evidence on 7th August 2024 and a deadline of 26th August 2024 was provided. The MYS data showed that the pharmacy made 334 claims during the sample period (October to December 2022), and they were therefore asked to provide evidence to validate the claims. 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 and provided digitally, or the contractor could send these with their monthly prescription batch to be scanned in our office, if the NMS events were recorded digitally the PAT were also able to accept a report ran from the pharmacy's Patient Medical Record (PMR) system. The PAT requested that the evidence showed key information such as the following: -

4.1.12.1 Dates of the NMS

4.1.12.2 Patient Name

4.1.12.3 Patient Address

4.1.12.4 Patient NHS Number

4.1.12.5 Patient Date of Birth

4.1.13 Following the initial email, which notified the contractor that they had been selected for the NMS PPV process, a call was made to the pharmacy to make sure that they had received the email and to remind them of the deadline to respond. We spoke to Amy at Cohens Chemist on 12th August 2024 and she advised that the email had been forwarded to the Operations team for them to respond. Also, on the 12th August 2024 we then received an email from Michael Cox with a PMR report attached for the purpose of NMS evidence, and later the same report was received from Amy at pharmacy.faw42@nhs.net .

4.1.14 After analysis of the PMR report, it was found that there was insufficient patient records provided for October 2022 to verify the 131 NMS claimed. An email was sent to pharmacy.faw42@nhs.net on 2nd September 2024 to advise that there was a shortfall of 31 NMS patient records and asked if any further evidence could be provided for October 2022. PAT did not receive a reply to this email, so a further email was sent on 1st October 2024. We received a reply on the same day from Amy apologising for non-reply to our previous email, and that this will be passed to Head Office to deal with.

4.1.15 Michael Cox emailed on 4th October 2024 to ask about the 31 NMS evidence shortfall. A reply was sent on the same day to explain that the PMR report had 100 patient records for October 2022, but the NMS claimed for October 2022 was 131. We asked if any further evidence was available for October 2022 to substantiate these claims. No additional evidence was provided for October to December 2022, so we requested evidence for the 305 NMS claims for January to March 2023. We advised the sample would then be based on the full 6-month period in line with the 2022-23 sample criteria.

4.1.16 **First breakdown of non-verified claims reasoning:**

4.1.17 **Table [Appendix B (Tables)]**

4.1.18 Email received on 29th October 2024 from Michael Cox providing the PMR report for January to March 2023 as requested.

4.1.19 The January to March 2023 evidence was processed and the outcome of the six-month sample was unchanged and there was a shortfall of 31, specifically for October 2022. We sent a recovery value email to pharmacy.faw42@nhs.net and Michael.cox@cohenschemist.co.uk on 29th October 2024.

4.1.20 **Second breakdown of non-verified claims reasoning:**

4.1.21 **Table [Appendix B (Tables)]**

4.1.22 Michael Cox replied to the recovery value email on 6th November 2024 to request that this recovery is reviewed by the local Pharmaceutical Services Regulations Committee (PSRC) as he feels the judgement is unfair with the only discrepancy being the month that the claims were sent. PAT replied to Michael on the 7th November 2024 and explained that the surplus NMS evidence can be carried forward but cannot be used retrospectively for a previous month's shortfall.

4.1.23 Comparing the initial breakdown to the second breakdown October is the only month where there is a significant shortfall of evidence. Backward carrying of claims does not meet the Drug Tariff requirements. Claims can only be submitted for service delivery completed in that month. A contractor cannot submit a claim in October for activity it is going to undertake in November, therefore November's surplus evidence cannot be applied to October's submission. However, surplus evidence for November can be carried forward to December.

4.1.24 A PSRC escalation warning email was sent to the contractor on 19th November 2024 with a deadline provided of the 3rd December 2024. The purpose of this warning is to advise the contractor that their case is due to be referred to the NHS England local PSRC for review. As we have had no agreement to our findings the timeline of correspondence will be provided to PSRC with the recommendation that they decide an overpayment has been made, and that this overpayment should be recovered pursuant to Regulation 94(1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.1.25 **Pharmaceutical Services Regulations Committee (PSRC) Decision**

4.1.26 Escalation to PSRC took place on 23rd December 2024. 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.

4.1.27 The engagement showed that during the multiple email exchanges with the PAT the pharmacy had been advised of the shortfall of evidence for October 2022 and was asked to provide further evidence to substantiate the 31 unverified claims. However, no further evidence for October was forthcoming.

4.1.28 Consequently, the PSRC concluded that the NHSBSA had not received sufficient evidence to verify all the claims made. As a result, on 17th January 2025 PSRC issued their decision agreeing that recovery of 31 NMS is recommended.

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

4.1.30 **Response to the contractor's appeal**

4.1.31 The PAT conducts assurance activities on behalf of NHS England (NHSE) to verify that pharmacy contractors are delivering services correctly and maintaining appropriate evidence to support their claims. Our 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.

4.1.32 As discussed already in this response PAT were unable to obtain sufficient evidence in support of each of the NMS claims made by Cohens Chemist. Therefore, we consider the decision to recover the funds was fair, in compliance with the regulations, and supported by the documented interactions and evidence review conducted by the NHSBSA.

4.1.33 **Key points for consideration**

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

4.1.34.1 The contractor has a shortfall of evidence for 31 NMS for October 2022. The NHSBSA PAT has not received sufficient evidence to be able to assure NHSE that the 31 NMS were claimed in line with the service specification and drug tariff.

4.1.34.2 As part of the Post Payment Verification process conducted by the Provider Assurance team, contractors are allowed to carry forward any surplus evidence into future months. This accommodates situations where a contractor provides the NMS service but delays claiming for it until the following month.

4.1.34.3 The contractor has requested that evidence dated November and December 2022 be used to verify claims for October 2022. However, this request cannot be fulfilled as the claim is not valid. Claims submitted for October should be for activity undertaken in October as required in the Drug Tariff and reflected in the NMS Service Specification on page 15. Evidence can only be carried forward to verify claims and not retrospectively so contractors cannot overclaim in later months to make up the difference from previous months already submitted.

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

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

4.1.35 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 £868.00 NMS overpayment from Cohens Chemist, as it was fair and compliant with the applicable regulations.

4.1.36 Please let me know if you need anything further to help in these deliberations."

5 OBSERVATIONS

5.1 COHENS CHEMIST

5.1.1 “Thank you for sending on this correspondence. The only point I wish to add is to reiterate the following point being made by Mr Harcourt is flawed and unfair. It was not fairly communicated and we were not allowed to send evidence from September 2022, so we could not “carry forward any surplus evidence into future months”.

5.1.1.1 “*2. As part of the Post Payment Verification process conducted by the Provider Assurance team, contractors are allowed to carry forward any surplus evidence into future months. This accommodates situations where a contractor provides the NMS service but delays claiming for it until the following month*.”

5.1.2 If this had been communicated effectively, I would had [sic] shared the pharmacy data from September 2022, which when I have checked, has 116 NMS provisions that can be evidenced. I do not understand why in these circumstances NHSBSA requested 3 months in the future, rather than prior?

5.1.3 The pharmacy appears to have only claimed for 66 NMS in September 2022, and therefore could have carried claims forward. I can share this evidence if required.

5.1.4 Again, I must apologise for the way the pharmacy has claimed for the service in 2022, in most cases it seems to be below what they could have actually claimed for. Three years later it seems unfair to punish the pharmacy financially for this.”

6 ADDITIONAL INFORMATION

As the Appellant had indicated that it had other data available which would support its arguments, I applied discretion and requested the September 2022 data from the Appellant and gave the Commissioner an opportunity to comment up on this data.

6.1 THE APPELLANT

6.1.1 “Please see attached data for September 2022 as requested.” [Spreadsheet enclosed].

6.2 NHS BSA ON BEHALF OF NHS ENGLAND

6.2.1 “Thank you for your email providing the further NMS evidence as supplied by Michael Cox in relation to the appeal by FAW42.

6.2.2 As the September evidence was not provided at the time of the Post Payment Verification exercise, these NMS were not taken into account in our original analysis. This resulted in the outcome that the pharmacy had been overpaid. It was at this point that we escalated to PSRC with our findings and they agreed with us to pursue a recovery of the overpayment.

6.2.3 Due to the nature of NMS and the different stages that the service can be considered complete, there are occasions when a claim can overlap into another month. Another example of this is there is only an engagement date provided, as this is considered the claim date for verification purposes. Taking this into account, we have processed the total number of NMS evidence including the September evidence which has now been provided by FAW42. These updated calculations have now met with the claim totals for October 2022 to March 2023, and the outcome is now that no recovery is required, this would have been the case had we seen the evidence originally.

6.2.4 As we've processed new information provided by FAW42, how do we proceed from here? As PSRC made the original decision, we would usually ask them to re-evaluate their decision, taking in to account the new information presented which will likely alter the outcome the appeal is based on."

7 CONSIDERATION

7.1 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.

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

7.2.1 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

7.2.2 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).

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

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

7.3.2 the grounds of the appeal are valid.

7.4 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:

7.4.1 a hearing is unnecessary; or

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

7.5 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.

7.6 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.

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

7.8 "*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*.

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.

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

7.9 Further regarding the scheme, the NHS BSA's representations include: "*Considering the 2-year retention period written within the Drug Tariff, we requested NMS evidence from September 2022 – March 2023, splitting this into 3 months evidence per request. As we were unable to verify the contractor, we requested a further 3 months. Please note, before requesting the additional 3 months, the contractor was given the opportunity to provide clarification or further evidence as we were unable to verify them. As we were still unable to verify the NMS service was completed in line with the Drug Tariff & Service Specification. The local PSRC decided that an overpayment had therefore occurred*."

7.10 The NHS BSA has provided a copy of the timeline showing a number of communications between the parties from 7 August 2024 to 19 November 2024. 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 an alternative email address.

7.11 The timeline heading includes a summary which states "*This pharmacy was selected for Post Payment Verification(PPV) for the New Medicine Service (NMS) and was requested to provide evidence for the 334 claims made between October 2022 and December 2022. There was a shortfall of 31 for October 2022, so we requested further evidence for the January 2023 to March 2023 period in which there was 305 NMS claimed. The total claim for the 6 month period (Oct 22 to Mar 23) is 639. We are looking to recover 31 NMS as there was insufficient evidence provided for October 2022*." The NHS BSA's Provider Assurance Team had contacted the pharmacy on 8 occasions between 7 August 2024 and 19 November 20024 in relation to this but in its view did not receive sufficient evidence from the Appellant.

7.12 In its earliest attempt, on 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 334 claims made between during the period October 2022 to December 2022. Alternatively, if the Appellant believed that that they had inadvertently claimed for NMS, they were to inform the NHS BSA accordingly.

7.13 The Appellant's operations team responded on 12 August 2024 with a spreadsheet for 348 NMS. On 2 September 2024, the NHS BSA emailed the Appellant stating "*After reviewing the evidence received, unfortunately we were unable to verify **31** of the NMS claims for October 2022 due to missing evidence*."

7.14 On 1 October 2024 the NHS BSA sent a further email to the Appellant stating "*I have not received a response to the attached email sent on the 2nd September 2024. If you are unable to provide further evidence for October 2022, can I please request NMS evidence for the period January 2023 to March 2023*."

7.15 Further correspondence passed between both parties on 4 October 2024 resulting in the Appellant providing information from January to March 2023. No further information was provided for October 2022.

7.16 On 29 October 2024 the NHS BSA sent an email to the Appellant stating: "*As part of this verification exercise, your pharmacy was requested to provide New Medicines Service records for the period October 2022 to March 2023. Our records show that your pharmacy claimed a total of **639** NMS during this time, however the evidence provided by the pharmacy means the Provider Assurance Team were unable to verify **31** of the claims made, resulting in the following overpayment*." The Appellant was advised to respond by 12 November 2024.

7.17 On 6 November 2024, the Appellant requested a review stating "*Please refer the case to PSRC, as this judgement in our opinion is unfair when the pharmacy has provided the service to patients, with the only discrepancy being the month claims were sent.*" The NHS BSA responded on 7 November stating: "*I processed the January to March evidence that you provided, but this has not changed the outcome. The issue is specifically with October 2022 missing 31 pieces of evidence. NMS evidence can be carried forward, but we cannot use evidence retrospectively so the figure of -31 for October will need to be recovered*."

7.18 A further email was sent from the NHS BSA on 19 November 2024 stating: "*To date your pharmacy has not provided sufficient evidence to support these claims, despite several attempts made by the NHSBSA Pharmacy Provider Assurance Team. Subsequently no agreement has been received for 31 claims to be recovered*." and "*As we have had no agreement to our findings, the timeline of correspondence will be provided to PSRC with the recommendation that they decide an overpayment has been made*." The Appellant was invited to respond by 3 December 2024 with any representations it wished to be provided to PSRC for consideration.

7.19 On 27 January 2025 the PSRC made a decision to recover the sum of £868.00 from the Appellant.

7.20 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.

7.21 I note that the Appellant seeks to appeal against the decision of the Commissioner to recover the sum of monies totalling £868.00.

7.22 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" (Appendix 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.

7.23 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)."

7.24 It is clear therefore that the NHS BSA, for its calculation of payments for the NMS service, relies on data provided by pharmacies.

7.25 Page 15 of the Specification states:

"*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*.

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."

7.26 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.

7.27 "*The sample size of 383 refers to the contingent of contractors designated for post-payment verification, each selected based on specific criteria. In this sample the criteria for selection of contractors for PPV was*:

Outliers - contractors with the largest volume of NMS claims

Random selection of contractors

Those who had claimed 100% of the NMS for the sample period in the last 3 months

Requested/Targeted – lead by ICB/Counter Fraud requests

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

7.28 The Appellant was initially asked to provide evidence to validate the 31 claims made between October 2022 and December 2022.

7.29 I note that the Appellant provided a spreadsheet containing data for 348 NMS claims. NHS BSA, by email to the Appellant on 4 October 2024 queried the number of claims specifically for October 2022 stating: "*The PMR report that was provided had a total of 100 patient records dated October 2022. The total number that was submitted via MYS and paid was 131, therefore leaving a shortfall of 31. If there is not further evidence available for October, you can supply the January to March 2023 evidence and we will look to sample the full 6 months*."

7.30 The Appellant then provided data for January to March 2023 on 4 October 2024. The NHS BSA noted that nothing further was submitted in relation to October 2022.

7.31 The NHS BSA reviewed the information provided and concluded it could not verify the 31 claims in October 2022 and made the decision to recover the amount of £868.00 in this regard.

7.32 By email to the Appellant on 7 November 2024, the NHS BSA stated: "*I processed the January to March evidence that you provided, but this has not changed the outcome. The issue is specifically with October 2022 missing 31 pieces of evidence. NMS evidence can be carried forward, but we cannot use evidence retrospectively so the figure of 31 for October will need to be recovered*."

7.33 The Appellant, in its appeal, states that the *"service specification allows for professional discretion throughout each stage on the timing of the engagement, intervention and follow up. This should also be the case for claim dates when the service specification allows so much variation".* Having regard to the Specification it envisages three clear stages in the NMS process, on page 7, those being patient engagement, intervention and follow-up. With regard to payments it goes on to state that they will be made in line

with the Drug Tariff. I note that the Drug Tariff then states that *"a monthly payment will be paid for each completed full service intervention"* at paragraph 2 of Part VIC. I therefore consider that the date at which a claim can be made must properly be when the Specification indicates that the intervention is complete.

7.34 I note that this will occur during the initial intervention if, in the clinical judgement of the pharmacist, intervention by the patient's prescriber is required. Otherwise this takes place during the follow up when any of the three outcomes in paragraph 19 occur (exit from service, pharmacist and patient agree solution, or referral to the GP practice for review).

7.35 The Appellant also states "*that this decision in [sic] unreasonable when the pharmacy has provided the service to patients in good faith with the expectation of reimbursement*." However, in my view, reimbursement can only be allowed where the claim meets the specification. The Appellant further states "*We also must raise that we have cases where our pharmacies provide more services than they have actually claimed for in these verification exercises, and it doesn't work in our favour with an additional payment.*" In its observations, the Appellant states that it could share "*the pharmacy data from September 2022, which when I have checked, has 116 NMS provisions that can be evidenced. I do not understand why in these circumstances NHSBSA requested 3 months in the future, rather than prior*. *The pharmacy appears to have only claimed for 66 NMS in September 2022, and therefore could have carried claims forward. I can share this evidence if required*."

7.36 On the September data, it is not clear to me as to why the Appellant would not claim for all 116 NMS provisions in September 2022, only claiming for 66, which is a shortfall of 50, a sum of £1400. This is greater than the shortfall of 31 unaccounted for in October 2022. Indeed, in its appeal, the Appellant states "*This level of recovery threatens the viability to operate a pharmacy*." It is therefore not clear to me why the Appellant would collect the data required on the spreadsheet and then only select a certain number to claim back in certain months rather than the true amount.

7.37 The Appellant, in its observations does acknowledge this unusual claiming method from 2022 stating "*I must apologise for the way the pharmacy has claimed for the service in 2022, in most cases it seems to be below what they could have actually claimed for*." The Appellant concludes "*Three years later it seems unfair to punish the pharmacy financially for this*."

7.38 The Appellant has provided me with a copy of this data which the NHS BSA has reviewed and commented upon.

7.39 NHS BSA has stated "….*we have processed the total number of NMS evidence including the September evidence which has now been provided by FAW42. These updated calculations have now met with the claim totals for October 2022 to March 2023, and the outcome is now that no recovery is required, this would have been the case had we seen the evidence originally.*

7.40 *As we've processed new information provided by FAW42, how do we proceed from here? As PSRC made the original decision, we would usually ask them to re-evaluate their decision, taking in to account the new information presented which will likely alter the outcome the appeal is based on."*

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

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

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

7.41.3 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.

7.42 In these circumstances, I am of the view that the Appellant has now provided additional records for patients who attended and utilised the NMS service and that the NHS BSA consider the evidence now demonstrates an alternative outcome. I have therefore considered whether I can substitute NHS England's decision and, in doing so, resolve this dispute now. Whilst the NHS BSA has provided its opinion of the data, it is not the first line decision maker, which is the PSRC. Therefore, I am of the view that the correct approach would be that the matter is remitted back to NHS England to determine if the Appellant does or does not qualify for payment in line with the service Specification.

8 DECISION

8.1 I quash the decision of NHS England and remit the matter to NHS England for it to take the decision again and, in doing so, consider the September 2022 data.

8.2 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.

Head of Appeals
NHS Resolution