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28 May 2025

REF: SHA/ 26527

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM HYDE PHARMACY (FLM76) ("THE APPELLANT")

1 **Outcome**:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £120.00.

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:

Hyde Pharmacy (FLM76)
NHS BSA on behalf of NHS England

8th Floor
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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM HYDE PHARMACY (FLM76) ("THE APPELLANT")

1 INTRODUCTION

1.1 The Appellant appealed the decision of NHS England to recover an overpayment relating to the Medicines Delivery Service.

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 29 January 2025 in respect of Hyde Pharmacy (FLM76)The decision stated:

2.1 "The Pharmacy Provider Assurance Team, part of NHS Business Services Authority (NHSBSA), have been requested by NHS England (NHSE) to undertake a Post Payment Verification (PPV) exercise to provide assurance that pharmacy contractors have claimed correctly for the Medicines Delivery Service.

2.2 This service was originally commissioned across the country from 8th April 2020 and ran until 31st July 2020. In the months of April 2021 to July 2021 the Medicines Delivery Service (MDS) was limited to those patients who had been notified by Test and Trace to self-isolate. The Service was only available to people during their 10-day self-isolation period and who have provided their Test and Trace Account ID when requesting the service. Eligibility for Clinically Extremely Vulnerable (CEV) patients for the MDS ceased on the 31st March 2021 and therefore claims for deliveries to these patients after this date no longer qualified for a MDS payment.

2.3 Please find further information in this link to the service announcement - https://www.england.nhs.uk/coronavirus/documents/home-delivery-of-medicines-and-appliances-during-the-covid-19-outbreak-march-2021/.

2.4 As part of the verification exercise, your pharmacy has been contacted by the Provider Assurance Team to request that you review all of your Medicines Delivery Service records between the months of April 2021 to July 2021.

2.5 Your pharmacy has been unable to provide evidence to demonstrate that the Medicines Delivery Service claims made during this time met the requirements set out in the service specification , i.e. that these claims for deliveries were to self-isolating patients. This is despite several attempts made by the NHSBSA Pharmacy Provider Assurance

Team to seek further/alternative evidence of how the claims have met the scheme requirements.

2.6 The 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. The NHSBSA Provider Assurance team have been authorised in writing by NHS England to request this information on their behalf.

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

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

2.8.1 [MHS] claimed 37 Self-Isolating & 20 CEV deliveries for the Medicines Delivery Service in the months of April 2021 to July 2021.

2.8.2 The evidence submitted by your pharmacy to date has been considered as not meeting the requirements set out in the service specification. This is despite several attempts made by the NHSBSA Pharmacy Provider Assurance Team to seek further/alternative evidence of how the claims have met the scheme requirements.

2.8.3 [MHS] contacted on 10 separate occasions by the NHSBSA Provider Assurance Team to request evidence to demonstrate that that the Medicines Delivery Service claims made during this time met the requirements set out in the service specification.

2.9 Having reviewed the information provided by the NHSBSA Provider Assurance Team, the NHS England Pharmaceutical Services Regulations Committee has decided that an overpayment in relation to your April 2021 to July 2021 Medicines Delivery Service claims has occurred and has instructed recovery of this overpayment to be progressed in accordance with Regulation 94 (1) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

2.10 The tables below outline the monthly Medicines Delivery Service claims reimbursed to your pharmacy – [MHS] – FLM76 in the months of April 2021 to July 2021 for Self-isolating and CEV patients, along with the associated recovery value:

	April 2021	May 2021	June 2021	July 2021	Total
Self-isolating claims paid	37	0	0	0	37
CEV claims paid	20	N/A	N/A	N/A	20

2.11 Subsequently this has resulted in the following overpayment:

2.12 20 CEV claims paid x £6.00 = **£120.00.**

2.13 **Total recovery for April 2021 – July 2021:**

2.14 20 CEV claims paid x £6.00 = £120.00.

2.15 **Total value to be recovered = £120.00 deduction.**

2.16 **Action Required**

2.17 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 28th February 2025.

2.18 Where you agree an overpayment has been made the amount over paid will be recovered by deduction from a future NHSBSA payment to you.

2.19 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by 28th February 2025.

2.20 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.

2.21 Please be aware that failing to contact us by 28th 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:

2.22 NHS Resolution

2.23 Primary Care Appeals
10 South Colonnade
Canary Wharf
London
E14 4PU

2.24 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.

2.25 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.

2.26 For more information or for clarification of any of the details in the letter, please contact us by email at pharmacysupport@nhsbsa.nhs.uk, alternatively you can contact us on 0300 330 1295.

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

2.28 Your co-operation is very much appreciated."

3 **THE DISPUTE**

In an email dated 19 February 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 "We appeal against this decision for the reasons previously stated and also to reaffirm that the GPS at the time requested delivery to patients they considered vulnerable and in most cases did not give specific special NHS confirmation numbers.

3.2 Many of those patients who we delivered to and helped to save their lives were elderly infirm and many lived alone with carers coming and going, we delivered at great risk to ourselves.

3.3 We still deliver to vulnerable patients as Covid and other viruses are still of concern, at no charge at all during and after hours, as the GPs and patients think we are paid for delivery services.

3.4 We have asked for a letter from the department to let GPs and patients know that a delivery service is optional and not paid for by the NHS but no such letter has been provided.

3.5 We are struggling month to month and we have had no pay increase for 5 years from the previous government or this government.

3.6 I strongly condemn the department to suggest that any overpayment was deliberately claimed infact [sic] in many cases we are underclaiming.

3.7 We lose more money in dispensing some items at a loss.

3.8 We appeal against the suggestion that any overpayments amounting to a few pounds not thousands even occurred at that difficult and costly time of the pandemic.

3.9 You may be aware that most pharmacists are struggling and we will have to consider closing as well if there is no pay increase this year."

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 of the 20th February 2025 and the opportunity to provide representations on the appeal.

4.1.2 **Background**

4.1.3 As part of the national response to the COVID-19 Pandemic, NHS England (NHSE) commissioned a delivery service from community pharmacies to those patients classed as Clinically Extremely Vulnerable (CEV) or 'Shielded Patients' who were required to self-isolate at home. This group of people were at a very high risk of serious illness from COVID-19 infection and were asked to remain indoors for their own safety.

4.1.4 To allow these patients to receive their prescriptions, an Advanced service known as the Medicine Delivery Service (MDS) was created to provide funding for deliveries of prescriptions to CEV patients. The service was limited to CEV patients who could be identified on their Summary Care Record (SCR) as 'Shielded Patients'.

4.1.5 Contractors claimed for the service via the Manage Your Service (MYS) portal and for each delivery claimed as part of the Medicine Delivery Service, a payment of £6.00 (including VAT) was paid as part of the normal end of month process.

4.1.6 The Medicines Delivery Service was commissioned from both pharmacies and dispensing doctors across England from 9th April 2020 until 1st July 2020 in the first instance, but in the introductory letter – attached – it stated that this service may be extended as necessary as part of the Covid-19 response.

4.1.7 In its letter of 30th June 2020 - attached - NHSE announced that the service would be extended so that both pharmacies and dispensing doctors across England will be required to ensure shielded patients can receive a home delivery of their medicines until 31st July 2020. The letter informed contractors that the Government had published plans on 22nd June 2020 for a phased easing of the shielding advice to people who are clinically extremely vulnerable from 6th July 2020 however went on to explain that "the provision of this service throughout July will enable patients who are shielding time to make alternative arrangements for access to their prescription medications, after which both the essential and advanced pharmaceutical service, and both elements of the dispensing doctor COVID-19 home delivery service cease to be commissioned."

4.1.8 This and subsequent letters were published by NHS England on its website at: https://www.england.nhs.uk/coronavirus/publication/preparedness-letters-for-community-pharmacy/.

4.1.9 Following the publication of each of these letters on the NHS Website the Pharmaceutical Services Negotiating Committee (PSNC) – the representative body for the community pharmacy sector, now known as Community Pharmacy England (CPE), also sent an update to its members highlighting the change to the service specification.

4.1.10 **April 2021 to March 2022 claims**

4.1.11 In the months of April 2021 to March 2022 the Medicines Delivery Service was limited to those patients who had been notified by Test and Trace to self-isolate. The Service was only available to people during their 10-day self-isolation period and who had provided their Test and Trace Account ID when requesting the service. Eligibility for Clinically Extremely Vulnerable (CEV) patients for the MDS ceased on the 31st of March 2021 and therefore claims for deliveries to these patients after this date no longer qualified as valid for a MDS payment.

4.1.12 The guidance stated that only self-isolators that have provided their Test and Trace Account ID reference number when requesting the service are eligible to receive it. A record of the Test and Trace Account ID reference number must be made and retained as part of the contractor's delivery record to ensure effective ongoing service provision, and for post-payment verification purposes. It also stated that pharmacies should familiarise themselves with the details of the service before making a claim.

4.1.13 Please find further information in this link to the service announcement - https://www.england.nhs.uk/coronavirus/documents/home-delivery-of-medicines-and-appliances-during-the-covid-19-outbreak-march-2021/.

4.1.14 The service specification also states that claims should only be made in the event that no friend, relative, carer or volunteer is available to collect the prescription on the patient's behalf.

4.1.15 The NHSBSA Pharmaceutical Provider Assurance Team (NHSBSA PAT), on behalf of NHSE, were requested to conduct a Post Payment Verification exercise to ensure that pharmacy contractors claimed correctly for the Medicines Delivery Service between the months of April 2021 to March 2022 to ensure that all claims were for Self-Isolating patients and contractors had Test and Trace referral records available to substantiate those claims.

4.1.16 Manage Your Service (MYS) put in place new functionality to enable contractors to claim for the delivery of the MDS to SI patients. In doing so it retained the functionality for contractors to submit claims for CEV patients to future proof the system in-case the response to the Pandemic and MDS changed again at some point in the future and required the MDS provision for CEV patients. DHSE, NHSE and PSNC agreed the wording of the communication regarding this change to the service expecting that this would be sufficient for those contractors delivering the service to understand the changes in patient eligibility.

4.1.17 However, MYS became aware that contractors continued to claim for deliveries to CEV patients. Once it became apparent that many contractors were still submitting claims for these ineligible patients, MYS was amended to ensure these claims were no longer automatically paid. CEV claims submitted after 05 May 2021 were not paid and only claims for deliveries to SI patients were processed for payment.

4.1.18 However, this did lead to the situation whereby for the months of April 2021 and May 2021, contractors were paid for those ineligible patient claims. Subsequently, the NHSBSA PAT were requested to recover the identified CEV claims, as there was no regulation to allow payments for patients who were ineligible for the service.

4.1.19 In the Post Payment Verification (PPV) exercise undertaken by the NHSBSA PAT, FLM76 – The Hyde Pharmacy were contacted on ten occasions between 21st February 2024 and 17th June 2024 to outline that the 20 CEV claims made between April 2021 and July 2021 were for deliveries made to ineligible patients' as the ability to claim for CEV patients under the MDS had ended in March 2021 and from that point only self-isolating patients in response to a positive Covid test were eligible for the service, as specified in the NHSE service announcements. For this case 37 self-isolating claims were also submitted in April 2021 however we did not ask for any evidence of those claims as the volume was low.

4.1.20 Emails were sent to the pharmacy's shared NHS mail address, pharmacy.flm76@nhs.net as required by NHSE and from 2nd April 2024 also to hydepharmacy@hotmail.com. All listed pharmacies must have a valid shared NHS mail account that should be regularly monitored by the pharmacy team as part of their terms of service.

4.1.21 Two telephone calls were made to the pharmacy to confirm receipt of the first two emails and to advise the pharmacy of the final 14-day response deadline. The NHSBSA PAT engaged with The Hyde Pharmacy and the owner during the PPV process. The responses and the engagement with the pharmacy was prompt once we received the additional email address,

hydepharmacy@hotmail.com as this was the direct channel to correspond with the pharmacy owner and appellant, Mr [MS].

4.1.22 During the appellant's initial correspondence, they explained how challenging the time period under review was for the pharmacy and requested the prescriptions dispensed for those months to be sent to the pharmacy or to advise where they could request these from. The NHSBSA PAT informed the appellant they are unable to provide the prescriptions and explained they would not hold the required information to substantiate the claims made as the information would have been a separate record kept by the pharmacy when patients requested deliveries of their medication.

4.1.23 The appellant stated they would attempt to retrieve the requested information from their medical records.

4.1.24 The appellant provided two sheets of patient details who received deliveries of their medication. This evidence was reviewed by the PAT and the appellant was notified via email this information could not be used to verify the claims made and we would be unable to provide assurance to NHSE that the deliveries were carried out in accordance with the service specification as there were no Test and Trace Account ID reference numbers recorded on the evidence and the dates were crossed out meaning we could not validate the time period these records were from.

4.1.25 The appellant responded to confirm due to the time that has since passed, they were unable to provide exact dates or Test and Trace Account ID reference numbers as these records have been misplaced.

4.1.26 The appellant also stated they are under pressure to continue to deliver to patients and requested a letter to send to GPs in the area who are demanding deliveries.

4.1.27 To avoid any doubt there is no dispute about these deliveries having been made, the engagement with the pharmacy was to confirm that the deliveries were made to patients who had been informed by Test and Trace to self-isolate and were therefore eligible for the Medicine Delivery Service.

4.1.28 As the NHSBSA PAT have been unable to validate the deliveries claimed by the pharmacy during this time, the details of the case were passed to the NHS England regional team for their Pharmacy Services Regulations Committee (PSRC) to review. A decision was sought as to whether the deliveries made by the contractor were eligible for a payment under the terms of the Medicine Delivery Scheme at the time that the deliveries were made; and if they were not eligible, for the delivery fees that have been paid to be recovered under regulation 94 (1) (a) as an overpayment.

4.1.29 **The PSRC decision**

4.1.30 To assist with their review, the PSRC was provided with the NHSE service announcements and 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.

4.1.31 The engagement showed that despite repeated requests made by the NHSBSA to the contractor over four months to provide evidence of patient eligibility for the service claims submitted, no valid evidence was provided.

4.1.32 Consequently, the PSRC concluded that the NHSBSA had been unable to find any evidence to demonstrate that the 20 deliveries claimed by the contractor between April 2021 and July 2021 for deliveries to CEV patients met the requirements set out in the service specification and therefore the claims made in April 2021 were incorrectly claimed as the patients were no longer eligible.

4.1.33 Following this conclusion, the PSRC determined that the pharmacy was not entitled to the payment for which it had received.

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

4.1.35 In making this decision the PSRC relied on the information that it had before it, following the extensive investigation undertaken by the NHSBSA and the repeated requests to the contractor for evidence of how the Medicine Delivery Service claims made for April 2021 to March 2022 met the requirements set out in the service specification.

4.1.36 In response to the points made in the contractor's appeal:

4.1.37 The service specification/service announcements from April 2021 state:

4.1.38 "Only self-isolators that have provided their Test and Trace Account ID reference number when requesting the service are eligible to receive it. A record of the Test and Trace Account ID reference number must be made and retained as part of the contractor's delivery record to ensure effective ongoing service provision, and for post-payment verification purposes."

4.1.39 The service specification is therefore clear that a record of the Test and Trace Account ID reference number must be made and retained as part of the contractor's delivery record to ensure effective ongoing service provision, and for post-payment verification purposes. All contractors providing the service in line with the service specification would then have been aware that these records would be required should a contractor be required to provide evidence for the Post Payment Verification of service delivery eligibility.

4.1.40 We include this information to establish that all claims for the MDS from April 2021 should be for patients self-isolating with supporting test and trace referral evidence.

4.1.41 The Hyde Pharmacy did claim for self-isolating patients during the time period we reviewed however, those claims are not a part of our assurance activity and instead it was only the 20 CEV claims made in April 2021 that we requested further explanation and evidence around.

4.1.42 In their appeal, the appellant says; "We appeal against this decision for the reasons previously stated and also to reaffirm that the GP's at the time requested delivery to patients they considered vulnerable and, in most cases, did not give specific special nhs [sic] confirmation numbers".

4.1.43 The appellant has stated that GPs were requesting they delivered to vulnerable patients. The PAT are not disputing the fact that the deliveries have been made, however, as we have previously advised the pharmacy, NHSE have requested the PAT engage with contractors who claimed for deliveries to CEV

patients. The service for CEV patients for the MDS ceased on the 31st March 2021 and therefore claims for deliveries to these patients after this date no longer qualified for a MDS payment. From the statement in the appeal and the fact they submitted two separate claims on MYS we believe The Hyde Pharmacy are confirming these claims were for the ineligible CEV patients and they felt they could claim for these patients as the GP was requesting delivery. In response we would state the pharmacy could have still heeded the advice of the GP and delivered to patients however the cost of those deliveries should have been passed onto the patient for a part of the normal delivery service rather than claiming under MDS as CEV patients were no longer a eligible cohort for the medicine delivery service. Subsequently, NHSE have requested that the NHSBSA PAT investigate and verify that all claims made during this time were only for deliveries to patients who were eligible for the MDS.

4.1.44 The appellant also states; "Many of those patients who we delivered to and helped to save their lives were elderly infirm and many lived alone with carers coming and going, we delivered at great risk to ourselves".

4.1.45 The NHSBSA PAT appreciate the hard work performed by pharmacies during the Pandemic, especially with the supporting of vulnerable and elderly patients and understand it was an unprecedented and challenging time; however, we must stress the service specification was clear as to which patients could receive a free delivery under the MDS and only those patients should have been claimed for.

4.1.46 Table 1 shows the number of claims made by the pharmacy in the months of April 2021 – July 2021. The pharmacy has claimed for deliveries in the month of April 2021 alone for each cohort of patients. The appellant has stated they were receiving requests from GPs to deliver to vulnerable patients however this leads to the questions as to whether there were any requests from GPs for deliveries in the months following April 2021 and if so, why were these not claimed for and is there a reason the pharmacy ceased claiming for MDS after April 2021?

4.1.47 *Table 1 – April 2021 to July 2021 MDS claims submitted*

	April 2021	May 2021	June 2021	July 2021	Total
Self-isolating claims paid	37	0	0	0	37
CEV claims paid	20	N/A	N/A	N/A	20

4.1.48 The appellant advises; *"We still deliver to vulnerable patients as Covid and other viruses are still of concern, at no charge at all during and after hours, as the GP's and patients think we are paid for delivery services" and goes on to state, "We have asked for a letter from the department to let GP's and patients know that a delivery service is optional and not paid for by the nhs but no such letter has been provided"*

4.1.49 The PAT did receive requests from the appellant for a letter to inform patients, GPs, care homes and nursing homes that delivery of medication is not paid for by the NHS. The PAT responded to this request to inform the appellant this is

not something we can provide as we are unable to dictate or advise pharmacies how to operate and to state that the MDS service finished in March 2022 which was after our engagement occurred with the pharmacy therefore any message we provide would not impact MDS claims. The PAT explained that there are some pharmacies who do choose to offer a free delivery service to some or all their patients and there are pharmacies who pass the cost of delivering prescriptions onto their patients. However, we did confirm that these delivery costs cannot be passed back onto the NHS and those pharmacies choose to deliver prescriptions free of charge or by charging patients for the delivery in line with their personal delivery procedures, this is something that is implemented by the individual pharmacies themselves and is not an NHS policy.

4.1.50 In the appeal, the appellant has disagreed any over payment has been made; “I strongly condemn the department to suggest that any overpayment was deliberately claimed infact in many cases we are underclaiming” and “We appeal against the suggestion that any overpayments amounting to a few pounds not thousands even occurred at that difficult and costly time of the pandemic”.

4.1.51 During the PPV, the PAT have not accused the appellant of deliberately overclaiming and as previously mentioned in this representation, the NHSBSA PAT were requested by NHSE to conduct a PPV exercise which involved contacting all contractors who had claimed for deliveries to CEV patients between the months of April 2021 to July 2021, as this cohort of patients no longer qualified for a free delivery under the MDS, meaning any claims for CEV patients were ineligible and payments made to contractors for these deliveries should therefore be recovered. This PPV exercise was undertaken with all pharmacy contractors who had claimed for the ineligible cohort of patients no matter the size of the potential overpayment.

4.1.52 As part of this exercise, the PAT contacted the appellant to advise they had been identified as claiming for deliveries to CEV patients after 31st March 2021.

4.1.53 The correspondence sent to the appellant provided the contractor with the opportunity to respond to the PAT to either confirm if they had inadvertently claimed for deliveries to CEV patients or if they believed these claims were for deliveries to eligible patients, and if so to provide evidence to the PAT to verify the claims and allow us to give assurance to NHSE that the service was performed correctly.

4.1.54 The appellant did provide two sheets of printed patient information to the PAT on 25th April 2024 containing a total of 72 records, as evidence of deliveries to patients during that time. The image below shows a small section of this information: [appendix A]

4.1.55 Upon review, the PAT were able to quickly ascertain the evidence provided was not sufficient to validate the 20 CEV claims made due to no Test and Trace Account ID reference numbers or date (these had been manually crossed out) within this data.

4.1.56 It was clearly communicated in the service specification what information had to be retained for PPV purposes, and the evidence provided by the appellant demonstrated that the contractor has not maintained appropriate records and does suggest the contractor had not met the requirements of the MDS:

4.1.56.1"8. Records and data sharing

4.1.56.28.1 The pharmacy contractor must maintain appropriate records to ensure effective ongoing service provision and to support post-payment verification. This should include, as a minimum, details of the eligible patients to whom a delivery was made under this service, including the postcode of the patient's address, and the date of the delivery".

4.1.57 The PAT must emphasise we have not singled out this pharmacy and we have engaged with all contractors who claimed for MDS deliveries to CEV patients after 31st March 2021, to enable them to provide evidence of delivering in line with the service specification and then claiming for that service provision for eligible patients only. It is only those pharmacies that have not been able to provide evidence to verify their claims that are then followed up in accordance with Regulation 94 of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.1.58 The appellant has also expressed the financial difficulties the pharmacy is facing in their appeal; "We are struggling month to month and we have had no pay increase for 5 years from the previous government or this government", "We lose more money in dispensing some items at a loss", and "You may be aware that most pharmacists are struggling and we will have to consider closing as well if there is no pay increase this year".

4.1.59 NHSE and the PAT do sympathise with the pressure's pharmacy contractors are facing; however, our role is simply to provide assurance to NHSE that pharmacies have claimed appropriately for Advanced Services and have no influence on the funding pharmacies receive from the government. The MDS assurance activity has a potential outcome of the recovery of public money which has been claimed for deliveries that the PAT has not been able to verify were to eligible patients. The MDS was set up so that public money should be restricted to the provision of delivery services to eligible patients only. The NHS has a duty to ensure that public money is spent appropriately, and the assurance activity is in place to ensure that.

4.1.60 The PSRC considered that The Hyde Pharmacy had not provided sufficient evidence to demonstrate that the claims it had submitted between April 2021 and July 2021 were for deliveries to patients eligible for the MDS. As a result, the decision determined that the £120.00 payment for the ineligible CEV claims were over payments and should then be recovered from the contractor.

4.1.61 **Key points for consideration**

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

4.1.62.1 The NHSE service announcement was very clear that the Medicines Delivery Service was limited from April 2021 to only those patients who had been notified by Test and Trace to self-isolate and was only available to people during their 10-day self-isolation period. Also, patients must have provided their Test and Trace Account ID when requesting the service.

4.1.62.2 Contractors were advised to retain evidence of MDS deliveries as highlighted in the service announcements for post payment verification purposes.

4.1.62.3 From 1st April 2021 NHS England did not commission a delivery service for CEV patients. Any claims submitted for delivery to CEV patients were not then eligible for payment. Those claims submitted and paid are therefore an overpayment and have been treated as such.

4.1.62.4 NHS England has no power to make payments to pharmacy contractors outside of the statutory framework set out in the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, the service specification, and the Drug Tariff.

4.1.62.5 The contractor had numerous opportunities to provide evidence to demonstrate that the deliveries claimed met the requirements set out in the service specification. Only those contractors where no or insufficient evidence of meeting these requirements were referred to the regional PSRC.

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

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

4.1.62.8 The appeal has not provided any evidence to suggest that the deliveries were made to patients eligible for the Medicines Delivery Service. The deliveries then claimed were not eligible for the Medicines Delivery Service payments resulting in an overpayment to the pharmacy.

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

4.1.63 Having considered these matters NHS England respectfully suggests that NHS Resolution conclude that the decision made by the PSRC in respect of the £120.00 overpayment recovery from The Hyde Pharmacy was fair and in accordance with the regulations.

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

5 OBSERVATIONS

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

5.1 The Appellant

5.1.1 "It is difficult to keep any free services going, our expenses are simply not being met under the current contract, how can we supply free services, dispense some items at a loss, rates and rent have increased, yet no pay rise for nearly 6 six years?? how would you feel if you do not get a pay rise for 6 years?? and all expenses have increased, we have taken out loans just to

survive and then we get a judgement of paying back £120 when we risked our lives to stay open and deliver medicines."

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 have considered further the requirements relating to the home delivery service referred to by the NHS BSA.

6.8 I note that the Pharmaceutical Services (Advanced and Enhanced Services) (England) Directions 2013 (the "Advanced and Enhanced Services Directions") were amended on 27 March 2020 to require NHS England to commission a home delivery service from a pharmacy contractor who is to make a delivery of a prescription as mentioned in paragraph 22A(3)(a) or (b) of Schedule 4 to the Regulations. Paragraph 22A(3)(a) and (b) relate to deliveries to eligible patients in an area specified in an announcement made by NHS England with the agreement of the Secretary of State. The announcement must be to the effect that in order to assist in the management of the serious risk or potentially serious risk to human health, eligible patients are advised to

stay away from pharmacy premises in the area specified, in the circumstances specified and for the duration of the period specified in the announcement.

6.9 The Advanced and Enhanced Services Directions go on to say that NHS England is directed to ensure there is a service specification for the home delivery service. A pharmacy contractor must comply with the requirements of the service specification.

6.10 It is clear to me that the home delivery service is dependant in terms of eligibility of patients and the geographical areas in which it applies on the contents of announcements made by NHS England. The NHS BSA has provided copies of announcements made by NHS England.

6.11 I note that the NHS BSA has indicated that the deliveries that are covered by the decision are those made in the period April to July 2021 inclusive. These were split into 37 deliveries to those who were self-isolating and 20 deliveries Clinically Extremely Vulnerable (CEV). I further note that the NHS BSA states *"The Hyde Pharmacy did claim for self-isolating patients during the time period we reviewed however, those claims are not a part of our assurance activity and instead it was only the 20 CEV claims made in April 2021 that we requested further explanation and evidence around".* I therefore limit my consideration to those payments in relation to CEV patients only.

6.12 A copy of the specification and guidance for the 'Home delivery of medicines and appliances during the COVID-19 outbreak' dated 16 March 2021 have been provided to me by the NHS BSA, who has also provided a number of NHS England announcements.

6.13 I note the NHS BSA states that "*In the months of April 2021 to March 2022 the Medicines Delivery Service was limited to those patients who had been notified by Test and Trace to self-isolate"* and that *"Eligibility for Clinically Extremely Vulnerable (CEV) patients for the MDS ceased on the 31st March 2021 and therefore claims for deliveries to these patients after this date no longer qualified as valid for a MDS payment"* which has not been disputed by the Appellant.

6.14 The specifications and guidance provided state:

6.14.1 *"Pharmacy contractors should ensure that they are only delivering to eligible patients in the areas specified in the announcement in place at that time when they are acting in accordance with this service specification. Appropriate checks should be made to ensure that the patient remains eligible for this service, which may include checks on the summary care record."*

6.15 I note the NHS BSA states that it was *"requested to conduct a Post Payment Verification exercise to ensure that pharmacy contractors claimed correctly for the Medicines Delivery Service between the months of April 2021 to March 2022 to ensure that all claims were for Self-Isolating patients and contractors had test and trace referral records available to substantiate those claims."*

6.16 I further note the NHS BSA's comments that the Manage Your Service (MYS) system had retained functionality for contractors to submit claims for delivering to CEV patients, which had led to claims being submitted for ineligible patients during the months of April and May 2021. The MYS service had subsequently been amended to ensure such claims could not be automatically paid. The NHS BSA states that it was therefore requested to recover those CEV claims which had been paid in error, given that those patients were ineligible.

6.17 The NHS BSA has provided a timeline detailing its contact with the Appellant between 21 February 2024 to 17 June 2024, in order to request evidence that the claims made between April 2021 to July 2021 were for deliveries made to eligible patients as detailed in the service specification.

6.18 I note that the service specification states:

6.18.1 *"The pharmacy contractor must maintain appropriate records to ensure effective ongoing service provision and to support post-payment verification. This should include, as a minimum, details of the eligible patients to whom a delivery was made under this service, including the postcode of the patient's address, and the date of the delivery."*

6.19 I note in its appeal, the Appellant states that *"the GPS at the time requested delivery to patients they considered vulnerable and in most cases did not give specific special nhs* [sic] *confirmation numbers".*

6.20 I note in response the NHS BSA states *"The appellant has stated that GPs were requesting they delivered to vulnerable patients. The PAT are not disputing the fact that the deliveries have been made, however, as we have previously advised the pharmacy, NHSE have requested the PAT engage with contractors who claimed for deliveries to CEV patients. The service for CEV patients for the MDS ceased on the 31st March 2021 and therefore claims for deliveries to these patients after this date no longer qualified for a MDS payment. From the statement in the appeal and the fact they submitted two separate claims on MYS we believe The Hyde Pharmacy are confirming these claims were for the ineligible CEV patients and they felt they could claim for these patients as the GP was requesting delivery. In response we would state the pharmacy could have still heeded the advice of the GP and delivered to patients however the cost of those deliveries should have been passed onto the patient for a part of the normal delivery service rather than claiming under MDS as CEV patients were no longer a eligible cohort for the medicine delivery service. Subsequently, NHSE have requested that the NHSBSA PAT investigate and verify that all claims made during this time were only for deliveries to patients who were eligible for the MDS".*

6.21 I further note the NHS BSA states that the Appellant provided *"two sheets of printed patient information"* and *"Upon review, the PAT were able to quickly ascertain the evidence provided was not sufficient to validate the 20 CEV claims made due to no Test and Trace Account ID reference numbers or date (these had been manually crossed out) within this data.*

6.22 *It was clearly communicated in the service specification what information had to be retained for PPV purposes, and the evidence provided by the appellant demonstrated that the contractor has not maintained appropriate records and does suggest the contractor had not met the requirements of the MDS:*

6.23 *"8. Records and data sharing*

6.24 *8.1 The pharmacy contractor must maintain appropriate records to ensure effective ongoing service provision and to support post-payment verification. This should include, as a minimum, details of the eligible patients to whom a delivery was made under this service, including the postcode of the patient's address, and the date of the delivery".*

6.25 I note that the Appellant has not responded to this point and note its comment in an email to the NHS BSA that "*those records are misplaced*". Based on the information provided, it is unclear what evidence has been misplaced but what is clear is that the

Appellant does not appear to have any evidence to validate its MDS claims in line with the service specification.

6.26 The NHS BSA go on to state that *"The pharmacy has claimed for deliveries in the month of April 2021 alone for each cohort of patients. The appellant has stated they were receiving requests from GPs to deliver to vulnerable patients however this leads to the questions as to whether there were any requests from GPs for deliveries in the months following April 2021 and if so, why were these not claimed for and is there a reason the pharmacy ceased claiming for MDS after April 2021?"* I have had regard to "table 1" provided in the NHS BSA's representations and note it demonstrates that the Appellant only claimed for the month of April 2021. I note the Appellant has not responded to the NHS BSA's question nor has it provided an explanation as to why this is the case.

6.27 I note the Appellant's comment that *"We still deliver to vulnerable patients as Covid and other viruses are still of concern, at no charge at all during and after hours, as the gps and patients think we are paid for delivery services*".

6.28 I note the response from the NHS BSA that *"The PAT did receive requests from the appellant for a letter to inform patients, GPs, care homes and nursing homes that delivery of medication is not paid for by the NHS. The PAT responded to this request to inform the appellant this is not something we can provide as we are unable to dictate or advise pharmacies how to operate and to state that the MDS service finished in March 2022 which was after our engagement occurred with the pharmacy therefore any message we provide would not impact MDS claims. The PAT explained that there are some pharmacies who do choose to offer a free delivery service to some or all their patients and there are pharmacies who pass the cost of delivering prescriptions onto their patients. However, we did confirm that these delivery costs cannot be passed back onto the NHS and those pharmacies choose to deliver prescriptions free of charge or by charging patients for the delivery in line with their personal delivery procedures, this is something that is implemented by the individual pharmacies themselves and is not an NHS policy"* . I further note the Appellant has commented that *"It is difficult to keep any free services going, our expenses are simply not being met under the current contract, how can we supply free services".* I do not consider this point to be relevant to the consideration of whether an overpayment has occurred however I note that the NHS BSA has provided an alternative solution to a free delivery service and am of the view that this is something for the Appellant to consider.

6.29 I further note the Appellant states that *"I strongly condemn the department to suggest that any overpayment was deliberately claimed infact in many cases we are underclaiming"* and in response the NHS BSA states that *"During the PPV, the PAT have not accused the appellant of deliberately overclaiming and as previously mentioned in this representation, the NHSBSA PAT were requested by NHSE to conduct a PPV exercise which involved contacting all contractors who had claimed for deliveries to CEV patients between the months of April 2021 to July 2021, as this cohort of patients no longer qualified for a free delivery under the MDS, meaning any claims for CEV patients were ineligible and payments made to contractors for these deliveries should therefore be recovered. This PPV exercise was undertaken with all pharmacy contractors who had claimed for the ineligible cohort of patients no matter the size of the potential overpayment.*

6.30 *As part of this exercise, the PAT contacted the appellant to advise they had been identified as claiming for deliveries to CEV patients after 31st March 2021.*

6.31 *The correspondence sent to the appellant provided the contractor with the opportunity to respond to the PAT to either confirm if they had inadvertently claimed for deliveries*

to CEV patients or if they believed these claims were for deliveries to eligible patients, and if so to provide evidence to the PAT to verify the claims and allow us to give assurance to NHSE that the service was performed correctly."

6.32 I note the comments from the Appellant that *"We are struggling month to month and we have had no pay increase for 5 years from the previous government or this government… We lose more money in dispensing some items at a loss…We appeal against the suggestion that any overpayments amounting to a few pounds not thousands even occurred at that difficult and costly time of the pandemic…You may be aware that most pharmacists are struggling and we will have to consider closing as well if there is no pay increase this year… rates and rent have increased , yet no pay rise for nearly 6 six years?? how would you feel if you do not get a pay rise for 6 years ??and all expenses have increased, we have taken out loans just to survive and then we get a judgement of paying back £120 when we risked our lives to stay open and deliver medicines".*

6.33 Whilst I sympathise with the comments made and appreciate the response of the pharmacy during the Pandemic, the fact of the matter is that the window for claiming for CEV patients ended on 31 March 2021. Conversely, the option was available for the Appellant to provide evidence in order for the NHS BSA to verify the claims and allow it to give assurance to NHS England that the service was performed correctly. I take this to refer to self isolating claims which are not the subject of this dispute.

6.34 As a result of my finding at 6.33, I agree with the NHS BSA that the decision to recover the overpayment is appropriate.

6.35 I note the Appellant's comments relating to its financial situation. I would ask the NHS BSA to liaise with NHS England to put in place a phased recovery over several months so as to mitigate the impact.

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 £120.00 in relation to claims made for CEV patients.

Head of Appeals
NHS Resolution