28 May 2025

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REF: SHA/26551

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM LH WILLS LTD T/A WILLS PHARMACY (FT071) ("THE APPELLANT")

1 Outcome:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £810.00.

1.2 I note that neither party has submitted a claim for interest with regard t 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:

LH Wills Ltd t/a Wills Pharmacy
NHS BSA on behalf of NHS England

NHS Resolution

REF: SHA/26551

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM LH WILLS LTD T/A WILLS PHARMACY (FT071) ("THE APPELLANT")

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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 7 February 2025 in respect of LH Wills Ltd t/a Wills Pharmacy (ODS code FT071). The decision stated:

2.1 **"Medicines Delivery Service - Post Payment Verification**

2.2 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.

2.3 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.

2.4 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/.

2.5 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.

2.6 **To date your pharmacy has not provided any reasoning 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. Therefore, the PAT are unable to verify that these claims were for deliveries to eligible patients. This is despite several attempts made by the NHSBSA Pharmacy Provider Assurance Team.**

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 FT071 – LH WILLS LTD claimed **135** deliveries for the Medicines Delivery Service in the months of April 2021 to July 2021.

2.8.2 The NHSBSA Provider Assurance Team did not receive any reasoning which demonstrated that the Medicines Delivery Service claims made between the months of April 2021 to July 2021 were for eligible patients and therefore could not verify that these claims met the requirements set out in the service specification.

2.8.3 LH WILLS LTD was contacted on 3 separate occasions by the NHSBSA Provider Assurance Team to request their reasoning which demonstrates 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 concluded 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 – LH WILLS LTD – FT071 in the months of April 2021 to July 2021 for your CEV patients, along with the associated recovery value:

	April 2021	May 2021	June 2021	July 2022	Total
CEV claims paid	135	N/A	N/A	N/A	135

2.11 Subsequently this has resulted in the following overpayment:

2.11.1 135 CEV claims paid x £6.00 **= £810.00.**

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

2.11.3 135 CEV claims paid x £6.00 **= £810.00.**

2.11.4 **Total value to be recovered = £ 810.00 deduction**.

2.12 **Action Required**

2.13 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 9th March 2025**.

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

2.15 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by **9th March 2025**.

2.16 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.

2.17 **Please be aware that failing to contact us by 9th March 2025 to agree that there has been an overpayment DOES NOT mean that the overpayment cannot be recovered.** Instead, where you do not agree that an overpayment has been made you have a right of appeal to the Secretary of State against NHS England's decision. Should you choose to appeal then send a concise and reasoned statement of the grounds for your appeal **within 30 days of the date of this letter** to nhsr.appeals@nhs.net or:

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

2.19 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.

2.20 The NHSBSA will notify you of when the overpayment recovery will take place.

2.21 A record of this process will be kept on your NHS England contractor file.

2.22 For more information or 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.

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

2.24 Your co-operation is very much appreciated."

3 THE DISPUTE

In an email dated 8 March 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 "I am appealing the decision to recover the payment for 135 deliveries made to patients who were shielding/isolating. The reasons that we delivered to these patients are as follows:

3.1.1 -isolating due to a positive covid test

3.1.2 -Vulnerable patients that were told to shield either by GP or healthcare guidance

3.2 In this area of holbrooks where we provide services most of the patients are over 65 and the demographics can confirm, so they would not have access to the trace app to be identified. We provided the delivery service in good faith to those who tested positive but we did not go around to their houses to confirm their positive test. I can try to go

through the delivery sheets from 4 years ago to give you names but this is a huge tax [sic] to confirm which patients had tested positive in 2021 and some of those patients have unfortunately passed away as well. Please let me know what course of action you would like to me to take."

NHS Resolution invited the Appellant to provide any information it wished to support its appeal.

By email date 20 March 2025 the Appellant stated:

3.3 "This is the list of names as requested. Some of these patients had multiple deliveries per month. If there are further names that we come across we will email them over."

3.4 [64 forenames and their surnames were provided.]

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 31st March 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 July 2021 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 (SI) 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, 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, FT071 – Wills Pharmacy were contacted on three occasions between 5th September 2024 and 7th October 2024 to outline that the 135 CEV claims made between April 2021 to July 2021 were for deliveries made to ineligible patients as the ability to claim for CEV patients under the MDS has ended in March 2021.

4.1.20 Emails were sent to the pharmacy shared NHS mail address pharmacy.ft071@nhs.net as required by NHSE. 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. Later during our communication with the pharmacy, further emails were also sent to [*redacted by NHS Resolution*]@nhs.net as requested.

4.1.21 A telephone call was made to the pharmacy to confirm receipt of our initial email and to inform them of the 3-week response deadline. The NHSBSA PAT spoke with the pharmacy manager, [*redacted by NHS Resolution*], who advised they would respond promptly however, the NHSBSA PAT did not receive any engagement from the multiple emails sent.

4.1.22 The PAT advised that the eligibility for CEV patients for the MDS ceased on the 31/03/2021 and therefore claims for deliveries to these patients after this date do not qualify for a MDS payment. Therefore, NHS England has requested that the ineligible claims made for Wills Pharmacy (FT071) to be recovered.

4.1.23 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.

4.1.24 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.

4.1.25 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.

4.1.26 **The PSRC decision**

4.1.27 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.

4.1.28 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.

4.1.29 Consequently, the PSRC concluded that the NHSBSA had been unable to find any evidence to demonstrate that the 135 CEV claims made by Wills Pharmacy met the requirements set out in the service specification and therefore the claims made in April 2021/May 2021 were incorrectly claimed as the patients were no longer eligible.

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

4.1.31 Having made this decision, the PSRC then directed that as Wills 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.

4.1.32 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.

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

4.1.34 The MDS service specification/service announcements from April 2021 state:

4.1.35 *"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."*

4.1.36 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.

4.1.37 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 and how that is clearly outlined in the service information available to pharmacy contractors. Wills Pharmacy did not 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 135 CEV claims made in April 2021 that we requested further explanation and evidence around.

4.1.38 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 as this cohort was no longer eligible for the service.

4.1.39 In their appeal statement, the appellant states that "*they provided the delivery service in good faith to those who tested positive, but did not go around to their houses to confirm their positive test.*" In response we would state the pharmacy was still responsible for ensuring the claims submitted on MYS were following the service specification for the service they were claiming for, those deliveries could have still been actioned 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.

4.1.40 The appellant states *"In this area of holbrooks where we provide services most of the patients are over 65 and the demographics can confirm, so they would not have access to the trace app to be identified. We provided the delivery service in good faith to those who tested positive, but we did not go around to their houses to confirm their positive test."*

4.1.41 On this point PAT appreciate the Pandemic was a stressful time for pharmacies however we need to state that information regarding the MDS was published regularly by NHSE on its website and following the publication of each of these letters on the NHS Website, Community Pharmacy England (CPE), also sent an update to its members. These updates highlighted the changes to the service specification, ensuring that all community pharmacies were informed of the necessary adjustments and extensions to the MDS. This comprehensive communication strategy was designed to ensure that all pharmacies were aware of the requirements and could comply accordingly. This method of communication was effective as the majority of pharmacy contractors stopped claiming for the ineligible CEV patients suggesting they were aware of the change to the service after April 2021. In support of this point for the previous three months before the change to the service of January to March 2021 the 3-month average total number of pharmacies claiming for MDS was 6,621 however after the service change the 3-month average total number of pharmacies claiming for MDS from April to June 2021 reduced to 1,048. This is almost an 85% reduction in pharmacies claiming for MDS showing the message to pharmacies around who was eligible for the service was clear. The PAT would also state pharmacy contractors performing advanced services such as MDS have a responsibility to ensure they keep up to date with changes to the service they are providing on behalf of their patients. On the issue raised by the appellant on the age of patients in the local area with the majority being over the age of 65, the PAT would state the same situation would exist in other areas of the country where contractors have still correctly followed the guidance outlined in the service specification rather than assuming eligibility for the service. Alongside that point we would also state it appears an unfair

generalisation to class every person over a certain age as being limited by technology and therefore not having access to the app. The PAT would also question even with a higher percentage of the population being over a certain age that does mean other ages would also not need to self-isolate and no explanation for those has been provided by the contractor.

4.1.42 The appellant states: *"I can try and go through the delivery sheets from 4 years ago to give you names but this is a huge tax to confirm which patients had tested positive in 2021 and some of those patients have unfortunately passes away as well."*

4.1.43 NHS Resolution did provide the appellant with an extension of 14 days to provide further information if they wish to rely on this as part of their appeal, and in response, the appellant subsequently provided a list of names to support their appeal. The evidence the appellant provided is a list containing 64 patient names, which were redacted, whereas the appellant claimed for a total of 135 CEV deliveries under the MDS.

4.1.44 After review of this evidence by the NHSBSA PAT it has been noted that the evidence does not match the volume of claims made and what they have provided does not meet the criteria as set out in the service specification at the time. For the period under review the requirement for the Medicines Delivery Service was limited to only self-isolating patients that had provided their Test and Trace Account ID reference number when requesting the service. A record of the Test and Trace Account ID reference number had to be retained as part of the contractor's delivery record to ensure effective ongoing service provision, and for post-payment verification purposes.

4.1.45 The MDS Service Specification clearly states '*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',* and as the records provided by the appellant do not include the Test and Trace ID reference number the PAT are unable to validate these MDS claims from these records.

4.1.46 Also, as instructed in the service specification under section 8 - Records and data sharing:

4.1.47 *'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.'*

4.1.48 As stated above as a minimum, details of the eligible patients to whom a delivery was made under this service this should also include the postcode of the patient and the address, alongside the date of the delivery. The evidence provided by the appellant does not include the date the delivery was made nor the delivery address or postcode of the patient requesting the service.

4.1.49 Therefore, on the basis of the above points the NHSBSA PAT are unable to verify that the evidence provided by the appellant on the 20th March 2025, were for deliveries to patients for the MDS in the months of April 2021 to July 2021 and met the requirements set out in the service specification.

4.1.50 NHSE and the PAT do appreciate the pressures pharmacies face and were under during the impact of the COVID Pandemic however the assurance activity is a consistent national approach where pharmacy contractors are treated equally ensuring a fair and consistent approach. We do not feel this approach is breaching confidence in delivering future commissioned services but instead highlights that assurance activity will be undertaken to ensure public money is spent correctly. The PAT have undertaken the assurance of the MDS in a systematic and consistent approach across all of the contractors it has identified as “anomalies” in their pattern of claiming for the service. It is only those pharmacies who have claimed for ineligible patients or those 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.

4.1.51 The PSRC considered that Wills 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 £810.00 payment for the ineligible CEV claims were over payments and should then be recovered from the contractor.

4.1.52 **Key points for consideration**

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

4.1.53.1 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.

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

4.1.53.3 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.

4.1.53.4 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.

4.1.53.5 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.

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

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

4.1.53.8 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.

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

4.1.54 Having considered these matters NHS England respectfully suggests that NHS Resolution conclude that the decision made by the PSRC in respect of the £810.00 overpayment recovery from Wills Pharmacy was fair and in accordance with the regulations.

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

4.1.56 Enclosures:

4.1.56.1 The NHSBSA PAT's response to the contractor's appeal.

4.1.56.2 A copy of the NHSE introductory letter dated 9th April 2020.

4.1.56.3 A copy of the NHSE letter dated 30th June 2020.

4.1.56.4 A copy of the NHSE Service Specification dated 16th March 2021.

4.1.56.5 A copy of the NHSE Service Announcement which outlined the service from 16th March 2021.

4.1.56.6 A copy of the NHSE Primary Care Letter dated 19th July 2021.

4.1.56.7 A copy of the NHSE Service Announcement which outlined the service from 29th September 2021.

4.1.56.8 A timeline of correspondence between the NHSBSA PAT and the contractor.

5 OBSERVATIONS

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

6 CONSIDERATION

6.1 Direction 2 of the Payment Disputes Directions directs me to determine a dispute in respect of the recovery of an overpayment from an NHS pharmacist under regulation 94(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services Regulations) 2013 (the "Regulations") which is in the nature of an appeal against a decision of NHS England that there has been an overpayment.

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

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

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

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

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

6.3.2 the grounds of the appeal are valid.

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

6.4.1 a hearing is unnecessary; or

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

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

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

6.7 I 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 there are claims for 135 deliveries to those who were Clinically Extremely Vulnerable (CEV) made in the period April to July 2021 inclusive.

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 in its decision, the NHS BSA states that *"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"* which has not been disputed by the Appellant.

6.14 The specification and guidance provided state at paragraph 5:

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 in its representations, 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 (SI) 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 5 September 2024 to 7 October 2024, where it outlined to the Appellant that "*the 135 CEV claims made between April 2021 to July 2021 were for deliveries made to ineligible patients as the ability to claim for CEV patients under the MDS has ended in March 2021*."

6.18 I note that the service specification states at paragraph 8.1:

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 it was delivering to patients who were either "*isolating due to a positive covid test*" or "*vulnerable patients that were told to shield*

either by GP or healthcare guidance." The Appellant explains "*most of the patients are over 65 and the demographics can confirm, so they would not have access to the trace app to be identified*". In response, the NHS BSA states "*the same situation would exist in other areas of the country where contractors have still correctly followed the guidance outlined in the service specification rather than assuming eligibility for the service. Alongside that point we would also state it appears an unfair generalisation to class every person over a certain age as being limited by technology and therefore not having access to the app*." The Appellant has not provided any supporting information to substantiate its statement with regard to patients over 65 years of age and their eligibility to receive deliveries.

6.20 The Appellant states that it "*provided the delivery service in good faith to those who tested positive but we did not go around to their houses to confirm their positive test*." In response to an invitation from NHS Resolution to provide any supporting information to its appeal, the Appellant provided a list of 64 names stating "*Some of these patients had multiple deliveries per month*."

6.21 The NHS BSA refer to the letter dated 16 March 2021 which was sent to all community pharmacies which states "*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 – see service specification and guidance. Pharmacies and dispensing doctors should familiarise themselves with the details of the service before making a claim*."

6.22 I am of the view that the list of names provided by the Appellant is limited. It is not clear from the list of names which of these patients were over 65, the reason for the delivery, how many deliveries had been made to each patient or what dates the deliveries had been made. I am of the view that the Appellant had a responsibility to ensure it kept up to date records as per all the guidance provided to all pharmacies. A list of names only is below the standard of evidentiary proof required to demonstrate the provision of the Medicines Delivery Service to eligible patients.

6.23 However, 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.

6.24 Given the claiming for CEV patients ceased, I consider that the NHS BSA's decision to recover the overpayment is the only appropriate outcome.

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 £810.00.

7.3 I note that neither party has submitted a claim for interest with regard to this dispute so I determine that no interest is payable on the sums to be paid from one party to another.

Head of Appeals
NHS Resolution