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5 June 2025

REF: SHA/ 26539

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM SUPER PHARM LIMITED T/A BENCHILL PHARMACY (FTA58) ("THE APPELLANT")

1 **Outcome**:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £12,600.00

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:
Super Pharm Limited t/a Benchill Pharmacy (FTA58)
NHS BSA on behalf of NHS England

8th Floor
10 South Colonnade
Canary Wharf
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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM SUPER PHARM LIMITED T/A BENCHILL PHARMACY (FTA58) ("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 26 February 2025 in respect of Super Pharm Limited t/a Benchill Pharmacy (FTA58). 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 March 2022 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 March 2022.

2.5 **To date your pharmacy has not provided 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. 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.

2.6 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 FTA58 – SUPER PHARM LIMITED claimed 2,100 Self-Isolating deliveries for the Medicines Delivery Service in the months of April 2021 to March 2022.

2.8.2 The NHSBSA Provider Assurance Team did not receive any evidence which demonstrated that the Medicines Delivery Service claims made between the months of April 2021 to March 2022 were to patients who had been notified by Test and Trace to self-isolate and who had provided their Test and Trace Account ID when requesting the service, and therefore could not verify that these claims met the requirements set out in the service specification.

2.8.3 SUPER PHARM LIMITED was contacted on ten 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 March 2022 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 table below outlines the monthly Medicines Delivery Service claims reimbursed to your pharmacy – SUPER PHARM LIMITED – FTA58 in the months of April 2021 to March 2022 for Self-isolating patients, along with the associated recovery values:

2.11 **Self-isolating claims**

2.12 The table below shows MDS claims reimbursed to your pharmacy between April 2021 and March 2022 for Self-isolating patients.

	Apr 21	**May 21**	**Jun 21**	**Jul 21**	**Aug 21**	**Sept 21**	**Oct 21**	**Nov 21**	**Dec 21**	**Jan 22**	**Feb 22**	**March 22**	**Total**
Self-isolating claims paid	0	0	0	0	0	0	0	0	0	900	1200	0	**2100**

2.13 2,100 Self-isolating claims paid x £6.00 = **£12,600.00**

2.14 **Total recovery for April 2021 to March 2022:**

2.15 2,100 Self-isolating claims paid x £6.00 = £12,600.00

2.16 **Total value to be recovered = £12,600.00 deduction.**

2.17 **Action Required**

2.18 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 March 2025.

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

2.20 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 March 2025.

2.21 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.

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

2.23 NHS Resolution
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.

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

2.27 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.

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

2.29 Your co-operation is very much appreciated."

3 THE DISPUTE

In an email dated 4 March 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 “I am responding to your letter concerning the medicine delivery service.

3.2 I can confirm that the deliveries did take place during the specified period . The number of prescriptions we dispensed during that time would equate to such a number of deliveries.

3.3 Unfortunately, I cannot locate the records of the deliveries as too much time has surpassed [sic] and there was no specification of how long the records needed to be kept when we first started the delivery service. The advice given by NHS England at the time of the medicine delivery service initiation was ambiguous as to how long the records of such delivery was to be kept.

3.4 As you are aware of the current Pharmacy funding crisis, the amount of money you are trying to recuperate from us, would jeopardize the future of this business.

3.5 I would like to appeal this decision so would like NHS England to reconsider this decision.”

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 6th of 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 – 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 May 2021 were not paid and only claims for deliveries to SI patients were processed for payment.

4.1.18 Despite the changes to the MYS functionality, it remained the situation that the majority of claims for CEV patients submitted for April 2021 and May 2021 saw contractors paid in effect for ineligible patient claims, deliveries to SI patients were the only eligible claims that were valid from April 2021 onwards. 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, FTA58 – Benchill Pharmacy were contacted on ten occasions between 7th December 2023 and 12th June 2024 to request evidence that the 2,100 Self-Isolating patient claims made during January 2022 and February 2022 were for deliveries made to eligible patients' self-isolating in response to a positive Covid test, as specified in the NHSE service announcements.

4.1.20 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. However, the NHSBSA PAT were unable to confirm that Benchill Pharmacy had a valid shared NHS mail account. Consequently, a telephone call was made to Benchill Pharmacy on the 7th December 2023 to confirm the email address of the pharmacy, which the appellant confirmed as being benchill.pharmacy@nhs.net, along with requesting the emails be sent to the appellants email address: [xx]@nhs.net.

4.1.21 Several phone calls to the pharmacy were also made, to confirm receipt of these emails and to advise the pharmacy of the final 14-day response deadline.

4.1.22 The NHSBSA PAT engaged with the appellant, [KI], during the PPV process. Initially Mr. [I] informed the PAT he was gathering the evidence requested to confirm the pharmacy had delivered during the specified time period. The appellant also asked what format they should provide their evidence in. The NHSBSA PAT advised the appellant of the evidence required for review and the preference is for their evidence to be provided in a digital format either by email or via a secure link the PAT will provide. However, despite multiple prompting no evidence was forthcoming from the appellant.

4.1.23 A further email was received from the appellant again stating they are gathering evidence for the MDS deliveries and requested where it states in the NHS contract how long they have to keep the documentation for the MDS PPV.

The NHSBSA PAT advised although the service specification does not specify how long to keep records for it does state it is a requirement to retain evidence for PPV purposes.

4.1.24 Following this the appellant then advised they were unable to provide the records for the period requested and asked for further information on what the next steps would be. In response to this the PAT outlined that if no evidence was available their case would be referred onto their NHS England local Pharmacy Services Regulation Committee (PSRC) for review and decision.

4.1.25 Despite these attempts made by the NHSBSA PAT, Benchill Pharmacy did not provide any evidence to demonstrate that the 2,100 Medicine Delivery Service deliveries claimed for the months of January 2022 and February 2022 were made to self-isolating patients who had provided their test and trace referral number when requesting the service as specified in the service specification at this time.

4.1.26 As such the NHSBSA were then unable to verify that the deliveries claimed met the requirements set out in the service specification.

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 Regulation 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 addition to this appeal response.

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

4.1.32 Consequently, the PSRC concluded that the NHSBSA had been unable to find any evidence to demonstrate that any one of the 2,100 deliveries claimed by the contractor for the months of January 2022 and February 2022 for deliveries to SI patients met the requirements set out in the service.

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 Benchill Pharmacy was not entitled to the payment that the overpayment should be reclaimed

pursuant to Regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.1.35 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 states:

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 The request of evidence to support the MDS claims made was stated in our engagement outlining for Self-Isolating claims the test and trace referral numbers in support of each MDS delivery was required. This evidence was not forthcoming.

4.1.41 In their appeal the appellant states *'Unfortunately, I cannot locate the records of the deliveries as too much time has surpassed and there was no specification of how long the records needed to be kept when we first started the delivery service. The advice given by NHS England at the time of the medicine delivery service initiation was ambiguous as to how long the records of such delivery was to be kept.'*

4.1.42 The NHSBSA PAT acknowledges that the service specification does not specify for how long contractors should keep records of the deliveries made, but this is not unique to this service.

4.1.43 Section VIC of the Drug Tariff contains the Pharmaceutical Services (Advanced and Enhanced Services) (England) Directions 2013. Throughout the directions there are repeated requirements for records to retained for post payment verification purposes without the reference to a time scale for retention.

4.1.44 For the New Medicines Service there is a time scale mentioned in paragraph 7- ongoing **conditions of arrangements**:

4.1.44.1(l) P ensures that a written record (which may be an electronic record) of each consultation carried out by or on behalf of P as part of P's New Medicine Service is prepared by the registered pharmacist who carried

out the consultation and includes the approved data ("approved" for these purposes means approved by the NHSCB).

4.1.44.2(m) P provides information from those records to the NHSCB or the Secretary of State, on request, in the manner approved for this purpose, and for the purposes approved, by the NHSCB; and

4.1.44.3(n) P keeps a copy of the record mentioned in sub-paragraph (l) for at least 2 years from the date on which the service intervention is completed or discontinued.

4.1.45 Records of other service provision are required to be kept for 3 years for other services e.g. the Blood Pressure Checking service. see Advanced service specification: NHS community pharmacy hypertension case-finding advanced service (NHS community pharmacy blood pressure check service) (england.nhs.uk).

4.1.46 It is therefore clear that records being kept for 2 or 3 years only is not uniform and there is the precedence that evidence would be required to be retained for longer than two years. The PAT would also state upon our initial engagement with the appellant it appeared that evidence was not destroyed at that point as Mr [I] was stating he needed time to collate the evidence and what format it should be provided to ourselves.

4.1.47 The appellant states in their appeal 'I can confirm that the deliveries did take place during the specified period.'

4.1.48 Again, NHSE do not dispute that the deliveries were made, but it is not assured that the contractor was performing the necessary steps to only claiming for those deliveries to self-isolating patients who were eligible for the service. This eligibility would have been recorded in the record of their test and trace referral numbers as outlined in the service specification.

4.1.49 The appellant also states, *'The number of prescriptions we dispensed during that time would equate to such a number of deliveries.*'

4.1.50 Benchill Pharmacy commenced trading on the 1st January 2022 and therefore no claims were made prior to January 2022, and no claims were made after February 2022. In regard to the statement above the PAT would respond stating the volume of prescriptions dispensed didn't have a direct correlation to volume of MDS deliveries as that purely depended on the volume of positive Covid tests within the area, so we would question whether this statement only applies to the regular delivery service completed by the appellant rather than for their MDS claims.

4.1.51 Benchill Pharmacy (FTA58) was identified as a significant outlier that needed to be included in the PPV exercise not just for a large volume of claims made by the pharmacy during the months that the service eligibility was for SI patients, but also due to the consistent high levels of claims in each month of the two months they claimed for the service. In the two months reviewed during this PPV exercise, the appellants claiming for the service ranged between 900 to 1,200 claims each month. This volume ensured that Benchill Pharmacy across the final 12 months of the service was the nineteenth highest claiming pharmacy nationwide for MDS and for the two months in which they actually claimed for the service they were the highest claiming pharmacy nationwide for the service as deliveries figures nationwide had dropped significantly by

that stage. This can be clearly seen in the table below in which it highlights the pharmacy claims being consistent and much larger than the national average claim for self-isolating deliveries each month.

	Apr 21	May 21	Jun 21	Jul 21	Aug 21	Sept 21	Oct 21	Nov 21	Dec 21	Jan 22	Feb 22	March 22	Total
Self-isolating claims paid	0	0	0	0	0	0	0	0	0	900	1200	0	2100
National Monthly Average Claim for MDS	87.36	72.03	28.07	19.79	26.1	26.8	27.22	29.41	29.76	25.02	27.41	19.17	

4.1.52 This consistent nature of claiming does not follow the national pattern seen from the data for other contractors. Nor what we would expect to see for those patients who would be eligible for the deliveries as the claims suggest a consistent volume of positive Covid claims in their local area across the final 12 months of the service when the number of patients that were testing positive was declining hence the reason that the pandemic restrictions were easing. Therefore, Benchill Pharmacy's high volume of claiming is even more outside of what we would expect due to the fact they only claimed in the months of January 2022 and February 2022.

4.1.53 The PAT would also raise for a contractor that only started operation within January 2022 the volume of deliveries immediately for the service is quite high. We would question if it were feasible if a new pharmacy immediately got the volume of patients necessary for a figure as high as 900 within a month testing positive for Covid when the national average for pharmacy claims was only just over 25 claims. We would also question how a contractor could have that volume of patients testing positive for Covid in the months of January and February of 2022 to then drop to the figure of zero for the month of March 2022. If the deliveries for the previous months were to patients self-isolating, we would consider it highly unlikely that the volume would drop to nothing in such a short period of time. Again, we would reiterate we are not disputing that the deliveries took place instead rather the eligibility of the patients for MDS.

4.1.54 Therefore, without any evidence being provided by the pharmacy which confirms that the deliveries made by Benchill Pharmacy during this period were to eligible patients as outlined in the service specification, and the concerns about high volumes of claims being submitted in the months of January 2022 to February 2022 even though the national trend was that claims were reducing for the service each month, supports the decision of the PSRC that these claims were not performed to those patients identified as eligible under the Medicine Delivery Service from April 2021 onwards.

4.1.55 The appellant states *'As you are aware of the current Pharmacy funding crisis, the amount of money you are trying to recuperate from us, would jeopardize the future of this business.'*

4.1.56 NHSE and the PAT does 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.

4.1.57 The PSRC considered that Benchill Pharmacy had not provided any evidence to demonstrate that the claims it had submitted between April 2021 and March 2022 were for deliveries to patients eligible for the MDS. As a result, the decision determined that the £12,600.00 payment for Self-Isolating claims were over payments and should then be recovered from the contractor.

4.1.58 **Key points for consideration**

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

4.1.59.1 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.

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

4.1.59.3 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.

4.1.59.4 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.

4.1.59.5 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.

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

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

4.1.59.8 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.

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

4.1.60 Having considered these matters NHS England respectfully suggests that NHS Resolution conclude that the decision made by the PSRC in respect of the £12,600.00 overpayment recovery from Benchill Pharmacy was fair and in accordance with the regulations.

4.1.61 Please let me know of 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 "The amount the NHSBSA wishes to recover will not be manageable as this large amount of money would cause cashflow problems for the business. I would suggest that if a payment plan could be agreed, so that the repayments could be repaid over a six-month time period?".

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 2021 to March 2022 inclusive. These were for 2100 deliveries to those who were self-isolating.

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. 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",* 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 (SI) patients and contractors had Test and Trace referral records available to substantiate those claims."*

6.16 The NHS BSA has provided a timeline detailing its contact with the Appellant between 7 December 2023 to 12 June 2024, in order to request evidence that the claims made in January 2022 and February 2022 were for deliveries made to eligible patients as detailed in the service specification.

6.17 I note that the service specification states:

6.17.1 *"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."*

6.18 In its appeal, the Appellant states that *"I can confirm that the deliveries did take place during the specified period. The number of prescriptions we dispensed during that time would equate to such a number of deliveries".*

6.19 The NHS BSA has highlighted the volume of deliveries made by the Appellant compared to the national average and states *"In the two months reviewed during this PPV exercise, the appellants claiming for the service ranged between 900 to 1,200 claims each month. This volume ensured that Benchill Pharmacy across the final 12 months of the service was the nineteenth highest claiming pharmacy nationwide for MDS and for the two months in which they actually claimed for the service they were the highest claiming pharmacy nationwide for the service as deliveries figures nationwide had dropped significantly by that stage."*

6.20 The NHS BSA goes on to state that *"This consistent nature of claiming does not follow the national pattern seen from the data for other contractors. Nor what we would expect to see for those patients who would be eligible for the deliveries as the claims suggest a consistent volume of positive Covid claims in their local area across the final 12 months of the service when the number of patients that were testing positive was declining hence the reason that the pandemic restrictions were easing. Therefore, Benchill Pharmacy's high volume of claiming is even more outside of what we would expect due to the fact they only claimed in the months of January 2022 and February 2022."*

6.21 On this same point, the NHS BSA further highlights that *"Benchill Pharmacy commenced trading on the 1st January 2022 and therefore no claims were made prior to January 2022, and no claims were made after February 2022. In regard to the statement above the PAT would respond stating the volume of prescriptions dispensed didn't have a direct correlation to volume of MDS deliveries as that purely depended on the volume of positive Covid tests within the area, so we would question whether this statement only applies to the regular delivery service completed by the appellant rather than for their MDS claims"* and "*The PAT would also raise for a contractor that only started operation within January 2022 the volume of deliveries immediately for the service is quite high. We would question if it were feasible if a new pharmacy immediately got the volume of patients necessary for a figure as high as 900 within a month testing positive for Covid when the national average for pharmacy claims was only just over 25 claims. We would also question how a contractor could have that volume of patients testing positive for Covid in the months of January and February of*

2022 to then drop to the figure of zero for the month of March 2022. If the deliveries for the previous months were to patients self-isolating, we would consider it highly unlikely that the volume would drop to nothing in such a short period of time".

6.22 I note that there is no dispute from the NHS BSA that the deliveries were made. However, whilst the Appellant engaged with the NHS BSA during the PPV exercise, the Appellant was unable to provide any evidence that the deliveries claimed met the requirements as set out in the service specification.

6.23 The Appellant goes on to state that *"Unfortunately, I cannot locate the records of the deliveries as too much time has surpassed* [sic] *and there was no specification of how long the records needed to be kept when we first started the delivery service. The advice given by NHS England at the time of the medicine delivery service initiation was ambiguous as to how long the records of such delivery was to be kept."*

6.24 I note in response, the NHS BSA has acknowledged that the service specification does not specify for how long contractors should keep records of the deliveries made but relies on the caveat that records must be retained for post payment verification as well as highlighting the requirement to keep records for the Blood Pressure Checking Service for three years and New Medicines Service for two years.

6.25 The NHS BSA has also referred to the service announcements issued to contractors which states *"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."*

6.26 I do sympathise with the challenges faced by pharmacies in retaining records and consider it unhelpful that the service specification did not identify a requirement for the records to be retained for a set period. However I am of the view that the Appellant should have been aware of the requirement of the service specification to retain records for any post payment verification. In the absence of any specified time period, the requirement in the specification is absolute – appropriate records must be maintained. But it is not reasonable to expect a pharmacy to keep records forever so it is appropriate to imply into the wording that records will be kept for a reasonable time period, taking into account the reasons expressly stated for maintaining records. Those reasons are to ensure effective ongoing service provision and to support post payment verification. The former would likely fall away once service provision ceases but the latter clearly extends after the provision of service and after payment has been received. The key question is therefore, knowing that records were to be maintained for post payment verification, whether the fact that the Appellant no longer has these records is reasonable.

6.27 I note that I have not been provided with any information from the Appellant as to their data management policy to evidence what its actual retention period for relevant records is or why they are unable to locate the relevant records.

6.28 I consider that had any evidence, at all, relating to these months been provided then this would have been enough to verify that claims were only made in accordance with the requirements of the service specification. The Appellant has stated that they *"cannot locate the records of the deliveries as too much time has surpassed*" however, I consider that the Appellant should have been able to provide the necessary information for post-payment verification by the NHS BSA. As it has not done so, I consider that the NHS BSA's decision to recover the overpayment is the only appropriate outcome.

6.29 I agree with the NHS BSA that the decision to recover the overpayment is appropriate.

6.30 I note the Appellant's comments relating to its financial situation and request for a payment plan to recover the monies owed. 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 £12,600.00.

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