NHS Resolution

20 June 2025

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REF: SHA/26562

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM STOCKTON HEATH HEALTHCARE LLP (FWK62) ("THE APPELLANT")

1 **Outcome**:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £12.00.

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:

Stockton Heath Healthcare LLP t/a Stockton Heath Pharmacy
NHS BSA on behalf of NHS England

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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM STOCKTON HEATH HEALTHCARE LLP (FWK62) ("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 18 February 2025 in respect of Stockton Heath Pharmacy (ODS code FWK62). 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 FWK62 – STOCKTON HEATH HEALTHCARE LLP claimed 2 **Clinically Extremely Vulnerable** 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 STOCKTON HEATH HEALTHCARE LLP was contacted on two 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 table below outlines the monthly Medicines Delivery Service claims reimbursed to your pharmacy – **STOCKTON HEATH HEALTHCARE LLP – FWK62** 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 2021**	**Total**
CEV claims paid	1	1	N/A	N/A	2

2.11 Subsequently this has resulted in the following overpayment:

2.11.1 2 CEV claims paid x £6.00 = **£12.00.**

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

2.12.1 2 CEV claims paid x £6.00 = £12.00.

2.13 **Total value to be recovered = £12.00 deduction.**

2.14 **Action Required**

2.15 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 20th March 2025.

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

2.17 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by 20th March 2025.

2.18 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.

2.19 Please be aware that failing to contact us by 20th 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:

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

2.21 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.

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

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

3 THE DISPUTE

In an email dated 14 March 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 "It now [sic] almost 4 years after this claim.

3.2 I cannot agree that an alleged overpayment can be recovered. I am concerned that this may have been for Test and Trace."

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 1st of April 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 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 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 acquaint 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 Despite the changes to the MYS functionality, it remained the situation any claims for CEV patients submitted for April 2021 and May 2021, contractors were 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, FWK62 – Stockon Health Pharmacy were contacted on two occasions between 5th September 2024 and 18th September 2024 to outline that the 2 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

4.1.20 Emails were sent to the pharmacy's shared NHS mail address, pharmacy.fwk62@nhs.net, as required by NHSE. All listed pharmacies must have a valid shared NHSmail account that should be regularly monitored by the pharmacy team as part of their terms of service.

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 engaged with the Pharmacy Manager, Enda, during the PPV process.

4.1.22 During the call, the appellant inquired about the grounds for appealing the recovery of the overpayment. The NHSBSA PAT explained that the service for Clinically Extremely Vulnerable (CEV) patients for the MDS ceased on the 31st March 2021 and claims for deliveries to these patients after this date no longer qualified as eligible for a MDS payment. However, Stockton Health Pharmacy continued to submit claims for this cohort of patients between April 2021 and July 2021.

4.1.23 The PAT referred the appellant to the email correspondence, which requested that the pharmacy either agree to the recovery of the overpayment for the ineligible CEV claims or provide reasoning to support the claims which will be referred to PSRC for a decision.

4.1.24 Following this communication, no further engagement or supporting evidence was received from the contractor regarding the eligibility of the claims submitted for the MDS service.

4.1.25 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 were eligible for the Medicine Delivery Service and that evidence was available in support of those claims.

4.1.26 As the NHSBSA PAT have been unable to validate the deliveries claimed by the pharmacy during this time, Stockton Health Pharmacy did not accept the proposed recovery and requested 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.

4.1.27 **The PSRC decision**

4.1.28 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.

4.1.29 The engagement showed that despite repeated requests made by the NHSBSA to the contractor to provide reasoning to demonstrate patient eligibility for the service claims submitted, no reasoning was forthcoming.

4.1.30 Consequently, the PSRC concluded that the NHSBSA had been unable to find any reasoning to demonstrate that the 2 deliveries claimed for CEV patients by the contractor 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.

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

4.1.32 Having made this decision, the PSRC then directed that Stockton Health 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.

4.1.33 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 July 2021 met the requirements set out in the service specification.

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

4.1.35 The service specification/Service Announcements from April 2021 state:

4.1.36 '*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*.'

4.1.37 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.

4.1.38 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. Stockton Health Pharmacy did not claim for self-isolating patients during the time period we are reviewing therefore it was only the 2 CEV claims made between April 2021 and May 2021 that we requested further explanation and reasoning around.

4.1.39 In their appeal statement, the appellant states: "*It now almost 4 years after this claim. I cannot agree that an alleged overpayment can be recovered, I am concerned that this may have been for test and trace*".

4.1.40 In response to this point NHSBSA PAT would state the assurance of all services was suspended during COVID to reduce the burden on contractors as NHS England and the PAT appreciated this was a difficult time. The assurance activity performed by the PAT was only restarted in April 2021 and only then by asking contractors to perform a self-review. This engagement approach failed to amend the behaviour of those contractors submitting very large claims and those claiming for ineligible patients, so it wasn't until June 2022 that assurance activity on MDS began in earnest by requesting evidence from contractors and escalating those contractors without sufficient evidence to PSRC. Since that time the PAT has been working through the backlog of

assurance work which has resulted in the delay in performing the PPV work sooner on MDS, but this has entailed reviewing multiple thousands of contractors around their MDS claims. PAT are not disputing that the deliveries took place instead rather as shared with the appellant that the eligibility of the patients qualified them for MDS as in this case the contractor did claim on MYS that these deliveries were to CEV patients and without any evidence PAT unfortunately cannot just assume these deliveries were actually to patients eligible as they were advised to self-isolate rather than CEV, 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 volume claimed.

4.1.41 As part of the PPV process, the PAT contacted Stockton Health Pharmacy to advise that they had been identified as claiming for deliveries to CEV patients after 31st March 2021.The correspondence sent to the appellant provided the opportunity to confirm whether they had inadvertently claimed for deliveries to CEV patients, or alternatively, to explain why they believed these claims were for deliveries made to eligible patients.

4.1.42 It should be noted that throughout the investigation, the contractor was unable to provide supporting evidence, such as the Test and Trace ID reference number or other patient details, to demonstrate that the claims submitted for the MDS service were for the deliveries made to eligible patients. Therefore, NHSBSA PAT cannot provide assurance to NHS England that the service claims were in line with the service specification.

4.1.43 In response the appellants statement, the PAT would argue that MYS records clearly show that the pharmacy made claims which were paid during April to May 2021 for patients who were no longer eligible patients for the service. Despite multiple opportunities, the pharmacy has not provided any evidence or clarification to support their claim that the deliveries may have been made to patients who had been notified to self-isolate by NHS Test and Trace.

4.1.44 The PAT would also highlight 6.20.1 of the service specification which states "*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."*

4.1.45 The PAT acknowledges that, while it does not specifically state in the service specification how long that MDS evidence should be kept by pharmacy contractors, it does require that the evidence should be available upon request for PPV purposes. The lack of explicit instructions from the NHS regarding the timescales for the storage of these records does not negate the requirement in the service specification that appropriate records must be maintained. This documentation is essential to substantiate the deliveries made under the Medicine Delivery Service.

4.1.46 Ultimately, the appeal rests on a key point that these patients were no longer eligible for the service so these claims are ineligible for payment and should be recovered as they fall outside the statutory framework for payment.

4.1.47 The PAT would also raise the contractor's own wording from the appeal as they state, "*I am concerned that this may have been for test and trace*." From this statement, the PAT would state the contractor themselves are clear here that they themselves are not certain these claims were performed for eligible patients and instead claimed incorrectly on MYS. Instead, it appears the appellant is unsure about the claims and the eligibility of the patients but does not wish any recoveries to take place due to the length of time that has passed.

4.1.48 In light of all this information NHS England maintains that Stockton Health Pharmacy was not compliant with the requirements set out in the service specification and their claims for deliveries to CEV patients during April 2021 were to patients who were ineligible for this advanced service at that time.

4.1.49 The PSRC considered that Stockton Health Pharmacy had not provided any evidence to demonstrate that the claims it had submitted in April 2021 were correctly following the service specification. As a result, the decision determined that the £12.00 payment for the ineligible CEV claims were overpayments and should then be recovered from the contractor.

4.1.50 **Key points for consideration**

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

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

4.1.54 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.

4.1.55 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.

4.1.56 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.

4.1.57 The service specification is precise in its language in that claims "must" be made by the 5th of the following month therefore even if evidence was provided there would still be a question around whether these claims were incorrect as they have been submitted late and to a volume significantly higher than previous months.

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

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

4.1.60 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.

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

4.1.62 Having considered these matters NHS England respectfully suggests that NHS Resolution conclude that the decision made by the PSRC in respect of the £12.00 overpayment recovery from Stockton Health Pharmacy was fair and in accordance with the regulations."

5 LATE OBSERVATIONS

5.1 The Appellant

5.1.1 "Apologies for the late reply I have been on annual leave.

5.1.2 I note this regards provision of services between April and July 2021 and the investigation started in September 2024. Can you please confirm that the Service Specification required records to be kept in excess of three years for post payment verification? The standard is usually 2 years.

5.1.3 It has been difficult for me to make representations or provide evidence regarding these claims as a considerable period of time had elapsed between the claim and the investigation.

5.1.4 I would therefore say it is unreasonable to ask me to supply evidence and ask that the investigation be dropped due to the amount of time elapsed if nothing else. We entered into the service in good faith and this investigation has gone to [sic] far, if our appeal is not upheld I will consider going to the local MP."

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 July 2021 inclusive. These were for 2 deliveries to those who were classed as Clinically Extremely Vulnerable.

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.

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 in September 2024, in order to request evidence that the claims made in April and May 2021 were for deliveries made to eligible patients as detailed in the service specification.

6.18 I note 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 In its appeal, the Appellant states that "*It now [sic] almost 4 years after this claim. I cannot agree that an alleged overpayment can be recovered. I am concerned that this may have been for Test and Trace".*

6.20 The NHS BSA has addressed the length of time since the initial claim was made and states "*PAT are not disputing that the deliveries took place instead rather as shared with the appellant that the eligibility of the patients qualified them for MDS as in this case the contractor did claim on MYS that these deliveries were to CEV patients and without any evidence PAT unfortunately cannot just assume these deliveries were actually to patients eligible as they were advised to self-isolate rather than CEV, 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 volume claimed."*

6.21 The NHS BSA goes on to state that it "*contacted Stockton Health Pharmacy to advise that they had been identified as claiming for deliveries to CEV patients after 31st March 2021.The correspondence sent to the appellant provided the opportunity to confirm whether they had inadvertently claimed for deliveries to CEV patients, or alternatively, to explain why they believed these claims were for deliveries made to eligible patients.*

It should be noted that throughout the investigation, the contractor was unable to provide supporting evidence, such as the Test and Trace ID reference number or other patient details, to demonstrate that the claims submitted for the MDS service were for the deliveries made to eligible patients. Therefore, NHSBSA PAT cannot provide assurance to NHS England that the service claims were in line with the service specification.

In response the appellants statement, the PAT would argue that MYS records clearly show that the pharmacy made claims which were paid during April to May 2021 for patients who were no longer eligible patients for the service. Despite multiple opportunities, the pharmacy has not provided any evidence or clarification to support their claim that the deliveries may have been made to patients who had been notified to self-isolate by NHS Test and Trace."

6.22 I note that there is no dispute from the NHS BSA that the deliveries were made. However, the Appellant did not engage with the NHS BSA during the PPV exercise and therefore no evidence was provided to demonstrate that deliveries claimed met the requirements set out in the service specification.

6.23 The Appellant goes on to state that *"Can you please confirm that the Service Specification required records to be kept in excess of three years for post payment verification? The standard is usually 2 years. It has been difficult for me to make representations or provide evidence regarding these claims as a considerable period of time had elapsed between the claim and the investigation."*

6.24 The NHS BSA in its representations states that "*while it does not specifically state in the service specification how long that MDS evidence should be kept by pharmacy contractors, it does require that the evidence should be available upon request for PPV purposes. The lack of explicit instructions from the NHS regarding the timescales for the storage of these records does not negate the requirement in the service specification that appropriate records must be maintained. This documentation is essential to substantiate the deliveries made under the Medicine Delivery Service."*

6.25 I note 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. 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.

6.26 Whilst I sympathise with the points made, 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.

6.27 The Appellant has not provided any reasoning as to why it claimed for two CEV deliveries in April 2021 and May 2021, given the claiming for CEV patients ceased. Therefore the Appellant does not qualify for payment in line with the service specification.

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

7 DECISION

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

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

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

7.1.3 quash the decision, with or without remitting the matter to NHS England for it to take the decision again subject to such directions as NHS Resolution considers appropriate.

7.2 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £12.00 in relation to claims made for CEV patients.

Head of Appeals
NHS Resolution