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17 June 2025

REF: SHA/ 26567

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM LIVESEY HEALTHCARE LTD (FV989) ("THE APPELLANT")

1 **Outcome**:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £2,352.00.

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:
Livesey Healthcare Ltd (FV989)
NHS BSA on behalf of NHS England

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Canary Wharf
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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM LIVESEY HEALTHCARE LTD (FV989) ("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 12 February 2025 in respect of Livesey Healthcare Ltd (FV989). The decision stated:

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

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

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

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

2.5 **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 FV989 – LIVESEY HEALTHCARE LTD claimed **360** Self-isolating and **32** 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 evidence which demonstrated that the Medicines Delivery Service claims made between the months of April 2021 to July 2021 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 LIVESEY HEALTHCARE LTD was contacted on **11** separate occasions by the NHSBSA Provider Assurance Team to request evidence to demonstrate that that the Medicines Delivery Service claims made during this time met the requirements set out in the service specification.

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

2.10 The tables below outline the monthly Medicines Delivery Service claims reimbursed to your pharmacy – **FV989 – LIVESEY HEALTHCARE LTD** in the months of April 2021 to July 2021 for Self-isolating and CEV 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 July 2021 for Self-isolating patients.

	April 21	**May 21**	**June 21**	**July 21**	**Total**
Self-isolating claims paid	111	97	105	47	**360**

2.13 360 Self-isolating claims paid x £6.00 **= £2,160.00**

2.14 **CEV claims**

2.15 The table below shows MDS claims reimbursed to your pharmacy between April 2021 and July 2021 for CEV patients.

	April 21	**May 21**	**June 21**	**July 21**	**Total**
CEV claims paid	13	19	N/A	N/A	**32**

2.16 Subsequently this has resulted in the following overpayment:

2.17 32 CEV claims paid x £6.00 **= £192.00 deduction.**

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

2.19 360 Self-isolating claims paid x £6.00 **= £2,160.00**

2.20 32 CEV claims paid x £6.00 **= £192.00.**

2.21 **Total value to be recovered = £2,352.00 deduction**.

2.22 **Action Required**

2.23 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 14th March 2025.**

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

2.25 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by 14th March 2025.

2.26 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.

2.27 **Please be aware that failing to contact us by 14th 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:

2.28 NHS Resolution
Primary Care Appeals
10 South Colonnade
Canary Wharf
London

E14 4PU

2.29 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.

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

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

2.32 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.

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

2.34 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 deeply disappointed to receive this letter, as the claims in question were made during a period when we did not have control of the business. It is disheartening that we must now take precious time and resources to validate claims that were not made under our management.

3.2 As you can appreciate, our pharmacy is already facing significant challenges, like many throughout the UK and situations like this only add to the burden. To investigate these claims, I will need to contact the previous owner and review documentation that is now over three years old. This is not a straightforward process, and I require sufficient time to gather the necessary information.

3.3 I kindly request an extension to allow me to conduct a thorough review. I trust you will understand the difficulty of this situation and appreciate your consideration."

Following receipt of the appeal, NHS Resolution allowed the Appellant further time to gather the information it intended to rely on.

In an email dated 28 March 2025, the Appellant provided the following information:

3.4 "Thank you for your email. We acknowledge your request and would like to confirm that we have obtained the required information. However, this process has taken considerable time due to the challenges involved in retrieving records from over three years ago, particularly as they relate to a previous owner.

3.5 Additionally, we are currently facing a staff shortage and financial constraints, which have further impacted our ability to expedite this process. Despite these challenges, we have made every effort to gather the necessary documentation to support our appeal.

3.6 We would also like to highlight that both NHS and government legislation recognises the need for reasonable timeframes when retrieving historical records. Given the

circumstances, we appreciate your understanding and request that these factors be taken into consideration in the review of our appeal.

3.7 We look forward to your response and appreciate your cooperation in this matter."

3.8 [A list of patient names was 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 4th 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 (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 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. Subsequently, the NHSBSA PAT were requested to recover the identified CEV claims, as there was no regulation to allow payments for patients who were ineligible for the service.

4.1.19 In the Post Payment Verification (PPV) exercise undertaken by the NHSBSA PAT, FV989 – Livesey Pharmacy were contacted on eleven occasions between 6th December 2023 and 9th July 2024 to request evidence that the 360 Self-Isolating patient claims made between April 2021 and July 2021 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 Alongside that, the NHSBSA PAT outlined that FV989, Livesey Pharmacy also incorrectly claimed for 32 CEV patients during the months of April and May 2021 and advised that claims for deliveries to CEV patients after 05 April 2021 were not eligible for payment under the banner of the Medicines Delivery Service.

4.1.21 Emails were sent to the pharmacy shared NHS mail address pharmacy.fv989@nhs.net and from the 30th January 2024, all emails were also sent to the appellants email address: liveseypharmacy@outlook.com as requested. All listed pharmacies must have a valid shared NHS mail account that should be regularly monitored by the pharmacy team as part of their terms of service.

4.1.22 The NHSBSA PAT engaged with Livesey Pharmacy during the PPV process, and the pharmacy made it clear to the PAT that no evidence was available to support any of the claims made at the time as the appellant had taken over ownership of Livesey Pharmacy after the claims were made. During these communications they stated that it had been over two years since the claims were made and they would not know where the previous owner kept the details for the claims.

4.1.23 In an email sent to the pharmacy dated the 8th March 2024, Livesey Pharmacy was advised if there has been a change of ownership since the claims were made but there was no change to the ODS code, then the NHSBSA PAT would still need the pharmacy to review the MDS claims for period of April 2021 to July 2021. As the pharmacy had kept the same ODS code it would still be liable for all debts and liabilities. Therefore, the pharmacy would still be obligated to keep records of the evidence and so should not have destroyed any evidence due to a change of management. Livesey Pharmacy was instructed to contact the persons responsible for inputting the claims at the time and enquiring of them where/how they stored the evidence as each pharmacy would have their own SOP for recording and storing claims for Self-isolating patients. It was also advised that we appreciated some time has passed since the claims had been made, however, we are contractually obligated to engage with the current managers of Livesey Pharmacy rather than the previous owners. Still, the previous owners could be included in our discussions.

4.1.24 Following this the appellant then advised they were unable to provide the records for the period requested as they were not the owners at the time the claims were made and were not able to contact the owners who made the claims at the time. Therefore, Livesey Pharmacy did not feel they should be held liable.

4.1.25 Despite the attempts made by the NHSBSA PAT, Livesey Pharmacy did not provide any evidence to demonstrate that the 392 Medicine Delivery Service deliveries claimed for between April 2021 and July 2021 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 were 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 to you in addition to this information.

4.1.31 The engagement showed that despite repeated requests made by the NHSBSA to the contractor over seven 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 the 360 deliveries claimed by the contractor between April 2021 and July 2021 for deliveries to SI patients met the requirements set out in the service specification alongside the incorrectly claimed 32 claims made for CEV patients.

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 Livesey Pharmacy was not entitled to the payment and 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 July 2021 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 appellant states in their appeal dated 8th March 2025 '*I am deeply disappointed to receive this letter, as the claims in question were made during a period when we did not have control of the business. It is disheartening that we must now take precious time and resources to validate claims that were not made under our management.'*

4.1.41 As outlined in an email sent to the pharmacy on 8th March 2024, the PAT advised that if there had been a change of ownership since the claims were made but no change to the ODS code unfortunately, as the new owners, they would still be responsible for all debts and liabilities, and therefore responsible for the MDS claims made during April 2021 to July 2021.

4.1.42 This information is clearly outlined on the application form that is required to be completed as part of a change of ownership.

4.1.43 The application form chapter-19_annex-1_application-form-application-in-respect-of-a-c.docx asks:

4.1.44 Basis for the change of ownership

4.1.45 Please can you confirm whether you are buying the pharmacy business on a:

4.1.46 Non debts and liabilities basis - Yes? No?

4.1.47 Debts and liabilities basis, with or without access to the existing bank account -Yes? No?

4.1.48 Therefore, if Livesey Pharmacy completed the change of ownership process they should have been aware on what basis they were taking over the pharmacy. Alongside the application form there is further information in the Pharmacy manual NHS England » Pharmacy Manual.pdf pages 23 and 24 are relevant. Allocation of organisation data service codes 43. The following information sets out NHS England's policy in relation to the allocation of organisation data service codes (also known as ODS or F codes).

4.1.49 *44. Buying a retail pharmacy business or DAC business on a debts and liabilities basis means that the electronic prescription nominations do not need to be transferred to a new code. However, it also means that the new owner of the pharmacy or DAC premises will be liable for any monies owed to the commissioner by the previous owner. Applicants should therefore seek their own professional advice before submitting an application that involves a change of ownership.*

4.1.50 CPE also provide support to contractors and applicants buying an existing pharmacy. Change of ownership - Community Pharmacy England (cpe.org.uk) and they also provide advice regarding when a change of ODS is and is not required following a change of ownership - We're all community pharmacy (cpe.org.uk).

4.1.51 If a change of ownership had occurred, the paper from NHSBSA would also reiterate this fact as PCSE Market Entry fill in the change of ownership form on behalf of the contractor and on the form, it clearly states select which option is applicable and if the pharmacy retains the same F-code the new ownership is agreeing to: -

4.1.52 *"Change of ownership (contractor completely buys out another company including debts, liabilities and/or access to bank account) – resulting in change of company name only. See Regulation 26 of the NHS (Pharmaceutical Services) Regulation 2012."*

4.1.53 Therefore, it stands to reason that the appellant should have made the appropriate checks and gone through the proper processes prior to their purchase of FV989 - Livesey Pharmacy.

4.1.54 As the appellant also states, *'As you can appreciate, our pharmacy is already facing significant challenges, like many throughout the UK and situations like this only add to the burden.'*

4.1.55 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.

4.1.56 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. In their appeal the appellant states *'To investigate these claims, I will need to contact the previous owner and review documentation that is now over three years old. This is not a straightforward process, and I require sufficient time to gather the necessary information.'*

4.1.57 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.

4.1.58 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.

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

4.1.60 (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).

4.1.61 (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

4.1.62 (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.

4.1.63 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).

4.1.64 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 this evidence was not forthcoming during our engagement as shown in the timeline. It should also be noted at that no point during this engagement did the appellant request an extension to the deadline in order the pharmacy could source the information required from the persons responsible at the time the claims were made.

4.1.65 As the appellant had stated, '*I kindly request an extension to allow me to conduct a thorough review. I trust you will understand the difficulty of this situation and appreciate your consideration.'* Livesey Pharmacy was granted a 14-day extension from NHS Resolution on the 13th March 2025 for the appellant to source the evidence from the previous owner, who was responsible for the MDS during April 2021 to July 2021.

4.1.66 In the documents from the appellant dated the 28th March 2025 they state *'Thank you for your email. We acknowledge your request and would like to confirm that we have obtained the required information. However, this process has taken considerable time due to the challenges involved in retrieving records from over three years ago, particularly as they relate to a previous owner.'*

4.1.67 After review of this evidence by the NHSBSA PAT it has been noted that what they have provided does not meet the criteria set out in the service specification at the time. As previously stated above, 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.

4.1.68 The evidence the appellant has obtained from the previous owners is a list of 127 entries of patient's names alone. The total claims made by Livesey Pharmacy - FV989 for the period equates to 360 deliveries claimed between April 2021 and July 2021 for deliveries to SI patients alongside 32 claims made for CEV patients. It does not show any Test and Trace Account ID reference number, which was a requirement for the service as stipulated in the communications circulated by the NHSE during this period.

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

4.1.69.1'8.1. 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.'

4.1.70 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.

4.1.71 Therefore, on the basis of the above points the NHSBSA PAT are unable to verify that the evidence provided by the appellant on the 28th 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.

4.1.72 The appellant then goes on to state *'Additionally, we are currently facing a staff shortage and financial constraints, which have further impacted our ability to expedite this process. Despite these challenges, we have made every effort to gather the necessary documentation to support our appeal.'*

4.1.73 NHSE and the PAT do appreciate the time and effort the pharmacy has taken to provide these documents, and the pressures pharmacies can be under. However, the assurance activity is a consistent national approach where pharmacy contractors are treated equally. The pharmacy had multiple occasions during the PPV engagement to provide evidence as shown in timeline, however this was not forthcoming. Therefore, the PAT would pose the question why this was not provided during this time and only after the PPV process had ended. Nor did Livesey Pharmacy request any extension to deadlines during the PPV process when advising they were unable to contact the previous owners who made the claims at the time.

4.1.74 The appellant goes on to state *'We would also like to highlight that both NHS and government legislation recognises the need for reasonable timeframes when retrieving historical records.'*

4.1.75 In response the PAT would state as previously mentioned engagement took place with Livesey Pharmacy for over seven months and multiple attempts were made to obtain the requested evidence. NHSE and the PAT feel this is a more than reasonable length of time for contractors to provide the evidence that is clearly stated in the service specification that contractors have a responsibility to maintain. We would also argue that even after the evidence was provided this was clearly less than what was claimed and did not meet the requirements outlined in the service specification.

4.1.76 NHS England maintains that Livesey Pharmacy was not compliant with the requirements set out in the service specification and their claims for deliveries to patients during April 2021 to March 2022 were to patients who were ineligible for this advanced service at that time. As a consequence of having then been paid for these deliveries to ineligible patients, an overpayment had been made. In addition, the NHSBSA PAT were unable to verify that the evidence provided in this appeal by the appellant were for deliveries to patients for the MDS in the months of April to July 2021 and met the requirements set out in the service specification and as such both NHSE and the PAT would consider the contractor has no basis for their appeal. The decision to then recover the £2,160.00 overpayment for self-isolating claims and £192.00 for ineligible CEV claims was then in accordance with the regulations.

4.1.77 **Key points for consideration**

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

4.1.77.2 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.

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

4.1.77.4 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.

4.1.77.5 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.

4.1.77.6 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.

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

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

4.1.77.9 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.

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

4.1.78 Having considered these matters, NHS England respectfully suggests that NHS Resolution concludes that the decision made by the PSRC in respect of the £2,352.00 overpayment recovery from Livesey Pharmacy was fair and in accordance with the regulations.

4.1.79 Please let me know of you need anything further to help in these deliberations."

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 the deliveries that are covered by the decision are those made in the period April 2021 to July 2021 inclusive. These were split into 360 deliveries to those who were self-isolating and 32 deliveries to those who were Clinically Extremely Vulnerable (CEV).

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 of 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 One of the announcements provided to me is dated 16 March 2021 and states the following:

6.14.1 *"To help provide support to people who have been notified of the need to self-isolate by Test and Trace, the Community Pharmacy Home Delivery Service and the Dispensing Doctor Home Delivery Service will be commissioned from 16 March 2021 to 30 June 2021 (inclusive) for anyone living in England who has been notified by Test and Trace to self-isolate. Upon receiving contact from Test and Trace, the individual is provided with a unique Test and Trace Account ID, which is an 8-character mix of letters and numbers.*

6.14.2 *This service is 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."*

6.15 Similarly, an announcement dated 29 September 2021 states:

6.15.1 *"To help provide support to people who have been notified of the need to self-isolate by NHS Test and Trace, the Community Pharmacy Home Delivery Service and the Dispensing Doctor Home Delivery Service will be commissioned from 1 October 2021 to 31 March 2022 (inclusive) for anyone living in England who has been notified by NHS Test and Trace to self-isolate. Upon receiving contact from NHS Test and Trace, the individual is provided with a unique NHS Test and Trace Account ID, which is an 8-character mix of letters and numbers.*

6.15.2 *This service is only available to people during their 10-day self-isolation period and who have provided their NHS Test and Trace Account ID when requesting the service."*

6.16 I do not appear to have been provided with an announcement relating to the period 1 July 2021 to 30 September 2021. However I note that there is no dispute that the Community Pharmacy Home Delivery Service was commissioned during the period April 2021 to March 2022 inclusive and that it was only available to people during their 10-day self-isolation period who had provided their NHS Test and Trace Account ID when requesting the service.

6.17 The specifications and guidance provided state:

6.17.1 *"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."*

6.18 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".*

6.19 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.

6.20 The NHS BSA has provided a timeline detailing its contact with the Appellant between 6 December 2023 and 9 July 2024, in order to request evidence that the 360 self-isolating deliveries were made to patients as detailed in the service specification. The NHS BSA states that it outlined to the Appellant that it had incorrectly claimed for deliveries to 32 CEV patients during April and May 2021. I note that the Appellant has not contested this fact, therefore, I consider that the NHS BSA should make the necessary arrangements for recovery of the monies. However, I note the Appellant's comments in relation to the change of ownership. I will consider this point in more detail following my consideration of the specific comments made regarding self-isolating patients.

6.21 I note that the service specifications state:

6.21.1 *"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."*

6.22 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 post payment verification 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 On appeal, I note the Appellant states that it has provided *"the required information"* which I note is a copy of a list of names.

6.24 I note the NHS BSA's comments in response that *"The evidence the appellant has obtained from the previous owners is a list of 127 entries of patient's names alone. The total claims made by Livesey Pharmacy - FV989 for the period equates to 360 deliveries claimed between April 2021 and July 2021 for deliveries to SI patients alongside 32 claims made for CEV patients. It does not show any Test and Trace Account ID reference number, which was a requirement for the service as stipulated in the communications circulated by the NHSE during this period".* The NHS BSA then goes on to highlight section 8 of the service specification which is quoted at 6.21.1 above and states that "*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."*

6.25 I note that the Appellant has not responded to this point nor has it provided the required information to validate the claims.

6.26 I further note the Appellant's comment that *"this process has taken considerable time due to the challenges involved in retrieving records from over three years ago"* and further that *"We would also like to highlight that both NHS and government legislation recognises the need for reasonable timeframes when retrieving historical records".*

6.27 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.

6.28 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."*

6.29 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 requirement in the specification is absolute – appropriate records must be maintained. I consider that the pharmacy should have been able to provide the necessary information for post-payment verification by the NHS BSA. I note that it has not been suggested that any records were destroyed or otherwise deleted. I further 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 nor have I been provided with an explanation of what it meant by "*NHS and government legislation"*. I consider that had the evidence required under the service specification been provided then this would have been enough to verify that claims were only made in accordance with the requirements of the service specification.

6.30 Turning to the question of the Appellant's change of ownership, I note the Appellant states that:

6.30.1 *"I am deeply disappointed to receive this letter, as the claims in question were made during a period when we did not have control of the business"*

6.30.2 *"This process has taken considerable time due to the challenges involved in retrieving records from over three years ago, particularly as they relate to a previous owner… Given the circumstances, we appreciate your understanding and request that these factors be taken into consideration in the review of our appeal."*

6.31 I consider that, as a matter of common sense, if the current pharmacy is not the one who received the overpayment then it should not be making the repayments.

6.32 I note that the NHS BSA's representations on the appeal have made a number of comments [see points 4.1.41 to 4.1.53 above] regarding ownership of the pharmacy. From these I have noted:

6.32.1 The link to a copy of the Community Pharmacy England 'Briefing: 038/18: Change of pharmacy circumstance checklist: ODS codes and planning required' dated February 2024 includes:

6.32.1.1 *"This briefing for pharmacy owners explains pharmacy ODS (F) codes and those actions needed if your pharmacy circumstances are going to change (e.g. location or ownership). Pharmacy relocation, closures or sales are subject to regulatory requirements, but this briefing focuses on mitigating IT impacts where such changes are planned. Community Pharmacy England recommends that pharmacy owners planning such changes work through all of this guide and let the relevant Integrated Care Board (ICB) know at least one month ahead of the planned date for the change and changes to it. The full transition period lasts for at least one month. The timescale above is separate from the formal notice period stated in the "notice of commencement" form . Please tick off each item as it is completed*."

6.32.2 A link to the Community Pharmacy England information sheet entitled 'Change of ownership' which includes:

6.32.2.1"A "change of ownership" for the purposes of the National Health Service (Pharmaceutical and Local Pharmaceutical Services Regulations 2013 (the Regulations) covers the situation where the legal identity of the pharmacy contractor has changed. Before a change of ownership takes place, the proposed incoming pharmacy contractor must make an application pursuant to regulation 26 of the Regulations. Unless there is good cause for delay, NHS England must determine the change of ownership application as soon as it is practicable to do so and within 30 days of the date on which all the required information and documentation was received by them (this will include fitness to practise)."

6.32.3 A link to the Chapter 19, Annex 1, Application form 'Application in respect of a change or ownership' [I note the form includes the wording referred to by the NHS BSA at point 4.1.44 to 4.1.47 above.]

6.33 I note that the NHS BSA indicates that the ODS code for the Appellant has not changed. The Appellant has not responded to this point nor has it provided any further information in respect of the change of ownership. Without evidence to the contrary, I consider that the ODS code and the Appellant are the same and therefore the Appellant is the same entity who received the overpayments.

6.34 As the Appellant has provided no observations, I consider the NHS BSA's comments to be reflective of the situation. Consequently, as the ODS code is the same I consider that the Appellant is required to make the necessary repayments in relation to the self-isolating patients and CEV deliveries.

6.35 I do note the Appellant's comment that *"we are currently facing a staff shortage and financial constraints, which have further impacted our ability to expedite this process. Despite these challenges, we have made every effort to gather the necessary documentation to support our appeal".* Whilst I sympathise with the comments made and appreciate the difficulty the Appellant had in obtaining the information that has been provided, it is clear that the information that has been provided is not the information that is required in accordance with the service specification and that the window for claiming for CEV patients ended on 31 March 2021. I therefore consider that the NHS BSA's decision to recover the overpayment is the only appropriate outcome.

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

6.37 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 the Appellant 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 £2,352.00.

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