NHS Resolution

24 June 2025

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Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

REF: SHA/26589

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM HYDE PHARMACY (FAG81) ("THE APPELLANT")

1 **Outcome**:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £22,064.00.

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

A copy of this decision is being sent to:

Hyde Pharmacy
NHS BSA on behalf of NHS England

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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM HYDE PHARMACY (FAG81) ("THE APPELLANT")

1 INTRODUCTION

1.1 The Appellant appealed the decision of NHS England to recover an overpayment relating to the New Medicine Service as part of the Pharmacy Quality Scheme.

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 10 March 2025 in respect of Hyde Pharmacy (ODS code (FAG81). The decision stated:

2.1 "**New Medicine Service - Post Payment Verification**

2.2 The Pharmacy Provider Assurance Team, part of NHS Business Services Authority (NHSBSA), have been requested by NHS England to undertake a Post Payment Verification (PPV) exercise to provide assurance that pharmacy contractors have claimed correctly for the New Medicines Service. As part of this verification exercise, your pharmacy was requested to provide New Medicines Service records for the period **October 2022** to **March 2023.**

2.3 Our records show that your pharmacy claimed a total of **788** NMS during this time, however suitable evidence was not provided by the pharmacy which means the Provider Assurance Team were not able to verify **788** of the claims made.

2.4 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.

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

2.6 HYDE PHARMACY was contacted on **12** separate occasions by the NHSBSA Provider Assurance Team to request evidence to substantiate the claim or agree to the recovery but did not receive a response or sufficient evidence.

2.7 **Having reviewed the information provided by the NHSBSA PAT, the NHS England Pharmaceutical Services Regulations Committee has decided that an overpayment in relation to your NMS 2022/23 claims has occurred and has instructed recovery of this overpayment to be progressed in accordance with**

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

2.8 The below table outlines the recovery amount, which will be recovered in **3** monthly installments.

ODS code	Recovery amount
FAG81	**-£22,064.00**

2.9 **Action Required**

2.10 Please respond to this correspondence at pharmacysupport@nhsbsa.nhs.uk to confirm your agreement for the overpayment to be recovered pursuant to Regulation 94(1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. **Please send this confirmation by 9th April 2025.** Where you agree an overpayment has been made the amount over paid will be recovered by deduction from a future NHSBSA payment to you.

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

2.12 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.

2.13 **Please be aware that failing to contact us by 9th April 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:

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

2.14 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. The NHSBSA will notify you of when the overpayment recovery will take place. A record of this process will be kept on your NHS England contractor file.

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

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

3 **THE DISPUTE**

In a letter dated 9 April 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 “With regards [sic] to the above and NHS's concerns and subsequent decision to recover payments made against the claims made for the periods stated. I would like to appeal and plead to you to reverse the decision for the following reasons.

3.2 I can categorically confirm NMS service was provided and patients have benefitted.

3.3 I can confirm that while the service was provided the full records were not made due to differential interpretations and applications of those regulations as laid down, were not followed exactly according to NHS specs due to immense pressures and constraints faced.

3.4 Reasons for (2) – Since funding cuts were being made incessantly and costs of services were going up in real and measurable terms the NHS has not been keeping up with necessary resources and has not been taking these serious concerns into consideration enough with an actionable plan instead we were told constantly to make efficiency savings and fight for survival while adding more and more services. It took the DoH more than 12 months to make an announcement on the funding situation since previous CPCF ended on the 31st of March 2024. There has already been multiple victims from both independent and multiples sectors as a result. Lloyds Pharmacy, which **WAS** the 2nd biggest pharmacy chain has completely disappeared from the high street.

3.5 PSNC has been for years tirelessly negotiating with NHS England (which the Prime Minister has now decided to dismantle completely) for many years without any success until the recent announcement for a funding increase. It has been too little too late for some.

3.6 CPCF agreement has never been to provide services at a cost to the provider. How can anyone justify such and [sic] agreement?

3.7 Hyde Pharmacy was a100 hour pharmacy (now open for 76 hours, 7 days a week.)

3.8 I knowingly and purposely get rid of as much paperwork and reduce unnecessary workload given the extreme pressures. A pharmacy like Hyde Pharmacy would otherwise have to close and there would be no like for like alternative in Hyde. It is entirely possible to tick all the boxes and pass the test so to speak. I do not like such ways. You will see that I do not therefore offer countless services and claim for it.

3.9 The evidence I supplied in the least shows there has been engagement between the pharmacy and patient and at least some of the information can be collated.

3.10 Looking at my procedures if we were to follow the specs letter by letter I can see that there has been breach of the rules. I therefore feel in my judgement there should be a breach notice rather than recovery of payment.

3.11 Recovery of payment would put the pharmacy in a detrimental position and patient access would be adversely affected. The recent funding has been a welcome uplift but having to pay back would mean the pharmacy would continue to struggle.

3.12 It would also lead to scaling back of some of the free services provided particularly to vulnerable patients as this would put pressures on essential services.

3.13 Hyde Pharmacy is the only Independent Pharmacy in Hyde and provides that personal service to the local population and added pressures would affect this position severely.

3.14 I am now reviewing all my procedures and I can already see that given the pressures at least some of the services will have to be scaled back as it would be impossible to meet the requirements.

3.15 I do hope and plead that you will reconsider and issue a breach notice instead while I suspend the NMS service pending review and re-instatement until further notice."

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 dated 16th April 2025 and the opportunity to provide representations on the appeal.

4.1.2 **Background to the New Medicines Service**

4.1.3 The New Medicine Service (NMS) forms part of the Advanced Services within the Community Pharmacy Contractual Framework (CPCF). This service provides support to all patients, with the inclusion of carers who have appropriate consent and parents/guardians of younger children, who are taking a newly prescribed medicine to manage a long-term condition (LTC). This service is intended to help them to appropriately improve their medication adherence and self-manage their LTC.

4.1.4 The NMS helps to promote multidisciplinary working between the pharmacy and the patient's GP practice in addition to any other professionals involved in their care. The service intends to promote the early identification of any issues arising from newly prescribed medicines and therefore supports patients to discuss any issues with their prescriber or pharmacist who may refer them back to their prescriber.

4.1.5 Pharmacies who take part in the scheme, must ensure that they meet minimum requirements set out in the advanced service specification. The requirements of contractors wishing to provide the New Medicine Service are set out in Annex A of this letter and in the advanced service specification.

4.1.6 **Post Payment Verification**

4.1.7 NMS claims for the 2022/23 financial year were analysed for Post Payment Verification (PPV) and 383 contractors were identified for the PPV sample. Contractors were selected for one of the following reasons:

4.1.7.1 Outliers' ones with the largest NMS claims.

4.1.7.2 Claimed 100% in the last 3 months.

4.1.7.3 Requested/Targeted – NHS England/Integrated Care Board (ICB)/Counter Fraud requests.

4.1.7.4 96 that were included in previous samples but were never asked for evidence due to 2-year retention period.

4.1.8 There were also several other pharmacies who were not outliers but were selected at random to be included in the sample.

4.1.9 After being identified for the PPV process, contractors received an initial email requesting that they provide evidence for the NMS claims made between October 2022 and March 2023, contractors were expected to provide evidence which substantiates all the claims made by the pharmacy during the claim period. If evidence is missing or duplicate claims are made, the NHSBSA (NHS Business Services Authority) is therefore unable to provide assurance to NHS England that the service is being conducted correctly and therefore is required to make a recovery of any overpayments which have been made to the contractor.

4.1.10 The NMS PPV sample for 2022 – 2023 was a period of 6 months (Oct-March) for all contractors. The PAT initially requested 3 months of evidence (Oct – Dec). Where no evidence or insufficient evidence is provided for verification, then the next 3 months of evidence (Jan – March 2023) is requested.

4.1.11 As part of the PPV process, Contractor were reminded that the evidence was being 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.

4.1.12 **Timeline**

4.1.13 FAG81, Hyde Pharmacy, were initially approached with a request to provide evidence on 7th August 2024 with a deadline of 26th August 2024 provided. Hyde Pharmacy had submitted 415 claims (between Oct-Dec 22) for payment via Manage Your Service (MYS) during the sample period for payment, therefore they were asked to provide evidence to validate the claims in question. The pharmacy was advised that the Pharmacy Provider Assurance Team (PAT) were able to accept paper consent forms which could either be scanned by the pharmacy, provided digitally, or the contractor could send these with their monthly prescription batch to be scanned by our office. If the NMS events were recorded digitally the PAT were also able to accept a report produced from the pharmacy's PMR system. As per Page 11 of the NMS service specification, section "Data collection and reporting requirements", the PAT requested that the evidence included the following information:

4.1.13.1Dates of the NMS

4.1.13.2Patient Name

4.1.13.3Patient Address

4.1.13.4Patient NHS Number

4.1.13.5Patient Date of Birth

4.1.14 PAT contacted Hyde Pharmacy on 15th August 2024 by phone to confirm that their initial email had been received. A member of the pharmacy staff informed PAT that it had not been received and gave an alternative email address of hyde.pharmacy@nhs.net to resend the email to. Please note that the initial email for all contractors is sent to the pharmacy shared NHS mail address, as requested by NHSE, and this mailbox should be monitored.

4.1.15 The initial email was forwarded to hyde.pharmacy@nhs.net on 15th August as requested by the Pharmacy staff member.

4.1.16 On 28th August 2024, a further email was sent to pharmacy.fga81@nhs.net and also hyde.pharmacy@nhs.net with the initial email attached as the original deadline of 26th August had passed and PAT had received no evidence or communication from the Contractor. A new deadline of 11th September 2024 was given to provide the required evidence.

4.1.17 PAT followed up this email with a phone call to Hyde Pharmacy on 3rd September 2024 to establish that the latest email had been received, as the Contractor had not replied at this point. The Superintendent Pharmacist, [MA] stated he had tokens to send as evidence which would be scanned and sent to PAT. Mr [A] was advised that NMS Service Specifications stated the minimum information PAT required was the date of the NMS and the name of the patient.

4.1.18 On 17th September 2024, as no further communication had been sent to PAT, a further email was sent to the Contractor. Within the email, the Contractor was reminded that PAT had been requested to carry out a PPV by NHSE and despite several attempts, the Pharmacy had not provided any evidence to support their NMS claims for October to December 2023.

4.1.19 The Pharmacy were made aware that at that stage, they had failed to provide the requested information, and this would lead to them being referred to their ICB for consideration of a breach of the Terms of Service, which may then result in a breach notice being issued. The Pharmacy were also notified that any further non engagement would also potentially lead to information on the case being provided to Pharmaceutical Services Regulations Committee (PSRC) of their ICB, for consideration as to whether they had failed to deliver their Terms of Service, pursuant to Schedule 4 Part 4 paragraph 35 (4) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. Where necessary, PSRC could also consider whether any further action is needed.

4.1.20 A timeline of correspondence with the Pharmacy (which was due to be referred to their ICB) was attached and the Contractor was asked to review the timeline and email and respond to PAT no later than 1st October 2024.

4.1.21 PAT contacted Hyde Pharmacy on 24th September 2024 by phone to confirm the most recent email had been received by the Pharmacy. Mr [A], informed PAT he had the evidence scanned and ready to send but had been very busy. Mr [A] informed the PAT that he would send the evidence in 'the next few days.' PAT clarified the details of the most recent email sent to Hyde Pharmacy and the implications of the ICB breach notice, emphasising that the deadline to respond was 1st October 2024.

4.1.22 On 6th October 2024, Mr [A] sent a series of five emails containing 295 PDF images of EPS tokens and a further 39 forms (green prescriptions and white forms). Mr [A] also stated in the email that "'*Please note that we operate a manual system in order to maintain efficiency as is expected. We have no further paperwork available."*

4.1.23 The images relate to the time period October to December 2023

4.1.24 [Image of a piece evidence (a prescription) received from Hyde Pharmacy]

4.1.25 PAT contacted Hyde Pharmacy via email on 26th September 2024 thanking them for the documents they had sent as evidence and advised that a summary of findings would be provided in due course. Additionally, PAT would contact the Pharmacy if clarification or additional evidence was required.

4.1.26 Following a review of the evidence supplied by Hyde Pharmacy PAT determined that EPS Tokens were an unsuitable form of evidence as the image included the name of a patient, but no date of NMS, and therefore the minimum required information, was not evident.

4.1.27 PAT sent an email to the Contractor acknowledging the previous comment that they operate a 'manual system 'with no other paperwork relating to their NMS claims, but stating that the EPS tokens provided were unsuitable evidence and asked the Pharmacy to provide additional evidence for the time period of January 2023 to March 2023. A Patient Medication Record (PMR) report was suggested as an alternative.

4.1.28 Following a lack of response from the Pharmacy, the email was also forwarded to the alternative email address hyde.pharmacy@nhs.net. The contractor had already been reminded previously that their NHS shared mailbox should be monitored.

4.1.29 Without a reply from Hyde Pharmacy, PAT made an additional call on 3rd December 2024, and spoke to Mr [A], who reiterated that the only evidence he had for the NMS claims had already been sent to the PAT and that he operated a 'manual service'. Mr [A] went on to explain in length that he had 'neither the time nor the resource to do what NHSE require' He further stated at this stage that he had no evidence at all and records the NMS engagements but has no 'spreadsheet' to provide. Mr [A] declared that the system 'doesn't work' and is 'not fit for purpose'.

4.1.30 Mr [A] believed he made 'a loss from NHS services' and was 'happy' to not offer this service again and asked the PAT to Inform NHSE of this decision. Mr [A] believed he had already explained this on a call to someone, however PAT believes this was the first time these details had been discussed.

4.1.31 PAT informed Mr [A] that with no evidence provided, the details of the case for FAG81 – Hyde Pharmacy would now be referred to PSRC and they would review the case with the NHSBSA making a recommendation that they had been unable to verify the NMS claims, and that any overpayment should therefore be recovered. Mr [A] concluded by asking if this could happen as soon as possible so he can 'stop providing the service' and knows 'where he stands and if he has to close the Pharmacy'.

4.1.32 PAT sent an email to the Contractor on 5th December 2024 with a timeline of correspondence attached, outlining the case that was due to be referred to PSRC for review. The contractor was given until 19th December 2024 to provide PAT with any evidence or representation which he wished to be added to the timeline to help PSRC makes its decision. The Contractor was also given the option to confirm an overpayment had been made if they believed the pharmacy had inadvertently claimed for NMS incorrectly. PAT received no further evidence or representations from the Contractor by the required date.

4.1.33 The case was referred to PSRC 21st January 2025.

4.1.34 **Pharmaceutical Services Regulations Committee (PSRC) Decision**

4.1.35 To assist with their review, the PSRC was provided with the NMS service specification, a summary of PAT's PPV procedure, along with 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 representation.

4.1.36 Consequently, the PSRC discussed the request and concluded that the NHSBSA had not received any evidence to verify the claims made. As a result, on 3rd March 2025 the PSRC issued their decision, determining that the pharmacy was not entitled to the full payment previously received, and instructed that the amount owed be recovered. However, PSRC noted the communications between the Contractor and PAT and the issue raised by the Contractor and consequently requested the reclaim was taken over a number of months rather than a single instalment.

4.1.37 PSRC contacted PAT to enquire about potential options for the recovery of the overpayment. PAT explained that a three-month payment plan would be offered in the first instance and only a six-month plan would be offered as an alternative. PSRC directed PAT to offer a three-month plan initially but to allow a six-month repayment plan if the Contractor requested it.

4.1.38 Payment plans are offered by PAT; however, the plan lengths are linked to the potential size of the recovery and prescription volume and have been agreed in advance with NHS England.

4.1.39 **Response to the contractor's appeal**

4.1.40 Hyde Pharmacy give a number of reasons for their appeal; however, it appears they base them on 3 key factors:

4.1.40.1 Stating that although the service was carried out, the contractor only keeps a 'manual system' of record keeping.

4.1.40.2 Lack of time and resource to maintain the necessary documentation in line with the service specification.

4.1.40.3 Pharmacy funding pressures and stating that the recovery of the overpayment would impact the Pharmacy.

4.1.41 In their appeal the contractor states *"I can categorically confirm NMS service was provided and patients have benefitted"*. While the PAT do not dispute that the pharmacy was offering the NMS at this time, assurance activities are conducted on behalf of NHSE to verify that pharmacy contractors are delivering services correctly and maintaining appropriate evidence to support their claims, which in turn ensures value for taxpayers' money. Without this evidence, the PAT are unable to verify that the service has been carried out correctly.

4.1.42 In the case of the NMS, claims may be deemed incorrect or unsuitable if they do not align with the service specification. To facilitate in verifying this process, PAT requests evidence from contractors, as outlined in the service specification, which also requires this evidence to be shared as part of any Post Payment Verification exercise.

4.1.43 As shown above, the PAT were unable to unable to verify the contractor due either unsuitable or no evidence being submitted for any of the requested months.

4.1.44 The Appellant admits in their appeal that "*while the service was provided the full records were not made due to differential interpretations and applications of those regulations as laid down, were not followed exactly according to NHS specs due to immense pressures and constraints faced".*

4.1.45 Throughout the process, the Contractor neglected to expand on the details of his 'manual system' used to record NMS, and when PAT enquired during a phone call if Mr [A] could provide an Excel document or similar, the Contractor replied that he had no 'spreadsheet' to send and has since admitted that "*I knowingly and purposely get rid of as much paperwork and reduce unnecessary workload given the extreme pressures A pharmacy like Hyde Pharmacy would otherwise have to close…"*

4.1.46 It is a contractor's responsibility to retain records and be able to provide them for PPV purposes for services including NMS. Without appropriate evidence the PAT have unable to verify that the NMS had been carried out in accordance with the service specification.

4.1.47 Although the appellant explained they operate a system whereby no paper-based evidence other than copies of EPS tokens is available, the PAT outlined in several emails that a wide range and formats of evidence including digital forms (PMR reports) are acceptable as evidence.

4.1.48 The Drug Tariff states that pharmacies are required to keep records for advanced services such as NMS for a least a full 2-year period. As outlined in the service specification, contractors are obligated to provide evidence of all claims that they have available upon request. Retention of records helps to support the ongoing provision of the service to patients, their future care and any audit of the service.

4.1.49 The Appellant goes on to advise that "*The evidence I supplied in the least shows there has been engagement between the pharmacy and patient and at least some of the information can be collated"*.

4.1.50 The only evidence provided by the contractor was in the form of EPS tokens and did not include the minimum information required to be able to verify the NMS claims for the Pharmacy. The Patient details were on the EPS token, however there was no date of NMS and a sticker on said form merely stated '*This patient MAY be a suitable candidate for NMS due to being dispensed the following product'*, which does not confirm any patient consent to enter into the NMS service or engagement with the pharmacy and there is no confirmation on the EPS Tokens that the NMS service was completed. Contractors should only claim for an NMS when it has been completed.

4.1.51 Furthermore, the EPS tokens provided were for the incorrect time period of October to December 2023. The PAT PPV initial email requested evidence from October to December 2022. The additional evidence was for January to March 2023. At no point did the PAT request evidence from October to December 2023.

4.1.52 The Appellant stated in a phone call that he 'refused'' to complete the documentation that NHSE require and stated a lack of time and resource within the Pharmacy to be able to do so.

4.1.53 PAT quoted the Service Specifications on several occasions in emails to the Pharmacy and reiterated that 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*.

4.1.54 During the NMS PPV, the PAT worked with the Contractor and allowed for multiple deadline extensions to enable them to submit their evidence. Subsequently PAT firmly believe that a fair and consistent approach was

employed, the Contractor had ample notice and was aware of the process they were being asked to undertake.

4.1.55 The Appellant expresses the view that *"Looking at my procedures if we were to follow the specs letter by letter I can see that there has been breach of the rules. I therefore feel in my judgement there should be a breach notice rather than recovery of payment".*

4.1.56 PAT undertake the PPV task to provide assurance that services have been provided correctly and where assurance cannot be provided the details of the case are sent to PSRC for review, and determination as to whether an overpayment has been made, and that this overpayment should be recovered pursuant to Regulation 94(1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. PAT do not make the decision to recover any overpayments or to issue breach notices etc.

4.1.57 Hyde Pharmacy were initially slow to submit their evidence and whilst they took several phone calls from PAT, didn't fully engage with PAT until after a breach notice email had been sent from their ICB. Evidence was eventually sent to PAT six weeks after the initial request via email.

4.1.58 Although PAT appreciates that Pharmacies are busy and have potentially numerous services to provide, the NMS PPV service specification states that only minimal information is requested, **(**including: dates of the NMS; patient name; patient address; patient NHS number and patient date of birth).

4.1.59 As there was a lack of sufficient evidence provided by the pharmacy, the PAT had no choice but to refer the case to PSRC, who subsequently decided that an overpayment had been made and should be recovered.

4.1.60 The Appellant explains that *"Recovery of payment would put the pharmacy in a detrimental position and patient access would be adversely affected. The recent funding has been a welcome uplift but having to pay back would mean the pharmacy would continue to struggle."*

4.1.61 Following a review of the case details for Hyde Pharmacy PSRC informed PAT that *'It was noted the communication between the caseworker and the Contractor and whilst the decision has been made to approve the PPV reclaim it was asked if it would be possible to do this over a number of months rather than a single reclaim due to the amount of the reclaim and the issues raised by the Contractor with regards to their financial instability'.*

4.1.62 PAT issued an email following the instruction from PSRC and Hyde Pharmacy were offered a three-month payment plan and were also given the opportunity to discuss an alternative approach to the recovery. The Pharmacy failed to respond to the email within the deadline.

4.1.63 The Appellant requests that PAT *"*issue *a breach notice instead while I suspend the NMS service pending review and re-instatement until further notice"* despite claiming during phone calls that the pharmacy had already stopped providing the service.

4.1.64 As already stated, it is not within the remit of PAT to make decisions of this nature. However, the NMS PPV sample for 2022 – 2023 was a period of 6 months (Oct-March) for all contractors involved however, with the process being streamlined to ease pressure on contractors. The PAT initially requested 3 months of evidence (Oct – Dec) and if the NMS claimed could be verified

then it is assumed that records would be available for the full six months and so no further investigation is undertaken. However, where no evidence or insufficient evidence was provided for verification, then the next 3 months of evidence (Jan – March) was requested. The contractor was given the opportunity to provide both sets of evidence which they failed to do. As there was no evidence provided, the NHSBSA was obliged to refer the case to PSRC for them to determine. The NHSBSA PAT and NHSE, do not deem a lack of acceptable evidence as a reason to not recover the overpayment. However the final decision sits with PSRC.

4.1.65 **Key points for consideration**

4.1.66 We respectfully ask that NHS Resolution considers the following key points when making its determination on the appeal:

4.1.67 The contractor was provided with many opportunities and ample time between to deliver evidence between August 2024 and November 2024.

4.1.68 The Contractor refused to comply with the NMS Specifications and guidelines.

4.1.69 PAT demonstrated multiple examples of co-operation with the pharmacy including multiple calls and emails and extensions of deadlines.

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

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

4.1.72 The PAT and NHSE do not agree that insufficient and unsuitable evidence is an acceptable reason to not recover the overpayment, and the PAT are unable to assure NHSE the service has been claimed and delivered in accordance with the service specification.

4.1.73 Having carefully considered these matters, the NHS Business Services Authority Provider Assurance Team respectfully recommends that NHS Resolution uphold the PSRC's decision regarding the recovery of the £22,064.00 NMS overpayment from Hyde Pharmacy in three instalments, as it was fair and compliant with the applicable regulations."

4.1.74 [The Commissioner provided a copy of the timeline referred to above which included links to previous communications with the Appellant.]

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 note the NHS BSA's representations on appeal include the following undisputed background points to the New Medicines Service:

6.8 *"The New Medicine Service (NMS) forms part of the Advanced Services within the Community Pharmacy Contractual Framework (CPCF). This service provides support to all patients, with the inclusion of carers who have appropriate consent and parents/guardians of younger children, who are taking a newly prescribed medicine to manage a long-term condition (LTC). Therefore, helping them to appropriately improve their medication adherence and self-manage their LTC.*

6.9 *The NMS helps to promote multidisciplinary working between the pharmacy, the patient's GP practice in addition to any other professionals involved in their care. The service intends to promote the early identification of any issues arising from newly prescribed medicines and therefore supports patients to discuss any issues with their prescriber or pharmacist who may refer them back to their prescriber.*

6.10 *Pharmacies who take part in the scheme, must ensure that they meet minimum requirements set out in the advanced service specification."*

6.11 Further, regarding the scheme, the NHS BSA's representations include: "*After being identified for the PPV process, contractors received an initial email requesting that they provide evidence for the NMS claims made between October 2022 and March 2023. Contractors are expected to provide evidence which substantiates all of the claims made by the pharmacy during the claim period. If evidence is missing or duplicate*

claims are made, the NHSBSA (NHS Business Services Authority) is unable to provide assurance to NHS England that the service is being conducted correctly and therefore is required to make a recovery of any overpayments which have been made to the contractor."

6.12 The NHS BSA has provided a copy of the timeline showing a number of communications between the parties between 7 August 2024 and 31 March 2025. The timeline includes copy emails and reminders that were sent to the Appellant as well as confirmation of the email addresses that were used and delivery receipts have also been provided. There is no dispute between the parties that these were sent electronically and to the premises specific email account as set out in the Regulations. In addition, I note that following various telephone calls with the Appellant and members of their pharmacy team, emails were also sent to alternative email addresses.

6.13 Given the detailed timeline, I am satisfied that the parties had engaged with each other regarding the matter in dispute although no agreement was reached.

6.14 The Appellant seeks to appeal against the decision of NHS England that an overpayment has occurred and to recover the sum of £22,064.

6.15 I note that I have been provided by the NHS BSA with a copy of the service specification, version 1.0 which is dated September 2021 and is titled "Advanced Service Specification – NHS New Medicine Service (NMS)" ("the specification") as well as a copy of the "Annex A" with the NHS BSA's representations, which sets out the requirements of contractors who wished to provide the NMS. I note that there is no dispute between the parties that this specification applies and that the Appellant signed up to the service as set out in the specification.

6.16 Point 26 on page 14 of the specification states:

"Contractors must report the following data (collated from their clinical records for the service) on a quarterly basis to the NHSBSA. The NHSBSA collect this data on behalf of NHS England and NHS Improvement and the process for submitting the data is described on the NHSBSA website. Contractors must submit the data to the NHSBSA within 10 working days from the last day of the quarter the data refers to (last day of June, September, December, and March)."

6.17 It is clear therefore that the NHS BSA, for its calculation of payments for the NMS service, relies on data provided by pharmacies.

6.18 Page 15 of the specification states:

"27. Claims for payments for this service should be made monthly to the NHS Business Services Authority, in accordance with the usual Drug Tariff claims process.

28. A payment will be made in line with the Drug Tariff determination for the service based on the total number of completed NMS provisions claimed in the month."

6.19 Claims made by the Appellant in line with the above, are subject to 'Post Payment Verification.' The NHS BSA made the following comments in their representations on appeal outlining the 'triggers' for the process and reasons why the Appellant's pharmacy (among several others) met that criteria.

"*NMS claims for the 2022/23 financial year were analysed for Post Payment Verification (PPV) and 383 contractors were identified for the PPV sample. Contractors were selected for one of the following reasons:*

1. *Outliers' ones with the largest NMS claims*
2. *Claimed 100% in the last 3 months*
3. *Requested/Targeted – ICB/Counter Fraud requests*
4. *96 that were included in previous samples but were never asked for evidence due to 2-year retention period….*

FAG81, Hyde Pharmacy, were initially approached with a request to provide evidence on 7th August 2024 with a deadline of 26th August 2024 provided. Hyde Pharmacy had submitted 415 claims (between Oct-Dec 22) for payment via Manage Your Service (MYS) during the sample period for payment; therefore they were asked to provide evidence to validate the claims in question."

6.20 The Appellant was initially asked to provide evidence to validate the 415 claims made between October 2022 and December 2022.

6.21 I note the comments from the NHS BSA that "*The pharmacy was advised that the Pharmacy Provider Assurance Team (PAT) were able to accept paper consent forms which could either be scanned by the pharmacy, provided digitally, or the contractor could send these with their monthly prescription batch to be scanned by our office. If the NMS events were recorded digitally the PAT were also able to accept a report produced from the pharmacy's PMR system."*

6.22 As per page 11 of the specification, section "Data collection and reporting requirements" the NHS BSA requested that the Appellant provide the following information:

6.22.1 Dates of the NMS;

6.22.2 Patient Name;

6.22.3 Patient Address;

6.22.4 Patient NHS Number; and

6.22.5 Patient Date of Birth

6.23 I note that the original deadline of 26 August 2024 to provide this information was extended to 11 September 2024 to allow the Appellant more time to gather the relevant information.

6.24 It was not until 6 October 2024, after further follow up emails from the NHS BSA, that the Appellant provided *"a series of five emails containing 295 PDF images of EPS tokens and a further 39 forms (green prescriptions and white forms). Mr [A] also stated in the email that "'Please note that we operate a manual system in order to maintain efficiency as is expected. We have no further paperwork available.""*

6.25 The NHS BSA states that *"Following a review of the evidence supplied by Hyde Pharmacy PAT determined that EPS Tokens were an unsuitable form of evidence as the image included the name of a patient, but no date of NMS, and therefore the minimum required information, was not evident.*

6.26 *PAT sent an email to the Contractor acknowledging the previous comment that they operate a 'manual system 'with no other paperwork relating to their NMS claims, but stating that the EPS tokens provided were unsuitable evidence and asked the Pharmacy to provide additional evidence for the time period of January 2023 to March 2023. A Patient Medication Record (PMR) report was suggested as an alternative.*

6.27 *PAT made an additional call on 3rd December 2024, and spoke to Mr [A], who reiterated that the only evidence he had for the NMS claims had already been sent to the PAT and that he operated a 'manual service'. Mr [A] went on to explain in length that he had 'neither the time nor the resource to do what NHSE require' He further stated at this stage that he had no evidence at all and records the NMS engagements but has no 'spreadsheet' to provide. Mr [A] declared that the system 'doesn't work' and is 'not fit for purpose'.*

6.28 *Mr [A] believed he made 'a loss from NHS services' and was 'happy' to not offer this service again and asked the PAT to Inform NHSE of this decision. Mr Ali believed he had already explained this on a call to someone, however PAT believes this was the first time these details had been discussed.*

6.29 *PAT informed Mr [A] that with no evidence provided, the details of the case for FAG81 – Hyde Pharmacy would now be referred to PSRC and they would review the case with the NHSBSA making a recommendation that they had been unable to verify the NMS claims, and that any overpayment should therefore be recovered. Mr [A] concluded by asking if this could happen as soon as possible so he can 'stop providing the service' and knows 'where he stands and if he has to close the Pharmacy'.*

6.30 *PAT sent an email to the Contractor on 5th December 2024 with a timeline of correspondence attached, outlining the case that was due to be referred to PSRC for review. The contractor was given until 19th December 2024 to provide PAT with any evidence or representation which he wished to be added to the timeline to help PSRC makes its decision. The Contractor was also given the option to confirm an overpayment had been made if they believed the pharmacy had inadvertently claimed for NMS incorrectly. PAT received no further evidence or representations from the Contractor by the required date*."

6.31 I note the case was referred to the PSRC on 21 January 2025 who concluded that the NHS BSA had not received any evidence to verify the claims made. As a result, on 3 March 2025, the PSRC issued their decision, determining that the pharmacy was not entitled to the full payment previously received, and instructed that the amount owed be recovered.

6.32 In its appeal, the Appellant contends that the "*NMS service was provided and patients have benefitted*."

6.33 The Appellant continues that *"while the service was provided full records were not made due to the differential interpretations and applications of those regulations as laid down, were not followed exactly according to NHS specs due to immense pressures and constraints faced.*"

6.34 I note in its representations, the NHS BSA states *"While the PAT do not dispute that the pharmacy was offering the NMS at this time, assurance activities are conducted on behalf of NHSE to verify that pharmacy contractors are delivering services correctly and maintaining appropriate evidence to support their claims, which in turn ensures value for taxpayers' money. Without this evidence, the PAT are unable to verify that the service has been carried out correctly."*

6.35 In order to qualify for payment, specific data as referred to at paragraph 6.22 above, needed to be submitted upon request. Whilst I am sympathetic to the pressures the Appellant is under, I note that sign up to provide the service is voluntary. Therefore by signing up to participate in the scheme the Appellant should have been aware of what it would entail and should have been able to keep the information accordingly.

6.36 The Appellant states that it *"knowingly and purposely get rid of as much paperwork and reduce unnecessary workload given the extreme pressures."*

6.37 However I note the NHS BSA's undisputed comments that the *"Drug Tariff states that pharmacies are required to keep records for advanced services such as NMS for a least a full 2-year period. As outlined in the specification, contractors are obligated to provide evidence of all claims that they have available upon request. Retention of records helps to support the ongoing provision of the service to patients, their future care and any audit of the service."* I note the Appellant was initially contacted on 7 August 2024 to provide evidence for the NMS claims that were made between the time period of October 2022 and December 2022. Therefore had a two year retention period been in place, as is required by the Drug Tariff, the Appellant would have been able to submit that evidence to the Commissioner upon request.

6.38 The Appellant further states that *"The evidence I supplied in the least shows there has been engagement between the pharmacy and patient and at least some of the information can be collated."*

6.39 The NHS BSA comments that "*the only evidence provided by the contractor was in the form of EPS tokens and did not include the minimum information required to be able to verify the NMS claims for the Pharmacy. The Patient details were on the EPS token, however there was no date of NMS and a sticker on said form merely stated 'This patient MAY be a suitable candidate for NMS due to being dispensed the following product', which does not confirm any patient consent to enter into the NMS service or engagement with the pharmacy and there is no confirmation on the EPS Tokens that the NMS service was completed. Contractors should only claim for an NMS when it has been completed.*

6.40 *Furthermore, the EPS tokens provided were for the incorrect time period of October to December 2023. The PAT PPV initial email requested evidence from October to December 2022. The additional evidence was for January to March 2023. At no point did the PAT request evidence from October to December 2023."*

6.41 I note the information provided by the Appellant to the NHS BSA was not sufficient to substantiate the 788 claims made. Further on appeal, the Appellant has not provided any further information upon which it could reasonably rely upon to demonstrate compliance with the specification.

6.42 I note from the information before me that there is no dispute from the Appellant that they are not able to provide the information as requested and set out in the specification.

6.43 In these circumstances, I am of the view, given that the Appellant has been unable to provide sufficient records for those patients who utilised the NMS service, that the Appellant does not qualify for payment in line with the specification.

6.44 I note the Appellant requests that a breach notice is issued, as opposed to a recovery of overpayment. The Appellant states that "*Looking at my procedures if we were to follow the specs letter by letter I can see that there has been breach of the rules. I therefore feel in my judgement there should be a breach notice rather than recovery of payment."*

6.45 Notwithstanding any potential breach, I am directed to consider the appeal in line with Regulation 94 of the Regulations and I have concluded that the Appellant does not qualify for payment. The NHS BSA is entitled to recover the overpayment.

6.46 Finally the Appellant states that "*Recovery of payment would put the pharmacy in a detrimental position and patient access would be adversely affected. The recent funding has been a welcome uplift but having to pay back would mean the pharmacy would continue to struggle.*

6.47 *It would also lead to scaling back of some of the free services provided particularly to vulnerable patients as this would put pressures on essential services."*

6.48 I note that the NHS BSA offered the Appellant a repayment plan of three months, however from the information provided, it does not appear as though the Appellant responded to this offer. In its representations, the NHS BSA also refers to the possibility of a six month repayment plan if a contractor requests it. Therefore I consider it appropriate for the NHS BSA and the Appellant to engage further to discuss any repayment plans.

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 £22,064.00.

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