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24 July 2025

REF: SHA/26622

APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM SUTTON CHASE LTD (FEM69) ("THE APPELLANT")

1 **Outcome**:

1.1 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £1,872.00.

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:

Sutton Chase Ltd t/a Alwoodley Pharmacy
NHS BSA on behalf of NHS England

8th Floor
10 South Colonnade
Canary Wharf
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APPEAL AGAINST NHS ENGLAND DECISION TO RECOVER AN OVERPAYMENT FROM SUTTON CHASE LTD (FEM69) ("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 29 April 2025 in respect of Alwoodley Pharmacy (ODS code FEM69). The decision stated:

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

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

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

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

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

2.6 **To date your pharmacy has not provided any reasoning to demonstrate that the Medicines Delivery Service claims made during this time met the requirements set out in the service specification. i.e. that these claims for deliveries were to**

self-isolating patients. Therefore, the PAT are unable to verify that these claims were for deliveries to eligible patients. This is despite several attempts made by the NHSBSA Pharmacy Provider Assurance Team.

2.7 Attached is a timeline of correspondence with your pharmacy to date which was passed to the NHS England local Pharmaceutical Services Regulations Committee (PSRC) to consider whether further action was necessary.

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

2.8.1 FEM69 – SUTTON CHASE LTD claimed **312 Clinically Extremely Vulnerable** deliveries for the Medicines Delivery Service in the months of April 2021 to July 2021.

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

2.8.3 SUTTON CHASE LTD was contacted on 7 separate occasions by the NHSBSA Provider Assurance Team to request their reasoning which demonstrates that the Medicines Delivery Service claims made during this time met the requirements set out in the service specification.

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

2.10 The table below outlines the monthly Medicines Delivery Service claims reimbursed to your pharmacy – SUTTON CHASE LTD – FEM69 in the months of April 2021 to July 2021 for your CEV patients, along with the associated recovery value:

	April 2021	May 2021	June 2021	July 2021	Total
CEV claims paid	145	167	N/A	N/A	312

2.11 Subsequently this has resulted in the following overpayment:

2.12 312 CEV claims paid x £6.00 **= £1,872.00**

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

2.14 312 CEV claims paid x £6.00 **= £1,872.00**

2.15 **Total value to be recovered = £1,872.00 deduction**.

2.16 **Action Required**

2.17 1. 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 29th May 2025.**

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

2.19 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by 29th May 2025.

2.20 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.

2.21 2. **Please be aware that failing to contact us by 29th May 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:

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

2.23 3. 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.

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

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

2.26 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.

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

2.28 Your co-operation is very much appreciated."

3 THE DISPUTE

In a letter dated 27 May 2025 addressed to NHS Resolution, the Appellant appealed against NHS England's decision. The grounds of appeal are:

3.1 "In an email dated 29th April 2025, NHSBSA on behalf of NHS England, stated that it will deduct £1,872 from this pharmacy's NHS account for the pandemic delivery service undertaken to clinically extremely vulnerable patients in April and May 2021 who had tested positive, were isolating and had provided their test and trace identity number.

3.2 We wish to appeal this decision. We consider it unreasonable to be undertaking post payment verification so long after the service has been claimed for.

3.3 We engaged fully with the process and provided evidence, downloaded from the NHSBSA's own website, showing the significant drop in claims from April 2021, as would be expected with the change in the service specification from this date. However, this evidence was disregarded.

3.4 The first request for post payment verification evidence came from the NHSBSA on 5th September 2024, ie nearly three and a half years from the time of the claim. We explained to the NHSBSA that we no longer had any paper records of deliveries from that time and could no longer supply the evidence that each delivery was made to a patient who was extremely clinically vulnerable, had tested positive under the test and trace scheme and had provided their test and trace identity number.

3.5 We explained that the service specification did not specify a timescale for retaining records and that we had retained them for two years and discarded them.

3.6 Without anything stated in the service specification about the retention of records, other resources needed to be used. The main national source of advice for advice for retention of records for NHS services, for pharmacy teams in hospital and community pharmacy is the NHS Specialist Pharmacy Service (SPS) website available at www.sps.nhs.uk

3.7 NHS SPS has a webpage dedicated to the retention of records within community pharmacy which is available at

3.8 https://www.sps.nhs.uk/articles/additional-services-records-in-community-pharmacy/

3.9 This NHS webpage outlines how long to retain records for and includes nearly all current and historic advanced services such as:

3.9.1 AURs - 1 year

3.9.2 MURs - 2 years

3.9.3 NMS - 2 years

3.9.4 CPCS - 2 years

3.9.5 Stoma appliance customisation - 1 year

3.10 The SPS website makes no specific mention about the pandemic delivery service but does say this under "Other records":

3.11 "**Other records**

Unique record

Yes this is likely to be the only record.

Reason for keeping

Keep for audit purposes.

Minimum period

Retain for 2 years.

Comment

This recommendation applies to any other **paper records** pertaining to individual patient care in community pharmacy not covered elsewhere in this resource."

3.12 Despite this clear guidance from the NHS SPS to retain records for two years for audit purposes, the NHSBSA and NHS England appear to have expected us to have retained paper records of deliveries, from the time of the pandemic, for an unknown and undefined lengthy period.

3.13 We are willing to help with any reasonable post payment verification (PPV) request but this request was unreasonable and inappropriate to ask for after nearly three and a half years from the deliveries during the pandemic. No clear reason has been given by NHSBSA why they waited so long to undertake PPV.

3.14 We request that the decision sent by NHSBSA on behalf of NHS England be quashed and overturned."

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:

4.2 "Thank you for your letter of the 3rd June 2025 and the opportunity to provide representations on the appeal.

4.3 **Background**

4.4 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.

4.5 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'.

4.6 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.

4.7 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.

4.8 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."

4.9 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/.

4.10 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.

4.11 **April 2021 to July 2021 March 2022 claims**

4.12 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.

4.13 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.

4.14 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/.

4.15 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.

4.16 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.

4.17 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.

4.18 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.

4.19 However, this did lead to the situation whereby for the months of April 2021 and May 2021, contractors were paid for those ineligible patient claims. Subsequently, NHSBSA PAT were requested to recover the identified CEV claims, as there was no regulation to allow payments for patients who were ineligible for the service.

4.20 In the Post Payment Verification (PPV) exercise undertaken by the NHSBSA PAT, FEM69 – Alwoodley Pharmacy were contacted on seven occasions between 5th September 2024 and 4th December 2024 to outline that the 312 CEV claims made between April 2021 and July 2021 were for deliveries made to ineligible patients' as the ability to claim for CEV patients under the MDS had ended in March 2021 and from that point only self-isolating patients in response to a positive Covid test were eligible for the service, as specified in the NHSE service announcements.

4.21 Emails were sent to the pharmacy shared NHS mail address, pharmacy.fem69@nhs.net as required by NHSE and later during our communication emails were also sent to XXX. 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.

4.22 During the appellant's initial correspondence, they advised '*as you have requested audit information, dating back over 3 years, it is no longer possible to send you the verification that you require. This is because we have followed the requirements of the service to follow our Information Governance SOP and destroy records over 2 years old.'* The appellant also stated that they did not consent to any deductions of overpayments so long after the service occurred.

4.23 During the correspondence with the appellant over the course of the PPV exercise the NHSBSA PAT sent several emails clarifying that the claims submitted for payment at the time were ineligible due to eligibility for CEV patients ended on the 31st March 2021 and therefore claims for deliveries to these patients after this date no longer qualified for a MDS payment. Stating that it was a requirement of the service specification 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 PPV purposes.

4.24 The NHSBSA also acknowledged that the service specification did not advise of how long contractors were required to keep evidence for PPV purposes. However, in other Advanced Services such as the Blood Pressure Checking Service (BPCS), records are required to be kept for at least 3 years. It is therefore clear that records would be required to be retained for longer than two years.

4.25 The appellant did provide reasoning in support of the claims made at the time however this did not validate their claims as it did not demonstrate that the claims were made to eligible patients self-isolating who had provided their Test and Trace ID reference number when requesting the service and therefore were eligible for the service from April 2021 onwards.

4.26 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.

4.27 As the NHSBSA PAT have been unable to validate the deliveries claimed by the pharmacy during this time, the details of the case were passed to the NHS England regional team for their Pharmacy Services Regulations Committee (PSRC) to review. 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.

4.28 **The PSRC decision**

4.29 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.

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

4.31 Consequently, the PSRC concluded that the NHSBSA had been unable to find any reasoning to demonstrate that the 312 deliveries claimed for CEV patients by the contractor met the requirements set out in the service specification and therefore the claims made in April 2021/May 2021 were incorrectly claimed as the patients were no longer eligible.

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

4.33 Having made this decision, the PSRC then directed that Alwoodley Pharmacy was not entitled to the payment and the overpayment should be reclaimed pursuant to Regulation 94 (1) (a) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.34 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 reasoning of how the Medicine Delivery Service claims made for April 2021 to July 2021 met the requirements set out in the service specification.

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

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

4.37 *'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.'*

4.38 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.

4.39 The appellant stated in their appeal *'In an email dated 29th April 2025, NHSBSA on behalf of NHS England, stated that it will deduct £1,872 from this pharmacy's NHS account for the pandemic delivery service undertaken to clinically extremely vulnerable patients in April and May 2021 who had tested positive, were isolating and had provided their test and trace identity number.'*

4.40 To clarify the Post Payment Verification (PPV) exercise undertaken by the NHSBSA Provider Assurance Team (PAT) on behalf of NHS England (NHSE) was to provide assurance that pharmacy contractors have claimed correctly for the Medicines Delivery Service (MDS).

4.41 In the months of April 2021 to July 2021 the 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.

4.42 Alwoodley Pharmacy had been identified as being a pharmacy contractor who continued to claim between April and July 2021 for CEV patients, despite this cohort of patients no longer being eligible for the service during this time period. FEM69 - Alwoodley Pharmacy had claimed for deliveries to CEV patients between April 2021 and July 2021, therefore as deliveries to these patients after the 31st March 2021 no longer qualified for an MDS fee this resulted in the following overpayment: 312 CEV claims paid x £6.00 = £1,872.00.

4.43 It was further stated by the appellant '*We engaged fully with the process and provided evidence, downloaded from the NHSBSA's own website, showing the significant drop in claims from April 2021, as would be expected with the change in the service specification from this date. However, this evidence was disregarded*.'

4.44 Alwoodley Pharmacy did provide information in an email dated the 11th November 2024 that they had checked their Manage Your Service (MYS) records and advised '*the data submitted via MYS you can see that the number of claims dropped significantly in the two months in question when compared to the two months previously.'* The data showed their claims as follows:

4.45 Feb-21 204
Mar-21 246
Apr-21 145
May-21 167

4.46 Alwoodley Pharmacy's data which had been submitted at the time via the MYS portal matched that held by the NHSBSA PAT, showing that in the month of April 2021 145 claims had been submitted for payment and 167 claims in May 2021.

4.47 Payments for deliveries to CEV patients were no longer automatically paid after May 2021, although the pharmacy continued to submit MDS CEV claims from June 2021 until the end of February 2022 (shown in table 1 below along with the national monthly averages for MDS). The pharmacy claimed for a total of 1,368 deliveries to CEV patients after May 2021, to the value of £8,208.00, which the pharmacy did not receive

payment for. This suggests that Alwoodley Pharmacy were unaware that this cohort of patients was no longer eligible and continued to perform deliveries to them under MDS.

4.48 *Table 1 – FEM69 – CEV claims (Paid claims in green)*

	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22
CEV claims	145	167	199	181	165	184	152	161	192	N/A	134	N/A
National Monthly Average Claims for MDS	87.36	72.03	28.07	19.79	26.1	26.8	27.22	29.41	29.76	25.02	27.41	19.17

4.49 It should also be noted that although after the month of May 2021 the pharmacy did not receive any payment for these claims, that the claims themselves were consistently high. This consistent nature of claiming does not follow the national pattern seen from the data for other contractors. Nor what we would expect to see for those patients who would be eligible for the deliveries as the claims suggest a consistent volume of positive Covid claims in their local area across the final 12 months of the service when the number of patients that were testing positive was declining hence the reason that the pandemic restrictions were easing. Therefore, this contradicts the statement made by Alwoodley Pharmacy in their appeal that the data provided showed a significant drop as they continued to claim for high volumes of deliveries until the end of the service while the national average per month dropped.

4.50 As previously noted, the appellant stated, '*We engaged fully with the process and provided evidence, downloaded from the NHSBSA's own website, showing the significant drop in claims from April 2021, as would be expected with the change in the service specification from this date'*. PAT in response would state this was not the evidence requested as outlined in the service specification instead it was just monthly claim figures. Also, in the month of February 2022, Alwoodley Pharmacy had claimed a total of 268 MDS claims, 134 claims of these claims were for Self-isolating patients and Alwoodley Pharmacy had been paid £804.00 for these claims. The PAT would pose the question why Alwoodley Pharmacy would state in our communications during the PPV process with them that MYS could not differentiate between CEV and Self-isolation claims when the pharmacy did make the distinction between the two claims in this month and claimed as such. The PAT would also question why at the time Alwoodley Pharmacy did not query why no payment had been received for the 134 CEV claims submitted for the month of February 2022.

4.51 Therefore, the evidence provided by Alwoodley Pharmacy did not substantiate their claims as stated by the pharmacy for the following reasons:

4.51.1 The pharmacy was responsible for ensuring the claims submitted on MYS were for deliveries to patients eligible for the service under the service specification for the service in place when the deliveries were made.

4.51.2 The claims submitted were for CEV patients when these were not patients eligible for the service at the time the claims were submitted.

4.52 The appellant goes on to state in their appeal *'It was the first request for post payment verification evidence came from the NHSBSA on 5th September 2024, ie nearly three and a half years from the time of the claim. We explained to the NHSBSA that we no longer had any paper records of deliveries from that time and could no longer supply the evidence that each delivery was made to a patient who was extremely clinically vulnerable, had tested positive under the test and trace scheme and had provided their test and trace identity number.'* And further detailed '*We explained that the service specification did not specify a timescale for retaining records and that we had retained them for two years and discarded them.*'

4.53 The appellant has not suggested or provided any evidence to demonstrate that the deliveries were for self-isolating patients instead of CEV patients. The PAT appreciate the pharmacy has stated due to the retention period the evidence has been destroyed. However, we would highlight that multiple appeals have already been lodged with NHSR using this reasoning and in each case. NHSR have stated that while sympathetic that would not excuse the contractor from providing evidence as it is not specifically detailed in the service specification how long evidence needs to be retained and ultimately these are ineligible claims as CEV were no longer acceptable after March 2021.

4.54 The appellant advises of SPS guidelines for document retention stating '*Without anything stated in the service specification about the retention of records, other resources needed to be used. The main national source of advice for advice for retention of records for NHS services, for pharmacy teams in hospital and community pharmacy is the NHS Specialist Pharmacy Service (SPS) website available at www.sps.nhs.uk*

4.55 *NHS SPS has a webpage dedicated to the retention of records within community pharmacy which is available at https://www.sps.nhs.uk/articles/additional-services-records-in-community-pharmacy/*

4.56 *This NHS webpage outlines how long to retain records for and includes nearly all current and historic advanced services such as:*

4.57 *AURs- 1 year*
MURs- 2 years
NMS- 2 years
CPCS- 2 years
Stoma appliance customisation- 1 year

4.58 *The SPS website makes no specific mention about the pandemic delivery service but does say this under "Other records":*

4.58.1 ***Other records***

4.58.2 ***Unique record***

4.58.3 *Yes this is likely to be the only record*

4.58.4 ***Reason for keeping***

4.58.5 *Keep for audit purposes*

4.58.6 ***Minimum period***

4.58.7 *Retain for 2 years*

4.58.8 ***Comment***

4.58.9 *This recommendation applies to any other* ***paper records*** *pertaining to individual patient care in community pharmacy not covered elsewhere in this resource.*"

4.59 The appellant further states '*Despite this clear guidance from the NHS SPS to retain records for two years for audit purposes, the NHSBSA and NHS England appear to have expected us to have retained paper records of deliveries, from the time of the pandemic, for an unknown and undefined lengthy period*'.

4.60 As stated in the Service Specification/ Announcements from April 2021 only self-isolators that have provided their Test and Trace Account ID reference number when requesting the service were eligible for the MDS. Records of these deliveries must be retained for PPV purposes to ensure effective service provision.

4.61 The service specification is clear on the need to maintain records for PPV:

4.62 ***"8. Records and data sharing***

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."

4.63 https://www.england.nhs.uk/coronavirus/documents/home-delivery-of-medicines-and-appliances-during-the-covid-19-outbreak-service-specifications-and-guidance-march-2021/

4.64 While the PAT acknowledges that the service specification is clear that records need to be kept for PPV purposes, it does not advise exactly how long contractors were required to keep such evidence. Nonetheless, it was an essential requirement that the records of eligibility for the NHS Medicines Delivery Service were retained, and that they should be available for PPV purposes. In similar situations NHS Resolution has taken the view "that the key question for an appeal is whether the Appellant's record retention was reasonable. In the absence of any specified time period, the requirement in the specification is absolute – appropriate records must be maintained therefore confirming they do not consider it reasonable that, where a service specification expressly requires records to be maintained to support post payment verification, a pharmacy should be entitled to apply a particular retention period without confirmation that there will be no post payment verification. Also, in this case the matter of the fact is that the window for claiming for CEV patients ended in March 2021 therefore the claims were made for ineligible patients."

4.65 The appellant goes on to state *'We are willing to help with any reasonable post payment verification (PPV) request but this request was unreasonable and inappropriate to ask for after nearly three and a half years from the deliveries during the pandemic. No clear reason has been given by NHSBSA why they waited so long to undertake PPV.'*

4.66 In response to this point the NHSBSA PAT would state the assurance of all services was suspended during COVID to reduce the burden on contractors as NHS England

and the PAT appreciated this was a difficult time. The assurance activity performed by the PAT was only restarted in April 2021 and only then by asking contractors to perform a self-review. This engagement approach failed to amend the behaviour of those contractors submitting very large claims and those claiming for ineligible patients. Therefore, it was not until June 2022 that assurance activity on MDS began in earnest by requesting evidence from contractors and escalating those contractors without sufficient evidence to PSRC. Since that time, the PAT has been working through the backlog of assurance work which has resulted in the delay in performing the PPV work sooner on MDS, but this has entailed reviewing multiple thousands of contractors around their MDS claims.

4.67 The PAT are not disputing that the deliveries took place instead rather as shared with the appellant that the eligibility of the patients qualified them for MDS. In this case, the contractor claimed on MYS that the deliveries were made to CEV patients. However, without supporting evidence, the PAT cannot assume these deliveries were actually to eligible patients, especially as they were advised to self-isolate rather than being classified as CEV. Since this cohort of patients no longer qualified for a free delivery under the MDS, any claims made for CEV patients were ineligible and payments made to contractors for these deliveries should therefore be recovered.

4.68 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. The PAT have undertaken the assurance of the MDS in a systematic and consistent approach across all pharmacy contractors it has identified as being outliers in how they have claimed for the service.

4.69 Engagement with the contractors has been undertaken to enable them to provide evidence of delivering in accordance with the service specification and then claiming for that service provision for eligible patients only. It is only those pharmacies that have not been able to provide evidence to verify their claims that are then referred to their ICB for a decision in accordance with Regulation 94 of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.70 The PSRC considered that Alwoodley Pharmacy had not provided any evidence to demonstrate that the claims it had submitted in April 2021 and May 2021 were correctly following the service specification. As a result, the decision determined that the £1,872.00 payment for the ineligible CEV claims were overpayments and should then be recovered from the contractor.

4.71 **Key points for consideration**

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

4.72.1 The NHSE service announcement was very clear that the Medicines Delivery Service was limited from April 2021 to only those patients who had been notified by Test and Trace to self-isolate and was only available to people during their 10-day self-isolation period. Also, patients must have provided their Test and Trace Account ID when requesting the service.

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

4.72.3 From 1st April 2021 NHS England did not commission a delivery service for CEV patients. Any claims submitted for delivery to CEV patients were then not eligible for payment. Those claims submitted and paid are therefore an overpayment and have been treated as such.

4.72.4 NHS England has no power to make payments to pharmacy contractors outside of the statutory framework set out in the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, the service specification, and the Drug Tariff.

4.72.5 The contractor had numerous opportunities to provide evidence to demonstrate that the deliveries claimed met the requirements set out in the service specification. Only those contractors where no or insufficient evidence of meeting these requirements were referred to the regional PSRC.

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

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

4.72.8 The appeal has not provided any evidence to suggest that the deliveries were made to patients eligible for the Medicines Delivery Service. The deliveries then claimed were not eligible for the Medicines Delivery Service payments resulting in an overpayment to the pharmacy.

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

4.73 Having considered these matters, NHS England respectfully suggests that NHS Resolution concludes that the decision made by the PSRC in respect of the £1,872.00 overpayment recovery from Alwoodley Pharmacy was fair and in accordance with the regulations.

4.74 Please let me know if you need anything further to help with these deliberations."

5 OBSERVATIONS

5.1 THE APPELLANT

5.1.1 "Thank you for your letter dated 4th July enclosing the comments of the NHS Pharmaceutical Services on our above appeal.

5.1.2 Their eleven pages of comments contain a lot of superfluous information.

5.1.3 The case can be summarised as follows. Both parties agree that the deliveries claimed for took place but that the paper evidence requested, ie that the deliveries were to patients who had been instructed to isolate by Test and Trace, has been destroyed. In essence, your decision rests on whether the pharmacy should have retained that information for an indefinite period for post verification audit purposes or whether NHS England should have undertaken reasonable actions to request that paper records should be retained for longer than the two years, as clearly stated on the NHS Specialist Pharmacy Service website.

5.1.4 The pharmacy correctly looked at the service specification for details of retention of data - there was no information on data retention.

5.1.5 The pharmacy correctly followed the NHS issued guidance on the NHS Specialist Pharmacy Service website which states that information should be kept for two years where "*this information applies to any other paper records pertaining to individual patient care in community pharmacy not covered elsewhere in this resource*".

5.1.6 This two years of record keeping is the same as stated on the NHS Specialist Pharmacy Service website for NMS, CPCS, MURs and twice as long as stated for AURs and the Stoma Customisation Service.

5.1.7 The pharmacy correctly followed its own procedures.

5.1.8 The pharmacy correctly followed the Data Security & Protection Toolkit to demonstrate it has and follows processes for data retention and destruction. This can be confirmed at

https://www.dsptoolkit.nhs.uk/OrganisationSearch/FEM69

5.1.9 The pharmacy has a Data Protection Officer who ensures the pharmacy meets the requirements of GDPR and guidance, based on legislation, from the ICO- The Information Commissioners' Office. Of relevance is the following webpage about principle (e) storage limitation.

5.1.10 https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-protection-principles/a-guide-to-the-data-protection-principles/storage-limitation/

5.1.11 The ICO state on this webpage:

5.1.12 **You must not keep personal data for longer than you need it.**

5.1.13 **You need to think about – and be able to justify – how long you keep personal data. This will depend on your purposes for holding the data.**

5.1.14 **You need a policy setting standard retention periods wherever possible, to comply with documentation requirements.**

5.1.15 There is obviously a significant disconnect between the NHS Pharmaceutical Services expectation of retention of paper records containing sensitive information and the requirements of:

5.1.15.1NHS Specialist Pharmacy Service

5.1.15.2The Information Commissioner Office

5.1.15.3The NHS Data Security & Protection Toolkit

5.1.16 On one hand, the pharmacy is being told by the ICO, the NHS Specialist Pharmacy Service and the NHS Digital Data Security and Protection Toolkit that **you must not keep personal data for longer than you need it** and to retain paper records for two years then destroy them, unless stated otherwise in a service specification. [Appellant's emphasis]

5.1.17 On the other hand, the NHS Pharmaceutical Services is expecting paper records of patient-sensitive information, obtained during a pandemic, to be retained for an indefinite period as post payment verification can occur possibly decades after the event.

5.1.18 This is obviously unrealistic, unworkable and unfair.

5.1.19 NHS Pharmaceutical Services state that NHS Resolution has taken the view "*That the key question for an appeal is whether the Appellant's record retention was reasonable."* By following the guidance from NHS SPS, the ICO and the NHS Data Security and Protection Toolkit, the actions of the pharmacy are clearly reasonable. The decisions of the NHS Pharmaceutical Services and the PSRC are not.

5.1.20 We are quite happy to fully cooperate with post payment verification but it is inappropriate for NHS Pharmaceutical Services to be requesting paper-based patient-sensitive data to be held for x number of years without stating as such and then expecting pharmacy teams to know the value of x via, presumably, psychic abilities.

5.1.21 In their eleven page response, NHS Pharmaceutical Services could have easily explained why they or NHS England did not use the many communication channels at their disposal to inform contractors that post payment verification for the medicines delivery service was taking longer than it should have done and that records needed to be retained for three, four or fifty years. They did not.

5.1.22 NHS England and NHS Pharmaceutical Services could have done many things to inform contractors to retain their records for longer than the two years stated on the NHS Specialist Pharmacy Services website. They could have:

5.1.22.1 Written a service specification that stated the need to retain patient's personal information for eg one, five or fifty years.

5.1.22.2 Emailed the pharmacy using the email address they hold for the pharmacy.

5.1.22.3 Made a general announcement on the NHS Business Services website.

5.1.22.4 Put an announcement in the Drug Tariff they publish each month

5.1.22.5 Issued a press release to the professional press.

5.1.22.6 Asked Community Pharmacy England to make an announcement on their website.

5.1.22.7 Informed the NHS Specialist Pharmacy Services of the extended retention period and request that they change their website

5.1.23 Of these, at least seven, communication options at their disposal, NHS England and NHS Pharmaceutical Services used none of them.

5.1.24 It is unfair that community pharmacies providing delivery services to patients during the pandemic should be penalised because of the NHS Pharmaceutical Services taking an inordinate amount of time to commence post payment

verification and NHS England not publishing any statement about the retention of records to contradict what is stated on the NHS Specialist Pharmacy Services and the Information Commissioner Office's website.

5.1.25 This appeal should be upheld and the decision overturned."

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 to July 2021 inclusive. These were 312 deliveries to those who were Clinically Extremely Vulnerable (CEV) in April and May 2021.

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 The specifications and guidance provided state:

6.14.1 "*Pharmacy contractors should ensure that they are only delivering to eligible patients in the areas specified in the announcement in place at that time when they are acting in accordance with this service specification. Appropriate checks should be made to ensure that the patient remains eligible for this service, which may include checks on the summary care record.*"

6.15 I note the NHS BSA states that it was *"requested to conduct a Post Payment Verification exercise to ensure that pharmacy contractors claimed correctly for the Medicines Delivery Service between the months of April 2021 to March 2022 to ensure that all claims were for Self-Isolating (SI) patients and contractors had Test and Trace referral records available to substantiate those claims."*

6.16 I further note the NHS BSA's comments that the Manage Your Service (MYS) system had retained functionality for contractors to submit claims for delivering to CEV patients, which had led to claims being submitted for ineligible patients during the months of April and May 2021. The MYS service had subsequently been amended to ensure such claims could not be automatically paid. The NHS BSA states that it was therefore requested to recover those CEV claims which had been paid in error, given that those patients were ineligible.

6.17 The NHS BSA has provided a timeline detailing its contact with the Appellant between 5 September 2024 and 4 December 2024, where it outlined to the Appellant that "*the 312 CEV claims made between April 2021 and July 2021 were for deliveries made to*

ineligible patients' as the ability to claim for CEV patients under the MDS had ended in March 2021 and from that point only self-isolating patients in response to a positive Covid test were eligible for the service, as specified in the NHSE service announcements."

6.18 I note that the Appellant has not been able to provide any information as to why it continued to inadvertently claim for CEV patients who became ineligible with effect from 31 March 2021.

6.19 I note that the service specification states:

6.19.1 *"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."*

6.20 In its appeal, the Appellant states "*We consider it unreasonable to be undertaking post payment verification so long after the service has been claimed for*" and that "*We engaged fully with the process and provided evidence, downloaded from the NHSBSA's own website, showing the significant drop in claims from April 2021, as would be expected with the change in the service specification from this date. However, this evidence was disregarded*."

6.21 In response, the NHS BSA confirms that the Appellant did provide information in an email dated 11 November 2024 showing data from their MYS records and indicating that it had submitted 145 claims in April 2021 and 167 claims in May 2021 for deliveries to CEV patients. The NHS BSA has provided data for the subsequent months showing that the Appellant continued to claim for deliveries to CEV patients until February 2022, but I note that the Appellant did not receive payment for these. I note the NHS BSA's view that the data "*…suggests that Alwoodley Pharmacy were unaware that this cohort of patients was no longer eligible and continued to perform deliveries to them under MDS.*" The NHS BSA further comments that the "*…consistent nature of claiming does not follow the national pattern seen from the data for other contractors. Nor what we would expect to see for those patients who would be eligible for the deliveries as the claims suggest a consistent volume of positive Covid claims in their local area across the final 12 months of the service when the number of patients that were testing positive was declining hence the reason that the pandemic restrictions were easing.*"

6.22 I note that updates which included changes to the service specification for MDS were widely distributed to all pharmacies by NHS England and subsequently by Community Pharmacy England. I consider that it is the responsibility of the Appellant to keep up to date with changes to those services.

6.23 The Appellant states in its appeal that "*We explained that the service specification did not specify a timescale for retaining records and that we had retained them for two years and discarded them*."

6.24 I note the Appellant refers in its appeal to guidelines for document retention from the Specialist Pharmacy Service (SPS) website. The Appellant states:

6.24.1 "*This NHS webpage outlines how long to retain records for and includes nearly all current and historic advanced services such as:*

6.24.1.1AURs- 1 year

6.24.1.2MURs- 2 years

6.24.1.3NMS- 2 years

6.24.1.4CPCS- 2 years

6.24.1.5Stoma appliance customisation- 1 year

6.24.2 *The SPS website makes no specific mention about the pandemic delivery service but does say this under "Other records":*

6.24.3 *"**Other records***

6.24.4 ***Unique record***

6.24.5 *Yes this is likely to be the only record.*

6.24.6 ***Reason for keeping***

6.24.7 *Keep for audit purposes.*

6.24.8 ***Minimum period***

6.24.9 *Retain for 2 years.*

6.24.10 ***Comment***

6.24.11 *This recommendation applies to any other **paper records** pertaining to individual patient care in community pharmacy not covered elsewhere in this resource."*

6.24.12 *Despite this clear guidance from the NHS SPS to retain records for two years for audit purposes, the NHSBSA and NHS England appear to have expected us to have retained paper records of deliveries, from the time of the pandemic, for an unknown and undefined lengthy period.*"

6.25 I note the service specification is silent on retention periods. I also note the NHS BSA has commented that the service specification does not specify for how long contractors should keep records of the deliveries made and relies on the caveat that records must be retained for post payment verification. NHS BSA states that "*As stated in the Service Specification/ Announcements from April 2021 only self-isolators that have provided their Test and Trace Account ID reference number when requesting the service were eligible for the MDS. Records of these deliveries must be retained for PPV purposes to ensure effective service provision.*"

6.26 I note that in an email to the NHS BSA dated 22 November 2024, the Appellant stated "*The MYS portal, under reports, only states Home delivery service. It makes no distinction between the CEV and Test and Trace services. There is no distinction on the report that I have shown as evidence and you have shown no evidence of a claim under the wrong category. Instead you have assumed that the claims made in April and May 2021 were for CEV rather than Test and Trace patients. You have not shown this and the MYS report does not show this. You have worked on the basis that any claim must be a wrong claim.*" In response the NHS BSA comments "*…why Alwoodley Pharmacy would state in our communications during the PPV process with them that MYS could not differentiate between CEV and Self-isolation claims when the pharmacy did make the distinction between the two claims in this month and claimed as such.*

The PAT would also question why at the time Alwoodley Pharmacy did not query why no payment had been received for the 134 CEV claims submitted for the month of February 2022."

6.27 I am of the view that the key question for this appeal is whether the Appellant's two year record retention was reasonable. In the absence of any specified time period, the requirement in the specification is absolute – appropriate records must be maintained. But it is not reasonable to expect a pharmacy to keep records forever so it is appropriate to imply into the wording that records will be kept for a reasonable time period, taking into account the reasons expressly stated for maintaining records. Those reasons are to ensure effective ongoing service provision and to support post payment verification. The former would likely fall away once service provision ceases but the latter clearly extends after the provision of service and after payment has been received. The key question is therefore, knowing that records were to be maintained for post payment verification, whether the policy of the Appellant to destroy records when it did was reasonable.

6.28 I consider that the Appellant was aware that other similar services had, at least, a two year retention period, due to its reference to the periods stated on the SPS website. The Appellant states that it "*…correctly followed its own procedures*" and that it "*…correctly followed the Data Security & Protection Toolkit to demonstrate it has and follows processes for data retention and destruction.*" The Appellant has also quoted guidance from the Information Commissioner's Office website.

6.29 However, I do not consider it reasonable that, where a service specification expressly requires records to be maintained to support post payment verification, a pharmacy should be entitled to apply a 2 year retention period without confirmation that there will be no post payment verification.

6.30 I do not consider that the destruction of records was in accordance with the service specification. However, the fact of the matter is that the window for claiming for CEV patients ended on 31 March 2021. The option was available for the Appellant to provide evidence in order for the NHS BSA to verify the claims and allow it to give assurance to NHS England that the service was performed correctly. I take this to refer to self isolating claims which are not the subject of this dispute.

6.31 I note the Appellant's comments that "*NHS England and NHS Pharmaceutical Services could have done many things to inform contractors to retain their records for longer than the two years stated on the NHS Specialist Pharmacy Services website*" and "*It is unfair that community pharmacies providing delivery services to patients during the pandemic should be penalised because of the NHS Pharmaceutical Services taking an inordinate amount of time to commence post payment verification and NHS England not publishing any statement about the retention of records to contradict what is stated on the NHS Specialist Pharmacy Services and the Information Commissioner Office's website.*"

6.32 Whilst I am sympathetic towards the Appellant's position, it has not provided any reasoning as to why it claimed for CEV deliveries in April and May 2021. Given the claiming for CEV patients ceased on 31 March 2021, the Appellant does not qualify for payment in line with the service specification.

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

7 DECISION

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

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

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

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

7.2 I dismiss the appeal and confirm the decision of NHS England to recover the overpayment of £1,872.00.

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