

Primary Care Appeals - Pharmacy User Group

Wednesday 25 May 2022 at 10am
Via MS Teams

Members	Job Title/Organisation
Jonathan Haley (JDH)	Head of Appeals
Sanjay Sekhri (SS)	Deputy Director of Advice and Appeals
Rachel White (RW)	Technical Case Manager
Ray Bushell (RB)	Case Manager
Phil Bratley (PB)	Panel Member (Pharmacy), Primary Care Appeals
Jo Severn (JS)	Boots UK Ltd
Noel Wardle (NW)	Temple Bright
Matt Cox (MC)	Lloyds Pharmacy
Sally-Anne Kayes (SAK)	NHS England
Marie Wharton (MW)	NHS England
Gordon Hockey (GH)	PSNC
In attendance	Job Title/Organisation
Emma Blamires (EB)	Case Administrator
Jane Horsfall (JH)	NHS England
Apologies	Job Title/Organisation
Anthony Edwards (AE)	Well Pharmacy
Kelvin Rowland-Jones (KRJ)	NHS England

Item	Description	Action
1.	<u>Welcome</u> JDH welcomed everybody including Jane Horsfall from NHS England. Kelvin Rowland-Jones passed on his apologies. Anthony Edwards from Well Pharmacy was absent.	
2.	<u>Minutes of last meeting</u> The minutes were agreed and will be published.	Mark Niles
3.	<u>Outstanding actions</u> There was one action from the May meeting, which was to raise with NHS England Contract Managers, the need for	JH

	<p>assessments when directing pharmacies to open. SAK had reported this to the Contract Managers forum in November but timing wasn't right because of COVID vaccination roll out. JH agreed to raise at their meeting on 26 May.</p>	
4.	<p><u>Appeals update</u> JDH updated all on the following matters:</p> <p><u>Demographic data collection</u> Appeals are looking to collect demographic data of appellants across all work streams. It will track the demographic data against the outcomes of appeals and dispute determinations, and we will report on that. It is a piece of work we are developing at the moment and agreeing with our governance team. We have completed a data protection impact assessment. We are waiting for that to be agreed and we will hopefully launch the work fairly soon.</p> <p><u>Subscription service</u> Appeals will soon launch a service where users can sign up to receive updates when we publish a decision or a resource on our web pages.</p> <p><u>Core system programme</u> There is a delay with development commencing. Work is expected to start in September and will hopefully be completed in June 2023.</p>	
5.	<p><u>Market entry – regulation 21A</u> GH highlighted the new provisions from January. JDH invited comments or questions. NW indicated that he hasn't relied on it yet. JDH advised that Appeals have determined one case recently, a PNA based application, where we were required to look at 21A but whilst the PNA specified that there was a need, and it did not specify the days. JDH suggested this might be one for the future, when the next iteration of PNAs are published. GH is hopeful that it allows NHSEI to make the decisions in the first instance.</p>	
6.	<p><u>Temporary closures</u> GH reflected on the balance between the Appeals Committee, making its own decision and the independence that we want to make sure that the decision making by NHSEI is in accordance with the Regulations. It obviously helps everybody if the guidance means something within that, and yet at the same time, if the guidance is wrong or thought to be wrong, we wouldn't want erroneous decisions. JDH answered that decision makers must follow the Regulations in the first instance and then there must always be discretion for the decision maker. Where it is guidance, it is who makes the best arguments on the evidence available. The recent PSNC briefing note provides sound guidance to the profession. For Appeals it is all about making a decision based on the individual facts of the case</p>	

	<p>and the weighing up of the information, to make a reasoned and fair determination.</p> <p>GH accepted that it isn't an easy issue but Appeals can be relied upon for an independent view on the case. NW agreed with the broad principle that the Regulations must be followed and guidance is guidance and is not of statutory footing. GH reflected that the wording may not be exactly as one wishes it sometimes.</p>	
7.	<p><u>COVID-19 pharmacy payments appeals process</u></p> <p>GH reported that the profession had argued for an independent appeals process and was pleased that NHS Resolution has delegated authority. The independence of Appeals is valued.</p> <p>JDH thanked GH for his comments. Appeals asked questions about its position because it is very unique for us too to deal with cases where there is an original decision by the BSA and then a separate review. We asked the right questions at the time especially that our independence is not compromised.</p> <p>JDH reminded all that there is 30 days to appeal after the internal review, which must be completed, and then once the appeal is received, it can be dismissed, if it meets the misconceived threshold. We will invite comments from the BSA as to why the appeal should be refused and then the Contractor will be given the opportunity to rebut anything said by the BSA.</p> <p>GH indicated low volume of cases. GH asked if Appeals accepted additional evidence from Contractors. JDH indicated that new information should be submitted with the appeal and not within the 10 day observation period as that is for rebuttal of whatever the BSA say in submissions.</p>	
8.	<p><u>Market entry applications and revised pending PNAs</u></p> <p>GH referred to historical cases where one or two companies made applications based on the draft PNA and it was really quite chaotic but hoped it could be made clear to everybody as to the correct approach. JDH did not think this would happen again but as a general point it is important to consider Regulation 22, which means the decision maker considers the PNA, which is live at the time of the determination, unless it is more just to do it the other way. In a number of cases around 2018/2019 we wrote to parties to explain the position e.g the application is based on the old PNA, the new PNA is now in force. We remitted a number of cases back to NHS England because it was fairer for them to restart the process.</p> <p>SAK advised that when you are looking at the draft PNA and if you are then making a decision on the current PNA using</p>	

	<p>information from the draft PNA, you need to be really careful because that is a draft and the later PNA can be so far removed from the draft.</p> <p>JDH is hopeful that the circumstances we saw last time where applicants were using the draft PNA in anticipation of maybe trying to get a foot through the door for a grant, would not happen again. If need be, we will do a look back exercise and see how we handled those.</p> <p>NW's recollection was that there was an attempt to gain the system, which is the one JDH described, where somebody had seen a draft PNA, put a PNA based application in, in the hope that by the time the application was finally determined, the published PNA, included the wording that the draft included. In effect an attempt to get ahead of anybody else and there was general approach by Appeals that it would use its discretion to determine the application in accordance with the PNA that was in force at the time the application was submitted. It would never be right to determine an application based on a draft PNA.</p> <p>The other issue is where applications are made based on a need, which was identified in the PNA that was in force at the time but by the time the appeal is finally determined, the new PNA has come into force, and that is then the situation where the question is asked of everybody, regarding a determination in accordance with the current PNA unless it is just to determine it in accordance with an old PNA. The point to be made is that if applications or appeals are being determined at around the time that the new PNAs are due to be published then it is important to keep an eye on whether the new PNA has been published or not, because the statutory obligation is to have regard to the PNA, which is in force at the time of the determination.</p>	
<p>9.</p>	<p><u>Plan for the introduction of ICSs</u></p> <p>GH reminded all about the changes occurring in July meaning that the decisions that are used to coming from NHSEI, will come from the new ICSs. The profession seeks assurance that the necessary changes and arrangements are all in hand.</p> <p>JH updated that the Pharmacy Manual is being reviewed along with other documentation in the hope that processes will be followed and decision making does not give rise to more appeals. Some things will not change such as the interface with PCSE. The problem is obviously going to be this transition period where some areas are moving to an ICB model this year and some are not going until next year.</p> <p>SAK agreed that PCSE is still there to support ICSs. For contractors, the avenue in is going to still be the same.</p>	

	<p>NHSEI does however need to consider how it supports new decision makers.</p> <p>NW asked if NHSEI were anticipating delays in the processing of applications during that changeover. JH was hopeful that service users should not experience any delays</p> <p>JDH advised that he had recently met with KRJ and JH to discuss ICS knowledge gaps and where Appeals might be able to support learning and development. It was agreed that Appeals would provide some training on relocation applications later this year. JDH highlighted to GH the need to consider this for the profession too and he will contact GH separately in this regard.</p>	<p>JDH</p>
<p>10.</p>	<p><u>Any other business</u> <u>Email auto acknowledgement</u></p> <p>NW asked if the automatic acknowledgement of emails could be reintroduced following the change of email address. JDH thought that this was working but will add this as an action for the team to look into.</p> <p>JDH advised that the team would be in touch with dates for a meeting in November/December.</p>	<p>Alison McCafferty</p> <p>Alison McCafferty</p>