

17 May 2024

REF: SHA/26035

APPEAL AGAINST NHS ENGLAND'S DECISION TO RECOVER AN OVERPAYMENT FROM FLYPHARM LIMITED T/A BLUE DEW PHARMACY (FVG70) ("THE APPELLANT")

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Tel: 0203 928 2000
Email: nhsr.appeals@nhs.net

1 Outcome:

- 1.1 I dismiss the appeal and confirm the decision of the Commissioner to recover the overpayment of £5,220.00.
- 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:

Blue Dew Pharmacy (the Appellant)
NHS BSA on behalf of the Commissioner

Advise / Resolve / Learn

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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 (“the Commissioner”), sent a decision to the Appellant on 28 April 2023 in respect of Flypharm Limited t/a Blue Dew Pharmacy (ODS code FVG70). 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. Between April and July 2020, and in the months of November 2020 and January to March 2021 the Medicines Delivery Service was limited to those patients classed as Clinically Extremely Vulnerable (CEV) to Covid, who could be identified on the Summary Care Record as ‘Shielded Patients’.
- 2.4 As part of the verification exercise, your pharmacy has been contacted by the Provider Assurance Team to request that you review all of your Medicine Delivery Service records in the months of January 2021 to March 2021.
- 2.5 **To date your pharmacy has not provided evidence to demonstrate that the Medicine Delivery Service claims made during this time met the requirements set**

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out in the service specification, despite several attempts made by the NHSBSA Pharmacy Provider Assurance Team.

- 2.6 Attached is a timeline of correspondence with your pharmacy to date which was passed to the NHS England local Pharmaceutical Services Regulatory Committee (PSRC) to consider whether further action was necessary.
- 2.7 The NHS England Pharmaceutical Services Regulatory Committee has now reviewed this information and noted that:
- 2.7.1 FVG70 – FLYPHARM LIMITED claimed **1,785** deliveries for the Medicines Delivery Service in the months of January 2021 to March 2021.
- 2.7.2 The NHSBSA Provider Assurance Team did not receive any evidence which demonstrated that the Medicine Delivery Service claims made in the months of January 2021 to March 2021 were to patients classed as Shielded only, and therefore could not verify that these claims met the requirements set out in the service specification.
- 2.7.3 FLYPHARM LIMITED was contacted on 7 separate occasions by the NHSBSA Provider Assurance Team to request evidence to demonstrate that that the Medicine Delivery Service claims made during this time met the requirements set out in the service specification.
- 2.8 Having reviewed the information provided by the NHSBSA Provider Assurance Team, the NHS England Pharmaceutical Services Regulatory Committee has decided that an overpayment in relation to your January 2021 to March 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.
- 2.9 The table below outlines the monthly Medicine Delivery Service claims reimbursed to your pharmacy – **FLYPHARM LIMITED – FVG70** for the months of January to March 2021 and also the maximum number of deliveries your pharmacy may have claimed for the service during this period, along with the associated recovery value:

	January 2021	February 2021	March 2021	Total
Pharmacy delivery claims	1	1,784	0	1,785
Max potential deliveries	927	914	966	2,807

- 2.10 Total recovery for January 2021 – March 2021:
- 2.11 1,784 deliveries claimed – 914 maximum deliveries = 870 deliveries
- 2.12 870 deliveries x £6.00 = £5,220.00 deduction
- 2.13 Please note that the maximum number of deliveries and any resulting overpayment has been calculated using only the month of February 2021. This is due to the number of claims made for this month being greater than the maximum number of deliveries that would have been eligible to claim for. The claims made for January 2021 were less than the maximum number of deliveries that would have been eligible so no deduction would be necessary for this month. Also as there were no claims made in March 2021 no deduction would be necessary for this month.
- 2.14 **Total value to be recovered = £5,220.00 deduction.**

2.15 **Action Required**

2.16 Please respond to this correspondence at nhsbsa.pharmacysupport@nhs.net 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 28th May 2023.**

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

2.18 If you have any concerns regarding the deduction or would like to discuss an alternative approach to recovering the overpayment, please contact us by 28th May 2023.

2.19 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.

2.20 **Please be aware that failing to contact us by 28th May 2023 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:

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

2.22 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.

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

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

2.25 For more information or for clarification of any of the details in the letter, please contact us by email at nhsbsa.pharmacysupport@nhs.net .

2.26 If you would prefer to speak to us via telephone/Microsoft Teams, please email nhsbsa.pharmacysupport@nhs.net to provide your contact details and a member of the team will get in touch as soon as possible.

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

2.28 Your co-operation is very much appreciated."

2.29 [Enclosures:

2.29.1 Timeline dated 8 November 2022 to 16 March 2023;

2.29.2 Email dated 8 November 2022 from NHS BSA to Appellants nhs.net email address;

2.29.3 Letter dated 19 February 2021 from NHS England and NHS Improvement to Community Pharmacies;

- 2.29.4 Home delivery of medicines and appliances during the Covid-19 outbreak: service specifications and guidance. Dated 19 February 2021 (Version 6);
- 2.29.5 Letter dated 5 January 2021 from NHS England and NHS Improvement to Community Pharmacies;
- 2.29.6 Delivery receipt from Appellants nhs.net email address dated 8 November 2022;
- 2.29.7 Email dated 17 November 2022 from NHS BSA to Appellants gmail and nhs.net email addresses;
- 2.29.8 Email dated 22 November 2022 from Appellant's gmail address to NHS BSA;
- 2.29.9 Email dated 24 November 2022 from NHS BSA to Appellant's nhs.net email address;
- 2.29.10 Delivery receipt from Appellants nhs.net email address dated 24 November 2022;
- 2.29.11 Read receipt from Appellants nhs.net email address dated 24 November 2022;
- 2.29.12 Email dated 25 November 2022 from NHS BSA to Appellants gmail and nhs.net email addresses;
- 2.29.13 Delivery receipts from Appellants gmail and nhs.net email addresses dated 25 November 2022;
- 2.29.14 Email dated 13 December 2022 from NHS BSA to Appellants gmail and nhs.net email addresses;
- 2.29.15 Delivery receipts from Appellants gmail and nhs.net email addresses dated 13 December 2022;
- 2.29.16 Email dated 11 January 2023 from NHS BSA to Appellants gmail and nhs.net email addresses;
- 2.29.17 Delivery receipts from Appellants gmail and nhs.net email addresses dated 11 January 2023.]

3 THE DISPUTE

In an email dated 28 May 2023 addressed to NHS Resolution, the Appellant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "Please see my letter to appeal the decision and supporting documents.
 - 3.1.1 Appeal Letter
 - 3.1.2 4 x [redacted by NHS Resolution] Letters
 - 3.1.3 Forwarded copies of delivery sheets sent to # [Name redacted by NHS Resolution]
 - 3.1.4 Forwarded copies of SMS sheets sent to # [Name redacted by NHS Resolution]
- 3.2 I would like to appeal the decision made by PSRC to recover funds for MDS claims in 2021.

- 3.3 The crux of the issue is that the deadlines to submit the paperwork for claiming for the deliveries for Clinically Extremely Vulnerable Covid patients was delayed. The majority of the delivery claims were submitted in Feb 2021 due to a backlog of work. Ongoing Covid issues and staff shortages.
- 3.4 Additionally, the attempt to contact me to resolve the matter before the overpayment was recouped was hindered due to a combination of # [redacted by NHS Resolution]. The # [redacted by NHS Resolution] in early 2022 # [redacted by NHS Resolution]. These are very personal matters and I trust they will be treated in the utmost of confidence and not published on the internet.
- 3.5 Please find attached to this email thread:
- 3.5.1 Delivery sheets
 - 3.5.2 SMS sent to the CEV patients
 - 3.5.3 SCR check list
 - 3.5.4 # [redacted by NHS Resolution] letters highlighting ongoing delays in my communication with # and # [Names redacted by NHS Resolution] at towards the end of 2022.
- 3.6 As a pharmacy we have a duty of care towards our patients, especially those most vulnerable.
- 3.7 We treat our patients as we would our own family members. We hired additional drivers and staff carried out the extra work to arrange for the deliveries. It would not be just nor would it be ethical to penalise the pharmacy due to a technicality. I apologise for my delay in not responding to NHS BSA in a timely fashion. If I was able to submit the data in the allocated timeframe then I certainly would have done so rather than deal with further anxiety of the appeal process.
- 3.8 As a healthcare professional and pharmacy contractor, I believe I am personally accountable for my responsibilities towards my staff, patients & NHS. However, on this occasion I fell short of my responsibility and sincerely hope you can look at this matter with some compassion.”

4 **ADDITIONAL INFORMATION**

- 4.1 5 July 2023: NHS BSA email to NHS Resolution
- 4.1.1 “We currently have a case with yourselves for MDS for the pharmacy FVG70.
 - 4.1.2 The pharmacy did not engage during the process and after escalating to PSRC as we had seen no evidence we were advised to recover the money and the contractor appealed the decision with yourselves.
 - 4.1.3 During the appeal the contractor has now provided evidence and explained that all claims were made in February for other months even though the service specification states these must be claimed before the 5th of the following month.
 - 4.1.4 In this case we are not specifically stating the contractor has overclaimed as instead they claimed a larger amount in a single month. With this in mind we were wondering what the process is as do we now just continue with the appeal as the case currently stands or can we in our response suggest the case is referred back to NHSBSA PAT so we can review the evidence in detail seeing if other months claims are indeed represented in the evidence and then advise Regional PSRC of the best approach?

- 4.1.5 Any guidance on how you operate with such cases would be greatly appreciated as NHS England are asking if the case can be passed back onto ourselves.”
- 4.2 7 July 2023: Both parties agreed to place the appeal on hold whilst NHS BSA reviewed the information provided by the Appellant.
- 4.3 9 October 2023: NHS Resolution invite parties to provide an update.
- 4.4 12 October 2023: Appellant email to NHS Resolution
 - 4.4.1 “Unfortunately I have not been to work. I will aim to include the delivery sheets in the next submission (October).”
- 4.5 16 October 2023: NHS BSA email to NHS Resolution
 - 4.5.1 “Apologies for the delay in responding we were just establishing where we currently are with this contractor.
 - 4.5.2 The pharmacy (FVG70) was requested to provide additional evidence as what they currently had did not support the claims however the contractor had advised additional evidence was available but the manager was struggling to put this together due to unforeseen family health issues.
 - 4.5.3 We were expecting the evidence to arrive in the latest prescription batch however the batch was not provided by the contractor so unfortunately we didn’t even receive the prescription claims from them this month.
 - 4.5.4 So we are still trying to obtain that additional evidence so I suppose I question I would have for yourselves at NHS Resolution is how long a case can stay as paused as we are trying to be fair to the contractor however we are really struggling obtaining the evidence from them to support the claims made.
 - 4.5.5 Any advice on paused cases and how long can be given would be greatly appreciated.”
- 4.6 17 October 2023: NHS Resolution email to both parties
 - 4.6.1 “[*NHS Resolution*] will therefore keep this case on hold until 31 January 2024 in order for the Contractor to provide the necessary information and for the NHS BSA to then consider this information. Parties are asked to update NHS Resolution on the position no later than 31 January 2024.”
- 4.7 31 January 2024: NHS BSA email to NHS Resolution
 - 4.7.1 “We just wanted to provide an update on the account FVG70 whose appeal dispute regarding overpayment of MDS claims during November 2020 – March 2021 was paused due to the fact the contractor was stating they had evidence to provide to support their claims.
 - 4.7.2 The contractor has outlined a few internal and personal reasons why this request has been difficult to comply with which we appreciate has impacted their ability to engage at certain points however this process has now gone on over many months and since the pausing of the case we again have performed multiple calls/emails on the case to obtain the requested evidence.
 - 4.7.3 The pharmacy manager has promised on several occasions to send the evidence but this has always been forgotten or not actioned. We have now strongly outlined the position of this case and the pharmacy manager has

promised to send the evidence with the January prescription batch which we receive a week or two into February. We have stated if this does not occur we will contact yourselves and un-pause the appeal case acting as evidence has not been provided as requested.

- 4.7.4 I appreciate this is beyond the deadline you provided of 31st of January 2024 however this will only be a short extension as we will know fairly quickly into February if that evidence has been included in their prescription batch. At that point we can update NHS Resolution on the case and see if the evidence supports the claims or if it doesn't or it has not been provided and we need to action this appeal.
- 4.7.5 I hope this is acceptable to yourselves or if you feel the case already needs to progress back to the appeal, if so please inform us of your decision and we will communicate the fact to the contractor. At that point we will just wish to clarify the position of Pharmacy Provider Assurance, so will we have 30 days to action the appeal paper?"
- 4.8 1 February 2024: NHS Resolution email to NHS BSA
 - 4.8.1 "I can confirm we will hold this case until 16 February 2024. Should parties decide to proceed with the appeal the full 30 days from the date we write to you will be given in order to provide representations."
- 4.9 16 February 2024: NHS BSA email to NHS Resolution
 - 4.9.1 "We have had communication from the Pharmacy Manager from FVG70 that this requested evidence has been sent on the 14th of February (which is incredibly late for the usual prescription batch to be provided) and may be in transit to our NW branch to be then forwarded onto Bridge House in Newcastle where we are based.
 - 4.9.2 We are in the process of confirming this is the case and if so plan to review that evidence asap.
 - 4.9.3 Obviously we agreed for this case to have a deadline of today (16th) for evidence to be provided which technically the contractor has potentially met. Can we leave the case as paused for at least the next 2 weeks to allow the Pharmacy Provider Assurance team to ascertain that evidence has been provided and to review if it supports the number of deliveries claimed for by the pharmacy for the Medicine Delivery Service?"
- 4.10 19 February 2024: NHS Resolution email to NHS BSA
 - 4.10.1 "Thank you for your email. I agree that we should keep this case on hold as you have suggested in order for you to check the information to 1 March 2024."
- 4.11 11 March 2024: NHS BSA email to NHS Resolution
 - 4.11.1 "Apologies for the delay we just wanted to review the contractors evidence as much as possible before making any recommendation on this paused appeal.
 - 4.11.2 What has been provided does not highlight Medicine Delivery Service claims and even if we included every single delivery on the logs it unfortunately does not match the claims made by the contractor. We did message them with some questions we had around the evidence but that deadline has passed without any further engagement.
 - 4.11.3 With this in mind we feel we need to press ahead with this appeal once more as the evidence does not support the volume of claims made by the contractor

and therefore we have been unable to provide assurance to NHS England that the contractor has followed the service correctly and has the evidence to support this.

4.11.4 Can you let me know the next steps, will Resolution communicate this to the contractor and do we have 30 days to prepare our appeal paper?"

4.12 12 March 2024: NHS Resolution to parties

4.12.1 "Further to previous correspondence, I note that we have kept this case on hold in order for the Contractor to provide information to NHS BSA so they could undertake a review.

4.12.2 The attached email from NHS BSA dated 11 March 2024 appears to indicate that the local process has been exhausted and NHS BSA now wishes for the appeal process to restart.

4.12.3 Before recommending the appeal process, the Contractor now has the opportunity to review NHS BSA's comments and is invited to update its appeal based on the NHS BSA's email dated 11 March 2024.

4.12.4 If I do not hear from the Contractor by 19 March 2024 I will assume that the Contractor is content that the appeals process should recommence with no additional information submitted.

4.12.5 On 20 March 2024 I will circulate the appeal giving NHS BSA 30 days to make its representations. Representations will then be circulated to the Contractor who will have the opportunity to make final observations before we go on to make our decision.

4.12.6 I look forward to hearing from the Contractor no later than 19 March 2024."

4.13 No further contact from parties. The appeal was recirculated on 20 March 2024.

5 SUMMARY OF REPRESENTATIONS

This is a summary of representations received on the appeal.

5.1 The Appellant stated:

5.1.1 # [redacted by NHS Resolution].

5.1.2 # [Name redacted by NHS Resolution] notes :

5.1.3 What has been provided does not highlight Medicine Delivery Service claims and even if we included every single delivery on the logs it unfortunately does not match the claims made by the contractor. **What is the figure he has calculated Vs Claim?** We did message them with some questions we had around the evidence but that deadline has passed without any further engagement. **Please advise the date/sender of the email.** With this in mind we feel we need to press ahead with this appeal once more as the evidence does not support the volume of claims made by the contractor and therefore we have been unable to provide assurance to NHS England that the contractor has followed the service correctly **Can # [Name redacted by NHS Resolution] pinpoint where staff may have erred in the calculation of the deliveries?** and has the evidence to support this.

5.1.4 I appreciate your patience in this matter and do hope we can provide answers to your queries."

- 5.2 NHS BSA on behalf of the Commissioner stated:
- 5.2.1 “Thank you for your letters of the 7th June 2023 and 20th March 2024, and the opportunity to provide representations on the appeal.
- 5.2.2 **Background**
- 5.2.3 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 (NHSE) 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 NHSE 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.
- 5.2.4 The Advanced and Enhanced Services Directions go on to say that NHSE 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.
- 5.2.5 As part of the national response to the COVID-19 Pandemic, 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.
- 5.2.6 To allow these patients to receive their prescriptions, an Advanced service known as the Medicine Delivery Service (MDS) was commissioned to provide funding for deliveries of prescriptions to CEV patients. The service was limited to CEV patients when the service was initially commissioned. CEV patients could be identified on their Summary Care Record (SCR) as ‘Shielded Patients.’ Pharmacies should have also first established whether a friend, relative, carer or volunteer was available to collect the prescription on the patient’s behalf before making and claiming for the delivery.
- 5.2.7 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.
- 5.2.8 The Medicines Delivery Service was commissioned for both pharmacies and dispensing doctors across England from 9 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.
- 5.2.9 In its letter of 30 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 31 July 2020. The letter 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.”

- 5.2.10 Between 31 July 2020 and 5th October 2020, the MDS was not then commissioned for the vast majority of the country. There were small discrete areas of the country where lockdown restrictions remained in place where the service was commissioned. These were specified in further letters published by NHSE. As these are not relevant to this appeal these letters have not been included in this representation but can be provided should NHS Resolution wish to see them.
- 5.2.11 In the attached letter of 4th November 2020 NHSE announced that the service would be extended nationally, for all CEV patients on the SPL from 5th November 2020 until 3rd December 2020.
- 5.2.12 Following another National Lockdown, the attached NHSE letter dated 5th January 2021 announces that the service would be extended further from 5th January 2021 until 21st February 2021, again stating that *“Only patients on the government’s shielded list living are eligible for this service. Appropriate checks should be made the Summary Care Record to ensure that the patient is eligible for this service”*.
- 5.2.13 In the attached letter dated 19th February 2021, NHSE then announces that as the government shielding guidance had been extended up until 31st March 2021, the Medicines Delivery Service would therefore be commissioned for these CEV patients from 19th February 2021 until 31st March 2021.
- 5.2.14 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/>.
- 5.2.15 Following the publication of each of these letters on the NHS Website the Pharmaceutical Services Negotiating Committee – the representative body for the community pharmacy sector, now known as Community Pharmacy England, also sent an update to its members highlighting the change to the service specification. A summary of the updates that were provided by the PSNC can be found at <https://cpe.org.uk/national-pharmacy-services/advanced-services/pandemic-delivery-service/pandemic-delivery-service-archive/> [Pandemic Delivery Service Archive : Archived PSNC Main site]
- 5.2.16 **November 2020 and January to March 2021 claims**
- 5.2.17 In its letter from the 10th of April 2020, NHSE announced the commissioning of the Medicines Delivery Advanced Service, stating that patients who met the shielding criteria who were asked to stay at home and not attend community pharmacies, must be offered a home delivery option for their prescription items.
- 5.2.18 The letter clearly stated that the MDS was limited to those patients classed as CEV to Covid. Contractors were required to make appropriate checks to ensure that patients who received the MDS were on the CEV list e.g., patients could be identified on the SCR as ‘Shielded Patients.’ The letter also made clear that claims should only be made in the event that no friend, carer, relative, or volunteer is available to collect the prescription on the patient’s behalf.
- 5.2.19 *Appendix 1: Section 5. “The service is restricted to those patients who are covered by the shielding policy¹, as set out in Annex A, and will apply across the whole of England. Pharmacy contractors should be aware that GPs have the ability to remove or add patients to the list of those deemed most vulnerable as their clinical condition changes. Appropriate checks should therefore be made to ensure that the patient remains eligible for this service. The pharmacist can check this on the Summary Care Record.”*

- 5.2.20 Appendix 1: Section 6. “Patients who meet the eligible patient criteria, should be encouraged in the first instance to arrange for their medicines to be collected from the pharmacy and then delivered by family, friends or a carer.”
- 5.2.21 During November 2020 and January to March 2021, the NHSE service specification made clear that the MDS remained limited to those patients classed as CEV to Covid, who could be identified on the SCR as ‘Shielded Patients’. The service specification also states that claims should only be made in the event that no friend, carer, relative, or volunteer is available to collect the prescription on the patient’s behalf.
- 5.2.22 Page 1: Background point 5. “The service is restricted to those patients who are covered by the shielding policy¹, and will apply **only in areas where the Government has announced that local or national lockdown procedures are in place and are specified in the relevant announcement made by NHS England and NHS Improvement (NHSEI)**. Pharmacy contractors should ensure that they are fully aware of which geographies are in local lockdown at any given time. Pharmacy contractors should also be aware that GPs have the ability to remove or add patients to the list of those deemed most vulnerable as their clinical condition changes. Appropriate checks should therefore be made to ensure that the patient remains eligible for this service. The pharmacist can check this on the Summary Care Record”.
- 5.2.23 Page 2: Background point 7. “Patients **who meet the eligible patient criteria**, should be encouraged in the first instance to arrange for their medicines to be collected from the pharmacy and then delivered by family, friends or a carer”.
- 5.2.24 Page 2: Background point 9. “Where there is no family, friend, neighbour or carer, the pharmacy team must advise the patient of the potential for a local volunteer to act on their behalf who can collect the patient’s prescription and deliver it to them. This must include local provision of volunteers³ and NHS Volunteer Responders⁴, where either are available. ‘NHS Volunteer Responders information for health professionals’ is available in Annex A”.
- 5.2.25 NHSBSA Pharmaceutical Provider Assurance (NHSBSA PAT), on behalf of NHSE, were requested to conduct a Post Payment Verification exercise to ensure that pharmacy contractors claimed correctly for the MDS between the months of November 2020 and January 2020 to March 2021 by only claiming for those patients classed as CEV.
- 5.2.26 The NHSBSA PAT looked at the claims for those contractors who were considered as outliers between the months of November 2020 and January to March 2021 and collated the NHS numbers of all patients who had a prescription dispensed by these pharmacies during this time. These NHS numbers were then provided to NHS Digital, who cross referenced them against the shielded patient list (SPL) and provided the NHSBSA PAT with the total number of patients who had a prescription dispensed at the pharmacy and who were identified as appearing on the SPL at any time.
- 5.2.27 The results showed the total amount of prescription forms dispensed to patients classed as ‘Shielded’ at these pharmacies during this time.
- 5.2.28 NHS Digital created and maintained the SPL which contained patients in England who were identified as being CEV, including patients identified by their GP or hospital specialist. The list was updated weekly from March 2020 to September 2021. The MDS was only commissioned for CEV patients on the SPL up until the end of March 2021.
- 5.2.29 The NHSBSA PAT provided the NHS numbers of all patients who had a prescription dispensed during November 2020 and January to March 2021 for

those pharmacies that it had identified as outliers, and these NHS Numbers were subsequently cross checked by NHS Digital against the SPL in November 2021.

5.2.30 The data obtained by the NHSBSA PAT includes any patient who was ever identified as being on the SPL throughout the course of the MDS being commissioned for CEV patients. Whilst this means that the number of CEV patients included in a review of the MDS over a fixed period of time is likely to be higher than the actual number of CEV patients on the SPL at that particular time (i.e, patients were added and removed throughout the time period as their CEV status changed) NHS England accepted this higher number to allow a fair and reasonable margin for modelling.

5.2.31 The prescription forms dispensed by the pharmacy to the CEV patients from this data during the time period being reviewed were then used for the NHSBSA modelling.

5.2.32 **NHSBSA Modelling**

5.2.33 For cases such as this one where the pharmacy did not provide any evidence to demonstrate that the MDS claims were to CEV patients only and so there is an absence of verifiable data, the NHSBSA PAT modelled the likely maximum number of potential deliveries to shielded patients, that the contractor could have made during November 2020 and January to March 2021. Ideally, the details of the CEV patients that the pharmacy had delivered to would be run against the list of patients which the pharmacy had dispensed to and were found to be included on the SPL, to do a simple comparison.

5.2.34 However, as this was not possible, the potential number of deliveries has been determined based on the number of prescription forms dispensed to patients identified as being on the shielded patient list **at any time and:**

5.2.34.1 For EPS (Electronic Prescription Service) prescriptions - where the patient is identified as living in a care home then **all** prescriptions for shielded patients **to that address on that day**, regardless of the NHS number, are considered to be a single delivery. Where prior to the Covid pandemic, it was understood that pharmacies had already been delivering to care homes using any existing business models that they had in place, the NHSBSA PAT has still allowed a MDS fee for the first prescription to that address for each day.

5.2.34.2 For EPS prescriptions - where the patient address cannot be identified as being a care home, then **all** prescriptions for shielded patients to **that NHS number on that day** are considered to be a single delivery.

5.2.34.3 For Paper prescriptions – each prescription form for a shielded patient is considered to be a single delivery.

5.2.35 EPS prescriptions allow the NHSBSA PAT to see the dispensed date of a prescription, which enabled the modelling to count all prescriptions from a specific day as single delivery. Paper prescriptions however do not provide a dispensed date, only the month for which the prescription was submitted, therefore a MDS fee has been allowed for each paper prescription to a shielded patient, even though most patients will receive their monthly prescription forms as a single batch.

5.2.36 The NHSBSA PAT have applied a business logic to the modelling by only counting one MDS fee per day for EPS prescriptions to a shielded NHS number, as it would be expected that even if several separate prescription

forms were dispensed to the same patient on a given day, these would still be delivered as part of the same journey in most cases.

5.2.37 These maximum potential figures should still be considered as an over-estimate, as it includes:

5.2.37.1 all CEV patients who ever appeared on the SPL so if a patient was removed from the list during the lockdown all prescriptions to the removed patient would still be included,

5.2.37.2 it does not account for any deliveries that would have been made by friends, family, carers, or volunteers, as per the requirement in the service specification,

5.2.37.3 It allows a claim for all paper prescription forms dispensed each month even though for many of these patients the forms will have been received as a single batch, dispensed together and delivered to the patient all at once.

5.2.37.4 The NHSBSA PAT allowing a fee each day for deliveries made to a care home, even where these would have already been covered by the pharmacy's usual business model.

5.2.38 This overestimate was accepted by NHSE as giving a fair margin, to enable a reasonable estimate of the deliveries that could be expected given that there may be operational difficulties in managing the deliveries e.g., out of stocks, missed deliveries, replacement of missing items etc.

5.2.39 The NHSBSA PAT model has been used when reviewing the claims of contractors in the absence of data from a pharmacy to show who their CEV patients were and the number of deliveries that were made to those patients during the claim periods investigated.

5.2.40 Table 1 below shows the results of this modelling for FVG70 - Blue Dew Pharmacy.

5.2.41 *Table 1*

	January 2021	February 2021	March 2021	Total
Pharmacy delivery claims	1	1784	0	1,785
Max potential deliveries	927	914	966	2,807

5.2.42 **PPV**

5.2.43 In the Post Payment verification exercise undertaken by the NHSBSA PAT, FVG70 - Blue Dew Pharmacy, were identified as a potential outlier when comparing the number of MDS claims made in the months of January 2021 to March 2021 with the maximum potential number of deliveries that may have been claimed for CEV patients during this time. As a result, 7 contact attempts were performed by the NHSBSA PAT to engage with the pharmacy to request evidence to show the MDS claims made in the months of November 2020, and January 2021 to March 2021 were claimed for CEV patients only as specified within the service specification.

- 5.2.44 Emails were sent to the pharmacy shared NHS mail address pharmacy.fvg70@nhs.net as required by NHSE. All listed pharmacies must have a valid shared NHSmail account that should be regularly monitored by the pharmacy team as part of their terms of service.
- 5.2.45 During a phone call the contractor also provided NHSBSA PAT with an additional email address to include when sending any further communications *[redacted by NHS Resolution]* _____@gmail.com.
- 5.2.46 Phone calls to the pharmacy were also made to confirm receipt of these emails and phone call attempts were made to advise the pharmacy of the final 14-day response deadline.
- 5.2.47 The pharmacy did initially engage via email at the beginning of the PPV process, however despite attempts made by the NHSBSA PAT, FVG70 - Blue Dew Pharmacy did not provide any evidence to demonstrate that the MDS claims made in the months January 2021 to March 2021 were claimed correctly for eligible patients. As such the NHSBSA were then unable to verify that the deliveries claimed met the requirements set out in the service specification.
- 5.2.48 As the NHSBSA PAT had been unable to validate the deliveries claimed by the pharmacy during this time, the details of the case were passed to the NHSE regional team for their Pharmacy Services Regulation Committees (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 Medicines 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.
- 5.2.49 **The PSRC decision**
- 5.2.50 To assist with their review, the PSRC was provided with the service specifications relevant for the January 2021 to March 2021 period, which outlined the details of this advanced service and the dates which the service was extended.
- 5.2.51 The timeline of correspondence showing all the contacts the Provider Assurance team had, and attempted to have, with the pharmacy was also provided to the PSRC for review. This timeline has been provided to you in addition to this representation.
- 5.2.52 This illustrated that FVG70 - Blue Dew Pharmacy did not provide any evidence to demonstrate that the deliveries claimed for in the months January 2021 to March 2021 were to shielded patients only and thus eligible for a MDS fee.
- 5.2.53 This was despite the repeated requests made by the NHSBSA to the contractor to provide such evidence.
- 5.2.54 Consequently, the PSRC accepted the NHSBSA modelling of expected deliveries and concluded that the pharmacy had claimed for deliveries in excess of the expected maximum which was considered possible for the period of November 2020, and January 2021 to March 2021, where only patients classed as 'shielding' were eligible met the requirements set out in the service specification.
- 5.2.55 Following this conclusion, the PSRC determined that the pharmacy was not entitled to the payment for which it had received.
- 5.2.56 Having made this decision, the PSRC then directed that as FVG70 - Blue Dew Pharmacy was not entitled to the payment that the overpayment should be

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

- 5.2.57 In making this decision the PSRC relied on the information that it had before it, following the extensive investigation undertaken by the NHSBSA and the repeated requests to the contractor for evidence of how the MDS claims made for the period of January 2021 to March 2021 met the requirements set out in the service specification.
- 5.2.58 **Our response to the contractor's appeal:**
- 5.2.59 The NHSBSA PAT have reviewed the appellant's appeal, the NHSBSA PAT understands and sympathises with the difficulties the appellant has encountered. The NHSBSA PAT recognises that an unfortunate combination of personal and business circumstances has significantly impacted the usual smooth running of the pharmacy.
- 5.2.60 Please note that the NHSBSA PAT were not initially aware of the appellants situation and only became aware of this after the PSRC decision had already been made. The NHSBSA PAT always encourages pharmacies to openly engage and communicate during the PPV process to address and discuss any difficulties the pharmacy may be facing. If the appellant had engaged with the NHSBSA PAT earlier and made them aware of the situation, support could have been provided throughout the PPV process and if necessary, discussions could have been had regarding extensions of deadlines and provision of evidence.
- 5.2.61 The appellant stated in the appeal *"The majority of the delivery claims were submitted in Feb 2021 due to a backlog of work."*
- 5.2.62 Please note that the service specification for the MDS states that *"Contractors must submit their claims for payment via the MYS platform by the 5th of the month after the service was provided. Claims for this service will not be accepted after the 5th of the following month."*
- 5.2.63 The pharmacy only made a single claim for each of the months October, November, December 2020, and January 2021, the new evidence provided in the appeal appears to show that although only 1 delivery was claimed by the appellant in the month of January 2021, many more deliveries were in fact made.
- 5.2.64 However, whilst the PAT were able to see evidence for delivery there was no associated evidence to demonstrate that these deliveries were eligible for medicines delivery service and therefore for the associated MDS payment.
- 5.2.65 Unfortunately, a significant portion of the original images provided as evidence in the appeal are unclear and it is therefore difficult to accurately ascertain dates, CEV status or other details of the individual patients. Some examples of these images are shown in Appendix 1.
- 5.2.66 Considering the circumstances outlined above NHSBSA felt that the safest option would be to conduct more in-depth investigation. Although the evidence provided in the appeal is not sufficient in itself to verify this account it did suggest that the January 2021 deliveries warranted further investigation by NHSBSA PAT.
- 5.2.67 Subsequently, the appeal was paused by NHS Resolution on 7th July 2023 to allow the appellant to submit clearer evidence to the NHSBSA PAT for review.

- 5.2.68 Despite multiple attempts to acquire the evidence from the appellant since the appeal was paused, there have still been significant delays obtaining this. As a result of these difficulties and to allow the appellant a further opportunity to provide their evidence, the NHSBSA contacted NHS Resolution on the 31st January 2024 to request an extension to the pause period. Subsequently this was granted until 16th February 2024.
- 5.2.69 After numerous additional emails, paper evidence was received from the appellant in late February 2024.
- 5.2.70 The evidence provided consisted of 136 A4 sheets with “Blue Dew Pharmacy” labels attached, 99 of these were for dates outside of the time period being reviewed and were therefore disregarded for the purposes of this PPV exercise.
- 5.2.71 Appendix 2 shows a sample of the evidence provided by the appellant. The evidence is made up of bag labels attached to A4 sheets of paper and the labels show the patient’s name, ID number, address and post code, as well as various other markings. These markings appear to include a variety of one or two ticks, X’s, NO’s or C’s on the labels for each of the patients, and each sheet contains a different quantity of labels with some of those labels being crossed out completely.
- 5.2.72 The NHSBSA contacted the appellant on the 4th March 2024 to seek further clarification of these markings however, to date we have received no response.
- 5.2.73 The NHSBSA reviewed the evidence provided and given the limited understanding of the markings it is not clear whether each and every delivery shown within it is for patients classed as CEV only or a mixture of CEV and non CEV deliveries. Despite further requests, there has been no clarification provided by the appellant to show how the deliveries for CEV patients were indicated on the delivery logs.
- 5.2.74 Additional observations were made, which highlighted that the evidence did not show whether the SCR was checked prior to the delivery being made or whether friends, family or the volunteer service were asked to collect on behalf of the patient prior to delivering the items under the MDS service. The review also found there were 638 deliveries for January 2021 and 502 deliveries for February 2021 provided in their evidence, which totals 1,116 deliveries for both months.
- 5.2.75 It should be noted that even if every single label was counted as a valid MDS delivery to a CEV patient for the months of January and February 2021, this is still significantly less than the total number of MDS CEV claims submitted for these months of 1,785 MDS claims.
- 5.2.76 The review of the evidence highlights that the appellant has not demonstrated that the deliveries made to the patients that it has claimed for under the Medicines Delivery Service meet the eligibility criteria for the service as specified during the months of January 2021 to March 2021.
- 5.2.77 The appellant has not provided any detail in the appeal as to what checks the pharmacy undertook to ensure patient eligibility for the service as set out in the service specification. This combined with the multiple issues highlighted with the evidence provided in the appeal means that the NHSBSA are unable to provide assurance to NHS England that the service was performed correctly.
- 5.2.78 **Key points for consideration**

- 5.2.79 NHS England respectfully asks that NHS Resolution considers the following key points when making its determination on the appeal:
- 5.2.79.1 The contractor has been given extensive opportunities to provide evidence to the NHSBSA PAT to demonstrate that a proportion of the deliveries claimed for in February 2021, could have been deliveries, eligible for the MDS, made in January 2021 but claimed late.
- 5.2.79.2 Despite multiple pauses and delays throughout this exercise the initial investigation, the final recommendation to the PSRC, and the further investigations during the pause in the appeal, maintaining contact with the contractor has been inconsistent and difficult.
- 5.2.79.3 The PSRC fully considered all information that it had been provided at that time before it when making its determination for the overpayment under regulation 94.
- 5.2.79.4 The NHSBSA PAT reviewed the additional evidence provided during the pause in the appeal and found that the number of deliveries demonstrated within the evidence was significantly less than the number of MDS CEV claims submitted for the months the appellant claimed for.
- 5.2.79.5 However, despite the appellant providing evidence of deliveries in January 2021, there was no evidence provided to demonstrate that these deliveries were to patients eligible for the MDS.
- 5.2.79.6 Based on the additional evidence provided since the appeal was paused the NHSBSA are still unable to provide assurance that the pharmacy claimed correctly for the MDS between the months of November 2020 and January 2020 [sic] to March 2021 and the recommendation to PSRC remains the same.
- 5.2.79.7 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.
- 5.2.80 Having considered these matters NHS England maintains that FVG70 – Blue Dew Pharmacy was not compliant with the requirements as set out in the service specification. NHS England respectfully suggests that NHS Resolution conclude that as a consequence of being paid for deliveries to ineligible patients an overpayment had been made. The decision then to recover the £5,220.00 is then in accordance with the regulations.
- 5.2.81 Please let me know if you need anything further to help in these deliberations.”
- 5.2.82 [Enclosures:
- 5.2.82.1 Appendix 1 which shows examples of the original evidence provided by the appellant;
- 5.2.82.2 Appendix 2 which shows examples of further evidence provided by the appellant;
- 5.2.82.3 A timeline of correspondence (split into 3 parts) between the NHSBSA PAT and the contractor;
- 5.2.82.4 A copy of the NHSE Service Announcement which outlined the service from 9th April 2020;

5.2.82.5A copy of the of the Service Announcement which outlined the service from 30th June 2020;

5.2.82.6Copies of the NHSE Service Announcements which outlined the service from 4th November 2020 to 2nd December 2020, and then from 5th January 2021 to 31st March 2021;

5.2.82.7Copies of the service specifications published 3rd of November 2020 and 19th of February 2021]

6 OBSERVATIONS

No observations were received by NHS Resolution in response to the representations received on appeal.

7 CONSIDERATION

7.1 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.

7.2 Direction 4 of the Payment Disputes Directions requires me to determine the appeal by dismissing it if:

7.2.1 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

7.2.2 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).

7.3 I consider that I am not required to dismiss the appeal pursuant to Direction 4 as:

7.3.1 the NHS BSA advised the Appellant of a 30 days' timescale for appeal and the appeal was received within that timescale; and

7.3.2 the grounds of the appeal are valid.

7.4 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:

7.4.1 a hearing is unnecessary; or

7.4.2 I must dismiss the appeal by virtue of Direction 4.

7.5 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.

7.6 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.

7.7 I have considered further the requirements relating to the home delivery service referred to by the NHS BSA.

- 7.8 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.
- 7.9 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.
- 7.10 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.
- 7.11 The decision letter and subsequent appeal relates to deliveries made in the months of January 2021 to March 2021.
- 7.12 In relation to this period, the decision letter states:
- 7.12.1 “FVG70 – FLYPHARM LIMITED claimed **1,785** deliveries for the Medicines Delivery Service in the months of January 2021 to March 2021.
- 7.12.2 The NHSBSA Provider Assurance Team did not receive any evidence which demonstrated that the Medicine Delivery Service claims made in the months of January 2021 to March 2021 were to patients classed as Shielded only, and therefore could not verify that these claims met the requirements set out in the service specification.”
- 7.13 The table at paragraph 2.9 above and the decision letter confirm that 1,785 deliveries were made and claimed for by the Appellant during January to March 2021. The table shows that the maximum potential deliveries for the same period total 2,807.
- 7.14 The NHS BSA explain that the maximum number of deliveries and any resulting overpayment has been calculated using only the month of February 2021. This is due to the number of claims made for this month being greater than the maximum number of deliveries that would have been eligible to claim for. The claims made for January 2021 were less than the maximum number of deliveries that would have been eligible so no deduction would be necessary for this month. Also as there were no claims made in March 2021 no deduction would be necessary for this month.
- 7.15 I have proceeded on the basis of the calculation as provided by the NHS BSA at 2.11 and 2.12 above:
- “1,784 deliveries claimed – 914 maximum deliveries = 870 deliveries*
- 870 deliveries x £6.00 = £5,220.00 deduction”.*
- 7.16 As part of the national response to the Covid-19 pandemic, NHS England 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.

- 7.17 The medicines delivery service was limited to those patients classed as CEV to Covid, who could be identified on the Summary Care Record as 'Shielded Patients'.
- 7.18 I note in its appeal, the Appellant sets out a combination of # [redacted by NHS Resolution] to explain why "the deadlines to submit the paperwork for claiming for the deliveries for Clinically Extremely Vulnerable Covid patients was delayed".
- 7.19 The Appellant in its appeal has provided over four hundred pages of text messages with patient names, mobile numbers, and text messages dated from 20 February 2020 to 9 May 2023. It is not clear what relevance this data has to CEV patients during the period January 2021 to March 2021 or how this identifies such patients as being vulnerable or shielded patients. The Appellant has also provided two hundred pages of photographs of pharmacy labels which are difficult to read. I note the NHS BSA refers to these labels in its representations at Appendix 1 which shows a snapshot of the labels with patient names and addresses. Again I note these are difficult to read and there is no explanation as to how these demonstrate that they relate to CEV patients. Appendix 2 shows extracts of the labels with various markings, either one tick, two ticks, a cross or a "No" or combination of these. Again there is no explanation from the Appellant for these markings and the identification of CEV patients. In this regard, both parties had the opportunity to respond to each other's representations on the appeal and both chose not to make any further comments.
- 7.20 I note the service specification dated 3 November 2020, as provided to me by the NHS BSA, at point 8.1, states:
- 7.20.1 *"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 and the date of the delivery"*.
- 7.21 The NHS BSA has also provided a copy of the letter of 19 February 2021 "Home delivery of medicines and appliances during the COVID-19 outbreak" which states:
- 7.21.1 *"Claims*
- 7.21.2 *Community pharmacy contractors can claim payment for delivery of medicines to CEV patients under the Community Pharmacy Home Delivery service on the Manage your service (MYS) portal.*
- 7.21.3 *Contractors must submit their claims for payment via the MYS platform by the fifth of the month after the service was provided. Claims for this service will not be accepted after the fifth of the following month. Payment for the essential service will be made automatically."*
- 7.22 The Appellant had been afforded seven opportunities to provide the supporting information after the 5th of the month deadline. Further that on receipt of the appeal, the NHS BSA made more attempts to obtain clarification of the information so they could verify it. The NHS BSA concluded there was no further action they could take and requested the NHS Resolution appeal process continued. The Appellant did not object to NHS Resolution continuing its process. Representations were sought and received from both parties. As already noted, no observations were received in response to the circulation of representations.
- 7.23 I am of the view that as the pharmacy delivery claims for January and March 2021 are below the maximum potential deliveries then there is no overpayment and therefore there is no repayment due to the NHS BSA for January and March 2021.
- 7.24 I am sympathetic to the Appellant, who has experienced # [redacted by NHS Resolution], but despite the opportunities to clarify its information and set out its position, the Appellant has not demonstrated that the claims made in February 2021

were to patients classed as CEV or 'Shielded Patients' who were required to self-isolate at home.

7.25 I therefore consider that the deliveries above the maximum potential deliveries made in the month of February 2021 by the Appellant are not eligible for a fee.

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

8 DECISION

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

8.1.1 dismiss the appeal and confirm the decision of the Commissioner; or

8.1.2 substitute for the decision any decision that the Commissioner could have taken when it took the decision; or

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

8.2 I dismiss the appeal and confirm the decision of the Commissioner to recover the overpayment of £5,220.00.

8.3 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**