

April 2022

## PSNC Briefing 010/22: COVID Cost Claims – Independent Internal Reviews and Appeals

This PSNC Briefing provides further guidance on the COVID cost claims process where a community pharmacy contractor wants to dispute the amount to be paid or to be recovered after Pre- or Post-Payment Verification (PPV).

The formal Drug Tariff wording is in Part VIA of the April 2022 Drug Tariff, section 12.10, and sets out an Independent Internal Review and appeal process for contractors to dispute the unpaid amount of a claim. The FAQs below, developed with the Department of Health and Social Care (DHSC), provide guidance on the process.

**Q1. Following PPV, the NHS Business Services Authority (NHSBSA) concluded the amount payable was lower than I claimed for, and I would like to appeal. What process is open to me?**

The first step is to ask for your claim to be reviewed by DHSC (the independent internal review as per the Drug Tariff). If you are still not happy with the outcome you can then appeal to NHS Resolution.

**Q2. I would like to appeal and not go through the independent internal review (DHSC) step. Can I appeal in the first instance to NHS Resolution?**

No. If you want to appeal to NHS Resolution, you must first go through the independent internal review process by DHSC first. It is not possible to appeal to NHS Resolution without first going through this internal process.

**Q3. After the feedback I've received from NHSBSA on the unpaid part of the claim, I only want to dispute part of the unpaid amount. Is this possible?**

Yes. You can choose how much of the unpaid element of your claim to dispute. First, the independent internal review and, second, the appeal processes (available only if you chose the independent internal review) will only consider the element being disputed.

**Q4. Can I claim further amounts above my original claim? Is this possible as part of the independent internal review process, or subsequent appeal?**

No.

**Q5. What is the deadline for asking for an independent internal review?**

You must request this within 30 days of the email setting out NHSBSA's final position. For clarity, day 1 of the 30 days starts the day after the email being sent by NHSBSA, and the end of the period is 11:59pm on the 30th day (i.e. if an email had been sent on 31st August, the contractor would have had up to 11:59pm on 30th September to ask for the review).

The NHSBSA email will state the date for your pharmacy by which you must ask for an internal review, plus the email address to which to send the request. You must ask for an independent internal review if you want to appeal or may want appeal.

You can include additional evidence if you believe this would be helpful to the panel (please see Q7), but this needs to be included at the same time as asking for the independent internal review.

To assist NHSBSA, please put "Review Request" and then either the individual ODS code or company name (if your request covers more than one pharmacy) in the subject line of your email.

You will receive an automated email receipt on submission, and we recommend you keep this receipt as evidence of submission. If you do not receive this, please contact the NHSBSA again.

Please ensure that you monitor the email address you have provided to NHSBSA – this is dealt with further in Q6. If you are going to seek legal or accountancy advice, please be mindful of the 30-day deadline. Deadlines will be strictly adhered to and submissions outside of 30 days will not be permitted. This is to ensure equal treatment of all contractors and the efficient processing of their claims.

Any contractors that have previously had their claim finalised will be written to setting out both the NHSBSA's final position on their claim and including the detail on this internal review and appeal process: contractors in this position will have 30 days to ask for an independent internal review from the date of that email.

Some contractors are still having their claims assessed and are not yet at the state of having a final position communicated. These contractors will be emailed once their evidence is assessed and it is possible to issue this final position, and will then have 30 days from that point to ask for the independent internal review.

#### **Q6. What email address will NHSBSA use to communicate with me?**

NHSBSA will use the email address stated at the time of making the original claim. If this email address is no longer in use, or is temporarily not being accessed (e.g. staff holiday), please notify NHSBSA at [nhsbsa.covidclaims@nhs.net](mailto:nhsbsa.covidclaims@nhs.net) to ensure email correspondence is sent to an alternative email address. You can also provide more than one email for NHSBSA to use, providing you agree all provided email addresses can then receive and transmit sensitive data and claim correspondence.

This updated email address(es) will be confirmed by NHSBSA and used for future correspondence on the claim, unless you subsequently notify them that this needs to be updated again.

Please ensure that you notify NHSBSA of the best email address for them to use, as review and appeal deadlines will be based on when they email the notified address (by default, this would be the one used to submit the claim, unless you have notified NHSBSA to update this).

#### **Q7. What evidence do I need to provide to the independent internal review?**

You need to identify which part of unpaid claim you are disputing. You also need to state why you disagree with the amount of the claim not payable, including why you believe that the evidence supports a higher claim and/or why you believe any rejected costs are in scope of the claims process.

The evidence and email communication that has already taken place with NHSBSA will be forwarded by them to the independent internal review panel for its consideration. You can provide additional supporting evidence for the panel to consider, as well as additional information / context to the evidence already provided.

If you want to include any additional information / context, this must be done when requesting a review by the panel.

Contractors need to ensure they are familiar with what costs are in scope of the Drug Tariff, i.e. the time period in which of costs were incurred and the category of costs that is in scope.

The review is limited to the part of the claim you are disputing: you do not need to provide any further information on elements already paid (or that you are accept will not be paid and you are not disputing).

#### **Q8. Do I need to attend the internal independent review panel?**

No, the review panel assesses the evidence you have provided, both previously to NHSBSA plus any further evidence submitted when requesting the review. The review panel may ask for clarification / further information, but this is likely to be in writing if needed.

#### **Q9. How long will it take the panel to conduct the independent review?**

The process is likely to take different timescales depending on the complexity of each contractor's evidence, and whether the panel needs to get further clarification or information. Contractors should ensure mailboxes remain

monitored, and any changes needed to the email address used to ensure emails are promptly read, are reported to the NHSBSA as per Q6.

**Q10. What detail will be provided at the end of the independent review process?**

NHSBSA will review the advice from the independent internal review panel, and then write to contractors setting out any additional amount payable following this.

**Q11. Will any disputed amount be recovered from me while I am going through the independent internal review process (and the subsequent appeal process, if applicable)?**

No, the amounts will be recovered following the expiration of 30 days or after the completion of the review and appeals process.

**Q12. How long do I have to appeal to NHS Resolution?**

Contractors can appeal to NHS Resolution if they are unhappy with the outcome following the independent internal review. Contractors will have 30 days to do this from receipt of the NHSBSA email setting out any changes to the NHSBSA determination following the independent internal review findings. For clarity, day 1 of the 30 days starts the day after this email being sent by NHSBSA, and the end of the period is 11:59pm on the 30th day (i.e. if an email had been sent on 31st August, the contractor would have had up to 11:59pm on 30th September to ask for the appeal).

This email will also set out the appeal process. There is no appeal to NHS Resolution available to contractors who have not gone through (did not request) the independent internal review.

Deadlines will be strictly adhered to and submissions outside of 30 days will not be permitted. This is to ensure equal treatment of all contractors and the efficient processing of their claims.

**Q13. How do I appeal to NHS Resolution?**

The mechanics of appealing to NHS Resolution will be set out in the email detailing any changes to the NHSBSA determination following the independent review.

**Q14. What additional information do I need to provide if I appeal to NHS Resolution?**

You need to identify which part of the unpaid claim you are disputing. You also need to state why you disagree with the amount of the claim not payable, including why you believe that the evidence supports a higher claim and/or why you believe any rejected costs are in scope of the claims process.

You can provide additional supporting evidence for the panel to consider, as well as additional information / context to the evidence already provided.

NHS Resolution will also consider the evidence and email communication that has already taken place with NHSBSA. The review is limited to the part of the claim you are disputing: you do not need to provide any further information on elements already paid or that you accept will not be paid (that you are not disputing).

**Q15. How will I find out the outcome of any appeal to NHS Resolution?**

The appeal process is a matter for NHS Resolution and follows the National Health Service Litigation Authority (Pharmaceutical Remuneration – Payment Disputes) (England) Directions 2022 set out in Part XVIII of the April 2022 Drug Tariff. NHS Resolution will write to you with its decision.

If you have queries on this PSNC Briefing or you require more information, please contact [info@psnc.org.uk](mailto:info@psnc.org.uk).