



## **NHS, ABPI and BGMA guidance for standardising the management and processing of off-contract claims when off-patent medicines under NHS framework agreements are out of stock**

### **What is this guidance?**

The Pharmaceutical Market Support Group (PMSG), on behalf of the NHS has developed practical guidance for use by hospital trusts and suppliers to manage claims where an off-patent medicine is out of stock.

### **When does this apply?**

This guidance covers all off-patent medicines purchased by hospital trusts through NHS framework contracts. **As such this guidance only applies to contracts for generic pharmaceuticals.**

The British Generic Manufacturers Association (BGMA) and the Association of the British Pharmaceutical Industry (ABPI) have assisted PMSG in developing this guidance.

The guidance will make it easier for Trusts and suppliers to resolve claims where an off-patent medicine is out of stock, and make it easier for claims to be made and processed in an efficient way in accordance with the NHS framework contracts for the purchase of medicines. When we use the words 'claim' or 'off-contract claim', it refers to where trusts are seeking or are authorised to claim against a contracted supplier where that supplier has been unable to supply product to the volume ordered, nor has it been able to arrange an alternative supply.

### **Why should we follow this guidance?**

Following this guidance will save both Trusts and suppliers time and effort, and more importantly, will ensure that out of stock incidents are dealt with as efficiently as possible. Central to this is improving the way trusts and suppliers communicate, whether this is confirming if the supplier has any stock not held by the wholesaler, or agreeing a common sense approach to resolving future out of stock situations.

### **Why should we follow the off-contract claims decision tree?**

By going through the steps in the off-contract claims decision tree on page 2, Trusts and suppliers can follow a straightforward process whereby when a medicine has not been delivered to a Trust within 14 days, all avenues of supply can be easily checked before making and paying a claim. Following the decision tree will also save money. For example, by aggregating low value claims received during a period of 90 days, this will save on the costs of processing these claims, which can be greater than the actual claims themselves.

### **Why should we use the template off-contract claims form?**

When a Trust needs to make a claim to cover the extra cost of purchasing the least expensive alternative, it can use the template on pages 3 and 4 (or an electronic version which details all of the mandated forms). The suppliers represented by BGMA and ABPI have supported PMSG in developing a template claims form which outlines the information that suppliers need to process a claim. This means that by using this template form, Trusts can be clear on the information they need to provide to successfully make a claim first time. Suppliers can also be sure that the information they need to authorise a payment has been provided by the Trust.

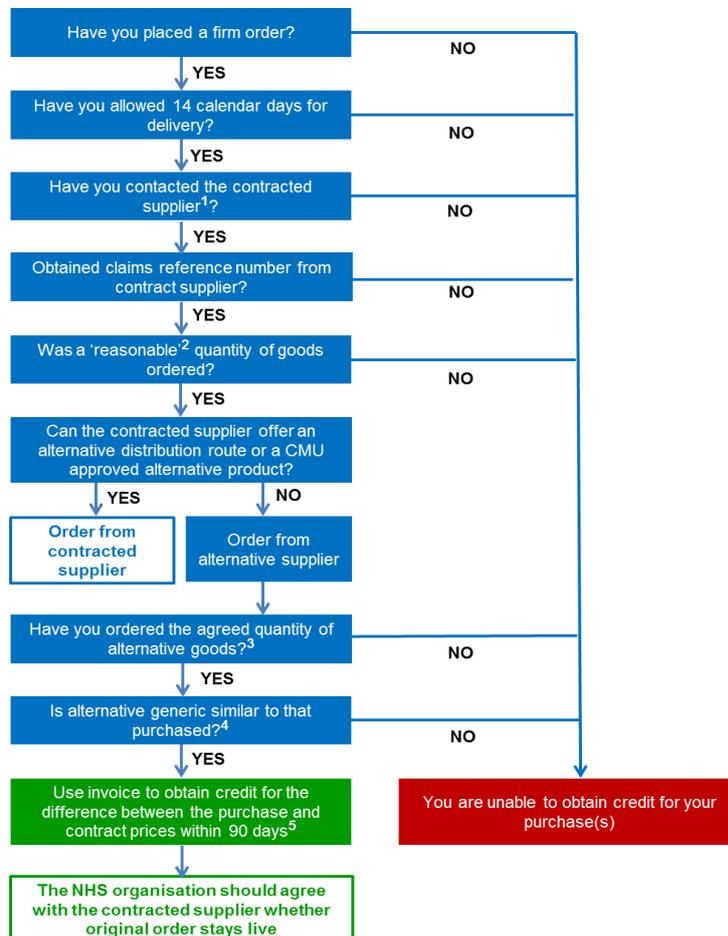


Suppliers will provide Trusts with a claim reference number when Trusts first contact them due to non-delivery. We believe that Trusts asking for and receiving a reference number will promote good, early communication between trust and supplier and will make obtaining credit more straightforward where an off-contract claim is pursued. The number is to be referenced at the beginning of the template form.

**Can I help in making this a uniform way of working?**

We expect that both Trusts and suppliers will follow the decision tree and use the template (either paper or an electronic version). Please encourage your colleagues and those suppliers or Trusts you trade with to do the same (if they are not already doing so). This will help to establish a uniform process that can improve the way we all work. If NHS Customers have any questions, please contact your Regional Procurement Specialist.

## NHS/BGMA/ABPI off-contract claims decision tree



### Explanatory notes

**1** Before placing an order, trusts are requested to consider the trust's present needs to place the order, and/or the quantity ordered.

**2** Check directly with the contracted supplier of the purchased product when an order fails, even if you made your failed order directly through a wholesaler. The contracted supplier may have surplus product that the wholesaler is not holding.

**3** A reasonable quantity of goods is based on your trust's current usage and its usual ordering patterns.

**4** The agreed order quantity may in some circumstances cover the whole shortage period. This is to be agreed by the trust and contracted supplier.

**5** The terms and conditions of supply require that trusts must use all reasonable endeavours to mitigate losses to a contracted supplier when purchasing a similar alternative. This guidance suggests as good practice that this requirement be applied to mean that trusts, as far as is possible, should seek to purchase the least expensive similar alternative. Trusts should also consider if the alternative product is similar (same molecule, same dosage, same strength, same pack size) to that originally specified. Unlicensed or different products in the same therapeutic category are not applicable. In exceptional circumstances, an alternative remedy to the shortage can be agreed by the trust and contracted supplier. Similarly, if the pack size of the alternative product is not available, the trust and contracted supplier can agree about the trust purchasing the closest available pack size.

**6** Trusts should submit claims for off-contract purchases within 90 days. Contracted suppliers may choose to aggregate claims until the total value exceeds £50. However, contracted suppliers should not seek to aggregate claims that they have held beyond 90 days, rather all claims are to be paid within 90 days of receipt.

### **It is strongly recommended that suppliers follow certain best practice tips when dealing with potential off-contract claims:**

- Contracted suppliers should make a record of off-contract enquiries.
- Contracted suppliers should acknowledge off-contract claims.
- Contracted suppliers have a responsibility to be aware of the off-contract claims procedure.



## **NHS/BGMA/ABPI off-contract claims form**

*This form and its use does not override any rights of the supplier or the NHS. This form exists merely for convenience and to improve the efficiency of making a claim*

**CLAIM REFERENCE number supplied by the contracted supplier**

**Date claim reference number was supplied:**

**Contracted supplier contact name:**

**To (if not to contracted supplier contact name above):**

**From:**

**Contact telephone number:**

**Contact email address:**

**Contact fax number:**

**Date of claim submission:**

**How is this claim to be treated (please circle one of the following)<sup>1</sup>: Left open / closed**

You were unable to supply product under the terms and conditions of the framework contract. We have therefore had to purchase the product from an alternative source at a higher price.

Under the terms of the contract, and subsequent to the correct following of the framework contract and the claims procedure for off-contract purchases, we are entitled to claim the price difference.

Please find attached a copy of the off-contract purchase invoice<sup>2</sup>.

We represent, warrant and undertake that the information relating to this claim is correct and not misleading and we will update you promptly if we become aware that any information contained in this form is wrong, incomplete or otherwise misleading.

The contracted supplier should acknowledge receipt of this form so that a trust knows that it has been received.

The details of this claim follow overleaf:

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<sup>1</sup> If the original claim is left open, further unfulfilled orders may be claimed for against that original claim, subject to the agreement of the respective supplier. If the original claim is closed, further unfulfilled orders will have to be claimed for under a new claim.

<sup>2</sup> The contracted supplier reserves the right to ask for a copy of the original failed order.

**Original order:**

<b>Original order number</b>	
<b>Date of order</b>	
<b>Product details</b>	
<b>Original order quantity</b>	
<b>Point of purchase</b>	

**Off-contract claim:**

<b>Date of alternative purchase</b>	
<b>Purchased from</b>	
<b>Order quantity</b>	
<b>Contract price per pack (excl. VAT)</b>	
<b>Off-contract purchase price per pack (excl. VAT)</b>	
<b>Net difference per pack between original order and alternative purchase excl. VAT</b>	
<b>Total claim (order quantity x net difference per pack between original order and alternative purchase) excl. VAT</b>	
<b>VAT cost</b>	
<b>Total of claim including VAT</b>	
<b>Alternative supplier's invoice number</b>	
<b>Name and address of who and where to issue any off-contract claims payment, cheque or credit note to</b>	

**Contracted supplier use only, as required:**

<b>Date of claim receipt</b>	
<b>Internal claim reference number</b>	
<b>Acknowledgement sent to customer</b>	
<b>Method of acknowledgement</b>	
<b>Date of acknowledgement</b>	
<b>Customer account number</b>	
<b>Claim approved by</b>	
<b>Credit note / cheque reference number</b>	

**Any comments:**