

NATIONAL APPEAL PANEL

constituted under

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL SERVICES)
(SCOTLAND) REGULATIONS 2009 (AS AMENDED)
("the Regulations")**

DECISION

of the

CHAIR

of

THE NATIONAL APPEAL PANEL

in the application relating to

UNIT 1, 177 LOW WATERS ROAD, HAMILTON, ML3 7QQ

Applicant and Appellant:	Kasim Gulzar
Pharmacy Practices Committee:	NHS Lanarkshire
PPC Decision Issued:	8th May 2014
Panel Case Number:	40(2014)

Decision of the Chairman of the National Appeal Panel

1. Background

- 1.1 Mr Kasim Gulzar ("the Applicant" or "the Appellant") made an application for inclusion in the pharmaceutical list of NHS Lanarkshire in respect of the premises at Unit 1, 177 Low Waters Road, Hamilton, ML3 7QQ ("the Premises") said application being dated 26th November 2013.
- 1.2 The Pharmacy Practices Committee of the Board of NHS Lanarkshire ("the PPC") convened a meeting held on 22nd April 2014 in order to consider the evidence of the Applicant and the Interested Parties, the papers submitted by each and the Health Board and others and following upon which after consideration, the PPC issued their decision dated 8th May 2014 that the provision of pharmaceutical services at the premises was neither necessary or desirable in order to secure adequate provision of pharmaceutical services within the neighbourhood in which the premises were located.

2. Grounds of Appeal

- 2.1 By Letter of Appeal dated 27th May 2014, the Appellant lodged Grounds of Appeal against said decision.
- 2.2 The Appellant's Grounds of Appeal may be summarised as follows:-
 - 2.2.1 Whilst the PPC had pointed out that within the neighbourhood there were three pharmacies providing pharmaceutical services and that a further three pharmacies were located approximately one mile from the neighbourhood did not of itself establish that the neighbourhood was being served adequately. By way of example he indicated that Boots on Mill Road was "over run" and subjected patients to excessive waiting times for prescriptions and services.
 - 2.2.2 The PPC agreed that the neighbourhood had a population of approximately 18,000 giving an average of around 6,000 persons per pharmacy. He argued that this was above average for a pharmacy. If the neighbourhood were divided into two, i.e. north and south with the south having one pharmacy (Boots, Mill Road) it was arguable that it served a much large figure of persons, say around 9,000. Boots is unable to cope and consequently providing an inadequate pharmaceutical service.
 - 2.2.3 The PPC stated that all pharmacies in the neighbourhood were easily accessible by public or private transport. Many within reasonable walking distance of GP surgeries and as also near major food and other retail outlets. This did not mask the fact that the services provided by Boots were inadequate. High waiting times and patients returning at a later date to collect medicines that the pharmacy had run out of. There was public dissatisfaction with the service from the current pharmacies.
 - 2.2.4 The PPC stated that all pharmacies within the neighbourhood exchange supplies of medicines when necessary to avoid shortages. He implied that this was a fiction in that in view of the competition pharmacies would hold on to stock for their own patients. The addition of an independent pharmacy would give the patients of a neighbourhood a choice and independents usually find it easier to source products as they have access to a variety of suppliers that large multiples do not.
 - 2.2.5 The Appellant expressed concerns that his credibility was questioned during the hearing it was suggested he had sourced patients to sign letters whereas those letters were in response to the required advertising by the Board.
 - 2.2.6 The Appellants stated that Lloyds Pharmacy was in attendance at the Hearing to object to the application yet it had apparently showed interest in the property in order to open a pharmacy previously.

3. The Evidence of the Parties

3.1 The evidence of the Applicant at the Hearing on 22nd April 2014 may be summarised as follows:-

- 3.1.1 The Applicant defined his neighbourhood as being Chantinghall Bridge heading along Bent Road into Quarry Street down the railway line, thereafter travelling east along the railway line to meet Meikle Burn continuing downwards to take in Eddlewood, traversing Stewarton Road taking in Meikle Earnock and Woodhead Green as far as Harlequin Court and Penbury Crescent to join the burn that flows from Neilsland Park and following it back to Chantinghall Bridge.
- 3.1.2 He was of the view that the current provision of pharmaceutical services was inadequate and that it did not provide patients with services to which they were entitled. The turnaround time to wait for a prescription to be dispensed was lengthy and in some cases in excess of 30/45 minutes. At all three of the pharmacies within the neighbourhood but more particularly Boots were people regularly queuing out of the door. The neighbourhood population approached 18,000 which of itself demonstrated an existing inadequate pharmacy provision, standing that the national average was approximately 4,500 per pharmacy. Further, new housing was planned for the neighbourhood and, accordingly, another pharmacy was necessary for both current and future service provision.
- 3.1.3 He argued that existing pharmacies "ran out" of regularly dispensed medicine and both Boots and Lloyds were extremely busy and beyond their capacity. A patient may require to return to the pharmacy at a later date/time in order to receive medicine or to use another pharmacy. This adds to a patient's journey time. Boots sole supplier is Unichem and Lloyds pharmacy are limited to Allianz/Unichem and AAH suppliers. That restricts the supply market. Were his proposed pharmacy to be granted in its application this would increase the supply of medicines and the ability to source and obtain medicines for patients and would complement the current pharmacies especially at time were there are issues in obtaining specific medicines. As the other two pharmacies were so busy there would be a resulting restriction on pharmacists availability to speak with a patient. No pharmacy would provide a compliance aid such as dosette boxes or bubble packs as they did not have the capacity. Although all three stated that they may be using a "hub" to carry out the dispensing of dosette boxes which he acknowledged may take the workload away from the pharmacist but even so that would make the process impersonal.
- 3.1.4 The Applicant advised the Hearing that it was a difficult climb from Low Waters Road to Mill Road which would render it difficult for an elderly patient to make that journey. There are high kerbs which make it difficult for both elderly and disabled and parents pushing prams. Mill Road pharmacy run by Boots was accordingly difficult to access and it was therefore necessary and desirable for his pharmacy's application to be granted on Low Waters Road. Boots pharmacy at Mill Road was not clearly visible.
- 3.1.5 The health statistics in the neighbourhood suggested a poor health profile with, for example, 22.7% of pregnant women smoking with 47.9% overall smoking. His current practice in Thornliebank was assisting over 60 people a month to stop smoking.
- 3.1.6 He stated that 18 new retail units will be built in the council area which would increase the amenities on Low Waters Road. Above these units will be flats which would increase the population of the neighbourhood. Generally, he stated that he received a significant level of support from people in the area as they are unhappy with the current service and this support in itself suggested that the neighbourhood was suffering an inadequacy in its pharmacy provision. This had been highlighted in letters, emails and a signed petition. In response to questions from the parties and the members of the PPC the Applicant stated that the owner of the unit which he hoped to take entry was awaiting his application being considered and agreed before constructing a doorway to the unit. He reiterated his concern and that dosette boxes were carried out off site and this was not consistent with a community pharmacy.

- 3.1.7 The Applicant stated that he did not know whether any formal complaints had been made to the Health Board in connection with any inadequacy of current service provision. The Applicant was advised by a questioner that Hamilton had a population of roughly 48,000 and was served by twelve pharmacies resulting in a 4,500 average population per pharmacy and whether or not that adequately provided pharmacy provision in Hamilton. He responded by referring to his definition of the neighbourhood which showed that the three current pharmacies were not providing an adequate service. That formatting of some letters was similar did not, in the Applicant's view, indicate that it sent out a standard template and that an explanation may have lain in the fact that a group of people had got together and had agreed to submit letters. He stated that he could not consider fifteen minutes an unreasonable time to wait for a prescription but, in speaking to people in the neighbourhood, they made it clear that they were unhappy with the current service. He accepted that the letters received in support of his application were less than 0.5% of the population but one person complaining was enough and he reiterated the people had contacted him.
- 3.1.8 He gave examples of people approaching him regarding the current lack of service. He stated that there was parking available at the proposed premises and on the main road and in the small street behind the Medical Centre. Whilst the pharmacy did not have any dedicated disabled parking available there was such at the Health Centre near his proposed premises. He did acknowledge that it was best to park off the main road. He also acknowledged that he could not confirm that the statistic of 47.9% of smokers specifically referred to his defined neighbourhood and may have taken in other data zones. He confirmed that he considered his proposed pharmacy to be viable although he had not written a Business Plan and had assumed that the nearby Health Centre would issue about 5,000 prescriptions per month.
- 3.2 The evidence of David Henry of Lloyds Pharmacy Limited, one of the Interested Parties may be summarised as follows:-
- 3.2.1 Mr Henry reminded the PPC that an application had been heard in 2010 at premises adjacent to the current premises and that the Applicant has stated that he agrees with the neighbourhood as defined by the PPC on that occasion and that there are three pharmacies within that neighbourhood and that, further, the provision of pharmaceutical services was considered to be adequate in 2010 with three pharmacies in the neighbourhood and three pharmacies on the periphery and providing services to the neighbourhood. The PPC then had taken into account matters such as a good bus network, the then existing services to the elderly, those on low incomes and had children in push chairs. There had been no change since. The distance to the nearest pharmacy is approximately 500 metres and accordingly little in the way of geographical advantage by granting the application.
- 3.2.2 The Applicant had made reference to a 35/45 minutes waiting time which is a figure which he stated was taken out of the area and within the representations submitted by him there was no reference to such a period. In the email dated 15th August alluded to by the Applicant, it referred to a period of up to 15 minutes. Other comments are unspecified. Mr Henry criticised the methodology of the petition. Nothing was known as to how it was conducted, whether the Respondents understood the concept of adequacy, the Regulations or whether they saw it as an opportunity to have more services in their area. In addition the number of responses was small. Mr Henry went on to explain the concept of the "hub" which was essentially off-site dispensing and which was assembled and clinically checked by a pharmacist off-site and delivered back to the pharmacy for final check, the whole process starting and finishing at the pharmacy. The purpose of using the "hub" concept was to provide increased capacity for the pharmacist as the dispensing of dosette boxes takes up a disproportionate amount of time. In his pharmacy there was capacity for more dosette boxes. Mr Henry stated that there was an adequate bus service and that even by walking within the neighbourhood the round trip would only be 15 minutes.

- 3.3 The evidence of Mr Noel Wicks of WEB Pharmacy Limited, one of the Interested Parties may be summarised as follows:-

3.3.1 Mr Wicks disagreed with the definition of neighbourhood which he regarded as being the whole of Hamilton as he was of the view that most people can get around Hamilton relatively easily. The population was approximately 48,000 and contained twelve pharmacies. Another neighbourhood could be described as being bound at the north by the A72 (Carlisle Road) running west along Miller Street and the A723 and A724 to where it meets Dickson Street. The western boundary would be Dickson Street running into Glebe Street and over to Mill Road and the greenbelt that is located to the west of Mill Road, said greenbelt continues parallel to Mill Road and again parallel and westerly to Strathaven Road. The southern boundary would be bounded by part of the housing on Strathaven Road past Ambleside Rise continuing following the trees and field area heading easterly to where it meets the Avon water and following that until it meets the A72 Carlisle Road. Thereafter the eastern boundary would be the junction where the Avon water and the A72 meet at the road bridge. This neighbourhood would have four pharmacies within it and a population of approximately 18,000, but that was based on data zones and there could be overlap. Either way, Mr Wicks stated that he did not have a strong view on the definition of the neighbourhood.

3.3.2 As to access, he stated that currently within the proposed neighbourhood he had a 15 minute roundtrip walk himself during which he noted the frequency of the buses and the number of cars. Boots had good parking which included disabled spaces and the other pharmacies were easily accessible by bus or car. There had been no outpouring of complaints and he was of the view that no pharmacy indicated any inadequacies. His own pharmacy in Brandon Street was nowhere near capacity and had about 200 trays on a bespoke MDS unit.

3.3.3 On the issue of difficulty in obtaining medicines, all pharmacies could struggle at one point or another and each pharmacy would help each other. His own pharmacy had lent to Boots and to Lloyds and they in turn have helped WEB. There were manufacturing problems that raised difficulties. Another pharmacy was not going to resolve the issue. Mr Wicks was of the view that unless a pharmacy was having 4,000 prescriptions per month it would not be viable.

4. The PPC's Decision

4.1 The Committee are noted as having taken into account all relevant factors concerning the issues of neighbourhood, adequacy and existing pharmaceutical services and, in addition to the whole submissions put before them, they took into account all written representation from supporting documents submitted by the Applicant and the Interested Parties and those who were entitled to make representations. The written representations and material received included maps, showing the location of the proposed pharmacy in relation to existing pharmacies, GP surgeries within Hamilton, of Hamilton and surrounding areas, the prescribing and dispensing statistics respectively of doctors and pharmacists within the town of Hamilton as well as demographic information in the town taken from the 2011 census. Further, a report on the pharmaceutical services provided by existing pharmaceutical contractors within the town and correspondence resulting from the wider consultation process undertaken by NHS Lanarkshire.

4.2 Insofar as the **neighbourhood** was concerned, the PPC had taken into account those who were resident in it, natural and physical boundaries, general amenities such as schools/shopping areas and the distances residents had to travel to obtain pharmaceutical services and also the availability of public transport and considered that the railway line to the north was a good physical boundary and that Meikleburn to the east a natural boundary. Going from east to west the PPC considered the southern boundary to follow the outskirts of the housing estates of Eddlewood, Meikle Earnock and Woodhead Green as these formed natural boundaries as housing was sparse and open ground lay beyond those areas. They determined the western boundary to follow the natural boundary of the burn (unnamed) on the outskirts of Woodhead Green through Neilsland Park and up to and intersecting Mill Road to follow Brent Road, south of Brent Cemetery and St Johns Primary School along Dickson Road and part way up Auchincampbell Road until it again met the railway line. Within this

neighbourhood were four primary schools, the Civic Centre and library, two Post Offices and an industrial estate and that three pharmacies were also located with a further three located approximately one mile away providing services to the neighbourhood.


- 4.3 The PPC turned to considerations of **adequacy** and had accepted that the population within the neighbourhood as defined would be approximately 18,000 albeit it was difficult in measuring precise population figures when using data zone figures which could overlap. The PPC had noted the proposed development of eighteen commercial units and thirty-four residential flats were in progress but that this would not significantly increase the size of the population and perhaps at most an additional one hundred residents. There were three contract pharmacies within the neighbourhood and a further three approximately a one mile radius from the premises which provided services into the neighbourhood. All were within reasonable proximity, accessible by public or private transport and many within walking distance of GP services, major food and other retail outlets. None of the existing pharmacies had any capacity issues as indicated by the oral evidence provided by Lloyds and WEB pharmacies. The PPC did not put much weight on the anecdotal account of waiting times up to 45 minutes for a prescription as no evidence had been adduced that any such complaints had been received. Further, the PPC considered that there was no substantial evidence to the allegation that the current three pharmacies located within the neighbourhood had refused or could not provide services such as dosette boxes due to issues with capacity. They considered that no cogent evidence from allegations of pharmacies had inadequate supplies of medicines, other than isolated incidents as it had been clarified that the pharmacies concerned all exchanged supplies when necessary. They accepted the evidence of WEB Pharmacy in this connection.
- 4.4 The PPC have noted in this connection the responses to the public notice and the petition from the Applicant which had been left at various locations around the neighbourhood of the proposed pharmacy and had concerns as to the authenticity of the letter submitted which appeared to be of a standard template letter and said petition contained multiple similar if not identical signatures. The PPC considered that the small amount of feedback received was more about convenience rather than adequacy of services.
- 4.5 The PPC considered access issues to the current pharmacies and whilst it was noted that there were numerous building works currently in operation between the proposed pharmacy and two of the other pharmacies these were of a temporary nature. The PPC had noted from their individual site visits that there was no available parking directly outside the proposed pharmacy contrary to the evidence given by the Applicant as there was a pedestrian crossing directly outside. Further, no evidence of any transport problems in the neighbourhood that would prevent residents accessing such services at existing pharmacies was presented. The PPC had also noted that the Applicant had not prepared or submitted a detailed business case in support of his application and was, as a result, concerned as to the future sustainability of a pharmaceutical service in that neighbourhood.
- 4.6 The PPC took the decision that the provision of pharmaceutical services at the premises was neither necessary nor desirable in order to secure adequate provision of pharmaceutical services within the neighbourhood in which the premises were located by persons whose names were included in the pharmaceutical list and accordingly rejected the application.
5. **Discussion and Reasons for Decision**
 - 5.1 The Regulations require to be looked at in light of the objects of the Scheme set out under the National Health Service (Scotland) Act 1978 and in particular Section 27 in that it shall be the duty of every Health Board to make, and in accordance with the Regulations, to make arrangements as to its area for the supply to persons who are in that area of:-
 - 5.1.1 (1) proper and sufficient drugs and medicines...which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service...

- 5.1.2 (2)(10) an application made in any case... shall be granted by the Board after procedures set out in Schedule 3 have been followed, only if it is satisfied that the provision of pharmaceutical services at the premises named in the Application is necessary or desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood in which the premises are located by a person whose name is included in the Pharmaceutical List...
- 5.1.3 Schedule 3 2(1)in considering an application to which Regulation 5(10) applies, the Board shall have regard to (a) the pharmaceutical services already provided in the neighbourhood of the premises named in the application by persons whose names are included in a Pharmaceutical List...(b) any information available to the Board which, in its opinion, is relevant to the consideration of the Application.
- 5.1.4 (2) The Board may determine any application in such manner as it thinks fit and may, if it considers that oral representations are necessary determine the Application for a hearing of any oral representations.
- 5.2 The provisions of the Act are largely replicated in the Regulations and in particular, Schedule 3 thereof. Part 1 provides that the Board shall give notice of the Application to various parties who particularly may have an interest in the Application and insofar as Part 2 is concerned, take reasonable steps to consult with persons to whom pharmaceutical services may be provided as a result of the Application by way of public consultation.
- 5.3 In Paragraph 3 the Board shall have regard to the Pharmaceutical Services already provided in the neighbourhood, any representations received by the Board (under Paragraph 1) and any information available to the Board which in its opinion is relevant to the consideration of the Application. It is important to note that the Board may, in accordance with this Schedule, determine any application in such a manner as it thinks fit
- 5.4 The Grounds of Appeal are limited to areas where the PPC has erred in law in its application of the provisions of the Regulations, that there has been a procedural defect or been a failure by the Board to properly narrate the facts and reasons upon which the determination of the Application was based or have failed to explain its application to the facts.
- 5.5 The principal point to address in the PPC's decision is whether and to what extent it has exercised its judgement fairly and given adequate reasons for it and that it does not otherwise offend against the Grounds of Appeal set out in Schedule 3, paragraph 2(A) and 2(B). It is important to note that the PPC comprises pharmacists and lay people who may be expected to understand the issues involved on the evidence before it. It is an expert Tribunal.
- 5.6 The PPC's Decision must be intelligible and it must be adequate. It must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal issues and its reasoning does not give rise to any substantial doubt that it had erred in law. Such adverse inference will not readily be drawn. In addition to the oral evidence presented to it, the PPC has also noted that it had undertaken individual site visits noting the location of the proposed premises, neighbouring pharmacies, demographic information and other supporting documentation provided by the Applicants and Interested Parties and the Health Board in dealing with both issues of neighbourhood and adequacy.
- 5.7 The Appellant's Grounds of Appeal generally rehearse the evidence given by him at the Hearing or, alternatively, giving new evidence which ought to have been addressed at the Hearing. For example, he states that the "fierce nature of business and the requirement of pharmacy stock for a pharmacy's own patients sees pharmacies holding on to stock rather than sharing". There is no evidence of this. In fact, the evidence of the representative of WEB pharmacy stated the opposite. It is not enough for the Appellant to go over his evidence again or to introduce new evidence without any such new evidence being tested by the PPC and the Interested Parties. The PPC, in this case, heard the evidence from the Applicant and the Interested Parties and drew its conclusion from that and the papers submitted. There was nothing in the Appellant's Letter of Appeal that suggested that the PPC had erred in law or that

there had been a procedural defect in the way that the Application has been considered. In my view, there has not been. Neither has there been a failure to explain the application by the PPC of the provisions of the Regulations to the facts nor a failure to properly narrate the facts or reasons on which the determination of the application was based.

6. Decision

- 6.1 The Notice of Appeal discloses no reasonable grounds and, accordingly, for the reasons stated above, the Appeal is dismissed.



J. Michael D. Graham
Interim Chairman
National Appeal Panel
15th July 2014