

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

11 Kenilworth Avenue, Burnfoot, Hawick, TD9 8EG

Applicants:	Umar Razzaq and Kenneth Brown (Elixir Health Care Ltd)
Appellants:	Lindsay & Gilmour Pharmacy
Pharmacy Practices Committee:	NHS Borders
PPC Decision Issued:	20th May 2014
Panel Case Number:	41 (2014)

Decision of the Chairman of the National Appeal Panel

1. Background

- 1.1 Mr Umar Razzaq and Kenneth Brown on behalf of Elixir Health Care Limited ("the Applicants") made an application for inclusion in the pharmaceutical list of NHS Borders ("the Board") in respect of premises at 11 Kenilworth Avenue, Burnfoot, Hawick, TD9 8EG ("the Premises") said application dated 23rd October 2013.
- 1.2 The Pharmacy Practice Committee of NHS Borders ("the PPC") convened a meeting held on 2nd May 2014 in order to consider evidence from the Applicants and Interested Parties and the papers submitted by each, the Health Board and others and following upon which, after consideration, the PPC determined that it was necessary to grant the application in order to secure adequate provision of pharmaceutical services in the neighbourhood defined by them.

2. Grounds of Appeal

- 2.1 A Letter of Appeal had been received from Red Band Chemical Co Limited trading as Lindsay & Gilmour dated 6th June 2014 stating that there had been a failure to properly narrate the facts behind the Board's assertions that the Application was valid and within the timescales outlined in the Regulations per their original representations communicated by letter to NHS Borders dated 4th December 2013.
- 2.2 Said letter contended that the application was invalid and ought not to have been processed as it did not fulfil the requirements of regulation 5(2A)(b) in that the consultation "must be completed within the remit of twenty working days immediately prior to the making of the application". That letter goes on to state that the advertisement in Hawick News indicated that the consultation period would end on Tuesday 1st October, however the application would appear not to have been received by NHS Borders until the last week in November, some thirty nine working days from completion of the consultation to submission to NHS Borders and that as such the timescale would fall outwith that required by the Regulations.

3. The PPC's Decision

- 3.1 The PPC determined that it was necessary to grant the application in order to secure adequate provision of pharmaceutical services in the neighbourhood determined by them. Adequate reasons were given for this decision.
- 3.2 However, in the course of the PPC's decision it stated at paragraph 113 that it had considered the validity of the application as put forward by Lloyds Pharmacy (*sic*) in their written representation and as discussed during the Hearing and agreed that it had been confirmed by the Board that the application was within the timescales as set out in the Regulations.
- 3.3 Regulation 5(2A)(b) states that the consultation must be completed within the period of 20 working days immediately prior to the making of the application. The application bears to be dated 23rd October 2013 (and not "the last week in November" as suggested by Messrs Lindsay & Gilmour's letter of objection dated 4th December 2013).
- 3.4 There is reproduced in the papers (page 42) what appears to be the reproduction of an advertisement relating to the submission of an application by the Applicants with a proposal to provide pharmaceutical services from the premises and states *inter alia* "...as required under the Regulations this public consultation will be for the period of not less than twenty working days from the date of this advert which will end on Tuesday 1st October 2013."
- 3.5 During the course of the evidence of the parties at the Hearing held on 2nd May, surprisingly little reference was made to this issue. In particular the representative of Messrs Lindsay & Gilmour did not question the Applicant as to the date of completion of the consultation or the submission of the Application, nor indeed did he make any reference to it during the course of his evidence. When the issue was raised with him in questioning by a member of the PPC, he stated that the company would "reserve their position on whether they think the application is valid and acceptable with regard to timescales". This was an opportunity to set out their reasons which they failed to do.

- 3.6 Nonetheless, the PPC stated that they did consider the validity of the application and were happy to rest on the advice given to them by the Board that the application was within the timescales as set out in the Regulations but no reasons were given beyond that. In the circumstances I require to remit this back to the Board for the purposes of requiring the PPC to set out their reasons as to why they considered the application to be valid in terms of Regulation 5(2A)(b). In passing, Messrs Lindsay & Gilmour cannot escape criticism for not setting out their position clearly during the course of their evidence and for failing to question the Applicant's detail of their application as there was no way of knowing whether or not the consultation period did go beyond the 1st October deadline.



J. Michael D. Graham
Interim Chairman
National Appeal Panel
17th July 2014

