

**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 a relocation from**

**120 Windmillhill Street, Motherwell, ML1 1TA**

**to**

**MODRYVALE HEALTH CENTRE**

**at**

**1, TOLL STREET, MOTHERWELL ML1 1TA**

<b>Applicants and Appellants:</b>	<b>Boots UK Limited</b>
<b>Pharmacy Practices Committee:</b>	<b>NHS Lanarkshire</b>
<b>PPC Decision Issued:</b>	<b>28<sup>th</sup> August 2015</b>
<b>Panel Case Number:</b>	<b>48 (2015)</b>

## Decision of the Chairman of the National Appeal Panel

### 1. Background

- 1.1 Boots UK Limited ("the Applicants" or "the Appellants") made an Application for inclusion in the pharmaceutical list of NHS Lanarkshire in respect of the premises within Modryvale Health Centre, 1 Toll Street, Motherwell, ML1 2PJ ("the Premises") being a relocation of its existing pharmacy contract at 120 Windmillhill Street, Motherwell, ML1 1TA. Said Application was dated 21<sup>st</sup> June 2015.
- 1.2 The Pharmacy Practices Committee of the Board of NHS Lanarkshire ("the PPC") convened a meeting held on 11<sup>th</sup> August 2015 in order to consider the evidence of the Applicants and Interested Parties, the papers submitted by each, including the Consultation Analysis Report ("CAR") following upon a joint consultation exercise between the Applicants and NHS Lanarkshire and a completed questionnaire following thereon, all referred to in the Minutes of the said meeting of the PPC. Following the whole evidence of the Applicants and various Interested Parties, and after consideration of it and the papers referred to, the PPC issued its decision on 28<sup>th</sup> August 2015 determining that the provision of pharmaceutical services at the premises was neither necessary nor desirable in order to secure adequate pharmaceutical services in the neighbourhood in which the premises were located and, in the circumstances, the Application was rejected.

### 2. Grounds of Appeal

- 2.1 In their Letter of Appeal dated 16<sup>th</sup> September 2015 the Appellants lodged Grounds of Appeal against said decision and which may be summarised as follows:-
  - 2.1.1 The PPC failed to interpret the consultation results in light of the alterations to the Application following upon expressions of public opinion. Only their statistics were quoted in the CAR without reference to any comment which made clear that opposition to the Application was principally based on the provision of addiction services which were not part of the Application. They state that this was driven by a misguided public campaign in a local paper and internet.
  - 2.1.2 The PPC gave undue weight to the response to question 13 (ie. "Do you believe there are any gaps/deficiencies in the existing provision of pharmaceutical services in the neighbourhood?").
  - 2.1.3 The PPC failed to apply Regulation 5 (10 A) appropriately throughout the Hearing, albeit this was corrected on reconvening the Hearing after submissions were completed and in the circumstances the PPC led itself to a conclusion outwith the regulations with regard to adequacy.
  - 2.1.4 The PPC had concluded at paragraph 16.9 of the Minutes that "that evidence from every one of the interested parties... there was sufficient capacity in the neighbourhood". The Appellants argue that this is a complete misinterpretation given that only one of the four interested parties quoted has premises within the neighbourhood determined by the PPC, the remainder being at the nearest over two kilometres outside the neighbourhood in an urban area. Further, the nearest pharmacy discounts itself in the PPC report (paragraph 6.14) as principally getting "the majority of its prescriptions from Wishaw", a major conurbation outwith the neighbourhood. The premises of another interested party is over 4.5 kilometres away, again in an urban area.
  - 2.1.5 On advice received, the Board disregarded premises already listed to the Applicants (ie. 120 Windmillhill Street) thus raising the question as to whether the PPC ought to have considered adequacy in the neighbourhood without considering the three locations within the neighbourhood that are operated by the Applicants.

### 3. The Evidence of the Parties

- 3.1 The evidence of Mr Charles Tait on behalf of the Applicants may be summarised as follows:-

- 3.1.1 Mr Tait advised that the Application was a novel one and that it involved the relocation of the pharmacy from an existing Boots pharmacy at 120 Windmillhill Street to the premises and, as such, the Application required to be determined on the basis that the pharmacy at 120 Windmillhill Street was deemed to be closed. The relocation involved a move of some five hundred yards but improved distribution in Boots pharmacies and patients, as two pharmaceutical contracts were currently thirty feet apart at 120 and 134 Windmillhill Street.
- 3.1.2 The neighbourhood was not specifically defined by the Applicant, although referred to as being taken from the last PPC held for the area. The neighbourhood was determined to contain a population of between 8,500 and 10,000 persons. However, the statistics indicated that the four remaining pharmacies in the neighbourhood provided services in excess of its population on the basis that pharmacies in town served business centres and a visiting population. Mr Tait had defined the neighbourhood as being on the North by the A723 Hamilton Road from the River Clyde to the town centre, along Muir Street and Menteith Road, on the East continuing onto Brandon Street across Hill Street then along the railway line to the roundabout at the junction of the B754 with Windmillhill Street, along Windmillhill Street to Dalzell Drive, South and West following the road passed the cricket ground to the Dalzell Burn to Manse Road along the unnamed road until it meets the River Clyde and then follow the river to rejoin Hamilton Road.
- 3.1.3 A consultation process had been undertaken by the Applicants with NHS Lanarkshire as a result of which Boots changed its Application to reflect public opinion and, as a result, drug addiction services were not to be provided at the proposed premises. Mr Tait stated that there was not one argument during the consultation process against the relocation, although he did report objections on the basis of increased traffic flow, but did not consider this to be of significant standing as patients went to the medical centre in order to go to the doctors and this would not change when the pharmacy opened.
- 3.1.4 He stated that the next closest pharmacy to the proposed location was Boots at 1.8 km away and Lloyds 2 km and Elixir more than 3km. The opening of a pharmaceutical premises would have little or no impact on other pharmacies which were more distant.
- 3.1.5 Mr Tait acknowledged in response to a question by an interested party that not all negative comments received during the consultation exercise were only about addiction services. He also acknowledged that the public benefit to having a pharmacy at a medical centre would be that patients accessing the medical centre would have the option to obtain a prescription without having to travel five hundred yards by car. Mr Tait did not agree with the comment in the consultation document that Boots would monopolise prescriptions from the medical centre as all pharmacies in the area collected prescriptions from that surgery for repeat business.
- 3.1.6 In response to a question by the PPC, Mr Tait stated that Boots could not fully commit to closing the pharmacy at 120 Windmillhill Street, should the Application be rejected, although he did accept that when dealing with a relocation of the type under discussion the regulations state that the adequacy test should be applied as if the pharmacy being relocated will not exist. Mr Tait stated that while it was still possible for the PPC to find the existing pharmaceutical services to be adequate without including those provided by 120 Windmillhill Street, he did not, in any event, think it to be the case. He was of the opinion that if one of the Boots pharmacies at Windmillhill Street closed then it would leave an opening for someone else to make an Application and Boots was not inclined to give its business away. Mr Tait accepted that there was no mention in the consultation document that the existing pharmaceutical services were inadequate or concern about the distance between health centres and the current pharmacy locations. He did, however, state that the concept of a neighbourhood was difficult for the public to grasp. Mr Tait assured the PPC that it was not intended to introduce any addiction services and that the owners of the property from which Boots would lease the pharmacy did not want addiction services. Boots would only consider introduction of an addiction service when public opinion had changed and the landlord (ie. the GPs) requested its provision.

- 3.1.7 The meeting adjourned at this point for advice to be taken on how to determine adequacy in terms of relocation. It was hoped that a response would be received by the end of the Hearing and that the Hearing would otherwise proceed.
- 3.2 The evidence of Mr Imran Qayam on behalf of Shehri Pharmacies Limited (McIntyre & Cairns Pharmacy) may be summarised as follows:-
- 3.2.1 The relocation was not going to improve pharmaceutical services in the area. On the contrary, it would be detrimental in that the premises are on the edge of the neighbourhood from which McIntyre & Cairns are providing pharmaceutical services, thus neglecting the neighbourhood where Boots are presently providing pharmaceutical services. There has been no material change since the last Application for a new contract in the twelve months previously. Boots have not established a need for a further provision of pharmaceutical services in the area and considered the Application to be for the commercial benefit of Boots, which would result in a detrimental effect on other service providers. The Application involved the relocation from a small unit to another small unit, which did not make business sense. He agreed with the proposed definition of the neighbourhood and acknowledged that his pharmacy was not in the neighbourhood.
- 3.2.2 Mr Qayam considered that his collection services from the Modryvale Medical Centre would be small as the majority of prescriptions were collected from Wishaw and this acknowledged that his pharmacy was probably the smallest entity to be affected if the Application was granted. He stated that were Boots to close one pharmacy in Windmillhill Street after an unsuccessful Application for their premises, extra staff and pharmacists would be available for the pharmacy to take on more services and whilst the pharmacy currently did not do a lot of addiction services, it was segregated, easy and convenient.
- 3.3 The evidence of Mrs Annette Wilson of Lloyds Pharmacy Limited may be summarised as follows:-
- 3.3.1 Mrs Wilson agreed with the definition of the neighbourhood as proposed by the Applicants and accepted the Application, albeit a relocation, was to be considered as to whether it was necessary or desirable to secure adequate provision of pharmaceutical services in the neighbourhood.
- 3.3.2 She referred to the results of the survey in which it was noted that the majority of those surveyed did not think that the proposed relocation was appropriate (63.4%). In addition, the site was not on a bus route and there were concerns about the vicinity to a primary school, objections to proposed opening hours, initially the proposed provision of Methadone, and an overwhelming majority raised questions (83.6%) and further other adverse comments.
- 3.3.3 There had been a previous Application in Leven Street where there were five contract pharmacies in the neighbourhood, all readily accessible by public or private transport and all provided services to the neighbourhood. The five contracted pharmacies included both pharmacies at 120 and 134 Windmillhill Street owned by Boots. As provision had been previously assessed as adequate the redistribution of services would not fill any gaps. Boots had two pharmacies within thirty metres of each other and accordingly it was submitted that the current adequacy of services would not change should Boots seek to close their pharmacy at 120 Windmillhill Street without relocation.
- 3.3.4 She stated that Lloyds and the other existing pharmacies could provide pharmaceutical services to the neighbourhood if Boots at 120 Windmillhill Street closed.
- 3.3.5 In response to a question by Mr Tait she accepted that Boots were withdrawing its addiction service in the relocation. She stated that if the relocation were granted she did not anticipate all businesses to stay the same and would have expected Boots business to grow and that it was not likely to affect staffing at her pharmacy but the pharmacy was likely to lose some business. She stated that 11% of prescriptions of

Lloyds were collected from Modryvale, as these people were registered with Lloyds at the moment, but the situation may change if the pharmacy opened within the medical centre. She was of the view that the current pharmaceutical services were adequate and this had been determined last year for the Leven Street Application and because Lloyds still had the capacity to grow. Demand did not currently outstrip supply.

3.4 The evidence of Mr Iain Allan on behalf of Eskway Limited may be summarised as follows:-

3.4.1 Mr Allan was of the view that the crux of the argument was a simple one (ie. adequacy) in that the current provision in the neighbourhood was adequate. The critical test, irrespective of the Application being one for a new contract or a relocation is that if the existing services are deemed to be adequate then the Application must fail, there being no provision in the regulations for convenience, distribution or commercial viability. He was of the view that the neighbourhood population was relatively affluent and had little trouble in accessing any required services, including pharmaceutical services in the general area of Motherwell, and that the PPC had met in October 2014 to discuss an almost identical neighbourhood and found the provision to be adequate then and he did not believe that any evidence had been shown by the Applicants to contradict that conclusion. He confirmed that he was content with the neighbourhood definition proposed by the Applicants.

3.4.2 In response to questions from Mr Tait, Mr Allan confirmed his pharmacy to be some 2km away from the premises and that possibly some of his patients could walk to the medical centre, but he considered that he would lose 10%-20% of business from Modryvale prescriptions, but did not have the necessary foresight to predict the effect of the relocation. Nevertheless, a pharmacy situated in a health centre was bound to have a detrimental effect.

3.4.3 In response to questions by the PPC, Mr Allan stated that a pharmacy within the medical centre would have a detrimental affect on other pharmacy businesses and when the pharmacy premises at 120 Windmillhill Street closed, then his pharmacy had the capacity to react and take on extra business. He was of the view that the current provision of pharmaceutical services was adequate, there were very few complaints or errors highlighted in the report from NHS Lanarkshire and the Pharmaceutical Care Services plan did not indicate any problems.

3.5 The evidence of Mr Umar Razzaq on behalf of Elixir Health Care Limited may be summarised as follows:-

3.5.1 Mr Razzaq agreed with the Applicants definition of the neighbourhood and considered that the existing pharmaceutical services provided to the neighbourhood were adequate. He did not accept that the reason for the relocation was for improved distribution of pharmaceutical contracts in the neighbourhood as it was clear from addressing the map that the proposed location was on the extreme edge of the neighbourhood, which may have the effect of actually worsening distribution and would only be convenient for a small number of residents in the area, most likely the ones that use Modryvale Medical Centre. Further, it was evident from the CAR that the vast majority of the public was against the proposed relocation for a variety of reasons.

3.5.2 He stated that his proposed pharmacy was some 3km on foot and 4.5km by road from the premises. Whilst his pharmacy would not close were the relocation granted, it would have a negative impact on his business. He repeated his assertion that the services to the neighbourhood were currently adequate, there were no major barriers to access, it was not a particularly deprived neighbourhood as the majority of the population owned a car but, in any event, the last PPC Hearing ten months previously concluded pharmaceutical services to be adequate and nothing had changed in that time.

#### 4. Legal Advice

4.1 During the course of the Hearing the Chairman adjourned for the purpose of taking legal

advice on the import of the regulations, in particular, regulation 5(10A) with the agreement of all parties whilst Mrs Joy Atterbury, of the Central Legal Office, provided such advice by a mobile telephone link to the Applicants, Interested Parties and members of the PPC. The advice sought was how adequate services may be defined when it involved a relocation as opposed to a new Application and whether all existing services were to be taken into account, or whether there was a presumption of closure of the pharmacy being relocated.

- 4.2 Mrs Atterbury's advice was that when considering Applications to which paragraph 5(10) applied and which was of the type described in sub-paragraph (2b)(ii) in a situation of a person whose name was already included in the pharmaceutical list and who proposed to relocate the Board shall disregard the premises already listed in relation to such Applicant and accordingly the PPC would require to consider adequacy in relation to the remaining four Pharmacies in the absence of 120 Windmillhill Street, and as to whether they provided adequate pharmaceutical services to that neighbourhood. If the PPC considered that a fifth pharmacy was necessary or desirable then the location of the new premises should be taken into account and that there were no particular conditions to be applied for a relocation to a health centre over any other type of premises.

- 4.3 All parties were given the opportunity of addressing questions to Mrs Atterbury, but none wished to do so.

## 5. The PPC's Decision

- 5.1 In addition to hearing the oral evidence of the Applicants and the Interested parties, the PPC is reported to have noted that its individual members had independently undertaken a site visit of Motherwell, noting the location of the proposed premises, the pharmacies, general medical practice, and all facilities and amenities within. The PPC also noted any other evidence more particularly described in paragraph 14 of the Minutes of the Hearing.
- 5.2 The PPC noted that NHS Lanarkshire had undertaken a joint consultation exercise with the Applicants, the purpose of which was to seek the views of the local people who may be affected by the proposed relocation or its use. Said consultation was conducted via SurveyMonkey and hosted by the NHS public website and posters were utilised to advertise the consultation and leaflets produced. It was publicised via a press release, internal staff briefing, facebook page, a twitter account and others. A summary of questions and analysis of responses was set out in paragraph 15.5 of the Minutes of the Hearing. 202 responses were received and all within the required timescale. It was considered by the PPC to be a healthy response rate.
- 5.3 In so far as neighbourhood was concerned the PPC had noted the boundaries as set out by the Applicants and which was agreed by the Interested Parties. However, whilst the PPC was in agreement with the Northern, Southern and Western boundaries proposed, it did not agree with the definition of the Eastern boundary. In its stead the PPC determined that the Eastern boundary was to continue due South after reaching the roundabout at Windmillhill Street and to continue down Shields Road until it turned into Burnside Street and then continued South down that road until it rejoined Dalzell Drive and, in turn, Manse Road and, finally, the River Clyde. The PPC considered this included a larger neighbourhood and the streets, schools and works between Shields Road/Burnside Street and Dalzell Drive, as the people living in that area considered themselves as part of one and the same community as those living to the West and the North of Dalzell Drive. This was confirmed by the PPC members' individual experience, by the movement of people between areas of housing, shopping and by the consequential traffic flow. Accordingly, the PPC determined that the neighbourhood should be defined as: to the North – the A723 Hamilton Road from the River Clyde to the town centre of Weir Street and Menteith Road, continuing along Brandon Street and the joining Crosshill Street at the roundabout, before following the railway line as far as the roundabout at the junction of the B754 with Windmillhill Street lying to the East – after reaching the roundabout at Windmillhill Street continuing due South down Shields Road until Burnside Street and then following the road round the cricket ground to rejoin Dalzell Drive and then to the South – continuing along Dalzell Drive to Manse Road and eventually the River Clyde lying to the West – the River Clyde until joining Hamilton Road.

The neighbourhood as proposed by the PPC contains schools, other educational establishments, parks, cemeteries, Civic Centre, concert hall, housing (both Council and

private developments), and encompasses the town centre.

- 5.4 In so far as adequacy is concerned, the PPC accepted that the existence of the Boots premises at 120 Windmillhill Street required to be excluded from any consideration of adequacy, standing that the Application involved a relocation. It was estimated from the dispensing figures that there would be an additional 6,000 prescriptions per month in the neighbourhood to be dispensed if 120 Windmillhill Street were to close. The PPC were of the view that the majority of these prescriptions would be repeat prescriptions, which would be collected by the dispensing pharmacy. The PPC considered that there was evidence that there was sufficient capacity in the neighbourhood for these to be absorbed. It was of the view that pharmacies would be proactive in acquiring any extra business and the process would be gradual following the closure of 120 Windmillhill Street. It was noted in paragraph 16.9 that the PPC's judgement was based on the accumulation of evidence from every one of the Interested Parties and that there was more than sufficient capacity in the existing pharmacies to cater for the additional workload created by the potential closure of 120 Windmillhill Street, not just in respect of prescriptions and repeat prescriptions, but also in respect of all the other services currently provided by those pharmacies. Boots have, in any event, mentioned additional capacity at their other premises in Windmillhill Street.
- 5.5 In paragraph 16.10 the PPC is reported to have stated that the majority of views expressed by the Interested Parties at the Hearing was that the existing pharmacies could cope with any additional demand and would be able to deal with the extra pressure on their services, and there was no indication of any real or potential inadequacies in the services to that neighbourhood, with a number of pharmacies servicing the neighbourhood to be reduced by one.
- 5.6 The PPC addressed the CAR and, in particular, made reference to the answers and the percentage of responses to questions 3, 13 and 15 which, in its view, indicated that a large number of people opposed the relocation of the pharmacy, even when those negative responses provided regarding addiction services were discounted.
- 5.7 The PPC had noted that Mr Tait had acknowledged that it was not viable to run two Boots businesses so close to each other at 120 and 134 Windmillhill Street, primarily on the grounds of excessive cost, but also on the grounds of a fair and effective distribution of pharmaceutical services, and that other than distance to existing pharmacies there was no other evidence produced by the Applicants that service provision was inadequate and that the PPC's view was that the basis for the relocation appeared to be more on convenience grounds than on any firm evidence of inadequacy of existing services.
- 5.8 The PPC was of the view that the estimated population for the neighbourhood was 8,389 and which could be adequately serviced by four pharmacies in the neighbourhood, and two just outside the neighbourhood.
- 5.9 The PPC accordingly concluded that there was no evidence of any substance provided to demonstrate any inadequacy of pharmaceutical services to the defined neighbourhood based on the four pharmacies in that neighbourhood. There was evidence of three of the four Interested Parties and they had the capacity and in staffing and resources to cope with any increase in demand in all of the services, were the services at 120 Windmill Street be taken out of the equation.
- 5.10 In the circumstances, the PPC's unanimous decision was that the relocation of the Boots pharmacy from 120 Windmillhill Street to 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 the Application was rejected.

## 6. Discussion and Reasons for Decision

- 6.1 An Application for pharmacy provision may only be granted if the Board through its PPC 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 (Regulation 5(10A)). In this connection the PPC requires to have regard to (a) the pharmaceutical services already

provided in the neighbourhood, but subject to the provision of Regulation 5(10A) that in considering an Application which is of the type described in sub-paragraph (2b)(ii) the PPC shall disregard premises already listed in relation to such Application; (a) the premises referred to in the Application; and (b) any information available to the Board which in its opinion is relevant in the consideration of the Application. The PPC may determine any Application in such manner as it thinks fit and may (as it has done in this case) consider oral representations.

- 6.2 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 deemed failure by the Board properly to narrate the facts and reasons upon which the determination on the Application was based, or a failure to explain its decision to the facts. It is entitled to make a decision which is intelligible and adequately addressing the principal and important controversial issues, and how these have been resolved. There is no requirement to go into every detail of evidence but the decision must be understood by the parties to the matters addressed, those parties being aware of the issues involved and the arguments narrated. Any party requires to be substantially prejudiced by a failure on the part of the PPC to provide an adequately reasoned decision. The PPC is also entitled to take into account the viability of the proposed pharmacy as well, of course, other pharmacies that may be affected by the granting of the Application
- 6.3 The Appellants Application was for the relocation of their pharmacy from 120 Windmillhill Street to the Modryvale Medical Centre and which was initiated by the General Practitioners at the Centre who were keen to build a closer relationship with a pharmacy, standing the move towards electronic prescribing. The Appellants had two pharmacies some thirty feet apart at 120 and 134 Windmillhill Street and the relocation from 120 Windmillhill Street to the medical centre involved a move of some five hundred yards. The Appellants had effected a joint consultation process with NHS Lanarkshire. The initial proposal was that the Appellants would provide a drug addiction service from the premises, but they had changed this in order to reflect public opinion which was clearly against such a proposal. The Appellants state in their appeal that the Chair was obliged to give weight to the public consultation, but the PPC failed to interpret the consultation results in light of the alteration to the Application reflecting public opinion in that the proposal for the drug addiction service had been withdrawn. The Appellants state that this was borne out in the PPC Minute where the CAR quoted statistics about reference to public comment which made it clear that opposition to the Application was principally around the provision of addiction services which were not part of the Application. This is not strictly accurate. Mrs Wilson of Lloyds Pharmacy Limited quoted certain responses from the CAR not only examples of percentages against the proposed relocation, but also a quote that the site was not on a bus route and too far to get to on foot from the nearest neighbourhood bus stop. She also made reference to the concerns about proximity to the primary school. In any event, the PPC had access to public responses against the Application, which included such comments as sufficient cover, lack of bus routes, inappropriate locus, a busy road and car park and especially busy immediately prior to and after school, there were other pharmacies within walking distance and adequacy in existing pharmaceutical provision. The PPC was entitled to take into account all the responses in the CAR and whilst the Appellants argue that it is clear that opposition to the Application was principally around the provision of addiction services (which was not part of the Application), the PPC was entitled to take account of the other responses unrelated to the provision of addiction services and which were discounted by it in its determination. The PPC report as having considered the CAR in determining adequacy, particularly in considering the report in light of whether the pharmaceutical services provided by four pharmacies was adequate. The PPC notes that while 72% considered that there were no gaps in efficiencies within five pharmacies in the neighbourhood, it recognised that responses to this question were based on the existing five pharmacies (including 120 Windmillhill Street) remaining, but that the PPC considered that the response could be considered in any event of one of those pharmacies closing and that they were of the view that the removal of the small pharmacy from the equation would not necessarily result in gaps or deficiencies.
- 6.4 The Appellants state that particular weight was given by the PPC to the responses to question 13 which resulted in an interpretation of the regulations as it considered adequacy in its current state, including the Appellants current premises at 120 Windmillhill Street. There is no evidence for that proposition. The Appellants representative had stated in paragraph 4.4 of his evidence that the Application for relocation was to be determined on the basis that the



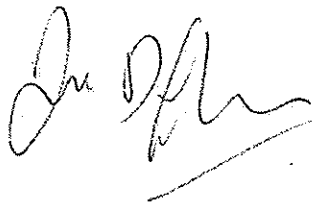
pharmacy at 120 Windmillhill Street was deemed to be closed. The Chairman was uncertain, thus the call for legal advice which, in essence, confirmed Mr Tait's understanding. Whilst the public may have misunderstood the issue of adequacy, the PPC did not. On the contrary, they had considered this particular issue with some care and were of the view that the removal of the pharmacy at 120 Windmillhill Street from the equation would not necessarily result in gaps or deficiencies. This was a view supported by the evidence of the Interested Parties as well as the PPC's individual expertise. The PPC is an expert Tribunal. There was no justification in the Appellants suggestion that the PPC had applied Regulation 5(10A) inappropriately standing the legal advice received by the PPC prior to its reaching its decision. The above effectively deals with the first three points of the Appellants' grounds of appeal.

6.5 The Appellants state that the PPC concluded "from every one of the Interested Parties that there was sufficient capacity in the neighbourhood". They stated that this was a complete misinterpretation in that only one of the four Interested Parties quoted had premises within the neighbourhood. This point is regarded as irrelevant standing that pharmacies outwith the neighbourhood do service the neighbourhood, and especially so in that that the proposed premises would have been at the edge of the Appellants' original neighbourhood. As to the final grounds of appeal that the Board ought to have disregarded premises listed to the Applicant and that the PPC ought to have considered adequacy in the neighbourhood, stripping out the three locations within the neighbourhood which are operated by the Appellant. This is a misinterpretation of the Regulations. It is the intention of the Regulations to include only the premises from which the pharmacy is relocating and not all other pharmacies owned by the Applicant. It is clear from Regulation 5(10A) that where an Application is made and the Applicant intends to relocate to new premises within the neighbourhood from premises already listed in relation to such Applicant and to provide from those new premises the same pharmaceutical services from the Applicants' existing premises and that the Board is not satisfied that the Application is a minor relocation the already listed premises should be disregarded.

6.6 The PPC has set out a well-reasoned decision and it is clear that they have considered all the evidence adduced, and addressed those areas, particularly those relating to adequacy, in relation to which opposing views had been expressed, and had clearly taken into account all relevant factors in coming to their decision, which was both coherent and comprehensible.

## 7. Decision

7.1 In the circumstances and for the reasons stated above it is considered that the Notice of Appeal discloses no reasonable grounds and that it is accordingly dismissed.

  
J. Michael D. Graham  
Interim Chairman  
National Appeal Panel  
6<sup>th</sup> January 2016

