

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

8 Hillview Place, Main Street, Alexandria, West Dunbartonshire, G83 0QD

Applicants:	Sohail Health Care (Scotland) Limited
Appellants:	Sohail Health Care (Scotland) Limited
Health Board:	NHS Greater Glasgow and Clyde
PPC Decision Issued:	4 May 2016
Panel Case Number:	NAP 56 (2016)

Decision of the Chairman of the National Appeal Panel

1. Background

- 1.1 This is an appeal against the decision of the Pharmacy Practices Committee of NHS Greater Glasgow and Clyde (the "PPC") which was issued on 4 May 2016.
- 1.2 Sohail Health Care (Scotland) Limited (the "Applicants" or "Appellants") made an application for inclusion in the pharmaceutical list of NHS Greater Glasgow and Clyde (the "Board") to provide pharmaceutical services in respect of the premises at 8 Hillview Place, Main Street, Alexandria, Dunbartonshire, G83 0QD ("the Premises") said application dated 24 January 2016.
- 1.3 The PPC under delegated powers of the Board held a hearing on 12 April 2016 and took evidence from the Applicants and interested parties and considered supporting documentation and following upon which it determined that the provision of pharmaceutical services at the premises was currently adequate and accordingly refused the application.

2. Grounds of Appeal

- 2.1 The Appellants submitted a letter of appeal to the Board received on 23 May 2016, the grounds of which may be summarised as follows:-
 - 2.1.1 Generally, that the PPC had erred in law with regard to the definition of neighbourhood (Schedule 3, paragraph 5(2A)) as they did not take into account the GP surgeries' relocation, nor did the PPC explain the facts regarding accessibility (Schedule 3, paragraph 5(2B)) in that they did not explain how a non-affluent area may access pharmacies in Alexandria which is located one mile away and that the Board had failed to recognise the "Legal Test" as "desirability" is part of the legal test (Regulation 5(A)) and that the PPC had stated on page 29, paragraph 2 that "the comments in the CAR were mainly related to desirability".
 - 2.1.2 Specifically, that the GP's relocation from the town centre previously adjacent to three pharmacies in Alexandria to North Main Street was why the neighbourhood had changed in terms of public access. The number of patients registered at GP practices in Alexandria is 26,000, more than two times the number of residents in the neighbourhood defined by the PPC. It was desirable to provide pharmaceutical services where people wish to travel to the area to access their pharmacy needs. The premises would provide adequate access and which is desirable. The PPC had erred in law in narrating the facts regarding the number of crossings over the river Leven. There were six crossings, four of which permitted pedestrians to cross and four for vehicles all within the three boundaries as defined by the PPC.
 - 2.1.3 As regards adequacy the PPC had failed to explain how local access to services was readily achievable in a variety of ways by foot, public transport or car. Furthermore and SIMD ranking of 15% most deprived data zone is not an affluent area and most residents would not be able to afford the train or bus for a two miles round trip to the nearest pharmacies located one mile away in the Vale Town Centre. Further, the PPC have failed to take into consideration whether the application was necessary or desirable and in referring to the comments in the Consultation Analysis Report ("CAR") which stated that these were mainly related to desirability and have thus ignored desirability as a parameter with regard to the legal test. The Appellants indicated that albeit the CAR responses numbered 60 whereas the appellants had over one hundred responses in a shorter period time in their own private survey which they could not use. The CAR indicated a significant number of "inadequate" responses. On a FoI request the Appellants state that the number of items dispensed between 2013/14 was 376,056 whereas the minutes of the hearing exclude 75,481 from Boots, 19 Main Street which indicates that each of the three pharmacies would be proscribing well over 250 items per day in a short amount of time.

3. Evidence of the Parties to the Hearing

- 3.1 The evidence of the Applicants may be summarised as follows:-

- 3.1.1 Ms Alia Sohail for the Applicants stated that as the population in the area was increasing the existing services were inadequate and that the CAR indicated a need for another pharmacy. The population of 2011 was 13,054 and would have increased since as there had been new developments and others currently underway. It was a large neighbourhood with four primary schools, and the Vale of Leven High School contained within it. It was an area of high deprivation and that the three existing pharmacies in Alexandria were close together and further away from the areas of the highest deprivation than the premises. There were other attractions to the neighbourhood including a swimming pool, leisure centre and a number of tourist attractions. There was a significant number of prescriptions dispensed by the three existing pharmacies. The relocation of the GP surgeries moving to the new centre left only one in Bank Street and most of the Respondents to the CAR had noticed a difference in the relocation which resulted in long waiting times and queues to get a prescription.
- 3.1.2 She acknowledged that an application by Apple Pharmacy in 2008 had failed but since then the increase in population and that forecast indicated a need for an additional pharmacy. She had spoken to the GP Practice Manager who is of the view that a new pharmacy is required and had indicated that there had been a 54% increase in the number of patients registered which along with tourists, the elderly living longer and patients living on the periphery (e.g. Cardross and the outlying houses; also the A82), added to the need for another pharmacy.
- 3.1.3 In relation to adequacy of the existing service she referred to the information contained in the CAR which reported inadequacies with the Minor Ailment Service (MAS), Chronic Medication Service (CMS), public health, dispensing and waiting times. Whilst only 10 minutes away from the town centre pharmacies, the premises would provide a much needed service which was nearer to the people of Levensdale, Tullichewan and Rosshead which were in deprived areas and high levels of substance abuse and a need for methadone dispensing.
- 3.1.4 There had been a suggestion that the Vale of Leven Hospital would be closing which would result in the minor injuries unit being located outwith Alexandria to one of the other hospitals. Were this the case the premises would provide a minor ailments and referrals service to patients rather than having them rely on NHS24 and it would have the additional benefit of taking some of the burden off GPs and to give them more time with patients. She contended that her business would be sustainable based on 55,000 items per annum and would not take business away from other pharmacies. On the contrary she wished to work with the other pharmacies to improve the quality of care for the population.
- 3.1.5 In response to questions by the interested parties she stated that the increase in GP registrations had been obtained from an FOI request. As to her definition of neighbourhood, she stated that she had looked at it from the natural boundaries, where people travel to and from and asked customers what they believed to be the neighbourhood and took a logical approach to define the boundaries as she felt that some of the population could not access the key existing pharmacies as it was a deprived area and people could not always afford to take a bus to obtain prescriptions and it would take half an hour to walk to the centre, 15 – 20 minute wait for the items and then another half hour walk back home all of which she regarded as unacceptable. She acknowledged that in some areas of her neighbourhood there would be pharmacies closer to her own. She had not used the River Leven as a boundary as the river was easily crossed. She then stated that those working at the proposed pharmacy would have language skills appropriate to Indian, Pakistani and Polish members of the community although did not have figures for non-English speakers within the neighbourhood nor was she certain of the number of pharmacies using the interpreting services of the Health Board. She had stated that a waiting time for a prescription in Balloch was 10 minutes and 15-20 minutes in Alexandria.
- 3.1.6 In response to questions by members of the PPC and specifically in relation to the 57 responses about the stoma service and 59 regarding dispensing where the majority were saying they were unhappy and was asked whether she knew that these were

expert patients who knew enough about the service to be able to comment on its adequacy or otherwise she responded that the Respondents were members of the community and it was to them pharmacies provided their services. In support of her contention that the population had increased since the 2011 Census there had been a number of new houses built and people were living longer and that many houses had been knocked down and that there had been migration into the area along with new care homes. Further there had been an increase in the number of registered patients with GPs. When it was argued by one of the members of the PPC that GP practices had amalgamated which had resulted in a decrease in registrations this was not agreed by Ms Sohail and had based her figures on the GP practices as existed in 2011. She added that she felt that core services were inadequate following upon her conclusions from the CAR. She felt that she had been prudent in her estimates were her application to be granted and that the proposed pharmacy would be viable. She indicated that the existing methadone service supplied by other pharmacies was questionable and that her pharmacy would be providing two consultation rooms with no appointment times. She acknowledged that the response to the CAR (0.5% of the population) was low but it was what it was.

3.2 The evidence of Mr Haugh of Gordon Pharmacy may be summaries as follows:-

- 3.2.1 Mr Haugh stated that the neighbourhood had previously been defined by the PPC in 2008 following on an application by Apple Pharmacy since when there had been no material change. The definition of the neighbourhood at that time was as bounded on the north by the A811 trunk road (Lomond Road), on the east by the Leven River, on the south by Place of Bonhill and on the west by the A82 trunk road. Within this neighbourhood there were three pharmacies providing pharmaceutical care with a comprehensive range of services. The PPC at that time felt that it was a distinct neighbourhood with the A811 being a physical boundary, the housing stock to the south of Place of Bonhill, was markedly different to that to the north and marked the beginning of rurality; the A82 trunk road was a physical boundary as was the River Leven and within the area was the town of Alexandria where all residents went about their daily lives, while utilising all amenities and residents did not need to travel outwith the area to access any additional services. He stated that the proposed neighbourhood would benefit from the new Mitchell Way redevelopment which would include a new Lidl food store along with a three storey development of both retail and residential units.
- 3.2.2 He considered the Applicants proposed neighbourhood population of 13,000 to be incorrect. This was the population of the locality of Alexandria to include the village of Balloch and the town land of Haldane, both of which fell outwith the Applicants neighbourhood. The actual population of the Applicants neighbourhood was in fact 8,217. He considered the Applicant's proposed neighbourhood to be unsuitable as the area to the north east of the neighbourhood was significantly closer to Well Pharmacy in Dalvait Road, Balloch than to any other pharmacy in Alexandria. It was only 750m from Smith Crescent whereas the Applicants proposed site was 1730m from this area (walking distances). The area to the south of the Applicants' neighbourhood, which included New Cordale Road was closer to Marchbanks Pharmacy in Main Street, Renton than to any other pharmacy in the Alexandria area. This pharmacy was only 370m from New Cordale Road whereas the Applicants proposed site was 2140m from this area.
- 3.2.3 There were three pharmacies in Alexandria. The population of the neighbourhood in the 2011 Census was 7111 which equated to roughly one pharmacy per 2370 people. Were the application approved this would result in one pharmacy per 1778 people. The population of Greater Glasgow and Clyde Health Board was currently 1,137,930 with 292 contractors equating to one pharmacy per 3897 people, significantly higher than the current Alexandria population per pharmacy figure and more than double were the application granted. His conclusion was that the neighbourhood was well provided for in terms of pharmacies in proportion to population.
- 3.2.4 He questioned the statistics provided by the Applicants in context of the number of people registered with a GP in Alexandria. There had in fact been a 2.5% decrease (652 persons) from January 2008 until January 2016.

- 3.2.5 65.7% people in the neighbourhood travel to work using a car as against the Scottish average of 62.4%. Parking in and around the town centre was better than in most towns across Scotland. There were 220 free spaces in the car parks behind Gordons Chemist (45), Boots (73) and in Overton Street (102) and all of which were rarely full. He stated that the population projections for the area and indicated by 2037 the population of West Dunbartonshire was projected to be 83,061, a decrease of 8.1% compared to the population in 2012. The population of Scotland is projected to increase by 8.8% over the same period. Notwithstanding the projections, the number of households in West Dunbartonshire was predicted to increase by 1% over the same period. He contended that over the last 50 years one person households have gone from being the least prevalent to the most prevalent household type and large households have become less common which would explain why more houses were required whilst the population was decreasing.
- 3.2.6 There was a regular bus service available across the neighbourhood into Alexandria Town Centre. The maximum wait for which between 9.00 am and 6.00 pm was 15 minutes. The only area of deprivation referred to in the application was Smith Crescent whereas 82.5% of the properties in the data zone fall outside the proposed neighbourhood and all the properties within the data zone fall outside the PPC 2008 neighbourhood. He stated that the percentage of the people who did not speak English in the neighbourhood was 0.1% compared to 0.2% in Scotland as a whole and accordingly there was no requirement for a bilingual pharmacist in the neighbourhood. He considered the CAR survey response on 60 in a patient population of either 7111 or 2567 too small and not statistically significant or representative of either the population or the patients and gained confidence in its results.
- 3.2.7 He was of the opinion that the Applicants had been unable to establish that the service provision within the neighbourhood was inadequate. Indeed, the evidence indicated that the three pharmacies in the neighbourhood were providing a comprehensive list of core, commissioned and non-commissioned services to all the residents within the neighbourhood. None of the services was at saturation point and all pharmacies within the neighbourhood had capacity to increase their service provision if required.
- 3.2.8 In response to questions by the Applicant Mr Haugh stated he was aware that the then Board's PPC agreed with the 2008 boundaries and that there had been no relevant change since then. Further he did not agree that there had been an increase in deprivation since then and that it had in fact improved since 2008 and had used the same SIMD information as the Applicants based on the 11 data zones in the neighbourhood. He acknowledged that he had not used a statistician to examine responses to the CAR but that he had discussed the issue with a Principal Planning Consultant. He did not consider there was much transient population within the neighbourhood and that people would pass through the neighbourhood to go to Loch Lomond.
- 3.2.9 In response to questions by members of the PPC he stated that he picked up prescriptions twice a day from GP practices and a home delivery was offered to any patient and they delivered all over and outwith the neighbourhood. There was no current pressure on his business and if it increased staff would increase accordingly. He stated that the trend in prescribing methadone was decreasing and his practice was seeing fewer patients and that more patients were being given their medication either three times per week or weekly and he believed this was true for all pharmacies.
- 3.3 The evidence of Mr Irvine of Bonhill Pharmacy may be summarised as follows:-
- 3.3.1 He stated that the Applicant must prove that the current provision is inadequate and had noted that the Applicant had claimed that any current inadequacy arose from claims of increased population, level of deprivation and the area had inadequate access to pharmaceutical services, a need for a bilingual pharmacist and a need for extended hours opening. None of these provided evidence of inadequacy.
- 3.3.2 He defined the neighbourhood as Alexandria with the western boundary along the

A82 north to the roundabout, thereafter down the A811 to form the northern boundary, thereafter following the River Leven to form the eastern boundary with a southern boundary being the Plaice of Bonhill to meet the A82 trunk road. This was the neighbourhood defined by the PPC in 2008. This neighbourhood had a population of 7111 (Census 2011). Three pharmacies provided pharmaceutical services in the neighbourhood averaging 2370 per pharmacy. People living within the neighbourhood could travel easily within it. Whilst there were three pharmacies in the neighbourhood there were three others on the periphery providing pharmaceutical services to the neighbourhood. He agreed with Mr Haugh on his figures regarding both the population for the neighbourhood and the inaccurate figures justifying the claim that the GP practices had a 54% increase in registered patients. There had in fact been a reduction in patient numbers. He made reference to the letter of support from Balloch and Haldane Community Council which he did not think covered the neighbourhood and had noted that there was no active Alexandria Community Council. He also considered that the letters show that the Community Council did not understand the regulations as when they mentioned convenience, that was not part of the legal test and that extended opening hours were not evidence of inadequacy. He stated further that the CAR was not statistically significant and pled in aid the opinion of a lecturer in pharmacy practices at Strathclyde University who stated that at least 370 responses were required and that no reliance should be placed on the CAR findings in any way. The CAR would require a further 310 responses for it to be relevant. He stated that a number of "core" services contained in the application were not in fact core services e.g. optometry referral, the supply of health start vitamins, the supply of vaccinations. These were not contractual core services in assessing the adequacy of pharmaceutical provision. The Applicant's assertion that there was a lack of access to harm reduction services in the neighbourhood was incorrect as all contractors in the neighbourhood had availability to provide the service and that the addictions nurse or Leven addiction services had indicated that no difficulties obtaining spaces for service users to Alexandria had been experienced. Mr Irvine thereafter summarised the reasons why there was no evidence of inadequacy.

- 3.3.3. In response to questions by the Applicants' representative, Mr Irvine stated that he did not advertise in his pharmacy that patients may complain and that he had not sought permission for the CAR to be sent to external sources as a publicly available document. He stated that waiting times in his pharmacy were about 5 minutes that the pharmacy had received no complaints. In fact in 11 years he had only dealt with one complaint.
- 3.4 Mr Aslam was invited to present on behalf of Marchbanks Pharmacy but stated that he had nothing further to add to the evidence of the two previous submissions.
 - 3.4.1 The Applicants representative asked if Mr Aslam's pharmacy had designated parking as his premises are on a main road and he stated that the premises were attached to the health centre and people could park at the back where there was ample parking.
- 3.5 The evidence of Ms Griffiths-Mbarek made on behalf of the Well Pharmacy may be summarised as follows:-
 - 3.5.1 Well Pharmacy had recently been rated as "good" in a GPHC Review and that a mystery shopper, customer service survey had given their pharmacy a 95% satisfaction rating, that they had 20/30 methadone patients at the branch and used "methaMeasure" that allowed automatic dispensing to the service user which had the ability of increasing capacity in the store but they were nowhere near maximum levels at present. The pharmacy provided care home and hospice services where the pharmacist visited to provide the service and was not neighbourhood restricted. The pharmacy was about to invest in premises as the post office was leaving and the shop would be refitted to improve the provision of pharmaceutical services.
- 3.6 The evidence of Mr Tait of Boots UK Limited may be summarised as follows:-
 - 3.6.1 As Mr Tait was not present his statement was read by Mrs J Glen, Contracts Manager the Board. He had stated that given the history of applications at the site Boots saw no reason for the neighbourhood in question to have altered since its last

consideration in that there had been little or no change to the neighbourhood since then and that the residential population had decreased. That the neighbourhood was served by three pharmacies within it and three immediately outside in Balloch, Bonhill and Renton all the current pharmacists in question provided a full and comprehensive range of services access to which was good and readily available with a comprehensive bus service network and available parking in the area. Also some good access on foot for pedestrians with level walking in most areas with well maintained pathways. There was no evidence of inadequacy.

4. The PPC's Decision

- 4.1 After all parties had summed up their position and prior to their departure from the hearing, the Chair had confirmed from each that they had received a full and fair hearing. The PPC indicated that they were required and did take into account all relevant factors concerning the issue of neighbourhood and adequacy of existing pharmaceutical services in the neighbourhood and in particular whether the provision of pharmaceutical services at the premises named in the application were necessary and desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood in which the premises were located.
- 4.2 In addition to the oral submissions put before them, the PPC took into account all written representations and supporting documents submitted by the Applicants, the interested parties and those who were entitled to make representations to the PPC and also considered the location of the existing pharmaceutical services and medical services, information from West Dunbartonshire Council's Planning and Building Standards Services advising of the known future developments within the area of the proposed premises. In addition, they consider the population/census 2011 information relating to the postcode areas surrounding the Applicant's proposed premises, patterns of public transport in the area of the premises, information regarding the number of prescription items dispensed during the past 12 months and quarterly information for the MAS activity undertaken by pharmacies in the consultation zone. The PPC also considered the applications considered previously by the PPC for premises within the vicinity, the CAR and the Board's pharmaceutical care services plan.
- 4.3 In determining the **neighbourhood** the PPC, having noted the evidence and their observations from a group site visit, considered the neighbourhood to be defined as lying to the west by the A82 as this was a major trunk road which formed the physical boundary; to the north by the A811 which was a major road which again formed a physical boundary; to the east by the River Leven which was a natural boundary with a small number of crossings and to the south by the Place of Bonhill in a line projected over the A82 as this marks the beginning of a change in the housing stock and marked the beginning of a more rural area. This was the area which had been defined by a previous PPC decision in 2008 and also encompassed the whole of Alexandria.
- 4.4 As to **adequacy** of the existing pharmaceutical services within that neighbourhood, the PPC required to consider whether the granting of the application was necessary or desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood. The PPC had noted that there were three pharmacies within the neighbourhood all providing core services and a range of non-core services with a further three pharmacies on the periphery none of which was operating at capacity. Whilst the Applicants had stated that the population was increasing the written information (on population statistics and GP practice numbers) supported by the oral presentations from the interested parties had evidenced that the population was decreasing and which evidence was accepted by the PPC. The Applicants had indicated that there had been a high level of deprivation which underscored the need for a further pharmacy. The PPC concurred that there was a higher level of deprivation than the average but they accepted the evidence that this situation had improved and had continued to do so. The PPC did not consider that access to the existing pharmacies was a problem in that all are easily accessible on foot, by car or by public transport and opening hours required of them under the Board's model hours contract and Sundays were covered on an agreed rota basis. The PPC considered that the comments in the CAR were mainly related to desirability and convenience rather than adequacy of the existing service and that the case for a multi-lingual service was not made out by the Applicants as there was not a significant number of patients requiring this service and that in any event a translator would require to be registered and appointed to the Health Board which provided an interpreting service in any event. In all

the circumstances, the PPC considered that the existing network provided a comprehensive service provision to the Neighbourhood and all services required by the pharmacy contract along with additional services and that accordingly the existing pharmaceutical services were adequate.

5. Discussion and Reasons for Decision

- 5.1 The Regulations require to be considered 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 arrangements as to its area for the supply to persons in that area of 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. An Application made in any case should be granted by the Board after procedures set out in Schedule 3 of the Regulations are followed, if the Board is satisfied that it is necessary or desirable to grant an Application in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included on the list of the services specified in the Application. This is further extended by Regulation 5 (10) of the Regulations in that an Application shall be granted by the Board: (1) 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 persons whose names are included in the pharmaceutical list and: (2) if the boundaries of the neighbourhood within which the Applicants intend to provide pharmaceutical services falls within any part of a controlled locality, only if it is satisfied that the granting of such an application, in its opinion, would not prejudice the provision of NHS funded services in the controlled locality. For the purposes of clarification in terms of paragraph 1a of Schedule 3 of the Regulations, a controlled locality is an area within a Health Board which is remote or rural in character and which is served by a dispensing doctor. This latter provision does not apply in the current circumstances.
- 5.2 In terms of paragraph 3 (i) of Schedule 3, the PPC shall have regard to the pharmaceutical services already provided in the neighbourhood of the premises, the pharmaceutical services to be provided in the neighbourhood at those premises, any information available to the PPC which, in its opinion, is relevant to the consideration of the Application, the CAR, the Pharmaceutical Care Services Plan and the likely long-term sustainability of the pharmaceutical services to be provided by the applicants.
- 5.3 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 in the way the Application has been considered, that there has been a failure by the PPC to properly narrate the facts or reasons upon which their determination of the Application is based, or there has been a failure to explain the application by the PPC of the provisions of the Regulations to those facts.
- 5.4 The principal point of the PPC's decision is whether or not 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 5 (2A) and (2B). It is relevant to note that the PPC comprises pharmacists and lay members who may be expected to understand the issues involved on the evidence before it. It is an expert tribunal. Equally, it must be understood that 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.
- 5.5 It may be useful at this point to address the decision in *Lloyds Pharmacy v National Appeal Panel 2004SC* referred to by the Appellants in which Lord Drummond Young set out the legal text which involved a "two stage approach". He states: ".....The decision-maker, [be it the PPC or the National Appeal Panel] must consider whether the existing provision of pharmaceutical services in the relevant neighbourhood is adequate. If it decides that such provision is adequate, that is the end of the matter and the application must fail. If it decides that such provision is not adequate, it must go on to consider the second question: whether the provision of pharmaceutical services at the premises named in the application is necessary or desirable in order to secure adequate provision ... A deficiency in services must exist before an application can be granted. Consequently, the existence of such a deficiency

must be identified before it is necessary to consider what may be done to provide a remedy ... Adequacy is a simple concept in the sense that there is no room for different degrees of adequacy or a spectrum of adequacy. Either the pharmaceutical services available in a neighbourhood are adequate or they are not ... The standard of adequacy is a matter for the decision-maker ... the decision-maker is a specialist tribunal and can be expected to apply its knowledge of the pharmaceutical business to the task of determining the appropriate standard. In addressing that question, however, it is in our opinion proper to have regarded to probable future developments for two reasons. First, the standard of adequacy in a particular neighbourhood will obviously change with time. The relevant neighbourhood may change, for example, through the construction of new housing developments or the movement of population out of inner city areas. Likewise, changes inevitably occur in pharmaceutical practice and the standard of "adequate" pharmaceutical provision must accordingly develop over time. Regulation 5(10) uses the word "secure" in relation to the adequate provision of pharmaceutical services. That word seems to us to indicate that the decision-maker can look to more than the area achieving a fair present adequacy of pharmaceutical provision. "Secure" suggests that it should be possible to maintain a state of adequacy of provision into the future ... the decision-maker must have some regard to future developments in order to ensure that an adequate provision can be maintained. The decision maker must, however, determine the adequacy of the existing provision of pharmaceutical services at a specific time, the time of its decision. It must accordingly reach its conclusion on the adequacy of the existing provision on the basis of what is known at that time, together with future developments that can be considered probable rather than speculative. The decision-maker must also bear in mind that the critical question at this stage with reasoning is the adequacy of the existing provision, not the adequacy or desirability of some other possible configuration of pharmaceutical services in the neighbourhood ...".

5.6 Insofar as the Applicant's grounds of appeal relating to neighbourhood are concerned these are not well founded. Evidence was given by both the Applicants and interested parties on the issue of neighbourhood, the PPC had the benefit of the documentation referred to above and had conducted a group site visit. On the basis of that evidence, and it being an expert tribunal it determined the neighbourhood as being Alexandria, encompassed within the boundaries as detailed in its decision. The Appellants in their grounds of appeal endeavoured to argue their position again in that they proposed to rehearse their arguments as put before the PPC and it is not the purpose of the National Appeal Panel to reconsider that evidence. The Appellants state that the PPC has erred in law in connection with narrating the facts regarding the number of crossings over the River Leven, stating that there were six crossings which permitted pedestrian access and four to allow vehicles. This is a detail and not one of the PPC were required to nor did comment on, it merely considered that access to services was readily achievable in a variety of ways either by foot or public transport or car and did mention that there were crossings. Further the Appellants state that the number of patients registered in GP practices in Alexandria was more than three times the number of residents in the defined neighbourhood. The PPC had all the evidence available with regard to the numbers of registrants in GP practices and it was considered by them. The PPC in considering the evidence did not consider any transient population as relevant although, having stated that, the matter having been raised I would have expected them to comment on it. Nevertheless, their failure to do so is not fatal to its decision.

5.7 Insofar as adequacy is concerned, there was a significant amount of evidence produced from both Mr Haugh and Mr Irvine none of which was seriously challenged by the Applicants during the course of the hearing. The PPC had stated that there were three pharmacies within the neighbourhood all providing core services and a further three on the periphery and none of which, on the evidence before them, was working at full capacity which was contrary to the Applicant's suggestion at the hearing that there was a lot pressure on the existing pharmacies. In their evidence the Applicants had stated that their pharmacy was only 10 minutes away from the town centre pharmacies and which while closer to the residents of Levensdale, Tullichewan and Rosshead in their defined neighbourhood there was evidence there are other areas closer to other pharmacies whether on the periphery of the neighbourhood or within the town centre. On the evidence, therefore, and on the basis of the site visit conducted by the PPC it is fair to say that they were justified in their view that access to services was readily achievable in a variety of ways by foot, public transport or car. That was clearly their view on the evidence before them.

5.8 It is not accepted that the PPC has failed to acknowledge the Legal Test. As mentioned

above, Lord Drummond Young's Opinion was that the PPC must decide whether the existing provision is adequate and, if so, that is an end to the matter and the application fails. It is only in the situation where the PPC considers that the current provision is inadequate that the concepts of necessity or desirability come into play. In this case, the PPC have determined the current provision to be adequate and have given sufficient reasons for their decision.

- 5.9 The PPC are obliged to consider the CAR and they can apply such weight to it as it considered appropriate. The PPC took the view that most of the negative comments in the CAR were related to desirability and convenience rather than adequacy of the existing service and have made no comment on the comparatively small sample which had been highlighted by Messrs Haugh and Irvine.
- 5.10 The remaining points of the Appellants grounds of appeal relate to the rehearsal of evidence already adduced before the PPC or the introduction of new evidence which I am unable to consider.

6. DECISION

- 6.1 For the reasons set out above, I conclude that the grounds of appeal set out by the Appellants disclose no reasonable grounds and accordingly dismiss the appeal in terms of paragraph 5(5)(a)(i) of Schedule 3 of the Regulations. In the circumstances it follows that paragraphs 5(2A) and 5 (2B) are not engaged.

(sgd) JMD Graham

J. Michael D. Graham
Interim Chair
National Appeal Panel
31st August 2016