

**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**

**35 ABBEYGREEN, LESMAHAGOW, ML11 0EQ**

<b>Applicant:</b>	<b>G&amp;S Healthcare Limited</b>
<b>Appellant:</b>	<b>Kirkmuirhill Pharmacy Limited</b>
<b>Health Board:</b>	<b>NHS Lanarkshire</b>
<b>PPC Hearing Held:</b>	<b>24 April 2017</b>
<b>Date Decision Issued:</b>	<b>10 May 2017</b>
<b>Panel Case Number:</b>	<b>NAP69 (2017)</b>

## **The Decision of the Chair of the National Appeal Panel**

### **1. Background**

- 1.1 This is an appeal against the decision of the Pharmacy Practices Committee of NHS Lanarkshire (“the PPC”) following upon a meeting of the PPC held on 24 April 2017.
- 1.2 G&S Healthcare Limited (“the Applicants”) made an application for inclusion in the pharmaceutical list of NHS Lanarkshire (“the Board”) to provide pharmaceutical services in respect of the premises at 35 Abbeygreen, Lesmahagow, ML11 0EQ (“the Premises”), said application dated 9 March 2017.
- 1.3 The PPC issued its decision on 10 May 2017 following upon the hearing of 24 April in which it determined that the pharmaceutical services within the neighbourhood defined by them was inadequate and that it granted the application on the basis that it was necessary 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.
- 1.4 Kirkmuirhill Pharmacy Limited (“the Appellants”) appealed against said decision by the PPC per their letter of appeal dated 20 May 2017 and which grounds are summarised at paragraph 2 below.

### **2. Grounds of Appeal**

- 2.1 No formal complaints had been raised to the Health Board nor any regulator which was in contradiction to much of the supporting evidence.
- 2.2 Failure to provide timeous delivery is not the single determinate of inadequacy.
- 2.3 The response to the consultation analysis survey and subsequent report (“CAR”) was comparatively small at only 5% of the population and that, dependent on their responses, just over 200 people out of the neighbourhood total of 6,500 had given negative answers. A more relevant sample would have been from community GPs who were best placed to advise on the suitability of current services. This was not provided.
- 2.4 Boots Pharmacy, the only pharmacy within the neighbourhood, “may not be providing the best service” but met all requirements directed by the Regulations and the Board. Accordingly, the PPC erred in deeming the existing provision as being inadequate.
- 2.5 The population of Lesmahagow was not going to increase by any meaningful degree, indeed census figures indicate a drop in population. In any event, new homes being built in the neighbourhood were not going to be in the actual town of Lesmahagow. The PPC did not have regard to Lord Drummond Young’s decision in *Lloyds Pharmacy Limited v National Appeal Panel* (2004) with regard to future developments. Whilst the Appellant did not dispute the PPC’s concern for the likely demand for pharmacy services for an ageing population, the Appellant has offered a door-to-door delivery service for 33 years and that, in any event, car ownership had increased.
- 2.6 The Appellants dispute the statement that dosette boxes were not available to patients in the neighbourhood, particularly those with complex drug regimes and those with poor compliance.
- 2.7 They questioned the adequacy of the premises, particularly in relation to its size, accessibility and ability to cope with preparing dosette boxes.
- 2.8 The Applicants had stated that, albeit not a core service, it was inadequate and unproductive that all 3 pharmacies in the surrounding area did not have a dispensing pharmacist to cover lunchtimes. In response, the Appellants state that their delivery service did not stop over lunchtime and that the pharmacies are generally managed throughout each lunchtime with at least one member of staff and that a pharmacist would be available to contact at short notice.

2.9 The Appellants had questioned the Applicants' ability to be an independent prescriber and deal with health equality such as elderly, smoking, weight management etc and that his aim would be to provide a daily delivery service.

### 3. Evidence of Parties

3.1 The evidence of the Applicants and interested parties may be summarised as follows:

3.1.1 The Applicants were represented by Mr Stephen McDermott who indicated that the proposed neighbourhood for the premises was Lesmahagow, a rural village with a strong sense of community, and that following upon the CAR he had included within the boundaries of the neighbourhood Auchlochan, a retirement village which is home to several hundred elderly residents who access pharmaceutical services within Lesmahagow on a daily basis. Within the neighbourhood defined by him, there were many amenities and community facilities, including places of worship, a medical practice, a pharmacy, a dental practice, a library, banks and post office, with numerous small businesses. There were, in addition, 2 primary schools, a secondary school, a care home, sheltered housing, a housing association and the Auchlochan retirement village referred to. Lesmahagow had an active community council. He indicated that from the 2011 Scotland census that Lesmahagow had a population of 4,340. That did not include the village of Auchlochan. People would travel to Lesmahagow from Dillarburn, Hawksland, Brocketsbrae and Devonburn, Blackwood and Kirkmuirhill. Residents from these areas would access pharmaceutical services in Lesmahagow which is the heart of the community for this population. There was one GP practice, Glebe Medical Practice, which had 6,560 registered patients in January 2017. He was of the view that Lesmahagow had one pharmacy which currently served between 6,000 and 6,500 people. Patients seeking access to a pharmacy outwith Lesmahagow would require to travel to Kirkmuirhill (2.9 miles away) or Coalburn (3.5 miles away).

3.1.2 He wished to demonstrate how the people of Lesmahagow were at a disadvantage compared to other areas within NHS Lanarkshire and other health boards. These neighbourhoods had similar populations but had access to more community pharmacists. He proceeded to compare such other neighbourhoods and populations, and sought to conclude that the residents of Lesmahagow were at a comparative disadvantage. He produced statistics indicating high levels of deprivation in certain areas, including a significant percentage claiming benefits, free school meals, long term health conditions and long term or disabled, and that these were important factors to consider when determining the healthcare needs of a population. For example, 25% of the population were aged 60 or over and claiming pension credit. This was higher than the 17% in South Lanarkshire and 15% in Scotland. The average age of the residents of Auchlochan was 83 years. The population projections for Lanarkshire to 2030 indicated a 72% increase in people over age 75, thus putting a greater strain on existing pharmacy services.

3.1.3 Mr McDermott stated that future developments would put further strain on the existing pharmaceutical services, including the building of new homes and apartments, expansion of Auchlochan and planning permission granted for new plots.

3.1.4 He considered that, as the current pharmaceutical services being provided were not of a satisfactory quality, they could not accordingly be deemed to be adequate and pled in aid the 325 responses received in the CAR and the 204 signatures gathered in the Applicants' own petitions. He reported that the number of items dispensed across Scotland had increased on an annual basis in 2004-2005 to 2004-2015 at a rate of 34.9% and continuing to rise. The average number of items dispensed per pharmacy was 81,499 items per month. Boots had dispensed 156,228 items and 91.6% more prescription items than the national average, and he argued that it had reached saturation point and which appeared to have been confirmed in the responses filed in the CAR, eg "[Boots] is struggling with too many prescriptions to fill", "one pharmacy is not enough to cover the population in this area. They need another pharmacy", "Boots are unable to cope with the current workload", "... the existing pharmacy is too busy and you have to wait for an unacceptable time to be attended to". He referred to the Board's pharmaceutical care services plan ("PCSP") wherein it was stated "the timeous and

accurate dispensing of prescriptions remains a principal function of the NHS Community Pharmacy Service". Some respondees has referred to "regular errors effected by Boots", that "prescriptions go missing" and long waiting times. Mr McDermott had stated that there were concerns regarding the poor stock availability within Boots and that patients were having to make at least 2 journeys to pick up their medicines, and as a rural community this could mean substantial distances. He stated that the patients were also receiving an inadequate service in the provision of dosette boxes and that patients who ought to have them were being denied them.

- 3.1.5 Mr McDermott argued that patients ought to get the best possible outcome from their medicines, whilst avoiding harm. The current provision did not assist in that regard and that the current pharmaceutical services were falling short of the Government's "2020 vision" of Healthcare Quality Strategy for Scotland. In addition, patients were receiving an inadequate service in relation to the Minor Ailments Service ('MAS') which was aimed to transfer care from the GPs and nurses to pharmacists, thereby reducing the waiting times and workloads at GP surgeries. There had been evidence in the CAR that patients had been refused treatment for minor ailments and directed to their GP as the pharmacist did not have time to discuss minor ailments. This suggested that MAS was not accessible by patients and that therefore the current service provided was inadequate. Across Scotland from 2012/13 to 2015/16 minor ailment items dispensed had increased by 3%, whereas Boots in Lesmahagow had demonstrated a 34% decrease from 2012 until the present day.
- 3.1.6 Further criticisms of the existing Boots Pharmacy ranged from a provision of appropriate levels of privacy for patient consultations and methadone patients never getting taken into a private room. Mr McDermott had stated he would have a consultation room which could be accessed from both sides offering easy access for wheelchair users and the opportunity for the patient and adviser to have a private conversation whilst not being overheard. In addition, there was a high entry step into Boots resulting in elderly and infirm patients having great difficulty entering the shop, whereas his proposed pharmacy would be properly DDA compliant and that, if granted, his pharmacy would be accessible for offering advice and dispensing items from 8.00am-6.00pm. In response to questions from both members of the PPC and interested parties, Mr McDermott indicated that he was not aware of any complaints received by the Board regarding Boots' provisions. He had confirmed that, whilst not aware whether NHS GPs had raised concerns about the service, he did have a meeting with the GPs who had mentioned concerns about stock, dosette boxes and patients being referred to them unnecessarily but had not been given exact numbers. He had stated that he would deal with a range of wholesalers , and accordingly it would be unlikely that he would be out of stock. He also reported that in addition to providing all core services he was about to start his independent prescriber training and when qualified intended to hold clinics. He had stated that he had distributed his own petition to local businesses on the main street and had decided to do so as, during the first week of the joint consultation, he had comments but many people did not have access to computers but had points that they wished to make and that he had no way of knowing whether people who had signed the petition also completed the CAR but felt that they would be separate . He considered that he had sufficient space to provide dosette boxes and a consultation room. He did not consider that he was "spreading himself very thinly" but that he was ambitious and that the proposed pharmacy would be his first business and wanted to offer a great service. He intended to use one regular locum so there would be continuity. He acknowledged that not all comments in the CAR were negative but 58.7% considered the current service was inadequate in regard to dispensing and 70.8% believed that a new pharmacy would make the service adequate.
- 3.2 The evidence of Mrs Cowle on behalf of Boots UK Limited may be summarised as follows:
- 3.2.1 Mrs Cowle agreed with the proposed neighbourhood defined on the map supplied with the application ( noting that Auchlochan was now included )as that being the village of Lesmahagow and the dwellings within the areas of New Trows and Auchlochan. The population at the time of the 2011 census was 4,230. She acknowledged that new houses had been built in Lesmahagow in recent years but that the population had not increased significantly. Car ownership in Lesmahagow was better than the national average for Scotland and Lanarkshire, with 73% of households having access to a car or van, compared with 70%

nationally. Boots Pharmacy was located at 43 Abbeygreen and the proposed site was on the same side as Abbeygreen, with one other premises separating the existing pharmacy and the new proposed premises, and as such this would not improve access by way of location. The opening hours for the proposed pharmacy are similar to that of Boots. Boots was fully staffed with a permanent pharmacist/manager and a second pharmacist 2 days a week, and supported by a team of support staff. There were, however, consultation rooms to the rear of the sales floor and the pharmacy had a bell at the door for anyone with mobility issues that may require assistance. A portable ramp was available for any person who had difficulty negotiating the step into the pharmacy. She had noted that there was a step into the proposed pharmacy premises also.

- 3.2.2 Mrs Cowle had highlighted the services provided by Boots Pharmacy, all readily available from the team on a walk in basis, and in addition consulted with patients and prescribed more than 50 items a week on MAS and would only ever refer issues to the GP practice if their conditions fell outwith the regulations of the service and never as a result of the pharmacist availability. 900 patients had been registered with the Chronic Medication Service ('CMS'), all of whom had a risk assessment completed by a pharmacist and appropriate advice to support them with their medication. If requested, the privacy of the consultation room was provided. The provision of compliance aids was not part of the national contract but, despite that, the pharmacy had 80 patients who currently received compliance aids directly from the store. The store offered a delivery service to patients who required it. She had noted that the PCSP had listed the services available, which services were commissioned but did not plan in providing for more pharmacies at this stage.
- 3.2.3 She was of the view that the existing pharmacy provision provided an adequate level of services to the neighbourhood and that the provision of a new pharmacy was not necessary, and should a need be identified it could be provided by the existing pharmaceutical provision. She denied that stock availability was low and, in any event, that pharmacists in the area worked together to support each other to supply stock and meet the needs of patients. She also stated that the average waiting time was 5-10 minutes and that the proposed premises would not offer better access than the existing pharmacy for those on foot, to car park facilities and those accessing services by car or bus.
- 3.2.4 In response to questions from the PPC, the Appellants and interested parties, Mrs Cowle stated that Boots had a formal delivery service on Mondays and Wednesdays and staff were able to deliver if required, as also were there regular deliveries to residential care homes from other Boots stores. As to the comments in the CAR about Boots' services being "shocking", "dire" and "unacceptable" and with gaps and deficiencies, Mrs Cowle stated that she believed that the services provided were more than adequate and that the pharmacist in the store was dedicated to the patients and gave excellent service and had been there for a year. Mrs Cowle had understood that the previous pharmacist had not been so proactive. Of the 900 patients registered for CMS, she believed that none or very few were active as there had not been a great drive from the Board to deliver this. In acknowledging that Boots had failed to submit their complaints statistics 3 times within the last 15 months, Mrs Cowle was not aware of the reason and had assumed it was human error as the information was there. In response to the question as to why Boots had declined their MAS service by 34%, this may have been due to historical bad practice. On being asked why the opening hours had been increased only a week after the consultation process following upon the application, Mrs Cowle stated it was considered appropriate to increase the hours to match the GP practice. In response to the question as to Boots' ability to meet increased demand as they had already dispensed 91.6% more items than the national average and were at full capacity and saturation point, Mrs Cowle stated that she did not understand how the Applicants could determine whether or not Boots was at capacity and there was a business model which did not allow them to reach that point before changing hours/ staffing levels to meet the needs for the business. Boots was not a store which was on special measures or receiving special support. Mrs Cowle reiterated that there was a consultation room which was there to be used and it was the patients who determined whether to use it or not, as some preferred to speak and conduct their business on the shop floor. This included substance misuse patients. She was referred to the comments from a local pharmacist in the CAR and was asked if that local pharmacist had worked in the store, to which Mrs Cowle explained that she assumed the pharmacist

either did currently or had in the past and that she had been concerned when she read the comments, and that this was not how the current pharmacist felt about the store and the reason why staffing levels in the store were high was to release the pharmacist to deliver the national contract services. If the application was granted, she indicated that it would be detrimental to their business as the majority of the business was dispensing within a very small retail unit but she hoped that the majority of patients would remain loyal to the pharmacy as indeed the majority of the population of Lesmahagow had not responded to the consultation.

3.3 The evidence of Mr Verma on behalf of Kirkmuirhill and Coalburn pharmacies may be summarised as follows:

3.3.1 Mr Verma referred to his reply to the consultation dated 27 March 2017 and which was incorporated in the appendices in the papers before the PPC.

3.3.2 He had stated that Kirkmuirhill and Coalburn were serviced by largely unused roads and that the road from Kirkmuirhill into the heart of Lesmahagow rarely had traffic and that there were 3 pharmacy providers within 5 miles of Lesmahagow, Boots in Lesmahagow, Kirkmuirhill Pharmacy Limited and Coalburn Pharmacy. He had reported that there had been significant animosity to the operating procedures of Boots within the community since its opening as it was considered that Boots' practices did not sufficiently seek the unique and personal requirements of a village pharmacy and its residents. Conversely, Kirkmuirhill and Coalburn provided a free 5 day delivery service which included residents within Lesmahagow and Boots' delivery service was only offered once their sole driver was available. However, the Applicants criticised the waiting time for Boots and ignored the exemplary waiting times for both Kirkmuirhill and Coalburn pharmacies which have 5 wholesale suppliers.

3.3.3 He reported that the pharmacies at Kirkmuirhill and Coalburn were not running at full capacity in that Coalburn dispenses roughly 4,500 prescriptions per month, whereas Kirkmuirhill dispenses 7,000/8,000 prescriptions per month. Both pharmacies have the capacity to service 10,000 prescriptions per month.

3.3.4 Mr Verma rebutted the views of some respondees to the consultation process. He was of the view that from small to large scale deliveries both Kirkmuirhill and Coalburn pharmacies were able to service all local areas and resolve every issue without the need for an additional pharmacy. In response to questions from the Applicants, the interested parties and the PPC, Mr Verma stated that Lesmahagow was a village in its own right and that there had been a pharmacy there for a long time because the village had not expanded much. He did not see how another pharmacy could survive. He was asked whether a 58 minute delivery journey from Lesmahagow to the pharmacies in either Kirkmuirhill or Coalburn was acceptable. He stated that the residents on the outskirts of Lesmahagow would use the bus service and it would take them the same amount of time to reach the pharmacy in the centre. He confirmed that his pharmacist had a complaint lodged but there had not been a single comment. He confirmed that his main business was to the people in Kirkmuirhill but that he did a lot of deliveries into Lesmahagow. He confirmed that should someone arrive at his pharmacy in a wheelchair it would require someone to open the door for them.

3.4 The evidence of Mr Tague on behalf of Lesmahagow Community Council may be summarised as follows:

3.4.1 The Community Council had taken the decision to support the application for a pharmacy in Lesmahagow and, whilst acknowledging the service provided by Boots and their endeavours to provide an adequate pharmaceutical service, the community council had taken the view that the service was currently inadequate in that the Boots pharmacy was overstretched, too busy, occasioning delays in delivering medicines and repeat prescriptions, that waiting times in the pharmacy were too long and that there had been concerns over MAS and the knock on effect on GP waiting times. Further, there was difficulty getting health advice on a one to one basis, unavailability of stock leading to concerns over non-compliance with medication, limited availability of blister packs and dosette boxes and poor accessibility for disabled people.

- 3.4.2 Whilst acknowledging the service to the community provided by Kirkmuirhill and Coalburn pharmacies, this was not a strong enough reason for refusing Lesmahagow a second pharmacy as the village was a community in its own right and deserved to be treated as such. It was a

hub for not just for the local community but also for outlying areas. The village had a high school, banks and serviced a wider area leading to an increased footprint in the village, and that this ought to be a factor in considering the proposal for an additional pharmacy.

- 3.4.3 Kirkmuirhill Pharmacy lies some 2.9 miles distant and required a round trip by bus for those who did not have access to a car of approximately an hour depending on prevailing circumstances. Coalburn Pharmacy was 3.6 miles distant and would result in a similar round trip. For an elderly person, the journey to either pharmacy would present a challenge and be undesirable.

- 3.4.4 The Community Council require to heed the CAR and the views of the other parties who serve the community and had to take into account the future ageing population of Lesmahagow and the surrounding area. There was an increasing aged population in that South Lanarkshire Council estimate an increase in those residents aged 60 plus from 25% in 2012 to 35% in 2026. In addition, the health and deprivation statistics indicate that levels of poor health and deprivation in Lesmahagow was above the national average. In response to questions from the Applicants, the interested parties and the PPC, Mr Tague was of the view that the current pharmaceutical services were at capacity and based his views on responses from the CAR, the petition and from general conversation. He stated that the Glebe Medical Practice had doubled and that there were more GPs in the practice, and that this had been the result of GP closures.

#### 4. The PPC's Decision

- 4.1 Prior to retiral of all parties, each confirmed that a fair hearing had been received and that there was nothing further to be added.

- 4.2 The PPC noted that the CAR followed upon the joint consultation exercise between the Applicants and the Board, as a result of which 325 responses were received, 318 via survey monkey and 7 on paper. A summary of the questions and analysis of the responses is contained in the PPC minute of the hearing. In addition, the PPC considered the location of the premises in relation to the existing pharmacies and GP surgeries, the prescribing statistics of the doctors within Lesmahagow, Blackwood and Douglas, dispensing statistics of pharmacies within Lesmahagow, Kirkmuirhill and Coalburn, demographic information for Lesmahagow, Coalburn, Kirkmuirhill/Blackwood and the surrounding areas and the PCSP. In addition, the PPC had information extracted from pharmacy quarterly complaints returned to the Board from 2013-2017 and all other papers and letters received in relation to the application. It was noted that each member of the PPC had independently undertaken a site visit to Lesmahagow and the surrounding villages, noting the location of the proposed premises, the existing pharmacies general medical practices hosted and the facilities and amenities within. The PPC considered the **neighbourhood** and defined it as lying to the North by Teiglum Burn (positioned north of Strathaven Road and Wellburn), on the East by the M74, on the South from Bog Road to where it met Coalburn Road crossing greenfield land to the village of Auchlochan (Rougham Woods), to the West by Auchlochan (Rougham Woods) crossing greenfield land behind New Trows Road and past North Garngour to meet the northerly starting point. It was noted that the neighbourhood contained all amenities necessary to carry out daily living including primary schools, a secondary school, churches/places of worship, post office, banks, a library, various shops and small businesses along with a GP practice, a dentist and a number of care homes. The PPC had noted that there was one pharmacy (Boots) within the defined neighbourhood along with two others just on the outskirts at Kirkmuirhill and Coalburn.

- 4.3 As to **adequacy**, whilst the PPC had noted that there had been no formal complaint or adverse comments relating to the existing service prior to the application, none had been made to the board and that Boots' representative had stated that the comments in the CAR

were historical, the PPC considered that as a new pharmacist in Boots had been in place for a year there had been sufficient time to progress issues prior to the consultation exercise. In noting the evidence relating to the dosette boxes, the PPC considered that this issue was indicative of other underlying problems indicating an incapacity in the neighbourhood.

- 4.4 The PPC considered the difficulty of access with Boots in Lesmahagow which albeit satisfied the minimum requirements of the Disability Discrimination Act they did note that the new pharmacy would also be DDA compliant. Whilst the minor ailments service was growing in Scotland and it was part of the 2020 Vision and Prescription for Excellence, the pharmacy should be the first port of call to divert attention from the GP surgeries. Boots membership signed up for the MAS service was reducing and it dispensed a low number of MAS products compared to their normal dispensing. Boots' representative had acknowledged the decrease and attributed it to the new pharmacist having a better understanding of who was entitled to receive the service than the previous one. It was considered that this did not reflect the national trend and the aspirations of the board to promote services such as minor ailments in order to alleviate pressure on GP surgeries. Whilst smoking cessation had been promoted in Kirkmuirhill and Coalburn pharmacies, Boots did not appear to be promoting the services that the pharmacy could offer in this area. The Applicant had clear plans to address public health needs.
- 4.5 The PPC were not impressed that Boots' methadone patients were offered methadone in public and were surprised to note that this practice was dependent on the basis of patient choice. The needs of other customers in the pharmacy at such times required to be respected and the patient choice extended to them as well. The PPC did not accept the likely increase of population posited by the Applicants but they did take into account the developments which were already either built or under construction when considering likely population. Further, the elderly population would rise significantly and the committee considered that this would increase the demand for a range of pharmaceutical services of the population, especially to the frail and vulnerable. The PPC considered whether viability would be affected, either in relation to the Applicants or other pharmacies were the application to be granted and, as the interested parties in attendance felt that the granting of the proposing pharmacy would not result in their withdrawal from the pharmaceutical list or negatively impact on the level of services, viability was considered not to be a concern. The PPC also noted that the dispensing figures for Boots in Lesmahagow were around 91% higher than the national average and that this may have contributed to the issues surrounding waiting times and accuracy in dispensing.
- 4.6 The PPC considered that the level of response to the joint consultation was high, indicating that the proposed application was of interest to the public and that, whilst not all comments were negative, the nature of the comments made had a level of consistency in terms of reflecting perceived inadequacies, eg stock issues, dispensing times and dispensing errors. Further, service matter such as minor ailments, dosette boxes and patient access to the pharmacist and confidentiality issues were also consistently reflected. The PPC required to give due regard to these matters which had been articulated well by both the Applicants and the representative of the Community Council.
- 4.7 The decision of the PPC was unanimous in that an establishment of a new pharmacy at the premises was necessary 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 approved.

## 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 underscored 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 fall 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, paragraphs 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 Mr Verma in the Appellants' letter of appeal sought to either introduce new evidence or endeavour to contradict evidence that had been heard by the PPC from which it drew its own conclusions. It is not possible for the National Appeal Panel to entertain either any new evidence or to substitute a decision of the PPC on the evidence which was adduced at the Hearing. As stated above the PPC is an expert tribunal and as such is perfectly competent to draw its own conclusions from the evidence.
- 5.6 The PPC accepted at paragraph 14.3.3 of its decision that there had been no former complaints or adverse comments regarding the existing services prior to the application having been made. Referring to the PCSP it was stated that the Board had no evidence of patients having difficulty in accessing dispensing services. That, in itself, is not the single key determinate of an inadequacy as suggested by the Appellants and there were clearly a number of issues that influenced the PPC's decision and which were adequately dealt with in its reasons not least of which was the response to the public consultation and the evidence produced during the hearing. The Appellant takes issue with the omission of any submission by the GPs in submitting evidence but that, with respect, was a matter for any party to the proceedings to raise with the GPs and no inference may be drawn by the lack of any such submission.
- 5.7 In determining neighbourhood and the residents within it the PPC considered that the

population was likely to increase in the future although acknowledged that perhaps not to the numbers suggested by the Applicants. Accordingly the PPC have stated that they only took account of the developments that have already been built or were under construction. They also took into account the elderly population and its projected significant increase which drew them to the conclusion that this would result in an increase in the demand for a range of pharmaceutical services to the population especially to the frail and elderly. Whilst the Appellant lays considerable emphasis on a delivery service this is not strictly a core service and could be withdrawn at any time.

- 5.8 The remaining aspects of the Appellants' grounds of appeal had either been addressed or considered by the PPC (eg. dosette boxes, access to premises, size of premises) as was, in terms of the PPC's questioning of the Appellants the distance from the premises to the outlying areas in which their and Coalburn Pharmacies were situated. In concluding their notice of appeal the Appellants stated there were "many areas where they believe that the Applicants did not provide the correct or full information". It was a matter for the Appellants and other interested parties to direct any further enquiry to the Applicants at the Hearing and it is, frankly, too late to raise them at the Appeal stage.

**6. Conclusion and Decision**

- 6.1 For the reasons set out above, I conclude the notice of appeal dated 20 May 2017 by the Appellants discloses no reasonable grounds of appeal and accordingly dismiss it in terms of paragraph 5(5)(a)(i) of Schedule 3 of the Regulations. In the circumstances paragraphs 5(2A) and 5(2B) are not engaged.

**(sgd) JMD Graham**

**J Michael D Graham  
Interim Chairman  
National Appeal Panel  
24 August 2017**