

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 relation to the amended decision of NHS Lothian in
the application relating to 4 Drumshoreland Road, Pumpherston, EH53 0LN**

Applicant and First Appellant: Mohammed Ameen

Second Appellant : Pumpherston Community Council

Health Board: NHS Lothian ("the Board")

Original Decision Issued: 11 November 2019

Amended Decision dated: 2nd November 2020

Panel Case Number: NAP95/1 (2020)

Decision of the Chairman of the National Appeal Panel

1. Background

- 1.1 Mohammed Ameen (“the Applicant” or “First Appellant”) submitted an application to the Board to be included in the pharmaceutical list of the Board to provide pharmaceutical services from and in respect of premises at 4 Drumshoreland Road, Pumpherston (“the Premises”). The application was dated the 26th July 2019.
- 1.2 The application was considered by the Board at a hearing of its Pharmacy Practices Committee (“the PPC”) on 11th October 2019 and a decision was issued on 11 November 2019. Appeals were lodged against that decision by the First Appellant and Pumpherston Community Council (hereinafter referred to as “the Council” or “the Second Appellant”).
- 1.3 I issued a decision on both appeals dated 5th March 2020 (and which is referred to for its terms) and in which I rejected most of the grounds of appeal under exception of 2 specific grounds which I referred back to the PPC for consideration and explanation.
- 1.4 The PPC met on 15th October 2020 to consider the issues referred to them and following upon which they issued their amended decision on 2nd November 2020.
- 1.5 The First and Second Appellants lodged further grounds of Appeal to the said amended decision and dated on 25th and 24th November respectively.

2. Amended Decision of the PPC

- 2.1 There were 2 specific grounds of appeal which I referred back to the PPC. The first such ground (“Ground 1”) was that of the First Appellant had averred that the Board had not provided the PPC with updated letters of support from MSPs. It had been noted by me in my decision of 5th March that the PPC had considered letters of support from mid 2018 which it stated did not specifically assert that the existing pharmaceutical service to the neighbourhood was inadequate. The First Appellant had however contended that more recent letters had been submitted to the Board stating that the existing provision was inadequate. I advised in my Decision that if such letters had been provided by the First Appellant to the Board and that that the PPC did not consider them when addressing earlier letters then this would amount to a procedural defect in that it would amount to a failure to properly narrate the facts and reasons for their decision. I enjoined the PPC to reconsider this particular issue along with the other ground (“Ground 2”) raised by the Second Appellant and detailed more particularly below.

- 2.2 The PPC reconvened to reconsider the matter of Ground 1 in some detail, and concluded that it was confident that it had received copies of all the letters submitted in support of the application and which had been included in the papers communicated to each member of the PPC and had not excluded any papers alleged to have been submitted prior to its original decision. In its amended decision the PPC had referred to all the communications received by it and were incorporated by reference in clause 1.2 of its Decision of 11th November 2019.
- 2.3 In his appeal dated 25th November 2020 the First Appellant makes reference to various letters from elected officials implying that they considered the current pharmaceutical provision to be inadequate and that these were not discussed in any way by the PPC. This is incorrect. Letters had been obtained by the Applicant from elected officials in relation to the subsequently aborted Hearing in 2018 and all of which were dated that year. Prior to the Hearing in October 2019 the Applicant re-submitted *duplicates* of these letters for distribution to the members of the PPC.
- 2.4 The Second Appellant had averred in their letter of appeal to the Amended Decision in relation to Ground 2 (a request for an explanation by the PPC of the reasons why it concluded any access issues did not prevent the existing services being considered adequate) that the lack of a Pharmacy in the neighbourhood had caused difficulties particularly during lockdown and the fact that it did not receive all the papers circulated to the other interested parties .
- 2.5. The First Appellant sought to comment in his letter of appeal in respect of Ground 2 the terms of which either had or ought to have been incorporated in his letter of appeal to the PPC's original decision.
- 2.6 In terms of its amended decision in respect of Ground 2 of 15th October the PPC has responded that it did not dismiss the issues of access on the sole grounds that there was no mention of it in the Council Minutes. Notwithstanding, however, the PPC did indicate that there was no record of historical support for a pharmacy in Pumpherston. It noted however that any issues regarding access to existing services did not thereby result in service provision being inadequate. It had stated that a previous pharmacy in Pumpherston had closed 25 years previously and that Pumpherston residents had access to services from other pharmacies in the area. There were 7 pharmacies all within a 3 mile radius collectively offering a full service and that Pumpherston residents had 7 day access to such pharmacy provision with some offering free home delivery and collection. In all the circumstances the PPC concluded that it did not consider such services in Pumpherston to be inadequate. Further, it noted comments in the CAR that there had been no issues with the lack of a pharmacy in the neighbourhood although acknowledged various criticisms including a steep incline and lighting on the Uphall footpath. The PPC contended that all relevant aspects of access had been addressed.

3. Disposal

- 3.1 In his original appeal against the PPCs Decision of 15th October 2019 the First Appellant contended that there were letters of support submitted to the Board which had not been considered by the PPC and that specifically these letters had stated that the existing services were inadequate; this statement caused me sufficient concern such that I referred this issue back to the PPC and whose response and comments are summarised in Paragraph 2.2 above. Contained in the letters of support referred to are references to a new pharmacy being 'beneficial' and further references to travel distances to other pharmacies in the area. In his latest appeal the First Appellant appears to modify his assertion that these letters confirmed them having stated that the existing services were inadequate. He states in his letter of appeal that there was an *implication* that the existing services were inadequate. He goes on to state that the PPC has still neither clarified this point nor discussed the letters in the revised Decision. The letters submitted in 2019 were duplicates and accordingly in the exact terms to those submitted in 2018; they were dated 2018; and the statement by the Appellant in his appeal against the PPC's Decision of 2019 that the Board did not provide the PPC with updated letters of support was misleading and the PPC specifically addressed the matters contained therein in Paragraph 11.3.3 of its Decision. All the PPC required to do in my reference back to them in relation to Ground 1 was to address the issue of the 'missing' letters of support. It is patently clear from its response and the lack of any further clarification from the First Appellant that no such 'missing' letters of support existed and it is most unfortunate that unnecessary and fruitless time has been spent in considering this matter.
- 3.2 For the reasons set out above Appeal Ground 1 has no reasonable prospects of success and falls to be dismissed.
- 3.3 The Second Appellant states that the Council did not receive the full complement of papers prior to the original Hearing and that there had been a significant impact on the provision of pharmaceutical services particularly during lockdown. Neither of these points raises relevant grounds of appeal but I note the PPC's comments in its amended Decision and they do address the issues referred to it. As I mentioned in my original Decision the issues referred back were specific and narrow and it is not competent for Appellants to either repeat or attempt to extend or enlarge upon points of Appeal that ought to have been raised after the PPC's original Decision.

3.4. For the reasons set out above Appeal Ground 2 has no reasonable prospects of success and falls to be dismissed.

3.5. On a general point and for future reference for Appellants the question of inadequacy of an existing provision is entirely a matter for the PPC which is an expert tribunal and decisions related to its area of expertise must be afforded a significant margin of deference. It is not a matter for a group of elected officials to determine what is adequate or inadequate in terms of the Regulations. The PPC has sufficient expertise in these issues as long as their reasoning is acceptably cogent. A mere difference of opinion between the PPC and witnesses will not usually be sufficient to disturb its decision.

(Sgd) J Michael D Graham

Chair

18th February 2021