

National Appeal Panel

Constituted under

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL SERVICES)
(SCOTLAND) REGULATIONS 2009 (AS AMENDED)**

DECISION

of the

CHAIR

of

THE NATIONAL APPEAL PANEL

In the application relating to

19 Brown Street, Mill of Haldane, Alexandria

Applicant: Mitchell & Pollock Limited

Appellants: Mitchell & Pollock Limited

(referred to as “the Appellants”)

Health Board: NHS Greater Glasgow & Clyde (“the Board”)

PPC Decision Issued On: 9 August 2021

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 (“PPC”) of the Board, which was issued on 9 August 2021 in relation to the application of Mitchell & Pollock (“the Applicant”).
- 1.2 The application was made on 27 April 2020. The application was considered at a meeting of the PPC on 21 July 2021. The decision was issued to the interested parties on 9 August 2021 refusing the application.
- 1.3 An appeal was lodged against the present decision of the PPC by the applicant (“the Appellant” or “the Applicant”).

2. Grounds of Appeal

- 2.1 The grounds of appeal submitted by the Appellant raise the following issues:
 - 2.1.1 the Consultation Analysis Report (CAR) was out of date at the point of the hearing and insufficient time was given to the Applicant to compile additional information;
 - 2.1.2 the PPC did not give adequate weight to the lack of availability of a Pharmacy First Plus service;
 - 2.1.3 the PPC did not give adequate weight to the lack of availability of a of 7 days service, particularly with reference to ADRS;
 - 2.1.4 the PPC incorrectly understood that the Applicant’s submission of existing inadequacy was based solely on the extent of the provision of the Minor Ailment Service;
 - 2.1.5 the PPC wrongly assumed that figures provided from West Dunbartonshire Council for new housing incorporated refurbishment of existing housing; and
 - 2.1.6 the PPC has failed to give adequate weight to submissions on the limitation of existing Sunday services.

3. Decision

- 3.1 Under the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009, as amended, (“the Regulations”), the available grounds of appeal against a decision of the Board are limited to circumstances in which there has been:
 - 3.1.1 an error in law by the Board in its application of the Regulations;
 - 3.1.2 a procedural defect in the way the application has been considered by the Board;
 - 3.1.3 a failure by the Board to properly narrate the facts and reasons upon which their determination of the application was based (“Schedule 3 para 5 (2B)(b)"); or,
 - 3.1.4 a failure to explain the application by the Board of the provisions of these Regulations to those facts (“Schedule 3 para 5 (2B)(c)").
- 3.2 I am required to consider the notice of appeal and:

- 3.2.1 to dismiss the appeal if I consider that it discloses no reasonable ground of appeal or is otherwise frivolous or vexatious;
- 3.2.2 remit the decision back to the Board for reconsideration if I consider that any of the circumstances set out at points 3.1.2 to 3.1.4 have occurred; or
- 3.2.3 in any other case, convene the National Appeal Panel to determine the appeal.

4. Consideration of Points of Appeal

Age of CAR

- 4.1 The CAR was published on 1 April 2020. The Appellant submits that the passage of time between completion of the CAR and the decision of the PPC is such as to render the CAR of limited use. Further, the Appellant submits that the period of 1 month which it was afforded to provide any updated information to support its application was insufficient.
- 4.2 The Regulations require that the CAR is prepared in the 90-day period prior to submission of an application. That has happened in this instance. There is no requirement in the Regulations that the Board must issue a decision in a particular period of time or that the CAR may only be a certain age at the point of a decision. Although it is desirable that decisions are taken promptly, I do not consider that any delay has resulted in a breach of the Regulations with reference to the CAR.
- 4.3 The Applicant states that they have been prejudiced by the delay on the basis that the CAR is out of date. I see no merit to this position. The CAR has been accepted and considered by the PPC in the usual manner. The clear conclusion of the PPC is that the CAR does not support the application. It is not the case that the CAR was supportive but has been dismissed as of limited value due to the passage of time. As a result, the Applicant has suffered no prejudice as a result of the passage of time.
- 4.4 The effect of the Applicant's position is that, rather than suffering prejudice to the merits of their original application, they consider that they ought to have been allowed to take advantage of the passage of time in seeking to argue that the position has moved on from the position in the CAR. There is clearly no such requirement.
- 4.5 In any event, in recognition of the passage of time, the PPC has allowed the submission of updated information. Had there been a fundamental change in the position set out in the CAR or otherwise, this period of time would have been sufficient. Quite reasonably, the PPC was not seeking a complete re-writing of the application. They were seeking to allow the interested parties, including the Appellant, the opportunity to bring any significant changes in position to their attention. I consider that the PPC has acted reasonably in this regard.
- 4.6 For the reasons set out, I do not consider this ground of appeal to have any merit.

Pharmacy First Plus

- 4.7 The Appellant submits that the PPC's analysis of the significance of the failure of existing pharmacies serving the neighbourhood to provide the Pharmacy First Plus service is unreasonable. In particular, the Appellant submits that it is unreasonable for the PPC to suggest that this is not an issue because it may be resolved in 5-10 years.
- 4.8 The Appellant's position is not a reasonable representation of the PPC's decision in this regard. The core of the PPC's decision is that the existing pharmacies cannot be said to be providing an inadequate service due to the failure to provide the Pharmacy First Plus service because it

is a new, non-core service. It is only provided by a very small number of pharmacies and there is no expectation by the Board that it be provided by all community pharmacies. The PPC's comments in relation to the 5-10 year period relates to the period of time in which pharmaceutical training is likely to develop to the point that this service is more straightforward to provide routinely.

ADRS and 7 Day Service

- 4.9 The Appellant asserts that the PPC did not consider its submission that, based on its interaction with ADRS, a 7-day service would be desirable. This is not correct. The PPC expressly had regard to the Applicant's submission that ADRS were keen for a 7-day dispensing and supervision service. However, the PPC considered that this was only an issue in a small number of cases and the general direction of travel was based on less daily dispensing. As such, the PPC considered that this was not a sufficiently significant issue to allow it to conclude that the existing service is inadequate.
- 4.10 The Appellant may well disagree with the conclusion reached by the PPC, however, that is not, of itself, a stateable ground of appeal. The PPC is an expert body and is, accordingly, afforded an appropriate margin of discretion within which to assess issues of this sort.

Minor Ailment Service

- 4.11 The Appellant states that the PPC made reference to the e-MAS numbers being the sole basis for the Applicant's submission that the existing pharmacies were struggling to meet demand and no reference was made to submissions by the Applicant on other prescription numbers.
- 4.12 This is incorrect. The PPC states that they considered that the Applicant at times relied heavily on the reduction in MAS numbers in its submission. Clearly, this recognises that there were other elements to the submission, simply that MAS numbers formed a significant part and, therefore, merited specific consideration.
- 4.13 The PPC addresses the MAS numbers in the paragraph of their decision highlighted by the Applicant in its appeal. However, the wider issue of capacity is also addressed at paragraph 12.20 of the decision where the PPC considers that a full range of services are provided by all existing pharmacies and that they had indicated that they were far from being at capacity.
- 4.14 The PPC have clearly had regard to a wide range of issues when considering the adequacy of the existing services. They are not required to specifically address each submission made to them provided their decision addresses the primary issues of controversy.

Housing Stock

- 4.15 The Appellant asserts that the PPC concluded that the figures provided by the Applicant in relation to housing development includes refurbishment of existing stock rather than new housing. The Appellant asserts that its figures were taken from West Dunbartonshire Council figures and there was no evidence for the PPC to reach the conclusion set out above.
- 4.16 The Appellant's interpretation of the PPC's decision is not correct. The PPC has not concluded that the figures provided are inaccurate or that they include refurbishment of existing housing. The PPC has made a general observation, based on its experience, that new housing will not automatically result in a commensurate increase in population. The PPC considered that an element of new housing will be used to replace existing stock which is falling out of circulation. The PPC was entitled to form that view on the basis of its own expertise.
- 4.17 In any event, the PPC continues to acknowledge that there may be an increase in the population but that it is satisfied that the increase in population would not prevent the existing pharmacies

being able to service the needs of the neighbourhood. This is in the context of the PPC having acknowledged the evidence provided to it that the existing pharmacies were far from at capacity.

7 Day Service

- 4.18 The Appellant states that consideration has not been given to the adequacy of a 1 hour service on a Sunday and that the current rota service was insufficient as there was significant demand.
- 4.19 The PPC does not specifically address what length of Sunday service is required to provide an adequate service. One would not expect it to. It is not for the PPC to dictate or set parameters for what constitutes an adequate service. The PPC needs to consider each situation on its own merits, with regard to appropriate evidence.
- 4.20 In this case, when considering the existing Sunday service, the PPC had regard to the Board's regular review of the existing rota service. The PPC notes that rather than recommending an increase in rota services, the Board has suggested that consideration should be given to reducing it due to low demand.
- 4.21 The Applicant may disagree with the conclusion of the PPC. However, the PPC's reasoning is clear and I consider that the PPC was plainly entitled to reach the conclusion it did based on the evidence it had regard to.

Disposal

- 5.1 For the reasons set out above, I conclude that the appeal discloses no reasonable grounds. On that basis, I dismiss the appeal.

JMD Graham

Chair

24th November 2021