

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

**KEIR PHARMACY LTD, UNIT 1, THE PINES, 5 FLEMING COURT,
DENNY, FK6 5HB**

Applicant and Appellant: Keiron Paterson/Keir Pharmacy Limited

Pharmacy Practices Committee: NHS Forth Valley

PPC Decision Issued: 19th December 2012

Panel Case Number: 18 (2013)

Decision of the Chairman of the National Appeal Panel

1. Background

- 1.1 Mr Keiron Paterson on behalf of Keir Pharmacy Limited has appealed against the Decision of the Pharmacy Practices Committee of NHS Forth Valley ("the PPC") which refused the application by Keir Pharmacy Limited for inclusion in the Pharmaceutical List in respect of the premises at Unit 1, The Pines, 5 Fleming Court, Denny and which Decision is recorded in the Minutes of the Hearing of the PPC held on 28th November 2012.

2. Grounds of Appeal

- 2.1 The Appellant states that the PPC considered that the level of existing services to and within the defined neighbourhood provided satisfactory access to pharmaceutical services for those resident in the neighbourhood and that the PPC considered the existing pharmaceutical services being adequate on the issue of access only and not on the matter of adequacy of the services themselves. Pharmacy applications had been granted in other neighbourhoods where pharmacies existed and which were deemed inadequate to service the population. This supported his contention that adequacy may not be considered wholly in relation to access.
- 2.2 The Appellant had submitted evidence including over two hundred letters from local residents and a letter from the local surgery which demonstrated that local pharmaceutical services were inadequate on the grounds of excessive waiting times, dispensing hours, lost prescriptions etc. The PPC made no mention of this in issuing their decision and they failed to properly narrate the facts upon which the determination was based.
- 2.3 The PPC had stated that "no evidence had been produced by the Applicant or had been made available to the Committee via another source which demonstrated that services were currently inadequate" was insufficient in terms of reasons for concluding that the existing services were adequate.
- 2.4 The Appellant raised an issue in connection with a non-contractor pharmacist a member of the PPC who left the Hearing and was not involved in the deliberations or voting. The Appellant states that this member was present as a non-contractor pharmacist in terms of Schedule 4.3.1(b)(i) of the Regulations and was entitled to vote as provided under Regulation 6(2).
- 2.5 The Appellant states that paragraph 27 of the Regulations provides that it should be the duty of every Health Board to make arrangements in its area for the provision of proper and sufficient drugs and medicines and that there was evidence that patients would experience difficulties in obtaining such from the existing registered pharmacies and that the PPC had failed to recognise this evidence. Further, the PPC have failed to recognise the relevant population in making their determination.

3. Discussion and Decision

- 3.1 The PPC have reported to have undertaken a full and wide ranging discussion regarding the application and that in relation to the neighbourhood they have given due consideration to the locality of shops, sports activities, retail park etc all as detailed in page 16 of the minutes of the meeting and determined the boundaries of the neighbourhood with some precision and concerning which the Appellant has no quarrel.
- 3.2 It is in relation to the decision on the issue of adequacy that is of concern to the Appellant. He states that the Committee considered that the level of existing services within the defined neighbourhood provided satisfactory access to pharmaceutical services for those residents in the neighbourhood, suggesting that the PPC only considered the issue of access. That is not a fair exposition of the PPC's view. The PPC had noted that within the neighbourhood there were two pharmacies providing a comprehensive range of pharmaceutical services including NHS core services and supplementary services. It was access to these services that the PPC considered was adequate.
- 3.3 The Appellant expressed concern that his "substantial body of evidence" including over two

hundred letters from local residents expressing concern that the existing pharmaceutical services were inadequate was ignored. The PPC admittedly have stated that "no evidence had been produced by the Applicant or had been made available to the Committee via another source which demonstrated that the services were currently inadequate". Clearly, the Appellant had produced evidence and, perhaps, this could be construed as the PPC dismissing that evidence summarily. It is more likely, however, that the Committee had intended to state that no cogent evidence had been produced. It is not expected that the PPC narrate all the evidence adduced by the Applicant and comment on it, but that they have noted the evidence and did not regard it to be either sufficiently cogent or convincing. Whilst I do have some sympathy with the Appellant on this point, if one were to take this sentence as a whole to include the evidence which had been made available to the Committee via another source (e.g. the numerous letters, petitions, demographics, bus times etc) demonstrating that the services were currently adequate does undermine the Appellant's ground of appeal. Further, the PPC considered that the level of existing services to/and with the defined neighbourhood provided satisfactory access to pharmaceutical services. I would remind the Board that in terms of Schedule 3 Paragraph 3 that the Board, through the PPC, shall have regard to the pharmaceutical services already provided in the neighbourhood, pharmaceutical services to be provided, any representations received from the PPC and others, any information available to the Board which in its opinion is relevant for the consideration of the Application and any responses received in the sixty days following the consultation process. For the future, it is advisable that the PPC record these regulatory requirements in their decisions. In the circumstances, however, the PPC are considered to have given sufficient reasons for their determination of adequacy.

- 3.4 The Appellant had stated that the non-contractor pharmacist, was entitled to vote and should have been allowed to do so. This is not the case. In terms of Schedule 4 Paragraph 3.1(b)(i) one of the constituent members of the PPC shall be a non-contractor pharmacist. However, in terms of Paragraph 6(i) every application considered by the PPC shall be considered by all the members present but shall be determined only by a majority vote of those members present who are entitled to vote. In terms of Paragraph 6(ii) only a member appointed by virtue of Paragraph 3(1)(c) is entitled to vote. These are three in number and none shall be or previously have been a doctor or dentist, ophthalmic optician or a pharmacist or an employee of such. In the circumstances, the non-contractor pharmacist was not entitled to vote and, in passing, it appears that she did stay for the deliberations in advance of the vote and which she was entitled to do.
- 3.5 I have already issued an Interim Decision dated 22nd May remitting the Decision back to the Board to re-hear the application before a new PPC on the grounds that a member of the PPC, did not intimate the interest he had with one of the Interested Parties to the proceedings and that the Decision was tainted by his presence and that it raised the issue of bias and as such resulted in a procedural irregularity. The test here is whether a fair minded observer, having known the facts would consider that there was a reasonable possibility that the Tribunal was biased in the attendance of this member. Actual bias is not necessary. Any re-hearing will require to be heard before a freshly constituted PPC none of whose members shall have attended the hearing on 28th November 2012.
- 3.6 Insofar as not otherwise determined or commented upon any other Ground of Appeal is dismissed, being of minor moment or irrelevant.
- 3.7 In the event that the Appellant withdraws his application a re-hearing will not be necessary.



J. Michael D. Graham
Interim Chairman
National Appeal Panel
 6th June 2013

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INTERIM DECISION

of the

CHAIR

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THE NATIONAL APPEAL PANEL

in the application relating to

UNIT 1, THE PINES, 5 FLEMING COURT, DENNY, FK6 5HB

Applicant and Appellant: Keiron Paterson/Keir Pharmacy Limited

Pharmacy Practices Committee: NHS Forth Valley

PPC Decision Issued: 19th December 2012

Panel Case Number: 18 (2013)

Interim Decision of the Chairman of the National Appeal Panel

1. Background

- 1.1 Mr Keiron Paterson on behalf of Keir Pharmacy Limited has appealed against the Decision of the Pharmacy Practices Committee of NHS Forth Valley ("the PPC") which refused the application by Keir Pharmacy Limited for inclusion in the Pharmaceutical List in respect of the premises at Unit 1, The Pines, 5 Fleming Court, Denny and which Decision is recorded in the Minute of the Hearing of the PPC held on 28th November 2012.
- 1.2 By letter dated 21st January 2013, Mr Paterson wrote to the NHS Forth Valley advising that a contractor member of the PPC hearing the application had a business relationship with one of the Interested Parties affected by the application and went into some detail as to the conflict of interest averred. ,
- 1.3 Mr Paterson states that the contractor member failed to declare his relationship with the Interested Party to the PPC and that, accordingly, the PPC proceedings should be declared void.

2. Interim Decision

- 2.1 It would appear that the contractor member did not intimate the interest he had with the Interested Party in the pharmacy which I understand is some ten miles furth of Denny. He took an active part in the proceedings and was present during the PPC's "full and wide ranging discussion" regarding the application. The Decision is, accordingly, tainted by the contractor member's presence in that it raises the issue of bias and as such has resulted in a procedural irregularity.
- 2.2 In the circumstances it is necessary to remit the Decision back to the Board to re-hear the application before a new PPC none of whose members shall include those who attended the Hearing on 28th November 2012.
- 2.3 A full Decision will be issued shortly.

J. Michael D. Graham
Interim Chairman
National Appeal Panel
22nd May 2013