

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

**Unit 6, Kinnaird Village, McIntyre Avenue,
Larbert. FK5 4XT**

Applicant: WEB Pharmacy ("the Applicant")

Appellant: A D Healthcare Ltd ("the Appellant")

Health Board: NHS Forth Valley ("the Board")

PPC Decision Issued: 22 January 2025

Panel case number: NAP 111B (2025)

Decision of the Chair of The National Appeal Panel

1. Background

- 1.1. This is an appeal against a reconsideration decision of the Pharmacy Practices Committee (“the PPC”) of the Board which was issued on 22 January 2025 in relation to the application of WEB Pharmacy (“the Applicant”).
- 1.2. The application was originally made on 2 December 2021. The application was considered at a meeting of the PPC on 22 September 2022. At that meeting the application was granted.
- 1.3. The (then) first and second Appellants lodged an Appeal against the decision of the PPC on 31 October 2022 and 1 November 2022 respectively. In a decision dated 25 April 2024 I upheld one ground of appeal and remitted the matter back to the PPC for reconsideration.
- 1.4. The ground of appeal which was upheld (then ground of appeal 2) related to the requirement in the Regulations for the Board to properly narrate the facts and reasons upon which their determination of the application was based – paragraph 3(6)(c) read with paragraph 5(2B)(b) of Schedule 3. The reasons that were given related to matters of convenience rather than adequacy. This also disclosed that the PPC had failed to properly apply the legal test. Failure to do so procedurally speaking or with reference to the facts of the case were grounds of Appeal in terms of paragraph 5(2B)(a) and (c) of Schedule 3 respectively.
- 1.5. In remitting the case back to the PPC I encouraged them to consider approaching their consideration of adequacy squarely in terms of the legal test and providing sufficient reasons in this regard.
- 1.6. The PPC reconvened on 9 July 2024 and issued its decision to once again approve the application on 11 July 2024. The remaining Appellant, A D Healthcare Ltd, appealed that decision.

- 1.7. In a decision dated 18 September 2024 I upheld ground of appeal 4 which related to a failure to provide sufficient reasons for the decision. The PPC reconvened on 22 January 2025 to address this issue. Once again they concluded that the current level of pharmaceutical services were inadequate and granted the application. That decision has been appealed by A D Healthcare Ltd.

2. Grounds of Appeal

- 2.1. Ground of Appeal 1. This ground relates to whether there has been a failure by the Board to provide adequate reasons.
- 2.2. Ground of Appeal 2. This ground relates to whether the PPC has failed to properly apply the legal test.
- 2.3. Ground of Appeal 3. This ground relates to whether there has been a procedural defect in that the Appellant was not invited to the reconsideration meeting
- 2.4. Ground of Appeal 4. This ground relates to whether there has been a procedural defect, in particular whether the PPC was quorate, when it reconsidered the application.

3. Legislative framework

Appeals

- 3.1. The Regulations provide, at paragraph 5(2B) of schedule 3, a limited right of appeal against a decision of the Board. These are errors in law in terms of the application of the Regulations and are as follows:
- 3.1.1. A procedural defect in the way the application has been considered by the Board;
- 3.1.2. A failure by the Board to properly narrate the facts and reasons upon which their determination of the application was based; or

3.1.3. A failure to explain the application by the Board of the provisions of these Regulations to those facts.

Consideration by the Chair

3.2. The Regulations provide, at paragraph 5 of schedule 3, that as Chair I am required to consider the notice of appeal and:

3.2.1. To dismiss the appeals if I consider that they disclose no reasonable grounds or are otherwise frivolous or vexatious; or

3.2.2. Remit the decision back to the Board for reconsideration if I consider that any of the circumstances set out in points 3.1.1 to 3.1.3 have occurred or;

3.2.3. In any other case, convene the National Appeal Panel to determine the appeal.

PPC: Legal test and determination of applications

3.3. The Regulations provide, at Regulation 5(10), the relevant test to be applied by the Board when considering an application to be on the Pharmaceutical list. That test, which has in its previous comparable iteration been the subject of judicial treatment is, put simply, whether the present services are inadequate and, if so, whether the application is necessary or desirable in order to secure adequate provision. If the answer is yes to both of these questions, the Board is to grant the application.

3.4. The Regulations provide, at paragraph 3(1) of Schedule 3, those matters that the Board shall have regard to in considering an application. These matters include current service provision, representations received by the Board, the Consultation Analysis Report (the “CAR”), the pharmaceutical care services plan (prepared by the Board for its area annually), the likely long term sustainability of the services to be provided by the applicant and any other relevant information available to the Board.

4. Consideration

- 4.1. Ground of Appeal 1. This ground relates to whether there has been a failure by the Board to provide adequate reasons. Failure by the Board to properly narrate the facts and reasons upon which their determination of the application was based is a ground of appeal – paragraph 3(6)(c) read with paragraph 5(2B)(b) of Schedule 3.
- 4.2. In the decision dated 22 January 2025, the information that was before the PPC was listed (paragraph 2). The reasons for the finding of inadequacy are listed at paragraph 4. In summary these related to demand upon current services, access to those services – including public transport, population growth and the findings in the CAR. In my view the reasons provided are now sufficient and this ground of appeal is not, therefore, upheld.
- 4.3. Ground of Appeal 2. This ground relates to whether the PPC has failed to properly apply the legal test. Failure to do so procedurally speaking or with reference to the facts of the case are grounds of appeal permitted in terms of paragraph 5(2B)(a) and (c) of Schedule 3 respectively.
- 4.4. The ground of appeal is advanced on the basis that the PPC have failed to first consider whether current services are adequate. The legal test, as mentioned above, is put simply, whether the present services are inadequate and, if so, whether the application is necessary or desirable in order to secure adequate provision. If the answer is yes to both of these questions, the Board is to grant the application. In these circumstances the PPC have, as they are entitled to do on the basis of the information before them, concluded that services are inadequate. The ground of appeal is concerned with the PPC's reasoning rather than the legal test as to adequacy. This ground of appeal is not, therefore, upheld.
- 4.5. Ground of Appeal 3. This ground relates to whether there has been a procedural defect in so far as the Appellant was not invited to the reconsideration meeting. A

procedural defect is a permitted ground of appeal in terms of the Regulations (paragraph 5(2B)(a) of Schedule 3).

- 4.6. How a Board determines an application at a reconsideration stage is, subject to the terms of the Regulations, a matter for it to decide. Most Boards reconvene to address the particular issues on appeal. A full reconsideration will not normally be necessary and this includes an oral hearing.
- 4.7. Paragraph 3(3) of Schedule 3 (determination of applications) provides that the “Board may, if it considers that oral representations are unnecessary, determine the application without hearing oral representations”. Accordingly this course of action was one that was available to the Board. This ground of appeal is not, therefore, upheld.
- 4.8. Ground of Appeal 4. . This ground relates to whether there has been a procedural defect, in particular whether the PPC was quorate, when it reconsidered the application.
- 4.9. Paragraph 5 of Schedule 4 (quorum) provides that there must be a chairing member, a pharmacist from the pharmaceutical list, and one not from that list, and two lay members present. Failure to adhere to these requirements constitute a procedural defect in terms of paragraph 5(2B)(a) of Schedule 3
- 4.10. When reconsidering the application it is clear from the Minutes of the Meeting of the PPC dated 25 January 2025 that the PPC was short of a lay member. This was discussed at paragraph 2 of the Minutes in so far as that member was unable to be present but was able to provide their views in writing – a copy of which was with the papers provided to me.
- 4.11. Pragmatic as this course of action might have been, and it was undertaken following the taking of advice, the Regulations clearly require members to be “present”. I will, therefore, uphold this ground of appeal and remit the application back to the PPC for reconsideration.

5. Disposal

- 5.1. For the reasons set out above, I consider that the appeal is successful in respect of ground of appeal 4. I shall therefore refer the matter back to the PPC for reconsideration – whilst quorate.

(sgd)

C W Nicholson WS

Chair

National Appeal Panel

9 April 2025