

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: 29 July 2025

Panel case number: NAP 111C (2026)

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 dated 29 July 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 The application was originally made on 2 December 2021.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 remitted the decision back to the PPC for reconsideration.
- 1.4. The ground of appeal which resulted in the decision being remitted (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. The reasons that were given related to matters of convenience rather than adequacy.
- 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 remitted the decision back for reconsideration in relation to ground of appeal 4 which, once again, 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.

- 1.8. That decision was then appealed by A D Healthcare Ltd. In a decision dated 9 April 2025 I remitted the decision back to the PPC for reconsideration. This was on the basis that the PPC was not quorate when it met on 9 April 2025; this represented a procedural defect in terms of the Regulations.
- 1.9. That decision of mine was then the subject of a Petition for Judicial Review. The petition did not pass the permission stage but Lord Harrower issued an opinion helpfully setting out his reasoning in that regard. (*A D Healthcare Limited for Judicial Review of a decision of the chair of the National Appeal Panel* [2025] CSOH 104.)
- 1.10. The PPC met again on 29 July 2025, now quorate, and reaffirmed their previous decision(s) that services were currently inadequate and the application should be granted. That decision is the subject of this latest appeal and it is again brought by A D Healthcare Ltd.

2. Grounds of Appeal

- 2.1. The Appellant advances four grounds of appeal which are as follows:
- 2.2. Ground of Appeal 1. This ground relates to whether there has been a failure by the Board to narrate facts or reasons for its decision.
- 2.3. Ground of Appeal 2. This ground relates to whether there has been a procedural defect in the way that the PPC has “reconsidered” their earlier decision when it was remitted back.
- 2.4. Ground of Appeal 3. This ground relates to whether an error of law occurred as a result of failing to properly apply the adequacy (legal) test.

2.5. Ground of Appeal 4. This ground relates to whether there has been a procedural defect in that the Appellant was not invited to the reconsideration meeting

3. **Legislative framework**

Appeals

3.1. The Regulations provide, at paragraphs 5 (2A) & (2B) of Schedule 3, a limited right of appeal against a decision of the Board in the following circumstances:

3.1.1. An error of Law by the Board in its application of the provisions 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; or

3.1.4. 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 3.1.2 to 3.1.4 have occurred or;

3.2.3. In any other case (point 3.1.1.), 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 narrate facts or reasons for its decision. 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. This ground of appeal has been advanced on numerous occasions. Most recently I addressed it in my decision dated 9 April 2025. In that decision I noted that the decision of the PPC dated 22 January 2025 narrated the information that was before the PPC (listed at paragraph 2) and the reasons for the finding of inadequacy (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 that decision I explained that in my view the reasons provided were now sufficient.

- 4.3. In this appeal the Appellant advances this ground with reference to the Minutes of the decision dated 29 July 2025. The Appellant argues that the findings in fact are not justified and are only noted briefly. These issues are however discussed in the Minutes of the Meeting of 22 September 2022 and those minutes are clearly mentioned as something the PPC had before them at the meeting of 29 July 2025, in particular at paragraphs 22.2.1. to 22.2.3. The discussion around the issues at hand includes reference to site visits, census information, GP lists and dispensing data.
- 4.4. On this basis, and with reference of the paragraph 3.2 of the Minutes dated 29 July which summarises the reasons given previously and being again relied upon, I do not consider that it can be said that there has been a failure by the Board to properly narrate the facts or reasons for its decision. This ground of appeal discloses no reasonable grounds of appeal in terms of the regulations and is, therefore, dismissed.
- 4.5. Ground of Appeal 2. This ground relates to whether there has been a procedural defect in the way that the PPC has “reconsidered” their earlier decision when it was remitted back. Failure to do so procedurally speaking is a ground of appeal permitted in terms of paragraph 5(2B)(a) of Schedule 3 of the Regulations.
- 4.6. In advancing this ground of appeal the Appellants make reference to Lord Lake’s Opinion in the *Petition of Abbey Chemists for Judicial Review* [2025] CSOH 21. In doing so the Appellants consider that the PPC’s meeting to “reaffirm” (that being the language used by the PPC) their previous decision(s) was not adequate enough to be considered a “reconsideration” in terms of the Regulations. Lord Lake, in endorsing the approach taken by the PPC in the case mentioned above, noted that:

“the minutes record that the PPC revisited the evidence to familiarise themselves with the case and that they “explored their original reasoning”. An exploration of the evidence indicates that this was more than a simple adoption of the earlier decision. In addition, the

committee did not move straight from that examination of the earlier decision to the conclusion of their reasoning."

- 4.7. The Appellants also argue that the need for a proper and full reconsideration of its original decision by the PPC was all the more important as the missing member would not have been present to hear what was discussed at the earlier meeting.
- 4.8. When a decision is remitted back to the PPC for reconsideration this is primarily with a view to remedying the defect or failure that led to the decision to remit in the first place. This does not automatically entitle a party to a full reconsideration of the application or for new evidence or information to be advanced but it is the case that the reconsideration must be meaningful, rather than simply reaffirming an earlier decision, and must occur to the extent mentioned above.
- 4.9. In these circumstances I agree with the Appellant that this has not taken place. This represents a procedural defect in terms of the Regulations at paragraph 5(2B)(a) of Schedule 3. Accordingly, as one of the circumstances mentioned in sub-paragraph (2B) have, in my opinion, occurred I will remit this application back to the Board for reconsideration.
- 4.10. Ground of Appeal 3. This ground relates to whether an error of law occurred as a result of failing to properly apply the adequacy (legal) test.
- 4.11. 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.
- 4.12. 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 has been advanced previously and it did not advance any further. It was then the case that it was concerned with the PPC's reasoning rather than the legal test as to

adequacy. As I have observed previously the legal test is narrated properly and then clearly addressed in the relevant minutes.

- 4.13. However, on this occasion this ground is advanced with a second limb. That second limb is, as I understand it, whether a PPC can properly assess adequacy and then apply the legal test if, at the date of the reconsideration decision, the information before the PPC (mentioned above at paragraph 3.4) is considered to be out of date.
- 4.14. As the Appellant has noted, adequacy is to be considered at a specific point in time – this being the time of its decision - and this is with a view to PPC basing its decision on current and relevant information. This is usually at the time the application is made (with reference to the supporting evidence of the application) and considered at the time the (first) decision of the PPC is taken; the latter being within 6 weeks of receipt of the CAR.
- 4.15. This exercise becomes more difficult where cases have been delayed for whatever reason, as was noted in the *Petition of LP North Sixteen Ltd t/a Dears Pharmacy for Judicial Review* [2025] CSOH 91; 2025 S.L.T. 1182 . It is unsatisfactory for an application to be considered on an assessment of adequacy made some time ago and when any delay is not the responsibility of the parties involved.
- 4.16. I do not consider that the PPC can be criticised for following the Regulations as they have done however, that is to say considering the information before it as it should do. On this basis the PPC did not fail to properly apply the legal test as to adequacy. This ground of appeal is, therefore, dismissed as it discloses no reasonable ground of appeal in terms of the Regulations.
- 4.17. That being said, the argument as to the passage of time is a compelling one and one that has been discussed in other cases that have come before me recently. At this stage it is helpful to note that the decision is being remitted back to the PPC for reconsideration in relation to ground of appeal 2. In these circumstances I consider it appropriate to highlight to the Board that when they undertake that exercise it is open to them to consider whether the supporting information with the application can still

be relied upon. The Board may wish to consider whether it can properly arrive at a conclusion as to adequacy and viability based on the information before it, as it is likely to be substantively outdated.

- 4.18. If this was to occur the application would fall for want of evidence. It would then be open to the applicant to submit a new application and this may prove to be beneficial in terms of reaching a decision based upon up-to-date information; this would also avoid the circularity of another reconsideration and appeal stage in relation to the current application.
- 4.19. As I say, however, this is a matter for the PPC to consider. It may equally be the case that it can arrive at a final decision after addressing those grounds remitted to it.
- 4.20. As mentioned above, whilst a reconsideration does not automatically entitle a party to a full reconsideration of the application or for new evidence or information to be advanced, it is the case that this might occur in a number of situations as per *LP Petition of LP North Sixteen Ltd t/a Dears Pharmacy for Judicial Review* [2025] CSOH 91; 2025 S.L.T. 1182.
- 4.21. A full reconsideration might be required if there was a substantial procedural defect at the first hearing (apparent bias is one example where this has occurred previously). Further evidence might be required if the defect which gave rise to the decision to remit a decision back to the Board for consideration related to evidence, incorrect or excluded evidence for example. I mention this to clarify neither of those situations have occurred here.
- 4.22. Ground of Appeal 4. 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).
- 4.23. As was mentioned in my decision of 9 April 2025, 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.

4.24. 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.

5. Disposal

5.1. For the reasons set out above, I shall remit the decision back to the Board for reconsideration in respect of Ground of Appeal 2 (procedural defect – reconsideration). Grounds of Appeal 1, 3 and 4 are dismissed because I have found that they disclose no reasonable grounds of appeal.

5.2. When I remit an application back for reconsideration I am to give to the Board such advice as appears to me to be desirable with a view to remedying the defect or failure that has led to the decision to remit.

5.3. In these circumstances reconsidering their decision to the extent discussed in relation to Ground of Appeal 2, that is to say a meaningful reconsideration, is the best way to address this defect.

5.4. In so doing the PPC may, as I have discussed in relation to Ground of Appeal 3, consider whether the supporting information can properly be relied upon now, given the passage of time and when it comes to considering the legal test of adequacy.

5.5. It is also open to the PPC to decide whether their reconsideration, including the consideration of the extent to which the supporting information can be relied upon, be

conducted with or without a hearing with oral submissions as discussed in relation to
Ground of Appeal 4.

(sgd)

C W Nicholson WS

Chair

National Appeal Panel

21 January 2025