

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: 16 June 2026

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 27 May 2026 in relation to the application of WEB Pharmacy (“the Applicant”). This is the 5th appeal in relation to this application.
- 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 The application was originally made on 2 December 2021.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 was the subject of another appeal brought by A D Healthcare Ltd. In a decision of mine dated 21 January 2026 I remitted the decision back to the PPC for reconsideration. This was on the basis that a procedural defect had, in my view, occurred – namely that the decision did not demonstrate that the reconsideration had been a meaningful exercise.
- 1.11. With the passage of time since the application had first been considered by the PPC in mind, I considered it appropriate to highlight to the Board that when undertaking its reconsideration it is open to them to consider whether the supporting information with the application can still be relied upon. I said that they may wish to consider whether they could properly arrive at a conclusion as to adequacy and viability based on the information before it, given it was likely to be substantively outdated.

- 1.12. The PPC met again on 27 May 2026 and, once again, granted the application after reconsidering it. That decision was issued on 17 June 2026. A D Healthcare Ltd now appeal that decision.

2. Grounds of Appeal

- 2.1. The Appellant advances three 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 test.

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 21 January 2026.
- 4.3. In that decision I referred back to previous decisions of the PPC to identify the Minutes that I considered provided sufficient reasons and how those had been sustained between meetings.
- 4.4. 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, and 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.
- 4.5. I also noted that the Minutes of the decision dated 29 July 2025 referred back to the Minutes of the Meeting of 22 September 2022 and the issues discussed at paragraphs 22.2.1. to 22.2.3 included reference to site visits, census information, GP lists and dispensing data.
- 4.6. Notwithstanding that the Minutes of the subsequent reconsideration meeting are brief, this did not detract from the previous reasons given and this is particularly true when the most recent reconsideration exercises did not relate to a failure to give reasons.

- 4.7. On that basis, I did not consider that it can be said that there had been a failure by the Board to properly narrate the facts or reasons for its decision.
- 4.8. This remains the case as those previous minutes were referred to by the PPC in its decision dated 27 May 2026, as well as its discussions around the updated information and how this supported its previous decision-making. Accordingly, this ground of appeal discloses no reasonable grounds of appeal in terms of the regulations and is, therefore, dismissed.
- 4.9. 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.
- 4.10. 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 as well as my decision dated 21 January 2026. As mentioned above, in that decision I remitted the PPC decision of 29 July 2025 back for reconsideration. This was on the basis that the decision did not demonstrate that the reconsideration had been a meaningful exercise.
- 4.11. 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.
- 4.12. In these circumstances I do not agree with the Appellant that this has not taken place. The Minutes of the Meeting of the PPC dated 27 May 2026 clearly identify the matter that has been remitted back to it for its reconsideration, as well as my advice regarding the information which might be considered out of date. In response, the PPC

identified the task before it in terms of conducting a meaningful reconsideration. They did this with reference to the information originally before it, previous PPC minutes and the updated information – which was clearly arrived at as a preference to concluding that the older information could no longer be relied upon. The updated information was considered consistent with their previous findings as to inadequacy.

- 4.13. Taking this all together the cumulative effect is , in my view, that the reconsideration exercise has been a meaningful one. Accordingly, this ground of appeal discloses no reasonable grounds of appeal in terms of the regulations and is, therefore, dismissed.
- 4.14. 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.
- 4.15. 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.
- 4.16. In these lengthy proceedings the PPC have, as they are entitled to do on the basis of the information before them, concluded that services are inadequate. They have done so consistently and there is, as mentioned above, a series of decisions which set out their reasons for doing so - all properly applying the legal test.
- 4.17. In this appeal the Appellant notes that the test needs to be applied at the time the decision is taken – in this instance, being 27 May 2026. This is correct. But the suggestion that the reference by the PPC to previous minutes and decision-making is in conflict with this requirement is not.
- 4.18. As mentioned above the previous decisions are referred to in terms of consistency of their views. They did not simply “adopt” or “reaffirm” earlier decisions; rather, they revisited them and concluded their reasoning was still relevant. They also took into account the updated information as part of their reconsideration. Taking this all

together it can properly be said that the view arrived at in terms of inadequacy was at the time the application was (re) considered, namely, 27 May 2026.

- 4.19. On this basis the PPC did not fail to properly apply the legal test as to adequacy at the time of its decision. This ground of appeal is, therefore, dismissed, as it discloses no reasonable ground of appeal in terms of the Regulations.

5. Disposal

- 5.1. For the reasons set out above, this appeal is dismissed in its entirety as it discloses no reasonable grounds of appeal in terms of the Regulations.

(sgd)

C W Nicholson WS

Chair

National Appeal Panel

25 August 2026