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25 October 2023

REF: SHA/26057

APPEAL AGAINST NHS ENGLAND (SOUTH WEST COLLABORATIVE COMMISSIONING HUB) DECISION TO REFUSE AN APPLICATION BY DAY LEWIS PLC FOR CONSOLIDATION ONTO THE SITE AT 6 ARNSIDE ROAD, SOUTHMEAD, BRISTOL, BS10 6AT OF DAY LEWIS PLC ALREADY AT THAT SITE AND DAY LEWIS PHARMACY CURRENTLY AT 5 ARNSIDE ROAD, BRISTOL, BS10 6AT

1 Outcome

1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of NHS England, and redetermines the application.

1.2 The Committee determined that the application should be granted.

A copy of this decision is being sent to:
Day Lewis plc (the Applicant)
South West Collaborative Commissioning Hub (NHS England)
Magna Healthcare Ltd

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

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APPEAL AGAINST NHS ENGLAND (SOUTH WEST COLLABORATIVE COMMISSIONING HUB) DECISION TO REFUSE AN APPLICATION BY DAY LEWIS PLC FOR CONSOLIDATION ONTO THE SITE AT 6 ARNSIDE ROAD, SOUTHMEAD, BRISTOL, BS10 6AT OF DAY LEWIS PLC ALREADY AT THAT SITE AND DAY LEWIS PHARMACY CURRENTLY AT 5 ARNSIDE ROAD, BRISTOL, BS10 6AT

1 The Application

By application dated 17 January 2023, Day Lewis plc ("the Applicant") applied to NHS England in respect of a consolidation onto the site at 6 Arnside Road, Southmead, Bristol, BS10 6AT, of Day Lewis plc already at that site and Day Lewis Pharmacy currently at 5 Arnside Road, Bristol, BS10 6AT. The application was made pursuant to Regulation 26A of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"). In support of the application it was stated:

1.1 "When considering an application made under regulation 26A, NHS England & NHS Improvement ("NHSE&I") is required to consider whether "it is satisfied that granting the application **would not create a gap** in pharmaceutical services provision that could be met by a routine application".

1.2 Routine applications are made in respect of:

1.2.1 a) Needs that have been identified within the prevailing PNA (regulations 13, 15 and 17) or;

1.2.2 b) Benefits that were not foreseen when the PNA was drafted (regulation 18).

1.3 In respect of the PNA, there are no needs identified within the 2022 Bristol PNA that would be met by granting an application in the area served by these two pharmacies. It is likely, therefore, that any changes in provision that might result in an application being made would be considered as 'unforeseen' (as a result of the closure of one pharmacy) and therefore any application would be made under regulation 18. In fact, in the absence of any need identified in the PNA, NHSE&I would be **required** to refuse any application made under regulations 13, 15 or 17.

1.4 In order to grant this consolidation application, therefore, NHSE&I will therefore need to be satisfied that a future application made under regulation 18, after site 2 had closed, would be refused.

1.5 The key matters NHSE&I would need to consider if such an application were made are as follows:

1.5.1 *Is it satisfied that granting the application……..would secure improvements, or better access, to pharmaceutical services, in the area of the relevant HWB having particular regard to the desirability of:*

1.5.1.1 *(i) There being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB;*

1.5.1.2 *(ii) People who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access;*

1.5.1.3 *(iii) There being innovative approaches taken with regard to the delivery of pharmaceutical services*

1.5.2 *such that granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published.*

1.6 We have therefore provided information below which will satisfy NHSE&I that granting an application for a new pharmacy (following the closure of the pharmacy at 5 Arnside Road) would not secure improvements or better access that were unforeseen in the PNA.

Background

1.7 The context of this application is the increasing pressure felt by all pharmacy contractors since the funding cuts that were introduced in December 2016. The combination of these cuts, Category M clawbacks, Covid-19 and inflationary pressures has resulted in unprecedented difficulties with some fairly substantial pharmacy businesses unable to remain profitable. According to PSNC analysis, more than 200 pharmacies have closed since the latest funding cuts were introduced.

1.8 This will ensure the long-term viability of pharmaceutical services in Southmead which would be provided by one profitable pharmacy rather than two with borderline profitability. This is entirely in keeping with the Department of Health's aims and expectations when Regulation 26A was introduced to facilitate consolidations.

1.9 The two pharmacies proposed for consolidation are located in Southmead a northern suburb and council ward of Bristol, in the south west of England which are both owned by Day Lewis plc.

1.10 The pharmacy premises we intend to keep trading (6 Arnside Road) was previously owned by Lloyds Pharmacy Limited and was acquired by Day Lewis plc on 1st November 2022. Both pharmacies are situated opposite one another on Arnside Road.

1.11 **ME2344: Day Lewis plc - Application in respect of a consolidation onto an existing site**

1.12 **Site 1 (the continuing site):** Day Lewis plc, 6 Arnside Road, Southmead, Bristol BS10 6AT

1.13 **Site 2 (the closing site):** Day Lewis plc, 5 Arnside Road, Southmead, Bristol BS10 6AT

1.14 [Photograph of both sites provided for Committee] – Appendix A

1.15 The proposed remaining premises is a larger double-fronted retail unit. A significant investment is planned to refit the proposed remaining premises to sustain a high-standard and so this consolidation of both pharmacies will allow us to continue to offer patients an excellent level of service.

1.16 The pharmacies we propose to consolidate are situated directly opposite from each other and each serve the same population. Both pharmacies would be classified as being located in a high-footfall shopping parade with supporting trade including convenience stores.

1.17 As both Pharmacies share the same shopping precinct, patients will be familiar with the available parking locally:

1.17.1 Along Ullswater Rd there is 30 Spaces of free parking with no restrictions.

1.17.2 Along Arnside Road, there are Disabled Bays with dropped curb crossing access for patients in wheelchairs.

1.17.3 Greystoke Avenue then has a further 22 Spaces including 1 Disabled Bay with no restrictions.

1.17.4 Substantial Additional parking including 3 Disabled Bays + 9 Parent & Child bays is also available to Aldi customers on Greystoke Avenue.

1.17.5 For patients travelling on a bike there are Push-bike stands available for safe parking.

1.18 There are no barriers between the two sites preventing movement between them. The journey between them takes 1 minute as they are situated directly opposite each other. Arnside Rd is suitable for prams/pushchairs/mobility scooters etc. and there is street lighting along the length of the road.

1.19 Bus stops are situated on either side of Greystoke Ave, with the number 2 service visiting frequently every 20 minutes. For patients arriving on the Tesco Express side of the road, furthest away from Arnside Rd, there is a traffic light pedestrian crossing immediately next to the bus stop which then leads onto a wide, flat pavement for pedestrians to access the pharmacy and supporting trade.

Local area

1.20 The amenities in the surrounding area serve both its resident population and residents from slightly further afield who visit some of the supporting trade in the area.

1.21 The closing site is a 100 Hour pharmacy which as mentioned in the background to this application is becoming more challenging to operate profitably in the current climate facing community pharmacy.

1.22 The proposed existing site current opening hours are:

1.22.1 Monday-Friday 09:00-18:00 (45 Hours)

1.22.2 Saturday 09:00-17:30 (8.5 Hours)

1.22.3 Sunday Closed

1.22.4 Total 53.5 Hours

1.23 We intend to increase the existing supplementary hours to open between 60-65 hours per week. Should this application be granted, we will engage with the patients to reach optimum opening hours based on their feedback whilst protecting the longevity of the Pharmacy being situated at Arnside Rd.

1.24 The two pharmacies provide a similar range of services for patients.

1.25 Dispensing data for the month of October 2022 (the latest available) shows the following:

1.25.1 Day Lewis – 5 Arnside Road (FL842) The Closing Site - 13,265 items

1.25.2 Day Lewis – 6 Arnside Road (FHF82) The Remaining Site – 4,369 items

1.26 We can confirm that there would be no capacity issues at the remaining pharmacy as a result of this consolidation application as our premises are big enough to accommodate the expected increase in prescription numbers. In fact, the pharmacy layout at the soon-to-be newly fitted pharmacy at 6 Arnside Road will be designed to accommodate additional prescription numbers.

1.27 The main GP practices located in the immediate area (within 1 mile radius) which both the closing and remaining pharmacies actively serve are:

1.27.1 Southmead & Henbury Family Practice, Ullswater Road, Southmead, Bristol, BS10 6DF

1.27.2 Greenway Community Practice, Greystoke Avenue, Bristol, BS10 6AF

1.27.3 Bradgate Surgery, Ardenton Walk, Henbury, Bristol, BS10 6SP

1.27.4 Monks Park Surgery, 24 Monks Park Avenue, Bristol, BS7 0UE

1.28 The combined dispensing of both the closing and existing pharmacy obtain over 86% of its total prescriptions annually from 4 above mentioned GP Surgeries, the split being:

1.28.1 1) Southmead & Henbury Family Practice 48.2%

1.28.2 2) Greenway Community Practice 19.5%

1.28.3 3) Bradgate Surgery 12.4%

1.28.4 4) Monks Park Surgery 6.3%

Pharmaceutical services in the wider area

1.29 There are a couple of alternative providers of pharmaceutical services in the wider area.

1.30 Within a 1 mile radius of the two pharmacies concerned, (source: NHS UK – Pharmacies one mile or less from postcode BS10 6AT) which are owned by different pharmacy contractors, these are:

1.30.1 Lloyds Pharmacy, New Health Centre, Greenway Ctr, Doncaster Road, Southmead, BS10 5PY Opening Hours: Monday-Friday 09:00-18:00, Saturday 09:00-13:00, Sunday Closed

1.30.2 Boots Pharmacy, 37 Southmead Road, Westbury On Trym, Bristol, BS10 5DW Opening Hours: Monday – Friday 09:00-18:00, Saturday Closed, Sunday Closed

1.30.3 Magna Pharmacy, Bradgate Surgery, Ardenton Walk, Henbury, Bristol, BS10 6SP Opening Hours: 09:00-19:00 Monday-Friday, 09:00-17:30 Saturday, Sunday Closed

1.31 Other extended opening hours that pharmacies are open in the wider area are:

1.31.1 Boots (1.5 miles away)

1.31.1.1 Unit 116, Upper Level, The Mall, Cribbs Causeway, Bristol, BS34 5UP Opening Hours: 10:00-19:00 Monday-Friday, 10:00-16:00 Saturday, 11:00-15:00 Sunday

1.31.2 Asda Pharmacy (1.9 miles away).

1.31.2.1 Highwood Lane, Patchway, Bristol BS34 5TL Opening Hours: 09:00-20:00 Monday-Friday, 09:00-20:00 Saturday, 10:00-16:00 Sunday

1.32 The above pharmacies means that patients will clearly continue to have a reasonable choice of contractor and easy access to pharmaceutical services should this application be approved.

Securing improvements or better access

1.33 When considering an application under Regulation 18 the fundamental test is whether granting the application will secure improvements or better access in respect of pharmaceutical services.

1.34 In respect of improvements, there is no evidence of any shortfall in current service provision by the consolidating pharmacies. Both pharmacies provide a comprehensive range of pharmaceutical services, and the consolidated pharmacy is required to provide all of the pharmaceutical services offered by each of the pharmacies at present. Furthermore, there is no evidence of complaints regarding the service provided by either pharmacy. Therefore, there is no reason to believe that there will be any shortfall in the service provided by the consolidated pharmacy.

1.35 It follows that, if service provision after 5 Arnside closes continues to meet the needs of the population, there is no reason to grant an application that would secure improvements as there is no evidence that improvements are required.

1.36 In terms of access to pharmaceutical services it is clear that patients who are currently able to access the closing pharmacy will be equally able to access the remaining pharmacy given their very close proximity.

1.37 Regardless of whether people access both pharmacies on foot, by car or public transport, given that the pharmacies are directly opposite each other both premises are equally accessible.

1.38 Should the application be granted, whilst there will be some decrease of opening hours available to patients at Arnside Rd, due to the closure of the 100 hour contract, there is no evidence that a future application made at this location to improve access (either physically or in respect of opening hours) would be successful, given that the closure of one pharmacy would have no material impact of access to pharmaceutical services.

Choice

1.39 When considering choice in respect of pharmacy providers, both NHSE&I and Primary Care Appeals have found previously that it does not automatically follow that only having one pharmacy in a location means there is not “reasonable choice” for patients.

1.40 In this case, whilst the outcome of this consolidation would be a reduction in the number of pharmacies in Arnside Road from two to one, as we have described above, there are 3 other pharmacies within a mile.

1.41 There is no evidence, therefore, that should this application be granted, there is a risk that a future application at this location would be granted on the basis of improved choice.

1.42 Overall therefore, there is no evidence, therefore, that should this application be granted, there is a risk that a future application at this location would be granted on the basis of improved choice.

Patients sharing protected characteristics

1.43 Relevant protected characteristics in this case are those relating to the accessibility of pharmaceutical services. These are typically age and disability i.e., matters that affect physical accessibility. Given the proximity of the remaining pharmacy, it is clear that patients who previously attended the closing pharmacy will have no difficulties attending this pharmacy.

1.44 As accessibility for these patients will be maintained there is no evidence that a future application made to secure improvements in access for these patient groups would be successful.

Innovation

1.45 There is no evidence of any gaps in pharmaceutical services provision in the area concerned that would be addressed through the provision of innovative pharmaceutical services.

The general area

1.46 Finally, to our knowledge there are no relevant changes planned within the area in the foreseeable future. There are no significant housing developments in this part of Southmead and there are no proposals to make any changes to medical services provision within the area as far as we are aware.

Conclusion

1.47 Taking into account the number of pharmacies in Southmead, and their accessibility, there is no evidence that a future application made at this location to improve access (either physically or in respect of opening hours) would be successful given that the closure of one pharmacy would have no material impact of access to pharmaceutical services.

1.48 In fact we would suggest that after the closure of the pharmacy at 5 Arnside it is inconceivable that any application made to NHS England to 'replace' this pharmacy would be approved. Given this is the relevant legal test, in our opinion there are no grounds to refuse this application.

1.49 In conclusion there is no reason to believe that any gaps will be created as a result of this consolidation and we respectfully request that it is approved."

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 13 June 2023 states:

2.1 NHS England has considered the above application and [is] writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.

2.2 You have a right of appeal to the Secretary of State against NHS England's decision. Should you choose to appeal then either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

2.3 Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.

NHS England South West Pharmaceutical Services Regulations Committee Report dated 9 May 2023

2.4 The Committee [of NHS England] noted:

2.5 Both pharmacies are located in Arnside Road, Bristol.

2.6 The application is to consolidate on to the site at 6 Arnside Road and for the pharmacy opposite at 5 Arnside Road (100- hour) to close.

2.7 The pharmacy at 6 Arnside Road (continuing site) was previously owned by Lloyds Pharmacy. Day Lewis took ownership of the pharmacy from Lloyds on 1st November 2022.

2.8 The Bristol PNA can be found at Pharmaceutical Needs Assessment (PNA) (bristol.gov.uk) The pharmacies are included in the Bristol North and West area details.

2.9 Recent Market Exit closures affecting Bristol are:

Lloyds Pharmacy inside Sainsburys	111 Winterstoke Road, Ashton Vale, Bristol	Bristol	Closed 19 April 2023
Lloyds Pharmacy inside Sainsburys	Fox Den Road, Stoke Gifford	Bristol	Closed 19 April 2023
Jhoots	1c Pool Road, Kingswoodm Bristol	Bristol	Notice of market exit given – date to be confirmed

2.10 This is a non-controlled locality.

Nature of the application

2.11 This is application for a "consolidation onto an existing site" and is an excepted application and considered under regulation 26A.

2.12 Regulation 26A states: [Quotes in full]

Public Involvement

2.13 The Committee [of NHS England] noted, full details of the Applicant's proposals were notified to various parties in accordance with the Regulations. Representations have been received from Boots UK Ltd, Avon LPC and Superdrug Stores Plc [sic]:

2.13.1 Boots UK Ltd acknowledge the application but neither support nor oppose the application.

2.13.2 The LPC is happy to support the application so long as no new gap is identified in the PNA as a result of approving this application.

2.13.3 Magna Healthcare Ltd oppose the application concluding:

2.13.3.1 "The Applicant is proposing a significant reduction in the opening hours of the pharmacy without any guarantee that the 7 day- late night provision will be maintained. The Applicant suggests an extended opening hour of 60 to 65 hrs after the consolidation. The target site is already open for 53.5 hrs a week, this at best adds 2 extra hours a day which is nowhere near to the extended hours that the current pharmacy provides. While the Applicant has the right to close the 100 hrs contract, the consolidation route should not be used to then block

proper provision of pharmaceutical services in the North and West locality of Bristol.

2.13.3.2 The proposed consolidation of the only 100 hrs pharmacy in the North and West locality of Bristol into a standard contract will create a gap in the provision of pharmaceutical services. I, therefore, request the committee [of NHS England] to reject the application."

2.14 The Applicant responded to the consultation responses concluding:

2.14.1 "In conclusion, the bar for refusing an application for consolidation is set very high. The commissioner must be satisfied that, following the closure of a pharmacy, it would be **required** to grant a new application for inclusion in the pharmaceutical list.

2.14.2 In this case, the only objector to this application has failed to provide any meaningful evidence that any gap created would be so significant that the commissioner would have no choice but to grant a further application in Southmead.

2.14.3 That being the case we invite the commissioner to grant our application."

2.15 The Health and Wellbeing Board did not respond despite being asked to comment.

Regulation 31 (same or adjacent premises)

2.16 Regulation 31 does not apply to consolidation applications 31(1). Regulation 31 says: [Quotes in full]

Consideration - REGULATION 26A – Consolidation

Reg 26A(3) – application to be made by a person already included in the list

2.17 Both pharmacies are currently owned and operated by the same company, the applicant, therefore the requirement in sub-paragraph (a) is met and sub- paragraph (b) does not apply.

Reg 26A(4) – applications where different persons are listed in respect of the two sites

2.18 As both pharmacies are currently owned and operated by the same company this paragraph does not apply.

Reg 26A(5)(a) – refusal of the application if it would cause a gap in the provision of pharmaceutical services

2.19 In the supporting information included with the application the Applicant has provided information to explain why they believe a gap would NOT be created if the consolidation was granted. The Applicant concludes:

2.20 [Quotes paragraphs 1.47 to 1.49 above].

2.21 The tables at part 3 of the application show the opening hours for both sites. The hours at the continuing site are currently:

2.22 Current core opening hours for Site 1

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00–12:00 14:00–18:00	09:00–12:00 14:00–18:00	09:00–12:00 15:00–18:00	09:00–12:00 14:00–18:00	09:00–12:00 14:00–18:00	09:00–12:00 14:30–17:30	Closed	40:00

2.23 Current total opening hours for Site 1

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00–12:00 12:00-14:00 14:00–18:00	09:00–12:00 12:00-14:00 14:00–18:00	09:00–12:00 12:00-15:00 15:00–18:00	09:00–12:00 12:00-14:00 14:00–18:00	09:00–12:00 12:00-14:00 14:00–18:00	09:00–12:00 12:00-14:30 14:30–17:30	Closed	53:30

2.24 The hours for the closing site are currently:

2.25 Current core opening hours for Site 2

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
06:00–22:00	06:00–22:00	06:00–22:00	06:00–22:00	06:00–22:00	08:00-19:00	08:00-17:00	100.00

2.26 Current total opening hours for Site 2

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
06:00–22:00	06:00–22:00	06:00–22:00	06:00–22:00	06:00–22:00	08:00-19:00	08:00-17:00	100.00

2.27 The table at 4.3 of the application confirms the services provided from the proposed closing site will be available at the remaining site.

2.28 The Committee [of NHS England] had access to the number of dispensing items between April 2022 and December 2022 at both sites. It was noted the closing site is the busier of the two. There are 5 other pharmacies within a mile of the closing site.

2.29 The data below for Oct 22 – Dec 22 (3 months) shows that for the proposed **closing** site 52% of the prescriptions came from Southmead & Henbury Family Practice. 63% of scripts from the same practice are already dispensed by the continuing site. Both pharmacies have the same top 4 practices generating prescriptions:

Continuing site – FHF82	Oct 2022	Nov 2022	Dec 2022	Totals	%
L81067 Southmead and Henbury Family Practice	3928	2522	2729	9179	63.50

L81098 Greenway Community Practice	772	495	693	1960	13.57
L81037 Pioneer Medical Group	979	570	514	2063	14.28
L81669 Monks Park Surgery	588	345	307	1240	8.58

Closing site – FL842	Oct 2022	Nov 2022	Dec 2022	Totals	%
L81067 Southmead and Henbury Family Practice	6526	5653	4662	16841	52.29
L81098 Greenway Community Practice	3070	2984	2266	8320	25.83
L81037 Pioneer Medical Group	1605	1694	1329	4628	14.36
L81669 Monks Park Surgery	910	752	755	2417	7.50

2.30 The Committee [of NHS England] noted the closing site is a 100-hour pharmacy, and whilst there are other pharmacies in the area, it is a significant distance before there is another 100-hour pharmacy providing late weekday opening and weekend opening. It was noted this is particularly a concern on Sundays.

2.31 It was noted the Applicant has indicated some additional Supplementary hours within the application but there is nothing formally applied for in writing and Supplementary hours can be withdrawn at any time, with short notice.

2.32 The Committee [of NHS England] noted the higher volume of activity is at the proposed closing pharmacy, indicating the broader range of opening hours at this site are an important factor for patients in this area, when deciding where to access their pharmaceutical services.

2.33 It was noted the area is one of deprivation and high health needs, therefore losing evening and weekend opening hours is a concern and will have a significant negative impact on patients. Other 100 hour pharmacies are a significant distance for patients to travel to.

2.34 The Committee [of NHS England] noted there is a new facility within the Regulations for 100 hour pharmacies to potentially reduce their opening hours.

2.35 The Committee [of NHS England] was also mindful of the statement within the PNA that there would have to be an assessment of gaps created if a pharmacy were to close.

2.36 In view of the concern around the loss of evening and weekend opening hours the Committee [of NHS England] concluded this significantly affected access to pharmaceutical services weekday evening and weekends, the application is refused.

Reg 26A(5)(b) – refusal of the application if either site if a distance selling pharmacy or appliance contractor

2.37 Neither site is operating as a distance selling pharmacy or appliance contractor so **there is no requirement to refuse under this sub-paragraph**.

Reg 26A(6)(a) – Service provision following consolidation where paragraph (3) applies

2.38 In section 4 of the application, it is indicated that all services currently provided at site 1 and 2 will continue after the consolidation. In section 5.3 of the form the applicant confirms that there will be no interruption in the provision of services.

2.39 The Committee [of NHS England] was satisfied there **is no requirement to refuse under this sub- paragraph**.

Reg 26A(6)(c) – consent to de-listing of site 2

2.40 In section 6 of the application, they have confirmed that, consequent on the consolidation, the pharmacy operating from 5 Arnside Road would cease trading. Therefore, there **is no requirement to refuse under this sub-paragraph**.

Reg 26A(7) – Applications to which paragraph 4 apply

2.41 Not applicable as paragraph 4 does not apply because both pharmacies are owned by the same company.

Reg 26A(8) – Consideration of two or more consolidation applications together

2.42 Not applicable as there are no other consolidation applications relating to this area.

Decision

2.43 **Based on all the above factors, the committee determined a gap would be created and the application is REFUSED.**

Appeal rights

2.44 The Applicant has appeal rights.

3 The Appeal

In a letter dated 12 July 2023 addressed to NHS Resolution, the Applicant appealed against NHS England's decision. The grounds of appeal are:

3.1 “We have been notified by PCSE in a letter dated 13 June that the above application has been refused. A copy of their letter and decision report is attached to this document.

3.2 We wish to appeal against the decision of the ICB as we believe their reasonings for refusal are, in fact, flawed.

3.3 For ease of reference, we attach a copy of our original application and supporting information.

3.4 We will address each of the ICB’s points a little later in this document.

3.5 Initially we would like to address comments made by third parties in relation to this application.

Comments from Interested Parties

3.6 Only three parties commented on the application, and they were as follows:

Boots Letter dated 2nd March

3.7 Boots had no comment to make on the application and simply asked to be kept informed of progress.

LPC Letter dated 22nd February

3.8 The LPC stated they were happy to support the application provided it did not create a gap in services. We strongly believe no gap will arise if this application is approved.

Magna Healthcare Letter dated 5th March

3.9 Magna Healthcare have written a detailed response explaining why they believe the loss of late-night opening in the locality will leave a gap in services.

3.10 We strongly disagree with both their conclusions and their reasons for reaching those conclusions. Each of their points has been addressed in detail in our letter of response dated 16th March a copy of which is attached to this document. To avoid repetition, we will not repeat our arguments here but will simply conclude by saying that there was only one objection to this application.

ICB Decision

3.11 In summary the reasons for refusal of this application by the ICB were as follows:

3.12 [Quotes paragraphs 2.30 to 2.36 above].

3.13 We have addressed each of these points below.

3.14 As this is an application for a consolidation made under regulation 26A, the ICB is required to consider whether "it is satisfied that granting the application **would not create a gap** in pharmaceutical services provision that could be met by a routine application".

3.15 We firmly believe that the information within our supporting document is more than sufficient to satisfy the ICB that granting an application for a new pharmacy (following the closure of the pharmacy at 5 Arnside Road) would not secure improvements or better access that could be met by a routine application.

3.16 To avoid repetition, we do not wish to repeat all the points from the original supporting documents but just wish to highlight those we believe to be the most salient.

3.17 Taking each of the ICB's points we wish to comment as follows:

3.18 ***20 The Committee* [of NHS England] *noted the closing site is a 100-hour pharmacy, and whilst there are other pharmacies in the area, it is a significant distance before there is another 100-hour pharmacy providing late weekday opening and weekend opening. It was noted this is particularly a concern on Sundays.***

3.19 As stated in our original submission we do not believe the potential closure will leave a gap in services within the area either during standard opening hours or late night/weekend provision. The list of pharmacies (excluding the two in question within this application) within a 2-mile radius is as follows:

3.19.1 *Lloyds Pharmacy,* New Health Centre, Greenway Ctr, Doncaster Road, Southmead, BS10 5PY Opening Hours: Monday-Friday 09:00-18:00, Saturday 09:00-13:00, Sunday Closed

3.19.2 *Boots Pharmacy,* 37 Southmead Road, Westbury On Trym, Bristol, BS10 5DW Opening Hours: Monday – Friday 09:00-18:00, Saturday Closed, Sunday Closed

3.19.3 *Magna Pharmacy*, Bradgate Surgery, Ardenton Walk, Henbury, Bristol, BS10 6SP Opening Hours: 09:00-19:00 Monday-Friday, 09:00-17:30 Saturday, Sunday Closed

3.19.4 *Boots*, Unit 116, Upper Level, The Mall, Cribbs Causeway, Bristol, BS34 5UP Opening Hours: 10:00-19:00 Monday-Friday, 10:00-16:00 Saturday, 11:00-15:00 Sunday

3.19.5 *Asda* Pharmacy Highwood Lane, Patchway, Bristol BS34 5TL Opening Hours: 09:00-20:00 Monday-Friday, 09:00-20:00 Saturday, 10:00-16:00 Sunday

3.20 A map showing these pharmacies in relation to the proposed consolidation site is attached to this document.

3.21 The final two pharmacies listed both open 7 days/week so it is clear that if this application was approved patients will still have both a choice and a range of contractors to choose from.

3.22 As highlighted in our response to the third party comments, the objector erred by focussing specifically on '100 hour pharmacies'. The ICB have repeated this mistake. The availability of services during extended hours is not limited to '100 hour pharmacies' so the ICB were wrong to focus on these in particular.

3.23 In addition to this, since this application has been submitted, on the 25th May the Department of Health and Social Care (DHSC) introduced changes to regulations which now allows 100 hour Pharmacies to give 5 weeks' notice to the ICB to reduce their core hours provided that they still:

3.23.1 Open a minimum of 72 Hours;

3.23.2 The hours of 17:00-21:00 Monday to Saturday remain;

3.23.3 The existing Sunday Core Hours are unchanged.

3.24 In reality, these regulatory changes means that the closing site should no longer be viewed as a "100 Hour Pharmacy" providing access to patients for 100 hours per week as Day Lewis will be submitting 5 weeks' notice to reduce the closing site to 72 hours with a commencement date of Saturday 19 August.

3.25 The new hours for the closing site will be:

3.25.1 Monday 10:00-21:00 (11 Hours)

3.25.2 Tuesday to Friday 09:00 - 21:00 (48 Hours)

3.25.3 Saturday 17:00 - 21:00 (4 Hours)

3.25.4 Sunday 08:00 - 17:00 (9 Hours)

3.25.5 Total 72 Hours

3.26 This therefore means that the gap in existing hours of the remaining site (53.5 hours) and the closing site should be considered as a difference in opening hours of 18.5 weekly hours and not 46.5 hours if it was being viewed as a "100 hour pharmacy".

3.27 ***21 It was noted the applicant has indicated some additional Supplementary hours within the application but there is nothing formally applied for in writing and Supplementary hours can be withdrawn at any time, with short notice.***

3.28 We accept that the "closing" pharmacy currently opens 100 hours/week which will soon be reducing to 72 as of the 19 August, whilst the "remaining" branch is a standard hour contract currently operating 53.5 hours/week.

3.29 It was made clear in the original document that Day Lewis would be willing to extend those hours in the remaining site if the ICB felt that would be beneficial to the patients.

3.30 Day Lewis would be prepared to review a request from the ICB to have directed extended opening hours in the remaining site to give the ICB more comfort than just increasing supplementary hours to ensure these hours remain protected for patient access.

3.31 ***22 The Committee*** **[of NHS England]** ***noted the higher volume of activity is at the proposed closing pharmacy, indicating the broader range of opening hours at this site are an important factor for patients in this area, when deciding where to access their pharmaceutical services***

3.32 Within the original supporting document, we stated dispensing figures for the two branches for the month of October 2022 (which at the time of preparing the document was the most up to date data available) as follows:

3.32.1 *Day Lewis – 5 Arnside Road (FL842) The Closing Site - 13,265 items*

3.32.2 *Day Lewis – 6 Arnside Road (FHF82) The Remaining Site – 4,369 items*

3.33 The June 2023 MYS FP34 Declaration Submission for both Pharmacies were as follows:

3.33.1 *Day Lewis – 5 Arnside Road (FL842) The Closing Site - 230 items*

3.33.2 *Day Lewis – 6 Arnside Road (FHF82) The Remaining Site – 12,726 items*

3.34 Following the decision to submit an application for consolidation of these two pharmacies, we have been proactive in keeping our patients informed of our intentions. In the hope that the application will be approved, we have set up improved systems within the remaining branch to ensure that we can cope with the increased volume of patients. The firm intention is to try to keep disruption to a minimum and patient care at the forefront of our plans.

3.35 Part of that process has been asking as many of our patients as possible if they would have any objections to their medication being dispensed by our branch located at 6 Arnside Road (the remaining branch) rather than from 5 Arnside Road (the closing branch). Over the past 6 weeks or so, the vast majority have happily renominated their branch from 5 to 6 Arnside Road, which has resulted in a big swing of scripts dispensed from the closing branch to the remaining branch for the month of June as shown in the MYS Declaration Data above.

3.36 This swing of items seems to support the view that the demands for late night/Sunday services is very limited.

3.37 To date we have not had any patient objections to our plans.

3.38 ***23 It was noted the area is one of deprivation and high health needs, therefore losing evening and weekend opening hours is a concern and will have a significant negative impact on patients. Other 100 hour pharmacies are a significant distance for patients to travel to.***

3.39 We have already raised the erroneous focus by the ICB on 100 hours pharmacies.

3.40 We obviously accept the demographic data for the area and prior to submitting this application it was one of the points we very carefully considered. After deliberation we took the unusual step of offering to extend the opening hours of the remaining branch post completion of the consolidation taking place. This was clearly stated in the original supporting document which confirms the intention of offering extended hours from the outset.

3.41 It was always our intention to include the ICB in these discussions and extend our hours should they have recommendations for us to do so. We intended to use the data of prescriptions dispensed by the closing site after the remaining site has closed as a starting point for these discussions.

3.42 It is also worth noting that the Health and Wellbeing Board did not comment on the application to give any view on what negative impact a reduction in evening and weekend hours would occur should the application be granted, or give any indication of what particular hours are required in addition to the remaining site to address any concerns.

3.43 We believe these intended extended hours would ensure patients would have pharmaceutical services when they needed them most.

3.44 As we currently provide pharmaceutical services to the patients who would be affected by this closure, we would respectfully suggest that we have a better understanding than either the objector or the ICB to the days and times when our patients require access to a pharmacy.

3.45 ***24 The Committee*** **[of NHS England]** ***noted there is a new facility within the Regulations for 100 hour pharmacies to potentially reduce their opening hours.***

3.46 As mentioned earlier in this appeal, we believe that the Committee [of NHS England] have not fully considered the outcome of the new regulations impact on concluding whether “it is satisfied that granting the application would not create a gap in pharmaceutical services provision that could be met by a routine application”.

3.47 Repeatedly throughout the objection to our application the term “100 hour Pharmacy” is used to present a significant “gap” in access of opening hours, however as previously stated, this gap in real terms should be viewed as 18.5 weekly hours, rather than 43.5 weekly hours.

3.48 In addition, as we have previously mentioned in the original application and this appeal, we would seek to consider opening more hours than 53.5 in the remaining site, including directed hours from the ICB, if the ICB felt this would be beneficial to patients.

3.49 ***25 The Committee*** **[of NHS England]** ***was also mindful of the statement within the PNA that there would have to be an assessment of gaps created if a pharmacy were to close.***

3.50 We accept that to be the case albeit as stated above in our view no gap in services will be created should this application be approved.

3.51 [Enclosed:

3.51.1 Application form

3.51.2 Map and key of pharmacies in Southmead

3.51.3 Map and key of GP surgeries in Southmead

3.51.4 Floor plan

3.51.5 Day Lewis supporting information (paragraphs 1.7 to 1.49 above).

3.51.6 Avon LPC comments on application:

3.51.6.1"Avon LPC is happy to support this consolidation so long a no new gap is identified in the PNA as a result of approving this application."

3.51.7 Boots UK Ltd comments on application:

3.51.7.1"We do not have any comments to make on this application.

3.51.7.2I would be grateful if you would keep us informed of the progress of this consolidation."

3.51.8 Magna Healthcare Limited comments on application:

3.51.8.1"Thank you for the opportunity to comment on the above mentioned consolidation application. I oppose the application as I believe the proposed change will create a gap in the provision of pharmaceutical services in the North and West locality of Bristol. Below, I have given my reasons for opposing the application based on my knowledge of the local area. I have also highlighted the sections in the Bristol PNA 2022 which support my arguments.

3.51.8.2Currently, the 100hrs Day Lewis is the only 100hrs pharmacy in the Bristol North and West locality. The other two localities (Bristol Inner City and Bristol South) each have two 100hrs pharmacies. Day Lewis is the only extended opening, 7 day pharmacy in the North and West locality. Therefore, closure of this pharmacy will leave a gap in accessibility to out of hour pharmacy service in this locality. As a local pharmacy contractor we use this pharmacy as a referral point for those seeking pharmaceutical services late in the evening or on weekends.

3.51.8.3The Bristol PNA 2022 (page 18, last paragraph), refers to distance (location) and the opening hour as prime consideration in determining the accessibility to pharmaceutical service. Therefore while the proposed change should have minimal or no effect on the distance criteria the reduced opening hours will certainly impact accessibility. 18% of the PNA survey respondent (page 46) stated that the accessibility was important factor in deciding which pharmacy they went to. 12% of the respondent said that the pharmacy needs to be convenient (page 51) with further 7% wanting their pharmacy to be open longer. All these findings in the PNA are strong indicators of the need for a 100hrs pharmacy in the North and West locality of Bristol. Of the five 100hrs pharmacies in Bristol, the North and West locality has only got one. To lose this only 100 hrs pharmacy will severely hamper accessibility in the locality.

3.51.8.4In page 57, the PNA states

3.51.8.5*'85.4% of residents can access a hundred hour pharmacy within a 10 minute drive (off peak), and within 99.6% within a 15 minute drive. The needs assessment also considered driving distances and levels of motorised transport in each locality, including consideration of 100-hour pharmacies just outside Bristol's borders. The assessment found that those areas with low car availability tended to be much closer to 100 hour pharmacies. Of those areas of Bristol with fewer than 50% of households that have cars, 80% are within 1.6km of a 100 hour*

pharmacy. Compared to areas with more than 90% of households with cars, only 13% are within 1.6km of a 100 hour pharmacy.

3.51.8.6 *In summary, despite the significant reduction in pharmacy cover out of hours, most people without a car are within walking distance of a 100-hour pharmacy. Most people outside walking distance of a 100 hour pharmacy have access to a car (see map 19).'*

3.51.8.7 Given that Southmead along with nearby Henbury, Lawrence Weston has some of the most deprived neighbourhood in the country (PNA page 27), this loss of late night pharmacy will have disproportionate impact on the most deprived in the society. Areas of high deprivation also has population with high medical need and those with disability and protected characteristics. 23% of PNA respondent (page 69) stated that people with access needs struggle to travel long distances to access a pharmacy. A further 14% said that it was difficult to access pharmacies without a car, and that the PNA does not consider those without private transport. Southmead and the surrounding areas have low car ownership in Bristol. I request the committee to have consideration for this group of population while considering this consolidation application. Bristol has now adopted the Clean Air Zone and therefore is likely to have impact on accessibility if the residents of this locality then have to travel to inner city to access a late night pharmacy.

3.51.8.8 In its key finding the PNA (page 91) states:

3.51.8.9 *This Pharmaceutical Needs Assessment (PNA) has not identified any current gap in the provision of necessary, essential pharmaceutical services in the 3 localities of Bristol during core hours of Monday-Friday 9am-5pm. Local pharmaceutical services are distributed across the localities of Bristol with all residents living within 1.6km of a community pharmacy and all 3 localities have 100hr and 7 day opening pharmacies.*

3.51.8.10 It is obvious from the statement above that the current state of no gap in the provision of pharmaceutical services in North and West Bristol locality is dependent on the presence of the only 100 hrs pharmacy in Southmead. This PNA has identified growing inequalities in health in Bristol, with the North and West locality characterised by an above average number of elderly residents (page 92).

3.51.8.11 I would like to request the Committee [of NHS England] to give special consideration to map 5 (page 98) which shows how it would impact access to pharmaceutical services in North Bristol if this last remaining 100hrs pharmacy was to go. If we were to take out this 100 hrs pharmacy from the map, the accessibility to late night pharmacy in North Bristol will be drastically reduced. Maps 13 (page 106), 14 (page 107), 15 (page 108) and 19 (page 112) are also specially relevant to determine whether the proposed change will create a gap in provision of pharmaceutical services in Bristol generally and in the North and West locality in particular.

3.51.8.12 There is data to suggest that this 100 hrs pharmacy is one of the most used out of hours pharmacy in Bristol area. It is persistently in the top 10 of the pharmacies dispensing out of hours prescription generated by Brisdoc Out of Hours Health Services. The table below shows the number of prescription dispensed by the pharmacy in most recent last 6 months of dispensing data available on Pharmdata. The pharmacy

is also closest to the Southmead Hospital, therefore its loss is likely to have impact on those being referred from the Southmead hospital.

Brisdoc out of hours prescriptions dispenses by Day Lewis (100 hours)			
Dispensing month	% of Brisdoc prescriptions dispensed at Day Lewis (100 hours)	Number of items dispensed	Ranking in Brisdoc prescription share
June 2022	3.83	140	4th
July 2022	2.39	67	12th
August 2022	3.20	38	7th
September 2022	3.97	81	5th
October 2022	4.66	139	3rd
November 2022	2.61	77	10th

3.51.8.13 The Applicant is proposing a significant reduction in the opening hour of the pharmacy without any guarantee that the 7 day- late night provision will be maintained. The applicant suggests an extended opening hour of 60 to 65 hrs after the consolidation. The target site is already open for 53.5 hrs a week, this at best adds 2 extra hours a day which is nowhere near to the extended hours that the current pharmacy provides. While the applicant has the right to close the 100 hrs contract, the consolidation route should not be used to then block proper provision of pharmaceutical services in the North and West locality of Bristol.

3.51.8.14 The proposed consolidation of the only 100 hrs pharmacy in the North and West locality of Bristol into a standard contract will create a gap in the provision of pharmaceutical services. I, therefore, request the Committee [of NHS England] to reject the application."

3.51.9 Day Lewis plc response to comments on application:

3.51.9.1 "Thank you for your letter dated 6 March enclosing third party comments in respect of the above application.

3.51.9.2 On behalf of the Applicant, Day Lewis PLC, I wish to make the following comments in response.

3.51.9.3 Letter from Boots dated 2nd March

3.51.9.4 We note that Boots do not object to our application, so we have no further comments to make.

3.51.9.5 Avon LPC – letter dated 22nd February

3.51.9.6 We note that the LPC supports the application "so long a no new gap is identified in the PNA as a result of approving this application". Clearly that is the legal test the commissioner is required to consider

and we provided evidence within our application that no such gap will arise.

3.51.9.7 It is relevant that the LPC, which represents all contractors, has not provided any information which suggests that there would be a gap in the provision of pharmaceutical services as a result of approving this application.

3.51.9.8 Magna Healthcare Limited – letter dated 5th March

3.51.9.9 Magna Healthcare Limited ("MHL") have provided a lengthy letter of objection to our application, so we respond to the points raised by MHL in the same order below.

3.51.9.10 However, we wish to start by reminding the commissioner of the legal test which it is required to consider when determining an application made in accordance with Regulation 26A.

3.51.9.11 Paragraph 5 of Regulation 26A states:

3.51.9.12 (5) The NHSCB must refuse a consolidation application—

3.51.9.13 (a) if it is satisfied that granting the application would create a gap in pharmaceutical services provision that could be met by a routine application—

3.51.9.14 (i) to meet a current or future need for pharmaceutical services, or

3.51.9.15 (ii) to secure improvements, or better access, to pharmaceutical services

3.51.9.16 Essentially, this requires the decision maker to put itself in a position where the pharmacy proposed for closure had already closed, and it was in receipt of an application to provide pharmaceutical services to replace those services lost from the closing pharmacy. If the decision maker feels it would be obliged to grant the application in those circumstances, it must refuse the consolidation application.

3.51.9.17 In respect of 5(a)(i), an application for a 'current' or 'future' need (Regulations 13 and 15 respectively) would only succeed if such a need had been identified within the prevailing PNA. As MHL states within its letter, the current PNA has not identified any gaps in the provision of pharmaceutical services. That being the case, any application submitted for a current or future need would automatically be refused.

3.51.9.18 In respect of 5(a)(ii) an application to "secure improvements, or better access, to pharmaceutical services" would be made under Regulation 18 – Unforeseen Benefits. As the commissioner will be aware, the bar for approving an application made under Regulation 18 is extremely high. In fact, only a handful of these applications are approved every year.

3.51.9.19 For an application to be approved under Regulation 18, the applicant would have to provide detailed and conclusive evidence to support its application that granting it would "secure improvements, or better access, to pharmaceutical services". It follows, therefore, that a party seeking to argue that a gap would be created as a result of a consolidation, would have to provide the same evidence to support its case.

3.51.9.20 It is our opinion that the information provided by MHL falls well short of the level the commissioner would expect to receive if it was to be convinced to grant an application made under Regulation 18. In that case it cannot be confident that there is sufficient evidence for it to refuse this application.

3.51.9.21 *Comments made by MHL*

3.51.9.22 Going on to respond to the comments made by MHL:

3.51.9.23 The objector refers to the fact our pharmacy is the only 100-hour pharmacy in the Bristol North and West locality. Putting aside the fact that locality boundaries often have little direct relevance to how patients go about their daily lives, MHL make the mistake of focussing on 100 hours rather than extended hours pharmacies.

3.51.9.24 There are, in fact, two extended hours pharmacies within approximately 2 miles away from the closing pharmacy. These are Asda Pharmacy at Highwood Lane Patchway, and Lloyds Pharmacy at Fox Den Road, Filton. Each of these pharmacies opens until 8pm in the evening and on Sundays. We therefore dispute the fact that the closure of our pharmacy will "leave a gap in accessibility to out of hour pharmacy service [sic]".

3.51.9.25 MHL go on to state that they use our pharmacy as a "referral point for those seeking pharmaceutical services late in the evening or on weekends". The MHL pharmacy at Bradgate Surgery, Henbury opens until 7pm on weekdays and 5.30pm on Saturdays so it is clear that the two pharmacies referred to above open for longer hours already.

3.51.9.26 Importantly, MHL have provided absolutely no information in respect of how many people they refer to extended hours services, so there is no evidence in respect of the extent of this demand. In any event it is not clear what mechanism MHL use to refer patients to pharmacies after they have closed as presumably there is nobody there to tell patients where to go.

3.51.9.27 One would assume that, if MHL are concerned about significant unmet demand when they are not open it would make commercial sense for them to extend their supplementary opening hours to meet this demand. The fact they have not done so suggests the demand does not actually exist to any meaningful extent.

3.51.9.28 MHL go on to discuss page 18 of the PNA. They accept that there will be no reduction in the geographical accessibility of pharmaceutical services due to the closure, as the remaining Day Lewis Pharmacy branch is essentially located in the same place. The concerns MHL raise are limited solely to opening hours. They then go on to refer to comments in the PNA regarding the importance of accessibility and convenience but acknowledge that only 7% of respondents to the PNA survey even mentioned longer opening hours. The majority of comments relate to the location of pharmacies rather than when they are open.

3.51.9.29 In fact, the comment made was that these people "wanted their pharmacy to be open longer" not that they wanted their pharmacy to be open for 100 hours per week. We have already stated that we intend to open for 60 to 65 hours per week which is significantly longer than the 40 core hours most pharmacies are required to open.

3.51.9.30 MHL then discuss drive times to 100-hour pharmacies. Whilst the closure of our pharmacy will increase the drive times to the next nearest 100-hour pharmacy, there are still two extended hours 7 day pharmacies within 2 miles, well within the 10 minute drive time referred to. As referred to earlier, no evidence has been provided by the objector in respect of the extent of demand out of hours, beyond the closing times of the remaining pharmacies in the area.

3.51.9.31 The extract provided from the PNA discusses the fact most people without a car are within walking distance of a 100-hour pharmacy and refers to map 19 in the PNA. In fact, it is apparent from that map that this statement that by far the largest area with low car ownership it that nearest the city centre, where people are more likely to walk to access amenities. Whilst there are pockets of the Southmead area with relatively low car ownership, there are similar areas dotted across the map, many of which do not have a 100-hour pharmacy within walking distance.

3.51.9.32 This map does not show that most people living close to the closing pharmacy have no access to a car and it is an even further leap to reach the conclusion that there is a significant number of people who don't have access to a car and require pharmaceutical services beyond the hours they will be available after the closure of our pharmacy. There is simply no evidence that this is the case.

3.51.9.33 MHL go on to discuss the profile of residents living in Southmead, Henbury and Lawrence Weston and we accept that there are pockets of deprivation in these areas. However, the map on page 27 also shows that the closing pharmacy is also close to the least deprived areas of the city. MHL also make further comments about accessibility issues for disabled residents, but it is very clear that these comments relate to geographical accessibility as that is a key factor for less mobile patients.

3.51.9.34 There is no evidence that patients with protected characteristics have particular needs for out of hours services. It is also the case that residents of the most deprived areas and those with mobility difficulties are also the people who are least likely to be in employment so more able to access pharmaceutical services during standard opening hours.

3.51.9.35 MHL then provide a further extract from page 91 of the PNA which is a statement of fact in respect of the opening hours of pharmacies in the 3 localities of Bristol. The objector appears to have overlooked the fact that the second sentence of this paragraph refers to 100 hour and 7 day opening pharmacies.

3.51.9.36 It is therefore not "obvious" that the statement of there being no gap relies on the presence of a 100-hour pharmacy in the locality because other 7 day pharmacies remain. Furthermore, the map of page 98 which MHL ask the commissioner to give special consideration to, shows only 100-hour pharmacies but not 7 day or late opening pharmacies. This is not evidence that a gap will arise.

3.51.9.37 The objector appears to forget that before the 100-hour exemption was introduced in 2005, prospective contractors were able to submit applications for inclusion in the pharmaceutical list demonstrating that a new pharmacy was 'necessary or desirable'.

3.51.9.38 To our knowledge nobody has previously demonstrated that a 100-hour pharmacy at this location is either necessary or desirable. There is only a 100-hour pharmacy at present because of the exemption introduced in 2005. This is not evidence that the is actually a need for services to be provided for 100 hours.

3.51.9.39 MHL go on to discuss the extent to which our pharmacy is used by patients accessing the Brisdoc Out of Hours health service. They comment that "it is persistently in the top 10 of pharmacies dispensing out of hours prescriptions generated by Brisdoc". Given that this objector has made much about how little out of hours access there is in Bristol, the fact that there are ten or more pharmacies meeting out of hours needs demonstrates that out of hour access is actually widespread.

3.51.9.40 Looking at the data table provided by MHL, the average percentage of Brisdoc items dispensed by our pharmacy per month (based on the 6 months provided) is 3.4% or 90 items per month (3 items per day).

3.51.9.41 Furthermore there is no data to indicate at what time of day these items were dispensed and whether there are other pharmacies nearby that were also open.

3.51.9.42 Reverting to the legal test, we would ask the commissioner to consider whether it would grant a new application submitted to provide dispensing services for 3 items per day which may or may not dispensed at times when other pharmacies are open. If it would not then there are no grounds to refuse this application.

3.51.9.43 Finally, and expanding on a point made earlier in this submission, MHL close by suggesting the granting this application will block the proper provision of pharmaceutical services in the North and West locality of Bristol. Of course, it will do no such thing. Any contractor already included on the pharmaceutical list, including MHL, may submit a notice to increase its supplementary opening hours without providing any notice at all. Not one of these contractors will be blocked from doing so if this application is granted.

3.51.9.44 Conclusion

3.51.9.45 In conclusion, the bar for refusing an application for consolidation is set very high. The commissioner must be satisfied that, following the closure of a pharmacy, it would be required to grant a new application for inclusion in the pharmaceutical list.

3.51.9.46 In this case, the only objector to this application has failed to provide any meaningful evidence that any gap created would be so significant that the commissioner would have no choice but to grant a further application in Southmead.

3.51.9.47 That being the case we invite the commissioner to grant our application."

3.51.10 DMB decision letter and Report (paragraphs 2.1 to 2.44 above).]

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 SOUTH WEST COLLABORATIVE COMMISSIONING HUB

4.1.1 “Thank you for your letter, received 20 July 2023, addressed to [*redacted by NHS Resolution*] at Primary Care Support England (PCSE) enclosing a copy of the appeal as detailed above. The South West Pharmaceutical Services Regulations Committee (SW Committee) wishes to make the following comments on the appeal.

4.1.2 The SW Committee met on 9 May 2023. The Committee [of NHS England] considered the loss of a 100 hour pharmacy, which currently provides evening and weekend opening hours, to be a significant loss in an area of deprivation with high health needs and determined the loss of opening hours would have a negative impact on the accessibility of pharmaceutical services, particularly during weekday evenings and at weekends.

4.1.3 While the Applicant notes they have submitted notice to reduce their hours, as permitted by the amended Regulations, the SW Committee [of NHS England] would point out the pharmacy will have to maintain any opening hours between 5pm and 9pm on weekdays and Saturdays and those between 11am and 4pm Sundays. This means that the proposed closing pharmacy would be open until at least 9pm on weekdays, 7pm on Saturdays and 4pm on Sundays. As these hours will remain core hours, this was considered to be material.

4.1.4 With regard to the Asda Pharmacy mentioned by the Applicant, while the stated opening hours are correct, it only has core hours until 6pm on weekdays and no core hours on weekends. It is also 4 miles travel distance away: the SW Committee [of NHS England] did not consider this to be a suitable alternative. The Boots at Cribbs causeway is a little over 4 miles away and only has core hours until 6pm weekdays, 4pm Saturdays and no core hours on Sundays.

4.1.5 The Magna Pharmacy is a little over 1.5 miles away has core hours until 5.30pm Saturdays and 6.30pm on weekdays and does not open on Sundays.

4.1.6 The amended Regulations regarding 100 hour opening hours did not come into effect until after the SW Committee made its determination in this case. Even with the reduced hours permitted the proposed consolidation is still a significant change and reduction in access to pharmaceutical services for patients in the area.

4.1.7 In their appeal the Applicant has made an additional offer to agree Directed Extended Hours to address the gap identified, this offer was not part of the application and so the SW Committee [of NHS England] could not consider if it was relevant.

4.1.8 The South West PSRC respectfully requests that the decision to decline the application is upheld.”

5 Observations

The following observations were received by NHS Resolution in response to the representations received on appeal.

5.1 MAGNA HEALTH CARE

5.1.1 “We have provided extensive representation while this case was being decided by NHS England. The [Applicant] has given no substantive reason in challenging the decision by the commissioner, other than restating the arguments that have been considered by NHS England in rejecting the application. I would request NHS Resolution to take into consideration all our submissions to NHS England in considering this appeal.”

5.1.2 [Enclosure copy of Magna Healthcare's comments made to NHS England on the application – also quoted at 3.51.8 to 3.51.8.14 above and

5.1.3 Copy of Bristol Pharmaceutical Needs Assessment October 2022 to 2025.] Appendix B.

5.2 THE APPLICANT

5.2.1 "Thank you for your letter dated 23 August enclosing third party comments in respect of the above appeal.

5.2.2 On behalf of the Applicant, Day Lewis PLC, I wish to make the following final observations.

5.2.3 As a preliminary matter, we note that the sole objector to our application has not actually commented on our appeal. It is relevant that the only party (other than the ICB) who raised any concerns about our application has not challenged any of the matters raised either in our response to their original objection at the application stage or in our appeal.

5.2.4 **Comments from the South West Pharmaceutical Services Regulations Committee (SW Committee [of NHS England]) – letter dated 18 August.**

5.2.5 We note the Committee's [of NHS England] comments in respect of the opening hours of the pharmacy we propose to close. They are correct that the recent amendment to the regulations will require pharmacies that previously opened for 100 hours a week to retain some extended hours in the evenings and at weekends.

5.2.6 However, the ICB persists with its view that because 'extended hours' exist, the potential loss of some of these hours would automatically result in a gap in the provision of pharmaceutical services. We dispute this assumption.

5.2.7 As we have explained previously, the extent to which the result of hours demand is minimal and for the small number of people who might require this, there is alternative provision available.

5.2.8 We accept that the area within which the closing pharmacy is located is relatively deprived. One of the implications of this is that employment levels are relatively low. The table below shows data from the 2021 census in respect of economic activity of residents in the lower super output area (LSOA) within which the closing pharmacy is located.

5.2.9 TS006 Economic activity status (from Nomis on 29 August 2023)

Economic activity status	Isoa2021:E01014689: Bristol 002B Country: England			
	Number	%	Number	%
Total: All usual residents aged 16 years and over	1266	100	46,006,957	100
Economically active (excluding full time students): In employment: Employee: Part time	189	14.9	5,475,751	11.9
Economically active (excluding full time students): In employment: Employee: Full time	377	29.8	15,766,743	34.3

Economically active (excluding full time students): In employment: Self employed with employees: Part time	3	0.2	168,287	0.4
Economically active (excluding full time students): In employment: Self employed with employees: Full time	8	0.6	534,605	1.2
Economically active (excluding full time students): In employment: Self employed without employees: Part time	26	2.1	1,612,760	3.5
Economically active (excluding full time students): In employment: Self employed without employees: Full time	58	4.6	2,074,377	4.5
Economically active and a full time student: In employment: Employee: Part time	21	1.7	566,637	1.2
Economically active and a full time student: In employment: Employee: Full time	3	0.2	141,387	0.3
Economically active and a full time student: In employment: Self employed with employees: Part time	0	0.0	4,106	0.0
Economically active and a full time student: In employment: Self employed with employees: Full time	0	0.0	2,783	0.0
Economically active and a full time student: In employment: Self employed without employees: Part time	0	0.0	43,897	0.1
Economically active and a full time student: In employment: Self employed without employees: Full time	0	0.0	13,881	0.0

5.2.10 As can be seen from this data approximately 30% of people living in this LSOA are in full-time employment. Of those people who are in full-time employment, many will live in households where other family members are not working or are only working part-time.

5.2.11 The majority of residents, therefore, will be at home for most or part of the normal working day and will be able to access pharmaceutical services during those hours. Those who are working full time, and whose working hours encompass the trading hours during which the remaining pharmacy will be open, are likely to be able to call on another member of the household to visit the pharmacy for them.

5.2.12 Alternatively, given that there are no significant places of employment within close proximity of the closing pharmacy, as these residents are clearly travelling to work they are mobile and therefore likely to be able to access another extended hours pharmacy on their way to or from their place of work.

5.2.13 It is important for the Committee to be mindful that, just because a pharmacy opens for extended hours at present, it does not automatically follow that patients cannot access the services they need during standard opening hours.

5.2.14 In order for a consolidation application to be refused, the decision maker must be satisfied that the gap created by the proposed closure is so significant that an application for inclusion in the pharmaceutical list would be granted to 'replace' that pharmacy. Given the limited demand or need for a pharmacy 'out of hours' hours at this location, we do not believe such an application would be granted.

5.2.15 We note that the SW Committee [of NHS England] stated that “the loss of opening hours would have a negative impact on the accessibility of pharmaceutical services, particularly during weekday evenings and at weekends”. We respectfully point out to the SW Committee [of NHS England] that this is not the correct legal test.

5.2.16 The SW Committee [of NHS England] go on to state that “the Asda Pharmacy only has core hours until 6pm on weekdays and no core hours on the weekends”. This pharmacy has existed for very many years and is located within an exceptionally large Asda store. It has always traded for extended hours and there is absolutely no reason to believe this will change. The fact these are not core hours has very little relevance in our opinion.

5.2.17 The Asda Pharmacy is located a 10 minute drive, or an 18 minute bus journey away from the location of the closing pharmacy. Bus route 2 runs from Southmead to Cribbs Causeway (where Asda is located) until after midnight 7 days a week.

5.2.18 We have enclosed a copy of the timetable accordingly.

5.2.19 The same points apply in respect of the Boots store.

5.2.20 The SW Committee [of NHS England] go on to say “even with the reduced hours permitted the proposed consolidation is still a significant change and reduction in access to pharmaceutical services for patients in the area.” Again with respect to the Committee [of NHS England], we feel they have failed to consider the correct legal test.

5.2.21 Finally, in respect of the offer we have made to engage with the ICB to provide additional directed extended hours, we have had no communication from the ICB in this respect but remain happy to discuss this matter further to address any concerns they may have.”

5.2.22 [Enclosed Bus time table]. Appendix C

6 Consideration

6.1 The Pharmacy Appeals Committee (“Committee”) appointed by NHS Resolution, had before it the papers considered by NHS England.

6.2 It also had before it the responses to NHS Resolution’s own statutory consultations.

6.3 Since 1 April 2023, Integrated Care Boards have taken on delegated responsibility for the commissioning of pharmaceutical services. NHS Resolution will issue this decision to NHS England and it is for NHS England to inform the relevant Integrated Care Board.

6.4 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

6.5 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:

6.5.1 confirm NHS England's decision;

6.5.2 quash NHS England's decision and redetermine the application;

6.5.3 if it considers that there should be a further notification to the parties to make representations, quash NHS England's decision and remit the matter to NHS England.

6.6 Regulation 26A states:

"1. A person already included in a pharmaceutical list may make an application pursuant to this paragraph ("a consolidation application") in respect of the consolidation onto the site (S1) of listed chemist premises in the area of the relevant HWB (HWB1) of the provision of pharmaceutical services provided at or from S1 and other listed chemist premises (S2) in the area of HWB1.

2. Section 129(2A) of the 2006 Act (regulations as to pharmaceutical services) does not apply to a consolidation application by a person already included in a pharmaceutical list for inclusion in respect of premises not already listed in relation to that person.

3. Subject to paragraph (4), a consolidation application—

(a) must be made by the person (P1) included in the pharmaceutical list in relation to S1; and

(b) if different persons are listed in relation to S1 and S2, must include as part of the application an application by P1 to change the ownership of S2.

4. If different persons are listed in relation to S1 and S2, and the person (P2) listed in relation to S2 is seeking to become the person listed in relation to S1, a consolidation application—

(a) must be made by P2; and

(b) must include as part of the application an application by P2 to change the ownership of S1.

5. The NHSCB must refuse a consolidation application—

(a) if it is satisfied that granting the application would create a gap in pharmaceutical services provision that could be met by a routine application—

(i) to meet a current or future need for pharmaceutical services, or

(ii) to secure improvements, or better access, to pharmaceutical services; or

(b) if either S1 or S2 are distance selling premises or appliance contractor premises.

6. In the case of an application to which paragraph (3) applies, the NHSCB must refuse the application unless it is satisfied—

(a) if the NHSCB intends to commission from P1 at or from S1 enhanced services which P2 provides at or from S2 but which P1 has not been providing at or from S1, that the provision of those services will not be interrupted except for such period as the NHSCB may for good cause allow

(b) in the case of an application to which paragraph (3)(b) applies, that—

(i) P2 consents to the change of ownership of S2, and

(ii) P1 and P2 consent to S2 ceasing to be listed chemist premises as a consequence of the application; and

(c) in the case of an application to which paragraph (3)(b) does not apply, that P1 consents to S2 ceasing to be listed chemist premises as a consequence of the application.

7. In the case of an application to which paragraph (4) applies, the NHSCB must refuse the application unless it is satisfied—

(a) that P2 is proposing to carry on at S1, in place of P1, the business in the course of which P1 is providing pharmaceutical services at S1;

(b) that P2 is undertaking to provide the same pharmaceutical services as those that P1 is providing (whether or not P2 is also to provide other services that P2 is providing at S2);

(c) that the provision of pharmaceutical services at S1 is not to be interrupted, except for such period as the NHSCB may for good cause allow;

(d) if the NHSCB intends to commission from P2 at or from S1 enhanced services which P2 provides at or from S2 but which P1 has not been providing at or from S1, that the provision of those services will not be interrupted except for such period as the NHSCB may for good cause allow; and

(e) that—

(i) P1 consents to the change of ownership of S1, and

(ii) P1 and P2 consent to S2 ceasing to be listed chemist premises as a consequence of the application.

8. If two or more consolidation applications are being considered together, as regards the issue of a gap in provision, as mentioned in paragraph (5)(a), each application may be refused on the basis of the cumulative effect on provision of all the applications being considered together."

6.7 In relation to Regulation 26A(1), the Committee noted NHS England's comments that the Applicant is included in the pharmaceutical list and further that this had not been disputed by any party.

6.8 In relation to Regulation 26A(2), the Committee noted that this was a statement of fact and did not require any determination.

6.9 In relation to Regulation 26A(3), the Committee noted that there is no dispute that the Applicant, Day Lewis Ltd, owns both premises in relation to the consolidation application, namely both the consolidation site and the closing site. The Committee therefore determined that this application was not an application to which Regulation 26A(3)(b) applied.

6.10 In relation to Regulation 26A(4), the Committee noted that it related to a situation where different persons were listed on the pharmaceutical list for each site. As the Applicant owns both the consolidation site and the closing site, the Committee determined that this application was not an application to which Regulation 26A(4) applied.

6.11 In relation to Regulation 26A(5)(a), the Committee was mindful that it must refuse a consolidation application if it is satisfied that granting the application would create a gap in pharmaceutical services provision that could be met by a routine application to:

6.11.1 meet a current or future need for pharmaceutical services, or

6.11.2 to secure improvements or better access to pharmaceutical services.

6.12 The Committee noted that paragraph 19(5) of Schedule 2 of the Regulations provides that, where a Health and Wellbeing Board is notified of a consolidation application, the Health and Wellbeing Board must make representations under paragraph 19(4) of Schedule 2 (representations in writing about the application) which, in addition to any other matter about which it may wish to make representations, indicate whether, if the application were granted, in the opinion of the Health and Wellbeing Board the proposed removal of premises from its pharmaceutical list would or would not create a gap in pharmaceutical services provision that could be met by a routine application:

6.12.1 to meet a current or future need for pharmaceutical services; or

6.12.2 to secure improvements, or better access, to pharmaceutical services.

6.13 The Committee noted that the Bristol Health and Wellbeing Board had been invited by NHS England to comment on the application within the 45 day consultation period but had not responded. The Bristol Health and Wellbeing had also been invited to comment on the appeal but no representations were received.

6.14 The Regulations are silent on the consequences of a Health and Wellbeing Board not providing comments as required by paragraph 19(5). The Committee will consider this further below.

6.15 The Committee considered the other information provided in respect of the application. It noted the Applicant's comments that there are a further five pharmacies in addition to the consolidation site within 2 miles of the closing site, which includes a mix of different contractors and opening hours. Of the six pharmacies including the Applicant's consolidation site, there are two pharmacies which provide extended opening hours and 5 provide opening hours over 6 days, four of which are open after 1pm on a Saturday albeit there are no other 100 hour pharmacies in the locality. NHS England claim that the distance to Asda and Boots is 4 miles.

6.16 At the time of the application, the closing site was a 100 hour pharmacy. The Applicant says it has since notified NHS England of its reduction in hours at the closing site to 72 hours, effective from 19 August 2023. This information has not been disputed by parties. The Committee is mindful that the Applicant's proposed core opening hours at the consolidation site are 40, with supplementary hours giving a total of 53.5 opening hours. The Applicant in its appeal has also indicated it would be prepared to consider a direction for extended hours as opposed to increasing supplementary hours to ensure protection for patients. Irrespective of this, the Committee was of the view that it would need to consider whether the reduction or loss of hours, if the consolidation was granted, would create a gap which a routine application could meet.

6.17 The Committee noted that in its decision, NHS England had stated that there had been no response from the Health and Wellbeing Board, support for the application was received from the LPC, no view expressed from Boots and that Magna Healthcare Limited were opposing the application.

6.18 The Committee reviewed the Bristol PNA, the Executive Summary on page 9 states:

6.18.1 "*Given that the Bristol provision is below the national average per 100,000 if any pharmacies were to close this could create a gap and the Pharmaceutical Needs Assessment would need to be reviewed. Any decision regarding new pharmacies in Bristol should take into account the population-to-pharmacy, changing demographics and burden of health inequality*."

6.19 The Committee noted that Magna Healthcare Limited, in its representations on the original application, refers to page 18 of the PNA stating:

6.19.1 "*Bristol PNA 2022 (page 18, last paragraph), refers to distance (location) and the opening hour as prime consideration in determining the accessibility to pharmaceutical service*."

6.20 The Committee noted on page 18, the PNA states:

6.20.1 "*The Bristol HWB considered the following matters when producing the PNA:*

1. The demography of the area.

2. Whether there is sufficient choice with regard to obtaining and accessing pharmaceutical services.

3. The differing needs of localities in the area.

4. Likely future needs.

Other population characteristics, such as the number of people aged over 65 years or younger than 16 years, were also considered. The PNA Steering Group considered access from home to the nearest local pharmacy to be a key issue. Access was measured by two standards:

1. A 20-minute journey from home to the nearest local pharmacy by foot.

2. A 20-minute journey from home to the nearest local pharmacy by motorised transport."

6.21 The Committee was of the view that the opening hours were just one of many factors which were taken into consideration by the Health and Wellbeing Board when writing the PNA.

6.22 The Committee noted that Magna Healthcare Limited, in its representations on the application, refer to page 57 of the PNA with regard to travel time analysis. Magna Healthcare Limited notes the PNA concludes:

6.22.1 *"In summary, despite the significant reduction in pharmacy cover out of hours, most people without a car are within walking distance of a 100-hour pharmacy. Most people outside walking distance of a 100 hour pharmacy have access to a car."*

6.23 Magna Healthcare is of the view that "*this loss of late night pharmacy will have disproportionate impact on the most deprived in the society*" and further that consideration should be given to those who struggle to access pharmacies without private transportation.

6.24 The Committee was of the view that it had not been provided with information to demonstrate that such groups were specifically having difficulty in accessing the existing pharmacies which do have extended opening hours, mindful that the PNA's benchmark was a 20 minute journey from home by foot and by motorised transport and that the PNA was of the view that "m*ost people outside walking distance of a 100 hour pharmacy have access to a car"*.

6.25 The Committee noted that Magna Healthcare Limited, in its representations on the application, refer to page 91 of the PNA which states:

6.25.1 *"This Pharmaceutical Needs Assessment (PNA) has not identified any current gap in the provision of necessary, essential pharmaceutical services in the 3 localities of Bristol during core hours of Monday-Friday 9am-5pm. Local*

pharmaceutical services are distributed across the localities of Bristol with all residents living within 1.6km of a community pharmacy and all 3 localities have 100hr and 7 day opening pharmacies."

6.26 Magna Healthcare Limited conclude that:

6.26.1 "*the current state of no gap in the provision of pharmaceutical services in North and West Bristol locality is dependent on the presence of the only 100 hrs pharmacy in Southmead*."

6.27 The Committee noted that Magna Healthcare Limited, in its representations on the application, refer to a number of maps within the PNA which show the location of the existing 100 hour pharmacies in particular and the percentage of prescriptions dispensed by Day Lewis from the Brisdoc Out of Hours Health Services. The Applicant has also provided a map showing the location of the other existing pharmacies within a two mile radius, two of which do provide extended hours as well as the Applicant's site which it plans to close, albeit none providing 100 hours a week. The Committee was also mindful that the Applicant had stated it would no longer be providing a service 100 hours a week from 19 August 2023 as this had been reduced to 72 hours. The Committee noted this has not been disputed by parties.

6.28 The Committee noted the Applicant states it intends to increase its supplementary hours at the remaining premises to open between 60 to 65 hours per week. The Committee is mindful that unless such additional hours form part of the pharmacy's core opening hours, rather than its supplementary opening hours, the Applicant would be entitled to change these opening hours without NHS England's consent by giving notice pursuant to paragraph 23 of Schedule 4 of the Regulations. The Applicant would only require NHS England's consent to reduce its opening hours if it wished to change its core opening hours. This means that any agreement by the Applicant to increase its opening hours could be reversed by the Applicant giving notice to NHS England unless NHS England were to issue a direction that those additional opening hours were to become core opening hours. The Committee noted that the Applicant has stated in its appeal it would consider any such direction that NHS England may propose. The Committee was of the view that it could only consider the core hours as stated in the application which total 40 hours including hours between 9am and 12pm and 2.30pm to 5.30pm on Saturdays and therefore if 5 Arnside Road were to be able to close there would be a reduction in hours of pharmaceutical services.

6.29 The Committee noted the six months of data provided by Magna Healthcare Limited in its representations on the application, regarding out of hours prescriptions dispensed by the Applicant from June 2022 to November 2022, which averages out at 3.44% per month although this does not indicate how many of the 3.44% of scripts issued were then specifically dispensed out of hours in comparison to those dispensed within typical normal hours. The Applicant has provided data showing its total dispensing figures in October 2022 and now more up to date data for June 2023.

Site	Items dispensed October 2022	Items dispensed June 2023
5 Arnside Road (Proposed closing site)	13,265	230
6 Arnside Road (Proposed remaining site)	4,369	12,726

6.30 The Committee noted this data did not provide a breakdown of items dispensed out of hours however it was mindful of figures provided by Magna Healthcare Limited in its representations to NHS England which show on average only 3.44% of scripts from the Brisdoc out of hours service are dispensed by the proposed closing site and that the information above supported a finding that as of June 2023, the vast number of users of the existing two premises had made the switch to the proposed remaining premises since October 2022.

6.31 The Applicant has also provided a bus timetable showing that for those service users who do not wish to walk or do not have access to private transportation, there is public transport to Asda and Boots, two of the pharmacies that are a little further away from the consolidation site. The Committee was of the view that by granting the application and so losing the 72 core opening hours that are currently provided at 5 Arnside Road, (replaced by 40 core hours at the consolidation site) would create a gap in the provision of pharmaceutical services, on weekday evenings (after 6pm) and on Sundays. However, there is no information to show that patients are accessing or need to access pharmaceutical services at those times. There are still accessible pharmacies in the locality within 2 miles (or 4 miles based on NHS England's comments) of the proposed remaining premises with extended opening hours albeit not 100 hours a week.

6.32 The Committee therefore determined that it was not required to refuse the application under Regulation 26A(5)(a) on the basis that it was satisfied that granting the application would not create a gap in pharmaceutical services provision that could be met by a routine application to meet a current or future need for pharmaceutical services or to secure improvements, or better access, to pharmaceutical services.

6.33 The Committee was mindful that this could lead to potential complications in the future, in that the Health and Wellbeing Board could, if the proposed consolidation did go ahead, decide to review the PNA as a result of the closure of a pharmacy as indicated on page 9 of its Executive Summary:

6.33.1 "*if any pharmacies were to close this could create a gap and the Pharmaceutical Needs Assessment would need to be reviewed*."

6.34 The Health and Wellbeing Board could issue a supplementary statement to update the PNA in this regard. The Regulations only require the Health and Wellbeing Board to issue a supplementary statement saying that no gap that could be met by a routine application has been created if the Health and Wellbeing Board considers a gap would not be created. It is not the grant of the application that triggers this requirement; it is only if the Health and Wellbeing Board considers no gap has been created. In the current matter, the Health and Wellbeing Board has remained silent. If therefore the application is granted and the relevant pharmacy closes, there is no certainty for the Applicant that a new pharmacy will not open at or near the old site. It is possible that the Health and Wellbeing Board might issue a supplementary statement to update the PNA indicating that a gap has been created and so make it more likely that applications to open a pharmacy in that location would be made. The Committee considered that this is a consequence of the wording of the Regulations.

6.35 The Committee considered that this is ultimately a risk for the Applicant to take into account in deciding whether to proceed with the consolidation (knowing that it could potentially result in another pharmacy opening in the area). The protection offered to an applicant in the Regulations that protects a pharmacy that has undergone a consolidation if the Health and Wellbeing Board agreed there was no gap does not apply to the Applicant's position.

6.36 In relation to Regulation 26A(5)(b), the Committee was mindful that it must refuse a consolidation application if either sites of the consolidation application are distance selling premises or appliance contractor premises. The Committee noted that NHS England, in its decision letter, states that neither pharmacy is a distance selling or appliance contractor, which had not been disputed by any party. Therefore the

Committee determined that it was not required to refuse the application under Regulation 26A(5)(b).

6.37 In relation to Regulation 26A(6)(a) the Committee noted the Applicant states that the advanced and enhanced services they currently provide are the same on both sites, which has not been disputed by any party. The Applicant further states that there will be no interruption in service provision. Therefore the Committee determined that it was not required to refuse the application under Regulation 26A(6)(a).

6.38 In relation to Regulation 26A(6)(b) and Regulation 26A(6)(c), the Committee was of the view that this criteria is not relevant as the Applicant owns both premises and consents to the pharmacy at 5 Arnside Road, Southmead, Bristol, BS10 6AT ceasing to be listed chemist premises as a consequence of the application. The Committee determined that it was not required to refuse the application under Regulation 26A(6)(b) or 26A(6)(c).

6.39 In relation to Regulation 26A(7), the Committee noted that this only applies if Regulation 26A(4) applies. The Committee had already determined that this was not an application to which Regulation 26A(4) applied and so the Committee determined that it was not required to refuse the application under Regulation 26A(7).

6.40 In relation to Regulation 26A(8), the Committee noted that this application was not being considered with any other consolidation applications and therefore Regulation 26A(8) did not apply.

7 Decision

7.1 The Pharmacy Appeals Committee (“Committee”), appointed by NHS Resolution, quashes the decision of NHS England, for the reasons given above, and redetermines the application.

7.2 The Committee determined that the application should be granted.

Case Manager
Primary Care Appeals