

27 October 2023

REF: SHA/26103

**APPEAL AGAINST LEICESTER, LEICESTERSHIRE AND
RUTLAND ICB DECISION TO GRANT AN APPLICATION
FOR A CHANGE OF OWNERSHIP BY FENIX
HEALTHCARE LIMITED FOR JHOOTS PHARMACY AT
115 - 117 BLABY ROAD, WIGSTON, LEICESTER LE18
4PB**

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

Tel: 0203 928 2000
Email: nhsr.appeals@nhs.net

1 Outcome

1.1 In accordance with paragraph 2 of Schedule 3 the Committee dismisses the appeal.

A copy of this decision is being sent to:

Fenix Healthcare Limited (The Applicant)
Maple Pharmacy (The Appellant)
PCSE on behalf of Leicester, Leicestershire and Rutland ICB

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1 The Decision

Leicester, Leicestershire and Rutland ICB considered and decided to grant the application. The decision letter dated 22 October 2023 stated:

- 1.1 Application for inclusion in the relevant pharmaceutical list at 115-117 Blaby Road, Wigston LE18 4PB [sic]
- 1.2 Leicester, Leicestershire and Rutland ICB has considered the above application and [is] writing to confirm that it has been granted. Please see the enclosed report for the full reasoning.
- 1.3 Enclosed is a template of the notice of commencement which you are required to submit to us. Please note that if this is submitted before the end of the 30 day appeal period and a valid notice of appeal is then received by the Secretary of State, the notice of commencement will cease to have effect.
- 1.4 Should this happen Leicester, Leicestershire and Rutland ICB will remove you from the relevant pharmaceutical list in respect of these premises and reinstate the previous contractor.
- 1.5 Please note that you must submit the notice of commencement no fewer than 30 days before the date you intend to start service provision. If it is received fewer than 30 days in advance it is not a valid notice of commencement and will not be accepted by Leicester, Leicestershire and Rutland ICB unless you successfully ask to give a shorter notice period. Should you wish to ask to give a shorter notice period please complete the enclosed application form.

Leicester, Leicestershire and Rutland ICB Report:

- 1.6 Fenix Healthcare Ltd - Change of Ownership – 25 Kingsmead Road, Leicester, LE2 3YE.
- 1.7 2013 Regulations - Regulation 26 (Leicester, Leicestershire & Rutland)
- 1.8 CAS-213472-Z2F8Y0
- 1.9 The application meets the criteria of Regulation 26(1), change of ownership.
- 1.10 Reg 31 is not applicable as no person on the pharmaceutical list is providing or has undertaken to provide pharmaceutical services from:
 - 1.10.1 Premises to which the application relates or

1.10.2 Adjacent premises

- 1.11 The new owner is offering to provide the same hours as the previous owner.
- 1.12 The new owner is offering to provide the same advanced and enhanced services as the current owners and service provision will not be interrupted.
- 1.13 Fitness to practise was completed and approved.
- 1.14 The Committee [of the ICB] agreed that the approval of the application will have no impact on those with protected characteristics or on [the commissioner's] duty on health inequality as the same services and hours are to be provided to the same groups of people.
- 1.15 The Committee [of the ICB] granted the application.
- 1.16 Appeal Rights [Full postal addresses provided]:
 - 1.16.1 Jhoots Pharmacy [1]
 - 1.16.2 Maple Pharmacy
 - 1.16.3 Well [1]
 - 1.16.4 Well [2]
 - 1.16.5 Monsell Pharmacy
 - 1.16.6 Jhoots Pharmacy [2]
 - 1.16.7 Little Hill Pharmacy Ltd
 - 1.16.8 Wigston Pharmacy
 - 1.16.9 Boots
 - 1.16.10 Your Pharmacy
 - 1.16.11 Glenhills Pharmacy
- 1.17 No Appeal Rights
 - 1.17.1 Leicestershire LPC
 - 1.17.2 Leicestershire LMC
 - 1.17.3 Leicester City HWB
 - 1.17.4 Leicester Healthwatch

2 The Appeal

In an online appeals form dated 20 October 2023 addressed to NHS Resolution, SDR Pharma Ltd t/a Maple Pharmacy appealed against the decision of Leicester, Leicestershire and Rutland ICB. The grounds of appeal are:

- 2.1 “Jhoots Pharmacy (115-117 Blaby Road) has been on the market for sale since last year (around July 2022). My initial request to purchase the pharmacy was turned down; guessing due to various reason(s). I initially proposed to the sales agent (Christie's) to keep my site (64 Blaby Road) open and close (115-117 Blaby Road) but they failed to get back to me. As the 2 pharmacies - Maple and Jhoots are in very close proximity (directly opposite each other), it made sense to consolidate the two pharmacies together. The consolidation process would not have affected the pharmaceutical services offered in the area as at Maple, I am constantly adapting to changes and reinvesting into the pharmacy and the staff. I am also looking to provide more health services to the public.
- 2.2 Few months later, the current owner of Jhoots Pharmacy (Manjit) then directly approached me to purchase the pharmacy. I am guessing he was unable to find a buyer. Maple Pharmacy has been getting busier over time, so when I met Manjit I felt at the time it may have been better to move into a bigger premises instead i.e. consolidate Maple and Jhoots and relocate to 115-117 Blaby Road. This whole site is owned by Manjit (Jhoots owner).
- 2.3 His initial plan was to convert the premises (115-117 Blaby Road) into residential dwellings as he wanted significantly above the market rent. However, as I showed interest to relocate to (115-117 Blaby Road), he suggested that as the premises was quite large, it could be split in half but I would be responsible for the building work and subletting the other half of the premises to help cover my rent costs. He then advised me that to ensure the change of ownership application was smooth, I would have been wise to primarily agree to carry on providing pharmaceutical services at the current Jhoots' site (115-117 Blaby Road). I was unhappy with this arrangement due to the above and other factors i.e. how the purchase money was to be paid. This made me uncomfortable due to it being unethical / immoral; hence, I refused to carry on any further.
- 2.4 Few weeks later, Manjit then came with his employee into my pharmacy, falsely accusing me of nominating patients. His stance was quite intimidating and threatened me to falsely report me to GPhC / NHS England as I refused his offer. At Maple Pharmacy, we strongly believe in providing excellent care to its patients and the public. The strong ethos I have instilled at Maple Pharmacy has helped us grow, and as a result more patients have joined Maple through their own will.
- 2.5 A separate recent incident involved staff at Jhoots Pharmacy - newly recruited by Manjit or possibly the new owner (Fenix Healthcare Ltd) have been involved in nominating patients (more than 50 patients without their consent). I have reported this incident to the East Midlands Pharmacy team and they are looking into this issue.
- 2.6 Owing to the above, I feel this change of ownership would have a significant impact on pharmaceutical services provided at Jhoots Pharmacy, which could potentially have detrimental effect on patients and the public in the local area. I would kindly urge you to re assess the change of ownership application and the pharmacy sale details more thoroughly before approving it.”

3 Unsolicited Additional Information

3.1 THE APPLICANT

Email to NHS Resolution dated 24 October 2023

3.1.1 “NOC granted. Please see attached.”

Copy letter addressed to the Applicant from Primary Care Support England (“PCSE”) dated 24 October 2023

- 3.1.2 "I am writing to confirm receipt of your notice of commencement and can confirm that it is valid. You will be included in the pharmaceutical list for the area of Leicestershire HWB in respect of the above mentioned premises with effect from 1st November 2023."

3.2 JHOOTS PHARMACY

Email to NHS Resolution dated 26 October 2023

- 3.2.1 "I am aware that an appeal has been lodged against the approval by [the ICB] of the change of ownership application by Fenix Healthcare Ltd of Jhoots Pharmacy in Wigston. Appeal Ref SHA/26103.
- 3.2.2 I understand that you are checking whether the appeal is valid before you can decide whether to process. The applicant (Fenix Healthcare Ltd) currently has a notice of commencement served for 1st November 2023. If the appeal is to be processed then we will not be able to achieve this date. If the appeal is invalid i.e vexatious, then its possible we can continue.
- 3.2.3 Is it possible for you to confirm how long it will take before you can confirm whether the appeal will be processed or dismissed? This will just help us protect patient services in terms of whether the current notice of commencement needs to be rescinded and maintain Jhoots on the list until such point any appeal is resolved.
- 3.2.4 If it is possible to determine the validity of the appeal in the next 24 hours it would greatly appreciated but either way if you can give me a steer it would help us manage the pharmacy business over this period and to maintain patient services."

4 Consideration

- 4.1 The Pharmacy Appeals Committee ("Committee") had regard to Regulation 26(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations") which states:

(1) Section 129(2A) of the 2006 Act (regulations as to pharmaceutical services) does not apply to an application from a person who is not included in a pharmaceutical list for inclusion in the list, or from a person included in a pharmaceutical list for inclusion in that list also in respect of other premises than those already listed in relation to that person, if-

(a) the applicant (X) is undertaking to provide pharmaceutical services at premises-

(i) that are already listed chemist premises, and

(ii) at which another person (Y) is providing pharmaceutical services;

(b) X is proposing to carry on at the listed chemist premises, in place of Y, the business in the course of which Y is providing pharmaceutical services at those premises;

(c) X is undertaking to provide the same pharmaceutical services as those that Y is providing;

and

(d) the provision of pharmaceutical service at the premises will not be interrupted (except for such period as the NHSCB may for good cause allow).

- 4.2 The Committee noted that the application had been made under Regulation 26(1) and as such, it is not a notifiable application in accordance with the Regulations.
- 4.3 The Committee noted that the cover letter with the ICB decision has given the incorrect title stating this is an application for inclusion on the relevant pharmaceutical list. However in the ICB's decision report, it does state "The application meets the criteria of Regulation 26(1), change of ownership." The Committee was satisfied that the ICB has considered the application as a change of ownership. The Appellant in its on-line appeal form also stated the application was a change of ownership.
- 4.4 The Committee noted that the decision had been notified to parties under paragraph 28(3)(c) and a right of appeal was given to those parties under paragraph 30 of Schedule 2.
- 4.5 The Committee noted Schedule 3, Part 1 paragraph 2 states:

Misconceived Appeals

2. If the Secretary of State, after considering a valid notice of appeal under regulation 45, 63 or 77 or paragraph 30, 32(5) of 36 of Schedule 2 against a decision, is of the opinion that the notice –

a) contains no valid grounds of appeal (for example, because it amounts to a challenge to the legality or reasonableness of a HWB's or PCT's pharmaceutical needs assessment, or to the fairness of the process by which the HWB or a PCT undertook that assessment); or

(b) contains no reasonable grounds of appeal (for example, where it is vexatious or frivolous),

the Secretary of State may determine the appeal by dismissing it (without proceeding to notify the appeal under Part 2).

- 4.6 The Committee considered the appeal in accordance with paragraph 2 of Schedule 3, misconceived appeals, as quoted above.
- 4.7 The Committee noted that Regulation 26(1) is specific in the criteria an Applicant must satisfy, if the proposed change of ownership is to succeed.
- 4.8 The Committee noted that PCSE, acting for the ICB, had stated in its decision letter that an appeal should contain "a concise and reasoned statement of the grounds of appeal".
- 4.9 The Appellant has referred to the current owner of the listed premises and the Appellant's recollection of its interaction with the current owner in the last year regarding plans for selling the pharmacy and nominations of patients to use the pharmacy. The Appellant stated that a "*change of ownership would have a significant impact on pharmaceutical services provided at Jhoots Pharmacy, which could potentially have detrimental effect on patients and the public in the local area.*" The Committee was of the view that exchanges between parties regarding the sale of premises or nomination of patients to that premises are not matters that can be considered on appeal.
- 4.10 The Committee must consider if the Applicant has satisfied the criteria under the relevant Regulation if a change of ownership is to succeed.

- 4.11 The Committee noted that Regulation 26(1) states that NHS England has to be satisfied that:
- 4.11.1 the application is in respect of listed chemist premises;
 - 4.11.2 the Applicant is proposing to carry on at the listed premises the business in the course of which the current owner is providing pharmaceutical services at those premises;
 - 4.11.3 the Applicant intends to provide the services as those provided by the existing pharmacy;
 - 4.11.4 if the change of ownership were to take place there would be no interruption to the provision of pharmaceutical services.
- 4.12 The Committee noted that the Applicant is proposing to continue to carry out providing pharmaceutical services from the listed premises (115-117 Blaby Road) and that it intends to provide the services as those provided by the existing pharmacy at that location. Further, the Applicant has confirmed that there would be no interruption to the provision of pharmaceutical services. The Committee is of the view that the decision in this regard is not challenged by the Appellant.
- 4.13 The Committee noted that the Applicant has applied for a change of ownership of the pharmacy based at the existing location of that pharmacy and has not sought to relocate the pharmacy from where it is currently located. This is unchallenged.
- 4.14 The Committee noted that there is no dispute that the premises are already listed and that pharmaceutical services are currently being provided from those premises. This is unchallenged. The Committee was of the view that there were no grounds in the appeal to lead it to believe that the change of ownership was not in accordance with Regulation 26(1).
- 4.15 From the information before it, the Committee concluded that the Appellant has not provided grounds of appeal sufficient as to challenge the view that the application should be granted under the provisions of Regulation 26(1).

5 Decision

- 5.1 In accordance with paragraph 2 of Schedule 3 the Committee dismisses the appeal as it is of the view that it contains no reasonable grounds of appeal.

Case Manager
Primary Care Appeals