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16 November 2023

REF: SHA/26070

APPEAL AGAINST NHS ENGLAND (SOUTH WEST AREA TEAM) DECISION REGARDING MEASURES TO REDUCE ADVERSE CONSEQUENCES FOLLOWING THE GRANT OF BANNS PHARMACY LTD APPLICATION FOR INCLUSION IN THE PHARMACEUTICAL LIST IN BUGLE, CORNWALL (A391 FROM ROCKHILL BUSINESS PARK TO JUNCTION WITH B3374)

1 Outcome

1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution substitutes that decision of NHS England for any decision that NHS England could have taken when it took that decision.

1.2 The Committee determines that The Clays Practice affected dispensing patients should be transferred to its prescribing list no later than three months from the date of its decision letter (i.e. by 16 February 2024).

A copy of this decision is being sent to:

Rushport Advisory LLP on behalf of Banns Pharmacy
The Clays Practice
Treverbyn Parish Council
PCSE on behalf of NHS Cornwall and Isles of Scilly ICB

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1 Background

NHS England considered the discontinuation of arrangements for the provision of pharmaceutical services by dispensing doctors, following the decision to approve Banns Pharmacy application to open a pharmacy in Bugle, Cornwall (A391 from Rockhill Business Park to the junction with the B3374).

2 The Decision

NHS England's decision letter dated 14 August 2023 states:

2.1 Following the decision by NHS Resolution (NHSR) to approve the above-mentioned application for a new community pharmacy contract in Bugle, Cornwall (NHSR case reference SHA/25840), the South West Pharmaceutical Services Regulations Committee (SW PSRC) has determined the periods of gradualisation that should be applied to the removal of patients from GP dispensing lists when the pharmacy opens. The decisions are made in accordance with Regulation 50 of Part 8 of The National Health Services (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013: The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (legislation.gov.uk)

2.2 The full reasoning for the decision is enclosed. You have a right of appeal to the Secretary of State against the decisions relating to gradualisation.

[Any reference to 'Committee' in this section is not to be confused with the Pharmacy Appeals Committee of NHS Resolution]

Extract from the South West Pharmaceutical Services Regulations Committee (PSRC) decision report of 5 July 2023

2.3 The Committee noted the background:

2.4 Bugle is a village in mid Cornwall. It lies within the parish of Treverbyn and is situated about 5 miles north of St Austell on the A391 road. The 2011 Census for the ward of Bugle which includes Treverbyn and surrounding hamlets gave a population of 4,164.

2.5 There are currently no pharmacies located within Bugle, the closest is in Roche 2.1 miles away.

2.6 The Clays Practice operates a Dispensary from their branch surgery in Bugle.

2.7 The PSRC previously considered an unforeseen benefits application by Banns Pharmacy to open a community Pharmacy in Bugle in November 2022. The PSRC refused the application.

2.8 The Applicant appealed that decision and NHS Resolution overturned NHS England's decision. NHS Resolution has remitted the decision on gradualisation back to the Commissioner and this is what the SW Committee is asked to consider here.

2.9 The Applicant is proposing to open Monday to Saturday for 40.5 Core Hours, with an additional Supplementary hour on Saturdays. The additional half hour Core opening will be Directed. The hours proposed are indicated below from section 3.1 of the application form:

2.10 Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9-1pm 2-5:30pm	9-1pm 2-5:30pm	9-1pm 2-5:30pm	9-1pm 2-5:30pm	9-1pm 2-5:30pm	9-12		40.50

2.11 Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9-1pm 2-5:30pm	9-1pm 2-5:30pm	9-1pm 2-5:30pm	9-1pm 2-5:30pm	9-1pm 2-5:30pm	9-1pm		41.50

Public Involvement / Representations

2.12 On receipt of the application for a new contract full details of the Applicant's proposals were notified to various parties in accordance with the Regulations. Representations were received from:

2.13 Boots UK Ltd opposed the application but made no comments on gradualisation.

2.14 Bosvena Health Ltd opposed the application but do not address gradualisation specifically but state:

"From our perspective we currently offer patient choice for GP provider for those patients living in that area under our General Medical Services contract, and our dispensary income in relation to these patients helps to support primary care provision to these patients in this rural area. From a viability point of view, we would need to consider reducing our practice boundary should this application for additional pharmacy capacity be approved within this geographical area, as we would then consider that sufficient cover would be provided from neighbouring sites, and loss of dispensing patients would make this rural extension of our GMS service less economically viable."

2.15 Brannel Surgery opposed the application, they did not address the question of gradualisation directly but discuss the financial impact of the loss of dispensing income:

"To conclude:

In summary, we do not believe this speculative 'unforeseen benefits' pharmacy application will provide greater convenience for the local population as they currently have access to a door-step delivery service with direct access to a GP.

Above all, we would ask you to please take a practical and realistic approach to the application and its ramifications and not to deny us the appropriate resources to

continue as a hardworking GP dispensing practice that serves our local rural community well.

We ask you, for the sake of our practices and the patient communities we serve, to please recognise the increased costs of delivering a robust and resilient health service in our rural area and the role that the dispensing function plays in this for both Brannel Surgery and Clays Practice."

2.16 The Clays Practice opposed the application, they did not address the question of gradualisation directly, but discuss the impact of the loss of dispensing on surgeries in the area and state:

"Several of the above pharmacies, include a delivery service to the Bugle area in their offering.

A pharmacy approval on this particular site could de-stabilise us and Brannel Surgery, St Stephen. We have already been impacted by the granting of a pharmacy licences [sic] *to Banns Pharmacy for sites in St Stephen, Roche & St Dennis.*

A pharmacy in Bugle could threaten the viability of both The Clays Practice and Brannel. With the current pressure that all Primary Care providers are under, the dispensing income is what enables our practice to employ enough staff to cope with demand. Without this income we here at The Clays Practice feel that a pharmacy at Bugle would put our practice under that much pressure that redundancies will be made and we may have no option but to hand back our Contract to NHS England. This would have a detrimental effect on patients who are registered at our practice and who will be forced to seek healthcare further away from home. This in turn will negatively impact on other surgeries who are already struggling with limited resources for their own registered population.

We are members of Arbennek Primary Care Network along with Brannel Surgery, who is also affected by this application and any de-stabilisation to either practice in this way will impact on the network as a whole. Our PCN network provides Primary Care to some 30,000 patients.

We believe that the reasons stated above are good enough grounds to reject this application."

2.17 Kernow LMC opposed the application but did not address the matter of gradualisation directly and state:

"We are writing to raise our concern in regard to this application, as the statutorily recognised representative of general practitioners across Cornwall and the Isles of Scilly.

Having noted both the application and the responses of general practice colleagues in the area concerned, we would bring your specific attention to the significant vulnerability that approval of this application would cause to the continuation of primary medical services in the area.

Were that to manifest, this would have a detrimental impact on the community in that area, on the services offered and the entire staff group employed by the surgeries most impacted."

2.18 Lostwithiel Medical Practice raised no objection to the application.

2.19 The LPC did not discuss the matter of gradualisation and state:

"We are aware that there has been a previous application in this location which did not lead to the opening of a community pharmacy in Bugle.

As the representative body for community pharmacy in Cornwall we believe that it is beneficial for the population of an area to be able to easily access a community pharmacy and gain the benefit of being able to speak to a pharmacist without appointment and be able to gain advice and product to be able to treat Minor Ailments and be able to obtain advice about prescription medication. There would also be access to community pharmacy services such as emergency supply, emergency contraception and the Minor Ailments Scheme as well as services such as the New Medicines Service and the Community Pharmacy Consultation Service."

2.20 Portscatho Surgery opposed the application and while not addressing the question of gradualisation directly do comment on potential impact on surgeries within the Primary Care Network and state:

"Thank you for your letter of 26 July 2022 informing us that you have received an application from Banns Pharmacy as noted above. We feel it necessary to object to the application on the following grounds:-

> *A pharmacy approval on this particular site will de-stabilise Brannel Surgery (who have already been impacted by the granting of a pharmacy licence for a site in St Stephen) and The Clays Practice, both of whom have a number of patients who will be affected by this.*
>
> *Brannel Surgery and The Clays Practice are members of our Primary Care Network, (Arbennek) and any de-stabilisation to either practice in this way, will impact on the network as a whole.*
>
> *A pharmacy will further threaten the viability of both practices to such a degree that they may have no option but to hand back their Contract to NHS England. This would have a detrimental effect on patients who are registered at Brannel Surgery and The Clays Practice, who will be forced to seek healthcare further away from home. This in turn will negatively impact on other surgeries who are already struggling with limited resources for their own registered population.*
>
> *This application represents a 'double whammy' to the network.*

Pharmacy approval would thus have huge ramifications on the practices within the network and the c.30,000 patient population of that network. It is for these reasons that we vehemently object to the granting of a licence to Banns Pharmacy."

2.21 Treverbyn Parish Council supported the application:

"Thank you for your correspondence re possible application by Banns.

Pharmacy Ltd for a pharmacy in the village of Bugle, Cornwall.

On initial discussion by the Parish Council there were enquires as to the location of the premises, etc.

At this initial stage the Parish Council are looking favourably on the idea of a much needed pharmacy in the village and await further information from you before giving a definite response."

2.22 In their response to representations the Applicant provided a report to provide more context and detail for the Committee covering an overview of Bugle and surrounding areas, views on the statutory tests, references to the content of the PNA, the proximity and accessibility of existing pharmacies and responded to matters raised within the consultation responses.

Impact on dispensing patients

2.23 As this is not a reserved location and, on appeal, the application has been granted gradualisation must be considered. NHS Resolution has remitted the decision on the period of gradualisation back to the Commissioner.

2.24 Details of how many dispensing patients live within a 1.6km radius for each practice are displayed in the following table:

Practice	Dispensing	Non-Disp	Disp	Disp within 1.6km
The Clays Practice	Yes	6522	3495	2779
Bosvena Health	Yes	18742	4587	125
Brannel Surgery	Yes	3289	2215	57
Roseland Surgeries	Yes	819	3051	3
Petroc Group	Yes	7198	9842	2
Mevagissey Surgery	Yes	4001	965	1
Lostwithiel Medical Practice	Yes	9090	2023	1
Total				**2,968**

2.25 Chapter 32 of the Manual states:

"Periods of gradualisation should generally be no shorter than one month and, other than in exceptional circumstances, should last no longer than three months. Exceptional circumstances may include:

- *the loss by a dispensing practice of all its dispensing patients,*
- *where the reduction in the number of dispensing patients would lead to staff changes or redundancies"*

2.26 Regulation 50 - Discontinuation of arrangements for the provision of pharmaceutical services by doctors [quote in full]

The SW Committee noted:

2.27 No party has made any specific representations on the matter of gradualisation directly, but there is information provided by parties on the impact overall of a pharmacy opening in the area.

2.28 The table above shows the number of dispensing patients, by practice, that are within 1.6Km of the best estimate.

2.29 The most affected practice is the Clays with 2779 patients within 1.6Km of the best estimate. This represents about 40.9% of the practice's total dispensing patients, which the SW Committee considered to be significant.

2.30 Bosvena Health has 125 dispensing patients within 1.6Km of the best estimate which is approximately 2.7% of its dispensing patients.

2.31 Brannel Surgery has 57 dispensing patients within 1.6Km of the best estimate which is about 2.5% of its dispensing patients.

2.32 The remaining practices listed have numbers of patients affected in single figures and are unlikely to be significantly affected.

2.33 The SW Committee noted the original application was for a best estimate address and the final patient numbers will need to be recalculated when the final address of the premises is known which may change the final numbers for each practice slightly.

2.34 The SW Committee discussed the opening hours of the new pharmacy and noted they include an additional 30 minutes over the 40 Core Hours requirement. It was agreed

the additional 30 minutes will be directed and should form part of the opening hours on a Monday so as to secure Core Hours on Saturday.

2.35 The Committee noted the proportion of patients across the affected practices varies and one practice is more significantly impacted than others. It was agreed there is a need for a range of gradualisation time periods.

2.36 Discussion took place on impact on each practice. The significant impact for Clays practice was recognised, along with the current concerns about stability of the wider PCN in this case. The following gradualisation periods were agreed:

2.36.1 Clays Practice – 12 months

2.36.2 Bosvena Health and Brannel Surgery – 3 months

2.36.3 All other practices – 1 month

Appeal Rights

2.37 Bosvena Health, Brannel Surgery, Clays Practice and Portscatho Surgery have appeal rights against the gradualisation decision.

2.38 The Applicant has appeal rights against the gradualisation decision.

3 The Appeal

In a letter dated 15 August 2023 addressed to NHS Resolution, Rushport Advisory LLP on behalf of Banns Pharmacy Limited ("the Appellant") appealed against NHS England's decision. The grounds of appeal are:

3.1 The Appellant has no comment to make on the period allowed for Bosvena Health and Brannel Surgery – 3 months.

3.2 In relation to the period permitted for the Clays Practice, the period of time allowed is clearly excessive.

3.3 The ICB provides no reasoning for its decision other than quoting what has been said by some local practices. As the ICB should have been aware, the same practices made similar claims in previous applications and the claims were shown to be incorrect and overstated. The Appellant notes that the ICB makes no reference to the submission that was made on behalf of the Appellant at the oral hearing in SHA/25840, i.e.

"4.6 In terms of prejudice, Mr Daly reiterated that this is not a reserved location and it is up to the practice to provide evidence of any prejudice to them. He said that they have not done so. In the event that the Committee considered it necessary, Mr Daly suggested that any gradualisation period should be the normal 3 months."

3.4 Simply put, there is no reason why the Clays Practice cannot put the necessary changes in place within 3 months of the pharmacy opening. Whilst the comments from the practice during the application process highlight a loss of income and the potential for staff redundancies, it is likely that staff would in fact be retained by the practice given that they would still have a busy dispensing practice after the Appellant opens as the current dispensary dispenses circa 11,300 items per month and has not [sic] pharmacist and staff in the dispensary tend to work in other surgery roles. Further, given the comments during the Appellant's application about how stretched the practice was in dealing with existing patients they would hope that all staff would be retained and deployed effectively. However, even in the unfortunate event of such redundancies occurring, there is no reason why this cannot be completed within 3 months.

3.5 The Appellant further asks the Committee to note that Banns Pharmacy Limited has now submitted its premises notification and once approved will follow this up with its Notice of Commencement so that pharmaceutical services can commence in October 2023.

3.6 The Appellant is happy to update the Committee on this opening date as and when it is confirmed and would ask the Committee to note that if there is a delay with this appeal for any reason then it would be appropriate to allow a gradualisation period of shorter than 3 months as all parties are on notice that the Appellant will be opening this pharmacy and should already be making plans for this.

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 NHS ENGLAND

4.1.1 Thank you for your letter, dated 15 September 2023, addressed to … NHS South West Collaborative Commissioning Hub 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 5th July 2023 to consider gradualisation, that matter having been remitted back by NHS Resolution, following its decision to grant the Unforeseen Benefits application. The SW Committee notes that the appellant is appealing the period of gradualisation for the Clays practice only.

4.1.3 Whilst the period of 12 months is the maximum indicated, the SW Committee is of the opinion the circumstances are exceptional - around 41% of dispensing patients will be lost to the practice. This represents more than 2700 patients. It represents a significant change in income and will require a considerable change in staff arrangements. Were the surgery to need to make staff redundant that would be a further cost and will require consultation and restructure across the practice team.

4.1.4 This practice is already working closely with CIOS ICB and receiving resilience support in relation to its general practice service. Adding financial instability to the Dispensing Practice part of this business may further destabilise the practice, to the detriment of its remaining dispensing patient services.

4.1.5 The SW Committee would respectfully suggest that this is a material change for the practice and if they are to be able to manage the transition without causing disruption to the surgery's functioning or impacting its stability, it will need an extended period of gradualisation for a smooth transition.

4.1.6 The SW Committee would respectfully suggest it is now October and we will likely see winter pressures beginning to take effect. General Practices, like all providers of NHS care, will come under pressures to manage increasing patient demand, leaving little overhead for complex reorganisations. Should the practice find itself struggling with winter pressures, as well as existing resilience concerns and a reorganisation following material loss of dispensing income, there is a risk the practice resilience will deteriorate, impacting on dispensing and general medical services to patients during the crucial winter period.

4.1.7 The South West PSRC notes its previous decision to decline the application has already been overturned by NHS Resolution, but respectfully requests that the decision to set a period of 12 months gradualisation is upheld, for the reasons detailed above.

4.2 THE CLAYS PRACTICE

4.2.1 Further to NHS Resolution's letter dated 15 September 2023 [SHA/26070] to interested parties, The Clays Practice would here submit further evidence contrary to the appeal submitted by Rushport Advisory LLP on behalf of Banns Pharmacy Limited, dated 15 August 2023, in respect of the matter of “gradualisation”.

4.2.2 The Clays Practice is an NHS primary care service operating under a General Medical Services contract with NHS England.

4.2.3 The Clays Practice consists of a primary operating hub located in Roche, with two satellite surgeries located in Bugle, a village 2.4 miles from Roche surgery and St Dennis, a village 4.4 miles from Roche surgery.

4.2.4 Due to the rurality of the location of the above surgeries, and being within a Controlled Locality, The Clays Practice has for many years operated, and continues to operate, as a dispensing practice.

4.2.5 There is very little dispensing from St Dennis Surgery owing to the surgery location being adjacent to St Dennis Pharmacy, owned by the Appellant.

4.2.6 Dispensing from Bugle Surgery constitutes 40.9% of the total dispensing activity for The Clays Practice, the residuum being undertaken at Roche Surgery.

4.2.7 The Clays Practice's dispensary services are long established, and are progressively and well managed by a dedicated team of two GPhC Registered Pharmacists, an experienced Dispensary Manager and an established cohort of eight experienced and qualified (and 1 nearly qualified) dispensers.

4.2.8 In recent years dispensing services at Roche surgery have been eroded by the granting of a pharmacy license to the Appellant, operating as Roche Pharmacy, in the village of Roche.

4.2.9 The Pharmaceutical Services Regulation Committee (PSRC) previously considered an unforeseen benefits application by Banns Pharmacy Limited to open a community Pharmacy in Bugle in November 2022. There was significant objection to the application from a number of interested parties, including The Clays Practice, adjacent general practice surgeries, the local Primary Care Network and Kernow LMC. Extracts of the representations from Bosvena Health Ltd, Brannel Surgery, The Clays Practice, Kernow LMC, LPC and Portscatho Surgery are detailed in section 7 "Public Involvement / Representations" of SW PSRC Decision Report CAS- 1 54971-N3P9C2, 5 July 2023. The PSRC refused the application.

4.2.10 The Appellant appealed that decision and NHS Resolution (NHS R) overturned NHS England's decision in June 2023 [NHSR case reference SHA/25840]. In this decision NHS Resolution has remitted the decision on gradualisation back to the Commissioner.

4.2.11 In CAS- 1 54971 - N3P9C2 decision report 5th July 2023, South West PSRC adjudicating on the question of gradualisation remitted to them, decided on appropriate periods of gradualisation for those relevant parties who will be affected by the NHS R decision to grant a pharmacy license to Banns Pharmacy Limited for the village of Bugle.

4.2.12 For The Clays Practice the period of gradualisation granted by South West PSRC is 12 months.

4.2.13 NHS R are now asked to adjudicate a decision that was felt by NHS R itself to be the remit of local commissioners as being best placed to decide this matter.

4.2.14 In their Appeal letter Rushport Advisory LLP do not forward any new evidence that would contradict the decision making processes made by SW PSRC in their consideration for gradualisation in respect of Bugle Pharmacy, but do purport vexatious and erroneous claims.

4.2.15 The location of the Bugle Pharmacy has been registered as Plot 1A Rockhill Business Park, Higher Bugle, St Austell, PL26 BRA. (GPhC Notice of Entry 9012185, dated 22nd August 2023).

4.2.16 Owing to its location about three quarters of a mile from the centre of Bugle, and given the paucity of dwellings beyond those immediately flanking Higher Bugle, it is contended that the site of this pharmacy is now within a "reserved location" [1][2]and this matter has been referred back to NHS England to be determined [email correspondence to CloS ICB dated 4.10.23]

4.2.17 The Clays Practice would continue to contend that a Pharmacy in Bugle is not necessary, concurring with the original NHS E decision. However, given that this is a decision that has now been made on appeal, it is of paramount importance that The Clays Practice is given adequate provision to adjust to these new arrangements.

4.2.18 As noted in the PSRC decision on gradualisation The Clays Practice undertakes a very significant proportion of overall dispensing from Bugle Surgery at 40.9%, and that a significant period of time is therefore required to re-evaluate how the loss of dispensing from Bugle Surgery will impact on patients, on how The Clays Practice will manage dispensing over the three surgeries in the Practice, and the human cost of the significant reduction in dispensing from Bugle surgery will have on dispensing staff requirements.

4.2.19 The significant reduction in dispensing from the Clays Practice, and more specifically from Bugle Surgery, raises the pressing question of whether Bugle Surgery is viable as a working general practice site. To be clear, the loss of dispensing from the Bugle site may mean the closure of Bugle Surgery, with significant loss of access to primary care services in the area. This is a situation that remains live with the Cornwall and Isles of Scilly Integrated Care Board (CIoS ICB) and with Kernow Local Medical Committee (Kernow LMC).

4.2.20 This is not a situation that is preferred, and from personal communication with Treverbyn councillors and Cornwall Councillor for Roche and Bugle, Cllr Peter Guest, it is not a situation that would be welcomed by the local population.

4.2.21 It is also, however, not a situation that The Clays can see a prompt solution to and will require an adequate period of time to address and implement, given the depth of feeling and adjustment that will be required in Bugle.

4.2.22 The granting [of] a 12 month gradualisation period in these circumstances seem wholly commensurate with the complexities of resolving appropriate primary care services in the village of Bugle and surrounding area.

[1] The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 [section 41 (3)]

[2] https://www.england.nhs.uk/wp-content/uploads/2013/07/rur-relate-determ-pol.pdf#page8 [sections 23/24]

4.2.23 The DH Guidance on 'prejudice' extracts a paragraph from the 1996 case of R v North Yorkshire FHSA ex parte Dr. Wilson and Partners when Carnwath J said:

"It is not part of the scheme of those regulations or indeed of the statute that pharmaceutical services should be relied upon to provide financial underpinning for medical services which are intended to be financed in other ways."

and is often quoted as a defence to prejudice in pharmacy applications. However, in SHA/18085, the Committee concluded that Carnwath J's comment remains valid but should be treated with some circumspection since it concerned an application under regulation 4 of the NHS (Pharmaceutical Services) Regulations 1992 and that regulation made no reference to prejudice and was not in respect of a controlled location (regulation 12 of the 1992 Regulations dealt with controlled location and prejudice in similar terms to the 2013 Regulations). The Committee did not take the extract to mean that any impact the pharmacy application may have on NHS medical services is to be ignored.

4.2.24 It is an established fact that many rural practices, whether in Cornwall or elsewhere in the UK, dispense to their patients as a matter of convenience and practicality for the patient.

4.2.25 It is a practise that has worked very well over many years allowing patients to access medication in an efficient manner from the same location as the prescription is issued.

4.2.26 As such, whether one considers that dispensing practices should or should not be relying on dispensing income to underpin medical services, it is a fact that many rural and dispensing practices by necessity do have a well established, but nonetheless complex and interrelated, model of funding that is based partly on the GMS global sum and partly from dispensing to their patients. Dismantling this complex formula is something that will take months, if not years, to fully realise.

4.2.27 This is a situation that is pertinent to any rural dispensing practice, and is not limited to The Clays Practice. The fact that in this specific scenario, of a commercial pharmacy operating out of the village of Bugle, the impact to The Clays Practice will be so profound, with the loss of 40.9% of its dispensing activity, that a signifiant [sic] period of time is required to recalibrate and adjust the business model of the Clays Practice. In respect of gradualisation Chapter 32 of the Manual states exceptional circumstances pertain "where the reduction in the number of dispensing patients would lead to staff changes or redundancies".

4.2.28 There is significant risk that such profound loss of dispensing activity by the Clays Practice in Bugle may entirely destabilise the Clays Practice, such that essential medical services may need to be curtailed, surgery premises may need to be closed, whether partially or fully, and staff numbers may need to be reduced, all of which impacts negatively on the patients registered with The Clays Practice. The Department of Health Guidance on the concept of prejudice states "nothing must be done which would compromise the ability of people in a controlled locality to access primary care services", for example anything that prevents elderly or disabled persons accessing standard services can be seen as "prejudice" and "DH needs to be mindful of its duties under the Equality Act 2010".

4.2.29 An appropriate duration of gradualisation is required to allow The Clays Practice to recalibrate all aspects of its medical activity so as not to adversely

impact on the essential core activity of the practice or the essential care required for all its registered patients whether in Bugle or more broadly in the Clays geographical area.

4.2.30 All changes, of course, will need to be through thorough consultation with CIOS ICB and Kernow LMC and these processes may take a significant amount of time due to the complexities of general practice commissioning and ensuring provision of services within Cornwall.

4.2.31 In his submission to PCSE and NHSE (sic) Mr Daly of Rushport Advisory LLP makes unsupported claims that The Clays Practice would remain a busy dispensing practice after his client opens a commercial pharmacy in the village of Bugle. His suggestion is that dispensing 11,300 items per month would not change, when clearly this is incorrect, as 40.9% of this dispensing activity would no longer be permitted to be carried out by The Clays Practice (Bugle Surgery) leaving a residuum dispensing of around 6600 items per month.

4.2.32 Mr Daly further makes vexatious and unsubstantiated claims that The Clays Practice dispensary has no pharmacist and that "staff in the dispensary tend to work in other roles". To be clear dispensing and medication services are so embedded that The Clays Practice has a pharmacist as a Partner. Banns Pharmacy Limited will be aware that pharmacists work within the Practice as they have directly approached Primary Care Network-employed pharmacists for locum work. It is concerning that Banns Pharmacy Limited have needed to seek locum pharmacists even before the opening of a pharmacy in Bugle.

4.2.33 The Clays Practice have 2 dispensers who are able to offer a few hours a week in additional roles which suits their skill mix and which offers an extra asset to the running of the surgery. However, while in their main dispensing role they only undertake dispensing. More broadly our dispensary staff are dedicated and qualified dispensers who are employed to work in a dispensary role and are not employed to be multitasking operatives who work across all aspects of general practice.

4.2.34 Mr Daly may be mistakenly making the assumption that dispensers in the Clays Practice operate in the same manner as that of his client, where Banns Pharmacy Limited may chose to operate a more dispenser-cum-shop worker model for its staff.[3]

4.2.35 This is not the case for the majority of the time and for the majority of dispensers in the Clays Practice.

4.2.36 Clearly if there is a necessity of a reduction in staff in the Clays Practice dispensaries it would be dispensers whose jobs would be at risk, and not shifting sideways to a job they are not qualified for. Suggesting otherwise is to demean the role of qualified dispensers, something we feel sure Banns Pharmacy Limited would not wish to be seen suggesting or doing.

4.2.37 As the Committee may be aware Banns Pharmacy Limited operate broadly in the local Clays Area, with commercial pharmacy operations in the villages of Roche, St Dennis, St Stephen and lately in Bugle.

[3] https://www.pharmacyregulation.org/sites/default/files/document/standards_for_registered_pharmacies_june_2018_0.pdf (Principle 2)

4.2.38 Inevitably patients in these areas will use the facility of a local pharmacy and like any other service in modern times will feedback to the relevant authorities if they have concerns about the quality of services they receive.

4.2.39 It is, of course, of utmost importance when dealing with medication that dispensing is carried out in a professional and accurate manner as mistakes could be potentially fatal or, at the very least, harmful.

4.2.40 It is The Clays Practice's understanding that Banns Pharmacy Limited are under review by the Local Pharmacy Committee (LPC) regarding errors in dispensing reported by patients.

4.2.41 On the face of the matter if Banns Pharmacy Limited are struggling to dispense in a timely and safe manner to the residents of the Clays Area when they are operating from 3 sites, then opening a further site in Bugle is likely to put additional strain on their resources to dispense safely and effectively and in a timely manner.

4.2.42 It would seem that a gradualisation period of 12 months would be the ideal opportunity for Banns Pharmacy Limited to restructure whatever it takes in order that their dispensing is made robustly safe for all of their customers, before the additional burden of dispensing at Bugle Pharmacy is added to their already overwhelming workload.

4.2.43 One could therefore rightly imagine that Banns Pharmacy Limited would welcome the opportunity of a 12 month gradualisation period.

4.2.44 The Clays Practice are very aware from interactions with their own patients that Banns Pharmacies do not effectively engage with core pharmacy services[4], preferring to direct these queries to the local general practice surgery.

4.2.45 In respect of Bugle Pharmacy the confirmed premises appear to be so small it is difficult to see that patients could be afforded the privacy and confidentiality required to partake in a consultation with a pharmacist.[5]

4.2.46 Banns Pharmacy Limited may wish to re-evaluate how they are able offer [sic] a full range of commercial pharmacy services and gradualisation of 12 months could be seen as an ideal opportunity to achieve this.

4.2.47 It is disappointing to note that although St Dennis Pharmacy [registered business address for Randhawas Pharma Limited t /a Banns Pharmacy Limited (Companies House number 11400857)] have a visible web presence allowing for transparency of governance, the superintendent pharmacist there is stated as Mr [IB], who was the pharmacist prior to acquisition of St Dennis Pharmacy by Randhawas Pharma Limited. Almost three years after acquiring Roche Pharmacy there is no web presence for Roche pharmacy. At present there also appears to be no web presence for Bugle Pharmacy. It is concerning that Banns Pharmacy Limited are not transparent in identifying professionals responsible for the pharmacy business in each location and provide no contact details or complaints facility for their customers.

[4] https://www.nhs.uk/nhs-services/prescriptions-and-pharmacies/pharmacies/how-your-pharmacy-can-help/

[5] https://www.pharmacyregulation.org/sites/default/files/document/standards_for_registered_pharmacies_june_2018_0.pdf (Principle 3)

4.2.48 For the reasons given above

4.2.48.1 that Banns Pharmacy Limited by necessity requires a longer period of time before Bugle Pharmacy is capable of taking on the full burden of dispensing in Bugle,

4.2.48.2 that history has shown that Banns Pharmacy Limited cannot safely dispense from 3 sites and that adding a 4th before they are ready to do so may be catastrophic to patients. This is unacceptable.

4.2.48.3 that The Clays Practice will be so profoundly impacted by the loss of dispensing in Bugle that significant changes may need to be undertaken to ensure primary care services in the area, and this may then profoundly and negatively impact on the residents of Bugle and the surrounding villages, the solution to which may be complex, lengthy and involving the local and regional commissioners.

4.2.49 The Clays Practice would contend that 12 month gradualisation for The Clays Practice with respect to Bugle Pharmacy is fair and commensurate with the complexities that will ensue from loss of dispensing from Bugle Surgery.

5 **Observations**

5.1 RUSHPORT ADVISORY LLP ON BEHALF OF BANNS PHARMACY

5.1.1 Thank you for your letter of 18 October 2023. [I] act for Banns Pharmacy Limited in the above application and have been instructed by the Appellant to submit the following reply to comments received on the above appeal from interested parties.

Clays Practice

5.1.2 Para 1 to 6 of the Clays Practice letter are not contentious and accepted. The Appellant notes in para 7 that the Clays Practice claims to have a “dedicated team” of 2 pharmacists, 1 dispensary manager and 9 other staff. Firstly, it is not clear if the word “dedicated” is intended to imply that these staff work only in the dispensaries or whether it relates to their overall professionalism (for example the phrase “he was dedicated to his cricket club” does not mean the [sic] he only ever worked there).

5.1.3 The Appellant is aware that the 2 pharmacists mentioned do not work full [sic] in the Bugle dispensary in any meaningful way. Indeed, one is a Primary Care Network pharmacist and would not be permitted to do so and the other is a practice partner (which appears to be confirmed in paragraph 32 of the Clays Practice letter) and would have a role over the entire practice.

5.1.4 The other staff, namely 1 dispensary manager and 9 others, or 10 in total, work over all 3 of the practice sites that dispense and not just Bugle. Roche Surgery is the largest site and dispensary and as the practice state, St Dennis dispensary does little dispensing. It is likely that the total staff count who are actually employed at the Bugle dispensary is 3 or possibly 4 persons as point 6 of the Clays Practice letter states that it accounts for 40.9% of total dispensing activity. It would of course have been helpful if the practice had provided this information, but they have not done so.

5.1.5 The Committee will recall from para 6.4 of the Appeal Report submitted for the appeal that Bugle Surgery is part time (compared to Roche which is full-time) which further supports the position that affected staff are small in number (see Appeal Report extract below)

"6.4 The opening times of this surgery are restricted to mornings only from Monday to Friday. The website advises that the Bugle surgery is open every morning until noon. The NHS website notes that this surgery opens between 8:30am and 12 noon Monday to Friday. Dispensing is only available during these times."

5.1.6 The attached CQC reports confirm that the Clays Practice employed 51 staff in June 2022, up from 50 staff in October 2021.

5.1.7 Page 2 of the CQC report states that they looked at personnel files of 2 members of staff who has started working since the previous inspection. It is therefore clear that, like all organisations, staff both leave and come into the practice.

5.1.8 Whilst the Clays Practice talks at length about possible restructuring and redundancies, it is more likely than not on the evidence available that this relates to either 1 or possibly 2 persons (out of the 3 or 4 who work in the Bugle dispensary part-time) whom the Appellant suggest would likely be used in other roles within the practice. This is not simply a guess, but based on its own experience of opening pharmacies where there were previously GP dispensaries, one of which was in Cornwall and where, on every occasion, staff were redeployed to other roles within the practices concerned.

5.1.9 Even if the practice decided it was fully staffed and could not utilise these 1 or 2 persons, it is quite clear that it would not take 12 months to make arrangements for the changes proposed and even 3 months would be more than sufficient time.

5.1.10 At paragraph 8 of the Clays Practice letter they state that dispensing services at Roche Surgery have "been eroded" in recent years.

5.1.11 The latest data from NHSBSA shows that the practice dispensed over 13,049 items in June 2023. This is up from 11,483 in June 2022 and 11,497 in June 2021.

5.1.12 Paragraphs 9 to 17 of the Clays Practice letter are either not relevant to this determination or simply argumentative and the Appellant does not address them further.

5.1.13 Paragraphs 18 to 22 of the Clays Practice letter set out the rationale behind the claim for 12 months gradualisation and these can be summarised as;

"Re-evaluate how the loss of dispensing from Bugle Surgery will impact on patients".

5.1.14 Given the decision of Primary Care Appeals to grant the Appellant's application, Rushport submit it is clear that the opening of the pharmacy and move to dispensing from the pharmacy will be very positive for patients. It is unclear what "re-evaluation" the practice believes would take 12 months or what they would intend to evaluate over such a long period of time.

"Re-evaluate how the Clays Practice will manage dispensing over the three surgeries in the Practice."

5.1.15 As highlighted above, this re-evaluation most likely refers to the role of 2 members of staff out of 51 employed by the practice. The practice has been aware of the approval of the Appellant's application since 25 May 2023 and some 5 months has already passed. Again, it is unclear what the surgery believes will take a further 12 months to evaluate.

"The human cost of the significant reduction in dispensing from Bugle Surgery will have on dispensing staff requirements"

5.1.16 This point is dealt with already above.

5.1.17 The practice then goes on to discuss the potential closure of the practice branch as it also did when the Appellant opened a pharmacy in Roche. It is a matter for the NHS to determine how it works with the practice going forward. The NHS will make savings of over £1 per item dispensed at a pharmacy rather than from a GP dispensary due to the different funding arrangements that are in place, but the Appellant cannot do anything about how the LMC, ICB, PCN or any other organisation works with the Clays Practice. The Appellant is fully supportive of retaining all the practice's surgery locations.

5.1.18 The Clays Practice then uses phrases such as at paragraph 22 that,

"The granting a 12 month gradualisation period in these circumstances seem wholly commensurate with the complexities of resolving appropriate primary care services in the village of Bugle and surrounding area."

5.1.19 Respectfully, the practice has known about this pharmacy opening for 5 months already. The changes involve patients being told to use a pharmacy rather than the dispensary at the surgery and the number of staff affected is, on the evidence available, likely to be 1 or 2 out of 51. It certainly appears that the practice is using rather woolly language rather than presenting any evidence upon which the Committee could properly rely.

5.1.20 Paragraphs 23 to 26 of the Clays Practice letter contain a critique of doctor dispensing to which Rushport does not reply.

5.1.21 At paragraph 27, the Clays Practice refers to the 2019 Pharmacy Manual, page 276 para 27. Whilst the Committee will no doubt properly apply the legal test, Rushport repeat the full wording of the Pharmacy Manual below for proper reference;

"27. Periods of gradualisation should generally be no shorter than one month and, other than in exceptional circumstances, should last no longer than three months. Exceptional circumstances may include:

- *the loss by a dispensing practice of all its dispensing patients,*
- *where the reduction in the number of dispensing patients would lead to staff changes or redundancies, or*
- *where there is only one pharmacy within a 1.6km of the practice premises and that is the pharmacy that is opening and its ability to absorb former dispensing patients effectively needs to be staged over time."*

5.1.22 As the Committee will note, the context used by the Pharmacy Manual starts with reference to a practice losing all of its dispensing patients and all points are made by reference to "exceptional circumstances". In this case the Clays Practice retains 60% of dispensing and the number of staff affected in any way is likely to be 1 or 2 for a practice that operates over a wide area with 3 sites of 51 staff. These are far from the "exceptional circumstances" that the authors of the Pharmacy Manual might have had in their minds.

5.1.23 Paragraph 29 of the Clays Practice letter then returns to vague and woolly statements and here states;

"An appropriate duration of gradualisation is required to allow The Clays Practice to recalibrate all aspects of its medical activity so as not to adversely impact on the essential core activity of the practice or the essential care required for all its registered patients whether in Bugle or more broadly in the Clays geographical area."

5.1.24 As the practice has relied on the Pharmacy Manual it should also have noted what the simple and clear purpose of a gradualisation period. Page 264 para 24 of the Pharmacy Manual states;

"24. The aim of gradualisation is two-fold:

• first, it allows patients a period of time within which to adjust to being given a prescription to take or send to a pharmacy rather than having their drugs and/or appliances dispensed at the surgery;

• second, it allows the affected dispensing practice time to make whatever alterations to its working practices as may be necessary, such as reducing stock holdings and altering staff duties."

5.1.25 Again, the practice has had notice of this decision for 5 months already and there is simply no reason why the adjustments required cannot be carried out in 3 months, nor does the practice provide any evidence that the Committee could rely on to support their request for such an extended period of gradualisation.

5.1.26 Paragraph 30 of the Clays Practice letter does not require further comment over what has been already stated.

5.1.27 In paragraph 31 of the letter the Clays Practice incorrectly quotes from the letter of appeal. Rushport did not suggest that "dispensing 11,300 items per month would not change" and in fact stated;

"Whilst the comments from the practice during the application process highlight a loss of income and the potential for staff redundancies, it is likely that staff would in fact be retained by the practice given that they would still have a busy dispensing practice after my client opens as the current dispensary dispenses circa 11,300 items per month…"

5.1.28 Further, as shown above, the practice now dispenses over 13,000 items per month and reducing that by 41% would leave 7,670 items per month. Rushport note the practice does not use the current figures in its own analysis.

5.1.29 Paragraph 32 of the Clays Practice letter refers to "*vexatious and unsubstantiated claims that The Clays Practice dispensary has no pharmacist"* and that *"staff in the dispensary tend to work in other roles*". However, the commentary the practice then provides does not claim that the practice has a pharmacist working in the dispensary (as they do not and the Partner pharmacist role is not to work in the dispensary) and confirms at paragraph 33 that some staff do have a mix of roles. Unfortunately, the practice does not differentiate between staff at different locations and provides commentary only over all staff across all 3 dispensing locations. The Committee may wonder why the Practice would obfuscate in this way when clarity is required.

5.1.30 Paragraphs 34 to 36 of the Clays Practice letter are argumentative and Rushport do not engage with the comments made.

5.1.31 Paragraphs 37 to 39 of the Clays Practice letter are uncontentious.

5.1.32 Paragraph 40 of the Clays Practice letter wrongly claims that the Appellant is "*under review by the Local Pharmacy Committee (LPC)*" – this is false and it is regrettable that the practice has attempted and failed to have the LPC to "investigate" the Appellant.

5.1.33 Paragraphs 41 to 46 of the Clays Practice letter are factually incorrect and malicious and Rushport do not comment further.

5.1.34 Paragraph 47 – the Appellant notes and is correcting the error on their website. The Appellant is grateful to have this brought to their attention even though this could have been achieved in a more constructive manner.

5.1.35 Paragraph 49 of the Clays Practice letter summarises their position and Rushport has detailed above why that position is wrong and provided evidence to support the case for a gradualisation period of no more than 3 months at most.

ICB Comments

5.1.36 Most of the comments from the ICB are already dealt with in the submissions above in reply to the Clays Practice.

5.1.37 From the ICB comments it is clear that they very much overestimate the change that will happen as a result of the Appellant's pharmacy now being open. For example, the ICB states; "*It represents a significant change in income and will require a considerable change in staff arrangements. Were the surgery to need to make staff redundant that would be a further cost and will require consultation and restructure across the practice team*".

5.1.38 The ICB appears to be unaware that this change will potentially affect 1 or 2 of the 51 practice staff.

5.1.39 The ICB then suggests that "winter pressures" will leave "little overhead for complex reorganisations". Respectfully, there is simply no evidence to support this statement and the evidence that exists shows that the opposite is true. The practice, or even the ICB if they have spoken to the practice, could and should have provided some evidence to support the statements about re-organisation, but have not done so. Whilst there is reference to "resilience support" being provided and "practice resilience" it is not at all clear what is meant by this.

5.1.40 Rushport also note that the proposal for 12 months gradualisation would be far past any period of winter pressure, but even if that were relevant, it seems contradictory to claim that having a higher workload by keeping dispensing to more patients for a longer period would assist the practice at a time of greater pressure on services.

5.1.41 Further, the opening of the Appellant's pharmacy now reduces the burden on the practice rather than increasing it. As just one example of this, the Appellant offers COVID vaccination services in its pharmacies every day they are open whereas the practice is offering 1 day per week with patients queuing for long period of time. It is notable that none of the benefits of reducing practice workload are even being considered by either the Clays Practice or the ICB and instead primary care seems to be viewed as the GP surgery working in a silo or in competition with the pharmacy, which cannot be correct.

5.1.42 Rushport further asks the Committee to note that Banns Pharmacy Limited has now commenced services from their new pharmacy in Bugle and did so on 2 October 2023. The pharmacy has its own car parking including disabled parking, step free access, a consultation room and offers free delivery of

prescription items. The pharmacy has been very well received locally. [emphasis added by Rushport Advisory LLP]

5.1.43 Rushport look forward to hearing from [you] in due course.

5.2 TREVERBYN PARISH COUNCIL

5.2.1 Treverbyn Parish Council wish to confirm its support for the new pharmacy (see attached copy of original letter) and would like to point out that paragraph 20 of the Clay Practice representation is factually incorrect.

Treverbyn Parish Council letter of 16 January 2023

5.2.2 Following recent discussions with the applicant and an open Parish Council meeting held on January 31st councillors have agreed to give their support to Banns Pharmacy Ltd application to open a pharmacy in the village of Bugle.

5.2.3 Whilst appreciative of the valued work of the Clays Practice it is recognised that this additional service would be of major benefit to the community. Bugle is a former mining village with a population that was reliant on the China Clay industry. Sadly with the demise of that industry it is now classed as 'an area of depravity' with an elderly and transient community with many dependent on an unreliable public transport system. As you are no doubt aware the dispensary for the Clays Practice is based in the nearby village of Roche (2.2 miles), there is no direct bus service and a prescription left at Bugle Surgery takes 3 days to process for collection and is only available between the hours 8.30am – 12.00pm Monday to Friday.

5.2.4 To have a compatible, more readily available service in the centre of the village would be a valuable asset and supportive to the needs of our Parish.

6 Consideration

6.1 The Pharmacy Appeals Committee ("the 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 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

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

6.5 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations") and in particular Regulation 50(1) which states:

Discontinuation of arrangements for the provision of pharmaceutical services by doctors

In circumstances where the NHSCB has arrangements (whether they were made under these Regulations or were made under or continued by virtue of the 2012 Regulations) with a dispensing doctor (D) to provide pharmaceutical services to a person (P), if…

D must terminate the provision of pharmaceutical services to P, subject to any postponement of the discontinuation by the NHSCB in accordance with paragraphs (2) to (6).

6.6 Regulation 50(3) states:

This paragraph applies where—

(a) the NHSCB grants a routine or excepted application, the result of which is the inclusion in a pharmaceutical list of pharmacy premises that are not already listed in relation to an NHS pharmacist;

(b) the pharmacy premises to which that application relates are not distance selling premises but –

(i) are in a controlled locality, or

(ii) are within 1.6 kilometres of a part of a controlled locality in which patients of a dispensing doctor reside and those patients are being provided with pharmaceutical services by that dispensing doctor; and

(c) granting the routine or excepted application, in the opinion of the NHSCB, results in a significant change to the arrangements that are in place for the provision of pharmaceutical services (including by a person on a dispensing doctor list) or local pharmaceutical services in any part of a controlled locality.

6.7 Pursuant to paragraph 9(4)(a) of Schedule 3 to the Regulations, the Committee may:

6.7.1 confirm NHS England's decision;

6.7.2 substitute for that decision, any decision that NHS England could have taken when it took that decision

6.7.3 quash NHS England's decision and remit the matter to NHS England for it to redetermine the decision, subject to such directions as the Secretary of State considers appropriate.

6.8 The Committee noted that some of the information contained in NHS England's decision which was from parties was with regard to the original application as well as other matters which the Committee felt was not pertinent to the decision regarding gradualisation. The Committee considered that the application for inclusion in the pharmaceutical list under the provisions of Regulation 18 had already been granted in an earlier determination and it is not within its remit to review that decision. The Committee is therefore only able to consider and determine the matter of the gradualisation period as per its consideration below.

6.9 The Committee noted the comments from The Clays Practice with regard to other pharmacies that the Applicant owns and runs in the area. The Committee was of the view that the running of a different pharmacy, albeit owned by the same company as the pharmacy in the instant appeal, was not something to which it could have regard and took no view on these matters.

6.10 The Committee further noted the comments from The Clays Practice and the Applicant as to how the pharmacy and surgery, respectively, should be run. The Committee was of the view that the actual day to day running of either the pharmacy or the surgery was not a matter to which it should or could have regard and therefore took no view on the actual management of either.

6.11 In its representations, The Clays Practice states "it is contended that the site of this pharmacy is now within a "reserved location" and this matter has been referred back to NHS England to be determined". The Committee noted that no further information had been provided to support this statement and further that no party, including NHS

England had provided any subsequent comments on this matter. Given that it has no information to the contrary before it, the Committee proceeded on the basis that the pharmacy is not in a reserved locality.

6.12 The Committee was mindful of the Regulations and the criteria to which it could have regard in respect of the period of gradualisation.

6.13 The Committee noted the decision of NHS England in respect of Bosvena Health, Brannel Surgery along with various other practices had not been disputed on appeal and that the appeal solely relates to the gradualisation period for The Clays Practice.

6.14 The Committee noted that NHS England had considered that a 12 month gradualisation period to be appropriate in respect of The Clays Practice. Rushport, on behalf of Banns Pharmacy Ltd, the Appellant, has requested a gradualisation period of 3 months.

6.15 The Clays Practice, in subsequent representations, states that it is of the view that the decision of NHS England should be upheld.

6.16 NHS England, in its representations, also stands by its original decision of 12 months for The Clays Practice.

6.17 The Committee noted that both the Appellant and The Clays Practice had sought to quote and rely on the Pharmacy Manual. The Committee is of the view however that this is a guidance document provided for NHS England and it is not something to which this Committee is bound by.

6.18 The Clays Practice had referred to the Department of Health Guidance on the concept of prejudice. The Committee was of the view that prejudice, as set out in Regulation 44, had already been considered as part of the substantive decision (SHA/25840) and it had already been determined that the granting of the application would not cause prejudice to the proper provision of relevant NHS services and it is not within its remit to review that decision.

6.19 The Committee noted the comments from The Clays Practice that *"An appropriate duration of gradualisation is required to allow The Clays Practice to recalibrate all aspects of its medical activity so as not to adversely impact on the essential core activity of the practice or the essential care required for all its registered patients whether in Bugle or more broadly in the Clays geographical area."*

6.20 The Committee was mindful of the 1996 case of R –v- North Yorkshire FHSA ex parte Dr. Wilson and Partners when Justice Carnwath said *"It is not part of the scheme of those regulations or indeed of the statute that pharmaceutical services should be relied upon to provide financial underpinning for medical services which are intended to be financed in other ways".* Therefore the Committee cannot be influenced by a medical practice's reliance on an income generated from dispensing to fund other services where legal precedent clearly states it should not depend on such funding.

6.21 The Committee noted the comments from The Clays Practice that the loss of income could force it to reconsider the future of the practice in Bugle. The Committee was mindful that any withdrawal of medical services would be a matter that The Clays Practice should discuss separately with the local Integrated Care Board.

6.22 The Clays Practice has stated that it will need to "recalibrate all aspects of its medical activity" and reference to potential redundancies is made and/or redeployment. Whilst the application to open a pharmacy was granted in May 2023, the Committee was mindful that the practice could not plan for the reduction in dispensing services until the pharmacy had opened. The Committee accepts that although some planning could be undertaken prior to the opening of the pharmacy it may not be possible to make too many changes on the basis that the practice would need to continue to provide services and dispense to patients. In terms of staffing, the Committee noted that no information

had been provided in support of the assertions regarding redundancies and job changes.

6.23 The Committee was of the view that patients have been aware of the pharmacy proposals for many months now and this is confirmed by the support that is shown from Treverbyn Parish Council. This would help facilitate a seamless transition from patients on the GP dispensing list. Whilst the majority of patients will be able to use the pharmacy in Bugle, the Committee was mindful of Regulation 48, "Arrangements in place for the provision of pharmaceutical services by doctors; applications by patients" which takes into account the needs of vulnerable patients and this would be an avenue for such patients to take if they are unable to avail themselves of the pharmaceutical services offered by Banns Pharmacy Ltd.

6.24 The Committee noted the information, which had been broadly agreed by parties that approximately 40% of The Clays Practice dispensing patients are affected by this decision. The Committee is of the view that this is not an insignificant proportion of its dispensing patients. The Committee was left in some difficulty because of the lack of information from The Clays Practice regarding the actual changes it would need to make to enable a transition.

6.25 The Committee considered that some time had now lapsed since NHS England's decision of 14 August 2023 regarding the arrangements for the reduction of adverse consequences. The Committee considered that The Clays Practice has been aware since the application was granted in May 2023 that those on their dispensing list would have to move to a prescribing list and whilst the practice was only able to commence and finalise such arrangements once the notice of commencement was submitted, the Committee are aware that the pharmacy opened and commenced trading on 2 October 2023. The Committee was mindful of the impact of a long period of gradualisation on the pharmacy.

6.26 The Committee gave careful consideration to the circumstances of The Clays Practice and Banns Pharmacy Ltd and was conscious of the need to take a balanced view of their conflicting requirements. It was also mindful that the pharmacy application was granted on the basis that it would provide significant benefits to the local population and that these should not be unreasonably delayed. Taking into account all of the above, the Committee is of the view that three months from the date of its decision as being reasonable before The Clays Practice is required to transfer patients from its dispensing list to its prescribing list.

6.27 The Committee was mindful that the decision in respect of the gradualisation periods for the other practices in the area had not been challenged on appeal. In this respect, the Committee was of the view that Bosvena Health and Brannel Surgery would already be in the process of transferring those patients who were on their dispensing list to their prescribing lists. In respect of all of the other practices affected, the Committee was of the view that the transfer of the patients on the dispensing list to the prescribing list should already have occurred.

7 DECISION

7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution substitutes that decision of NHS England for any decision that NHS England could have taken when it took that decision.

7.2 The Committee determines that The Clays Practice affected dispensing patients should be transferred to its prescribing list no later than three months from the date of its decision letter (i.e. by 16 February 2024).

Case Manager
Primary Care Appeals