17 July 2024

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REF: SHA/26141

APPEAL AGAINST BIRMINGHAM AND SOLIHULL ICB DECISION TO GRANT AN APPLICATION BY MOHAMMEDI HEALTHCARE LIMITED FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM 545-547 GREEN LANE, SMALL HEATH, BIRMINGHAM B9 5PT TO YARDLEY GREEN MEDICAL CENTRE, YARDLEY GREEN ROAD, BORDESLEY GREEN, BIRMINGHAM B9 5PU

1 Outcome

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

1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:

Mohammedi Healthcare Limited (the Applicant)
Templebright LLP representing MEJ Hingley & Co Limited (the Appellant)
PCSE on behalf of Birmingham and Solihull ICB
Birmingham and Solihull Community Pharmacy

NHS Resolution

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1 A summary of the application, decision, appeal, representations and observations are attached at Annex A.

2 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, comprising of Ms L Lee, Mr P Bratley and Mrs C Limm held an oral hearting on 23 May 2024. In attendance was Mr Nitin Korin and Mr Nikhil Korin representing the Applicant, Mr Noel Wardle of Temple Bright LLP representing the Appellant, Ms Jane Hingley, Mr Jeff Blankley of Birmingham and Solihull Community Pharmacy and Mrs A McCafferty from NHS Resolution (as an observer).

3 **Site Visit**

3.1 The Committee had arranged to meet at Yardley Green Medical Centre ("the Centre), at 11 am on Monday 20 May 2024, travelling in two cars. Parking was extremely difficult both in the Centre parking spaces and in the surrounding area. The member who had a blue badge was able to park in a designated disabled space, but the only other parking available was on a grass verge. Throughout the inspection, cars were queuing to park and parking was difficult. The Committee also noted that it appeared that the car park was used by members of the public, who then exited the car park rather than attending a surgery or a pharmacy.

3.2 The Committee noted that the Centre was set back from Yardley Green Road behind a large hedgerow. There was a single row of parking spaces in front of the Centre and a further parking area to the left beyond the Hingley Pharmacy. Staff parking was in a gated area behind the Centre. The Centre had three separate entities in occupation, M Pharmacy which was connected via an internal archway to the Omnia Surgery. Next to the Omnia Surgery was the Yardley Green Surgery. The Hingley Pharmacy was housed in a detached building adjacent to the Centre. It also noted that there was a second Hingley pharmacy across the road from the Centre.

3.3 The Committee first went into the M pharmacy. The Committee noted that it was a well-appointed pharmacy. It had good fittings and a consultation room and was spacious. At the time of the visit, there was one patient in the pharmacy.

3.4 The Committee went through into the Omnia Surgery through the connecting archway. This was a large surgery and there were very many spare seats in the waiting room. The surgery was spread over two floors and also offered minor surgery, physiotherapy and chiropody services. It was not clear how many GPs were attached to the practice or the opening times. The Committee noted that as it waited to inform the receptionist of its presence, a patient had mistakenly attended the surgery instead of waiting for a telephone call from her doctor. The Committee concluded that many patients were in fact receiving remote consultations and this could account for the lack of patients in the

very large waiting area, alternatively, it may have been due to the time of day i.e. the end of the morning surgeries.

3.5 The Committee then went into the adjacent Yardley Green Surgery, this was open Monday to Thursday: 8:30 am to 6:30 pm and Friday: 8:30 am to 7:00 pm. Six GPs were listed as being resident at the surgery. Again, the waiting rooms had few patients and very many empty seats.

3.6 The Committee then noted the Hingley Pharmacy adjacent to the Centre buildings. It appeared to be a traditional pharmacy layout. Opening hours were not advertised.

3.7 To ease pressure on the parking in the vicinity of the Centre, the Committee travelled some distance outside the relevant area to find parking spaces. The Committee conducted the remainder of the site inspection, travelling in one car, owned by a committee member.

3.8 The Committee then travelled to the Mohammedi Stores at 330-336, Green Lane, Small Heath, B9 5DP. There was limited parking at this site, but the Committee was able to find one space in a side road.

3.9 The Committee noted that there was a closed pharmacy, which was shuttered. There were no signs regarding closure of the pharmacy. Behind the shutters was a faded handwritten sign which read, 'for pharmacy 7733075'. The Committee noted that the number for the Mohammedi Pharmacy on Green Lane is 0121 773 3075. The Committee also noted that there were large plastic signs on the walls above both the shop and the store, indicating that there was electronic prescription collection and delivery service. The large signs on the wall had the telephone number 01217533300, which also appears to be a number for the Mohammedi Pharmacy.

3.10 The Committee then went into the Mohammedi Stores and noted that there was an abandoned pharmacy counter and dispensing area at the back of the shop. This was now partially obscured by stock and did not appear to have been used for some time. The Committee was told by the shopkeeper that the pharmacy counter had not been used for several years. The Committee noted that there was a certificate on the wall of the dispensing area, from the Royal Pharmaceutical Society in the name of 'Mohammed Asif' (corrected at the hearing).

3.11 The Committee noted the location of Hustan's Chemist on Green Lane, a short distance from Mohammedi Stores.

3.12 The Committee then travelled the short distance by car to the Mohammedi Pharmacy at 545-547 Green Lane. This journey registered as less than a mile on the odometer.

3.13 Throughout the site inspection, and in all the areas visited, the traffic was very heavy and parking difficult. Progress to and through the Hob Moor Road/Green Lane junction was slow but parking was found in a side street, near to the number 17 bus stop on Hob Moor Road. The bus stop indicated the bus went to Hob Moor Road and Green Lane. There was no timetable displayed but the Committee noted that it appeared to be a frequent service given that it saw several number 17 buses during the site inspection and would estimate that the buses were at approximately ten-minute intervals.

3.14 The Committee noted that the Mohammedi Pharmacy was double fronted. One window was a display area for mobility aids. The other displayed large adverts for a number of services, some of which were private, but also NHS services including blood pressure monitoring, diabetes screening, flu jabs and free delivery of prescriptions. There was a small step up into the premises. The premises were spacious and there was a consultation room.

3.15 The surrounding area on Green Lane had small local shops including a charity shop, mini markets, legal advisors, dress and fabric shops and a bookmaker's shop.

3.16 The Committee then crossed Green Lane using the controlled crossing, to cross over to the Hingley Pharmacy on the other side of the road. This pharmacy did not have an NHS contract but dispensed private prescriptions which were sent out by Royal Mail.

3.17 The Committee noted that there was another number 17 bus stop in front of this Hingley Pharmacy.

3.18 The Committee then returned to the Mohammedi Pharmacy and began the walk to the site of the proposed relocation. The Committee crossed Hob Moor Road at the junction. Traffic was heavy but slow moving and there was a refuge area in the middle of the road to facilitate crossing. Although there was notable traffic congestion at the time, the dropped curves and refuge island in the middle of the crossing made the manoeuvre relatively uneventful. It was noted that the area was generally very congested with on-street parking which slowed traffic down together with 20mph speed limits in places.

3.19 The Committee stopped outside the Shelley Pharmacy. It noted that there was a small step up into the premises. The window displays indicated that it offered a range of private and NHS services. The NHS services included a minor ailments service, flu and covid jabs, blood pressure checks, contraception services, new medicines service, stop smoking services and diabetes screening. Its opening hours were Monday to Friday: 9:00 am to 7:00 pm and Saturday: 9:00 am to 1:00 pm.

3.20 The Committee (which included someone with reduced mobility) was able to comfortably make the journey to the proposed location in under five minutes. The Committee noted that the new location was not easily visible from the roadway due to the large hedgerow.

3.21 The Committee then travelled by road to the Charles Road Surgery on Charles Road. The Committee noted that Charles Road is a steep hill and the surgery was at the foot of the steepest part. It noted that although this was only a short distance by car, it concluded that it was unlikely that anyone with reduced mobility who had accessed treatment at the Charles Road Surgery would have walked to the pharmacy at 545-547 Green Lane.

4 A summary of the above observations was provided to those in attendance. They were invited to comment upon them **OR** indicate if any of the observations appeared to be inaccurate.

4.1 It was queried if the entrance to Mohammedi Pharmacy was a stepped entrance, it was confirmed that it was not a stepped entrance but there was a shallow step at the doorway.

4.2 The Committee accepted that the name on the certificate in the Mohammedi Supermarket was Asif not Arif.

5 **Oral Hearing Submissions**

5.1 It should be noted that the Committee had the benefit of the outline of notes for both parties but where those notes differed from the Committee's notes, the Committee's notes were preferred.

Mr Koria for the Applicant

5.2 Mr Koria gave the following opening statement, '*Firstly, I am surprised we are even at Oral Hearing in the first instance. As the Committee will be aware, should this application be approved, the outcome is that overall pharmaceutical provision will be reduced in one of the most over-served areas in the country for pharmaceutical*

provision. Indeed, there are 23 pharmacies within a mile or less of my client's pharmacy, Mohammedi Pharmacy.

5.3 *The Committee will be aware of the funding and manpower pressures that Pharmacy currently faces, which are well documented; these are felt especially by pharmacies situated in Small Heath. We appeal to the Committee to take a common-sense approach to this matter and grant this application.*

5.4 *Ultimately granting this application is of benefit to all parties, including the Appellant. It is unfortunate that the Appellant has raised the need to debate the minutiae of pharmacy relocation legislation for a simple relocation of 190 metres. My client is at a loss as to why the Appellant has objected to this application, seeing as the proposed application would ultimately reduce competition for the Appellant.*

5.5 *The Committee will be aware that the Appellant was not given appeal rights and successfully appealed against their lack of appeal rights under Schedule 2, Paragraph 30 of the Regulations. These Regulations clearly state that appeal rights should be granted where an appeal is not vexatious. However, seeing that the Appellant is set to benefit from this relocation. We contend that the appeal by the Appellant is in fact vexatious and thus appeal rights should not have been granted.*

5.6 *Moving onto addressing the Regulations. Regulation 24 has been adequately addressed in prior correspondence and we submit that the proposed location is not significantly less accessible. As the Committee will be aware from their site visit, this is a relocation of 190 metres, along wide-flat pavements, with the crossing of only one road required. Indeed, this crossing has pedestrian aids including a refuge island, guard railing, and tactile paving. There are no barriers to movement and the proposed site has good disabled access. There is also much better parking at the proposed site.*

5.7 *The patient groups have been defined as the following and are not disputed. I also provide a short summary for each group:*

5.7.1 *Patients that utilise the free collection & delivery services.*

5.7.2 *As previously highlighted, the majority of prescriptions are delivered so these patients will not find the new site significantly less accessible.*

5.7.3 *Patients that originate from GP surgeries requiring access to pharmaceutical services*

5.7.4 *For patients who access pharmaceutical provision in connection with a visit to the GP the new site will be more accessible; being co-located with Omnia Practice and on the same site as Yardley Green Medical Centre. Patients of Charles Road Surgery have their scripts delivered.*

5.7.5 *Patients that require access to pharmaceutical services other than after a visit to a GP surgery*

5.8 *For patients who access pharmaceutical provision other than a visit to the GP, the proposed site is more accessible with much more parking. Also, the maximum additional distance any patient would have to travel is 190 metres.*

5.9 *Patients who share protected characteristics. There are no patients with significant protected characteristics that enter the store. These patients use the free collection & delivery service provided. Regulation 24 has been met.*

5.10 *Moving onto Regulation 31. For an application to be refused on Regulation 31, both 31(2)(a) and 31(2)(b) must apply.*

5.11 *We contend that 31(2)(b) does not apply. As previously highlighted judicial guidance in respect of 31(2)(b) is available in the case of Pharmacy Care Plus Ltd vs Family Health Services Appeals Unit [2013]. The relevance of this case appears to have been accepted by all parties after significant correspondence and previous cases were provided by my client. Of relevance is paragraph 34 of the ruling.*

5.12 *It will almost always be an extremely relevant consideration to know whether or not there is any connection in terms of ownership and control between the entities who carry on the entities business and who propose to carry on the proposed new business. So, for example, if an entities business was owned by Company A and the proposed new business was owned by Company B, and there was absolutely no connection at all in terms of ownership and control between the two of them, it would be difficult to see how they could be regarded as providing the same service, even if the services which they were going to provide were complementary to each other.*

5.13 *In contrast, if they were both to be provided by exactly the same company, then that would also be an extremely relevant consideration going the other way. The ruling clearly states that for Regulation 31(2)(b) to be met i.e. the services that the applicant proposes to provide as part of the same service as the entities' services, there must be shared ownership and control between the entities. Emphasis on ownership and control.*

5.14 *In any case, JMA Pharma Ltd and Mohammedi Healthcare Ltd are: - Different legal entities- Have different Directors. - Have different Registered Addresses. - Have different Shareholders. - Have different Superintendents. - Have different VAT numbers. - Have different range of Services. - Have different SOPs. - Have different payrolls. - Have different hours. - Visually the pharmacies also look very different as could be seen from site visit*

5.15 It was noted by the Committee that Mr Koria also added, 'and different persons of significant control.'

5.16 Mr Koria went on to say, the companies shared family connections but, '*We maintain that there is no shared ownership and control between the two entities and thus Regulation 31(2)(b) has not been met.*

5.17 *In terms of the precedent, the Pharmacy Care Plus Ltd vs Family Health Services Appeals Unit determination has been upheld at appeal numerous times under the 2013 Pharmaceutical Regulations with a few examples being:*

5.17.1 *SHA/19964 in 2019*

5.17.2 *SHA/24622 in 2021*

5.17.3 *SHA/24623 in 2021*

5.18 *Despite there being separate ownership & control of both entities, should the Committee decide that this constitutes connected control – we point the Committee to Paragraph 35 of the Pharmacy Care Plus Ltd vs Family Health Services Appeals Unit decision which states: "But also I can well accept that there may be intermediate positions; so, for example, there may be a commonality of ownership but the owners may not be exactly the same, and it may very well be that in such cases one would have to consider things such as the nature of the respective businesses; whether or not they are going to be physically separate or separate from a business point of view; whether or not the employees would be working in both businesses, and any other relevant matters. That conclusion seems to me to be consistent with the guidance given in 2009 by the Department of Health, to which I have been referred, whereby in short, the question is said to be whether or not the primary care trust is satisfied that the Applicant has a sufficiency distinct identity and will be providing a distinct service from the already listed contractor."*

5.19 *We submit that the pharmacies operated by JMA Pharma Ltd and Mohammedi Healthcare Ltd are separate businesses: - They have different services - They have different SOPs - They have different labelling procedures - They have different staff - They have different payrolls - They have different hours - They have different fit-outs - They have different facias - They have different signs We do submit that Mr Mohammed Asif has locumed at the pharmacy owned by JMA Pharma in the past; however, as previously highlighted this has been during unsociable hours. He was remunerated as an external party and has his own indemnity insurance. Mr Asif no longer locums with JMA Pharma Ltd and it is worth noting that he locumed at other pharmacies in Birmingham during this time, when there were significant manpower issues in pharmacy to simply maintain continuity of patient care, opposed to the pharmacy having to close and cause disruption to patients.*

5.20 *We also provided the Committee with further past decisions where Regulation 31(2)(b) was not met. - SHA/18622, SHA/18623 in these two new cases, the applicants were brothers and yet the Committee deemed that Regulation 31(2)(b) did not apply. Crucially we point the Committee to SHA/18622 page 25, point 6.18 which states: 6.18 The Committee therefore considered that, notwithstanding that there was a family connection between the owners of the pharmacies, it was reasonable to consider that the pharmacies were running separate businesses, providing separate services from their respective premises and therefore that Regulation 31(2)(b) did not apply.*

5.21 *To confirm if the relocation is granted JMA Pharma Ltd will submit a closure notice for the 100hr at the proposed site. Example where NHS have accepted that 2 pharmacies won't be operating from same premises - SHA/24623 Point 2.13 SHA/18622 Point 6.19/6.20.*

5.22 *We conclude that Regulation 24 has been met, and there are no reasons to refuse this application under Regulation 31. We also appeal to the common-sense of the Committee in what is a relocation 190 metres; and an application that will ultimately reduce the clustering of pharmacies in one of the most over-served areas in the country. We invite the Committee to grant this application*.

5.23 In response to questions from Mr Wardle, regarding the connection between the registered offices of Mohammedi Healthcare Limited and JMA Pharma, neither of the Mr Koria were able to provide answers, they said they were unsure. It was agreed there would be a short adjournment to allow Mr Asif, who was currently working at the Mohammedi Pharmacy to attend by telephone to answer questions.

5.24 Mr Asif in response to questions said that he lived at 42 Longmoor Road in Birmingham and his father and mother, and brothers lived at 44 Longmoor Road. In relation to the registered addresses, he said there had been a mistake and the registered address of Mohammedi Pharmacy had been changed for a period of time to 44 Longmoor Road. The registered office was later changed to Green Lane. Mr Asif said he owned the Mohammedi Pharmacy with his wife Rizwana.

5.25 Mr Asif said his father's name was Mohammed Arif, his mother was Basri Khatoon. He had several brothers including Mohammed Arshad and Junaid Mohammed Arif. His parents and several of his brothers owned the Mohammedi supermarket. Mr Asif said that no-one else in his family were pharmacists.

5.26 Mr Asif said he had nothing to do with the running of the supermarket. He has simply been a tenant in it when he had opened the Mohammedi Pharmacy. He had been the responsible pharmacist, and he could not remember who else was working there.

5.27 With regard to JMA Pharma, Mr Asif agreed that his brother, Mohammad Arshad had been a shareholder and director of the supermarket and also of JMA Pharma. He said he did not know if he was still a shareholder in the supermarket. Mr Asif said he had been a tenant of the supermarket, but he had nothing to do with the running of the supermarket. Mr Asif said JMA Pharma was a separate entity to his pharmacy.

5.28 Mr Asif said he had closed the pharmacy in the Mohammedi supermarket three or four years ago. When asked why the pharmacy signs were still up on the walls of the Mohammedi Supermarket, advertising his pharmacy, Mr Asif said he had told his family to take them down and would make sure that they did. He said he understood that it should not say there was a pharmacy there if there was not.

5.29 Mr Asif said that his brothers had purchased Lloyds a year or so ago. When asked if it was always his intention to relocate there, he said no, that was not his intention.

5.30 When asked when the idea of relocating happened, he said that he used to be operating inside the supermarket and then he bought what was the Evergreen Pharmacy. The one inside the supermarket had been a 100-hour contract and he closed that when he had bought the Evergreen Pharmacy. When asked if in effect he had bought a 40-hour contract, he agreed.

5.31 Mr Asif said that Lloyds had been bought by his brothers Ashad and Arif, but he was not in a position to buy it. He said that his brothers were not pharmacists, and he had no intention of moving but they had bitten off more than they could chew. He said the decision to try to move was made in March of 2023 when he had made his application. He agreed that his brothers had purchased the pharmacy in February of 2023.

5.32 Mr Asif said that it had left a bad taste in his family when he had stopped paying rent, so his brothers were upset with him and bought the pharmacy of their own accord without discussing it with him. He said his brothers did not know much about running a pharmacy, so his dad had come to him and asked him to relocate.

5.33 However, in response to a question querying if his parents and brothers had charged rent, he said they had not, but it had caused other issues in the family.

5.34 When challenged on his response that his brothers had not discussed that they were planning to buy a 100 hour pharmacy with him, he said that he advised them not to buy it as it was too hard but they bought it anyway.

5.35 Mr Asif could not recall the exact date his brothers purchased the pharmacy but agreed it was in February of 2023. Mr Asif also agreed that he had made his application on the 14th of March 2023 a period of 2-6 weeks after his brothers had made their purchase.

5.36 Mr Asif said after they had bought the pharmacy, they had, ‘wanted to do their own thing’ but found it hard. Mr Asif reiterated that there were two businesses, ‘but to all intents and purposes not the same’.

5.37 When asked about working in the Mohammed Pharmacy, Mr Asif agreed he had. He said he hadn't worked there for some time. He had just done the odd evening. When pressed, Mr Asif said he had actually stopped working there in the last month. Mr Asif said he had been working 7:00 pm to 9:00 pm, three days a week as his brothers could not find someone to cover this. When asked when he had started working at the pharmacies, he said he couldn't remember, it had been a while, but he couldn't remember the exact date.

5.38 Mr Asif said that he didn't think any other members of staff worked in both pharmacies.

5.39 Mr Asif was asked if he saw the pharmacy as a competitor of his. He replied that he did, but then said that he did work at other pharmacies as a locum. When asked why he stopped working at his brothers’ pharmacy, he denied it was because of the approach of the hearing.

5.40 Mr Asif said he didn't know exactly how much his brothers paid for the pharmacy, he agreed it was an arm’s length purchase and a significant sum. When asked what the arrangements would be if the application was granted Mr Asif said that it would simply

be closed. When asked if his brothers would simply close and walk away from the business with no deal to compensate them Mr Asif said that no deal had been made.

5.41 In relation to the dispensing at Mohammed Pharmacy, he said that 10,000 items were dispensed per month. Deliveries took place over six days a week and he believed approximately 9000 items were delivered. When it was suggested that this would mean that 350 items a day were delivered, Mr Asif said he never calculated it. His patients had comorbidities and complex conditions and it was very rare that a patient would have one item delivered.

5.42 When asked how wide the delivery area was, Mr Asif said it was the B9 and B10 postcodes and a bit of Yardley. He agreed it was probably less than a five-mile radius. When asked if he was sure that 90% of items were delivered, he said that he had two delivery drivers to get it done. People rarely came into the shop.

5.43 With regard to footfall, Mr Asif said less than 10 people per day collected prescriptions. Mr Asif said he didn't really count the number of patients, but he knew it wasn't a very heavy footfall. He said that patients tended to get their prescription and ‘rush in and rush out again’ because of the parking.

5.44 With regard to services, Mr Asif said there were purchases of over-the-counter medications, cosmetic items and mobility aids, for example, a wheelchair. He did agree that he offered supervised methadone and said that would be five or six patients. Mr Asif acknowledged that he occasionally advised people on medication. Mr Asif clarified his evidence and said that it was not on a daily basis that people came in for supervised consumption, he said that it was perhaps once every three days. Not everyone was supervised. It was very variable and depended on the timing. He said he had no patients with protected characteristics.

5.45 When asked if he had read the case papers for the appeal, he said he had, but he couldn't remember everything. It was pointed out that there was a direct contradiction between the dispensing figures. He clarified that he delivered 350 items a day and this equated to around 200 forms a day. He clarified that he had a driver who had an assistant and one delivery vehicle, so that one could deliver whilst the other drove. The housing in the delivery area was very dense, so it was possible to make multiple deliveries efficiently.

5.46 Mr Asif said there was only one small residential home that he delivered to which only had six patients, so there were no big delivery drops and each delivery was per user. Mr Asif said that there were a lot of diabetics in the area.

5.47 When pressed on his estimation of walk-in patients, Mr Asif said he had never counted, there were perhaps three or four a day, not a large amount. Mr Asif said that in the supermarket, he'd had a lot more footfall. The counters in his current premises weren't as busy, and the tills weren't as busy.

5.48 When asked why he had not disclosed JMA Pharma was owned by his brothers, Mr Asif said that it was irrelevant. The businesses were separate entities and they wanted to run the pharmacy independently. When asked what services JMA Pharma offered, he said he did not know. He said it was a totally different pharmacy. He said he lived next door to his parents because it was always understood that he would look after them as they got older.

5.49 Mr Asif said that the lease of JMA Pharma premises had been assigned to him in January 2024 after the favourable decision for relocation. He was not sure if it was in his name or Mohammedi Pharmacy but felt it might have been Mohammed Healthcare Limited. This assignment took place after receiving the decision on the 23rd of December 2023 and had not been started before. He said although the lease was assigned to him, he was not paying it. He had made just one payment and then had

heard about the appeal. Mr Asif said he would only pay the lease if it his application was granted.

5.50 Mr Asif agreed that at Mohammedi Pharmacy he offered advanced services including flu jab, blood pressure testing, and new medicine service, which was done over the phone. Mr Asif said that there were very few vaccines given. Mr Asif said that he couldn't remember how many it might have been. He said it might have been none, or it might have been two or three or four.

5.51 Closing submissions were made by Mr Koria for the Mohammedi Pharmacy.

5.52 '*First, I would like to address a number of Mr Wardle's submissions: Mr Wardle questions the motivations of non-pharmacists purchasing a pharmacy. As the committee will be aware some of the largest pharmacy chains in the UK are owned and operated by non-pharmacists: - Allcures Pharmacy – approximately 50 pharmacies - Medipharmacy/ Enimed group – approximately 60 pharmacies It is understandable why the directors of JMA Pharma would want to purchase a pharmacy in Small Heath, near their supermarket.*

5.53 *Mr Wardle also highlights the question of the unambiguous link between the companies via service addresses. We believe that Mr Wardle has misinterpreted our correspondence in this regard – we were simply trying to make the point that registered service addresses do not necessarily constitute the grounds for an unambiguous link. Our apologies if this has been interpreted differently by Mr Wardle or comes across differently in the language used. Indeed, by this point we had already submitted that there were family connections between the two companies and have always maintained that there are family connections between the two companies. This was submitted once in early correspondence, on page 169, and we did not feel the need to repeat ourselves.*

5.54 *Mr Mohammed Asif has been fully transparent about the relevant businesses and the family connection between parties through his oral representations.*

5.55 *Onto the regulations: We reiterate to the committee that a family connection between separately owned entities are not alone grounds for refusal of an application under Regulation 31. Again, we point the committee to where the Pharmacy Care Plus Ltd vs Family Health Services Appeal Unit case highlights that where day to day operations of a company are not the same, there are no reasons to refuse an application under Regulation 31.*

5.56 *This is upheld in the case references SHA/18622 and SHA/18623 where both entities were run by brothers, but the application was not refused due to day-to-day running. Both cases were provided to the committee as oral hearing evidence. As the committee will be aware, past cases are highly relevant to forming the Committee's determination of cases. Indeed, past cases form NHS guidance notes, which are used by all in assisting the determination of applications.*

5.57 *We maintain that there is no shared operational control of Mohammedi Healthcare Ltd and JMA Pharma Ltd as they have: - different services - different SOPs - Different staff - Different payrolls - Different hours - Different fit-outs - Different facias - Different signs.*

5.58 *Per Mr Mohammed Asif's submission, he has locumed during unsociable hours for a couple hours a day previously. Crucially as a locum not as an employee. Locums are not employees. Mr Mohammed Asif has also locumed at alternative pharmacies during this time. Independent pharmacy owners will generally try and help out each other in times of crises. However, crucially he does not control business operations for JMA Pharma and thus there is no reason to refuse this under regulation 31.*

5.59 *We highlight to the Committee that this is only a relocation of 190 metres, less than a 5-minute walk as described by the panel on their site visit. This is not significantly less*

accessible. There is only one road to cross which has tactile paving and a refuge island. The crossing was described as 'no trouble' for someone with impaired mobility by the Committee. The new site does not have stepped access, whereas Mohammedi Pharmacy does. There is a wide pathway through the hedgerow that Mr Wardle described. The hedgerow is not dense as the committee will be aware from their site visit. The vast majority of patients utilise the comprehensive delivery service provided by Mohammedi Pharmacy.

5.60 *We submit that Regulation 24 has been met. There is no reason to refuse this application under Regulation 31. Regulation 24 has been met. We invite the committee to grant this application*.'

Mr Wardle representing MEJ Hingley & Co. Limited t/a Hingley Pharmacy ("the Appellant")

5.61 Mr Wardle indicated that he had set out his submissions in detail in the Appeal and, in particular, paragraphs 3.24 to 3.62 and 5.1 to 5.1.22 of Annex A. He requested the Committee to consider any matter not repeated orally.

5.62 As a starting point, given that the burden of proof rests with the Applicant, it was of some concern why no-one from the Applicant company (or, indeed, JMA Pharma Ltd) was attending the hearing. The Committee might consider that one explanation may be that they did not want to attend and answer questions which would indicate a clear link between the two companies such that Regulation 31 was engaged. Mr Asif did join, and it was submitted that those answers undermined the representations made by the legal representatives as their answers materially differed from the written submissions.

5.63 Regulation 31. Mr Wardle noted that previous decisions referred to, but every application turns on its own facts.

5.64 The Committee would be well aware of regulatory test and judicial guidance [restated Regulation 31.]

5.65 Mr Wardle said that there was no issue that Regulation 31(2)(a) applied but the issue for Committee was whether Regulation 31(2)(b) applied.

5.66 The Applicant (Mohammedi Healthcare Limited) and person included in pharmaceutical list at proposed premises (JMA Pharma Ltd) were separate legal entities. However, it was necessary to consider whether there was any "commonality of ownership" between the two, and for that you had to consider all relevant matters.

5.67 Mr Wardle went on to say. '*There are several matters that are relevant here which, in my submission, mean that there is commonality of ownership between the two such that regulation 31 applies and the application must be refused:*

5.68 *Shared registered addresses for both companies and directors – 42 and 44 Longmore Road. See page 19, paragraph 4.1.33. Consider response from applicant's representative when referred to these premises. They didn't say home addresses. Why not? Suggest because they were trying to hide that fact.*

5.69 *Clear link between individuals as very close family members, even if no direct ownership link between JMA Pharma Ltd and Mohammedi Healthcare Limited directors/shareholders. Very close family – brothers and parents. Again consider why this wasn't disclosed previously in correspondence. Representative said that it was referred to, but the only reference to "family" is [as per letter of 11 September 2023, 'Notwithstanding above, family members are able to have business interests independent of each other, and any previous connection does not automatically imply a link as suggested by the objector.* '

5.70 Mr Wardle said his client had a concern but did not know the individuals, it was unclear to her what the link was. It was raised again by his client in correspondence, that there was a clear and unambiguous link. Mr Koria on behalf of the Applicant proffered to be confused by that link. This was somewhat surprising as we now all knew that these individuals were family members. Mr Wardle did not believe (on a quick scan of the correspondence) that the closeness of the individuals was referred to at all. He said that it was quite open to the Applicant to explain when this issue was raised. He accepted that the fact there was a family connection did not of itself mean that Regulation 31 would apply, but it had been deliberate not to disclose that link.

5.71 Mr Wardle said that, '*Timing. Mr Asif stated that there was no discussion between him and his (non-pharmacist) brothers before they purchased. Then said there was a discussion, but Mr Asif advised against buying it. Change of ownership went through some time in February 2023 (Mr Asif stated he didn't know the date). Relocation application made on 15th March 2023. Difficult to believe that it was not always anticipated that brothers would buy the Lloyds pharmacy and Mr Asif would apply to relocate. Submit that was always the plan*.

5.72 *Mohammed Asif, the owner and director of Mohammedi Healthcare Limited, appears to be regularly working in M Pharmacy. 4 hours a week, for 3 days a week when questioned. Not "occasional" as first stated. Not clear for how long. How likely is it that the owner and director one pharmacy company would be working in a nearby pharmacy unless there was a link between the two? Stopped a month ago, put to Mr Asif that that was because of this hearing. Doesn't matter whether locum – shared employment across companies.*

5.73 *Mr Asif said competitor of M Pharmacy. If that is correct, why does Mohammedi Stores (owned by Mohammedi (UK)) Ltd) still have signage up for Mohammedi Pharmacy (owned by Mohammedi Healthcare Limited) when one of the shareholders of Mohammedi Stores is a shareholder of JMA Pharma Limited? How likely is it that a shareholder of one pharmacy company would be advertising another pharmacy company in which they had no interest?*

5.74 *No explanation as to what the financial arrangements are between Mohammedi Healthcare Limited and JMA Pharma Limited. Why has JMA Pharma Ltd agreed to close its pharmacy if this application were to be granted? JMA Pharma Ltd presumably paid a considerable sum to purchase Lloyds (Mr Asif stated that he didn't know).*

5.75 *Mohammedi Healthcare Limited it now seems has a lease, so JMA Pharma must either be a tenant of Mohammedi Healthcare Limited or occupy under some sort of licence.*

5.76 *Regulation 31(2)(b) is designed to prevent this sort of situation. That is why judge in Pharmacy Care Plus stated need to consider "all relevant matters". Deliberate attempt by applicant to circumvent rules and that is not permitted*.

5.77 Mr Wardle concluded by saying that there was a clear and unambiguous link and that there was no discretion, the application had to be refused if Regulation 31(2)(b) applied.

5.78 Mr Wardle went on to say, '*Regulation 24 Submissions in appeal bundle. Paragraphs 3.47 to 3.53 and 5.1.19 to 5.1.22 of the appeal notice which he relies on.*

5.79 *Delivery patients – inherently unlikely this many are delivered to. Would represent approx. 20 prescriptions per hour, 8 hours per day, 6 days a week. Mr Asif stated that area was B9 and B10 postcodes and parts of Yardley. Put to him perhaps a 5-mile radius. He said perhaps a bit less.*

5.80 *Might ask why relevant, because doesn't matter how many are in a patient group. However, submit this information was put forward in an attempt to seek to minimise the footfall at the pharmacy.*

5.81 *Following on from the question, asked about advanced services. Not initially referred to by applicant in questions. Then accepted blood pressure, flu vaccination, NMS, Pharmacy First. Not referred to before. Then unclear about how many flu vaccinations, even though he is the owners and main pharmacist at Mohammedi Pharmacy.*

5.82 *Insufficient information about patient groups. If insufficient, can't be satisfied not significantly less accessible. Re accessibility, accepted not a significant distance 190m. However, important to note that over 2/3 of the pharmacy's patients don't come from the Omnia and Yardley surgeries. Why is that? Why are patients choosing to use Mohammedi Pharmacy. Applicant hasn't been able to explain. Perhaps because of high street location.*

5.83 *Have to consider not only physical barriers but also mental barriers (Community Pharmacies (UK)) JR. moving from High Street location into surgery behind railings and hedgerow set back from main road where two thirds of patients aren't registered. Mental barrier if not physical*.

5.84 Mr Wardle concluded by saying the Applicant had failed to identify the patient groups and had not provided the information when asked questions.

5.85 In response to questions, Mr Wardle said that the relevance of mental barriers was a point established at paragraph 46 in the judicial review case of R (on the application of Pharmacy Care Plus Ltd) v Family Health Services Appeals Unit [2013] EWHC 824 (Admin).

5.86 In response to the frequency of dispensed items, although it was Mr Asif's evidence that patients may receive 10 to 15 items, there was no evidence to support this. The figures did tend to be pharmacy specific.

5.87 His research showed that prior to the purchase of the pharmacy, JMA Pharma had been incorporated in May 2022 and had been a dormant company until it purchased the pharmacy in February 2023. Mr Koria confirmed that JMA Pharma only operated this one pharmacy and had no other operations.

6 Consideration

6.1 The Committee had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

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

6.3 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

6.4 As an initial point the Committee considered the issue raised by the Applicant of the appeal being vexatious in nature. The Committee noted that the only evidence of this is that the Appellant may benefit from the relocation. There appeared to be no indication of any intent by the Appellant to annoy or harass via this appeal, and, as shown by the extensive consideration carried out by the Committee, there are valid grounds upon which an appeal could have been brought. As such the Committee did not consider this claim to be in any way vexatious.

6.5 The Committee next considered Regulation 31 of the Regulations which states:

(1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.

(2) This paragraph applies where -

(a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -

(i) the premises to which the application relates, or

(ii) adjacent premises; and

(b) NHS England is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).

6.6 The Committee considered that, as the application was not a consolidation application, it must be refused if both Regulation 31(2)(a) and 31(2)(b) apply.

6.7 The Committee considered that Regulation 31(2)(a) applies as a person on the pharmaceutical list, JMA Pharma Ltd is providing pharmaceutical services from the premises to which the application relates, i.e. Yardley Green Medical Centre.

6.8 The Committee noted that this was not disputed by any of the parties to the appeal.

6.9 The Applicant indicates that the notification of withdrawal is conditional on the Applicant's relocation application being upheld after this hearing and therefore Regulation 31 does not apply to the determination of the Applicant's application on the basis that the Applicant will not relocate until such time as JMA Pharma Ltd has vacated the premises.

6.10 As at the date of this determination, there is no disagreement that JMA Pharma Ltd is listed on the pharmaceutical list as providing pharmaceutical services from the premises to which the application relates, i.e. Yardley Green Medical Centre.

6.11 The Committee was of the view that Regulation 31(2)(a) applies regardless of whether a notification of withdrawal from the pharmaceutical list has been submitted provided that a person listed on the pharmaceutical list is providing pharmaceutical services from the premises. Regulation 31(2)(a) does not refer to a point in time in the future but instead looks to the situation as it is when the decision-maker is making their decision in respect of the application.

6.12 The Committee had no evidence to suggest that there had been a submission of notification of withdrawal from the pharmaceutical list but even if such an application had been submitted, it would not have been enough to displace a finding that Regulation 31(2)(a) applies to the present application.

6.13 The Committee concluded that Regulation 31(2)(a) did apply and went on to consider whether Regulation 31(2)(b) applies.

6.14 The Committee noted that both the Applicant and the Appellant seek to rely on a case which considered the wording in a previous iteration of the Regulations that was similar to the wording of the existing Regulation 31 – (R on the application of Pharmacy Care Plus Ltd v Family Health Services Appeals Unit [2013] EWHC 824 (Admin)) (the "Judgment"). The Committee considered that this case would likely provide a guide to interpreting Regulation 31(2)(b).

6.15 In particular, both parties rely on paragraphs 34 and 35of that decision:

"*34. it will almost always be an extremely relevant consideration to know whether or not there is any connection in terms of ownership and control between the entities who carry on the existing business and who propose to carry on the proposed new business. So, for example, if an existing business was owned by Company A and the proposed*

new business was owned by Company B, and there was absolutely no connection at all in terms of ownership and control between the two of them, it would be difficult to see how they could be regarded as providing the same service, even if the services which they were going to provide were complementary to each other. In contrast, if they were both to be provided by exactly the same company, then that would also be an extremely relevant consideration going the other way.

35. But also I can well accept that there may be intermediate positions; so, for example, there may be a commonality of ownership but the owners may not be exactly the same, and it may very well be that in such cases one would have to consider things such as the nature of the respective businesses; whether or not they are going to be physically separate or separate from a business point of view; whether or not the employees would be working in both businesses, and any other relevant matters. That conclusion seems to me to be consistent with the guidance given in 2009 by the Department of Health, to which I have been referred, whereby in short, the question is said to be whether or not the primary care trust is satisfied that the Applicant has a sufficiency distinct identity and will be providing a distinct service from the already listed contractor."

6.16 The Committee considered that the Judgment constituted judicial guidance on wording that was similar to the current Regulation 31(2)(b). The Committee was of the view that this guidance indicated that the Committee could not automatically conclude that, for the purposes of Regulation 31(2)(b), the service provided by the Applicant and JMA Pharma Ltd were separate (and therefore that Regulation 31(2)(b) did not apply) simply because the Applicant and JMA Pharma Ltd were different legal entities. The Committee considered that further consideration of the ownership and control of the two entities was required, due to the statements made by the Appellant. It noted that consideration of an intermediate position could include commonality of ownership but that there are other relevant matters to consider.

6.17 The Committee noted that the application, signed on behalf of the Applicant by Mr Asif did not reveal any connection between the Applicant and JMA Pharma Ltd. Indeed, on the application, it is stated that, '*It is clear from the judicial guidance that, regardless of whether the applicant proposes to open from premises that are currently occupied by a pharmacy or adjacent to those premises, where the applicant is not connected to the existing pharmacy owner, Regulation 31 does not apply*.'

6.18 The question of a link between the Applicant and JMA Pharma Ltd was first raised by the Appellant in its response to the application by letter of 11 August 2023, signed by the Appellant's representative in which it stated:

'*In relation to the current application, there is a clear and unambiguous link between the applicant company (Mohammedi Healthcare Limited) and the company which is included in the pharmaceutical list at the proposed premises (JMA Pharma Limited). According to records held by Companies House, the position is as follows:*

> *Mohammedi (UK) Ltd operates Mohammedi Supermarket at 330-336, Green Lane, Small Heath Birmingham, B9 5DP.*
>
> *Mohammed Arshad (DOB Oct 1984) is listed in the incorporation documents for Mohammedi (UK) Ltd and later as an officer of the company in the Annual Return of 7th August 2006. All officers of the company reside/resided at 44, Longmore Road, Solihull B90 3DY.*
>
> *In 2009, Mohammedi Healthcare Ltd opened a 100 hour-contract pharmacy (Mohammedi Pharmacy) in Mohammedi Supermarket, 330-336, Green Lane, Small Heath, Birmingham, B9 5DP.*

The registered address of Mohammedi Healthcare Ltd was Pharmacy Section, 330-336, Green Lane, Small Heath, Birmingham, B9 5DP (ie the same address as Mohammedi (UK) Ltd t/a Mohammedi Supermarket).

In 2009, the sole director of Mohammedi Healthcare Ltd was Mohammed Asif (DOB Sep 1979) residing at 42, Longmore Road, Solihull B90 3DY.

From 2010 to 2012, the annual returns for Mohammedi Healthcare Limited detailed Mohammed Asif's address as 44, Longmore Road, Solihull, B90 3DY until a notice of a director's details changed was lodged at Companies House detailing a change to his residential address to 42, Longmore Road, Solihull, B90 3DY (ie next door).

In 2021, Mohammedi Healthcare Ltd acquired a 40-hour contract at 545-547, Green Lane, Small Heath, Birmingham B9 5PY, which operates as Mohammedi Pharmacy. This is the pharmacy which is the subject matter of the current relocation application.

Mohammedi Pharmacy at Mohammedi Supermarket at 326-336, Green Lane ostensibly closed down although the signage remains.

The incorporation documents of JMA Pharma Ltd detail Mohammed Arshad (DOB Oct1984) of 44, Longmore Road, Solihull, B90 3DY as a shareholder of the company. The registered address of JMA Pharma Ltd at incorporation in May 2022 was 44, Longmore Road, Solihull, B90 3DY.

The sole director of JMA Pharma Limited is listed as Junaid Mohammed of 44, Longmore Road, Solihull, B90 3DY.

In February, 2023, JMA Pharma Ltd acquired the 100-hour contract previously operated by Lloyds Pharmacy at Omnia Practice, Yardley Green Medical Centre, 73, Yardley Green Road, Bordesley Green, Birmingham B9 5PU, operating it as M Pharmacy.

In summary, therefore, the position is as follows:

Mohammedi Healthcare Ltd is applying to relocate its 40-hour contract to premises which are currently included in the pharmaceutical list in the name of JMA Pharma Ltd

Mohammed Arshad has been a director of Mohammedi (UK) Ltd which operates Mohammedi Supermarket which housed Mohammedi Healthcare Ltd t/a Mohammedi Pharmacy from 2009 to 2021. In July 2019, he resigned from Mohammedi (UK) Ltd. He was listed as a shareholder of JMA Pharma Ltd in May 2022. Mohammed Asif is a director of Mohammedi Healthcare Ltd, which operated, from 2009 to 2021, Mohammedi Pharmacy in Mohammedi Supermarket, the operating company of which Mohammed Arshad was a director.

Directors of all three companies either reside or have resided at 44, Longmore Road, Solihull, B90 3DY which was also the registered office of JMA Pharma Ltd at incorporation. Mohammed Asif of Mohammedi Healthcare Ltd still resides at the next door (semi-detatched) property, 42, Longmore Road, Solihull, B90 3DY.

A google streetview image of 42 and 44 Longmore Road, Solihull, B90 3DY is given below. As can be seen, not only are the two properties linked as semi-detached, but they share a driveway and parking area.'

6.19 In response, the Applicant by letter of 11 September 2023 stated the following:

'*The objector then goes on to stipulate: "there is a clear and unambiguous link between the applicant company (Mohammedi Healthcare Limited) and the company which is*

included in the pharmaceutical list at the proposed premises (JMA Pharma Limited)." We question the validity and scepticism of the objectors claim to have found a link between the applicant (Mohammedi Healthcare Ltd) and the pharmacy at the proposed premises (owned by JMA Pharma Ltd). We affirm that they are not connected entities, in summary:

1. They are both separate legal entities with no shared directors or shareholders (can be confirmed on companies house search and is presented below for ease)

2. Have separate registered offices

3. Separate Control- different SOP's (standard operating procedures), different decision and policy making structures….

As can be seen there are no shared directors or shareholders between the applicant (Mohammedi Healthcare Ltd) and the pharmacy operating from the proposed site (JMA Pharma Ltd). We wish to place extra emphasis on this statement as we understand that if there was a "clear and unambiguous link" between these two entities there would be a common director or shareholder, however this is not the case, nullifying the objector's bold claim of there being a "clear and unambiguous link between the applicant company (Mohammedi Healthcare Limited) and the company which is included in the pharmaceutical list at the proposed premises (JMA Pharma Limited).

The objector attempts to make a link with other companies not relevant, particularly in relation to Mohammed Arshad. Directors and shareholders of companies change over time, but the fact is the current two legal entities are unrelated as demonstrated above and evidenced at companies house. Notwithstanding above, family members are able to have business interests independent of each other, and any previous connection does not automatically imply a link as suggested by the objector. Historical shareholders from old companies have no effect on current business interests.'

6.20 The Committee noted that although the Applicant refers to it being possible for family members to have business interests independent of each other there was no acknowledgement of a familial or any other link between the directors of Mohammedi Healthcare Limited and JMA Pharma Ltd. The Applicant was required to explain why Regulation 31 had been met. The Committee considered that the Applicant must always have been aware that there was a familial relationship between the two businesses and that he was frequently working at JMA Pharma Ltd. This was not disclosed or admitted by the Applicant until it was queried by the Appellant as part of the appeal. It is unclear to the Committee the reasons why the Applicant did not include this information in its original application or the letter of 11 September 2023.

6.21 The decision letter dated 20 December 2023 and report from Birmingham and Solihull ICB granted the application simply states, '*Regulation 31 met. Regulation 31 has been satisfied as pharmaceutical services are not being provided at the same or adjacent premises*.'

6.22 The Committee noted that JMA Pharma Ltd and the Applicant were separate limited companies with separate directors and shareholders. The Applicant asserted that they had different branding, operating models and staff. The directors of both companies are brothers but that familial relationship of itself would not be sufficient to ensure that Regulation 31(2)(b) applied. The Committee considered that the Applicant was aware of the Judgment, due to it being referred to in the Application and the existence of the intermediate position explained therein. The fact that the directors are brothers is more than "*no connection at all*" and so the Committee considered that it should have been apparent to the Applicant that further explanation of this connection was required.

6.23 The Committee accepted that on the basis of Companies House information, JMA Pharma Ltd and the Applicant appeared to be legal entities with no overlap in terms of shareholders, directors or persons with significant control. However, the test as

accepted by the parties is, '*whether or not the primary care trust [superseded by the Commissioner] is satisfied that the Applicant has a sufficiency distinct identity and will be providing a distinct service from the already listed contractor.*' The lack of overlap in Companies House information contributes to the distinctiveness of the parties, but there are other factors relevant to the question of distinctiveness that need to be considered.

6.24 The Committee noted that in addition to the information put forward by the Appellant in its initial response it was indicated at the hearing that:

6.24.1 the only directors and shareholders of JMA Pharma Ltd were the brothers of Mr Asif. Mr Asif and his wife were the only directors and shareholders of the Applicant. Neither director of JMA Pharma Ltd was a pharmacist nor appeared to have any prior involvement with pharmacies.

6.24.2 Mr Asif initially said he had been unaware of his brothers' intention to purchase a competitor pharmacy a matter of a few minutes' walk from his own pharmacy. He later said that he did know but advised them not to purchase it.

6.24.3 JMA Pharma Ltd was a dormant company which had been used for only one purpose, the purchase of the Yardley Green pharmacy from Lloyds, in February of 2023. This was an arm's length transaction at, what was acknowledged by Mr Asif, a significant value.

6.24.4 Mr Asif had put in his application to relocate to the pharmacy in March of 2023 a matter of weeks after the purchase had been made and the directors of JMA Pharma Ltd had decided to relinquish the pharmacy seemingly without any recompense.

6.24.5 Mr Asif worked in the pharmacy 3 evenings a week on a regular basis until a matter of weeks before this hearing.

6.24.6 The Applicant indicated that JMA Pharma Ltd had already transferred its lease at Yardley Green Medical Centre to the Applicant and/or Mr Asif as it believed that the Applicant had been successful in its application to relocate and there was no possibility of an appeal against that decision.

6.24.7 Despite believing that the application had been successful, JMA Pharma Ltd had not submitted a notification to withdraw from a pharmaceutical list. It was not made clear why the notification had not been submitted but the lease had already been transferred. The Applicant suggested that submitting the notification would be a step to be taken at some point after the decision from this hearing was received.

6.25 The Committee considered each of the above factors. The fact that Mr Asif advised his brothers not to purchase the pharmacy led the Committee to consider that Mr Asif had been involved in the decision, at the very least his views had been sought. Whether he agreed with the purchase or not, his input into the decision was not something that would be expected in wholly distinct and unconnected entities. A business does not usually ask their competitors for their views on a new business venture.

6.26 The Committee was not persuaded that experienced businessmen such as the directors of JMA Pharma Ltd, who had previously been involved as directors in their family companies and who had paid what was described as a significant sum for their new pharmacy, would decide within a matter of weeks that they would walk away from their new pharmacy business without financial recompense, so that a company with a distinct identity could relocate to those premises. The Committee noted that this lack of compensation also appeared at odds with the suggestions that JMA Pharma Ltd was a competitor of the Applicant, as no reason was put forward as to why a competitor would relinquish their pharmacy in the absence of financial benefit. The Committee

considered that the only reasonable inference from this was that the reason for the lack of financial compensation was a connection between the two businesses.

6.27 The Committee noted that Mr Asif had been working on a regular basis in the pharmacy until immediately prior to the hearing and considered that this suggested that there could be a degree of involvement and control in the business. The Judgment specifically mentions "*whether or not the employees would be working in both businesses*" as a factor to consider in relation to evaluating the intermediate position. The Applicant stated that Mr Asif was a locum and only worked unsociable hours, however the Committee accepted the Appellant's suggestion that the exact nature of the employment is irrelevant, as he was still employed at the other pharmacy. Whilst the Committee understood that non-pharmacists can and do invest in pharmacies, the Committee did not find credible Mr Asif's explanation of his involvement in what was claimed was a competing business.

6.28 The Committee also had regard to the previous decisions in SHA/18622 and SHA/28623, due to it being raised by the Applicant. In these cases the applicants were indeed brothers and yet it was decided that Regulation 31(2)(b) did not apply. It is noted that within the decision, at one of the very paragraphs indicated by the Appellant, the Committee stated:

"*While it may be the case that where the owners of the businesses are brothers, the potential for such an arrangement to be agreed is higher, the Committee considered that, simply because the owners were brothers, and* ***absent any other information*** *suggesting that this may be the aim of the applications…*[Emphasis added]"

6.29 Consequently, the Committee viewed the Applicant's situation as distinguishable from this determination in that there was indeed other information and evidence that warranted consideration, as established above. It was not the case that there was only a familial relationship between the Applicant and JMA Pharma Ltd, as was accepted by both parties.

6.30 The Committee considered that the evidence of the two entities being of a distinct nature provided by the Applicant was stated to be differences in the following:

- legal entities;
- directors;
- registered addresses
- shareholders;
- superintendents;
- persons of significant control;
- VAT numbers;
- range of Services;
- SOPs;
- labelling procedures;
- staff;
- payrolls;
- hours;
- fit-outs;
- facias; and
- signs.

6.31 While this list of differences is long, the Committee noted that the test established in the Judgment is not merely a mathematical counting up of the number of differences against the number of similarities. Instead all of the information relevant to the issue must be considered. The Committee considered that the differences in operational style were negated by the fact that the Applicant worked at the other pharmacy and so was intimately familiar with these operations, thus they did not represent a barrier to them being operated by the same individual. The Committee does not consider that physical

differences between two locations are, of themselves, sufficient to dispel the assertion of a connection. Physical similarities would be evidence of a link but physical differences establish very little in the context of Regulation 31.

6.32 Consequently, when balancing the fact that there was not an overlap in Companies House information of the legal entities, against the factors which indicated that there was a tangible connection, the Committee was not satisfied that the Applicant had a sufficiently distinct identity and would be providing a distinct service. The contributing factors that the Committee considered was the familial relationship, the fact that Mr Asif worked at JMA Pharma Ltd, the involvement in the purchase by Mr Asif, the length of time between the purchase and the request for relocation, and the lack of financial compensation for the transfer of the lease. Consequently, it determined that the evidence indicated that it was reasonable to treat the services that the Applicant proposes to provide as part of the same service as the existing services based on the test provided in the Judgment.

6.33 The Committee considered that the Applicant's suggestion that the Commissioner would be able to ensure that two pharmacies would not be operating from the same premises was incorrect. The Committee noted that the granting of a relocation application does not require that the pharmacy has to actually relocate nor does it require the pharmacy in existence to close. If an application is granted then the Commissioner must include the Applicant in the pharmaceutical list upon receipt of a valid notice of commencement. The Committee recognised that there was a risk here that, if it granted this application, then the pharmacy could relocate and JMA Pharma Ltd might not submit a closure notice. This would result in there being two pharmacies at the same site. Given the multiple connections between the two entities the Committee considered that there would be a significant possibility of the two businesses merging into one, resulting in both businesses providing the same service but with no benefit to the patients. It was noted that this is the exact situation that the Department of Health's guidance stated that Regulation 31 was trying to restrict.

6.34 As was stated in SHA/18622 the potential for this to happen is higher where the owners of the two businesses are brothers. The Committee took into account that at the point at which the Applicant believed it had been successful and that there was no further right of appeal, the lease had been transferred, but no notification of withdrawal had been filed. The Applicant appeared to suggest that this was something JMA Pharma Ltd intended to do at some point in the future, but the Committee did not find it credible that the complex steps necessary to transfer the lease had been undertaken with the financial consequences of doing so, but the simple step of filing a Notification had been delayed.

6.35 The Committee thus determined that, on the evidence, it was satisfied that it was reasonable to treat the services that the Applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates, and the existing listed chemist premises should be treated as the same site). The Committee therefore determined that the Regulations required that the application must be refused by virtue of Regulation 31.

6.36 As the Committee had determined that the application was to be refused under Regulation 31, the Committee was not required to consider Regulation 24 in relation to the application.

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

6.37.1 confirm the Commissioner’s decision;

6.37.2 quash the Commissioner’s decision and redetermine the application;

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

6.38 In those circumstances given that the Committee had found that the application must be refused under Regulation 31, the Committee determined that the decision of the Commissioner must be quashed.

6.39 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.

6.40 The Committee noted that representations on Regulation 31 had already been made by parties to the Commissioner, and these had been circulated and seen by all parties who made representations on the application, as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 31.

6.41 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 Decision

7.1 The Committee quashes the decision of the Commissioner and redetermines the application.

7.2 The Committee concluded that it was required to refuse the application under the provisions of Regulation 31.

Committee Chair

Annex A

REF: SHA/26141

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APPEAL AGAINST BIRMINGHAM AND SOLIHULL ICB DECISION TO GRANT AN APPLICATION BY MOHAMMEDI HEALTHCARE LIMITED FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM 545-547 GREEN LANE, SMALL HEATH, BIRMINGHAM B9 5PT TO YARDLEY GREEN MEDICAL CENTRE, YARDLEY GREEN ROAD, BORDESLEY GREEN, BIRMINGHAM B9 5PU

1 The Application

By application dated 14 March 2023, Mohammedi Healthcare Limited ("the Applicant") applied to the Birmingham and Solihull ICB for a no significant change relocation from 545-547 Green Lane, Small Heath, Birmingham B9 5PT to Yardley Green Medical Centre, Yardley Green Road, Bordesley Green, Birmingham B9 5PU. In support of the application it was stated:

1.1 In response to why the application should not be refused pursuant to Regulation 31 the Applicant stated:

1.2 "There is currently a pharmacy trading from the proposed premises which is owned and operated by JMA Pharma Ltd. It is intended that this pharmacy will close immediately before the relocation takes place for which closure notice will be submitted in due course.

1.3 Regardless of the presence of this existing pharmacy, this application should not be refused pursuant to Regulation 31 for the following reasons.

1.4 [Quotes Regulation 31 in full]

1.5 For an application to be refused pursuant to Regulation 31, both 31(2)(a) and (b) must apply.

1.6 Judicial guidance in respect of 31(2)(b) is available in the case of R (on the application of Pharmacy Care Plus Ltd) v Family Health Services Appeals Unit [2013] EWHC 824 (Admin).

1.7 It is clear from the judicial guidance that, regardless of whether the applicant proposes to open from premises that are currently occupied by a pharmacy or adjacent to those premises, where the applicant is not connected to the existing pharmacy owner, Regulation 31 does not apply.

1.8 Whilst is the intention that the relocation will not take effect before the existing pharmacy closes (so in practice there will not be two pharmacies operating from these premises), Regulation 31 is not applicable in this case as the applicant and the existing pharmacy are distinct and separate legal entities with no connection.

1.9 NHS England is therefore not required to refuse the application under the provisions of Regulation 31 for these reasons."

1.10 Information in support of all no significant change applications

1.11 "For the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible.

1.12 All patient groups are able to access the new location as easily, and some patients will experience improved accessibility to Pharmaceutical Services due to where these patients access medical services.

1.13 The distance between the current and new premises is short (c0.2 miles / 300 metres) and access between the sites is straightforward.

1.14 There is a reasonable choice of Pharmaceutical Services and providers of Pharmaceutical Services within this area and this will be maintained.

1.15 By relocating to the new premises there will be no detriment to arrangements in place. The same services and opening hours will be provided in the new location as in the current location, as such there will be no change to the arrangements.

1.16 Neither the PNA nor any recent / current communication regarding pharmacy services, point to any proposed plans to alter the provision of Pharmaceutical Services in the area of the HWB. There is no evidence that by allowing this application any detriment would occur.

1.17 Patient Groups:

1.18 1. Patients that utilise the free collection & delivery service:

1.19 These patients will not be affected by the relocation as the service will continue and c90% of patients utilise this service, thus this patient group will not be disadvantaged by this relocation as this service will continue to operate and serve the same population. This is by far the largest patient group.

1.20 2. Patients that originate from GP surgeries requiring access to Pharmaceutical Services:

1.21 Patients accessing Omnia Practice and Yardley Green Medical Centre (which is co-located with the new proposed premises) will find the proposed site more accessible than the current site (see maps below). c30% of items prescribed from the current site originate from these 2 GP surgeries hence it can be determined that the new proposed site will be more accessible for patients originating from these GP surgeries (source: Pharmdata).

1.22 Patients who travel from other surgeries will have parking facilities available and will not notice a significant change in their journey as the proposed site is only a short distance away (an extra 2 minutes by car). In particular, the parking facilities at the new proposed site features a large car park including disabled bays for easier accessibility compared to limited roadside parking available at the current site (due to zig zags/pedestrian crossings and double yellow lines) which is currently an issue experienced by patients. Hence patients who access the Pharmaceutical services by car may find the proposed site to be of easier access and more beneficial as the access

to parking outweighs the extra 2 minute drive required to travel to the new proposed site. Similarly, it is worth noting that the proposed premises provides improved and easier access for disabled patients. Alongside the availability of disabled parking bays, the proposed site also features power assisted doors, wider aisles and an improved, more modern consulting room.

1.23 3. Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery:

1.24 Given the short distance between the 2 sites, the maximum additional journey for a patient (irrespective of their starting point) would be 0.2 miles (c300 metres) which equates to a 2 minute drive or 3 minute walk.

1.25 This additional 3-minute walk involves walking along a straight road, which is well-lit, wide footpath with pedestrian crossings and intermittent road barriers particularly at junctions. Hence it can be determined that this walk is viable to be completed by all types of patients and will not pose a significant disadvantage to patients accessing pharmaceutical services at the new proposed site.

1.26 Furthermore, there is still access via bus to the new proposed site. There is a bus stop opposite the new site on Hob Moor Rd where the bus service 891 runs, this is the same bus that is used to access the current site. Patients accessing the current site via the bus service 17 and 871 would get off at the stop opposite the current site then complete the 3-minute walk to the new site.

1.27 Consideration in relation to the Equality Act 2010 namely patients sharing a protected characteristic identifies no patients that would be negatively impacted as a result of this relocation.

1.28 [See map - Appendix A for Committee]

1.29 We will continue to provide exactly the same service as we currently provide at the proposed site. Access will be the same for patients as there is the same provision for parking and public transport routes. In particular the number 891 bus calls at a stop at Hob Moor Rd directly opposite the new proposed site, eliminating the need for patients who take this bus to complete the additional 3-minute walk from the current site to the new site.

1.30 The relocation is only 0.2 miles away from the existing site with improved parking facilities so will not have any negative effect on patients who access the pharmacy at its current location."

2 The Decision

The ICB considered and decided to grant the application. The decision letter dated 20 December 2023 states:

2.1 "Birmingham and Solihull ICB has considered the above application and I am writing to confirm that it has been granted. Please see the enclosed report for the full reasoning."

Actions from the Pharmacy Services Regulations Committee 11 December 2023

2.2 "The Committee have granted the following application for No Significant Change Relocation within a HWB's area.

2.3 Mohammedi Healthcare Ltd- No Significant Change Relocation – Same HWB Area Application

2.4 CAS-217044-K5T6V8

2.5 From: 545-547 Green Lane Small Heath Birmingham B9 5PT

2.6 To: Yardley Green Medical Centre Yardley Green, Road Bordesley Green Birmingham B9 5PU

2.7 Determination:

2.8 Committee granted the application as the applicant has met the requirements of the regulations listed below pertaining to a Relocation within the same Health and Wellbeing Board area.

2.9 Regulation 24(1)(a) is met.

2.10 The applicant has confirmed the relocation to the proposed premises would not be significantly less accessible to the patient groups who are accustomed to accessing pharmaceutical services at the existing premises.

2.11 Regulation 24(1)(b) is met.

2.12 Regulation 24(1)(c) is met.

2.13 Regulation 24(1)(d) is met.

2.14 Regulation 24(1)(e) is met.

2.15 Regulation 31 met.

2.16 Regulation 31 has been satisfied as pharmaceutical services are not being provided at the same or adjacent premises.

2.17 Appeal rights: No appeal rights."

3 The Appeal

In a letter dated 16 January 2024 addressed to NHS Resolution MEJ Hingley & Co Limited's Representative, Templebright LLP appealed against the ICB's decision. The grounds of appeal are:

3.1 "We act for MEJ Hingley & Co Limited which is included in the pharmaceutical list for premises trading as Hingley Pharmacy, 48-52 Yardley Green Road, Bordesley Green, Birmingham, B9 5QE and 77 Yardley Green Road, Bordesley Green, Birmingham, B9 5PU.

3.2 On behalf of our client we write to:

3.2.1 1) Appeal a decision of NHS England [sic] not to grant our client third party rights of appeal

3.2.2 2) Appeal a decision of NHS England [sic] to grant the above application The above decisions were notified to our client by letter dated 20th December 2023.

3.3 Taking each appeal in turn:

Appeal against a decision of NHS England not to grant our client third party rights of appeal

3.4 Our client is included in the pharmaceutical list for premises at 48-52 Yardley Green Road, Bordesley Green, Birmingham, B9 5QE and 77 Yardley Green Road, Bordesley Green, Birmingham, B9 5PU.

3.5 By letter dated 13th July 2023, our client was notified of a no significant change relocation application by Mohammedi Healthcare Limited from 545-547 Green Lane, Small Health, Birmingham, B9 5PT to Yardley Green Medical Centre, Yardley Green Road, Bordesley Green, Birmingham, B9 5PU. A copy of that letter and distribution list is attached to this appeal.

3.6 NHS England's letter stated that our client was being notified of the application as an "interested party" to the application.

3.7 As NHS Resolution will be aware, a no significant change relocation application is a "notifiable application" for the purposes of paragraph 18 of schedule 2 to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

3.8 By reason of paragraph 19 of schedule 2 to the Regulations, NHS England was required to notify our client of the application as a "person included in a pharmaceutical list for the area of the relevant HWB…whose interests might, in the opinion of the NHSCB, be significantly affected if the application were granted." It is of note that our client's pharmacies are located within 100 metres of the site proposed by the applicant in its no significant change relocation application.

3.9 NHS England's letter of 13th July 2023 invited our client to submit representations in respect of the application by 27th August 2023. On behalf of our client, we submitted representations to NHS England by letter dated 11th August 2023. That letter was sent by email to PCSE on the same day.

3.10 We attach a copy of our letter of 11th August 2023. The letter is 8 pages long and addresses the regulatory test which NHS England was required to apply to its determination of the no significant change relocation application.

3.11 By a letter and email from PCSE of 29th August 2023, PCSE sent to our client a 14 day circulation letter, together with correspondence received by PCSE from Boots, our client (the attached letter of 11th August 2023) and the LPC. A copy of that correspondence is attached to this letter of appeal.

3.12 The letter from PCSE dated 29th August 2023 stated that it was enclosing "written representations that we have received regarding the above application". Our client had no further comment to make and no response was sent to PCSE to the 29th August 2023 letter.

3.13 On 20th December 2023, our client received notification of a decision in respect of the relocation application, stating that the application had been granted. A copy of the 20th December 2023 letter and decision report is attached to this appeal. It is to be assumed that our client was notified of NHS England's decision to grant the application as our client is a person entitled to be so notified pursuant to paragraph 28(3)(b)(v).

3.14 The decision report stated that "no appeal rights" had been given to any third party (including our client), and the letter of 20th December 2023 did not provide any information to our client about third party rights of appeal.

3.15 Our client considers that it should have been granted third party rights of appeal against the decision to grant the relocation application since it falls within the scope of paragraph 30 of schedule 2 to the Regulations. In particular:

3.15.1 1) NHS England was required to notify our client of the application and subsequent decision and, indeed, our client was notified of the application and subsequent decision.

3.15.2 2) Our client made representations to NHS England in writing about the application

3.15.3 3) Given the content of those representations, NHS England should have been satisfied that our client's representations:

3.15.3.1a. Made a reasonable attempt to express our client's grounds for opposing the application adequately

3.15.3.2b. Raised grounds for opposing the application which did not relate to the legality or reasonableness of the PNA and were not vexatious or frivolous.

3.16 NHS England gave no reasons why our client was not afforded third party rights of appeal, and we believe that the decision not to grant our client third party rights of appeal was unlawful.

3.17 In accordance with paragraph 30(6) of schedule 2 to the Regulations, on behalf of our client we therefore seek to appeal the decision of NHS England not to grant our client third party rights of appeal.

Appeal against the decision of NHS England to grant the relocation application

3.18 Subject to NHS Resolution upholding the above appeal and granting our client third party rights of appeal against the decision by NHS England to grant the relocation application, our client's ground of appeal in relation to the relocation grant is that NHS England failed to give any, or any proper, reasons for its decision.

3.19 Our client refers to its written representations to NHS England dated 11th August 2023 and asserts that:

3.19.1 1) For the reasons given in our client's representations of 11th August 2023, regulation 31 required NHS England to refuse this application.

3.19.2 2) For the reasons given in our client's representations of 11th August 2023, the application fails to satisfy the requirements of regulation 24.

3.20 Since our client was not provided with any response from the applicant to its representations of 11th August 2023 and since NHS England's decision failed to give any reasons why our client's representations were not accepted and why the application was granted, our client has no further substantive comments to make on the merits of the application itself at this stage beyond those contained within our letter of 11th August 2023.

3.21 In conclusion, therefore, for the reasons given in our letter of 11th August 2023 and on behalf of client we consider that NHS England should have refused this application. We therefore invite NHS Resolution to uphold our client's appeals and to refuse this application.

3.22 We look forward to hearing from you."

3.23 [Enclosures:

3.23.1 Letter from PCSE to parties dated 13 July 2023. (Notifying parties of the application).

3.23.2 Copy of PCSE's Distribution list.

3.23.3 Copy of MEJ Hingley and Co Limited Representative Templebright LLP letter to PCSE dated 11 August 2023. [See 3.24 – 3.63 below].

3.23.4 Letter from PCSE to parties dated 29 August 2023. (Circulating representations on application).

3.23.5 Decision letter to parties dated 20 December 2023 with Actions from the Pharmacy Services regulations Committee 11 December 2023. [See paragraph 2 above.]]

MEJ Hingley and Co Limited Representative Templebright LLP letter to PCSE dated 11 August 2023

3.24 "I act for MEJ Hingley & Co Limited which is included in the pharmaceutical list for premises trading as Hingley Pharmacy, 48-52 Yardley Green Road, Bordesley Green, Birmingham, B9 5QE and 77 Yardley Green Road, Bordesley Green, Birmingham, B9 5PU.

3.25 On behalf of my client I write further to your letter of 13th July 2023 and in order to make representations to NHS England on the above application.

3.26 **Regulation 31**

3.27 As NHS England will be aware, it is required first to consider whether it must refuse this application by reason of regulation 31 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. Regulation 31 provides as follows:

3.28 [Quotes Regulation 31 in full]

3.29 The applicant applies to relocate its pharmacy from 545-547 Green Lane, Small Heath, Birmingham, B9 5PT to Yardley Green Medical Centre, Yardley Green Road, Bordesley Green, Birmingham, B9 5PU.

3.30 As NHS England will be aware, the applicant's proposed premises, the Yardley Green Medical Centre, are already included in the HWB's pharmaceutical list, with the NHS Chemist being JMA Pharma Limited trading as M Pharmacy.

3.31 The applicant states that JMA Pharma Limited's inclusion in the pharmaceutical list will be removed prior to the applicant proceeding with its proposed relocation (should this application be granted) but, of course, at the time that this application is being determined, JMA Pharma Limited is included in the relevant pharmaceutical list, so that regulation 31(2)(a) clearly applies. There can be no guarantee that JMA Pharma Limited will be removed from the pharmaceutical list prior to the applicant's pharmacy relocating (were this application to be granted) and no basis upon which NHS England could require the removal of JMA Pharma Limited from the pharmaceutical list.

3.32 In relation to regulation 31(2)(b), NHS England must determine whether it "*is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).*"

3.33 In its application form, the applicant refers to the judgment of Davies J in the case of R (on the application of Pharmacy Care Plus Ltd) v Family Health Services Appeals Unit [2013] EWHC 824 (Admin).

3.34 As a preliminary matter, the case of Primary Care Plus Limited related to the application of regulation 17A of the National Health Services (Pharmaceutical Services) Regulations 2005. Whilst regulation 17A or the 2005 Regulations is similar to regulation 31 of the 2013 Regulations, it is not identical.

3.35 I have set out, above, the wording of regulation 31(2)(b). In particular, NHS England will note that it must determine whether "*the premises to which the application relates and the existing listed chemist premises should be treated as the same site*". In contrast, the relevant wording in regulation 17A was whether "the premises to which the application relates and the existing listed premises should be considered as one site".

3.36 NHS England may consider that there is a material difference in whether it considers the applicant's proposed premises and the premises for which JMA Pharma Limited are included in the pharmaceutical list are to be treated as "the same site" (which is the test which applies to this application) rather than whether those premises are to be treated "as one site" (which is the test stated in regulation 17A and to which the Primary Care Plus Limited determination relates).

3.37 It is submitted that the proposed premises are clearly "the same site" (as provided for in regulation 31(2)(b)) even if they would not be considered as "one site" for the purposes of regulation 17A (as provided for in the Primary Care Plus Limited judgment).

3.38 In any event, even if the regulatory test in regulation 31 is, to all intents and purposes, the same as the regulatory test in regulation 17A, it is "reasonable to treat the service that the applicant proposes to provide as part of the same service as the existing services".

3.39 The applicant states, in its application form, relevantly as follows "It is clear from the judicial guidance that, regardless of whether the applicant proposes to open from premises that are currently occupied by a pharmacy or adjacent to those premises, where the applicant is not connected to the existing pharmacy owner, Regulation 31 does not apply."

3.40 This appears to be a reference to paragraph 35 of the judgment of Davies J in Primary Care Plus Limited. Paragraph 35 reads as follows:

"*35. But also I can well accept that there may be intermediate positions; so, for example, there may be a commonality of ownership but the owners may not be exactly the same, and it may very well be that in such cases one would have to consider things such as the nature of the respective businesses; whether or not they are going to be physically separate or separate from a business point of view; whether or not the employees would be working in both businesses, and any other relevant matters. That conclusion seems to me to be consistent with the guidance given in 2009 by the Department of Health, to which I have been referred, whereby in short, the question is said to be whether or not the primary care trust is satisfied that the applicant has a sufficiency distinct identity and will be providing a distinct service from the already listed contractor.*"

3.41 In relation to the current application, there is a clear and unambiguous link between the applicant company (Mohammedi Healthcare Limited) and the company which is included in the pharmaceutical list at the proposed premises (JMA Pharma Limited). According to records held by Companies House, the position is as follows:

3.41.1 Mohammedi (UK) Ltd operates Mohammedi Supermarket at 330-336, Green Lane, Small Heath Birmingham, B9 5DP.

3.41.2 Mohammed Arshad (DOB Oct 1984) is listed in the incorporation documents for Mohammedi (UK) Ltd and later as an officer of the company in the Annual Return of 7th August 2006. All officers of the company reside/resided at 44, Longmore Road, Solihull B90 3DY.

3.41.3 In 2009, Mohammedi Healthcare Ltd opened a 100 hour-contract pharmacy (Mohammedi Pharmacy) in Mohammedi Supermarket, 330-336, Green Lane, Small Heath, Birmingham, B9 5DP.

3.41.4 The registered address of Mohammedi Healthcare Ltd was Pharmacy Section, 330-336, Green Lane, Small Heath, Birmingham, B9 5DP (ie the same address as Mohammedi (UK) Ltd t/a Mohammedi Supermarket).

3.41.5 In 2009, the sole director of Mohammedi Healthcare Ltd was Mohammed Asif (DOB Sep 1979) residing at 42, Longmore Road, Solihull B90 3DY.

3.41.6 From 2010 to 2012, the annual returns for Mohammedi Healthcare Limited detailed Mohammed Asif's address as 44, Longmore Road, Solihull, B90 3DY until a notice of a director's details changed was lodged at Companies House detailing a change to his residential address to 42, Longmore Road, Solihull, B90 3DY (ie next door).

3.41.7 In 2021, Mohammedi Healthcare Ltd acquired a 40-hour contract at 545-547, Green Lane, Small Heath, Birmingham B9 5PY, which operates as Mohammedi Pharmacy. This is the pharmacy which is the subject matter of the current relocation application. Mohammedi Pharmacy at Mohammedi Supermarket at 326-336, Green Lane ostensibly closed down although the signage remains.

3.41.8 The incorporation documents of JMA Pharma Ltd detail Mohammed Arshad (DOB Oct 1984) of 44, Longmore Road, Solihull, B90 3DY as a shareholder of the company. The registered address of JMA Pharma Ltd at incorporation in May 2022 was 44, Longmore Road, Solihull, B90 3DY.

3.41.9 The sole director of JMA Pharma Limited is listed as Junaid Mohammed of 44, Longmore Road, Solihull, B90 3DY.

3.41.10 In February, 2023, JMA Pharma Ltd acquired the 100-hour contract previously operated by Lloyds Pharmacy at Omnia Practice, Yardley Green Medical Centre, 73, Yardley Green Road, Bordesley Green, Birmingham B9 5PU, operating it as M Pharmacy.

3.42 In summary, therefore, the position is as follows:

3.42.1 Mohammedi Healthcare Ltd is applying to relocate its 40-hour contract to premises which are currently included in the pharmaceutical list in the name of JMA Pharma Ltd.

3.42.2 Mohammed Arshad has been a director of Mohammedi (UK) Ltd which operates Mohammedi Supermarket which housed Mohammedi Healthcare Ltd t/a Mohammedi Pharmacy from 2009 to 2021. In July 2019, he resigned from Mohammedi (UK) Ltd. He was listed as a shareholder of JMA Pharma Ltd in May 2022.

3.42.3 Mohammed Asif is a director of Mohammedi Healthcare Ltd, which operated, from 2009 to 2021, Mohammedi Pharmacy in Mohammedi Supermarket, the operating company of which Mohammed Arshad was a director.

3.42.4 Directors of all three companies either reside or have resided at 44, Longmore Road, Solihull, B90 3DY which was also the registered office of JMA Pharma Ltd at incorporation. Mohammed Asif of Mohammedi Healthcare Ltd still resides at the next door (semi-detatched) property, 42, Longmore Road, Solihull, B90 3DY.

3.42.5 A google streetview image of 42 and 44 Longmore Road, Solihull, B90 3DY is given below. As can be seen, not only are the two properties linked as semi-detached, but they share a driveway and parking area.

3.43 [Photograph provided – See Appendix B for Committee]

3.44 In addition, it is understood that Mohammed Asif (the current director of the applicant company) regularly works in both Mohammedi Pharmacy and M Pharmacy.

3.45 It is therefore submitted that there is shared management of both the applicant company and the company that is included in the pharmaceutical list at the proposed premises. Both the applicant company and the company that is included in the pharmaceutical list at the proposed site share staff, including pharmacist staff, and have closely connected shareholders, officers and registered premises.

3.46 On that basis, regulation 31 applies to NHS England's determination of this application, and NHS England is required to refuse this application.

3.47 **Regulation 24(1)(a)**

3.48 Notwithstanding the matters raised above, NHS England is also required to refuse this application since it fails to meet the requirements of regulation 24.

3.49 As NHS England will be aware, it is for the applicant to demonstrate that the requirements of regulation 24 would be met by the granting of this application.

3.50 Regulation 24(1)(a) requires NHS England to determine whether "*for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible*".

3.51 The applicant has failed to provide sufficient information in is application form to satisfy NHS England in relation to the matters contained within regulation 24(1)(a).

3.52 In its application form, the applicant makes only a cursory attempt at defining the pharmacy's patient groups, and the information provided is insufficient to meet the requirements of regulation 24(1)(a). By way of example:

3.52.1 The applicant states that "30% of items prescribed from the current site originate from [Omnia Practice and Yardley Green Medical Centre]". This means that the applicant is seeking to move to GP premises from which fewer than a third of its prescriptions originate.

3.52.2 Additionally, the applicant provides no information regarding patients registered with other surgeries. For example, data from NHSBSA shows that the second largest source of prescriptions dispensed by Mohammedi Pharmacy originate from Charles Road Surgery (with 17% of total prescriptions dispensed), yet the applicant makes no mention of Charles Road Surgery at all.

3.52.3 Charles Road Surgery is located to the west of the applicant's existing premises, meaning that the proposed premises will be further away compared to the existing premises.

3.52.4 The applicant refers to access to the proposed premises by car compared to the existing premises. However, the applicant notes that there is only limited parking at the existing premises; it would therefore seem unlikely that many of the applicant pharmacy's patients access the existing premises by car so that it is not clear how relevant this information is.

3.52.5 The applicant provides no information in relation to other modes of transport that patients may use to access the existing premises from their GP surgery. For example, the applicant does not refer to patients travelling by foot or public transport at all in relation to patients accessing the pharmacy after a visit to their GP.

3.52.6 In relation to patients travelling by bus (who do not access pharmaceutical services after a visit to their GP surgery), it is clear that the existing and proposed premises are not served by the same bus routes. The existing premises are served by bus routes 17, 871 and 891. In contrast, the proposed premises are served by only route 891. Any patient using routes 17 and 871 would find the existing premises located almost opposite the bus stop, where those patients would have to walk 300 metres from the bus stop to access the proposed premises.

3.52.7 The applicant makes no mention of where the pharmacy's patients live. It states that 90% of its prescriptions are delivered, but it seems that this is unlikely to be an accurate estimate. The pharmacy dispenses an average of around 4,750 prescription forms a month. No information is provided about the delivery service, but assuming that it is provided 5 days a week, that would equate to around 200 deliveries per day, or 25 per hour for 8 hours each day, or a delivery every two minutes or so being made by the pharmacy. It seems inherently unlikely that this information is correct, and no evidence is provided in support of this assertion.

3.52.8 The applicant's application form states that it provides a number of additional pharmaceutical services: NMS, NHS flu vaccination, CPCS, hypertension case finding service and supervised consumption. The applicant provides no information regarding the patient groups that access these services.

3.52.9 In relation to access to the pharmacy by those with a disability, the existing premises already offer step-free access and are large, double-front premises. The proposed premises would therefore not appear to offer any benefit in terms of accessibility.

3.52.10 The existing premises are located within a busy parade of shops providing a range of day-to-day services. However, the applicant provides no information regarding patients who may access the existing pharmacy premises due to its highly visible "high street" location. In contrast, the proposed premises are located away from this "high street" shopping area and are within a GP surgery in premises which are set back from the road and are not easily visible to passers-by.

3.52.11 For those patients who access the existing pharmacy premises by reason of its "high street" location, the proposed premises would be significantly less accessible.

3.52.12 In order to access the proposed premises, patients who are in the vicinity of the existing premises must cross the junction with Hob Moor Road/Blake Lane. Both Hob Moor Road and Blake Lane are busy roads, and there is no pedestrian crossing facility (for example, there is no pelican or zebra crossing).

3.53 In conclusion, therefore, the application fails to meet the requirements of regulation 24(1)(a). The applicant has failed to properly and fully identify the pharmacy's patient groups and, in any event, the proposed premises are likely to be significantly less accessible for at least some of the pharmacy's patient groups.

3.54 **Regulation 24(1)(b)**

3.55 NHS England must also determine whether granting this application would "result in a significant change to the arrangements that are in place for the provision of…pharmaceutical services…in any part of the area of [the HWB]".

3.56 It is submitted that granting this application would result in a significant change in arrangements. As stated above, the applicant's pharmacy is currently located in the main shopping area of Green Lane. It is the only NHS pharmacy located within that

shopping area and is no doubt used, at least in part, by those who are visiting and using the shops and other facilities within the large parade of shops.

3.57 In contrast, the applicant is applying to relocate to premises which are within a GP surgery. Not only is this a very different location (as described above), but there are already 4 pharmacies within 50m of the GP surgery (M Pharmacy, two pharmacies operated by my client and Shelley's Pharmacy).

3.58 Even if the M Pharmacy were to close, granting this application would simply result in clustering of pharmacies within, or in close proximity to, the Yardley Green Medical Centre and would remove service provision from the "high street" location of Green Lanes.

3.59 This application would therefore result in a significant change in arrangements in place for the provision of pharmaceutical services in the HWB's area and should be refused on that basis.

3.60 **Conclusion**

3.61 In conclusion, for the reasons given above I invite NHS England to refuse this application.

3.62 I look forward to hearing from you."

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 MOHAMMEDI HEALTHCARE LTD c/o HEALTHCARE PLUS CONSULTING (THE APPLICANT)

4.1.1 "Thank you for your letter dated 25th January 2024. Please find our representations on the above appeal below.

4.1.2 Firstly, my client would like to note his disappointment in MEJ Hingley & Co Limited appealing this decision despite not having appeal rights. He believes that such an appeal is vexatious, especially when we consider that the application effectively will reduce pharmaceutical provision in an area that can be considered over-served, with 5 pharmacies within 190 metres of each other.

4.1.3 Indeed, we note that notification of the relocation was sent to 38 local contractors with only 1, MEJ Hingley & Co, raising objection to the relocation. In particular we note:

4.1.3.1 The Local Pharmaceutical Committee with all their local expertise and knowledge on patient care are supportive of the application.

4.1.3.2 Also, the experienced regulatory team at Boots had no objections to the relocation.

4.1.3.3 The ICB, with all the relevant facts in front of them, granted this relocation determining that the application should not be refused pursuant to Regulation 31, and the application had met all parts of Regulation 24.

4.1.3.4 Additionally, Shelley's Pharmacy, which is situated 30 metres from the proposed site had no objections to the relocation.

4.1.4 Much of our comments to the objections raised by the Appellant have been addressed in our letter dated 11th September 2023. We would like to re-submit these for consideration in our appeal response alongside the comments made in our original application, please find both documents appended. We would also like to add additional representation below.

4.1.5 Regulation 31 [quotes Regulation 31 in full]

4.1.6 We reiterate, for an application to be refused pursuant to Regulation 31, both 31(2)(a) and(b) must apply.

4.1.7 Addressing Regulation 31 (2)(a) We repeat:

4.1.8 “There is currently a pharmacy trading from the proposed premises which is owned and operated by JMA Pharma Ltd. It is intended that this pharmacy will close immediately before the relocation takes place for which a closure notice will be submitted in due course.

4.1.9 So, in practice there will not be two pharmacies operating from these premises, we believe there are reasonable measures in place to guarantee that JMA Pharma Ltd will be removed from the pharmaceutical list prior to the applicant’s pharmacy relocating. In any event NHSE would have to approve the Notice of Commencement (NOC) for Mohammedi Healthcare Ltd, assuming relocation is approved, and the date cannot be before the closure date of JMA Pharma Ltd, therefore NHSE would be able to ensure that two pharmacies would not be operating from the same premises.”

4.1.10 We also append a letter from JMA Pharma Ltd confirming that they will submit closure notice to close their pharmacy at 73 Yardley Green Road, Birmingham, B9 5PU, should this appeal be upheld.

4.1.11 Addressing Regulation 31 (2)(b) We repeat:

4.1.12 “Judicial guidance in respect of 31(2)(b) is available in the case of R (on the application of Pharmacy Care Plus Ltd) v Family Health Services Appeals Unit [2013] EWHC 824 (Admin).

4.1.13 It is clear from the judicial guidance that, regardless of whether the applicant proposes to open from premises that are currently occupied by a pharmacy or adjacent to those premises, where the applicant is not connected to the existing pharmacy owner, Regulation 31 does not apply.”

4.1.14 The Appellant raises the relevance of this particular case under the new regulations and proceeds to argue that the wording: “treated as the same site” and “considered as one site” are materially different statements. Such an observation is tenuous at best.

4.1.15 Regardless, this decision is highly relevant under the 2013 regulations and has been upheld numerous times by the appeal unit. The Applicant is aware of at least three appeals cases where the Pharmacy Care Plus Ltd v Family Health Services Appeals Unit decision has been upheld under the 2013 Regulations:

4.1.15.1SHA/19964 (2019)

4.1.15.2SHA/24622 (2021)

4.1.15.3SHA/24623 (2021)

4.1.16 We have attached SHA/24622 and SHA/24623 for the benefit of the appeals unit.

4.1.17 SHA/24622

4.1.18 This relocation is a very similar situation to what is being argued: where a pharmacy relocation is being proposed into a unit which a pharmacy occupies but will close before the relocation takes place.

4.1.19 We invite the Committee to read the decision in full, but highlight pg.17 in particular:

"5.7 …Regulation 31(2)(b) does not apply as the Applicant does not have any connection with Denmark Street Healthcare LLP, who currently operate a pharmacy from the proposed site.

5.8 In this case, the Committee noted that Denmark Street Healthcare LLP provide pharmaceutical services at the proposed site. The Committee also noted the statements from the Applicant that Denmark Street Healthcare LLP will submit a notification to withdraw from the pharmaceutical list if the extant application is granted.

5.13 The Applicant has stated that L Rowland and Co (Retail) Ltd have no connection to Denmark Street Healthcare LLP either in terms of ownership or control and that there are no shared directors, shareholders or employees between the two companies.

5.14 The Applicant refers to guidance from a court case: R (on the application of Pharmacy Care Plus Ltd) v Family Health Services Appeals Unit [2013] EWHC 824 (admin).

5.15 The Committee noted that NHS England, in its decision, had stated that "Regulation 31(2)(c) would not apply as the applicant states that there are no legal or business links between the applicant and the existing pharmacy at the proposed site." The Committee noted that whilst NHS England had quoted a regulation which does not exist it had concluded that Regulation 31 did not apply to this application.

5.16 No information has been received by the Committee that suggests that there is any connection between L Rowland & Co (Retail) Ltd and Denmark Street Healthcare LLP. Based on the information before it, the Committee determined that it was not required to refuse the application under the provisions of Regulation 31."

4.1.20 We note that in this case NHS England had determined that Regulation 31 did not apply, and this was upheld by the Appeals Committee.

4.1.21 SHA/24623

4.1.22 Again, this relocation is a very similar situation to what is being argued: where a pharmacy relocation is being proposed into a unit which a pharmacy occupies but will close before the relocation takes place.

4.1.23 We invite the Committee to read the decision in full, but highlight pg.34 in particular:

6.6 The Committee noted the Applicant, in its application form, states that "there is currently a pharmacy trading from the proposed premises which is owned and operated by Day Lewis PLC. It is intended that this pharmacy will close immediately before the relocation takes place." The Committee therefore went on to consider Regulation 31(2)(b). 6.7 The Applicant also, in its application form, refers to judicial guidance in respect of 31(2)(b) from court case: R (on the application of Pharmacy Care Plus Ltd) v Family Health

Services Appeals Unit [2013] EWHC 824 (Admin). The Applicant states that "It is clear from the judicial guidance that, regardless of whether the applicant proposes to open from premises that are currently occupied by a pharmacy or adjacent to those premises, where the applicant is not connected to the existing pharmacy owner, Regulation 31 does not apply."

6.8 The Applicant further states that "there is absolutely no connection in terms of ownership or control between L Rowland & Co (Retail) Ltd, and the existing occupier, Day Lewis PLC. The companies have no shared directors, shareholders, employees, premises or any other features that might lead to the conclusion they are connected." The Committee noted that this had not been disputed by any party and no information had been received by the Committee to suggest otherwise.

6.9 The Committee noted that NHS England, in its decision states it was "assured it would be unlikely that the 2 pharmacies would both operate from the same premises and there does not appear to be any reason to treat the services of the Applicant as the same as those of the pharmacy at the proposed location." NHS England was satisfied that Regulation 31 did not require the application to be refused.

6.10 The Committee noted that no party had sought to argue that Regulation 31 required it to refuse the application, therefore based on the information provided, it determined that it was not required to refuse the application under the provisions of Regulation 31.

4.1.24 Again, we note that in this case NHS England had determined that Regulation 31 did not apply, and this was also upheld by the Appeals Committee.

4.1.25 It is clear that the determination of similar applications not being refused under the provision of Regulation 31 by NHS England, are upheld by the Appeals Committee and has thus set a precedent.

4.1.26 One can only assume that this case has also been upheld on numerous appeals decisions prior to 2019 and on applications that do not go to appeal, however this is something that ourselves and our client are not privy to. It is clear that the ruling in Pharmacy Care Plus Ltd v Family Health Services Appeals Unit [2013] is relevant.

4.1.27 We note that the Pharmacy Care Plus Ltd v Family Health Services Appeals Unit [2013] decision is contingent on connection of ownership and control of the relevant companies.

4.1.28 We repeat that Mohammedi Healthcare Limited and JMA Pharma Limited are:

4.1.28.1 "They are both separate legal entities with no shared directors or shareholders (can be confirmed on companies house search and is presented below for ease)

4.1.28.2 Have separate registered offices (can be confirmed on companies house search and shown below)

4.1.28.3 Separate Control- different SOP's (standard operating procedures), different decision and policy making structures

	Mohammedi Healthcare Ltd (see Appendix 1)	JMA Pharma Ltd (see Appendix 2)
Company Registration Number	06882277	14144614
Officers/Directors	Mohammed Asif	Junaid Mohammed Arif

Shareholders / Persons with significant control	Mohammed Asif Rizwana Rabani	Junaid Mohammed Arif Mohammed Arshad
Registered Addresses	545-547 Green Lane, Small Heath, Birmingham, United Kingdom, B9 5PT	M Pharmacy Yardley Green Medical Centre, Yardley Green Road, Birmingham, United Kingdom, B9 5PU

4.1.29 As can be seen there are no shared directors or shareholders between the applicant (Mohammedi Healthcare Ltd) and the pharmacy operating from the proposed site (JMA Pharma Ltd)."

4.1.30 We also highlight that both entities have different superintendents and different VAT numbers.

4.1.31 We note that The Appellant, again, uses misleading language proclaiming there to be a "clear and unambiguous link" between the two entities.

4.1.32 Despite The Appellant's explanation being highly confusing and convoluted, for which we still do not understand the point that is being made, this supposed "unambiguous link" appears to relate to directors' service address's from over a decade ago.

4.1.33 We understand that The Appellant is represented by a solicitor, Mr Wardle. As they will be aware, directors service addresses can simply be a place where correspondence can be sent to individuals, and not their personal address in order to respect privacy. We submit that it is highly probable that Mr Wardle's law firm allows clients to input Temple Bright LLP offices as their registered service address, and yet such clients would, in the main, be regarded as completely separate entities with no shared management or control. Clearly, addresses are an insufficient barometer of determining control or ownership of a company.

4.1.34 Additionally, as highlighted in previous submitted comments, Mohammed Asif has locumed at M Pharmacy during critical periods of manpower crises during unsociable hours. We stress that this is as a locum and not an employee, and this is understandable given his position as a nearby pharmacist and ability to work shifts at late notice. We highlight that he has his own indemnity insurance as a locum and is remunerated as such.

4.1.35 We maintain that there is no link between ownership and control of Mohammedi Healthcare Limited and JMA Pharma Limited. Thus, the conditions set out in Pharmacy Care Plus Ltd v Family Health Services Appeals Unit [2013] have been met, and hence Regulation 31(2)(b) has not been met. Thus Regulation 31(1)(b) is not applicable and this relocation application should not be rejected pursuant to Regulation 31.

4.1.36 We also append a letter from Mohammedi Healthcare Limited's Chartered Accountants confirming that there is no link between Mohammedi Healthcare Limited and JMA Pharma Limited.

4.1.37 Regulation 24

4.1.38 We believe that all parts of regulation 24 have been met through the points made in the original application, and the comments made on MEJ Hingley & Co Limited's original objection.

4.1.39 We highlight that the relocation is a mere 190 metres, with one road crossing featuring: dropped kerbs; tactile paving; a refuge island; guard rails; and a yellow directional bollard.

4.1.40 The proposed site features a large power assisted door, step free access, and disabled toilet access.

4.1.41 It is clear that the proposed site is not significantly less accessible and in fact can be considered more accessible.

4.1.42 There will not be a significant change in arrangements that are in place as the relocation will simply be replacing a pharmacy at the proposed site.

4.1.43 Thus Regulation 24 has been met in all parts.

4.1.44 Again, we conclude that the proposed location will not be significantly less accessible; and will actually be more accessible to large number of patients, given the very short distance from the current site.

4.1.45 We also conclude that there is no shared ownership or control between JMA Pharma Limited and Mohammedi Healthcare Limited.

4.1.46 Hence, regulation 24 & 31 have been met in full and this application should be upheld."

Copy letter from Healthcare Plus Consulting Ltd to the Commissioner / NHS England regarding the original application

4.1.47 "Thank you for forwarding representations made by interested parties. It should be noted that the only contractor that has raised significant objections is MEJ Hingley &Co Limited represented by Temple Bright, so our response is predominantly based on their comments.

4.1.48 It should be noted that no other contractor has objected to this application, given the numerous pharmacies in the area and the LPC who understand local pharmaceutical provision are in fact supportive of this application.

4.1.49 With regard to comments made by Temple Bright on behalf of their client MEJ Hingley & Co Limited, we wish to respond to these comments to provide further clarity and correction (where necessary) to the asserted points made. Below are our responses to the comments made by Temple Bright (the objector):

4.1.50 The objector states: "The applicant states that JMA Pharma Limited's inclusion in the pharmaceutical list will be removed prior to the applicant proceeding with its proposed relocation (should this application be granted) but, of course, at the time that this application is being determined, JMA Pharma Limited is included in the relevant pharmaceutical list, so that regulation 31(2)(a) clearly applies. There can be no guarantee that JMA Pharma Limited will be removed from the pharmaceutical list prior to the applicant's pharmacy relocating (were this application to be granted) and no basis upon which NHS England could require the removal of JMA Pharma Limited from the pharmaceutical list."

4.1.51 There is currently a pharmacy trading from the proposed premises which is owned and operated by JMA Pharma Ltd. It is intended that this pharmacy will close immediately before the relocation takes place for which a closure notice will be submitted in due course.

4.1.52 So in practice there will not be two pharmacies operating from these premises, we believe there are reasonable measures in place to guarantee that JMA Pharma Ltd will be removed from the pharmaceutical list prior to the applicant's pharmacy relocating. In any event NHSE would have to approve the Notice of Commencement (NOC) for Mohammedi Healthcare Ltd, assuming relocation is approved, and the date cannot be before the closure date of JMA Pharma

Ltd, therefore NHSE would be able to ensure that two pharmacies would not be operating from the same premises.

4.1.53 The objector then goes on to stipulate: “there is a clear and unambiguous link between the applicant company (Mohammedi Healthcare Limited) and the company which is included in the pharmaceutical list at the proposed premises (JMA Pharma Limited).” We question the validity and scepticism of the objectors claim to have found a link between the applicant (Mohammedi Healthcare Ltd) and the pharmacy at the proposed premises (owned by JMA Pharma Ltd). We affirm that they are not connected entities, in summary:

4.1.53.1 They are both separate legal entities with no shared directors or shareholders (can be confirmed on companies house search and is presented below for ease)

4.1.53.2 Have separate registered offices (can be confirmed on companies house search and shown below)

4.1.53.3 Separate Control- different SOP’s (standard operating procedures), different decision and policy making structures

	Mohammedi Healthcare Ltd (see Appendix 1)	JMA Pharma Ltd (see Appendix 2)
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Registered Addresses	545-547 Green Lane, Small Heath, Birmingham, United Kingdom, B9 5PT	M Pharmacy Yardley Green Medical Centre, Yardley Green Road, Birmingham, United Kingdom, B9 5PU

4.1.54 [*See Appendices 1 and 2 for Companies House Screenshots confirming this table] [Appendix C and D for Committee]

4.1.55 As can be seen there are no shared directors or shareholders between the applicant (Mohammedi Healthcare Ltd) and the pharmacy operating from the proposed site (JMA Pharma Ltd). We wish to place extra emphasis on this statement as we understand that if there was a “clear and unambiguous link” between these two entities there would be a common director or shareholder, however this is not the case, nullifying the objector’s bold claim of there being a “clear and unambiguous link between the applicant company (Mohammedi Healthcare Limited) and the company which is included in the pharmaceutical list at the proposed premises (JMA Pharma Limited).”

4.1.56 The objector attempts to make a link with other companies not relevant, particularly in relation to Mohammed Arshad. Directors and shareholders of companies change over time, but the fact is the current two legal entities are unrelated as demonstrated above and evidenced at companies house. Notwithstanding above, family members are able to have business interests independent of each other, and any previous connection does not automatically imply a link as suggested by the objector. Historical shareholders from old companies have no effect on current business interests.

4.1.57 The objector also makes comment regarding shared management and employees stating that Mohammed Asif works in both the current site and the pharmacy operated by JMA Pharma Ltd at the proposed site. As a pharmacy business owner and director of Mohammedi Healthcare Ltd, Mohammed Asif appreciates the severity of the manpower crisis being currently experienced

within the pharmacy sector and the difficulties it creates to maintaining patient care through upholding accessibility to pharmaceutical services. He therefore works in the pharmacy operated by JMA Pharma Ltd (M Pharmacy) at the proposed site as a self-employed locum during unsociable hours to help with staff shortages in order to uphold access to pharmaceutical services for the local community. M Pharmacy is also a 100 hour contract and Mohammedi Pharmacy is a 40 hour contract, so it is understandable why Mohammed Asif locums at M Pharmacy during the evening, particularly in a time where a national manpower shortage is being experienced. We do not believe Mohammed Asif's current situation of working as a locum in the evening in M Pharmacy is a claim that Mohammedi Healthcare Ltd and JMA Pharma Ltd share staff and as a summary of our points and counter arguments stated above: we do not believe that this relocation application fails to meet the requirements of Regulation 31.

4.1.58 In regards to Regulation 24(1)(a), the objector says that: "The applicant states that "30% of items prescribed from the current site originate from [Omnia Practice and Yardley Green Medical Centre]". This means that the applicant is seeking to move to GP premises from which fewer than a third of its prescriptions originate."

4.1.59 We find the above point to be irrelevant to the claim of this application failing Regulation 24, as stipulated by the objector. As can be seen from the below map, for patients who do not access pharmaceutical services after a visit to the GP (Omnia Practice and Yardley Green Medical Centre), the maximum additional walk is 3 minutes or 190m (door to door using pedestrian entrance), which is not a significant change in accessibility- particularly given the simple nature of the walk as described on the original application. Previous distance of c300m quoted was based on postcode to postcode distance whereas, the distance is actually far shorter at c190m when plotted door to door. For ease as quoted in our application: "This additional 3-minute walk involves walking along a straight road, which is well-lit, wide footpath with pedestrian crossings and intermittent road barriers particularly at junctions." We also believe it is important to reiterate that c90% of prescriptions are delivered so there are very few people who would have to complete this additional 3- minute walk anyway and a proportion of those patients may live closer to the proposed site then the current site, hence this relocation would actually provide an improvement in accessibility for these patients.

4.1.60 [See map – Appendix E for Committee]

4.1.61 There is a pedestrian entrance (consisting of a long, small incline ramp) where the route of the distance plotter shortcuts the main entrance for cars on the map. This pedestrian entrance is suitable for all patients to use, irrespective of if their mobility is impaired, and takes them directly to the store front of the proposed premises.

4.1.62 Furthermore, the objector makes reference to the crossing of the junction with Hob Moor Road/Blake Lane (green triangle on the above map) stating: "In order to access the proposed premises, patients who are in the vicinity of the existing premises must cross the junction with Hob Moor Road/Blake Lane. Both Hob Moor Road and Blake Lane are busy roads, and there is no pedestrian crossing facility (for example, there is no pelican or zebra crossing)."

4.1.63 As can be seen from the below picture of this junction, there are many typical crossing features present at this junction to ensure safety and viability of all patients being able to cross this junction successfully and safely. These features include; dropped kerbs with tactile paving for people who are visually impaired , a refuge island (which narrows the road, reducing the speed of

oncoming vehicles), guard rails on both sides of the junction and a bollard with a left arrow on the refuge to remind motorists to keep left. We deem the numerous safety features of this crossing to be sufficient and not negatively impact any patient's accessibility when crossing this junction in order to access the proposed premises.

4.1.64 These features will have been put in place by the local authority to support crossing the road and recognising people would cross this road regularly as part of their daily lives.

4.1.65 [See photograph – Appendix E for Committee]

4.1.66 Moreover, the objector makes a point of this relocation having an effect on patients who access the current premises after a visit to Charles Road Surgery, stating: "Charles Road Surgery is located to the west of the applicant's existing premises, meaning that the proposed premises will be further away compared to the existing premises."

4.1.67 As is evident from the below map, patients who travel on foot from Charles Road Surgery to the current site (red triangle) are currently walking 0.7 miles (or approx.1130 metres) to access pharmaceutical services. The location of the proposed premises adds a further 190 metres to their walk, which although further away, is not a significant additional distance and thus does not affect a patient's accessibility when accessing pharmaceutical services. Additionally, this particular group of patients walk past a pharmacy (Hustan's Chemist) on the way to the current and proposed site.

4.1.68 It should also be noted that patients from the Omnia & Yardley Green practice (c30% of items) will have significantly improved access at the proposed site.

4.1.69 [See map – Appendix E for Committee]

4.1.70 Similarly, for patients who travel by car from Charles Road Surgery to the current site, the proposed site offers improved accessibility to car parking. The proposed site features 55 parking spaces, 5 of which are disabled bays. This is a significant improvement to the car parking facilities at the current site (roadside parking only with no designated disabled parking) which as highlighted in the original application is an inherent issue as stated by patients of the pharmacy.

4.1.71 Regarding access to the proposed site via bus the objector makes the point: "In relation to patients travelling by bus (who do not access pharmaceutical services after a visit to their GP surgery), it is clear that the existing and proposed premises are not served by the same bus routes. The existing premises are served by bus routes 17, 871 and 891. In contrast, the proposed premises are served by only route 891. Any patient using routes 17 and 871 would find the existing premises located almost opposite the bus stop, where those patients would have to walk 300 metres from the bus stop to access the proposed premises."

4.1.72 As of 08/09/23 the current site is served by bus routes 17 and 891 via the Hob Moor Rd stop on Green Lane. This bus stop is c50m away from the current site and as can be seen from the below image, involves negotiating a busy stretch of the road where it is common for large vehicles to park on the footpath, minimising the walking area available. We believe this to be important as it indicates that the few patients who commonly access the current site via bus are diligent of the local terrain and are capable to complete this walk to the current site among the hazards surrounding this bus stop. From this we conclude it is viable for this group of patients to complete the additional 190m walk to the proposed premises which is along much more friendly terrain as

aforementioned and that the changes in how patients will access the proposed premises via bus will not cause a significant effect to accessibility. For clarity, the additional walk will only affect patients who access the current site via bus route 17, as there is a stop directly opposite the proposed premises which facilitates bus route 891 and is a few metres way from a zebra crossing, ensuring safe access for all patients to the proposed premises. Less than 5 patients currently access services by bus, which is the least used mode of transport for current patients.

4.1.73 [See photograph – Appendix E for Committee]

4.1.74 Following on, the objector questions the number of deliveries the pharmacy at the current site (Mohammedi Pharmacy) does stating: “The pharmacy dispenses an average of around 4,750 prescription forms a month. No information is provided about the delivery service, but assuming that it is provided 5 days a week, that would equate to around 200 deliveries per day, or 25 per hour for 8 hours each day, or a delivery every two minutes or so being made by the pharmacy. It seems inherently unlikely that this information is correct, and no evidence is provided in support of this assertion.”

4.1.75 There is currently one full time delivery driver working at the current pharmacy who works 9 hours on each day Monday to Friday and often on Saturday mornings. It is worth noting that this delivery driver is also accompanied by another member of staff who helps to organise and fulfil each delivery, resulting in a high efficiency and work rate. Considering this information, we dispute the objectors numbers and do not agree with the objector’s assertion of our figures for deliveries being “inherently unlikely”.

4.1.76 The objector has incorrectly assumed that one prescription form is delivered to one patient at one address. However, as NHSE will be aware, this is often not the case as patients who get their prescriptions delivered who tend to have chronic illnesses and/or elderly hence struggle to leave the house to access pharmaceutical services. These patients would have multiple items across multiple forms delivered to the same address. Given the lengthy hours worked by the delivery driver coupled with the fact that some patients receive multiple forms we maintain that 90% of prescription forms from the current site (Mohammedi Pharmacy) are in fact delivered & this statement is wholly accurate.

4.1.77 Moreover, the objector claims that: “In relation to access to the pharmacy by those with a disability, the existing premises already offer step-free access and are large, double-front premises. The proposed premises would therefore not appear to offer any benefit in terms of accessibility.”

4.1.78 As per our original application, we insist that disability access would greatly improve at the proposed site, contrary to what the objector believes. At the current site, a member of staff has to typically assist patients with impaired mobility when entering the pharmacy (typically by holding the door open). The proposed site features a large power assisted door, step free access and access to a disabled toilet nullifying the need for a member of staff to assist them all whilst providing these patients with autonomy and easier access upon entering the pharmacy. We believe this to be a large benefit for patients and enable this particular group of patients easier access to pharmaceutical services.

4.1.79 The objector stipulates that: “the proposed premises are located away from this “high street” shopping area and are within a GP surgery in premises which are set back from the road and are not easily visible to passers-by.”

4.1.80 We do not believe that the current site is set on a “high street shopping area”, given the majority, if not all, of the shops are small businesses (largely family run) and include several empty, derelict units (see both image below) which would otherwise not be present on a traditional “high street” for all intents and purposes. We also deem that the proposed premises is located in the same area as the current site given there is only a 190m distance between them (from door to door and following the footpath).

4.1.81 [See photograph – Appendix E for Committee]

4.1.82 We hope our points and counter arguments mentioned above provides clarity and showcases our belief and confidence as to why we think this relocation application meets the requirements of Regulation 24(1)(a).

4.1.83 In regards to Regulation 24(1)(b), the objector states: “Even if the M Pharmacy were to close, granting this application would simply result in clustering of pharmacies within, or in close proximity to, the Yardley Green Medical Centre and would remove service provision from the “high street” location of Green Lanes.”

4.1.84 We deem this to be a weak argument towards as to why this relocation application fails to meet the requirements of Regulation(24)(1)(b) as it is not relevant given granting this application would not result in a significant change to the arrangements that are in place for the provision of pharmaceutical services in any part of the HWB as explained in the points mentioned above and in our original application, given there are numerous pharmacies within the area. Given the extremely short distance of this relocation, it is difficult to see how this would leave a gap in provision, also given the fact that Shelley’s pharmacy is also located close by and have not objected.

4.1.85 Conclusion

4.1.86 In conclusion we believe the application does meet the requirements of Regulation 24(1)(a), Regulation(24)(1)(b) and Regulation 31 and should be granted. Evidence has been provided that the 2 entities are not linked.

4.1.87 It should also be noted that the LPC, who understand requirements of pharmaceutical provision at local level were supportive of this relocation and no other contractor (there are 10 other contractors under a mile from the proposed site according to NHSE) made comments, which logically implies they have no objection to this relocation application in line with the NHS Regulations.

4.1.88 It is clear that regardless of how patient groups are defined, and regardless of how these patients access the existing pharmacy (by foot/car or bus) or utilise the extensive free delivery service; the proposed location will not be significantly less accessible, given the short distance of c190m between the 2 sites.

4.1.89 We invite NHS England [sic] to approve this application as all parts of Regulation 24 & 31 are met. We look forward to hearing further in due course.”

4.1.90 [Enclosures:

4.1.91 Copy of application form dated 14 March 2023 (as at paragraph 1 above);

4.1.92 Letter from J M A Pharma Ltd t/a A M Pharmacy to Primary Care Appeals, dated 12 February 2024;

4.1.92.1"I am director and shareholder of JMA Pharma Ltd, who operate M Pharmacy at Yardley Green Medical Centre, Yardley Green Road, Bordesley Green, Birmingham, B9 5PU.

4.1.92.2I can confirm that should the above relocation be granted, that JMA Pharma Ltd will submit a closure notice for M Pharmacy to NHSE and follow all proper procedures in doing so.

4.1.92.3I can confirm that there will not be another pharmacy occupying the current site of M Pharmacy, until we have fully closed in the eyes of NHSE and left the premises."

4.1.93 Letter from Javed & Co Chartered Accountants to Primary Care Appeals, dated 12 February 2024;

4.1.93.1"We have acted for Mohammedi Healthcare Limited for over 10 years and confirm that there is no shared control / ownership between Mohammedi Healthcare Limited and JMA Pharma Limited.

4.1.93.2Please do not hesitate to contact us if you require any further information."

4.1.94 Copy of SHA/24622 dated 11 November 2021; [Appendix F for Committee]

4.1.95 Copy of SHA/24623 dated 18 November 2021. [Appendix G for Committee]]

5 Observations on representations

This is a summary of observations received by NHS Resolution in response to the representations received on appeal.

5.1 TEMPLEBRIGHT LLP REPRESENTING MEJ HINGLEY & CO LIMITED (THE APPELLANT)

5.1.1 "I continue to act for MEJ Hingley & Co Limited. On behalf of my client I write further to your letter of 28th February 2024 and in order to respond to representations from the applicant on my client's appeal.

5.1.2 As a preliminary matter, the applicant's representative refers to its letter to NHS England of 11th September 2023. For the avoidance of doubt, my client was not provided with a copy of that letter, and so did not have the opportunity to address the matters raised in that letter in its letter of appeal.

5.1.3 Taking each of the matters raised by the applicant's representative in turn, my client comments as follows.

Representations from other parties

5.1.4 It is, of course, irrelevant whether any other persons notified of the application submitted representations or appealed the decision. NHS Resolution, as the appellate body, has received a valid appeal against NHS England's decision and must determine the application *de novo*. It can play no part in NHS Resolution's determination that other pharmacies either did not submit representations on the application or have not appealed the decision.

Regulation 31(2)(a)

5.1.5 As a matter of fact, it is beyond argument that the applicant has applied for inclusion in the pharmaceutical list for premises which are currently included in

the pharmaceutical list, such that 31(2)(a) must apply to NHS Resolution's determination of this application.

5.1.6 Any stated intention of JMA Pharma Limited that it "will submit a closure notice to close their pharmacy" should the relocation application be granted is not legally binding on any party. Notwithstanding its stated intention, it would be perfectly open to JMA Pharma Limited not to submit a closure notice should this application be granted and there would be nothing that NHS England could do in order to force JMA Pharma Limited to close.

5.1.7 In relation to the notice of commencement, as NHS Resolution will be aware, it is simply wrong of the applicant's representative to assert that NHS England has to "approve" the Notice of Commencement, and could, therefore, in some way refuse to include the applicant in its pharmaceutical list should this application be granted. The effect of the regulations is that NHS England must include the applicant in the pharmaceutical list if its application is granted and if a valid notice of commencement is, thereafter, submitted by the applicant. That would be the case even if JMA Pharma Limited has not followed through on its stated intention to close its pharmacy before the notice of commencement takes effect.

Regulation 31(2)(b)

5.1.8 In relation to regulation 31(2)(b), I have set out, below, an extract from the judgment of HHJ Davies in the Pharmacy Care Plus case.

> *33. I have gone into paragraph 5.9 in some detail because, in the acknowledgement of service, it was suggested by the defendant that this was actually a reference only to the connection in terms of the services being provided or proposed to be provided by the existing and proposed new pharmacy. But when that suggestion was challenged by the claimant, the evidence submitted by the defendant after permission was granted included a statement from a Ms Lisa Hughes, who is the Appeals Manager of the Family Health Services Appeal Unit, and who is responsible for oversights of the functions delegated to the authority in relation to appeals. What she says is that the position so far as the appeal committee is concerned is not that the question is wholly dependent on the manner of service delivery; and that instead, the decision is made in the light of all the information put before it by the parties which is relevant to that question, which includes the manner of service delivery, which she accepts may be a relevant factor for consideration, but which also includes the issue of any connection between the respective providers, which she also accepts would be a relevant factor for consideration.*
>
> *34. So far as the proper construction of Regulation 17A is concerned, in my judgment Ms Hughes is obviously right when she says that it is necessary for the decision maker to consider all information relevant to the issues which need to be considered when reaching a decision on paragraph 17A(b). It is clear, and I accept Mr Fraser Campbell's submission to this effect, that it will almost always be an extremely relevant consideration to know whether or not there is any connection in terms of ownership and control between the entities who carry on the existing business and who propose to carry on the proposed new business. So, for example, if an existing business was owned by Company A and the proposed new business was owned by Company B, and there was absolutely no connection at all in terms of ownership and control between the two of them, it would be difficult to see how they could be regarded as providing the same service, even if the services which they were going to provide were complementary to*

each other. In contrast, if they were both to be provided by exactly the same company, then that would also be an extremely relevant consideration going the other way.

35. But also I can well accept that there may be intermediate positions; so, for example, there may be a commonality of ownership but the owners may not be exactly the same, and it may very well be that in such cases one would have to consider things such as the nature of the respective businesses; whether or not they are going to be physically separate or separate from a business point of view; whether or not the employees would be working in both businesses, and any other relevant matters. That conclusion seems to me to be consistent with the guidance given in 2009 by the Department of Health, to which I have been referred, whereby in short, the question is said to be whether or not the primary care trust is satisfied that the applicant has a sufficiency distinct identity and will be providing a distinct service from the already listed contractor.

5.1.9 It is clear from the above that the following are relevant matters when applying regulation 31:

5.1.9.1 The manner of service delivery

5.1.9.2 The issue of any connection between the respective providers

5.1.9.3 Whether or not there is any connection in terms of ownership and control between the entities who carry on the existing business and who proposed to carry on the proposed new business

5.1.9.4 There may be commonality of ownership but the owners may not be exactly the same

5.1.9.5 The nature of the respective businesses

5.1.9.6 Whether or not they are going to be physically separate or separate from a business point of view

5.1.9.7 Whether or not the employees would be working in both businesses

5.1.9.8 Any other relevant matters

5.1.10 The decision maker must consider all information relevant to the issues which need to be considered when reaching a decision. However, the question is not simply one of whether the two companies have the same directors or the same shareholders. That is because, of course, an applicant may set up a business – which has a close connection with an incumbent pharmacy – in a way which is intended to deliberately circumvent the protections contained within regulation 31, for example by nominating different directors or having shares held by an apparently independent third party.

5.1.11 It is for that reason that HHJ Davies makes it clear that the decision-maker must look at all relevant matters in the round when applying regulation 31.

5.1.12 In relation to the current application, there is clearly a relationship between the applicant company and JMA Pharma Limited. That relationship is summarised in my client's letter of 11th August 2023 to NHS England.

5.1.13 Whilst the applicant's representative purports not to understand the matters raised in my client's letter of 11th August 2023, it is of note that none of those matters are disputed.

5.1.14 The applicant's representative challenges the relevance of a shared residential address, stating that this may simply be a "postal address", giving the example of a law firm's address which is used by the firm's clients. However, it is clear that the premises which are referred to in the various Companies House documents are not a business address, but a residential address. It would be extremely unlikely that a residential address would be used for Companies House correspondence unless there was a familial relationship with that address. NHS Resolution will note that the applicant's representative makes no attempt to explain why a common residential address is used.

5.1.15 It is also highly relevant to note that the owner and superintendent of the applicant company (Mohammed Asif) works as responsible pharmacist for JMA Pharma Limited. It is assumed that he works regularly (ie every day) for JMA Pharma Limited given the comments made by the applicant's representative. Whilst that employment may be as a locum pharmacist, that is more likely to be for tax reasons than evidence of a lack of connection between the two businesses.

5.1.16 Put another way, NHS Resolution may ask itself how likely it is that the owner of one pharmacy would work as a locum in another pharmacy nearby if there was no connection between those two businesses. If there was no connection, NHS Resolution might consider it very unlikely that the owner of one pharmacy would work in what would, otherwise, be a nearby competitor pharmacy.

5.1.17 Indeed, the fact that JMA Pharma Limited asserts that it is going to close its pharmacy before the applicant relocates to its premises shows that there must be some sort of relationship between the two businesses. Again NHS Resolution may ask itself why JMA Pharma Limited would voluntarily close a pharmacy in a health centre unless it had some interest in the business that wants to open at its premises. The applicant does not provide any explanation for this.

5.1.18 The applicant's representative refers to three previous appeal decisions. As NHS Resolution will be aware, each application must be determined on its own facts. NHS Resolution's application of regulation 31 to appeals which are entirely different – and with entirely separate facts – from the current appeal is unlikely to be of any assistance to NHS Resolution in its determination of this appeal.

Regulation 24(1)(a)

5.1.19 In my client's representations to NHS England (adopted in support of this appeal), my client noted that the applicant had failed to make anything other than a cursory attempt to define the pharmacy's patient groups. It is somewhat surprising that the applicant has still not defined the pharmacy's patient groups in response to this appeal, simply responding to matters raised in my client's appeal letter.

5.1.20 Taking the matters raised by the applicant's representative in turn, my client comments as follows:

5.1.20.1 It is, of course, highly relevant that the applicant is seeking to relocate to a GP surgery from which fewer than 30% of its current prescriptions originate. NHS Resolution may consider why such a small percentage of the pharmacy's patients are registered with that GP surgery but, more importantly, why so many patients who are not registered at that surgery choose to access the pharmacy at its current location. Unfortunately the applicant provides no information about these matters to assist NHS Resolution answer these highly relevant questions.

5.1.20.2 It is factually correct that there is no zebra crossing at the junction of Hob Moor Road and Blake Lane. It is also correct that this is a busy road junction. The photograph provided by the applicant, itself, shows cars and a bus queuing at the junction and several vehicles travelling along Hob Moor Road away from Blake Lane, apparently having just turned into Hob Moor Road. The presence of pedestrian barriers along Hob Moor Road merely demonstrates that this is a dangerous junction where pedestrians are at risk of coming into contact with vehicles, because the vast majority of junctions do not have pedestrian barriers.

5.1.20.3 The issue in relation to Charles Road Surgery patients is not necessarily the distances of travel, but why those patients choose to access the pharmacy at its current location. It is submitted that this is likely to be because of its High Street location amongst the shops and other services on Blake Lane. There is a concern that such patients would not choose to access the pharmacy at its proposed location within a different GP surgery from their own GP surgery.

5.1.20.4 The applicant states that "patients from Omnia & Yardley Green practice will have significantly improved access at the proposed site". However, the applicant cannot have it both ways – either there is no material difference in the existing location compared to the proposed premises (so that the proposed premises could not offer a significant improvement in access) or there would be a significant improvement in access to the proposed premises compared to the existing premises for patients of the Omnia & Yardley Green practice meaning that the reverse must also be true (significantly worse access to the proposed premises for patients who are not registered with the Omnia & Yardley Green practice).

5.1.20.5 In terms of access by car, given the lack of parking at the existing premises, it is to be assumed that few of the pharmacy's patients drive to the current premises. However, no information is provided by the application about how patients currently travel to the existing premises.

5.1.20.6 In terms of access by bus, the applicant does not dispute that the existing premises are much closer to the route 17 bus stop compared to the proposed premises. The applicant states that "less than 5 patients currently access service by bus", but it is not clear where this information has come from.

5.1.20.7 In relation to delivery services, my client continues to assert that it is highly unlikely that the pharmacy delivers approximately 200 items per day, every day.

5.1.20.8 It is beyond argument that the existing premises are located within a high street shopping area. The nature of the area is shown in the images provided by the applicant. Whilst the shop adjacent to the existing premises is currently empty, there are estimated to be at least 25 open businesses within 100m of the existing premises along Green Lane. In contrast, I have included, below, a google streetview image of the proposed premises which shows a modern health centre building set back from the road.

5.1.21 [Photograph provided] [Appendix H for Committee]

5.1.22 In conclusion, on behalf of my client I invite NHS Resolution to conclude that this application does not meet the relevant regulatory test and to refuse it."

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