

26 September 2024

REF: SHA/26249

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**APPEAL AGAINST BRISTOL, NORTH SOMERSET &
SOUTH GLOUCESTERSHIRE ICB DECISION TO
GRANT KEYNSHAM HEALTHCARE LIMITED
APPLICATION FOR CHANGE OF OWNERSHIP FROM
BOOTS UK LTD IN RESPECT OF 39 HIGH STREET,
SHIREHAMPTON, BRISTOL, BS11 0DX**

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of the Commissioner.
- 1.2 The application is granted.

A copy of this decision is being sent to:

Healthcare Services Consultancy Ltd t/a Greenway Pharmacy and Shirehampton Pharmacy
Keynsham Healthcare Ltd
Boots UK Ltd
PCSE on behalf of Bristol, North Somerset & South Gloucestershire ICB

Advise / Resolve / Learn

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APPEAL AGAINST BRISTOL, NORTH SOMERSET & SOUTH GLOUCESTERSHIRE ICB DECISION TO GRANT KEYNSHAM HEALTHCARE LIMITED APPLICATION FOR CHANGE OF OWNERSHIP FROM BOOTS UK LTD IN RESPECT OF 39 HIGH STREET, SHIREHAMPTON, BRISTOL, BS11 0DX

1 The Application

By application dated 30 July 2023, Keynsham Healthcare Ltd (“the Applicant”) applied to Bristol, North Somerset and South Gloucestershire ICB (“the Commissioner”) for a change of ownership from Boots UK Ltd in respect of 39 High Street, Shirehampton, Bristol, BS11 0DX. In support of the application it was stated:

- 1.1 “I/we proposed to carry on at the above premises the business in the course of which the above owner is providing pharmaceutical services at the above premises.”
- 1.2 Opening hours
- 1.3 Core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 15:00	Closed	40.00

1.4 Total opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 15:00 15:00 – 17:30	Closed	42.30

- 1.5 The Applicant confirmed that Essential services (paragraphs 3 to 22, Schedule 4) were to be provided.
- 1.6 The Applicant confirmed that the pharmacy premises will have a consultation room that meets the requirements of paragraph 28A, Schedule 4 of the Regulations.
- 1.7 In response to why the application should not be refused pursuant to Regulation 31, the Applicant left this blank.
- 1.8 The Applicant confirmed by ticking “Yes” that the services they are undertaking to provide are the same as those that the current owner is providing.
- 1.9 The Applicant confirmed by ticking “No” that there would not be any interruption to service provision.

2 The Decision

The Commissioner considered and decided to grant the application. The decision letter dated 31 May 2024 states:

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

2.1 "Bristol, North Somerset and Gloucestershire ICB has considered the above application and I am writing to confirm that it has been granted.

2.2 Please see the enclosed report for the full reasoning."

Extract from the South West Collaborative Commissioning Hub report:

Considerations and decision:

2.3 "BNSSG ICB is satisfied there is no pharmacy providing pharmaceutical services at the same or adjacent premises. The application therefore does not need to be refused in accordance with Regulation 31.

2.4 In accordance with the NHS CB procedure for dealing with change of ownership applications made under Regulation 26(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, the ICB is satisfied that:

2.4.1 The same services will be provided by the applicant as provided by the current contractor.

2.4.2 The applicant had confirmed that there will be no break in the provision of services.

2.4.3 The same opening hours will be provided by the applicant as provided by the current contractor.

2.5 Fitness to Practise has recently been undertaken by the South West Primary Care Team and approved

2.6 The decision to approve the change of ownership application is taken by the Primary Care Contracts Manager and will be added to the report for the next South West Pharmaceutical Services Regulations Committee.

2.7 Please note on the application form the supplementary hours total is incorrect (it notes 42.3hrs total when it's 42.5 hours total affects the supplementary hours only), the hours in the table are correct. Approval is based on the hours listed on the table with the correct total, 42.5 hours.

2.8 Appeal rights have been granted to

2.8.1 Boots Pharmacy 39 High Street, Shirehampton, Bristol BS11 0DX

2.8.2 Shirehampton Pharmacy, Shirehampton Health Ctr, Pembroke Rd, Shirehampton, Bristol BS11 9SB

2.8.3 Cohens Chemist 3 Baltic Place, Pill, Bristol BS20 0EJ.

2.8.4 Avonmouth Pharmacy Ltd, 205 Avonmouth Road, Avonmouth, Bristol BS11 9EG

2.8.5 Well Pharmacy Sea Mills Surgery, 2 Riverleaze, Sea Mills, Bristol BS9 2HL

- 2.8.6 Lawrence Weston Pharmacy, 62 Ridingleaze, Lawrence Weston, Bristol BS11 0QB”

3 The Appeal

In an email of 28 June 2024, Healthcare Services Consultancy Ltd, t/a Greenway Pharmacy and Shirehampton Pharmacy ("the Appellant") appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 “I would like to formally appeal against the grant of this Change of Ownership application for Boots Pharmacy at 39 High Street, Shirehampton, Bristol, BS11 0DX.
- 3.2 As mentioned in the decision report, the Applicant is undertaking and stating to provide 42.3 hours a week opposed to the current 42.5 hours a week being provided by Boots. This is consequently a change in service hours. The applicant should be completing the application to undertake the 42.5 hours/week which is currently being provided for by the Boots.
- 3.3 The Committee cannot be satisfied that the Applicant is undertaking to provide the same services in the same course of business that the Boots is currently providing. Offering different opening hours is a change in services / course of business.
- 3.4 The decision report questions that the application has been considered fairly, in that the decision is conditional or based on an assumption (i.e. the decision report states: *‘Approval is based on the hours listed on the table with the correct total, 42.5’* - Even though the hours total submitted on the application was 42.3). The regulations do not allow for any assumptions, as highlighted in the decision report.
- 3.5 To maintain a fair and equitable application process, the applicant should be re-submitting a new application with the correct hours to ensure there is no bias or impartiality in the process.
- 3.6 Therefore Regulation 26 has not been met, and this Change of Ownership application should be refused.”

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

- 4.1.1 “Thank you for your letter, received 9th July 2024, addressed to Mr Speight at Primary Care Support England (PCSE) enclosing a copy of the appeal as detailed above. The South West Collaborative Commissioning Hub (SW CCH), on behalf of Bristol, North Somerset and South Gloucestershire Integrated Care Board (BNSSG ICB) wishes to make the following comments on the appeal.
- 4.1.2 The change of ownership application was considered in accordance with Regulation 26(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The BNSSG ICB was satisfied that:
 - 4.1.2.1 there is no pharmacy providing pharmaceutical services at the same or adjacent premises.
 - 4.1.2.2 the same services will be provided by the applicant as provided by the current contractor.

4.1.2.3 the applicant had confirmed that there will be no break in the provision of services.

4.1.2.4 the same opening hours will be provided by the applicant as provided by the current contractor.

4.1.3 It is noted the appeal received is based on the declaration of opening hours and the description of 42.30 opening hours in section 3.2 of the change of ownership application form (2 ½ Supplementary Hours) is questioned. The SW CCH is satisfied that the use of .30 represents 30 minutes and is therefore the same as using .5 hours, and that Keynsham Healthcare Ltd has declared they will provide the same Core and Supplementary opening hours as the current owner when they take over. The decision report notes that approval was given on the basis of the hours listed in the table (total of 42.5 hours).

4.1.4 We therefore respectfully request that the decision to approve the application is upheld.”

4.2 THE APPLICANT

4.2.1 “Thank you for the appeal notification.

4.2.2 The application was submitted on the PCSE Market Entry portal. The portal only allows you to fill in your opening and closing times and the systems adds up the hours to give the total opening hour. The total opening hour cannot be entered or amended by the applicant. The system adds up the opening times in hours and minutes, therefore, as stated in the application the total opening hours for the pharmacy is 42 hours 30 minutes (stated as 42.30 in the application form). I have attached a screenshot of the opening hour section of the portal, which depicts the section the contractor has to fill (opening and closing times) and the total opening hours (greyed at the bottom which is automatically calculated and cannot be amended).

4.2.3 I do not believe there is any ground for this appeal to be considered. The ICB has also erred in reading the total hours. Nevertheless they have taken the right decision. If the pharmacy was to open and close at the stated hours then it would indeed be open for 42 hrs 30 minutes.

4.2.4 The appellant states 'To maintain a fair and equitable application process, the applicant should be resubmitting a new application with the correct hours to ensure there is no bias or impartiality in the process'.

4.2.5 While I believe the right procedures should be followed in dealing with this appeal, the system should not be left open for spurious appeal. If I was to resubmit the application, as suggested by the appellant, the net result would still be the same. The system will still depict the total opening hours as 42.30.

4.2.6 Locally, the appellant has spread misinformation about the Boots pharmacy closing and have his employee stationed outside Boots to direct them towards his own pharmacy. Both I and Boots team have raised this issue with the LPC.

4.2.7 I hope to hear from you on this matter.”

4.3 BOOTS UK LTD

4.3.1 “Thank you for your letter dated 8th July 2024 informing us of the above appeal. Boots UK Ltd have the following comments to make.

4.3.2 The appeal is based on there being confusion over the opening hours and whether the existing opening hours will be offered once the Change of

Ownership takes place. It is clear to see what has happened and that there has been a simple administrative error.

4.3.3 An extract from the Change of Ownership application form is below:

Total opening hours

The total opening hours includes the core opening hours and any supplementary opening hours. these must be the same total opening hours as at the current premises.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 17:00	09:00 – 12:00 13:00 – 15:00 15:00 – 17:30	Closed	42.30

4.3.4 As the appeals committee will note, the hours do indeed add up to 42.5 and that the error appears to be that the applicant has stated 42.3. Had it read 42 hours 30 minutes, this would be correct. It is a simple error, and we believe that the applicant has all good intention of providing the same hours as Boots UK LTD do currently at 39 High Street, Shirehampton, thus offering the same services with no interruption to this service and would therefore satisfy regulation 26.

4.3.5 In point 5 of the decision report from the ICB, the deciding committee clearly recognise the applicant's intention and also state that the hours for each day add up to the correct number 42.5 or 42 hours and 30 minutes. We do not believe that there is at any point an "assumption" made as the appellant suggests. The ICB have approved the Change of Ownership based on the hours detailed in the table, rather than the incorrect adding up.

4.3.6 Boots UK LTD respectfully ask that NHS Resolution dismiss the appeal and uphold the decision of the ICB to approve the application.

4.3.7 We look forward to the decision in due course and we would wish to attend an oral hearing should it be deemed necessary to hold one."

5 Observations

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

5.1 THE APPELLANT

5.1.1 "Thank you for sharing the responses.

5.1.2 My understanding was that a paper copy of a change of ownership was submitted, and this stated 42.3.

5.1.3 Without having sight of the application, there is no way of knowing what the truth is here. With my previous knowledge of claims of incorrect or error in information on a change of ownership application; I can only go with the facts and information of what has been shared with me; and we are meant to trust this information should be accurate.

5.1.4 I trust the committee with undertake a fair and equitable process to clear this up to make a decision."

- 6 A change of ownership application which is made under the provisions of Regulation 26(1) is not a notifiable application under the Regulations and therefore parties would not usually see a copy of the application form. NHS Resolution applied its discretion under Schedule 3, Part 3, paragraph 7 and provided all parties, including the Appellant, with a redacted copy of the application form, given that this is something which the decision maker would have regard to.

7 **Late observations**

7.1 THE APPELLANT

- 7.1.1 “Please see my further observations for the application with the reference stated below. At the time of sending my initial observations, I did not have sight of the original change of ownership application. I have now received that original COO application (thank you for sending this) and had a chance to review this with my observations below. I would like to start by saying thank you for giving the time and consideration to hear the appeal.

- 7.1.2 Ref: SHA/26249 - Keynsham Healthcare Change of Ownership in Shirehampton

Owner of Boots

- 7.1.3 The COO application is not correct to state which entity currently owns the Boots pharmacy as per the relevant pharmaceutical list. The application address has Boots The Chemist Ltd, however this limited company is not stated on the GPhC register and the nature of the business is listed as Dormant Company on Companies House. Was this pharmacy ownership moved to Boots The Chemist and this was not notified? The application clearly states ‘This must be the name and address as it currently appears in the relevant pharmaceutical list’.

Opening Hours

- 7.1.4 My understanding was that a paper copy of a change of ownership was submitted, and this stated 42.3 which does not match the current opening hours of the pharmacy. However the applicant states something about a portal, inferring an electronic application. However the COO application I have received that the applicant submitted has hand written information on it, which indicates this was a physical application form.

Services

- 7.1.5 The services listed on the NHS website differ to the services the listed in the application. NHS Condom Supply, Prescription Delivery Service & Inhaler Recycling are currently being delivered in Boots pharmacy, however they are not included in the application.

- 7.1.6 The Committee cannot be satisfied that the Applicant is undertaking to provide the same services in the same course of business that the Boots is currently providing. Not offering these services is a change in services or course of business.

- 7.1.7 What’s further worrying is that the applicant has declared they will undertake the same services as the current owner Boots and states there will be no interruption to the service provision; however the application clearly indicated they will NOT be undertaking the same services as Boots and this was clearly a fraudulent declaration.

Registered Office Address

- 7.1.8 The registered office address at the bottom of the application states a different address to that registered with Companies House. Companies House states 4 South Parade, Chew Magna, Bristol, England, BS40 8SH, (as can be seen from the snip it copied below), however the change of ownership application states Silver Levene, 37 Warren Street, London, W1T 6AD as the registered office address. This address in the application doesn't appear anywhere. The application is dated 30th July but the office address looks like it was changed shortly after on 31st July.
- 7.1.9 The application looks to have been submitted with the wrong information. The guidance is very clear, *I/we also undertake to notify NHS England or the relevant delegated integrated care board within 7 days of any material changes to the information provided in this application* (snip it below). It is known that any applicant is required to notify the NHS of any material changes to application. This does not correlate correctly, and the initial decision does not indicate that the NHS was made aware of this material change to the application.

Summary

- 7.1.10 With the points above, I will summarise my comments in two parts.
- 7.1.11 Firstly, the lack of diligence in completing and submitting the application form and furthermore the absence of following the due process to inform the NHS of material changes. Secondly the appeals team cannot be satisfied that the Applicant is undertaking to provide the same services in the same course of business that the Boots is currently providing, given the variance in the opening hours and the services in the application.
- 7.1.12 I trust the appeals team will consider the application fairly, in that the decision should not be conditional or based on assumptions. The regulations do not allow for any assumptions.
- 7.1.13 Every other application is held to the standard dictated by the rules and regulations. It would be unreasonable and not fair to assess this application to a different standard. There are clear errors and discrepancies on the application form and therefore assumptions cannot be added to assume Regulation 26 has been met. This COO should therefore be rejected and the Applicant needs to re-submit with the correct information to ensure a fair and equitable application process.
- 7.1.14 Thank you for taking the time to consider this appeal."

[Supporting information enclosed at Appendix B].

- 8 NHS Resolution applied its discretion again on receipt of the additional late observations from the Appellant and under Schedule 3, Part 3, paragraph 7 provided all parties with a copy of the late observations given that this was new information and was something which the decision maker would have regard to. Parties were provided with the opportunity to comment on these late observations.

9 **Response to observations**

9.1 THE APPLICANT

- 9.1.1 "Thank you for your letter dated 2nd of September 2024. Please see below my comments regarding further comments raised by the appellant.

Name of the ownership company.

- 9.1.2 I have clarified it with the Boots team, and they have confirmed that the licence is held by Boots UK Limited as stated in my application.

Opening hours

- 9.1.3 I have already clarified, in my previous submission, that the hours stated in my application is the correct opening hours for the pharmacy. The appellant has raised further questions about whether the application was submitted on the PCSE portal. I can confirm again that the application was submitted on the portal. The application is first completed on the portal, then downloaded into physical copy which is signed/missing information added. The final signed copy is then uploaded on the portal along with other supporting documents (layout design/payments receipt etc.) and submitted.

Services

- 9.1.4 The services listed on the application is the ones that the pharmacy is contractually required to provide, [sic] and the ones I have undertaken to provide. The NHS website allows a pharmacy to advertise any service (commissioned or private) they may wish to provide at any given time. This is not necessarily the service the pharmacy is contractually required to provide. As the new business owner, we intent [sic] to provide many more services than that is listed [sic] on the COO application form. I have not listed these services on the application as the application list needs to match with the service list held by the ICB. Therefore, despite the extra services offered by contractor [sic] (commissioned or private), the COO can only list the services that is held by the ICB.
- 9.1.5 Nevertheless, I can assure the appeal committee that we will be providing all the services listed on the NHS website and other newer services not listed anywhere.

Company address:

- 9.1.6 The change of company address was queried by the PCSE during the application process. They sent us an acknowledgement letter on 14th August 2023 (attached for your reference [see Appendix C]), requesting some missing information as well as advising to amend the address in the application form. I informed the PCSE that the address has changed since the application was submitted. The PCSE advised us to update the address on the application form and resubmit which we did. I have attached a copy of the amended application for your reference [see Appendix C]. I am therefore not sure where the appellant got hold of the older version of the application.

Conclusion

- 9.1.7 Clearly the appellant is relying on assumptions to further delay the process. The appellant is not privy to all the developments that happens during the application process. The PCSE checks all the relevant information to ensure the application is complete and legitimate before it is put for further consideration by the ICB. My application has gone through the same rigour and meets all the criteria set within the regulation. The appellant on the other hand has used unfair and unfounded arguments to further delay my application. I therefore request the appeal committee to see this appeal for what it is, a delay tactic and nothing more. Accordingly, I request the committee to reject the appeal."

9.2 THE APPELLANT

- 9.2.1 “Whilst I have been reviewing this, the data held on PharmData (which is provided from NHS Digital) shows that this Boots is owned by Alliance Boots Holdings Ltd, which is again different to the application and different to what’s [sic] on the GPhC pharmaceutical list/register [see Appendix D]. The application form clearly states to write the name & address of the current owner as per the pharmaceutical list.”

9.3 BOOTS UK LTD

- 9.3.1 “Thank you for your letter dated 2nd September 2024 informing us of the late observations received regarding the above appeal and asking for any further observations.

- 9.3.2 Boots UK Ltd have the following comments to make.

Owner of Boots

- 9.3.3 The application clearly states Boots UK Limited as the current owner. Boots UK Limited (company number 928555) was previously called ‘Boots The Chemists Limited’. The name was changed in October 2007, however, given our 175 year heritage, and trusted and extremely well-known brand, many patients and organisations still refer to us ‘Boots’ or ‘Boots The Chemists’.

- 9.3.4 After the name was changed from ‘Boots The Chemists Limited’ to ‘Boots UK Limited’ for company number 928555, a new company was created called ‘Boots the Chemists Limited’ and this is held for name protection purposes only.

- 9.3.5 When the application was submitted, no questions were asked or clarification sought as to the company name and therefore we can conclude that the ICB was satisfied when approving this application that the details were sufficiently clear.

Opening hours

- 9.3.6 This has already been covered in our previous letter, but I include the original response below. The appellant refers to the application being handwritten, you are able to write on applications submitted through the portal, as the application needs to be generated and uploaded before signing. That aside, the application was approved, the opening hours added up correctly and this was accepted by the ICB.

- 9.3.7 The original appeal was based on there being confusion over the opening hours and whether the existing opening hours will be offered once the Change of Ownership takes place. It is clear to see what has happened and that there has been a simple administrative error.

- 9.3.8 An extract from the Change of Ownership application form is below:

Total opening hours

The total opening hours includes the core opening hours and any supplementary opening hours. these must be the same total opening hours as at the current premises.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 12:00	09:00 – 12:00	09:00 – 12:00	09:00 – 12:00	09:00 – 12:00	09:00 – 12:00	Closed	42.30

13:00 – 17:00	13:00 – 17:00	13:00 – 17:00	13:00 – 17:00	13:00 – 17:00	13:00 – 15:00 15:00 – 17:30		
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9.3.9 As the appeals committee will note, the hours do indeed add up to 42.5 and that the error appears to be that the applicant has stated 42.3. This is clearly intended to indicate 42 hours 30 minutes and the applicant proposes to provide the same hours as Boots do currently at 39 High Street, Shirehampton, thus offering the same services with no interruption, therefore satisfying Regulation 26.

9.3.10 In point 5 of the decision report from the ICB, the deciding committee clearly recognise the applicant's intention and also state that the hours for each day add up to the correct number 42.5 or 42 hours and 30 minutes. We do not believe that there is at any point an "assumption" made as the appellant suggests. The ICB have approved the Change of Ownership based on the hours detailed in the table, rather than the incorrect adding up.

Services

9.3.11 Under Regulation 26, the requirement is for the provision of the "same pharmaceutical services" as defined under Regulation 2.

9.3.12 Should the incoming provider wish to continue to provide locally commissioned or private services, then new arrangements need to be put in place.

Registered Office Address

9.3.13 With reference to the registered address of the applicant (purchaser) on the application, it is clear that the details stated were correct at the time of application. There is no material change to the details supplied, the company number remains the same and this can easily be explained by the fact that Keynsham Healthcare Ltd changed their accountant during the application process and therefore the address was updated accordingly.

9.3.14 Boots UK Limited respectfully asks that NHS Resolution dismiss the appeal and uphold the decision of the ICB to approve the application. We look forward to the decision in due course and we would wish to attend an oral hearing should it be deemed necessary to hold one."

10 Consideration

10.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution, had before it the papers considered by the Commissioner.

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

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

10.4 The Committee first considered Regulation 31 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("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).

10.5 The Committee noted that the Applicant had not provided any information in the application form on this point but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises.

10.6 The Commissioner in its decision report concluded that the application does not need to be refused in accordance with Regulation 31, which the Committee noted had not been disputed by any party. Based on the information before it, the Committee determined that it was not required to refuse the application under the provisions of Regulation 31.

10.7 The Committee noted Regulation 26(1) (*Change of ownership applications*) of the Regulations, which reads:

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

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

(i) that are already listed chemist premises, and

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

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

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

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

10.8 The Committee considered the position in relation to each condition.

- 10.9 The Committee noted that the Regulations are specific in the conditions the applicant must satisfy, if its proposed change of ownership is to succeed.
- 10.10 The Committee has considered each of these paragraphs in turn, applying them to the information provided in the application form, unless (in relation to any of those paragraphs) the Applicant has provided amended/updated information.

Regulation 26(1)(a)

- 10.11 The Committee noted the various assertions from the Appellant with regard to the legal entity and name of the pharmacy as entered on to the pharmaceutical list. The Committee noted that Regulation 26(1)(a) states:
- (a) *the applicant (X) is undertaking to provide pharmaceutical services at premises-*
- (i) *that are already listed chemist premises, and*
- (ii) *at which another person (Y) is providing pharmaceutical services;*
- 10.12 The Committee was mindful that the Regulations are specific as to the conditions which have to be met in order for a change of ownership application to be granted. The Committee noted that there is no dispute between parties that there are already listed chemist premises at 39 High Street, Shirehampton, Bristol, BS11 0DX. The Committee further noted that there is no dispute between the parties that Keynsham Healthcare Ltd is a separate legal entity to Boots UK Ltd. The Committee was therefore of the view that 26(1)(a)(i) was met.
- 10.13 The Committee further noted that there is no dispute between parties that the premises are already listed and that pharmaceutical services are currently being provided from those premises. The Committee was therefore of the view that 26(1)(a)(ii) was met.
- 10.14 The Committee noted that the application form requests the “name and address as it currently appears in the relevant pharmaceutical list”. The Committee further noted that the application form states “Boots UK Limited, Boots Pharmacy, Boots the Chemist”. The Committee also noted the explanation from Boots UK Ltd with regard to the various names and further noted the information from the Appellant confirming that the name, as it appears on the GPhC Register is “Boots UK Limited”. The Committee was mindful that it is the name on the Pharmaceutical List for the premises in question to which it has to have regard and noted that the Commissioner, who holds the pharmaceutical list, was content with the name as set out in the original application form. Based on all of the information before it, including the application form which had been signed on behalf of the current owner, the Committee was of the view that the name and address of the current owner is correct.
- 10.15 The Committee further noted the comments from the Appellant with regard to the registered address of the Applicant. The Commissioner had requested additional information from the Applicant before it accepted the application form and that, on the provision of that information, the Commissioner was satisfied that the application could proceed. The Committee took no view on the request for additional information except to note that the application form had been fully completed and accepted by the Commissioner. The Committee was of the view that the application form as accepted by the Commissioner contained all relevant information to allow the Commissioner initially and the Committee on appeal to consider it fully.
- 10.16 Based on the information before it, the Committee was satisfied that, for the purposes of paragraph (a), this undertaking had been made and was met.

Regulation 26(1)(b)

- 10.17 The Committee noted the Applicant is proposing to carry on at the listed premises in place of Boots UK Limited, the business in the course of which Boots UK Limited is providing pharmaceutical services at those premises.
- 10.18 Based on the information before it, the Committee was satisfied that this was sufficient for the purposes of paragraph (b).

Regulation 26(1)(c)

- 10.19 The Committee noted the Applicant intends to provide the same pharmaceutical services as those provided by Boots UK Limited and that this had been confirmed by the Applicant ticking "Yes" on the application form in response to "Are the services you are undertaking to provide the same as those that the current owner is providing?".
- 10.20 The Committee noted the further comments from the Appellant with regard to the services indicated on the existing provider's website compared with those the Applicant was proposing to offer. The Committee noted the assurances provided by the Applicant in their initial application form and subsequent assurances that they would provide the same services once the change of ownership had taken place.
- 10.21 The Committee was of the view that there was nothing before it which would lead it to the conclusion that the Applicant was not going to be providing the same services currently provided by Boots UK Limited and that the services confirmed on the application form match the services as listed by the Commissioner. The Committee accepted the undertakings from the Applicant.
- 10.22 The Committee noted that the appeal centred on the provision of hours which the Applicant was proposing to provide. The Committee noted that the opening hours (including both core and supplementary) at 39 High Street total 42 hours and 30 minutes.
- 10.23 The Committee noted that, on the application form, the total hours (including core and supplementary) were shown as "42.30" which, when read as a decimal, is not the same as 42 hours and 30 minutes. The Commissioner, in their decision letter had taken this to be 42.5 hours and was of the view that the Applicant was proposing to provide the same hours as currently being provided by Boots UK Ltd.
- 10.24 The Committee noted the additional information provided by the Applicant and confirmation that, due to the nature of the form used on the PCSE Market Entry Portal they are unable to add-up the hours themselves. The hours are automatically calculated by the system after inputting "opening time" and "closing time" and selecting if these are to be "core hours" or "supplementary hours". The Committee noted, from the screen shot from the portal that this is shown to total core hours of 40.00, total supplementary hours of 02.30 and a final total hours of 42.30.
- 10.25 The Committee noted the comments from the Appellant with regard to the "assumptions" made by the Commissioner but was of the view that the Applicant was proposing the same number and distribution of hours that the existing pharmacy is currently providing. The Committee further noted that there is no dispute between parties with regard to the core hours.
- 10.26 On the basis of the information before it, the Committee was satisfied that paragraph (c) was met and the same services as well as the same hours as currently being provided by Boots UK Limited at 39 High Street would be provided by the Applicant.

Regulation 26(1)(d)

- 10.27 On the information before it, the Committee was satisfied that were the actual change of ownership to take place, no interruption, as described in paragraph (d), would occur.

Consequences of satisfying paragraphs (a) to (d) of Regulation 26(1)

- 10.28 Being satisfied of the various matters set out in Regulation 26(1), the Committee considered that the application should be granted.
- 10.29 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 10.29.1 confirm the Commissioner's decision;
 - 10.29.2 quash the Commissioner's decision and redetermine the application;
 - 10.29.3 if it considers that there should be a further notification to the parties to make representations, quash the Commissioner's decision and remit the matter to the Commissioner.

11 Decision

- 11.1 The Committee confirms the decision of the Commissioner.
- 11.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 11.3 The Committee has determined that it should be granted on the following basis:
- 11.3.1 the Applicant is proposing to continue in place of the existing contractor, the business in the course of which that contractor is providing pharmaceutical services at the same premises;
 - 11.3.2 they have undertaken to provide the same pharmaceutical services as those that the existing contractor is providing; and
 - 11.3.3 that the provision of pharmaceutical services will not be interrupted (except for such period as the Commissioner may for good cause allow).
- 11.4 The application is granted.

**Case Manager
Primary Care Appeals**