24 October 2024

REF: SHA/26268

APPEAL AGAINST HUMBER AND NORTH YORKSHIRE ICB DECISION TO REFUSE AN APPLICATION BY TENNYSON HEALTHCARE LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT 58-60 BECK BANK, COTTINGHAM, HU16 4LH OR WITHIN 0.5KM OF HU16 4LH

8th Floor
10 South Colonnade
Canary Wharf
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E14 4PU

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

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:
Gordons Partnership Solicitors on behalf of Tennyson Healthcare Limited
PCSE on behalf of Humber and North Yorkshire ICB
Humber Local Pharmaceutical Committee
Jhoots Pharmacy

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1 The Application

By application dated 25 February 2024, Tennyson Healthcare Limited ("the Applicant") applied to Humber and North Yorkshire ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at 58-60 Beck Bank, Cottingham, HU16 4LH or within 0.5km of HU16 4LH. In support of the application it was stated:

In response to "Please provide the address or best estimate of the proposed premises" the Applicant stated:

1.1 "58 - 60 Beck Bank, Cottingham, HU16 4LH. If these premises detailed above are no longer available, the best estimate of the location of the pharmacy would be within a 0.5km radius of the same postcode, HU16 4LH.

1.2 Location Map 1.png [appendix A]"

In response to "in my/our view this application should not be refused pursuant to Regulation 31 for the following reasons" the Applicant left this box blank.

In response to "please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area" the Applicant stated:

1.3 "Background

1.4 The location of the proposed pharmacy is within a retail unit on a commuter route, less than 0.5 miles from Cottingham train station and on a bus connection.

1.5 Unemployment rates in Cottingham South are in line with the East Riding average levels and are lower in Cottingham North so there are many commuters travelling in and out of the area.

1.6 Cottingham village centre previously had three pharmacies, two Boots pharmacies and a Lloyds Pharmacy. It is understood that one of the Boots pharmacies (FRN54, 156 Hallgate, Cottingham, HU16 4BD) closed in November 2023 and the Lloydspharmacy (FTC54, Unit 1, Kings Parade, Hallgate, Cottingham, HU16 5QQ) is now operated by Jhoots (the change of ownership having taken place in late 2023).

1.7 The change of ownership of the Lloydspharmacy has caused access issues to pharmaceutical services for patients. There have been several occasions where the pharmacy has failed to open, particularly during out of hours periods, such as weekends, meaning that patients have lacked choice in accessing services. This has also caused increased pressure on healthcare services like 111 or GP Out of Hours

services, which is avoidable where there is sufficient service pharmaceutical provision and choice for patients in the Cottingham area.

1.8 The applicant proposes to replace the pharmaceutical services provided by the Boots pharmacy and more generally the reduction in the provision of pharmaceutical services across Cottingham and according [sic] provide a significant benefit to the community.

1.9 Reg 18(1)(b) – PNA

1.10 The improvements and better access that would be secured were not included in the relevant Pharmaceutical Needs Assessment (PNA) as the PNA does not cover the closure and loss of service of the Boots pharmacy nor other pharmacies in the area.

1.11 The PNA indicated in 2022 that there was no gap in service but importantly for this application says at page 6:

1.11.1 "there is currently no extended-hour provision of pharmaceutical services in the Ward weekdays after 6pm and on Sundays"

1.12 Since the PNA was drafted in 2022 there have been no supplementary statements issued to reassess the provision of pharmaceutical services in the Cottingham area in view of the closure of Boots Pharmacy, the change of ownership and subsequent issues at Lloydspharmacy and the increasing population due to several housing developments (figures relating to this are on page 60 & 62 of the East Riding PNA – 1,100 settlements proposed).

1.13 Reg 18(2)(a)(i) and (ii)– Would granting the application cause significant detriment to the proper planning of, or the arrangements for, the provision of pharmaceutical services in the HWB's area?

1.14 The proposed pharmacy would be largely replacing existing pharmacy provision therefore rather than causing detriment to either the planning or arrangements for the provision of pharmaceutical services in the area, the proposed pharmacy would preserve the status quo and ensure that access to pharmaceutical services is consistent and reliable.

1.15 When considering the application, the NHSCB must have regard to the matters set out in paragraph (2) of the 2013 regulations. These include: -

1.16 Reg 18(2)(b)(i) – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB.

1.17 The proposed location, within the Cottingham South Ward falls within an area that has a mixed profile of deprivation at LSOA level. Four out of six LSOAs in this Ward are ranked in the middle and least deprived quintiles of England (the other two falling into the second most deprived quintile).

1.18 This has an impact on the transport options to which the population have access and how they get to the pharmacies they use.

1.19 It also has an impact on health needs discussed below.

1.20 Currently, the nearest pharmacy to the proposed location is the Boots pharmacy at 42 - 44 King Street, Cottingham, Hull, HU16 5QE. This pharmacy is 0.3km away. There are only 2 pharmacies within a kilometre of the proposed location, and neither offer Sunday opening.

1.21 Nearest pharmacies to the proposed site:

Pharmacy Name	Address	Distance from Proposed Location	Opening Times
Boots	42-44 King Street, Cottingham, Hull, HU16 5QE	0.3km	Mon-Fri: 9am-6pm Sat: 9am-5pm Sun: Closed
Lloyds Pharmacy (Jhoots)	Unit 1 Kings Parade, King Street, Cottingham, East Riding of Yorkshire, HU16 5QQ	0.5km	Mon-Fri: 9am-6pm Sat: 9am-12.45pm Sun: Closed

1.22 The proposed pharmacy will offer early morning and Sunday opening and consequently will be accessible at times when existing pharmacies are not offering services.

In response to "please explain how you intend to secure the unforeseen benefit(s)" the Applicant stated:

1.23 "Importantly the applicant pharmacy will match the morning opening hours of the local surgeries.

1.24 There two GP practices within a kilometre of the proposed location:

GP Surgery Name	Address	Distance from Proposed Location	Opening Times
Cottingham Medical Centre (Greengates Medical Group)	17-19 South Street, Cottingham, HU16 4AJ	0.5km	Mon-Fri: 8am-6pm Sat & Sun: Closed
Kings Street Medical Centre	168 King Street, Cottingham, HU16 5QJ	0.6km	Mon-Fri: 8am-6pm Sat & Sun: Closed

1.25 As of November 2023, the list sizes of Greengates Medical Group was 23,045 and King Street Medical Centre was 7,462. This is a total of 30,507 patients registered at either practice that require adequate provision of pharmaceutical services. (Taken from https://www.nhsbsa.nhs.uk/prescription-data/organisation-data/practice-list-size-andgp-count-each-practice).

1.26 Chestnuts Surgery merged with Hallgate Surgery again contributing to a lack of choice of where patients can go to access healthcare services. The merger of these two practices resulted in the formation of King Street Medical Practice.

1.27 Kings Street Medical Centre has been rated as good by less than 70% of patients (according to GP Patient Survey Results from 2023). This poor rating emphasises the importance of accessible pharmacy services. As pharmacies are increasingly seeing more clinical services being commissioned e.g. Pharmacy First, being able to increase the choice of pharmacies patients can offer would contribute to easing demand on other services e.g. general practices, as well as urgent and emergency care providers.

1.28 Residents living in the East of Cottingham (e.g., Endyke [sic] Lane, Inglemire Lane, Snuff Mill Lane, Hull Road, Bricknell Avenue, Golf Links Road, Thwaite Street, and the surrounding areas) would no longer have to travel more than a mile to access a pharmacy, as is currently the case. Many of the people who live around Cottingham are reliant on having access to a pharmacy to which they can walk. Pictorial representation available, but unfortunately cannot upload to online market entry application [appendix B, page 3] .

1.29 Locating the pharmacy in close proximity to the train station and on a bus route also facilitates access to residents travelling to and from work (into and out of the area) and commuters who work in Cottingham.

1.30 Estimated premises would be 58-60 Beck Bank, a retail unit with parking immediately at the front door, on a commuter route to the train station and on a bus route. This is subject to the property remaining available for rent. Failure to secure these premises, the pharmacy premises would be within 0.5kilometre radius from the HU16 4LH postcode (see below screenshot for pictorial representation) [appendix B, page 4]. With the population of Cottingham having low unemployment rates, the working population would have increased access to pharmaceutical services upon the approval on this application.

1.31 If approved, a prescription ATM (e.g. MedPoint or Pharmaself) would be installed at the premises (subject to planning permission approval and landlord approval) to facilitate 24/7 access to prescription collection. Consideration would also be given to an additional solution with the capability for patients to purchase medicines (OTC) via an ATM to promote and encourage self-care and improve access to medicines in out of hours periods, reducing burden on UEC providers who patients may choose to present to if they feel this is the only way to access treatment in an out of hours period.

1.32 Currently there is a choice of two pharmacies to the population of Cottingham which continues to increase due to several recent housing developments. The documents below detail the planned/newly built housing developments in Cottingham total an additional 1,070 dwellings being built, and as most are family homes, can estimate an increase in population of 3,000+ to Cottingham, all of which are entitled to appropriate access to pharmaceutical services. Copies of the Cottingham Neighbourhood Plan documents available, but unfortunately no functionality to attach to this online market entry application [links do not work in appendix B].

1.33 There have been several complaints made to councillors regarding the lack of choice of community pharmacies in Cottingham, as well as the issues with demand on existing services stretched beyond capacity including anecdotal evidence from patients of long queues at both pharmacies, and repeated trips back to the pharmacies in order to pick up medicines and/or access other services e.g. Minor Ailments Scheme, etc.

1.34 In a time where the Primary Care Access Recovery Plan and NHS Long Term Plan calls for the greater use of community pharmacy services, Cottingham residents would receive a limited service from existing contractors due to capacity issues of both workforce, time and estates. The approval of a new contractor would contribute significantly to easing this burden.

1.35 Reg 18(2)(b)(ii) – people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access.

1.36 Providing services at the proposed location would have a significant benefit for patients, particularly those who may have difficulty in accessing services in other localities, such as the elderly or disabled.

1.37 As stated in the current PNA:

1.37.1 “the East Riding already has a higher-than average older population and a lower-than average younger population. The proportion of people aged over 65 is expected to increase at a much higher rate than national and regional averages”.

1.38 The East Riding overall has fewer pharmacies per 100,000 population than both the Yorkshire and Humber and England averages. However because of the very rural

nature of large parts of the East Riding where dispensing GP practices provide the dispensing service this is not considered to be an issue to address.

1.39 Poor health is related to both advancing age and material deprivation. The least healthy are likely to be the greatest users of pharmaceutical services.

1.40 So, we know that:

1.40.1 - East Riding has a higher than average older (and ageing) population

1.40.2 - East Riding already has fewer pharmacies to service an increasing population (e.g. Increased burden on existing providers)

1.40.3 - Poorer health is associated with advancing age

1.41 These are three significant and interlinked points to signal that an additional pharmacy in the Cottingham boundary would enhance pharmaceutical provision and support the surrounding population with improving their health.

1.42 Neither of the two pharmacies are registered to deliver the Pharmacy Contraception Service and only the Lloydspharmacy (Jhoots) is registered to offer the Smoking Cessation Service. Both of these are nationally commissioned services that have the potential to relieve some of the burden on other healthcare services e.g. stop smoking providers, sexual health providers and general practices to enable them to focus on more complex cases and work collaboratively to address health inequalities and improve overally [sic] health.

1.43 Where the pharmacies are registered to provide services they are not in fact providing them:

1.44 As an example, SHAPE Atlas includes data from the BSA for the Hypertension Case-Finding Service. From the data, both pharmacies: Lloydspharmacy (aka Jhoots) and Boots currently has no activity data for the service [appendix B, page 5].

1.45 They also do not return on a search to 'Find a pharmacy for a BP check' via: Find a pharmacy that offers free blood pressure checks - NHS (www.nhs.uk).

1.46 How can the Health & Wellbeing Board be assured that individuals with potentially undiagnosed hypertension (and therefore increased risk of cardiovascular disease) when the two pharmacies servicing the population of Cottingham are not delivering this meaningful and beneficial service?

1.47 Additionally, while 95.2% of the Cottingham population identify as 'white' (https://www.citypopulation.de/en/uk/yorkshireandthehumber/admin/east_riding_of_yorkshire/E04000509__cottingham/), the remaining 4.8% are rightly entitled to parity and the assurance that when they do require pharmaceutical services they are not disadvantaged due to their ethnicity or any other protected characteristic e.g. religion, sexual orientation, maternity, etc.

1.48 If approved, the pharmacy would seek to understand the genuine needs of those with protected characteristics and look to adapt how pharmaceutical services if needed to ensure these populations are not disadvantaged. As an example, there is a large traveller community in Cottingham, based on Woodhill Way, which are known to be 'hard to reach' when it comes to offering healthcare services 20160505 CQC_EOLC_Gypsies_FINAL_2.pdf.

1.49 The pharmacy, if approved, would seek to engage with support workers and community representatives in order to ensure their needs are best met, meeting the Accessible Information Standard (AIS) and using health literacy tools where appropriate e.g. picture labels.

1.50 Reg 18(2)(b)(iii) – Providing an innovative approach to the delivery of pharmaceutical services

1.51 The application is not made on the basis that it will provide an innovative approach to the delivery of services.

1.52 In summary, this application offers a combination of replacement of an important provider of services, and improved services, and will provide choice and accessibility to pharmaceutical services where both are currently limited and are likely to be increasingly so in the future.

1.53 The applicant will accordingly provide overall improvements and better access to pharmaceutical services in the HWB area."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 27 June 2024 states:

2.1 "Humber and North Yorkshire ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.

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

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

PSRC Report:

2.4 "CAS-278011-H1T0V2 – Unforeseen Benefits

2.5 Applicant Name: Tennyson Healthcare Limited

2.6 Proposed Premises: 58 - 60 Beck Bank, Cottingham, HU16 4LH (or best estimate)

2.7 NHS England has considered the above application, and I am writing to inform you that it has not been supported for the following reasons:

2.7.1 The Pharmaceutical Services Regulations Committee did not think there was sufficient information submitted to demonstrate any unforeseen benefits or innovative approaches as required by Regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

2.8 Appeal rights are granted to:

2.8.1 The applicant"

3 The Appeal

In a letter dated 26 July 2024 addressed to NHS Resolution, Gordons Partnership Solicitors, on behalf of the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "We act for Tennyson Healthcare Limited. We are instructed by our client to appeal against the refusal of its application offering unforeseen benefits at 58-60 Beck Bank, Cottingham, HU16 4LH.

3.2 The application is made under regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2014 ("the Regulations").

3.3 **The Decision**

3.4 The Pharmaceutical Services Regulations Committees meeting for Humber and North Yorkshire ICB refused the application on the following basis:

3.5 In considering whether the granting of the application would confer significant benefits, the Committee determined that –

3.5.1 There was not sufficient information submitted to demonstrate any unforeseen benefits or innovative approaches.

3.6 On that basis the committee concluded that it was not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

3.7 **The Appeal**

3.8 The grounds of the appeal are based on a procedural error and on the incorrect conclusion reached.

3.9 Procedurally the Committee's processes were flawed as follows: -

3.9.1 The committee has not given adequate reasons. The decision report gives a one sentence reason for the refusal of the unforeseen benefits application.

3.9.2 The committee misdirected itself by saying that there was not sufficient information to demonstrate any unforeseen benefits. The committee also concluded that there was not sufficient information given to demonstrate innovative approaches; however the justification document attached to the application clearly said that the application was not bought on the basis that it will provide an innovative approach to the delivery of pharmaceutical services.

3.10 On the limited information available it does not appear that the decision to refuse the application was based on Regulation 31, Regulation 18(1)(b) and Regulation 18(2)(a) so that does not form part of the grounds of appeal.

3.11 Accordingly, the final determination by the Committee was incorrect and the decision by the ICB should be quashed and redetermined with a grant of our client's application.

3.12 **Background**

3.13 It may be helpful for Primary Care Appeals to understand the context of the application. Our client's director (Mr Matthew Tennyson) is familiar with the area and the company made its application against a background of closure of the Boots Pharmacy, at 156 Hallgate, Cottingham, HU16 4BD which closed in November 2023 and evidence of failures in the service provided by the remaining pharmacies. There is also to be an increase in population from local housing developments.

3.14 In a response to the circulation of the original application, the East Yorkshire Health and Wellbeing board indicated that the closure of the Boots Pharmacy in Cottingham has created a potential gap in the provision of pharmaceutical services in Cottingham. This decision is relevant to the determination of this application. The comments confirm our client's understanding that his proposed pharmacy would offer significant benefits as set out in his application.

3.15 However, for the avoidance of doubt, it is our client's position that the application can still be treated as falling within Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical) Regulations 2013 ("the Regulations"). The confirmation of the potential gap is lacking in specificity so the improvements and better access proposed by our client can still be considered unforeseeable. If Primary Care Appeals does not accept this contention, then as our client's application was made prior to the issue of the supplementary statement, it would be open to the PCA to consider that the relevant Pharmaceutical Needs Assessment for the purpose of this application should be that in existence at the time the application was made and not that amended by the supplementary statement. It could be argued that the only way to determine the application justly is with regard to the earlier Pharmaceutical Needs Assessment (Regulation 22(2)(a) of the Regulations). PCA will also be aware that pursuant to paragraph 7 of schedule 3 of the NHS (Pharmaceutical and Local Pharmaceutical) Regulations 2013 it has flexibility in the way it determines appeals.

3.16 Tennyson Healthcare Limited intends to run the proposed pharmacy with a focus on customer care and prompt service so that patients obtain access to timely advice and services when they require them but turning to the specific regulatory criteria: -

3.17 **Regulation 18(2)(b)i**

3.18 **There being reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB**

3.19 The applicant submitted a detailed document setting out reasons why the population in the vicinity of the proposed pharmacy did not have reasonable choice with regard to obtaining pharmacy services in the initial application [1.3 to 1.53 above].

3.20 The appellant relies on that document but highlights some areas below:

3.20.1 **Location of the neighbouring pharmacies**

3.20.2 By way of overview, the East Riding area has fewer pharmacies per 100,000 population than both the Yorkshire and Humber and England averages, so it is not the position that the population have above average choice of provision in areas outside Cottingham.

3.20.3 Cottingham is covered by two ward areas: Cottingham North and Cottingham South. The proposed pharmacy falls within Cottingham South, which has 9,612 usual residents. Cottingham North has 7,902 usual residents so the total population is 17,514. (Data as at 2022 from Nomis which provides official census statistics). People also come from outside Cottingham seeking healthcare services: the total of the list sizes of the two closest GP surgeries is over 30,000.

3.20.4 The best estimate of the proposed location is adjacent to the site of the closed Boots Pharmacy. This pharmacy served a distinct population outside the retail area of the town centre where the other two pharmacies in Cottingham are located, and the appellant's pharmacy will serve this population."

4 Summary of Representations

After reviewing the appeal and the paperwork provided by the Commissioner, NHS Resolution applied its discretion under Schedule 3, Part 3, paragraph 7 and allowed parties the opportunity to make comments on the Commissioner's PSRC meeting minutes dated 26 June 2024 and on the Supplementary Statement issued on 31 March 2024 [appendix C]. This is a summary of representations received.

4.1 The Commissioner

4.1.1 "As per the letter from the applicant, as the application was not refused on Regulation 31, Regulation 18(1)(b) and Regulation 18(2)(a), these will not form part of the response to the appeal which will focus on Regulation 18(2)(b). Any additional representations from Humber & North Yorkshire (HNY) Integrated Care Board (ICB) will be made under the relevant section of the regulations.

4.1.2 **In relation to Regulation 18(2)(b), notwithstanding that the improvements or better access were not included in the relevant Pharmaceutical Needs Assessment (PNA), granting the application would confer significant benefits on persons in the area (which were not foreseen when the PNA was published), having regard to the desirability of –**

4.1.2.1 **(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the Health and Wellbeing Board;**

4.1.2.2 There are 10 Community Pharmacies within 2miles of the proposed premises, 3 of these are within 1mile and 2 within less than 0.5miles. Of those within 2miles, 3 open earlier than 09:00 therefore providing patients with early morning access to pharmacy services and 1 provides opening on a Sunday.

4.1.2.3 The applicant proposes supplementary opening hours on a Saturday which can be withdrawn with 5 weeks' notice potentially reducing access to pharmacy services at the weekend. However, as stated in the committee report, the proposed core hours on a Sunday would potentially support the wider system and enable patients to access pharmacy services in Cottingham over the whole week.

4.1.2.4 As the applicant alludes to in their application, there have been challenges with 1 of the pharmacies in Cottingham in relation to opening. Humber & North Yorkshire Integrated Care Board acknowledges this and is working with the contractor.

4.1.2.5 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(i)

4.1.2.6 In relation to accessibility / availability of pharmacy provision in Cottingham, the extract of the minutes submitted from the Patient Participation Group (PPG) for King Street Medical Practice in Cottingham is not explicit in what updates were received or what the deteriorating status of dispensing in Cottingham is. However, the Chair of the PPG was involved in the work undertaken with the Local Authority and East Riding Healthwatch in relation to the patient survey.

4.1.2.7 There have been no specific complaints made to HNY ICB in relation to pharmacy provision in Cottingham.

4.1.2.8 **Housing Developments**

4.1.2.9 The PNA acknowledges that there will be several housing developments within both the Cottingham North & South area through the lifetime of the current PNA, and beyond. Within the PNA in, 3.61 (page 60) in relation to Cottingham North and 3.69 (page 62) in relation to Cottingham South did propose within the PNA reviewing access to pharmacy provision because of these.

4.1.2.10 In relation to the comment made by the applicant "the existing local pharmacies are already unable to manage the additional work from the closed Boots pharmacy and the increasing population will put further pressure on pharmaceutical services". There was no evidence submitted to support this.

4.1.3 **(ii) people who share a protected characteristic (as listed in section 149(7) of the Equality Act 2010 - age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity) having access to services that meet specific needs for pharmaceutical services that, in the area of the Health and Wellbeing Board, are difficult for them to access, or**

4.1.3.1 There was no mention in the application of how people who share a protected characteristic, as listed in section 149(7) of the equality Act 2010, access services that meet their specific needs for pharmaceutical services that, in the Health & Wellbeing area, will access pharmaceutical services that are currently difficult for them to access.

4.1.4 **Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(ii)**

4.1.4.1 There was some information within the application in relation to age & race but nothing comprehensive which then went on to illustrate how those who share a protected characteristic access services that meet specific needs for pharmaceutical services that, in the area of the Health and Wellbeing Board, are difficult for them to access.

4.1.5 **(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services granting the application would confer significant benefits on persons in the area which were not foreseen when the relevant pharmaceutical needs assessment was published.**

4.1.5.1 There was some information within the application which related to innovative approaches being taken with the regard to the delivery of pharmaceutical services including the installation of a prescription ATM to facilitate prescription collection outside of the pharmacy opening times. There is also reference to other ways that patients can purchase medication that would normally be bought over the counter being under consideration.

4.1.5.2 There was no evidence submitted that supports the need for these within the area.

4.1.6 **Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(iii)**

4.1.6.1 Although the rationale behind the application was to replace the Boots provision and the justification document attached to the application did state that the application was not brought on the basis that it will

provide an innovative approach to the delivery of pharmaceutical services, this is an area which is considered under Regulation 18(2)(b).

4.1.7 **Evidence (as requested on page 2 of your letter dated 8th August 2024)**

4.1.8 **Health & Wellbeing Board's up-to-date PNA**

4.1.9 Please see below, as requested, a link to the East Riding PNA for 2022-2025 with references to the appropriate sections.

4.1.10 ERY-PNA-2022-2025-Final.pdf (eastriding.gov.uk)

4.1.11 **Appropriate Sections – Cottingham North**

4.1.12 Key Findings in Accordance with the Regulations around service provision in Cottingham can be found on page 13.

4.1.12.1 Gaps in Necessary service provision in zero Electoral Wards

4.1.12.2 Gaps in improvements and better access in zero Electoral Wards.

4.1.13 Within the application, HNY ICB did not find that the applicant specified nor provided any evidence in relation to any specific pharmaceutical services that there was a gap in.

4.1.14 Specific information around the Cottingham North area can be found on pages 60-61 with conclusions in relation to pharmacy provision being found within the same pages.

4.1.15 In relation to Cottingham North:

4.1.16 **3.7.1 Necessary Services: Gaps in Provision:**

4.1.16.1 There is currently no extended-hour provision of pharmaceutical services in the Ward weekdays after 6pm and on Sundays. However, since out of hours and urgent care services are provided outside the Ward (from where there is access to medicines or extended hour pharmaceutical services if needed), the HWBB considers there is no gap in necessary service provision.

4.1.17 **3.7.3 Improvements and Better Access: Gaps in Provision related to Market Entry & Exist Regulations:**

4.1.17.1 None

4.1.18 **3.74 Improvements and Better Access: Gaps in Provision related to availability of locally commissioned services that could be met by existing contractors:**

4.1.18.1 NHS England will seek to commission a Hepatitis C Testing, an Appliance Use Review Service and/or a Stoma Appliance Customisation Service from existing pharmacies locally, if needed. Note: Other available services which are not provided (e.g. Palliative care service; BP service; needle exchange) may be accessed from/ signposted to, the Beverley Wards.

4.1.18.2 Information on the **Cottingham South area** can be found on pages 62-63 with conclusions in relation to pharmacy provision being found within the same pages.

4.1.19 In relation to **Cottingham South:**

4.1.20 **3.7.1 Necessary Services: Gaps in Provision:**

4.1.20.1 There is currently no extended-hour provision of pharmaceutical services in the Ward weekdays after 6:30pm and on Sundays. However, since out of hours and urgent care services are provided outside the Ward (from where there is access to medicines or extended hour pharmaceutical services if needed), the HWBB considers there is no gap in necessary service provision.

4.1.21 **3.7.3 Improvements and Better Access: Gaps in Provision related to Market Entry & Exist Regulations:**

4.1.21.1 None

4.1.22 **3.7.4 Improvements and Better Access: Gaps in Provision related to availability of locally commissioned services that could be met by existing contractors:**

4.1.22.1 NHS England will seek to commission a Hepatitis C Testing, an Appliance Use Review Service and/or a Stoma Appliance Customisation Service from existing pharmacies locally, if needed.

4.1.22.2 Note: Other available services which are not provided (e.g., Palliative care; BP service; substance misuse services; needle exchange service; stop smoking services) may be accessed from/ signposted to, the neighbouring Cottingham North Ward or the Beverley Wards.

4.1.23 **Supplementary statement to the PNA**

4.1.23.1 A supplementary statement was published on 31/03/24 in response to the Boots closure on Hallgate in Cottingham and indicates there is a gap in service provision in Cottingham.

4.1.23.2 18.-Supplementary-Statement-closure-Boots-Pharmacy.pdf (eastridingjsna.com)

4.1.23.3 In relation to the comment within the appeal letter that a new PNA has been published since the application was made, no new PNA has been published since the application was made and so the East Riding PNA for 2022-2025 is still current and should be used to determine the outcome of this appeal."

4.2 Gordons Partnership Solicitors on behalf of the Applicant

4.2.1 "The PSRC's meeting minutes of 26 June 2024

4.2.2 It is clear from the minutes that the PSRC misdirected itself fundamentally in relation to the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and the supplementary statement.

4.2.3 The PSRC seem to have misread the supplementary statement and indicated that it stated there was no gap. They appear to have misunderstood the effect of the supplementary statement, in that it forms part of the PNA when issued.

We will deal with the points arising from this when we consider the supplementary statement below.

4.2.4 In relation to the minutes of the discussion of the application itself it appears that the Programme Lead for Primary Care (HP) presented the application and said "In relation to Regulation 18(2)(b)(iii), granting the application could create significant benefits for persons in the area which were not foreseen when the relevant pharmaceutical needs assessment was published, the application proposes some innovative and alternative ways of delivering services compared to those offered by nearby pharmacies. In addition, whilst the local GP surgeries are closed at the weekend, the proposed Saturday and Sunday opening hours would support additional access to pharmacy services, such as Pharmacy First, Minor Ailments, etc, which in turn could support the wider system. It is recommended that the application is granted on the grounds that the applicant has demonstrated unforeseen benefits and innovative approaches as required by Regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013."

4.2.5 The applicant has no issue with the presentation of the application and the conclusion reached by HP.

4.2.6 The PSRC then state in their conclusion that "the committee considered it would be ideal to introduce another pharmacy to the local area" but did not appear to assess our client's application against the regulatory criteria of whether there was reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB. If they had done so it is likely the PSRC would have appreciated they could have granted the application.

4.2.7 In addition, there appears to be confusion about regulation 18(2)(b)(ii) as the minutes say, after comments about GP surgeries, that "and does not provide any information on how those people with shared protected characteristics will access pharmaceutical services that meet specific needs."

4.2.8 It is difficult to see what is meant by this as the application was made on the basis that there is a group of people who are not able to access pharmaceutical services.

4.2.9 In relation to factual errors and issues:

4.2.9.1 <u>Provision of pharmaceutical services on a Sunday</u>

4.2.9.2 The PNA confirms that there is no provision of pharmaceutical services in Cottingham North or South wards on a Sunday. The nearest pharmacy open on a Sunday is in Hull which is over five miles away from Cottingham.

4.2.9.3 <u>Missing information</u>

4.2.9.4 The committee said "The application provides very limited information on the nearest GP surgeries";

4.2.9.5 The application gave GP surgery names, address, distance from proposed location, opening times, list size and ratings which indicate the need for accessible pharmacy services. This is detailed information about local GP surgeries, and it is difficult to see what else was required. Accordingly there is a concern that the committee did not have all the relevant information before it when it considered the application.

4.2.9.6 Finally, we note that the Health Watch survey is said to have been included in the committee report but this has not been included within the papers forwarded to us. It would be helpful if this could be circulated.

4.2.9.7 Overall the committee's factual and legal errors suggest that is clear that the decision should be quashed and, we would respectfully suggest, substituted with the recommendation made by HP.

4.2.10 <u>The Supplementary Statement issued on 31 March 2024</u>

4.2.11 The East Yorkshire Health and Wellbeing Board indicated that the closure of the Boots Pharmacy in Cottingham has created a potential gap in the provision of pharmaceutical services in Cottingham. They say:

4.2.12 "Boots Pharmacy at 115 Hallgate, HU16 4BD in the Cottingham North Ward closed on the 11/11/2023. This closure does create a significant change to the East Riding PNA 2022-2025 that are of a [sic] it does create a gap in the need for pharmaceutical services within the Cottingham North and South Wards".

4.2.13 The comments confirm our client's understanding that his proposed pharmacy would offer significant benefits as set out in his application. Our client's position is that if the relevant PNA is deemed to be the version including the 31 March 2024 supplementary statement the application can still be treated as falling within Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical) Regulations 2013 ("the Regulations").

4.2.14 It is appreciated that for the application to fall within Regulation 18 regulation, 18(1)(b) has to apply and the improvements and better access offered by the application should not be included in the PNA:

4.2.15 "the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,"

4.2.16 The supplementary statement confirms a gap in the provision of pharmaceutical services and is deemed to be part of the PNA.

4.2.17 However schedule 1, paragraph 4 is relevant when considering whether the comments in the supplementary statement are sufficient:

"*The improvements and better access: gaps in provision Paragraph 4. A statement of the pharmaceutical services that the HWB has identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied—*

(a) would, if they were provided (whether or not they were located in the area of the HWB), secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in its area,"

4.2.18 It is arguable that the identification of a potential gap in the supplementary statement is not a full statement of the pharmaceutical services that are not provided in the area. Consequently, the specific improvements and better access proposed by our client are not included in the PNA in the way mandated by 18(1)(b) and can still be considered unforeseeable.

4.2.19 However, it is our client's case that to ensure fairness of consideration, then as our client's application was made prior to the issue of the supplementary statement, NHS Resolution should consider that the relevant Pharmaceutical

Needs Assessment for the purpose of this application should be that in existence at the time the application was made and not that amended by the supplementary statement. He drafted the application with an assessment of the position at that time. The supplementary statement confirms that he was correct in that assessment, and it seems unfair that the application should be refused if the actions of a third party render the form of his application obsolete.

4.2.20 PCA will also be aware that pursuant to paragraph 7 of schedule 3 of the NHS (Pharmaceutical and Local Pharmaceutical) Regulations 2013 it has flexibility in the way it determines appeals.

4.2.21 Even without consideration of the supplementary statement, it is clear from the ICB's comments that a pharmacy would offer significant benefits although they did not analysis [sic] their conclusion in the framework of the relevant legislation.

4.2.22 In summary, it would be helpful for the ICB to share the survey conducted by Healthwatch.

4.2.23 The appeal should be conducted to ensure a fair consideration of the issues. If this is done either on the basis of the PNA in place prior to March 2024 PNA or on the basis of the post March 2024 PNA our client submits that the outcome should be the grant of the application and the quashing of the decision by NHS England. If an oral hearing is arranged our client would want to attend and be represented."

4.3 Humber Local Pharmaceutical Committee

4.3.1 "The LPC will leave the questions raised around the application of the regulations to the appeals unit to consider. However we do note that even if the decision by PRSC is quashed NHS resolution does have the remit to redetermine the decision to the same outcome, we would support that same outcome. The LPC continues **not** to support this application.

4.3.2 We will however provide local clarification and comment on the matters of 'context' and claims made in the appeal. This will necessitate the use of extracts from the appeal letter presented in *italics* with highlights for any typos.

4.3.3 *'a background of closure of the Boots Pharmacy, at 156 Hallgate, Cottingham, HU16 4BD which closed in November 2023 and evidence of failures in the service provided by the remaining pharmacies. There is also to be an increase in population from local housing developments.'*

4.3.4 It is established fact that a closure of a contract does not automatically mean that a gap has been created, something that has been demonstrated nationally and in other supplementary statements on closures issued by East Riding Council. The loss of a contract does not automatically equate to a loss of services as the remaining contractors can, and do, adjust to meet the new demand. From the original application '*the proposed pharmacy would preserve the status quo and ensure that access to pharmaceutical services is consistent and reliable.'* Status quo is not an unforeseen benefit and the reference to 'consistent' services is outside of the regulations and comes under contract management within the purview of NHS England/ICB, closures are notified to NHSE using the accepted process.

4.3.5 *'In a response to the circulation of the original application, the East Yorkshire Health and Wellbeing board indicated that the closure of the Boots Pharmacy in Cottingham has created a potential gap in the provision of pharmaceutical services in Cottingham. This decision is relevant to the determination of this application. The comments confirm our client's understanding that his*

proposed pharmacy would offer significant benefits as set out in his application.'

4.3.6 East Riding PNA (2022-2025) was published in October 2022 and is the PNA to be considered.

4.3.7 Since then while there have been changes in Cottingham there was no Gap identified in the PNA nor in any supplementary statements to the date of application. The supplementary statement that came later still does not create a gap. Potential is just that potential, not actual. It has no significant impact on this application, which predates it, and the applicant's other current application to address the potential gap they believe exists from the statement is being dealt with elsewhere.

4.3.8 However there is a regulatory basis to query any declared gap in the supplementary statement.

4.3.9 Regulation 6(3) states that a supplementary statement may be published by a HWB explaining changes to the availability of pharmaceutical services since the publication of its PNA where:

4.3.9.1 *The changes are relevant to the granting of applications referred to in section 129(2)(c)(i) or (ii) of the NHS Act 2006 (i.e. routine applications);* ***and***

4.3.9.2 *The HWB is: Satisfied that producing a new PNA is a disproportionate response to the changes, or is in the process of producing a new PNA and is satisfied that immediate modification of its PNA is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area.*

4.3.10 Supplementary statements, therefore, simply explain changes to the availability of services e.g. a pharmacy has closed/opened/relocated. They cannot go on to identify a gap etc.

4.3.11 Where the HWB identifies changes to the need for pharmaceutical services in its area, which are of a significant extent, then regulation 6(2) says that it is to produce a new PNA.

4.3.12 It's not, therefore, simply the case that a supplementary statement is issued when a pharmacy closes. The rest of regulation 6(3) **must** be satisfied too.

4.3.13 When determining the application, therefore, NHSR should have regard to the PNA and note that a supplementary statement has been issued confirming the closure of a pharmacy, if it chooses to factor in the supplementary statement at all. However, unless that current need is articulated in the PNA, **not** in a supplementary statement, there is no gap to apply against or refer too, applications must be refused by our understanding if depending on that gap.

4.3.14 Setting aside the fact a supplementary statement cannot identify gaps, needs, improvements or better access, the supplementary statement that was issued wouldn't meet the requirements of either paragraph 2 or 4, Schedule 1 in any case.

4.3.15 **Necessary services: gaps in provision**

2. *A statement of the pharmaceutical services that the HWB has identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied—*

(a) need to be provided (whether or not they are located in the area of the HWB) in order to meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in its area;

(b) will, in specified future circumstances, need to be provided (whether or not they are located in the area of the HWB) in order to meet a future need for pharmaceutical services, or pharmaceutical services of a specified type, in its area.

4.3.16 **Improvements and better access: gaps in provision**

4.3.17 ***4.*** *A statement of the pharmaceutical services that the HWB has identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied—*

(a) would, if they were provided (whether or not they were located in the area of the HWB), secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in its area,

(b) would, if in specified future circumstances they were provided (whether or not they were located in the area of the HWB), secure future improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in its area.

4.3.18 The HWB has not stated which pharmaceutical services are not being provided in its area but which either:

4.3.18.1 need to be in order to meet a current or future need (as well as specifying the future circumstances) for, or

4.3.18.2 would, if they were provided, secure current or future improvements, or better access, to pharmaceutical services or pharmaceutical services of a specified type.

4.3.19 It is therefore our understanding that within the PNA it isn't sufficient to simply say there is a gap – the HWB has to go further and say what the gap is and what is required to fill it, i.e. what services, where and when they are to be provided, and what the specified future circumstances are that would trigger the need/improvements/better access if relevant. If it fails to do so, as in this case, then there is no gap, and nothing to consider.

4.3.20 ***'Location of the neighbouring pharmacies***

4.3.21 By way of overview, the East Riding area has fewer pharmacies per 100,000 population than both the Yorkshire and Humber and England averages, so it is not the position that the population have above average choice of provision in areas outside Cottingham.

4.3.22 Cottingham is covered by two ward areas: Cottingham North and Cottingham South. The proposed pharmacy falls within Cottingham South, which has 9,612 usual residents. Cottingham North has 7,902 usual residents so the total population is 17,514. (Data as at 2022 from Nomis which provides official census statistics). People also come from outside Cottingham seeking healthcare services: the total of the list sizes of the two closest GP surgeries is over 30,000.

4.3.23 The best estimate of the proposed location is adjacent to the site of the closed Boots Pharmacy. This pharmacy served a distinct population outside the retail

area of the town centre where the other two pharmacies in Cottingham are located, and the appellant's pharmacy will serve this population.'

4.3.24 The amount of pharmacy's per 100k is an oft quoted number which has no regulatory status whatsoever and is entirely irrelevant taking none of the many other factors around access and capacity into account.

4.3.25 It is worth noting that Cottingham, while it often refers to itself as Cottingham village, is not a rural location and is very much attached to the conurbation of Hull and its surroundings with the access and facilities that implies. People are mobile within and without Cottingham and into Hull as well as the East Riding.

4.3.26 Cottingham does indeed have 2 GP surgeries and those surgeries provide prescriptions that are dispensed at 150 and 97 different community pharmacies respectively (SHAPE data).

4.3.27 By considering real world geography which takes no heed of the border between Hull and the East Riding there are 10 community pharmacies within 2 miles of the proposed location. The 6 listed on the provided map are all within 1.5miles and 5 of them actually within 1.2miles. 2 within 1.3 miles.

4.3.28 There is ample choice of contractors and with the Cottingham GPs providing prescriptions dispensed in so many community pharmacies this does show that the patients in Cottingham are making full use of their patient choice in dispensing their prescriptions at a variety of locations.

4.3.29 ***'Opening times of neighboring*** [sic] ***pharmacies***

4.3.30 *The closest pharmacies to the proposed site are Boots and Jhoots Pharmacy. Neither of these pharmacies offer early opening hours on weekday mornings - our client will be open from 8am whereas Boots and Jhoots open at 9am. As mentioned in the application, these local surgeries open at 8am so the pharmacy would be available to dispense acute prescriptions from these surgeries. The proposed pharmacy will open between 9 and 1pm on Sunday and as there is currently no Sunday opening in the locality this will increase the choice of time of the provision of pharmaceutical services. Out-of-hours access will also be increased by the applicant's proposal to install out of hours automated access to medicines.'*

4.3.31 The appellant only offers opening to 1700 Mon-Sat with supplementary hours only on Saturday, but they do offer core hours on Sundays. There is no data to show unmet need that goes against what the PNA says 'However, since out of hours and urgent care services are provided outside the Ward (from where there is access to medicines or extended hour pharmaceutical services if needed), the HWBB considers there is no gap in necessary service provision.'

4.3.32 Indeed there is out of hours, and Sunday opening, provided by Tesco on Hall Road whose share of the Cottingham GPs items, at 3% and 2.7% respectively is well above those shares for other contractors, around 1%, at that distance of 1.9miles. (SHAPE data)

4.3.33 The appellant seeks to provide benefits by matching GP practices opening at 0800. No evidence is supplied to illustrate any unmet need from patients around an 0800 opening, the LPC also notes that the 0800-0900 hours offered are supplementary hours and therefore outside of consideration as they can be changed at will. Also with reference to those accessing rail travel there is also no evidence supplied of unmet need or even issues.

4.3.34 '***Accessibility***

4.3.35 *There have been many concerns raised about the accessibility of the provision of pharmaceutical services because of problems with the provision of essential and other services from the current providers in Cottingham. The Patient Participation Group (PPG) for King Street Medical Practice in Cottingham meets monthly and the minutes reflect growing concerns with the pharmaceutical provision in Cottingham. For example – the meeting on October 2023 recorded the following…'*

4.3.36 Claims are made about service levels in Cottingham, without formal NHS validated complaint evidence these specific, and social media driven, points have no probative value as the LPC, and ICB/NHSE, are well aware of the temporary issues that occurred in Cottingham. Issues due to a rogue online patient group, as referenced in the appeal, misunderstanding the true situation around pharmacy provision in Cottingham, as the Boots contract was closing to a managed plan that was drastically disrupted due to the actions of this patient group, actions the practice dissociated itself from to this LPC representative personally. The LPC is also well aware of the changes contractors have made to improve their capacity. Regardless of this 'blip' these issues are all within the remit of NHSE/ICS contract management and not relevant to a Reg18 application.

4.3.37 Any mention of the availability to advanced or enhanced services such as Minor ailments, pharmacy contraception, hypertension etc, from the appeal and original application, are also irrelevant to an application for an essential services contract. These services are within existing contractors remit to sign up for should there by evidence of genuine need.

4.3.38 *'In relation to accessibility in terms of physical ease of access to the existing provision, for those attempting to gain access to pharmacy services by foot, the pavements are not well maintained, and the walk would take about seven minutes if travelling from the proposed site. '*

4.3.39 How many people would that be and what evidenced impact is there from their choice to walk and do they constitute a significant group? No evidence is supplied.

4.3.40 *'Many of those living on the east side of Cottingham would of course not need public transport options if our client's pharmacy was in place. The pharmacy will be near the train station and will be able to offer services to those using travelling to or from Cottingham by rail.'*

4.3.41 Again what actual evidence is there beyond assumption to show that they would need this or indeed suffer from any unmet needs which also applies to the rail travellers.

4.3.42 Typical residential housing around 58-60 Beck Bank Cottingham [image provided at appendix D, page 5].

4.3.43 The only 'units' on Beck Bank and station Rd junction [image provided at appendix D, page 5].

4.3.44 We do wonder exactly where the appellant is planning to locate a pharmacy.

4.3.45 *'For people accessing pharmaceutical services by car nearly 20% of households, according to the Nomis report for both Cottingham wards, do not have access to a motor vehicle which makes it particularly important that there are accessible pharmacies where they live.'*

4.3.46 This means 80% car ownership which isn't bad in an affluent area with low deprivation such as Cottingham. It is worth remembering that there are 10

community pharmacies within 2 miles, 5 within 1.2miles and 2 current Cottingham contractors within 0.3 miles. 2 contracts alone constitute choice.

4.3.47 ***'Housing Developments***

4.3.48 *The application sets out the general position from the local plan in relation to the housing developments in the local area leading to an estimate increase in population by at least 3,000 in the 2019 to 2029 period. In fact, substantial building work has already taken place with key developments as follows: '*

4.3.49 Housing developments are noted in the PNA, and therefore foreseen if you talk of a 2019-2029 plan with the current PNA covering 2022-2025. Planned construction does not equal built, sold and inhabited homes. And inhabited by the numbers and types of people the appellant may wish.

4.3.50 *'The existing local pharmacies are already unable to manage the additional work from the closed Boots pharmacy and the increasing population will put further pressure on pharmaceutical services.'*

4.3.51 A statement based on an assumption with no data to validate either point.

4.3.52 The table below shows the dispensed items data for just the 6 pharmacies listed on the supplied Map all within 1.5miles of the proposed location.

4.3.53 2 have had changes of ownership which render their data incomparable. However the remaining 4 do clearly show that they have all increased their dispensing volume significantly and well beyond the average increase for the Humber LPC area. The 4, when comparing the 6 months prior to Boots Hallgate closing, then compared to 5 months of 2024 afterwards, show an average increase of 17% compared to the LPC average of 3.3%. These items have to come from somewhere and remember the Cottingham GPOs prescriptions are split across up to 150 pharmacies.

Contract	**Average monthly items Apr-Sept 23**	**Average monthly items Jan-May 24**	**Variance Items**	**variance %**	**Comments**
Boots King St Cottingham	10922	13267	2345	21.47%	
Jhoots King St Cottingham	3946	3908	-38	-0.96%	COO Impact from Lloyds
Boots Endike lane	7513	9035	1522	20.26%	
Keiths Bricknell Ave	7678	7633	-45	-0.59%	COO Impact from Whitworths
Keiths Cottingham Rd	6713	7680	967	14.40%	Keiths Cottingham Rd
Boots Orchard Park	15905	17848	1943	12.22%	
			6694		
Boots Hallgate Cottingham	**5031**	N/A			The Closed Pharmacy
Humber LPC	**1765376**	1823820	58444	**3.31%**	

4.3.54 **+17% average for the 4 CPs unaffected by COO compared to +3.31% LPC Average**

4.3.55 Boots Hallgate was dispensing roughly 5000 items monthly before the closures impact, the 4 comparable community pharmacies shown here alone have seen a collective increase above that amount before remembering the other 146 contractors processing the Cottingham prescriptions.

4.3.56 *'In summary the difficulties with access both geographically and because of the times and service level of existing provision means that there is no reasonable choice of pharmaceutical services in the area. '*

4.3.57 As previously explained, and backed by data unlike this claim, there are 5 pharmacies within 1.2miles and only 2 are needed for choice, and the 2 are within 0.3miles. When looking to the true geography and not limiting oneself just to Cottingham the fuller picture shows this statements flaws.

4.3.58 *'Cottingham has a significant population with protected characteristics. The information given in the application was comprehensive and in summary East Riding has a higher than average older (and ageing) population and poorer health is associated with advancing age. Specifically for Cottingham North and South wards the percentage of retired people is 34% and 32.8% respectively against a national average of 21.5%. '*

4.3.59 This elderly population, in both wards, for both male & female, has a longer life expectancy than the national average (PNA). Again where are the details to show how these characteristics are being ill served and what detailed solutions are being offered to address any identified shortcomings in a normal manner, let alone an innovative one. There is no innovation present in the application.

4.3.60 *'The Nomis data for Cottingham South also records that there are fewer people who report very good health in South Cottingham (43.7%) than the national average (48.5%), which suggests a higher than average pressure on services.'*

4.3.61 A suggestion is not enough to grant an application. Where is the information, data, analysis to demonstrate an understanding of the specific causes of this in comparison to other locations and an offer of something innovative that would deliver improvements?

4.3.62 '*It appears that there are services that meet the elderly population's specific needs that are difficult for them to access. An example of this is the Hypertension Case-Finding Service. It appears from checks made recently through SHAPE Atlas data from the BSA for the Hypertension Case-Finding Service that Jhoots Pharmacy has no activity data and Boots has limited activity data for the service.*

4.3.63 *They also do not return on a search to 'Find a pharmacy for a [free] BP check' via:*

4.3.64 *Other services that would be offered by our client but are not currently provided in Cottingham include Pharmacy Contraception Service and only Jhoots Phamacy* [sic] *is registered to provide the Smoking Cessation Service.*

4.3.65 *There is no record of Boots at 44-46 King Street, Cottingham nor Jhoots at Unit 1 Kings Parade, Cottingham receiving a DMS payments in February 2024 nor a trend that would suggest they had previously provided this important essential service. (Information from Pharmadata).'*

4.3.66 Any mention of availability of advanced or enhanced services such as Minor ailments, pharmacy contraception, hypertension etc is also irrelevant to an

application for an essential services contract. These services are within existing contractors remit to sign up for should there by evidence of genuine need/demand.

4.3.67 However it should also be noted that the DMS, SCS are both services initiated by the hospital trusts referring into them and outside a pharmacies control. Across our area, and indeed nationally, these referrals occur at a very low level, with many signed up contractors receiving few if any referrals into those services.

4.3.68 In addition PCS is a new service still finding its feed [sic] and all of these services are advanced services, entirely optional to start and stop, and have no bearing in regard to the granting of a contract.

4.3.69 *'The issues that relate to the inadequate provision of pharmacy services generally as are set out above when discussing choice, also apply to the difficulties that people with protected characteristic have in receiving timely and effective pharmacy services.'*

4.3.70 In general there is a lack of information to reinforce the various statements made about the current contractors and situation in Cottingham.

4.3.71 We ask NHS Resolution to consider our clarification of the appellants 'context' and if NHSR chooses to quash the decision by NHS England they can choose to redetermine and should refuse this appeal.

4.3.72 The LPC appreciates being kept informed of the progress of the application and would request to be invited to any oral hearing, should one be required."

4.4 Jhoots Pharmacy

4.4.1 "Thank you for your letter dated 8th August 2024 notifying us of the appeal with regards to the above application. I would like to take this opportunity on behalf of Jhoots Pharmacy (as an interested party) and submit the following response for consideration.

4.4.2 As a preliminary point we note the applicant has applied as a 'best estimate of address', however they provide two potential addresses the first of which is not an estimate it is a specific address i.e. 58-60 Beck Bank, Cottingham, HU16 4LH the other is a wide area covering 0.5km. The application either needs to be where 'premises are known' i.e. specific address or a best estimate. Multiple locations should not be provided. The application is therefore not a complete application and should therefore be refused.

4.4.3 With regards to the additional supporting documentation by the application and appeal I would wish to submit the following.

4.4.4 The applicant refers to previously there being three pharmacies in Cottingham and now there are two. I submit therefore, a choice of pharmacies in Cottingham. The Boots Pharmacy that closed was on the same street as Jhoots Pharmacy and within the same retail area. The other Boots Pharmacy on King Street is only a short distance away in a good location close to the Sainsbury's Local and other shops and services.

4.4.5 The applicant refers to the PNA and that it mentions there is no provision after 6pm and on Sundays. In response to this I would submit that neither does the PNA say there is gap in this respect or that there is a need. The appellant has not provided evidence there is a specific need for services on Sunday.

4.4.6 The applicant submits “many of the people who live around Cottingham are reliant on having access to a pharmacy to which they can walk”. It is difficult to see how the application would make any significant difference. The address specified the applicant confirms is only 300 metres from the next nearest pharmacy. The other best estimate of address is wider radius of 0.5km so could be anywhere within that area so it is difficult to make further analysis.

4.4.7 In considering Reg 18(2)(b)(ii) – people who share a protected characteristic, the applicant refers to general data within East Riding rather than specifically Cottingham. The fact that East Riding may have fewer pharmacies per 100,000 of population compared to Yorkshire and Humber and England averages does not provide justification to Regulation 18 (2)(b)(ii).

4.4.8 The applicant provides extracts from building developers web sites on new homes but really lends no further specifics in terms of timescales or further details to support the context of Regulation 18 for this application.

4.4.9 In our opinion the applicant has not provided evidence that the application would confer significant benefits in the context of choice within the area of the Health and Wellbeing Board, innovative services, or to those groups who may share a protected characteristic. Regulation 18 is not met and therefore we submit the application cannot be approved.

4.4.10 We submit that there is a choice of pharmacies in Cottingham. The ICB PSRC appears to have provided a detailed consideration to the application, and we support the decision to refuse the application. With respect I ask for the appeal to be dismissed.”

5 Observations

5.1 Humber Local Pharmaceutical Committee

5.1.1 “The LPC feels its initial submission covers off the thinking and rebuttal around the appellants approach to the relevant PNA, the impact and status of supplementary statements and indeed the lack of a gap. We do wish to clarify the statement below from the appellants representative for the sake of data clarity.

5.1.2 *‘Provision of pharmaceutical services on a Sunday*

5.1.3 *The PNA confirms that there is no provision of pharmaceutical services in Cottingham North or South wards on a Sunday. The nearest pharmacy open on a Sunday is in Hull which is over five miles away from Cottingham.’*

5.1.4 The nearest Sunday opening pharmacy to the application is Tesco’s Hall Rd in Hull which is only 1.9 miles away and NOT 5 miles. For the avoidance of doubt the location of Cottingham and Hull is shown below [appendix E, page 1], they are geographically connected.

5.1.5 The LPC appreciates being kept informed of the progress of the application and would request to be invited to any oral hearing, should one be required.”

5.2 The Commissioner

5.2.1 “Thank you for your letter dated 12th September 2024 which we received on 17th September 2024.

5.2.2 This letter will respond to the representations put forward by the applicant in relation to the:

5.2.2.1 PSRC meeting minutes of 26 June 2024

5.2.2.2 Supplementary Statement issued on 31 March 2024

5.2.3 **The Pharmacy Services Regulations Committee (PSRC's) meeting minutes of 26 June 2024**

5.2.4 Upon re-reading the minutes from the above meeting, Humber & North Yorkshire (HYN) Integrated Care Board (ICB) acknowledge that there was an error in that they stated the supplementary statement indicated there was no gap when indeed it did state there was a gap. We apologise for this. However, PSRC were aware of what the supplementary statement said.

5.2.5 In relation to the comment that the PSRC had misunderstood the effect of the supplementary statement to the Pharmacy Needs Assessment (PNA), HNY ICB had previously taken advice from Primary Care Commissioning (PCC) to be certain of its role.

5.2.6 In line with regulation 6(3) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, supplementary statements explain changes to the availability of pharmaceutical services which are of a significant extent where:

5.2.6.1 the changes are relevant to the granting of applications referred to in section 129(2)(c)(i) or (ii) of the NHS Act 2006, and

5.2.6.2 the Health & Wellbeing Board (HWB) is satisfied that producing a new PNA would be a disproportionate response to those changes, or it is in the process of producing a new PNA and is satisfied that immediate modification of its current PNA is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area.

5.2.7 Within Chapter 8 of the DHSC PNA information pack for local authority health and wellbeing boards, it states "Supplementary statements are statements of fact; they do not make any assessment of the impact the change may have on the need for pharmaceutical services. Effectively, they are an update of what the pharmaceutical needs assessment says about the availability of pharmaceutical services. They are not a vehicle for updating what the pharmaceutical needs assessment says about the need for pharmaceutical services".

5.2.8 Under regulation 6(2) of the 2013 regulations where a HWB identifies changes to the need for pharmaceutical services in its area which are of a significant extent, it must produce a new PNA unless it is satisfied that to do so would be a disproportionate response to those changes. Therefore, where a HWB identifies changes to the need for services the correct step is to start to produce a new PNA, not issue a supplementary statement.

5.2.9 In response to the first paragraph on page 2, where the applicant states that PSRC did not assess the application against the regulatory criteria of whether there was reasonable choice regarding obtaining pharmaceutical services in the area of the relevant HWB, our previous response dated 8th August to regulation 18(2)(b)(i) detailed that there were 10 Community Pharmacies within 2miles of the proposed premises.

5.2.10 Likewise, in relation to comments around regulation 18(2)(b)(ii) our previous response detailed that "there was no mention in the application of how people who share a protected characteristic, as listed in section 149(7) of the equality Act 2010, access services that meet their specific needs for pharmaceutical

services that, in the Health & Wellbeing area, will access pharmaceutical services that are currently difficult for them to access". This was based on the information submitted in the application / justification information which had some information within it in relation to age & race but nothing comprehensive which then went on to illustrate how those who share a protected characteristic access services that meet specific needs for pharmaceutical services that, in the HWB area, are difficult for them to access.

5.2.11 **Factual Errors.**

5.2.12 **Provision of Pharmaceutical Services on a Sunday.**

5.2.13 In response to the provision of pharmaceutical services on a Sunday, the applicant states the nearest pharmacy open on a Sunday is 5miles away. Within our report that was submitted for consideration by PSRC shows that the nearest pharmacy open on a Sunday is Tesco Pharmacy which is in fact 1.5miles away. This was taken from Find a pharmacy - NHS (www.nhs.uk).

5.2.14 **Missing Information.**

5.2.15 I can confirm that the application and justification document were shared with PSRC to aid in their decision making.

5.2.16 Apologies for not including the Health Watch Survey report. This was included as an appendix to the report but is attached to the email which contains this response [appendix F].

5.2.17 **The Supplementary Statement issued on 31st March 2024.**

5.2.18 In relation to the supplementary statement being part of the PNA, as stated above within Chapter 8 of the DHSC PNA information pack for local authority health and wellbeing boards, it states "Supplementary statements are statements of fact; they do not make any assessment of the impact the change may have on the need for pharmaceutical services. Effectively, they are an update of what the pharmaceutical needs assessment says about the availability of pharmaceutical services. They are not a vehicle for updating what the pharmaceutical needs assessment says about the need for pharmaceutical services".

5.2.19 Therefore, in relation to the comment in the final paragraph of this letter that there is a pre and post supplementary statement PNA is incorrect and so the East Riding PNA for 2022-2025 is still current and should be used to determine the outcome of this appeal."

5.3 Gordons Partnership Solicitors on behalf of the Applicant

5.3.1 "Community Pharmacy Humber – letter dated 6 September 2024

5.3.2 We have already set out our position on the interpretation of the regulations in relation to the effect of the supplementary statement and the wording of the statement and we will not repeat it here.

5.3.3 In relation to matters not already commented on:

5.3.4 Overall, the letter challenges statements made in the appeal that rely on independent data such as the Healthwatch Survey and Nomis census data by asking for data. It appears there is a failure to understand the evidential basis of the appeal and that the statements in the appeal are only made by reference to this independent data.

5.3.5 Access

5.3.6 Community Pharmacy Humber states “People are mobile”. This is a sweeping statement linked to the number of community pharmacies that dispense the prescriptions issued by the local GPs and permeates the representations. The response also recites the number of pharmacies across a large area and then dismisses the very real difficulties in local transport options or pedestrian access for people who do not have access to a car. It should be noted that there is no challenge to the demographic data that our client has put forward showing that there are 20% of households with no access to a car or van. For the population of Cottingham who do not have access to all transport options there is no reasonable choice of pharmacy.

5.3.7 Opening hours

5.3.8 The comments made by Community Pharmacy Humber about need miss the point that the criteria is about reasonable choice. It is our client’s case that there is no reasonable choice when opening hours do not meet those of the closest surgeries and the population have to travel nearly 2 miles for a weekend service.

5.3.9 Service levels in Cottingham

5.3.10 These are specific concerns raised by the GP Surgery and validated by Healthwatch and not a “rogue online patient group”.

5.3.11 These concerns are relevant to the determination of reasonable choice as they suggest that although there are other services in Cottingham, they are often not available at the times when they are required nor are they providing the services required.

5.3.12 The figures quoted for the increase in prescription numbers across local pharmacies provide evidence of the pressure on local services and gives some indication of why the local services are not meeting demand.

5.3.13 <u>Jhoots Pharmacy - letter dated 7 September 2024</u>

5.3.14 Jhoots contention that the best estimate location given is not valid is not accepted. NHS Resolution will be aware that best estimates of the proposed location are given where the address is not known. The regulations require the applicant to give an address which is as specific as possible, and it should be the best estimate that the applicant can reasonably make at the time of the application. This is what our client has done. NHS R’s reasons for granting or refusing the appeal would be essentially the same if the application was granted at any location within the best estimate locations and therefore it conforms to the best estimates provisions within the regulations.

5.3.15 The Pharmacy Manual identifies that best estimate locations that are likely to cause difficulty are those that are insufficiently detailed and gives the example of statements such as “in the vicinity of” which would not be the case in this application.

5.3.16 Other comments made by Jhoots are covered in the appeal document.

5.3.17 <u>Humber and North Yorkshire ICB letter dated 28 August 2024</u>

5.3.18 Many of the comments have already been covered in our client’s representations already made. However, both this commentator and the HWB have said that there is no evidence submitted to support that “existing pharmacies are already unable to manage the extra work from the closed

Boots". For the avoidance of doubt, the evidence relied on is the pattern of temporary closures by one of the pharmacies in Cottingham, and patient and surgery concerns about the service provided in Cottingham and the increase in population which will arise from the new developments. This has an impact on patient choice as it means the services are not always available to the population of Cottingham when and where they are required.

5.3.19 In relation to the housing developments, we note that it is not disputed that the population will be increasing in Cottingham due to housing developments. It should be noted that the developer's website for second stage of the Poppy Fields development indicates that all homes are now reserved. The remaining developments set out in the appeal are at an advanced stage of sale and occupation so the increase in population is not something that will occur in the distant future but is in place now and will be continuing.

5.3.20 Boots letter of 3 September 2024

5.3.21 No comments.

5.3.22 In all the circumstances, we would ask you to allow our client's appeal and grant the application."

6 Further observations

After reviewing the observations, NHS Resolution applied its discretion under Schedule 3, Part 3, paragraph 7 and allowed parties the opportunity to make comments on the Healthwatch survey report contained in the Commissioner's observations, given this is new information and was something which the Pharmacy Appeals Committee would have regard to.

6.1 The Commissioner

6.1.1 "Thank you for your letter dated 26th September 2024 which we received on 27th September 2024 allowing us the opportunity to comment on the Healthwatch survey report.

6.1.2 The only observation from Humber & North Yorkshire (HNY) Integrated Care Board (ICB) in relation the Healthwatch survey report is that it is the views of patients at a point in time and may not be their current views."

6.2 Gordons Partnership Solicitors on behalf of the Applicant

6.2.1 "Thank you for your letter of 26 September 2024. Our position in relation to the effect of regulation 6 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 remains unchanged.

6.2.2 Instead of taking the wording of regulation 6(3) as they are set out, especially the words "any such supplementary statement becomes part of that assessment", the ICB is relying on a gloss on the words. Where this is at odds with the actual wording, the gloss cannot stand.

6.2.3 The intent behind regulation 6(3) is that needs may have changed, for example in a part of the HWB area, but it would be disproportionate (for example, disproportionately costly) to produce a new PNA for the whole area earlier than a new PNA for the whole area is due.

6.2.4 This view is supported by the amendment Regulations that took account of the pandemic by introducing regulation 6(A1). The [sic] explanatory note to the National Health Service (Charges, Primary Medical Services and Pharmaceutical and Local Pharmaceutical Services) (Coronavirus) (Further Amendments) Regulations 2021 says:

6.2.4.1 *"HWBs can, pending a formal revision of their PNA, issue supplementary statements on matters relevant to NHS England's commissioning decisions – if this is essential to prevent significant detriment to pharmaceutical services provision in their area. These Regulations allow new HWBs to issue supplementary statements updating the PNAs they inherit from the HWBs they replace, pending the publication of the new HWB's own first PNA (regulation 3(7)). Any supplementary statements that the old or new HWBs have issued then become part of the PNA that NHS England uses to support commissioning decisions that relate to the area of the new HWB…".*

6.2.5 It would be irrational to say that a supplementary statement published by a new HWB is part of the PNA to be used for commissioning services, but a supplementary statement by an existing HWB is not.

6.2.6 In relation to the guidance, we consider that the ICB has applied the guidance selectively. Although it is accepted that the words quoted are contained in the guidance, at other parts of the guidance a stance that contradicts the suggestion that the statement is just a statement of fact is taken. In particular the guidance states:

6.2.6.1 *"Where the health and wellbeing board identifies changes to the availability of pharmaceutical services that are not relevant to the granting of applications and therefore does not issue a supplementary statement, it will need to keep a record of these changes so that they can be incorporated into the next version of the pharmaceutical needs assessment."*

6.2.7 This makes it clear that a change that does prompt the issue of a supplementary statement will be relevant to the granting of an application. This position is also clear from the examples of actual practice that are given.

6.2.8 However, our position on the effect of the statement for this application also remains unchanged.

6.2.9 In relation to the Healthwatch survey, it should be noted that the findings emphasise the importance of a pharmacy that is accessible to people's homes. The issues summarised by Healthwatch do not simply relate to concerns that can be managed by the ICB but relate to the increase in population from the new developments and show pharmaceutical services that are no longer able to support the current level of population. The survey also shows evidence of people with protected characteristics (predominantly age) who do not receive the pharmaceutical services that they require. One example is Feedback 80:

6.2.9.1 *"Need more of them. My elderly parents 95 and 86 have been left without medication due to the long waits and even when asking for home delivery it doesn't arrive. My father became ill from not having his meds and needed medical support all of which could have been avoided. Cottingham is shambolic in the provision of pharmacy provision and the population of the village. A total disgrace. I have seen people in tears, getting cold waiting outside then told to come back another day."*

6.2.10 Finally, it is accepted that an error was made in relation to the distance to the Tesco and we apologise for that. Our client has checked the distance and route that he would take to drive to the Tesco Superstore and calculates it is 2.9 miles Please see below [appendix G, page 2].

6.2.11 In the circumstances, we would ask NHSR to grant our client's appeal."

6.3 Humber Local Pharmaceutical Committee

6.3.1 "The LPC feels its initial submission and September follow up covers off many of the issues with the appeal. We do wish to clarify the statements below from the appellants representative aimed at our comments and leave others to point out other matters such as the foreseen nature of housing developments and that reserved housing still does not mean built, or occupied, or occupied with whoever suits the narrative.

6.3.2 *Overall, the letter challenges statements made in the appeal that rely on independent data such as the Healthwatch Survey and Nomis census data by asking for data. It appears there is a failure to understand the evidential basis of the appeal and that the statements in the appeal are only made by reference to this independent data.*

6.3.3 We do understand data but also how it's used rather than merely stated, asking for data is to establish what the applicant intends to do with this data and how this provides benefit. The HealthWatch summary of themes showed temporary issues related to customer service that should be addressed by the contractor or via NHSE's contract management and are out with the decision processes within these regulations. Even with a sample size of 172, 0.98%, from a population of 17,543 in the PNA, which will have changed but only to further dilute the sample %, there are numerous examples within the comments showing little issue with accessing dispensing services out with Cottingham. Taken within the context of the upheaval at the time this data would have been gathered, the closed Hallgate shop was mentioned by some as though still in operation, this does colour the views seen within the true context of the time.

6.3.4 *Community Pharmacy Humber states "People are mobile". This is a sweeping statement linked to the number of community pharmacies that dispense the prescriptions issued by the local GPs and permeates the representations. The response also recites the number of pharmacies across a large area and then dismisses the very real difficulties in local transport options or pedestrian access for people who do not have access to a car. It should be noted that there is no challenge to the demographic data that our client has put forward showing that there are 20% of households with no access to a car or van. For the population of Cottingham who do not have access to all transport options there is no reasonable choice of pharmacy.*

6.3.5 Sweeping or not the sheer number and breadth of the pharmacies that are dispensing prescriptions generated in Cottingham is undisputed. This range shows evidence of choice and mobility. We understand that highlighting that people are mobile may go against the picture being painted that sets Cottingham as a village separate from any urbanisation, reliant on only its local services when in fact, as demonstrated in our previous communications and map, Cottingham is contiguous with the City of Hull. It is not distanced from the city at all and has access to the public transport networks, bus or rail or taxi, that are available to the city. The applicant themselves makes mention of the rail access, a key factor in their chosen location.

6.3.6 We would also remind the appellant that 20% without access means 80% with access. The national travel survey in 2022 has the UK average of households without car access at 22% showing Cottingham comparing favourably.

6.3.7 *The comments made by Community Pharmacy Humber about need miss the point that the criteria is about reasonable choice. It is our client's case that there is no reasonable choice when opening hours do not meet those of the closest surgeries and the population have to travel nearly 2 miles for a weekend service.*

6.3.8 The LPC fully understands reasonable choice. Highlighting the number of contractors involved in dispensing Cottingham Rx's demonstrates that choice in action and we understand that 2 contracts, actually in Cottingham already, does show choice even at the ultra-local level. We would also point out that there are 10 community pharmacies that offer a weekend service less than 2 miles away, including one that includes Sunday opening. If that distance were extended to 2.8 miles there are 4 contracts that open on Sundays as well as weekend Saturdays. 2.8 miles, with car ownership at the level seen in Cottingham, the number of contractors currently involved in processing prescriptions and with access to the city's transport infrastructure, does not seem to be much of a barrier to choice or access in urban Cottingham. (The 14 contractors mentioned within 2.8 miles are listed in attachment A) [Appendix H, page 4].

6.3.9 *These are specific concerns raised by the GP Surgery and validated by Healthwatch and not a "rogue online patient group".*

6.3.10 As mentioned previously this LPC, and me in particular, was involved in rectifying the destabilising patient issues instigated by actions from one surgery's patient group. This misinformation, and its subsequent impact, has had long lasting effects which would have been picked up at the time of the HealthWatch survey. Attachment B [Appendix H, pages 5 to 9] shows the behind-the-scenes email trail and evidence of the 'rogue' actions taken by the PPG and the outcome. As we were involved and are aware of the reality of what went on, we wish this to be taken as a statement of fact that demonstrates the context which the HealthWatch and the PPG notes used by the appellant exist within. The attachment is provided to NHS resolution with names unredacted to demonstrate its veracity knowing NHS resolution may need to redact some details.

6.3.11 *These concerns are relevant to the determination of reasonable choice as they suggest that although there are other services in Cottingham, they are often not available at the times when they are required nor are they providing the services required.*

6.3.12 The LPC reminds NHS resolution that Cottingham residents have already demonstrated their uptake of choice across the City of Hull, not just Cottingham which is not a distinct entity due to its contiguous nature and integration with Hull services. The appellant has shown disquiet with contractor patient service levels linked to a known event but not contract level issues that cannot be dealt with by the current contractors and NHSE contract management. Evidence of unmet need at any specific times, or indeed evidence of failure to meet core contractual responsibilities, is not present.

6.3.13 *The figures quoted for the increase in prescription numbers across local pharmacies provide evidence of the pressure on local services and gives some indication of why the local services are not meeting demand.*

6.3.14 The numbers being so at odds with the established averages across the Humber patch demonstrate that the item volume from Hallgate has been absorbed into the pharmacy's near to the closure, further proving Cottingham residents have choice and are demonstrating its application. The known Hallgate linked capacity issues are known and within the scope of the contract management system to regulate and therefore have no probative weighting on the granting of a new contract.

6.3.15 The LPC appreciates being kept informed of the progress of the application and would request to be invited to any oral hearing, should one be required."

7 **Consideration**

7.1 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, 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.

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

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

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

Regulation 31

7.5 The Committee first 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).

7.6 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. The Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.

7.7 The Committee did not agree with Jhoots Pharmacy that the application was invalid because it was based on both a fixed address and best estimate.

7.8 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

7.9 The Committee noted that this was an application for “unforeseen benefits” and fell to be considered under the provisions of Regulation 18 which states:

"(1) If—

(a) NHS England receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and

(b) the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,

in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), NHS England must have regard to the matters set out in paragraph (2).

(2) Those matters are—

(a) whether it is satisfied that granting the application would cause significant detriment to—

(i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or

(ii) the arrangements NHS England has in place for the provision of pharmaceutical services in that area;

(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England’s duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England’s duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England’s duties under section 13K of the 2006 Act (duty to promote innovation)),

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

(c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;

(d) whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;

(e) whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;

(f) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.

(g) whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—

(i) by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and

(ii) since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.

(3) NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."

7.10 The Committee noted that the Commissioner, in its decision, had refused the application on the following basis:

7.10.1 *"Overall, this applicant did not meet the regulatory requirements for an UB application, and it was suggested that, should a new PNA be issued which identified a gap in provision, the contractor could apply once more under the relevant application and regulations….*

7.10.2 *…The Committee noted that the supplementary statement was issued after the application was made, not as a result. The statement also reiterates that there is no current gap identified, if this was the case, the outcome would trigger the revision of a new PNA. The supplementary statement is a statement of fact which has no bearing on this application."*

7.11 The Committee noted that Gordons Partnership Solicitors stated in its appeal that:

7.11.1 "*In a response to the circulation of the original application, the East Yorkshire Health and Wellbeing board indicated that the closure of the Boots Pharmacy in Cottingham has created a potential gap in the provision of pharmaceutical services in Cottingham. This decision is relevant to the determination of this application. The comments confirm our client's understanding that his proposed pharmacy would offer significant benefits as set out in his application.*

7.11.2 *However, for the avoidance of doubt, it is our client's position that the application can still be treated as falling within Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical) Regulations 2013 ("the Regulations"). The confirmation of the potential gap is lacking in specificity so*

the improvements and better access proposed by our client can still be considered unforeseeable.

7.11.3 *If Primary Care Appeals does not accept this contention, then as our client's application was made prior to the issue of the supplementary statement, it would be open to the PCA to consider that the relevant Pharmaceutical Needs Assessment for the purpose of this application should be that in existence at the time the application was made and not that amended by the supplementary statement. It could be argued that the only way to determine the application justly is with regard to the earlier Pharmaceutical Needs Assessment (Regulation 22(2)(a) of the Regulations)."*

7.12 The Committee was mindful of Regulation 22 which considers which PNA should be considered when an application is made in the same period that a new PNA is published.

7.13 The Applicant specifically refers to the Regulations by stating "*It could be argued that the only way to determine the application justly is with regard to the earlier Pharmaceutical Needs Assessment*". The Committee was of the view that the reference to an earlier PNA in Regulation 22 is a reference to a PNA published in accordance with Regulation 6(1) and is not a reference to the form of a PNA that existed immediately before a supplementary statement was published. This is due to the operation of a supplementary statement forming a part of the existing PNA. The Committee therefore considered that the current PNA in its "pre-supplementary statement" form is not an "earlier PNA" to which Regulation 22 refers. Regulation 6(3) makes clear that making a supplementary statement that forms part of the existing PNA is not a "revised assessment". The Committee also considered that to read "earlier PNA" in Regulation 22 as including the form of a "pre-supplementary statement" would mean the reference in Regulation 6(1) to "previous publication" of a PNA would also be read as including the form of a "pre-supplementary statement". That clearly undermines the intent of Regulation 6(1) to ensure a new PNA is published within three years of the "previous publication" of a PNA.

7.14 The Committee considered that it was appropriate for NHS Resolution to enable the parties to make comments on the supplementary statement, as it forms part of the PNA and is relevant to this application. The Committee had regard to the comments made by parties in reference to the supplementary statement.

7.15 Gordons Partnership Solicitors, in its representations stated:

7.15.1 *"The comments* [in the supplementary statement] *confirm our client's understanding that his proposed pharmacy would offer significant benefits as set out in his application. Our client's position is that if the relevant PNA is deemed to be the version including the 31 March 2024 supplementary statement the application can still be treated as falling within Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical) Regulations 2013 ("the Regulations").*

7.15.2 *It is appreciated that for the application to fall within Regulation 18 regulation, 18(1)(b) has to apply and the improvements and better access offered by the application should not be included in the PNA:*

7.15.2.1 *"the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1."*

7.15.3 *The supplementary statement confirms a gap in the provision of pharmaceutical services and is deemed to be part of the PNA.*

7.15.4 *However schedule 1, paragraph 4 is relevant when considering whether the comments in the supplementary statement are sufficient:* [Schedule 1, paragraph 4(a) quoted].

7.15.5 *It is arguable that the identification of a potential gap in the supplementary statement is not a full statement of the pharmaceutical services that are not provided in the area. Consequently, the specific improvements and better access proposed by our client are not included in the PNA in the way mandated by 18(1)(b) and can still be considered unforeseeable.*

7.15.6 *However, it is our client's case that to ensure fairness of consideration, then as our client's application was made prior to the issue of the supplementary statement, NHS Resolution should consider that the relevant Pharmaceutical Needs Assessment for the purpose of this application should be that in existence at the time the application was made and not that amended by the supplementary statement.*

7.15.7 *He drafted the application with an assessment of the position at that time. The supplementary statement confirms that he was correct in that assessment, and it seems unfair that the application should be refused if the actions of a third party render the form of his application obsolete.*

7.15.8 *PCA will also be aware that pursuant to paragraph 7 of schedule 3 of the NHS (Pharmaceutical and Local Pharmaceutical) Regulations 2013 it has flexibility in the way it determines appeals.*

7.15.9 *Even without consideration of the supplementary statement, it is clear from the ICB's comments that a pharmacy would offer significant benefits although they did not analysis* [sic] *their conclusion in the framework of the relevant legislation."*

7.16 The Commissioner, in its representations, stated:

7.16.1 *"No new PNA has been published since the application was made and so the East Riding PNA for 2022-2025 is still current and should be used to determine the outcome of this appeal."*

7.17 Humber Local Pharmaceutical Committee, in its representations, stated:

7.17.1 *"The supplementary statement that came later still does not create a gap. Potential is just that potential, not actual. It has no significant impact on this application…*

7.17.2 *… Supplementary statements, therefore, simply explain changes to the availability of services e.g. a pharmacy has closed/opened/relocated. They cannot go on to identify a gap etc.*

7.17.3 *Where the HWB identifies changes to the need for pharmaceutical services in its area, which are of a significant extent, then regulation* [sic] *6(2) says that it is to produce a new PNA.*

7.17.4 *It's not, therefore, simply the case that a supplementary statement is issued when a pharmacy closes. The rest of regulation* [sic] *6(3) must be satisfied too…*

7.17.5 *… therefore, NHSR should have regard to the PNA and note that a supplementary statement has been issued confirming the closure of a*

pharmacy, if it chooses to factor in the supplementary statement at all. However, unless that current need is articulated in the PNA, ***not*** *in a supplementary statement, there is no gap to apply against or refer too* [sic]…

7.17.6 *…setting aside the fact a supplementary statement cannot identify gaps, needs, improvements or better access, the supplementary statement that was issued wouldn't meet the requirements of either paragraph 2 or 4, Schedule 1 in any case…*

7.17.7 *… It is therefore our understanding that within the PNA it isn't sufficient to simply say there is a gap – the HWB has to go further and say what the gap is and what is required to fill it, i.e. what services, where and when they are to be provided, and what the specified future circumstances are that would trigger the need/improvements/better access if relevant. If it fails to do so, as in this case, then there is no gap, and nothing to consider."*

7.18 The Commissioner, in its representations, stated:

7.18.1 *"In relation to the comment that the PSRC had misunderstood the effect of the supplementary statement to the Pharmacy Needs Assessment (PNA), HNY ICB had previously taken advice from Primary Care Commissioning (PCC) to be certain of its role.*

7.18.2 *In line with regulation 6(3) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, supplementary statements explain changes to the availability of pharmaceutical services which are of a significant extent where:*

7.18.3 *the changes are relevant to the granting of applications referred to in section 129(2)(c)(i) or (ii) of the NHS Act 2006, and*

7.18.4 *the Health & Wellbeing Board (HWB) is satisfied that producing a new PNA would be a disproportionate response to those changes, or it is in the process of producing a new PNA and is satisfied that immediate modification of its current PNA is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area.*

7.18.5 *Within Chapter 8 of the DHSC PNA information pack for local authority health and wellbeing boards, it states "Supplementary statements are statements of fact; they do not make any assessment of the impact the change may have on the need for pharmaceutical services. Effectively, they are an update of what the pharmaceutical needs assessment says about the availability of pharmaceutical services. They are not a vehicle for updating what the pharmaceutical needs assessment says about the need for pharmaceutical services".*

7.18.6 *Under regulation 6(2) of the 2013 regulations where a HWB identifies changes to the need for pharmaceutical services in its area which are of a significant extent, it must produce a new PNA unless it is satisfied that to do so would be a disproportionate response to those changes. Therefore, where a HWB identifies changes to the need for services the correct step is to start to produce a new PNA, not issue a supplementary statement."*

7.19 Gordons Partnership Solicitors, in its final observations stated:

7.19.1 *"Our position in relation to the effect of regulation 6 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 remains unchanged.*

7.19.2 *Instead of taking the wording of regulation 6(3) as they are set out, especially the words "any such supplementary statement becomes part of that assessment", the ICB is relying on a gloss on the words. Where this is at odds with the actual wording, the gloss cannot stand.*

7.19.3 *The intent behind regulation 6(3) is that needs may have changed, for example in a part of the HWB area, but it would be disproportionate (for example, disproportionately costly) to produce a new PNA for the whole area earlier than a new PNA for the whole area is due.*

7.19.4 *This view is supported by the amendment Regulations [sic] that took account of the pandemic by introducing regulation 6(A1). The explanatory note to the National Health Service (Charges, Primary Medical Services and Pharmaceutical and Local Pharmaceutical Services) (Coronavirus) (Further Amendments) Regulations 2021 says:*

7.19.4.1 *"HWBs can, pending a formal revision of their PNA, issue supplementary statements on matters relevant to NHS England's commissioning decisions – if this is essential to prevent significant detriment to pharmaceutical services provision in their area. These Regulations allow new HWBs to issue supplementary statements updating the PNAs they inherit from the HWBs they replace, pending the publication of the new HWB's own first PNA (regulation 3(7)). Any supplementary statements that the old or new HWBs have issued then become part of the PNA that NHS England uses to support commissioning decisions that relate to the area of the new HWB…".*

7.19.5 *It would be irrational to say that a supplementary statement published by a new HWB is part of the PNA to be used for commissioning services, but a supplementary statement by an existing HWB is not.*

7.19.6 *In relation to the guidance, we consider that the ICB has applied the guidance selectively. Although it is accepted that the words quoted are contained in the guidance, at other parts of the guidance a stance that contradicts the suggestion that the statement is just a statement of fact is taken. In particular the guidance states:*

7.19.6.1 *"Where the health and wellbeing board identifies changes to the availability of pharmaceutical services that are not relevant to the granting of applications and therefore does not issue a supplementary statement, it will need to keep a record of these changes so that they can be incorporated into the next version of the pharmaceutical needs assessment."*

7.19.7 *This makes it clear that a change that does prompt the issue of a supplementary statement will be relevant to the granting of an application. This position is also clear from the examples of actual practice that are given."*

7.20 The Committee carefully considered all the comments above.

7.21 The Committee noted that when determining the application, the Commissioner disregarded the supplementary statement on the basis of its comments above and refused the application on the basis that Regulation 18(2) had not been satisfied.

7.22 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

7.23 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the PNA in accordance with paragraph 4 of Schedule 1 of the Regulations.

7.24 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a)* ***would*** *if they were provided….secure improvements or better access, to pharmaceutical services… (b)* ***would*** *if in specified future circumstances they were provided…secure future improvements or better access to pharmaceutical services…"* (emphasis added).

7.25 The Committee considered the PNA prepared by East Riding of Yorkshire Council, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee noted that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable, after identifying changes that have occurred that are relevant to the granting of applications, unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a supplementary statement under Regulation 6(3).

7.26 The Committee noted the comments from both Humber Local Pharmaceutical Committee and the Commissioner which state that a supplementary statement "cannot… identify a gap" and that changes to the need for services cannot be made in a supplementary statement and must be in a new PNA. The Committee thus considered that if this were the correct interpretation, then Regulation 18(1)(b) would, implicitly, be satisfied.

7.27 In consequence of these statements the Committee proceeded to consider the wording of Regulation 6, and the DHSC PNA information pack referred to by the Commissioner. The Committee noted that nowhere in Regulation 6 does it say that a supplementary statement cannot be issued where a gap is created. Having regard to the actual wording of Regulation 6(2) it states that the changes since the previous assessment must be "*of a significant extent*". The parties suggestion that a supplementary statement cannot create a gap, would thus create a situation where a change which was not of a significant extent, but nonetheless created a gap, then neither a supplementary statement nor a revised assessment could be issued. The Committee noted that it is not stated anywhere in the Regulations that a change that creates a gap is automatically considered a change of a significant extent (and so triggers the requirement to make a revised assessment in accordance with Regulation 6(2)). The Committee therefore considered that a change that creates a gap might not be of a significant extent, for example, because it is relevant only to a small proportion of the area of the Health and Wellbeing Board.

7.28 The Committee also noted that Regulation 6(3)(b) provides for a situation where a supplementary statement needs to be made while a PNA is pending due to it being "essential to prevent significant detriment to the provision of pharmaceutical services in its area." The Committee considered it would not make sense that a PNA would need to be issued, if this change had created a gap in services, since this would run counter to the necessity of a "immediate" modification clearly established in the Regulations.

7.29 As regards to the DHSC PNA information pack, the Committee noted that the Commissioner is indeed correct that it states, in relation to supplementary statements, "They are not a vehicle for updating what the pharmaceutical needs assessment says about the need for pharmaceutical services.".

7.30 The Committee noted that examples are provided in the information pack to illustrate the use of supplementary statements. The Committee had regard to examples 4 and 5 of "Does a supplementary statement need to be published?". Paragraph 4 refers to the only pharmacy in a deprived part of a town closing. It indicates that the HWB should

consider, if the pharmacy had not been there when the PNA was written, would it have been identified as a gap. Paragraph 5 then states:

"If the health and wellbeing board considers that if the pharmacy mentioned in paragraph 4 had not been open during the writing of the PNA that there would have been a gap in the provision of pharmaceutical services then it would need to publish a supplementary statement."

7.31 The Committee considered that the clear implication here is that the supplementary statement will contain a statement relating to the need for pharmaceutical services. As per paragraph 5, this is the only reason for publishing the supplementary statement. The Committee considered that this directly contradicts the earlier statement that the supplementary statement should not relate to needs for pharmaceutical services.

7.32 The Committee also noted Regulation 6(4) which requires a HWB, in the situation explained in Regulation 6(4), to publish a supplementary statement explaining that a gap is not created. The Committee noted that the Regulations clearly envisage here that a supplementary statement will contain a statement relevant to needs for pharmaceutical services that forms part of the PNA.

7.33 The Committee consequently considered that a supplementary statement may refer only to the availability of pharmaceutical services but, if considered appropriate by the HWB, is also able to identify a gap. As noted above, a supplementary statement then forms part of the PNA. In light of its previous consideration of Regulation 22, the Committee then reviewed the PNA dated 1 October 2022 and the 18 supplementary statements that had been issued.

7.34 The Committee noted that the supplementary statements covered changes to the Pharmaceutical List which included existing pharmacies closing or changing ownership as well as changes to core and supplementary hours for those pharmacies already on the Pharmaceutical List. The Committee noted that the supplementary statement dated 31 March 2024 is relevant to this application which was issued in response to the closure of Boots Pharmacy at 115 Hallgate, HU16 4BD in the Cottingham North Ward. The supplementary statement concluded that:

7.34.1 *"This closure does create a significant change to the East Riding PNA 2022-2025 that are of a* [sic] *it does create a gap in the need for pharmaceutical services within the Cottingham North and South Wards".*

7.35 The Committee noted Gordon Partnership's request for it to apply its flexibility to the manner in which it determines appeals but considered that it would be perverse to ignore the most recent assessment of need that specifically takes into account the closure of the Boots pharmacy at 115 Hallgate, HU16 4BD in the Cottingham North Ward. That assessment of need is set out in the current PNA as updated by the supplementary statement.

7.36 The Committee noted that, regardless of the clear error in the drafting, the surrounding wording in the supplementary statement is very specific, it said the closure "does" create a gap in service provision. However, the Committee also noted and as argued by Gordons Partnership, that the supplementary statement did not overtly state that the closures have created a current or future need.

7.37 The Committee therefore considered if, on one hand, this indicated a level of certainty in relation to a gap that could potentially be filled by an application submitted pursuant to Regulations 13, 15 or 17 (and so prevent the application of Regulation 18(1)(b) to the application) or if, on the other hand, the level of ambiguity was such as to enable the Committee to determine that the improvements or better access that the Applicant is seeking to secure were not or was not included in the PNA.

7.38 The Committee considered that it was clear that the gap could potentially be filled by an application submitted pursuant to Regulations 13, 15 or 17 and so prevent the application of Regulation 18(1)(b) to the application, even if it was not entirely clear to the Committee which one it was. The Committee noted that parties to this appeal had not been expected to provide comments on which type of application (Regulation 13, 15 or 17) could fill the gap but the Committee concluded it was not necessary in this determination to do so.

7.39 The Committee considered that, in this determination, it was required to determine if the improvements or better access were not or was not in the PNA. For the reasons given above, the Committee determined that the improvements or better access were or was included in the PNA and the Committee therefore had to determine that Regulation 18(1)(b) was not satisfied.

7.40 The Committee considered that any potential procedural issues raised by the Applicant had been remedied by the opportunity to provide representations and observations on the additional information circulated by NHS Resolution.

Other considerations

7.41 Having determined that Regulation 18(1)(b) was not satisfied the Committee did not need to have regard to the matters in Regulation 18(2) in order to reach its determination of the appeal.

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

7.42.1 confirm the Commissioner's decision;

7.42.2 quash the Commissioner's decision and redetermine the application;

7.42.3 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.

7.43 As the Commissioner had disregarded the supplementary statement, the Committee determined that the decision of the Commissioner must be quashed.

7.44 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.

7.45 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties 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 18.

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

8 DECISION

8.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.

8.2 The Committee determined that the application should be refused.

Case Manager
Primary Care Appeals