

18 December 2024

REF: SHA/26324

APPEAL AGAINST NHS HUMBER AND NORTH YORKSHIRE ICB DECISION TO REFUSE AN APPLICATION BY MARRA HEALTHCARE LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT CRICHTON AVENUE PARADE OF SHOPS, CLIFTON, YORK, YO30 6EF (BEST ESTIMATE)

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APPEAL AGAINST NHS HUMBER AND NORTH YORKSHIRE ICB DECISION TO REFUSE AN APPLICATION BY HAXBY GROUP PHARMACY LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT 86 CLIFTON, YORK, YO30 6BA (BEST ESTIMATE)

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APPEAL AGAINST NHS HUMBER AND NORTH YORKSHIRE ICB DECISION TO REFUSE AN APPLICATION BY THE PHARMACY GROUP CORPORATION LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT WATER LANE AND PETERSWAY, 6/6A COMPTON STREET, CLIFTON, YO30 6LE – 2 COMPTON STREET, CLIFTON YO30 6LE – INSIDE YORK MEDICAL GROUP, WATER LANE YO30 6PS (BEST ESTIMATE)

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the applications.
- 1.2 The Committee determined that the applications should be refused.

A copy of this decision is being sent to:

Healthcare Plus Consulting Ltd on behalf of Marra Healthcare Ltd
Rushport Advisory LLP on behalf of Haxby Group Pharmacy Ltd
The Pharmacy Group Corporation Ltd
PCSE on behalf of Humber and North Yorkshire ICB

Advise / Resolve / Learn

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1 The Applications

By application dated 18 February 2024, Marra Healthcare Ltd applied to Humber and North Yorkshire ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Crichton Avenue parade of shops, Clifton, York, YO30 6EF (best estimate). Map covering best estimate area depicted at Appendix A with proposed best estimate sites located within blue box. In support of the application it was stated:

- 1.1 In response to why this application should not be refused pursuant to Regulation 31 Marra Healthcare Ltd stated:
 - 1.1.1 N/a. There is no pharmacy currently trading from/adjacent to the proposed site.
- 1.2 "The Boots, 86 Clifton, York, YO30 6BA was open with no plans for closure at the time of the PNA being written. This application is therefore submitted under Regulation 18 as an unforeseen benefits application.
- 1.3 An increase in local pharmacy capacity and improved choice to meet the needs of the local population."

Supporting information with the application form

"Background

- 1.4 This application is in respect of opening a new pharmacy to provide better pharmaceutical access and choice for residents of York. Specifically, patients requiring access to pharmaceutical services in the Clifton Ward. We understand that the Boots Pharmacy, 86 Clifton, York, YO30 6BA closed on the 17th February 2024 and has left a significant gap in pharmaceutical services within the Clifton Ward. Hence this application is offering unforeseen benefits not captured within the PNA.
- 1.5 The best estimate of the proposed site we wish to open up a new pharmacy is located on Crichton Avenue Parade of Shops, Clifton, York YO30 6EF. This is a different location to the recently closed Boots, however we believe that a pharmacy located here would provide better access to the resident population.
- 1.6 According to the 2019 index of multiple deprivation, the Clifton Ward contains some of the most deprived areas in the country. The proposed site is located in the York 009C Lower-Layer Super Output Area (LSOA), which is amongst the most 20% deprived LSOAs in the country. The adjacent York 009D LSOA is also in the top 20% most deprived LSOAs. It is evident that the proposed site and the area directly surrounding it are highly deprived and can simply be described as some of the most deprived areas in the whole of York. It is well documented that health needs are greater in deprived areas. When we also consider the pressure that the primary care network currently faces, it is imperative that this application is granted.
- 1.7 Such is the obvious need for a pharmacy at this location, residents have taken it upon themselves to petition for a pharmacy in the local area. At the time of writing, 256 local residents have signed a petition in an attempt to save the recently closed Boots at 86 Clifton, YO30 6BA.
- 1.8 We invite the committee to read the petition in full at: https://www.change.org/p/a-community-pharmacy-in-clifton-york?source_location=search
- 1.9 There are many comments highlighting the need for a pharmacy near the proposed location. These will be referenced further along in the application.

Proposed Location

- 1.10 The proposed location is situated amongst the well utilised shopping parade on Crichton Avenue, YO30 6EF, which serves the local community and has other local amenities co-located (See image [Appendix A]). There are wide walkways and good disabled access. It is well served by the number 19 bus stopping directly outside.
- 1.11 The Clifton area of York, as defined in the PNA, does not cover the exact relevant populations, and thus it is more prudent to analyse the LSOAs (Lower-layer Super Output area) surrounding the proposed location, to determine the local population that are likely to utilise the site.

LSOA	Population
York 009C	1637
York 009A	2005
York 009B	1720
York 009D	1387
York 009E	1638
York 006D	1556
York 006A	1638
York 007B	1651
York 007a	1597

- 1.12 We can see from the table above that approximately 15,000 local residents are likely to access pharmaceutical services in the vicinity of the proposed location. Now the

Boots has closed, these patients no longer have access to pharmaceutical provision nearby; and hence are likely to access provision at the proposed site should a new contract be granted.

- 1.13 We can see that the proposed site [on the map at Appendix A], YO30 6EF, fills a huge geographical gap in pharmaceutical provision. This is especially relevant when we consider the 3 recent pharmacy closures near the proposed site.

Regulations

- 1.14 We are required by NHS England to address the overarching question in an Unforeseen Benefits application:
- 1.15 “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 area”.
- 1.16 When considering the above question, the provisions of Regulation 18(2)(b) should be noted:

(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 the NHSCB's duties under sections 13I and 13P of the 2006 Act(b) (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 the NHSCB's duties under section 13G of the 2006 Act(c) (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act(a) (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;

- 1.17 We note that points on reasonable choice; protected characteristics; and innovation are desirable, however, they are merely supporting considerations when determining whether in fact the overarching test in regulation 18(2)(b) has been met: an application should be granted should it provide improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area.
- 1.18 We have addressed these regulations overleaf.

Patient Journeys

- 1.19 Above we identified approximately 15,000 residents of the aforementioned LSOAs who would likely access pharmaceutical services at the proposed site. When considering securing better access, we must consider what a typical patient journey would look like. We also consider the reasonable choice within these journeys, alongside how those with protected characteristics find those journeys.

- 1.20 Using the proposed site, YO30 6EF, as an arbitrary marker to represent local residents. We can see that the next nearest pharmacy, notwithstanding the Boots that is set to close, is Cohens Pharmacy (Gillygate, YO31 7EQ), 1.1 miles away. It must be noted that distance in itself is also a barrier to access. For residents currently residing near the proposed site, pharmaceutical services are difficult to access by foot, car, and public transport now the Boots (YO30 6BA) has closed. Below we highlight the anticipated journeys that patients would have to make should this application not be granted.
- 1.21 By Foot from Proposed site (YO30 6EF) to nearest pharmacy (Cohens Pharmacy, YO31 7EQ)
- 1.22 This journey is 1.1 miles or 24 minutes and falls outside of the 15- minute PNA target for residential areas and is clearly excessive especially considering the inner-city location. [see Appendix A]. We cannot consider a 2.2-mile round walk to access pharmaceutical services as sufficient access, nor can we consider this as having a reasonable choice to pharmaceutical services.
- 1.23 When we also consider the high deprivation in the area, it is not unreasonable to interpret that walking will be the preferred mode of transport for a lot of residents due to the cost barrier that car travel and public transport may present.
- 1.24 Such a lengthy journey will prove difficult for the elderly, disabled, or for parents with young children – all of whom are groups with protected characteristics. This sentiment is echoed by many residents in the Boots petition:
- “The alternatives offered on the NHS app are in the city centre and are difficult for disabled residents to access”*
- “...there is no pharmacy within a reasonable distance.”*
- “A local pharmacy is important for a community, especially when demands on GPs are so high. Not everyone has access to online prescription services or transport to a supermarket pharmacy several miles away and some will have difficulty going into the city centre to the large Boots store.”*
- 1.25 Comments are centred around the obvious need for pharmaceutical provision in this area once the Boots ultimately closes. Vulnerable patients are worrying about how they will access pharmaceutical services especially for those who do not drive and have limited mobility.
- 1.26 It follows that surrounding pharmaceutical provision in the area is also not accessible by foot on account of the greater distances involved [see Fig 1 in Appendix A], and thus there is a lack of reasonable choice and access to pharmaceutical services for those travelling by foot, especially for those groups above who share protected characteristics.
- 1.27 By Car from Proposed site (YO30 6EF) to nearest pharmacy (Cohens Pharmacy, YO31 7EQ)
- 1.28 The journey by car to Cohens Pharmacy Gillygate, YO31 7EQ, is currently an 8-minute drive from the proposed site. However, car parking is an issue with no parking available outside of this town centre Cohens store, with patients likely to use Bootham Row car park, YO30 7BP.
- 1.29 This car park is still a 150-metre walk from the Cohens and requires patients to cross the busy Gillygate without the use of pedestrian aids; a journey that the elderly, disabled, and those with mobility issues may struggle with.

- 1.30 We also note that residents, especially those in the deprived York 009C and 009D LSOAs, may not have a car to access pharmaceutical services at the Cohens in the town centre. Per the 2011 Census, 43.5% of households in the York 009C LSOA did not have access to a car or van. When we also consider the highly deprived nature of the 009C and 009D LSOAs, it could be supposed that those with a car who would like to access pharmaceutical services may be deterred from doing so frequently due to petrol and parking costs. This presents a clear barrier to access pharmaceutical services and thus it cannot be determined that there is currently reasonable choice in access to pharmaceutical services by car.
- 1.31 As per the images above, car parking at the proposed site is ample and free of charge. The reduced journey distance may encourage those on tight budgets to access pharmaceutical services more regularly. Granting this application would introduce reasonable choice by car and eliminate the current barrier to access.
- 1.32 By Public Transport from Proposed site (YO30 6EF) to nearest pharmacy (Cohens Pharmacy (Gillygate YO31 7EQ)
- 1.33 The journey by bus to Cohens Pharmacy – Gillygate, YO31 7EQ is a 20-minute journey; and patients living to the North of the proposed site will still have to walk a distance to be able to access public transport services. When we account for walking time, bus waiting time and round journey's, journey time alone to a local pharmacy could exceed an hour should this application not be granted. Clearly this does not provide adequate access to pharmaceutical services and presents barriers to access especially to groups such as the elderly, disabled, and parents with young children.
- 1.34 Such poor provision by bus is highlighted by a comment on the Boots petition:
- “There is very little provision, and declining, in York as a whole. With Clifton Boots’ closure, this makes it almost impossible for many local residents to access basic needs, especially if they do not drive. Local bus services are inadequate in this respect also for the less mobile.”*
- 1.35 Additionally, the highly deprived nature of the York 009C and 009D LSOAs means residents who wish to access pharmaceutical services by bus may be deterred from doing so frequently due to the transport costs involved.
- Conclusion
- 1.36 In our view, the closure of the Boots Pharmacy, YO30 6BA, has left a significant gap in pharmaceutical services for the Clifton ward, and North York in general.
- 1.37 Local residents and those who are using the local amenities would benefit significantly from having a pharmacy located on the parade of shops located on Crichton Avenue.
- 1.38 Granting this application would secure better access to pharmaceutical services. The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than their current choices. It would also introduce reasonable choice of a different pharmaceutical provider for those in the local area, when we consider that the nearest pharmacy is 1.1 miles away.
- 1.39 We would like to note that granting this application would not cause significant detriment to access of pharmaceutical services, as this application is seeking to fill a gap vacated by the Boots, YO30 6BA closure; and notwithstanding the fact that the nearest pharmacy to the proposed site is located 1.1 miles away. On the evidence outlined above, we believe that a new pharmacy contract should be granted.”

By application dated 6 February 2024, Haxby Group Pharmacy Limited applied to the Commissioner for inclusion in the pharmaceutical list offering unforeseen benefits under

Regulation 18 in the region of 86 Clifton, York, YO30 6BA (best estimate). In support of the application it was stated:

1.40 In response to why this application should not be refused pursuant to Regulation 31 Haxby Group Pharmacy Ltd stated:

1.40.1 The current Boots Pharmacy at 86 Clifton is due to permanently close on 17th February 2024.

1.41 “The 2022 - 2025 York PNA did not identify any gaps in service, however it concluded - In summary, there are no gaps in the provision of necessary services in York.

1.42 However, there are a number of developments that are expected to take place over the next three years that may impact on the need for and access to pharmacy services. This includes GP extended access, housing developments, online pharmacies and changes to the way in which pharmacies are funded. It is not possible to assess the impact of this at this time, however, it should remain under review as part of the ongoing PNA process.

1.43 The PNA also noted - A supplementary Statement was issued regarding the closure of Lloyds Pharmacy Limited 3 Intake Avenue, York, YO30 6HB in August 2019. The closure of this pharmacy has reduced access to pharmacy services for approximately 1,500 people (estimate provided by the Public Health England SHAPE tool). These people are now more than 1.2km walk from a pharmacy.

1.44 Since the PNA was published there have been further closures of pharmacies in York. There is currently a well-used pharmacy at 86 Clifton, York that dispenses around 8,000 prescription items per month, but this is due to close on 17th February 2024. With the loss of this pharmacy, patients living in the centre of the Clifton ward will all need to travel over one mile to their nearest pharmacy. For example, someone living on Burdyke Avenue/Kingsway North Junction, distances to next nearest pharmacy would be; Citywide Health, Tower Court (1.1 miles), Citywide Health Water End (1.5 miles), Cohens, Gillygate (1.2 miles), Monkbar Pharmacy (1.3 miles). Local ward councillors have started a petition to help gain signatures of local residents asking for a pharmacies [sic] presence to be maintained within Clifton.

1.45 The planned closure of the pharmacy at 86 Clifton was not anticipated on publication of the 2022-25 PNA. The closure will definitely create a gap in provision, and awarding a new pharmacy contract will therefore meet the needs of this gap and is the unforeseen benefit.”

By application dated 23 April 2024, The Pharmacy Group Corporation Ltd applied to the Commissioner for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at YO10 postcode with best estimate sites between; Water Lane and Petersway along the A19 (Clifton); 6/6a Compton Street, Clifton, YO30 6LE; 2 Compton Street, Clifton, YO30 6LE; Inside York Medical Group – Water Lane, YO30 6PS [see map at Appendix B]. In support of the application it was stated:

1.46 In response to why this application should not be refused pursuant to Regulation 31 The Pharmacy Group Corporation Ltd stated: “n/a”.

1.47 “The closure of the Boots Pharmacy, 86 Clifton, YO30 6BA, has left a gap in pharmaceutical services.

1.48 The recently closed Boots was well-utilised as it averaged 8,000 items a month. It was located amongst other communal shops where residents would access the pharmacy in conjunction with these other shops.

1.49 The Lloyds pharmacy on Intake Avenue, YO30 6HB, also recently closed. Hence, pharmaceutical provision has vanished for residents of Clifton in recent years.

- 1.50 Clifton is also a deprived area with many households not having access to a car or a van. The next nearest pharmacy is over a mile away, and some residents may struggle to access services elsewhere. Residents now have at least a 15-minute walk to access alternative pharmacies. This is difficult for the elderly.
- 1.51 Pharmacies are no longer just dispensers and are playing an important role in minor ailments. The Pharmacy First service is needed to ease pressures on GP practices.
- 1.52 A pharmacy at this location would provide better access to pharmaceutical services. Residents no longer have a reasonable distance to travel to alternative pharmacies. Residents are also unable to see their pharmacist about minor ailments and Pharmacy First. A pharmacy at this location would reduce travel time for prescriptions and allow people to see a pharmacist in conjunction with Pharmacy First.
- 1.53 Boots pharmacy on 86 Clifton, YO30 6BA was open when the PNA was drafted. The Boots has since closed. Opening up a new pharmacy will give improved access, in terms of travel distance and services provided."

2 The Decision

The Commissioner considered and decided to refuse all of the applications. The decision letters dated 28 August 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."

Extracts from the Humber and North Yorkshire ICB letters of 20 August 2024:

- 2.2 "Humber & North Yorkshire ICB has considered the above application, and I am writing to inform you that it has been rejected for the following reasons:
- 2.3 The recommendation to PSRC is that this application is not supported as the applicant has not demonstrated any unforeseen benefits as required by Regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 2.4 18(1)(a) – there would not be any improvements or better access by granting this application.
- 2.5 18(1)(b) – there are no improvements or better access included in the current PNA.
- 2.6 18(2)(a)(i-ii) - no determination can be given in relation to whether granting the application would cause significant detriment to either planning for pharmacy services or for pharmacy services already in place.
- 2.7 18(2)(b)(i) - there is reasonable choice in relation to obtaining pharmaceutical services in the area within 1.5 miles of YO30 6EF with good weekday and weekend opening.
- 2.8 18(2)(b)(ii) – there was some consideration in relation to how patients could access services but no information to evidence how people with protected characteristics would access services to meet specific needs.
- 2.9 18(2)(b)(iii) – there was no evidence to support innovative approaches to the delivery of pharmaceutical services
- 2.10 Appeal rights are granted to: The applicant."

3 The Appeal

In a letter dated 25 September 2024 addressed to NHS Resolution, Healthcare Plus Consulting Ltd on behalf of Marra Healthcare Ltd appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "Thank you for your letter dated 28th August 2024 to my client [sic]. Marra Healthcare Ltd have instructed us (Healthcare Plus Consulting Ltd) to act on their behalf for this appeal, please find an authorisation letter attached.
- 3.2 We would like to appeal the decision made in relation to the above unforeseen benefits application.
- 3.3 Unfortunately, we were not privy to the meeting minutes and thus cannot see the full decision reasoning from NHS England. We would be grateful if this could be provided; however, we appeal based upon the very limited information available to us.
- 3.4 We submit that NHS England have failed to properly evaluate Regulation 18 and the fundamental question within the Regulation: does the application provide *'improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area.'*
- 3.5 We assert that this application does provide improvements or better access to pharmaceutical provision, as set out in my client's original application and the comments previously provided by my client. We re-attach this correspondence for re-consideration by NHS resolution.
- 3.6 Particularly we feel that NHS England have failed to consider the high deprivation in the area. We reiterate that the Clifton Ward contains some of the most deprived areas in the country. The proposed site is located in the York 009C Lower-Layer Super Output Area (LSOA), which is amongst the most 20% deprived LSOAs in the country. The adjacent York 009D LSOA is also in the top 20% most deprived LSOAs. It is evident that the proposed site and the area directly surrounding it are highly deprived and can simply be described as some of the most deprived areas in the whole of York. The Committee will be aware that deprived populations consequently have greater health needs; and that pharmaceutical provision should be doubly concentrated in such high areas of deprivation.
- 3.7 These residents currently have to travel over a mile to access pharmaceutical provision by foot. We submit that this is not representative of reasonable choice or access to pharmaceutical services. This is especially pertinent when we consider that residents in the York 009C are particularly limited in mobility. Per the 2021 census, 22.6% of these residents have a disability under the 2010 Equality Act. This is far greater than the figures for York (17.1%) and England (17.3%). Of particular concern is the fact that 10.6% of residents in this LSOA have significant disabilities under the 2010 Equality Act with their day-to-day activities limited a lot. This is far greater than the figures for England (7.3%) and almost double the average figures for York (5.9%).
- 3.8 We submit that accessing pharmaceutical services by foot is out of the question for a number of local residents. These residents ultimately have to try and access pharmaceutical provision by car or via public transport.
- 3.9 Those accessing via car may have a few different options to pharmaceutical provision, however, as previously mentioned, vehicular access is poor at my client's proposed site. Per 2021 census data, 37.3% of households in the York 009C LSOA do not have access to a car/van and 38.3% of households in the York 009D LSOA do not have access to a car/van.
- 3.10 This is much greater than the 23.5% no car/van percentage for England as a whole. It is apparent that residents near my clients proposed site have poor mobility and poor vehicular access. Thus, these residents could be reliant on public transport to access pharmaceutical provision.

- 3.11 These residents could access the Cohens (YO31 7EQ) at Gillygate via the No.6 bus.
- 3.12 Alternatively, these residents could access the Citywide Health Pharmacy (YO30 4WL) at Oakdale Road also via the No.6 bus. However, those residing near the proposed site may not be able to afford the associated costs with bus travel. This is compounded by the fact that 7.3% of residents in the York 009C LSOA and 6% of residents in the York 009D LSOA consider that they have bad/very bad health. These figures are far greater for the York (4.2%) and England (5.2%) averages and would suggest that the local population require greater interaction with pharmaceutical services.
- 3.13 We can see that there is a deprived population, with poor health, that do not have access to a car and are being forced to access pharmaceutical provision by bus. However, repeated journeys by bus can be particularly punitive for this population with residents undoubtedly asking themselves whether they should access pharmaceutical provision by bus or utilise the money elsewhere. Having to choose between accessing health services or obtaining everyday essentials is clearly representative of no choice at all; much less than the threshold of 'reasonable choice'.
- 3.14 Overleaf [see Appendix C] we provide a visual aid for the Committee surrounding the deprivation at the site proposed by my client.
- 3.15 Visually from the above map [see Appendix C], we can see that the site proposed by my client serves a highly deprived area, given by red shading on the map. Areas of affluence are given by blue shading.
- 3.16 We also note that it is telling that Citywide Group, who operate Tower Court Pharmacy (YO30 4WL), have also applied to open a pharmacy in this locality despite being a contractor in the area and the second nearest pharmacy to my client's proposed site. We believe that this highlights the very real need for an additional pharmacy in the area and current lack of reasonable choice.
- 3.17 We submit that Regulation 18 has been met through the representation above and attached [sic] previous correspondence by my client. Thus, we invite NHS Resolution to grant my client's application."
- 3.18 Included with the letter of appeal was the information already provided with the application form at section 1 paragraphs 1.4 – 1.38.

Also included with the letter of appeal was a letter from Healthcare Plus Consulting Ltd on behalf of Marra Healthcare Ltd to the Commissioner dated 5 August 2024 which stated:

- 3.19 "Thank you for your letter dated 22nd July 2024. I act for Marra Healthcare Ltd and have been instructed by my client to respond to the comments made upon this application. We welcome comments from all local parties and note the following:
- 3.19.1 Clear support for this application was included in the York HWB's comments.
- 3.19.2 Notwithstanding the views and opinions of local contractors, the reality remains that:
- 3.19.2.1 The proposed site lies in the York 009C LSOA, which is amongst the most 20% deprived LSOAs in the country. The area is also one of the most deprived areas in the whole of York. As stated in our original application, it is well known that highly deprived areas have greater health needs, hence access to a pharmacy is imperative.
- 3.19.2.2 The demand for a pharmacy in Clifton is evidenced by the change.org petition included in our original application. At the time of submission of this application the petition had 256 signatures, and at the time of submission of these response [sic] to comments the petition now has

643 signatures. This significant increase in signatures shows that having no pharmacy in the Clifton area is a growing problem and suggests that local residents are unable to cope with accessing pharmaceutical services at other local pharmacies.

- 3.20 Taking each representation that made considerable comments in turn below:

Community Pharmacy North Yorkshire

- 3.21 We disagree with these comments as we understand that an unforeseen benefits application can have more than 40 core hours and in doing so we are better fulfilling local needs.

York HWB

- 3.22 We welcome the support of the HWB for this application. We note that the HWB have highlighted extended core opening hours to Sunday. The Application by my client does offer all-day Saturday core hours, and we note that the recently closed Boots did not open on a Sunday. However, should the HWB have identified a real need for Sunday opening, then my client would be more than happy to explore this further.

Boots & Cohens

- 3.23 Our client's application was submitted under regulation 18 as an unforeseen benefits application. We believe that the high deprivation around my client's proposed site, alongside the closure of the Boots Pharmacy in Clifton has created a real need for a pharmacy in this area. Hence, an application offering unforeseen benefits in the proposed area at Crichton Avenue Parade of Shops, Clifton, York, YO30 6EF has strong grounds. The local community surrounding the proposed premises of our application geographically fall under the York 009C LSOA. This is a highly deprived area where 7.3% of the population have bad or very bad health according to 2021 census data. This is 3.1% greater than the York Local Authority and 2.1% greater than England. Similarly, 22.6% of residents in this LSOA are classed as disabled under the Equality Act. This is 5.5% higher than York Local Authority and 5.3% higher than England.

- 3.24 Contrary to the comments made by Boots and Cohens, it is clear that the closure of the Boots Pharmacy is leaving a significant gap in pharmaceutical services and this is further reaffirmed by comments from residents whom signed the change.org petition:

3.24.1 *"The alternatives offered on the NHS app are in the city centre and are difficult for disabled residents to access"*

3.24.2 *"...there is no pharmacy within a reasonable distance."*

3.24.3 *"A local pharmacy is important for a community, especially when demands on GPs are so high. Not everyone has access to online prescription services or transport to a supermarket pharmacy several miles away and some will have difficulty going into the city centre to the large Boots store."*

- 3.25 In response to the other comments stated by Cohens:

3.25.1 Our application proposes a wide variety of services, including some that are targeted to benefit the local population, such as Smoking cessation schemes. The Boots Pharmacy that has now closed did not offer these services.

3.25.2 Complaints about lack of service provision are evidenced by the 643 signatures and comments received in the change.org petition asking for a Community Pharmacy in Clifton following the closure of the Boots.

3.25.3 The proposed opening hours are shown below and are greater than 40 hours.
We believe these hours will improve access to pharmaceutical services.

3.26 Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 13:00 14:00 – 18:30	09:00 – 13:00 14:00 – 18:30	09:00 – 13:00 14:00 – 18:30	09:00 – 13:00 14:00 – 18:30	09:00 – 13:00 14:00 – 18:30	10:00 – 16:00	Closed	48.5

3.27 Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 13:00 14:00 – 18:30	09:00 – 13:00 14:00 – 18:30	09:00 – 13:00 14:00 – 18:30	09:00 – 13:00 14:00 – 18:30	09:00 – 13:00 14:00 – 18:30	10:00 – 16:00	Closed	48.5

The Pharmacy Group Corporation Ltd

3.28 We acknowledge the comments made by The Pharmacy Group Corporation Ltd and highlight below why our client's application (Marra Healthcare Ltd) should be preferred to The Pharmacy Group Corporation Ltd and Haxby Group Pharmacy Ltd's applications.

3.29 Before submitting their application, my client greatly considered where a pharmacy would best serve the needs of the local population. My client proposes to serve one of the most deprived areas of York, the York 009C LSOA, where health needs are high and complex. This is a highly deprived area and is classified within the second decile of the 2019 Index of Multiple Deprivation, where 7.3% of the population have bad or very bad health according to 2021 census data. This is 3.1% greater than the York Local Authority and 2.1% greater than England.

3.30 The other 2 applicants propose to serve the York 007B LSOA. We note that this LSOA is a much more affluent area being in the seventh decile of the Index of Multiple Deprivation. The table below exhibits data from the 2021 census. As can be seen from this data, only 4.9% of residents in this LSOA are classed as having bad/very bad health. This is lower than the data for England which is at 5.2% and the York 009C LSOA (my client's proposed site) which is at 7.3%. The statistics in the table below also show how travel and disability outcomes are significantly worse at my clients proposed site compared to the site earmarked by other applicants. It is evident that the York 009C LSOA is highly deprived, whereas the York 007B LSOA is much more affluent and a pharmacy situated at my client's proposed site would be much more beneficial to the community.

	Marra Healthcare Ltd – York 009C	The Pharmacy Group Corporation Ltd & Haxby Group Pharmacy Ltd – York 007B	England
No car/van	37.30%	25.30%	23.50%
Bad/very bad health	7.30%	4.90%	5.20%
Disabled under the Equality Act	22.60%	18.50%	17.30%

Haxby Group Pharmacy Ltd

- 3.31 We note that the Haxby Group have provided no representation on my client's application. We can only assume that this is because they have no objections to my client's application.

Conclusion

- 3.32 We conclude that there is a very real need for a pharmacy at my client's proposed site and urge the Committee to grant my client's application.
- 3.33 We note that there are other Applicants, however these applicants propose to serve areas with good health metrics. Granting an application at my client's proposed site would serve a much more needing local population and help to ease local health inequalities.
- 3.34 We invite the Committee to grant this application under Regulation 18."

In a letter dated 26 September 2024 addressed to NHS Resolution, Haxby Pharmacy Group Ltd appealed against the Commissioner's decision. The grounds of appeal are:

- 3.35 "I wish to appeal the decision of the ICB to refuse our application to open a pharmacy in the region of 86 Clifton Road, York.
- 3.36 I do not understand why the ICB has refused this application and the decision that we received simply says that we failed all the legal test [sic]. However, the decision also states that there was "no information" on some parts of the test or "no evidence" provided. This is simply wrong.
- 3.37 The background to this application is that there was a well used Boots pharmacy that traded from premises at 86 Clifton, York. The Boots dispensed approximately 8,000 items per month.
- 3.38 The pharmacy closed in February 2024.
- 3.39 This is not simply an application that seeks to open a pharmacy just because one has closed. The closure of the Boots pharmacy has left residents in this part of York without any reasonable access to a pharmacy and the services that it provides. The shaded areas on the map below [see Appendix D] indicate areas which are within 15 minutes walk of a pharmacy. The white non-shaded areas are more than a 15 minute walk from a pharmacy.
- 3.40 What this shows is that the Clifton Ward now has no pharmacy service.
- 3.41 There may be areas where having no access to a pharmacy can still be considered reasonable due to the location of other pharmacies and the lack of real demand for a pharmacy within a particular location due to demographics or lack of any associated medical services, but this is not the case in Clifton.
- 3.42 Whilst people tend to think of the city of York as being an affluent area, Clifton is one of the most deprived areas of York and falls just outside the top 10% of deprived areas nationally (national rank 4,772 out of 34,844 with 1= most deprived).
- 3.43 The map below [see Appendix D] is the York ward map and this shows that not only Clifton, but the wards that surround it, make up the most deprived areas of York.
- 3.44 Clifton is now an area with greater than average health needs due to poor living standards and deprivation generally, but with no access to a pharmacy where people live.

- 3.45 Local residents have been vocal in their need for a pharmacy in York and have been working with their local councillor, Danny Myers, to try to re-open a pharmacy in the Clifton ward.
- 3.46 On his change.org petition Mr Myers says;
- 3.46.1 *I am a resident of Clifton, and I know the difficulty our community faces due to the lack of a local pharmacy.*
- 3.46.2 *Since the closure of Lloyds Pharmacy on Intake Avenue and the Boots Pharmacy on Clifton Green this February, there is a severe gap in community pharmacy services for Clifton residents. This creates an unfair delivery of service to Clifton residents compared to the rest of the city.*
- 3.46.3 *Our community is home to many elderly and vulnerable individuals who would benefit from a local pharmacy. According to NHS England, over 1.6 million people in England live more than a mile away from a pharmacy (source: NHS England). The absence of a local pharmacy forces us to rely on distant pharmacies or online services which often results in delays and difficulties.*
- 3.46.4 *A community pharmacy would not only provide easy access to prescription medications but also offer health advice and support that is crucial for our wellbeing.*
- 3.46.5 *Pharmacies play an integral role in public health by providing immunisations, conducting health screenings and offering advice on healthy living (source: Royal Pharmaceutical Society).*
- 3.46.6 *We believe that establishing a community pharmacy in Clifton will greatly improve healthcare accessibility for all residents while reducing pressure on other healthcare services.*
- 3.46.7 *Please join us in requesting that the City of York Council makes an urgent case for the NHS Humber & North Yorkshire Integrated Care Board to restore community pharmacy services in Clifton Ward at the earliest opportunity, to ensure important access to public services for people in Clifton.*
- 3.47 Mr Myers' petition has over 500 supporters with some supporters providing reasons for signing the petition which are copied below.
- 3.48 *Reasons for signing*
- 3.49 *See why other supporters are signing, why this petition is important to them, and share your reason for signing (this will mean a lot to the starter of the petition).*
- 3.49.1 *It's scandalous that there are no local pharmacies, we need more, not less*
- 3.49.2 *I believe in the importance of community pharmacies, for the elderly, immobile, and otherwise vulnerable. Access to healthcare shouldn't be restricted because it benefits a business - which is what I assume Boots mean by, 'optimise locations'.*
- 3.49.3 *Exactly same reason as Cllr Myers*
- 3.49.4 *All residents should have easy access to a pharmacy*
- 3.49.5 *Access to a local pharmacy for advice and medication can be critical for early diagnosis and treatment.*

- 3.49.6 *This is a vital community service*
- 3.49.7 *It's a mile walk in any direction to the nearest pharmacy now Boots has closed. Boots was always busy. It's a puzzle that it was closed.*
- 3.49.8 *We definitely need a Pharmacy in the area*
- 3.49.9 *We need this in Clifton!*
- 3.49.10 *The pharmacy was and STILL should be situated in the heart of the Clifton community.*
- 3.49.11 *On the two occasions I have ordered a repeat prescription at the main Boots in Coney ...*
- 3.49.12 *A pharmacy is a must for the Clifton area, there are a lot of old people in the area and they need this service for repeat prescriptions*
- 3.49.13 *The increased range of health services we can now access at a Pharmacy rather than adding pressure to GP appointments suggests we need more community pharmacies, not closing them. As we have an ageing society there will be ever greater pressure on services and this ...*
- 3.49.14 *Important for the community to have access to a pharmacy*
- 3.49.15 *Following the closure of Boots, Clifton is now in desperate need of a local pharmacy. the alternatives offered on the NHS App are in the city centre and are difficult for disabled residents to access. CYC should seek to ensure that all neighbourhoods/wards have essential services within a ... The Clifton residents deserve to keep this important service in the face of the current NHS situation*
- 3.49.16 *The community needs a local pharmacy because of the older members of the area but also an increase in housing in this area. It is a very shortsighted decision by Boots in the light of pharmacists now taking over seven illnesses/conditions from NHS GPs. Pharmacy ...*
- 3.49.17 *There is very little provision, and declining, in York as a whole. With Clifton Boots' closure, this makes it almost impossible for many local residents to access basic needs, especially if they do not drive. Local bus services are inadequate in this respect also for the less mobile.*
- 3.49.18 *I used to live in Clifton, and relied on the pharmacy there - it's a long walk into town!*
- 3.49.19 *High density population area that will increase in the future and it's the ONLY PHARMACY in the area.*
- 3.49.20 *All communities in the UK need a local pharmacy in order to ideally walk to in order to pick up prescription meds and for more routine items. It's typical that the Government is prepared to let 'market forces' prevail and the less profitable outlets to close.*
- 3.49.21 *A local pharmacy is important for a community, especially when demands on GPs are so high. Not everyone has access to online prescription services or transport to a supermarket pharmacy several miles away and some will have difficulty going into the city centre to the large Boots store.*

- 3.49.22 *A local pharmacy is absolutely essential. The Govt wants us to free up GPS and use the pharmacies as a first point of contact for advice and some medication - this is not possible if there is no pharmacy within a reasonable distance.*
- 3.49.23 *A local pharmacy is a vital community asset supporting the health and well-being of the local population. The closure of Boots on Clifton is a severe blow to the many residents who relied on it and will struggle to get to other pharmacies.*
- 3.50 What is perhaps most confusing about the decision to refuse our application is that the local HWB responded to the multiple applications to open a pharmacy in Clifton and provided written support for the, The HWB letter is attached with this appeal and states;
- 3.50.1 *The public health team at City of York Council is responding to this application on behalf of the York Health and Wellbeing Board. We are writing to support this application.*
- 3.50.2 *The application proposes a new pharmacy on the same site as a recently closed pharmacy site. It is currently approximately a mile to the nearest available pharmacy.*
- 3.50.3 *We believe the current availability of pharmacy services in the Clifton area represents a 'gap' in access to pharmaceutical services that was not previously described in the PNA. In April we issued a supplementary statement saying this.*
- 3.51 There is also no doubt that there is demand for pharmacy services within Clifton. Not only can this be seen from the local reaction to the Boots closure, it is also due to the presence of York Medical Group, Water Lane and also Priory Medical Group, Rawcliffe Surgery, which are both a short distance from our proposed location as shown below [see Appendix D].
- 3.52 Despite EPS, many patients still visit their surgery prior to accessing pharmaceutical services. They do this for acute appointments and also due to having to visit their doctor for scheduled appointments and reviews.
- 3.53 These patients have now lost reasonable access to pharmaceutical services. Patients are now forced to travel outside of the areas they live in to access pharmacies either in York City centre or on the outskirts of York, with the nearest pharmacy, Cohens, being nearly 1 mile from our proposed site. Whilst residents could potentially access alternate pharmacies by bus, it must be remembered that despite being on low incomes – as many are in Clifton – this does not entitle people to free public transport. A parent with a sick child would then face considerable extra expense to access a pharmacy via a return bus journey.
- 3.54 Over 33% of households in Clifton have no access to a car and 19% of all residents say that their day-to-day activities are limited either a little or a lot due to a disability. However, this only relates to those considered disabled under the Equality Act so the real figure of those with limitations on their movement is likely to be higher.
- 3.55 It is also noticeable that in Clifton, 30% of those who work do so from home. As a result, these residents are not travelling to other areas where they may be able to access alternate pharmacies.
- 3.56 This is also not the first pharmacy to close in Clifton. Clifton used to have 2 pharmacies. Along with Boots, Lloyds operated a pharmacy on Intake Avenue which is also in Clifton, but closed this pharmacy in 2019.

- 3.57 This means that residents of Clifton have seen both of their pharmacies close, not because of poor performance, but simply due to corporate decisions made by the 2 largest pharmacy operators who have closed the largest number of pharmacies across England for decades.
- 3.58 In addition to this, the Health, Housing and Adult Social Care Scrutiny Committee of York Council recently published a paper on Community Pharmacy Provision in York dated 11 September 2024. A copy of this paper is enclosed [see Appendix E].
- 3.59 The paper discussed pharmacy generally but then makes important points about the decreasing availability of pharmacy services in York.
- 3.60 The Committee is asked to read the paper and in particular note the following points.

1. Community pharmacy in our city is a huge asset to local communities and to public health. It has 'fantastic potential to improve access to healthcare and alleviate pressures on the wider health service'. However, it as a sector it faces a number of challenges.

2. This report provides an overview of recent changes to pharmacy provision in York, and the potential impact on resident access to pharmacies. This report also provides an overview of the broader challenges facing community pharmacies in the UK.

17. Some of the applications to change pharmacy provision require comments from the HWBB lead. Others are notifications and, in these instances, the ICB notify the local public health team. Since publishing the PNA, the following changes to provision have been notified. It was decided that none of the changes resulted in a 'gap' in provision.

- Four 100hr pharmacies have reduced their hours to between 72 and 82 hours during 2023. All four pharmacies still provide a seven-day service, and still provide a service until 9pm on weekday nights.*
- Lloyds pharmacy at Monks Cross closed on 23 April 2023. The nearest pharmacy is 0.2 miles away.*
- Citywide 100hr pharmacy in Huntington closed on 27 May 2023. There are 6 other pharmacies within a mile.*
- Boots pharmacy on Kings Square closed on 28 October 2023. There are 10 other pharmacies within a mile.*
- There was also a change of ownership of a pharmacy in Huntington in April 2023.*

18. So far, in 2024 there have been two pharmacy closures who closed on 17 February and 9 March 2024 respectively:

- Boots on 86 Clifton (see map below [see Appendix D]). Yellow shading indicates locations within 15 minute walk of a pharmacy. The red dot indicates where the pharmacy was, and the non-shaded residential area to the north of that red dot is the area which is now more than a 15 minute walk from a pharmacy.*
- Boots on 10 East Parade Heworth closed in February 2024, with another Boots still open 250 metres away (shown with green square on map above [see Appendix E]). This closure does not put any additional residents more than 15 minute walk from a pharmacy.*

19. There are no legal powers to require a community pharmacy to open or remain open in a location. However, PNAs identify within them whether there is a gap, a current or future need. Where there are changes in pharmacy provision, a supplementary statement may be published which will state what the changes are. These must be taken into by the ICB commissioners of pharmacy services in assessment of applications for a pharmacy licence.

20. In response to the Clifton pharmacy closure in February 2024, City of York's public health drafted a supplementary statement which was issued by the chair of the Health and Wellbeing Board, stating a gap in provision in the Clifton area.⁴ This document does not automatically mean new applications for pharmacies will be successful, but it is one of the factors considered when applications are made.

⁴2022-pharmaceutical-needs-assessments-supplementary-statement (healthyork.org)

21. There have been three applications to open a new pharmacy in the Clifton area.

- Application by Haxby Group Pharmacy Limited, submitted February 2024
- Application by Marra Healthcare, submitted March 2024.
- Application by Pharmacy Group Corp, submitted June 2024.

22. Public Health/Health and Wellbeing Board responded to these applications. Support was given to each application in line with the identified gap in pharmacy provision in the Clifton Area. In some cases, additional comments were made about the benefit of more comprehensive opening hours.

23. In August 2024, the ICB issued responses and has rejected all three of the applications for a new pharmacy in the Clifton area.

24. In July there was an application for a distance selling pharmacy. This type of pharmacy operates exclusively online and has no in-person customers. Public Health/Health and Wellbeing Board responded to the application with no objection to the application. The ICB will publish their decision in October 2024.

25. In 2024 so far, two pharmacies have notified a permanent decrease to their supplementary dispensing hours. This means that they will now only operate for the core hours.

- Fittleworth Medical at Kettlestring Court, Clifton Moor: new dispensing hours are Monday-Friday 9:00-15:00.
- Monkton Road Pharmacy: new dispensing hours are Monday-Friday 9:00-17:00.

Consultation

26. The production of a PNA involves a 60-day statutory consultation process with the public and key professional bodies.

27. Scrutiny is asked to note that there was a resident led petition in January 2024 to keep the pharmacy in Clifton open.

Options

28. The Committee is asked to note and comment on pharmacy access and provision in York, as set out in this report and in the verbal evidence presented at the committee.

- 3.61 What becomes clear is that York has seen ever decreasing availability of pharmacy services. In some areas these changes may not have led to significant issues for residents, but Clifton is clearly an exception. Not only is it one of the most deprived areas of York, but it has thousands of patients accessing it in order to visit their GP surgery and has seen its only 2 community pharmacies close.
- 3.62 At the same Health, Housing and Adult Social Care Scrutiny Committee of York Council on 11 September 2024 the issue of the refusal of the applications that were submitted in Clifton under regulation 18 were discussed with members of the Committee questioning how it could be that our applications [sic] was refused when the public health team was clear that there was a need for a pharmacy in Clifton.
- 3.63 In addition to this we have been in contact with local residents in Clifton and have asked them to provide details of their experience of accessing community pharmacies since the closure of Boots. The results of the survey to date are attached, and with 180 residents making representation with this appeal and clearly show the very significant need for a pharmacy in Clifton to serve the local population. We ask that the Committee reads and considers these comments from patients and we will provide more comments later when we have an opportunity to do so.
- 3.64 We ask that you allow this appeal and approve the application.”

In a letter dated 26 September 2024 addressed to NHS Resolution, The Pharmacy Group Corporation Ltd appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.65 “We are writing to appeal against the refusal of our application for inclusion in the pharmaceutical list.
- 3.66 The ICB do not provide much of an explanation for the refusal of our application and we cannot see the reasoning behind the decisions made.
- 3.67 The decision letter states that: “18(2)(b)(i) - *there is reasonable choice in relation to obtaining pharmaceutical services in the area within 1.5 miles of the secured premises with good weekday and Saturday opening with some on a Sunday.*”
- 3.68 We are unsure as to where the figure of 1.5 miles has come from, however, we know that this is certainly not in line with the York Pharmaceutical Needs Assessment (PNA). The Clifton area is extremely deprived and has recently suffered the loss of both the Boots pharmacy on Clifton/ A19 and the Lloyds Pharmacy on Intake Avenue. On Page 67, the York PNA states that: “*the majority of the residents living within the deprived areas of York, which may mean that there is not access to a car, are also able to access pharmaceutical services within one mile (1.6 km) of their residence.*” This statement was written prior to the closure of the Boots Pharmacy.
- 3.69 From this statement we learn the following:
- 3.69.1 The maximum distance that residents in deprived areas should have to travel to access a pharmacy is one mile.
- 3.69.2 With the closure of the Boots, many residents within deprived areas of Clifton have journeys in excess of a mile to access a pharmacy.
- 3.69.3 Clearly journeys for Clifton residents no longer constitute reasonable choice following the closure of the Boots per PNA guidelines.
- 3.69.4 The “benchmark” of 1.5 miles used by the ICB is clearly incorrect and not in line with the PNA. Hence the decision is flawed.

- 3.70 The ICB has also failed to recognise the numerous support for all applications by local councillors and Doctors who realise the pressing need for a pharmacy in the Clifton area.
- 3.71 We re-submit all previous correspondence for re-determination and trust that the committee will properly evaluate the applications in line with what is written in the York PNA.”

Also included with the letter of appeal was a letter from The Pharmacy Group Corporation Ltd to the Commissioner dated 29 August 2024 which stated:

- 3.72 “Thank you for sending across the written representations.
- 3.73 Responding to comments made on our application:
- 3.74 We note that the HWB are supportive of a new pharmacy and request that we consider extending core hours opening to include Sunday. To reiterate, our proposed provision of core hours is the most extensive of the 3 applications made in the Clifton area. If there is a real need for Sunday opening, we would uphold this directive and be prepared to open on Sundays. However, we believe that our proposed provision of core hours best reflects the needs of the local population, and provides the best access of all three applications.
- 3.75 Some objectors query the services offered in our application and question the need for a pharmacy within Clifton at all. In response we maintain that our proposed services (listed below) are extensive and best serve the local population.
- 3.75.1 Hypertension Case Finding Service
- 3.75.2 Pharmacy First
- 3.75.3 Minor Ailments
- 3.75.4 Pharmacy Contraception
- 3.75.5 Supervised consumption
- 3.75.6 Needle & Syringe Exchange (If commissioned)
- 3.75.7 NMS
- 3.75.8 Delivery
- 3.75.9 Flu vaccination
- 3.75.10 COVID Vaccination
- 3.75.11 Palliative Care
- 3.75.12 Smoking cessation
- 3.75.13 Sexual Health
- 3.75.14 Start Vitamins
- 3.76 Amongst the vast range of services we propose to provide, we highlight our intention to provide Pharmacy First. As stated in our original application; pharmacies are no longer just dispensing medication and are now playing an important role in minor ailments. The Pharmacy First service is needed to ease pressures on GP practices.

Our best estimate for the proposed location is within York Medical Group Water Lane. The closure of the Boots at 86 Clifton has undoubtedly made it more difficult for patients of this GP to access a pharmacy. Not only do we intend to work closely with York Medical Group to ease pressure on GP's through operation of our Pharmacy First service, but our proposed location would provide patients of this GP surgery improved access to a local pharmacy.

- 3.77 We note that Haxby Group Pharmacy Ltd and Marra Healthcare Ltd have provided no representation on our application. We infer from this that these parties have no objections to our application.
- 3.78 In conclusion our application therefore provides improved overall access to pharmaceutical provision for patients in the Clifton ward area so our application should be preferred.
- 3.79 We would be most grateful if you could keep us informed of the progress of this application and if there is to be an oral hearing where we may wish to be represented."

4 **Summary of Representations**

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

- 4.1.1 "The response will take each contactor in turn and respond to the Regulations and representations submitted. Any additional evidence from Humber & North Yorkshire (HNY) Integrated Care Board (ICB) will be made under the relevant section of the response.

SHA/ 26324 - MARRA HEALTHCARE LIMITED - APPLICATION FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS AT CRICHTON AVENUE PARADE OF SHOPS, CLIFTON, YORK, YO30 6EF

- 4.1.2 Regulation 31 [Quoted in full]
- 4.1.3 This regulation does not apply as there is no pharmacy at the same or adjacent premises of the best estimate location.
- 4.1.4 Regulation 18(2)(a) [quoted in full]
- 4.1.5 Following consideration of Regulation 18(2)(a) (i) – (ii), Humber & North Yorkshire ICB is not able to determine whether granting the application would cause significant detriment to either (i) or (ii).
- 4.1.6 Regulation 18(2)(b)(i): [quoted in full]
- 4.1.7 There are 10 Community Pharmacies within 1.5 miles of the proposed premises, 3 of these are 1 mile or less from the proposed premises. Of those within 1.5 miles, 2 open earlier than 09:00 therefore providing patients with early morning access to pharmacy services, 6 provide opening on a Saturday and 3 are open on a Sunday.
- 4.1.8 The applicant proposes 40 core hours and offers additional directed core opening hours offered on a Saturday.
- 4.1.9 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(i)

- 4.1.10 In response to the comment that the Pharmacy Committee has failed to consider the high deprivation of the area. I would like to assure the contractor that all the information submitted to HNY ICB was shared with the Pharmacy Committee to support them in making a decision about this application.
- 4.1.11 As above, there are 3 community pharmacies within 1 mile of the proposed premises and therefore residents do not have to travel more than 1 mile to access pharmaceutical services.
- 4.1.12 Regulation 18(2)(b)(ii): [quoted in full]
- 4.1.13 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.
- 4.1.14 The focus was on how patients would travel to Community Pharmacies.
- 4.1.15 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(ii)
- 4.1.16 The additional information submitted within the appeal documentation also focuses on access to vehicles and how patients would potentially travel to access community pharmacy service with some information on protected characteristics.
- 4.1.17 In addition, there are alternative ways that patients can access pharmacy services such as telephone calls and video consultations. Patients can order their medications electronically and have them delivered should they need to. There are also Distance Selling Pharmacies available to patients.
- 4.1.18 Regulation 18(2)(b)(iii): [quoted in full]
- 4.1.19 There was no information within the application which related to innovative approaches being taken with the regard to the delivery of pharmaceutical services.
- 4.1.20 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(iii)
- 4.1.21 There was no further information within the appeal documentation that related to innovative approaches being taken with the regard to the delivery of pharmaceutical services.
- SHA/ 26327 - HAXBY GROUP PHARMACY LIMITED - APPLICATION FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS IN THE REGION OF 86 CLIFTON, YORK, YO30 6BA
- 4.1.22 Regulation 31 [quoted in full]
- 4.1.23 This regulation does not apply as there is no pharmacy at the same or adjacent premises. Although the secured premises are the previous Boots site, this is no longer listed on the HNY ICB pharmaceutical list as the Boots in Clifton closed on 17th February 2024.
- 4.1.24 Regulation 18(2)(a) [quoted in full]

- 4.1.25 Following consideration of Regulation 18(2)(a) (i) – (ii), Humber & North Yorkshire ICB is not able to determine whether granting the application would cause significant detriment to either (i) or (ii).
- 4.1.26 Regulation 18(2)(b)(i): [quoted in full]
- 4.1.27 There are 11 Community Pharmacies within 1.5 miles of the secured premises, 5 of these are 1 mile or less from the secured premises. Of those within 1.5 miles, 2 open earlier than 09:00 therefore providing patients with early morning access to pharmacy services, 7 provide opening on a Saturday and 2 are open on a Sunday.
- 4.1.28 The applicant proposes 40 core hours with supplementary hours on a Saturday which can be withdrawn with 5 weeks' notice potentially reducing access to pharmacy services at the weekend.
- 4.1.29 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(i)
- 4.1.30 The additional information submitted within the appeal documentation also focuses on access to vehicles and how patients would potentially travel to access community pharmacy service with some information on protected characteristics.
- 4.1.31 To clarify the information on page 13 of the appeal letter:
- 4.1.31.1 In 2024 so far, two pharmacies have notified a permanent decrease to their supplementary dispensing hours. This means that they will now only operate for the core hours.
- 4.1.31.1.1 Fittleworth Medical at Kettlestring Court, Clifton Moor: new dispensing hours are Monday-Friday 9:00-15:00. Fittleworth Medical is an appliance only contractor and so potentially less impact on patients in the reduction of hours.
- 4.1.31.1.2 Monkton Road Pharmacy: new dispensing hours are Monday-Friday 9:00-17:00. Supplementary hrs were 17:00 – 17:30. 30 min reduction in opening hours. 4 pharmacies within 1 mile, all open until at least 5.30pm
- 4.1.32 HNY ICB is unaware of the survey that the residents of Clifton are being asked to complete in relation to their experience of accessing community pharmacy since the closure of Boots.
- 4.1.33 In addition, there are alternative ways that patients can access pharmacy services such as telephone calls and video consultations. Patients can order their medications electronically and have them delivered should they need to. There are also Distance Selling Pharmacies available to patients.
- 4.1.34 Regulation 18(2)(b)(ii): [quoted in full]
- 4.1.35 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.
- 4.1.36 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(ii)

- 4.1.37 There is no further information in relation to this regulation within the appeal documentation.
- 4.1.38 Regulation 18(2)(b)(iii): [quoted in full]
- 4.1.39 There was no information within the application which related to innovative approaches being taken with the regard to the delivery of pharmaceutical services.
- 4.1.40 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(iii)
- 4.1.41 There was no further information within the appeal documentation that related to innovative approaches being taken with the regard to the delivery of pharmaceutical services.

SHA/ 26331 - THE PHARMACY GROUP CORPORATION LTD - APPLICATION FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS AT WATER LANE AND PETERSWAY, 6/6A COMPTON STREET, CLIFTON, YO30 6LE - 2 COMPTON STREET, CLIFTON YO30 6LE - INSIDE YORK MEDICAL GROUP, WATER LANE YO30 6PS. BEST ESTIMATE

- 4.1.42 Regulation 31 [quoted in full]
- 4.1.43 This regulation does not apply as there is no pharmacy at the same or adjacent premises of either the secured premises or best estimate location.
- 4.1.44 Regulation 18(2)(a): [quoted in full]
- 4.1.45 Following consideration of Regulation 18(2)(a) (i) – (ii), Humber & North Yorkshire ICB is not able to determine whether granting the application would cause significant detriment to either (i) or (ii).
- 4.1.46 Regulation 18(2)(b)(i): [quoted in full]
- 4.1.47 There are 12 Community Pharmacies within 1.5 miles of the secured premises, 4 of these are 1 mile or less from the proposed premises. Of those within 1.5 miles, 3 open earlier than 09:00 therefore providing patients with early morning access to pharmacy services, 7 provide opening on a Saturday and 3 are open on a Sunday.
- 4.1.48 The applicant proposes 49 core hours.
- 4.1.49 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(i)
- 4.1.50 In response to comment 4 on page 2 of the appeal letter which states that the benchmark used by the ICB is incorrect as it goes further than the 1.6 km (1 mile) within the PNA, the report submitted to the Pharmacy Committee included the number of pharmacies within 1 mile which is in-line with the PNA.
- 4.1.51 I would like to provide assurance, in relation to the comment made on page 2 that the ICB failed to recognise the support for the applications, that all representations submitted to HNY ICB were shared with the Pharmacy Committee to support them in making a decision about this application.
- 4.1.52 In addition, there are alternative ways that patients can access pharmacy services such as telephone calls and video consultations. Patients can order

their medications electronically and have them delivered should they need to. There are also Distance Selling Pharmacies available to patients.

- 4.1.53 Regulation 18(2)(b)(ii): [quoted in full]
- 4.1.54 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.
- 4.1.55 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(ii)
- 4.1.56 There was no further information within the appeal documentation that related to innovative approaches being taken with the regard to the delivery of pharmaceutical services.
- 4.1.57 Regulation 18(2)(b)(i): [quoted in full]
- 4.1.58 There was no information within the application which related to innovative approaches being taken with the regard to the delivery of pharmaceutical services.
- 4.1.59 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(iii)
- 4.1.60 There was no further information within the appeal documentation that related to innovative approaches being taken with the regard to the delivery of pharmaceutical services.

RELEVANT TO ALL APPLICATIONS

- 4.1.61 Evidence (as requested on page 3 of your letter dated 10th October 2024) Health & Wellbeing Board's up-to-date PNA Please see below, as requested, a link to the City of York PNA for 2022-2025.
- 4.1.62 The City of York Pharmacy Needs Assessment (PNA) can be found here:
- 4.1.63 [2022-york-pharmaceutical-needs-assessment-2022-to-2025](https://www.healthyyork.org/2022-york-pharmaceutical-needs-assessment-2022-to-2025) (healthyyork.org)

"In summary, there are no gaps in the provision of necessary services in York"

- 4.1.64 The PNA did acknowledge that there would be some developments expected to take place over the next three years that may impact on the need for an access to pharmacy services. The Boots closure was not known at the time of writing the current PNA.

"However, there are a number of developments that are expected to take place over the next three years that may impact on the need for and access to pharmacy services. This includes GP extended access, housing developments, online pharmacies and changes to the way in which pharmacies are funded. It is not possible to assess the impact of this at this time, however, it should remain under review as part of the ongoing PNA process."

"Any pharmacy changes or closures that have a significant impact on access may be subject to a supplementary statement being issued by the Health and Wellbeing Board if this occurs before the next PNA is prepared".

- 4.1.65 Supplementary statement to the PNA
- 4.1.66 There was a supplementary statement issued in February 2024 and edited in April 2024 in relation to the Boots closure in the Clifton area which did state there was now a gap in pharmacy provision in the Clifton area of York.
- 4.1.67 [Supplementary statement to the York Pharmaceutical Needs Assessment 2022-2025](#) (healthyork.org)
- 4.1.68 In relation to the supplementary statement, as stated 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"*.

Additional Information

- 4.1.69 MP Initiated Petition
- 4.1.70 As a result of the Boots closure, there has been a petition started by the residents. At the time of writing this response (15th October 2024) 659 residents had signed the petition. Link to the petition:
- 4.1.71 [Petition · A Community Pharmacy in Clifton, York - United Kingdom · Change.org](#)
- 4.1.72 Additional Patient Survey
- 4.1.73 HNY ICB is unaware of the recent survey alluded to in the Haxby Group response to this appeal of local residents within the Clifton area of York where they are being asked to provide details of their experience in accessing community pharmacy services since the closure of Boots.
- 4.1.74 City of York Council Paper on Community Pharmacy Provision in York HNY ICB is aware of the paper alluded to in the Haxby Group response to this appeal that was presented to the Health, Housing and Adult Social Care Scrutiny Committee of City of York Council on 11th September 2024. We have received a letter from the Director of Public Health following this meeting which we have responded too. Please find both the letter received and our response sent attached to this letter. [see Appendix G]
- 4.1.75 No new PNA has been published since the application was made and so City of York PNA for 2022-2025 is still current and should be used to determine the outcome of this appeal."

4.2 RUSHPORT ADVISORY LLP ON BEHALF OF HAXBY GROUP PHARMACY LIMITED

- 4.2.1 "I act for Haxby Group Pharmacy Limited in the above applications and have been instructed to submit this letter in response to the appeals as listed above.
- 4.2.2 As the Committee will note, each party has provided evidence to show why a new pharmacy is required in the Clifton area of York. We do not repeat the evidence already provided and this letter instead deals with the issue of competing applications and also the test under regulation 18.
- 4.2.3 As the Committee is aware, regulation 18 states as follows;

- 4.2.4 Unforeseen benefits applications: additional matters to which the NHSCB must have regard

18.—(1) If—

(a) the NHSCB 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,

- 4.2.5 In relation to regulation 18(1)(b) it has come to our attention that the improvements or better access that would be secured by granting my client's application have now been included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.

- 4.2.6 We attach a copy of the Supplementary Statement [see Appendix H] dated 8 March 2024 (but also edited and updated in April 2024) which considers the closure of Boots in Clifton and the impact that the closure has had on local people and concludes that "It is our view that this now a gap in pharmacy provision in the Clifton area of York."[sic].

- 4.2.7 As the Supplementary Statement forms part of the relevant PNA the Committee may take the view that all 3 applications must be refused.

- 4.2.8 In the event that the Committee does not accept that all 3 applications must be refused and also accepts that one application should be approved (there being no need for more than one application to be approved) then we submit that my client's application should be preferred as they have secured and are paying rent on a property (the old Boots pharmacy) at 86 Clifton, York. We attach confirmation of this [see Appendix I].

- 4.2.9 This is not simply an option or an agreement that is subject to any other matter but is instead a fully executed lease and shows that my client will be able to provide pharmaceutical services in Clifton and deliver on the requirements of regulation 18 and also the need identified within the PNA.

- 4.2.10 My client has previously provided a substantial amount of evidence and patient support that shows that the local community would welcome a new pharmacy to open on the same site as the previously closed Boots pharmacy.

- 4.2.11 We look forward to hearing from you in due course."

- 4.3 With their representations Rushport Advisory enclosed:

- 4.3.1 Supplementary statement – see Appendix H

- 4.3.2 A copy of the Health, Housing and Adult Social Care Scrutiny Committee, report of the Director of Public Health – see Appendix E

- 4.3.3 A copy of a signed lease – see Appendix I

5 Observations

- 5.1 THE COMMISSIONER

- 5.1.1 “Thank you for your letter dated 14th November 2024.
- 5.1.2 Taking learning from a recent appeal within H&NY ICB, SHA/26268 which was for an Unforeseen Benefits application under Regulation 18, this response will focus on the role of the supplementary statement and the determination of this recent appeal.

Supplementary statement to the PNA

- 5.1.3 There was a supplementary statement issued in February 2024 and edited in April 2024 in relation to the Boots closure in the Clifton area which did state there was now a gap in pharmacy provision in the Clifton area of York.
- 5.1.4 [Supplementary statement to the York Pharmaceutical Needs Assessment 2022-2025](https://www.healthyyork.org/2022-2025) (healthyyork.org)
- 5.1.5 Within Chapter 8 of the [DHSC PNA information pack for local authority health and wellbeing boards](#), the bottom of page 63, the guidance 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". It then goes on to say "Once published the supplementary statement becomes part of the pharmaceutical needs assessment and will therefore be referred to by NHS England and NHS Improvement when it determines applications for inclusion in a pharmaceutical list. It will also be referred to by NHS Resolution when it determines an appeal. Supplementary statements are therefore to be published alongside the pharmaceutical needs assessment".
- 5.1.6 Within the decision letter for appeal SHA/26268, in paragraph 7.43 it stated that "as the Commissioner had disregarded the supplementary statement, the Committee determined that the decision of the Commissioner must be quashed".
- 5.1.7 Reflecting on the outcome of the appeal SHA/26268 and looking again at the DHSC PNA information pack for local authority health and wellbeing boards, the wording contradicts itself and therefore it is difficult to ascertain the role of the supplementary statement.
- 5.1.8 **Determination of appeal SHA/26268**
- 5.1.9 The determination made by NHS Resolution in relation to appeal SHA/26268 quashed Humber & North Yorkshire (HNY) Integrated Care Board (ICBs) decision but still refused the application on the basis that the improvements or better access set out in the unforeseen benefits application were included in the Pharmacy Needs Assessment (PNA) due to the publication of a supplementary statement which identified there was a gap, and consequently Regulation 18(1)(b) was not satisfied meaning the application should not have been submitted as an unforeseen benefits application."

5.2 THE PHARMACY GROUP CORPORATION LTD

- 5.2.1 “Re: Observations by The Pharmacy Group Corporation Ltd t/a The Pharmacist
- 5.2.2 The York Health & Wellbeing Board are clear in the need for a Pharmacy in the Clifton ward.

- 5.2.3 Each of the applicants has provided evidence to show why a new pharmacy is required, given the high levels of deprivation in the area. This letter provides additional information regarding our application.
- 5.2.4 In the event that the Committee does not accept that all three applications must be refused and that one application should be approved, then our application should be preferred. We have secured a premises within Clifton Health Centre, Water Lane, Clifton, York, YO30 6PS. We have attached the confirmation of this with our counter-signed agreement for the premises [see Appendix J]. The agreement can be immediately exercised should our application for the NHS Pharmacy contract be approved.
- 5.2.5 We will work closely with the co-located GP surgery to deliver much needed pharmacy services to the local population in Clifton. Further to this, there is improved access at our proposed site with parking available at the Clifton Health Centre. Due to its location, the Clifton Health Centre site better serves the deprived population than that of the former Boots premises which is situated in a more affluent area within Clifton.
- 5.2.6 In conclusion, given the Health Centre location and increased core hours, our application gives the best access for the local population in Clifton and therefore should be preferred if any are to be granted."

6 Consideration

- 6.1 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 locations of the proposed pharmacies.
- 6.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

- 6.5 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).

- 6.6 The Committee noted that all three of the Applicants had argued that their respective applications should not be refused under the provisions of Regulation 31 as there is no pharmacy currently trading in the Clifton area of York, as the pharmacy which was located at 86 Clifton closed on 17 February 2024. The Commissioner, in its decision letter, had not considered Regulation 31 however in subsequent representations the Commissioner had concluded for all of the applications that *“this regulation does not apply as there is no pharmacy at the same site or adjacent premises ...”*. The Committee noted that the application of Regulation 31 had not been disputed either on appeal or in subsequent representations by any party. On the basis of the information before it, the Committee was not required to refuse any of the applications under the provisions of Regulation 31.
- 6.7 The Committee noted that, if any of the applications were granted, the successful applicant(s) 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

- 6.8 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)."*

6.9 The Committee noted that the Commissioner, in its decision, had refused the applications on the basis that:

6.9.1 "18(1)(a) – there would not be any improvements or better access by granting this application.

18(1)(b) – there are no improvements or better access included in the current PNA.

18(2)(a)(i-ii) - no determination can be given in relation to whether granting the application would cause significant detriment to either planning for pharmacy services or for pharmacy services already in place.

18(2)(b)(i) - there is reasonable choice in relation to obtaining pharmaceutical services in the area within 1.5 miles of YO30 6EF with good weekday and weekend opening.

18(2)(b)(ii) – there was some consideration in relation to how patients could access services but no information to evidence how people with protected characteristics would access services to meet specific needs.

18(2)(b)(iii) – there was no evidence to support innovative approaches to the delivery of pharmaceutical services.”

- 6.10 Whilst all of the Applicants had sought to argue that their application should be granted on the basis of a lack of reasonable choice within the Clifton area of York, the Committee noted that, in their representations Rushport, on behalf of Haxby Group Ltd had provided a copy of the supplementary statement and had stated:

6.10.1 *“In relation to regulation 18(1)(b) it has come to our attention that the improvements or better access that would be secured by granting my client’s application have now been included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.”*

We attach a copy of the Supplementary Statement dated 8 March 2024 (but also edited and updated in April 2024) which considers the closure of Boots in Clifton and the impact that the closure has had on local people and concludes that “It is our view that this now a gap in pharmacy provision in the Clifton area of York.

As the Supplementary Statement forms part of the relevant PNA the Committee may take the view that all 3 applications must be refused.”

- 6.11 The Committee noted the Commissioner had addressed the question of the supplementary statement in further representations and had made reference to a previous appeal case where the supplementary statement had been considered. The Committee further noted that no other party had provided any further information regarding either the Pharmaceutical Needs Assessment (“the PNA”) or the supplementary statement as to whether or not the improvements or better access that they sought to offer were or were not included in the PNA as set out in Regulation 18(1).
- 6.12 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.
- 6.13 The Committee noted that Regulation 22 refers to the ability to determine an application on the basis of an earlier PNA if that is the only way to determine the application justly. 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 as forming 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 that a new PNA is published within three years of the “previous publication” of a PNA.

- 6.14 The Committee also 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 86 Clifton, YO30 6BA. That assessment of need is set out in the current PNA as updated by the supplementary statement.
- 6.15 The Committee noted that when determining the applications, the Commissioner had not taken into account the supplementary statement and had refused all of the applications on the basis that Regulation 18(2) had not been satisfied.
- 6.16 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 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.
- 6.17 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.
- 6.18 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).
- 6.19 The Committee considered the PNA prepared by York Health and Wellbeing Board, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind 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). As noted above, such a statement then forms part of the PNA. Following its consideration of Regulation 22, the Committee reviewed the PNA dated 2022 – 2025 which was published on 1 October 2022 as updated by the supplementary statement issued in February 2024 and updated in April 2024.
- 6.20 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 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.
- 6.21 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.

6.22 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.”* The Committee also noted the view of the Commissioner that *“the wording contradicts itself and therefore it is difficult to ascertain the role of the supplementary statement.”*

6.23 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 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.”

6.24 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 the needs for pharmaceutical services.

6.25 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.

6.26 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. In light of its previous consideration of Regulation 22, the Committee reviewed the PNA dated 1 October 2022 and the supplementary statement which had been issued in February 2024.

6.27 The Committee noted that in response to the closure of Boots UK Limited, 86 Clifton, YO30 6BA with effect from 17 February 2024, the supplementary statement issued in February 2024 and updated in April 2024 concluded:

6.27.1 *“It is our view that this now a gap in pharmacy provision in the Clifton area of York.[sic]*

Signed Cllr Jo Coles, Chair of York Health and Wellbeing Board

Dated 8th March 2024”

6.28 The Committee noted that, regardless of the clear error in the drafting, there was now a gap in service provision. The Committee accepts that the supplementary statement does not overtly state that the closure has created a current or future need.

6.29 In this regard, 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 Regulation 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 Applicants were seeking to secure were not or was not included in the PNA.

- 6.30 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 the appeals 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 that it was not necessary in this determination to do so.
- 6.31 The Committee considered that, in this determination, it was required to decide 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 conclude that Regulation 18(1)(b) was not satisfied.

Other considerations

- 6.32 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.
- 6.33 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.33.1 confirm the Commissioner's decision;
 - 6.33.2 quash the Commissioner's decision and redetermine the applications;
 - 6.33.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.
- 6.34 In those circumstances as the Committee has had regard to the supplementary statement, the Committee determined that the decision of the Commissioner must be quashed.
- 6.35 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 applications.
- 6.36 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 applications by the Commissioner. The Committee further noted that when the appeals were circulated representations had been sought from parties on Regulation 18.
- 6.37 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 DECISION

- 7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the applications.
- 7.2 The Committee concluded that it was not required to refuse any the applications under the provisions of Regulation 31.
- 7.3 The Committee determined that the applications should be refused.

Case Manager
Primary Care Appeals