

15 January 2025

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APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY OLIVEMEAD LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST AT PETTERIL BANK ROAD SHOPS, CARLISLE, CA1 3AH (BEST ESTIMATE) WITH REGARD TO CURRENT NEED UNDER REGULATION 13

1 Outcome

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

A copy of this decision is being sent to:

Healthcare Plus Consulting Ltd on behalf of the Applicant
North East and North Cumbria ICB

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1 The Application

By application dated 29 February 2024, Olivemead Limited ("the Applicant") applied to the North East and North Cumbria ICB ("the Commissioner") for inclusion in the pharmaceutical list at Petteril Bank Road Shops, Carlisle, CA1 3AH (Best Estimate) with regard to Current Need under Regulation 13. In support of the application it was stated:

1.1 "In my/our view this application should not be refused pursuant to Regulation 31 for the following reasons:

1.1.1 N/A.

1.1.2 No pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply.

Information in support of the application:

1.2 In making this application the Applicant is seeking to meet the current need identified on the attached supplementary statement dated 15th January 2024 by Cumberland Health & Wellbeing Board.

1.3 The proposed site is located in the Carlisle 011F Lower-Layer Super Output Area (LSOA), which is amongst the most 10% deprived LSOAs in the country. It is well documented that health needs are greater in deprived areas, and the recent closure of the Boots Pharmacy (CA1 3AH) on 13/01/24 has left a large gap in essential, advanced, and locally commissioned services for the localised population.

1.4 The proposed location is the same as the recently closed Boots and granting this application would deliver much needed pharmaceutical service provision to a highly deprived area, potentially saving lives.

1.5 In the box below please explain how you intend to meet the identified current need either in whole or in part.

1.5.1 Need will be met in full by opening a pharmacy within the best estimate location providing all required services and providing them when they are needed."

1.6 The Applicant's proposed core opening hours are:

1.6.1 Mon to Fri – 09.00 to 18.00

1.6.2 Sat - 09.00 to 13.00

- 1.6.3 Sun Closed
- 1.7 The Applicant's proposed total opening hours are:
 - 1.7.1 As above.
- 1.8 The Applicant intends to provide the following services:
 - 1.8.1 Essential services
 - 1.8.2 Advanced and Enhanced Services:
 - 1.8.2.1 Smoking cessation;
 - 1.8.2.2 CPCS;
 - 1.8.2.3 Flu vaccination;
 - 1.8.2.4 Pharmacy Contraceptive Service;
 - 1.8.2.5 Hypertension;
 - 1.8.2.6 New Medicine Service (NMS;)
 - 1.8.2.7 Think Pharmacy First/Minor Ailment;
 - 1.8.2.8 Emergency Hormonal Contraception;
 - 1.8.2.9 Stop smoking;
 - 1.8.2.10 Opioid Substitution Therapy & Supervised Administration;
 - 1.8.2.11 Gluten Free;
 - 1.8.2.12 UTI Scheme;
 - 1.8.2.13 Needle & syringe programme;
 - 1.8.2.14 Palliative Care;
 - 1.8.2.15 Pharmacy First.
- 1.9 Enclosure: Cumberland Health and Wellbeing Board – Supplementary Statement 15 January 2024:

“Cumberland Health & Wellbeing Board – Supplementary Statement
- 1.10 15 January 2024
- 1.11 This supplementary statement has been prepared and issued by the Director of Public Health & Communities on behalf of the Health and Wellbeing Board of Cumberland and forms part of the Pharmaceutical Needs Assessment.
- 1.12 Since the publication of Cumberland's Pharmaceutical Needs Assessment (PNA) the following change in pharmaceutical services has occurred:

Cumberland PNA publication:	December 2023
Date of Supplementary Statement issued:	15th January 2024
Supplementary Statement number:	1

1.13 The following pharmacy has closed:

1.14 **Boots UK Limited, 6 Petteril Bank Road, Carlisle, CA1 3AH**

1.15 The pharmacy provided the following services:

Community Pharmacist Consultation Service (CPCS); Flu vaccinations; New Medicine Service (NMS); Emergency Hormonal Contraception (EHC); Stop Smoking; Opioid Substitution Therapy (OST) Supervised administration; Gluten Free; Minor Ailment/Think Pharmacy First; Urinary Tract Infection (UTI) scheme.

1.16 These services were provided at the following times:

Monday to Friday 9am to 6pm; Saturday 9am to 1pm. (Sunday closed).

1.17 The pharmacy closed on:

13th January 2024

1.18 The closure of this pharmacy has created a gap in pharmacy provision in the former location in the Harraby ward area, Carlisle. There is a gap in essential, advanced and locally commissioned services between the hours of Monday to Friday 9am to 6pm and Saturday 9am to 1pm. This supplementary statement is issued in accordance with Part 2;(6)3 of the National Health Service (Pharmaceutical and Pharmaceutical Services) Regulations 2013.”

2 The Decision

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

The Commissioner considered and decided to refuse the application. The decision letter dated 6 September 2024 states:

2.1 “**North East and North Cumbria ICB** has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.

2.2 You have a right of appeal to the Secretary of State against North East and North Cumbria ICB’s decision. Should you choose to appeal then you should either complete

the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

- 2.3 **Primary Care Appeals**, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.”

Decision report

PHARMACEUTICAL SERVICES REGULATIONS COMMITTEE (PSRC) DECISION RATIONALE

- 2.4 “Application offering to meet an identified current need at (Best Estimate) premises Petteril Bank Road Shops, Carlisle, CA1 3AH
- 2.5 Name of Applicant: Olivemead Limited
- 2.6 Application reference: CAS-280892-T1R5J9
- 2.7 All the evidence provided by the applicant, the committee report and the regulations were considered and discussed by the committee. The committee considered whether Regulations 13(1)(a&b) were met and particularly whether the supplementary statement published by the Health and Wellbeing Board satisfied Regulation (13)(1)b. The committee concluded that the HWB statement was not based on a review of the needs of the HWB area as a whole and the statement itself was factual. Current Needs in the area were not included in the relevant pharmaceutical needs assessment and therefore Regulation (13)(1)b was not met.
- 2.8 It was agreed that under Regulations 13 and 14 of the NHS (Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2023 – current needs additional matters and consequences, the application should be **refused** on the basis that the relevant Regulations as set out in the committee report were not met:
- 2.8.1 **Regulation 13(2)(d)** is met therefore **Regulation 14(4)** is also met and refusal is necessary.
- 2.8.2 **Regulation 13(1)** is not met as the PNA does not identify any gaps or current needs, therefore the contractor cannot meet this regulation.
- 2.8.3 **Regulation 13(2)(g(ii))** - there is reasonable choice with regard to pharmaceutical services in the area. There is no evidence that people with protected characteristics find accessing pharmaceutical services difficult in the area. No proposed innovative approach to the delivery of pharmaceutical services offered by the applicant has been identified. It is the decision of the PSRC that granting the application would not secure improvements or better access to, or increase the availability of, essential services in the Harraby area of the Cumberland HWB. The regulation is not met, therefore **Regulation 14(5)** is also not met and the application must be refused.
- 2.8.4 **Regulation 13(2)(h)** - it is reasonable to assume that the recent closure of a Pharmacy in this location was due to it not being financially viable. There is no evidence of the existing Pharmacy services not providing a reasonable level of service and so granting the application may cause significant detriment to existing local services by destabilising their viability without conferring significant benefits on persons in the area of the relevant HWB. As the PSRC

is satisfied with regard to 13(h), **Regulation 14(5)** is not met and the application must be refused.

- 2.9 Regulations also considered by PSRC but deemed not applicable to this application.
- 2.10 The following Regulations were also considered by PSRC at its meeting on 4 September 2024, but were deemed not to be relevant to this application:
 - 2.10.1 Regulation 13(2)(a-c)
 - 2.10.2 Regulations 13(2)(e,f & gi)
 - 2.10.3 Regulation 13(2)(i)
 - 2.10.4 Regulation 14(1)(2)&(3)
 - 2.10.5 Regulation 31.
 - 2.10.6 Regulation 32.
 - 2.10.7 Regulations 40 to 44.
 - 2.10.8 Regulation 50
 - 2.10.9 Regulation 65
 - 2.10.10 Regulation 66
 - 2.10.11 Paragraph 31, schedule 2
- 2.11 Appeal rights: only the Applicant.”

3 The Appeal

In a letter dated 1 October 2024, the Applicant represented by Healthcare Plus Consulting Ltd appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “Thank you for your letter dated 6th September 2024 to my client. Olivemead Ltd have instructed us (Healthcare Plus Consulting Ltd) to act on their behalf for this appeal, please find authorisation letter attached.
- 3.2 We would like to appeal the decision made in relation to the above current need application.
- 3.3 We are unsure why this application has been refused, given a need was identified at this very location on the supplementary statement dated 15th January 2024. This supplementary statement was attached to my client’s original application. We reattach all previous correspondence for re-evaluation by NHS Resolution.
- 3.4 The Committee will be aware that a supplementary statement is effectively an extension of the Pharmaceutical Needs Assessment (PNA). Once a supplementary statement is published and identifies a gap, it becomes part of the PNA. So, we contest the conclusion drawn by NHS England that “*Current Needs in the area were not included in the relevant pharmaceutical needs assessment*” and assert that this conclusion is ultimately incorrect.

3.5 We submit that the need was identified in the Cumberland Health & Wellbeing Board Supplementary statement dated 15th January 2024. The Supplementary Statement states:

3.5.1 *“The closure of this pharmacy has created a gap in pharmacy provision in the former location in the Harraby ward area, Carlisle. There is a gap in essential, advanced and locally commissioned services between the hours of Monday to Friday 9am to 6pm and Saturday 9am to 1pm.”*

3.6 The statement clearly sets out:

3.6.1 1) The required services: *“essential, advanced and locally commissioned services”*

3.6.2 2) Where these services are required: *“the former location [of the Boots] in the Harraby ward area, Carlisle”*

3.6.3 3) When the services are to be provided: *“between the hours of Monday to Friday 9am to 6pm and Saturday 9am to 1pm”*

3.7 Addressing Point 1, my client’s application proposes to provide the following essential, advanced and locally commissioned services:

Essential (These are presupposed and not written on the application form, per instructions):

3.7.1 Discharge Medicines Service;

3.7.2 Dispensing Medicines;

3.7.3 Disposal of Unwanted Medicines;

3.7.4 Healthy Living Pharmacies;

3.7.5 Public Health (Promotion of Health Lifestyles);

3.7.6 Repeat Dispensing;

3.7.7 Signposting;

3.7.8 Support for Self Care;

Advanced:

3.7.9 Pharmacy First/ CPCS;

3.7.10 Flu Vaccination;

3.7.11 Pharmacy Contraception service;

3.7.12 Hypertension case-finding;

3.7.13 New Medicine Service (NMS);

3.7.14 Smoking Cessation;

Locally Commissioned:

- 3.7.15 Opioid substitution therapy;
 - 3.7.16 Supervised Administration;
 - 3.7.17 Gluten Free;
 - 3.7.18 Urinary Tract Infection (UTI) scheme;
 - 3.7.19 Think Pharmacy First;
 - 3.7.20 Emergency Hormonal Contraception;
 - 3.7.21 Stop Smoking service;
 - 3.7.22 Needle & Syringe programme;
 - 3.7.23 Palliative Care.
- 3.8 It is clear from the above services that my client is proposing to provide **all** [emphasis added by the Applicant] Essential and Advanced Services. My client is also proposing to provide **all** [emphasis added by the Applicant] locally commissioned services that are commissioned by the ICB. Please see page 36 of the Cumberland PNA for further detail on locally commissioned services. My client proposes to meet all possible services to meet the gap in provision that has been identified.
- 3.9 Addressing Point 2, the supplementary statement sets out that there is a requirement to provide these services *“in the former location [of the Boots] in the Harraby ward area”*. My client has proposed to open up at Petteril Bank Road Shops, CA1 3AH – the same location as the recently closed Boots Pharmacy. Thus, this condition is also met.
- 3.10 Addressing Point 3, the Supplementary Statement highlights that the services are to be provided *“between the hours of Monday to Friday 9am to 6pm and Saturday 9am to 1pm”*.
- 3.11 My client has proposed to open for the following core hours:
- 3.11.1 Monday – Friday: 9:00 – 18:00
 - 3.11.2 Saturday: 9:00 – 13:00
- 3.12 Hence, my client proposes core hours for the entirety of the need identified by the Supplementary Statement issued by Cumberland Health & Wellbeing Board.
- 3.13 We submit that it is clear that my client proposes to meet the identified need in full, through the location, services, and core hours proposed and thus we respectfully ask NHS Resolution to overturn the decision of NHS England and grant this application.
- 3.14 We would also like to note that previous successful Current Need applications have been granted based upon similarly worded statements within the PNA/ Supplementary Statements:

SHA/24660

- 3.15 Here, the Applicant's current need application was successfully granted at appeal on the basis of the below statement from page 4 of the 2018 Newcastle PNA:
- 3.15.1 *"The PNA identifies that there is a gap in essential pharmaceutical service provision in Dinnington."* (Point 8.34.1, pg 31, SHA/24660 report)
- 3.16 The subsequent point in this decision highlights how NHS Resolution are accepting that such a statement indicates that a gap has been identified:
- 3.16.1 *"The Committee was satisfied that page 4 of the PNA identifies a gap in essential services in Dinnington"* (Point 8.35, pg 31, SHA/24660 report).
- 3.17 Points 8.42 & 8.43 on page 33 of this decision confirm that NHS Resolution accept that such a statement meets the criteria for an identified current need, that has been met by the Applicant, and thus Regulation 13 (1) was met:
- 3.18 *"The Committee having regard to the above, concluded that there is wording in the PNA which does state that there is a gap in essential pharmaceutical services in Dinnington. In the Committee's view, the requirement in Schedule 1 of the Regulations is that the PNA must contain a statement of the pharmaceutical services that the HWB has identified as services that are not provided in the area of the HWB but which the HWB is satisfied need to be provided in order to meet a current need for pharmaceutical services, or pharmaceutical services of a specified type has been met."* (Point 8.42, pg 33, SHA/24660 report) *"In this case, the provisions of Regulation 13(1) were met."* (Point 8.43, pg 33, SHA/24660 report).
- 3.19 To summarize, NHS Resolution were satisfied that the statement: *"The PNA identifies that there is a gap in essential pharmaceutical service provision in Dinnington."* was sufficient to constitute a current need. In my client's case, the current need criteria are outlined more explicitly and in much more detail. Thus, given NHS Resolution have interpreted the above statement as constituting a current need, it follows that the wording in the Supplementary Statement issued by Cumberland Health & Wellbeing Board and dated 15th January 2024 also constitutes a current need.

- 3.20 We have attached a copy of this application for the benefit of the Committee.

The Regulations

- 3.21 The Committee will be aware that Regulation 13 governs Current Need Applications. Below we go through each facet of Regulation 13 and provide commentary on why this has been met by my client.
- 3.22 13.(1) If—
- (a)[NHS England] receives a routine application and is required to determine whether granting it, or granting it in respect of some only of the services specified in it, would meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and (b) the current need has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) of Schedule 1,*
- 3.23 It has been established above that a Current Need has been identified in accordance with Schedule 1 of the regulations, by the supplementary statement stating: *"There is a gap in essential, advanced and locally commissioned services.."* Guidance for this criteria can be found in SHA/24660, and thus 13(1)(b) is met.

- 3.24 As highlighted above, my client proposes to fulfil the need for all essential, advanced, and locally commissioned services in the correct location and with the correct core hours, and thus the current need is to be met in full by my client. Thus regulation 13(1)(a) is met.
- 3.25 Other matters:
- 3.25.1 *(2)(d) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs for pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in that area;*
- 3.26 We are unaware of any changes that have occurred since the publishing of the supplementary statement, causing an essential need to refuse this application in order to prevent significant detriment.
- 3.27 Since the publication of the PNA two pharmacies have closed in Carlisle. The Boots (CA1 3AH), which has caused the need to arise, and the Lloyds in Sainsburys (CA2 5TF). The need for pharmaceutical services has therefore increased.
- 3.28 *(2)(e) whether it is satisfied that—*
- (i) granting the application would only meet the current need mentioned in paragraph (1) in part, and*
- (ii) if the application were granted, it would be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;*
- 3.29 As highlighted above, the identified need would be met in full.
- 3.30 *(2)(f) whether—*
- (i) it is satisfied that granting the application would only meet the current need mentioned in paragraph (1) in part, but*
- (ii) it considers that, if the application were granted, it would not be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;*
- 3.31 As highlighted above, the identified need would be met in full.
- 3.32 *(2)(g) whether it is satisfied that—*
- (i) the current need mentioned in paragraph (1) was for services other than essential services, and*
- (ii) granting the application would result in an increase in the availability of essential services in the area of the relevant HWB;*
- 3.33 All essential, advanced, and locally commissioned services have been provided in full.
- 3.34 *(2)(h) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the current need mentioned in paragraph (1) has been met by another person who is providing, or is due to be met by another person who has*

undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services;

- 3.35 We understand that no other Applicant has met this current need at this point in time.
- 3.36 *(2)(i) whether the application needs to be deferred or refused by virtue of any provision of Parts 5 to 7.*
- 3.37 There are no reasons to defer/ refuse this application under these provisions.
- 3.38 We submit that it is clear that Regulation 13 has been met, and the current need identified by the supplementary statement dated 15th January 2024 has been met in full. Thus, we invite NHS Resolution to grant my client's application."
- 3.39 [Enclosures:
- 3.39.1 Application form [as per paragraph 1 above]
- 3.39.2 Cumberland Health and Wellbeing Board Supplementary Statement dated 15 January 2024
- 3.39.3 Letter from the Applicant to the Commissioner dated 1 July 2024
- 3.39.3.1 "Thank you for your letter dated 24th June 2024. We welcome comments and note that only Well have chosen to provide representation.
- 3.39.3.2 Well mention that my client has not identified access and choice improvements in their objection to my client's application. The Committee will be aware that these comments are in relation to the regulatory tests outlined in Regulation 18 and are not relevant in the context of this application.
- 3.39.3.3 My client has applied under Regulation 13 to address an identified current need. As was identified in the supplementary statement dated 15th January 2024 which was attached in my client's original application.
- 3.39.3.4 It is undisputed that my client's application will address the current need identified by Cumberland Health & Wellbeing Board. Thus, we invite the Committee to grant this application as Regulation 13 has been met."
- 3.39.4 The ICB's Decision Rationale [Paragraphs 2.4 to 2.11 above]
- 3.39.5 Copy of decision SHA/24660
- 3.39.6 Copy of the Cumberland PNA 2023.

4 **Summary of Representations**

No representations were made in response to the appeal.

5 **Consideration**

- 5.1 The Pharmacy Appeals Committee (“Committee”) appointed by NHS Resolution had before it the papers considered by the Commissioner together with a plan of the area showing existing pharmacies and doctors’ surgeries and the location of the proposed pharmacy.
- 5.2 It also had before it the responses to NHS Resolution’s own statutory consultations.
- 5.3 The Committee had before it a copy of the Cumberland PNA dated 2023 and prepared by Cumberland Health and Wellbeing Board (HWB), which had been provided by the Commissioner. The Committee was also provided [by the Applicant] with ‘Supplementary Statement 1’ to the PNA.
- 5.4 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 5.5 The Committee dealt with the appeal by way of consideration of all the issues.
- 5.6 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

Regulation 31

- 5.7 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).

- 5.8 The Committee noted from its application form, that the Applicant had stated: “N/A” and “No pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply.” The Committee further noted that in its decision letter, the Commissioner had stated that Regulation 31 was deemed not to be relevant to this application. The Committee noted that Regulation 31 was not a matter disputed on appeal.
- 5.9 Therefore the Committee was not required to refuse the application under the provisions of Regulation 31.
- 5.10 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if

the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 13

5.11 The application (which was to be determined in accordance with the procedures in Schedule 2) was submitted by the Applicant based on addressing current need for pharmaceutical services.

5.12 The Committee considered whether the need on which the Applicant based its application satisfied the elements of Regulation 13(1) which reads as follows:

"(1) If - —

(a) NHS England receives a routine application and is required to determine whether granting it, or granting it in respect of some only of the services specified in it, would meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and

(b) the current need has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) 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). "

5.13 Paragraph 2(a) of Schedule 1 reads as follows:

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

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

5.14 The Committee noted that the Applicant is proposing to meet a current need in the Harraby Ward area of Carlisle.

5.15 The Committee noted that the proposed site identified was a best estimate location at Petheril Bank Road Shops, Carlisle CA1 3AH. The Applicant stated in its application form: *"The proposed location is the same as the recently closed Boots and granting this application would deliver much needed pharmaceutical service provision to a highly deprived area, potentially saving lives."* The Committee further noted the Applicant's comment that: *"In making this application the Applicant is seeking to meet the current need identified on the attached supplementary statement dated 15th January 2024 by Cumberland Health & Wellbeing Board."*

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

supplementary statement under Regulation 6(3). Such a statement then forms part of the PNA.

- 5.17 The Committee consequently noted 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.
- 5.18 The Committee noted 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.
- 5.19 The Committee noted that there are only two references in the PNA to the Harraby Ward of Carlisle. The first of these is on page 61:
- 5.19.1 *“A number of pharmacies provide the ‘collection of prescriptions from surgeries’ service as well as providing delivery services, including vulnerable patient groups. Pharmacies across all areas of Carlisle provide delivery services including those located in central and urban Carlisle; Harraby (Parklands); Longtown; Brampton and Dalston.”*
- 5.20 The second reference is on page 64 under the heading *“Table 13: Carlisle: 10% most Deprived LSOAs in England: With Advanced & Locally Commissioned Pharmaceutical Services”*
- 5.21 The Committee noted that there was no reference in the PNA itself to a current need in the Harraby district of Carlisle. This was not perhaps surprising given that publication of the PNA pre-dated the closure of the Boots pharmacy at Petheril Bank Road.
- 5.22 The Committee has already noted a copy of the HWB’s ‘Supplementary Statement number 1’ dated 15 January 2024. The Supplementary Statement includes: *“Since the publication of Cumberland’s Pharmaceutical Needs Assessment (PNA) (in December 2023) the following change in pharmaceutical services has occurred”*. The Committee noted the change being referred to was the closure of Boots UK Limited’s pharmacy at 6 Petheril Bank Road, Carlisle, CA1 3AH on 13 January 2024.
- 5.23 The Committee noted that Boots pharmacy had provided the following services:
- 5.23.1 Community Pharmacist Consultation Service (CPCS);
- 5.23.2 Flu vaccinations;
- 5.23.3 New Medicine Service:(NMS);
- 5.23.4 Emergency Hormonal Contraception (EHC);
- 5.23.5 Stop Smoking; Opioid Substitution Therapy (OST)
- 5.23.6 Supervised administration;
- 5.23.7 Gluten Free;
- 5.23.8 Minor Ailment/Think Pharmacy First;
- 5.23.9 Urinary Tract Infection (UTI) scheme.
- 5.24 The Committee noted that Boots had provided these services at the following times:

- 5.24.1 Monday to Friday 9am to 6pm; Saturday 9am to 1pm. (Sunday closed).
- 5.25 The Supplementary Statement referred to above concludes:
- 5.25.1 *"The closure of this pharmacy has created a gap in pharmacy provision in the former location in the Harraby ward area, Carlisle. There is a gap in essential, advanced and locally commissioned services between the hours of Monday to Friday 9am to 6pm and Saturday 9am to 1pm."*
- 5.26 The Committee noted that the Commissioner was not persuaded that the Supplementary Statement had identified a current need that the application could fill. Its decision letter includes:
- 5.26.1 *"The committee concluded that the HWB statement was not based on a review of the needs of the HWB area as a whole and the statement itself was factual. Current Needs in the area were not included in the relevant pharmaceutical needs assessment and therefore Regulation (13)(1)b was not met."*
- 5.27 The Committee considered that, in this determination, it was required to determine if the current need were not or was not in the PNA.
- 5.28 The Committee noted that the wording in the Supplementary Statement is very specific, it said the closure "has" created "...a gap in essential, advanced and locally commissioned services between the hours of Monday to Friday 9am to 6pm and Saturday 9am to 1pm." The Committee further considered that of itself the word "has" provided an absolute certainty as to the outcome, and that a gap has been created. Although the Supplementary Statement did not state specifically that the closure of the Boots pharmacy had created a 'current' need, the implication is clearly there based on the above wording.
- 5.29 Turning again to the Supplementary Statement, the Committee has already noted at points 5.23 to 5.24 the services which were provided by the Boots pharmacy. Also having regard to the Applicant's proposed services at point 1.8 above, the Committee noted that Boots provided and the Applicant wishes to provide many of the same services. In other instances the two parties provided/wish to provide services which the other did/does not intend to provide. The Committee noted that the wording of the Supplementary Statement as referred to point 5.25.1 above only states *"There is a gap in essential, advanced and locally commissioned services between the hours of Monday to Friday 9am to 6pm and Saturday 9am to 1pm."* The Committee noted that the Applicant proposes to open as core hours, similar hours to those previously provided by Boots pharmacy. Given that the Supplementary Statement was non-specific about precisely the essential, advanced and locally commissioned services were there is a gap, the Committee considered that the Applicant's proposed services can justifiably be said to be addressing that gap.
- 5.30 The Committee determined that the need in question was included in the PNA dated December 2023 by way of the Supplementary Statement in accordance with paragraph 2(a) of Schedule 1.
- 5.31 In this case, the provisions of Regulation 13(1) were met.
- 5.32 The Committee therefore proceeded to consider the application having regard to those matters set out at 13(2), which states:

(a) 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 meet the current need mentioned in paragraph (1) that the applicant is offering to meet;

(b) whether it is satisfied that another application offering to meet the current need mentioned in paragraph (1) has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;

(c) whether it is satisfied that an appeal relating to another application offering to meet the current need mentioned in paragraph (1) is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;

(d) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs for pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area;

(e) whether it is satisfied that—

(i) granting the application would only meet the current need mentioned in paragraph (1) in part, and

(ii) if the application were granted, it would be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;

(f) whether—

(i) it is satisfied that granting the application would only meet the current need mentioned in paragraph (1) in part, but

(ii) it considers that, if the application were granted, it would not be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;

(g) whether it is satisfied that—

(i) the current need mentioned in paragraph (1) was for services other than essential services, and

(ii) granting the application would result in an increase in the availability of essential services in the area of the HWB;

(h) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the current need mentioned in paragraph (1) has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services;

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

13(2)(a)

5.33 The Committee noted there are no applications from other persons offering to meet the current need mentioned in paragraph (1) that the Applicant is offering to meet.

13(2)(b)

5.34 The Committee was satisfied that there was no other application offering to meet the current need mentioned in paragraph (1) that had been submitted to it, and that it would be desirable to consider, at the same time as the Applicant's application, that other application.

13(2)(c)

- 5.35 The Committee was satisfied that there is no appeal relating to another application offering to meet the current need mentioned in paragraph (1) pending, and it would be desirable to await the outcome of that appeal before considering the Applicant's application.

13(2)(d)

- 5.36 The Committee was not satisfied that, since the publication of the relevant PNA, there have been changes to the needs for pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area.

13(2)(e) and (f)

- 5.37 The Committee was satisfied from the information provided to it that granting the application would meet the current need included in the PNA in full.

13(2)(g)

- 5.38 The Committee was satisfied that the current need mentioned in paragraph (1) was for essential services, and so this provision does not apply.

13(2)(h)

- 5.39 The Committee was not satisfied that, since the publication of the relevant PNA, the current need mentioned in paragraph (1) has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services.

13(2)(i)

- 5.40 The Committee was not satisfied that the application needed to be deferred or refused by virtue of any provision of Part 5 to 7. The Committee was therefore satisfied that it was not required to defer or refuse the application under Regulation 13(2)(i).

Regulation 21(A)

- 5.41 The Committee noted that Regulation 21A of the Regulations has been in effect since 1 January 2022. Regulation 21A states:

(1) Paragraph (2) applies where NHS England receives a routine application which is in respect of premises not already listed, where—

(a) the applicant's stated intention (in accordance with paragraph 7(1)(a) of Schedule 2) is to meet a need, or secure improvements or better access, identified in the relevant pharmaceutical needs assessment (whether current or future gaps in provision); and

(b) the need is, or the improvements are or the better access is, in respect of the days on which or the times at which essential services are provided in the area of the relevant HWB.

(2) In determining whether or not it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), NHS England must have regard to whether granting the application would result in an undesirable increase in the availability of essential services in the area of the relevant HWB.

(3) If NHS England is satisfied that granting the application would result in the undesirable increase in availability mentioned in paragraph (2), it must refuse the application.

- 5.42 The Committee considered that, in relation to Regulation 21A(1)(a), the Applicant's stated intention is to meet a need identified in the PNA. Regulation 21A(1)(b) states that the need is in respect of the days on which or the times at which essential services are provided in the area of the relevant HWB. The Committee considered that this means that Regulation 21A applies where the need refers to certain days on which and times at which essential services have been identified as needing to be provided.
- 5.43 The Committee noted that the need in the PNA relevant to this application makes mention of days and times. The Committee therefore determined that Regulation 21A(2) did apply.
- 5.44 However the Committee had no information to that granting the application would result in an undesirable increase in the availability of essential services in the area of the relevant HWB.
- 5.45 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.45.1 confirm the Commissioner's decision;
 - 5.45.2 quash the Commissioner's decision and redetermine the application;
 - 5.45.3 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.
- 5.46 The Committee has concluded that the application should be granted thus it must quash the Commissioner's decision and redetermine the application.
- 5.47 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.
- 5.48 The Committee noted that representations on Regulation 13 had already been made by parties to the Commissioner, and these had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 13.
- 5.49 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

6 **Decision**

- 6.1 The Pharmacy Appeals Committee (“Committee”), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 6.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 6.3 The Committee has determined that the application should be granted for the following reason:
 - 6.3.1 The PNA has identified a current need which this application can meet.
- 6.4 Accordingly, the application is granted.

Case Manager
Primary Care Appeals