5 March 2025

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REF: SHA/26396

APPEAL AGAINST BUCKINGHAMSHIRE, OXFORDSHIRE AND BERKSHIRE WEST ICB DECISION TO GRANT AN APPLICATION BY HALO PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST AT UNIT 27B, KINGFISHER COURT, NEWBURY RG14 5SJ UNDER REGULATION 25

1 Outcome

1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and remits it to the Commissioner to re-determine the application in relation to the change of address.

A copy of this decision is being sent to:

Halo Pharmacy Ltd
Day Lewis Plc
PCSE, on behalf of Buckinghamshire, Oxfordshire and Berkshire West ICB
Boots UK Ltd

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1 The Application

By application dated 12 June 2024, Halo Pharmacy Ltd ("the Applicant") applied to Buckinghamshire, Oxfordshire and Berkshire West ICB ("the Commissioner") for inclusion in the pharmaceutical list at Unit 25, Kingfisher Court, Newbury RG14 5SJ under Regulation 25. In support of the application it was stated:

1.1 In response to "If you are undertaking to provide appliances, specify the appliances that you undertake to provide (or write 'none' if it is intended that the pharmacy will not provide appliances)" the Applicant left the box blank.

1.2 In response to why the application should not be refused pursuant to Regulation 31 the Applicant left the box blank.

1.3 In response to why the application should not be refused pursuant to Regulation 25(2)(a) the Applicant left the box blank.

Pharmacy procedures

1.4 7.1 Please explain how the pharmacy procedures used within the premises will secure:

(a) the uninterrupted provision of essential services during the opening hours of the premises, to persons anywhere in England who request those services, and

(b) the safe and effective provision of essential services without face to face contact between any person receiving the services, whether on their own or someone else's behalf, and the applicant or the applicant's staff.

7.2 Please describe the procedure that will be followed where a patient attends the premises

and asks for one or more of the essential services.

7.3 If you are undertaking to provide advanced services at the premises please describe how you will do so without providing any element of essential services.

You must ensure that you provide sufficient information within this application form to satisfy NHS England or the relevant delegated integrated care board on the above points. You are not required to submit your standard operating procedures for the premises but if you do they will be circulated to interested parties unless NHS England or the relevant delegated integrated care board is satisfied that the full disclosure principle does not apply.

1.5 “Essential Services will be provided remotely through the deployment of an approved Website and Patient App such as to enable any patient anywhere in England to request NHS Essential services without a face-to-face contact. The website + App + all other digital platforms for communication will be available uninterrupted at least during the opening hours of the premises.

1.6 2. Please see SOPs attached. These provide the overall framework for the provision of essential services in the Pharmacy.

1.7 3. Only advanced services that can be provided remotely will be provided. The pharmacy does not intend to provide services that could require service users to come to the premises.

1.8 3.2 Request for face-to-face service provision

1.9 If any member of staff receives a query from any member of the public, or patient or their carers that requests the provision of any Essential Service face to face on or in the vicinity of the premises then they must.

1.10 a. Inform the person that no face-to-face contact may occur between the patient or their representative and any member of staff.

1.11 b. Provide the person with a copy of our patient information leaflet that explains what services the pharmacy provides and why they cannot be carried out face-to-face.

1.12 c. Refer the person to the Responsible Pharmacist if they require any further explanation.

1.13 d. Establish where the person is in England and which services they require.

1.14 e. Explain that due to NHS Regulations we are unable to provide face-to-face provision of NHS Essential Services.

1.15 f. Use the NHS Choices website to find suitable service providers near to the patient and offer them their details to contact them (note this is not “signposting” as an NHS service and is simply providing proper patient care in accordance with GPhC standards).”

2 The Decision

The Commissioner considered and decided to grant the application. The decision letter dated 28 October 2024 states:

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

2.1 “Buckinghamshire, Oxfordshire and Berkshire West ICB has considered the above application and I am writing to confirm that it has been granted. Please see the enclosed report for the full reasoning.

2.2 The report details the conditions that will be placed upon your inclusion in the relevant pharmaceutical list should a valid notice of commencement be received. Enclosed is a form confirming acceptance of these conditions. It should be completed by an authorised person and returned to me with your notice of commencement.

2.3 Also enclosed is a template of the notice of commencement which you are required to submit to us. Please note that if this is submitted before the end of the 30 day appeal

period and a valid notice of appeal is then received by the Secretary of State, the notice of commencement will cease to have effect. This means that if you have opened your new premises then you will be required to close with immediate effect.

2.4 Please note that you must submit the notice of commencement no fewer than 30 days before the date you intend to start service provision. If it is received fewer than 30 days in advance it is not a valid notice of commencement and will not be accepted by Buckinghamshire, Oxfordshire and Berkshire West ICB unless you successfully ask to give a shorter notice period. Should you wish to ask to give a shorter notice period please complete the enclosed application form."

Decision report

2.5 "**Halo Pharmacy Ltd: – Distance Selling Premises Application**

2.5.1 CAS no: CAS–310960–X5M2W2

2.5.2 Address: Unit 25, Kingfisher court, Newbury RG14 5SJ

2.5.3 Berkshire West HWB

2.5.4 Buckinghamshire, Oxfordshire and Berkshire West ICB

2.6 **THE APPLICATION**

2.7 An application from Halo Pharmacy Ltd for a Distance Selling Premises Application was received on 13th June 2024 from Unit 25, Kingfisher court, Newbury RG14 5SJ.

2.8 The Committee was now required to consider the application in accordance with Regulation 25 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.9 **CONSIDERATION**

2.10 The Committee considered the following:

2.11 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.12 Department of Health guidance on Distance Selling Premises.

2.13 The application form provided by the Applicant.

2.14 Representations made by Boots UK Ltd, Day Lewis Plc, CA-Health and Community Pharmacy Thames Valley LPC.

2.15 The Committee noted that Day Lewis Plc objected to the application.

2.16 The Applicant's response to the representations received during the consultation period.

2.17 The Committee decided it was not necessary to hold an oral hearing before determining the application.

2.18 A map of the locality showing the nearest community pharmacies and GP Surgeries, in relation to the proposed premises for the Distance Selling pharmacy.

2.19 The Committee noted that a site visit had not been undertaken as this application for a distance selling pharmacy is not visited by members of public.

2.20 **Regulation 31 – Refusal: same or adjacent premises**

2.21 The Committee noted that it was required to refuse an excepted application, if the two conditions under paragraph 31(2) applied. These conditions are –

2.21.1 *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 the premises to which the application relates, or adjacent premises; and*

2.21.2 *The NHSCB 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).*

2.22 The Committee was satisfied there is no pharmacy providing pharmaceutical services at the same or adjacent premises. The application did not therefore need to be refused in accordance with Regulation 31.

2.23 The Committee noted that the Applicant stated on the application form that it intends to provide advanced services (NMS, Flu and CPCS) remotely and not on the pharmacy premises. The Committee considered the floor plan provided which detailed a consultation room. The Committee noted that the Distance Selling pharmacies are able to provide Advanced Services from the pharmacy premises as long as no element of essential services are provided at the same time.

2.24 The Committee noted that the pharmacy intends to open for 40 core hours per week.

2.25 The Committee went on to consider the reasons provided by the Applicant as to why the application should not be refused.

2.26 **Regulation 25(1)**

2.27 The Committee noted that as this was a distance selling application Regulation 25(1) indicates that section 129(2A) of the National Health Service Act 2006 does not apply, provided that Regulation 25(2) does not require the application to be refused.

2.28 **Regulation 25(2)(a)**

2.29 The Committee noted the proposed address and that it is not in the same site or building as a provider of primary medical services with a patient list. The Committee therefore did not have to refuse the application under Regulation 25(2)(a).

2.30 **Regulation 25(2)(b)**

2.31 The Committee noted that it had to be satisfied that services would be provided on an uninterrupted basis to patients anywhere in England who request those services and that essential services would be provided safely and effectively without face-to-face contact between any person receiving the services whether on their own or on someone else's behalf, and the applicant or the applicant's staff.

2.32 The Committee noted that the applicant had stated that: all essential services would be delivered in accordance with the relevant regulations, professional standards and company standard operating procedures and that provision would be uninterrupted to

persons anywhere in England who request those services during the opening hours of the premises.

2.33 The Committee noted the proposed audit procedures and that there will always be a responsible pharmacist on site during opening hours with accountability set out by the superintendent pharmacist. The Committee noted the details relating to the website and the offer of services to patients via that means.

2.34 The Committee was satisfied that, based on the information provided, there would be uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services during the stated opening hours.

2.35 The Committee went on to consider whether essential services would be provided safely and effectively without face-to-face contact between any person receiving the services whether on their own or on someone else's behalf, and the applicant or the applicant's staff.

2.36 The Applicant had confirmed that essential services will be provided without face-to-face contact between anyone receiving the services, whether on their own or someone else's behalf, and the pharmacy staff. The pharmacy will operate from secure premises, with a controlled entry system, to which members of the public will not have access. Any patient that requests essential services to be provided at the premises will be informed that the pharmacy is not permitted to provide those services at the premises. Access to information about Essential Services will be achieved by using telephone, Live Video Call, the website, email. and postal services. Essential services would be delivered via a number of methods including telephone, EPS, website, email, postal services, courier services, specialist waste management services, video services and specialist cold chain courier services.

2.37 **Schedule 4 Terms of service of NHS pharmacists**

2.38 The Committee took the view that where compliance with the Terms of Service would ordinarily require face to face contact, the Applicant must explain how it is going to achieve compliance (and therefore safe and effective provision) without face-to-face contact.

2.39 The Committee considered Schedule 4 to the Regulations having regard to the additional information supplied by the Applicant in support of the application.

2.40 **Schedule 4, paragraph 5(2) & (3) -** the Committee considered whether the Applicant had explained how patients would present prescriptions. The Committee noted the Applicant's comments which stated that prescriptions will be received by the EPS, post, or where practicable, with the patient's informed consent, collected from a surgery. They had also described the means of supplying dispensed prescriptions.

2.41 The Committee was satisfied that paragraph 5(2) & (3) would be complied with effectively without face-to-face contact.

2.42 **Schedule 4, paragraph 6 -** the Committee considered whether the Applicant had explained how in a case of urgency at the request of a prescriber drug or appliance would be provided to a patient. The Committee noted the Applicant's supporting information which acknowledged that such requests would be unlikely to occur often in a distance selling pharmacy. However, they had gone on to describe the processes and had described the way the legal requirements would be met in terms of the patient

interview and records. They had also described that such requests would be prioritised for urgent local or courier delivery.

2.43 The Committee was satisfied that paragraph 6 would be complied with effectively.

2.44 **Schedule 4, paragraph 7 –** the Committee considered whether the Applicant had explained how evidence would be sought and provided about the patient's entitlement to exemption from NHS Charges. The Applicant had explained that for local patients, where evidence of exemption is required or provided by the patient, it can be sent to the pharmacy for verification via the delivery driver and then returned to the patient. Exemptions may also be sent to the pharmacy by post and the pharmacy will pay for postage and return the exemption to the patient free of charge. Scanned email copies of exemptions are also acceptable. The nature of any exemption will be recorded on the PMR system with a copy attached to the patient's file. In all instances. The PMR system would be updated to reflect that necessary check has been carried out and a note of when the next check is required should be entered onto the system.

2.45 The Committee was satisfied that paragraph 7 would be complied with effectively.

2.46 **Schedule 4, paragraph 8(1)** – the Committee considered whether the applicant had explained how items would be provided to patients including protection of the cold chain and requirements of the misuse of drugs act. The Committee noted the Applicant's comments which included information about deliveries. They stated that medicines will be packed, transported, and delivered in such a way that their integrity, quality and effectiveness is preserved. The delivery mechanism used will provide a verifiable audit trail for medicine from the initial request through to its final delivery, or its return to the pharmacy in the event of a delivery failure. Packaging must maintain patient privacy and confidentiality. They went on to describe management of the cold chain including packaging, labelling, and an appropriate courier service. Delivery of controlled drugs will be carried out by couriers with pharma grade specialist facilities to meet specific quality and validation requirements.

2.47 The Committee noted that in addition to the broader information provided as part of the application, that very specific details were also available in the SOPs that had been provided as part of their response to comments from interested parties.

2.48 The Committee was satisfied that paragraph 8(1) would be complied with effectively.

2.49 **Schedule 4, paragraph 8(15)** – the Committee considered whether the applicant had explained how drugs would be provided in a suitable container suitable for posted/delivered items. The Committee noted the Applicant's comments which confirmed that suitable package would be used for deliveries and that there would be differentiation in terms of the packaging used for different medicine types and delivery methods.

2.50 The Committee was satisfied that paragraph 8(15) would be complied with effectively.

2.51 **Schedule 4, paragraph 9(4)** – the Committee considered whether the applicant had explained how for repeatable prescriptions they would assess that the patient is taking/using the item(s) appropriately and is not suffering from any side effects. The Committee noted the Applicant's comments which stated that the advice required for repeat dispensing would be provided using its non-face to face methods for communication. The SOPs covered this in more detail, stating that the pharmacist would telephone the patient to ask the relevant questions and provide advice before issuing the prescription.

2.52 The Committee was satisfied that paragraph 9(4) would be complied with effectively.

2.53 **Schedule 4, paragraph 10(1)** – the Committee considered whether the applicant had explained how it would provide appropriate advice about the use of drugs/appliances, safe keeping of items and returning of unwanted items be given. How it would advise regarding importance of only ordering items actually needed (repeatable prescriptions and appliances). The Committee noted the Applicant's comments which stated that the advice required for repeat dispensing would be provided using its non face to face methods for communication. The SOPs covered this in more detail, stating that the pharmacist would telephone the patient to ask the relevant questions and provide advice before issuing the prescription.

2.54 The Committee was satisfied that paragraph 8(1) would be complied with effectively.

2.55 **Schedule 4, paragraph 14 -** The Committee considered whether the Applicant had explained how it would accept unwanted drugs from patients and how patients will be advised on returning unwanted items. The Committee noted the Applicant's comments which outlined the options for disposal of unwanted medicines – i.e., a specialist waste management company for residential homes, return via a courier (paid for by the pharmacy) or local collection. Appropriate packaging will be made available and the service will be advertised on the website/app and marketing leaflets.

2.56 The Committee concluded that it was satisfied that the requirement of paragraph 14 would be complied with safely and effectively.

2.57 **Schedule 4, paragraph 17** – The Committee considered whether the Applicant had explained or otherwise demonstrated how it will assess whether persons require prescription linked intervention advice because they have diabetes, are at risk of coronary heart disease, smoke or are overweight.

2.58 The Committee noted information provided in the application which states that there will be "active" and "passive" approaches. A questionnaire will be available via the website which would identify whether further information was required. In some cases, patients will choose to complete the questionnaire without being asked to and others will be identified and asked to complete the questionnaire. Leaflets will be delivered with medication and there will also be targeted campaigns.

2.59 The Committee was satisfied that it had been provided with information sufficient to show that there would be compliance with paragraph 17 of Schedule 4.

2.60 **Schedule 4, paragraph 18 –** The Committee considered whether the Applicant had explained how it would participate in health campaigns. The Committee noted the Applicant's comments which confirmed that the pharmacy would participate in the national health campaigns and that this would be done by sending out leaflets during the period of the campaign and providing additional advice and learning resources via the website. Patients would be directed to the resources via email, text and other non face to face communication so that they are aware of the campaign.

2.61 The Committee considered it had been provided with sufficient information and was satisfied that paragraph 18 would be complied with safely and effectively.

2.62 **Schedule 4, paragraph 20 –** The Committee considered whether the Applicant had demonstrated how it would assess patients' needs before signposting them in order to minimise inappropriate use of health or social care services. The Committee noted the Applicant's comments which stated that the same active and passive assessment tool (as set out above) would be used. If the pharmacy is not able to provide the appropriate

advice, treatment, or support, they will provide contact details of another suitable provide and in some cases refer the patient to that provider. Advice would be provided via non face to face methods.

2.63 The Committee concluded the Applicant had demonstrated how it would assess patients' need before signposting them to minimise inappropriate use of health or social care services.

2.64 **Schedule 4, paragraph 21** – The Committee considered whether the Applicant had demonstrated how it considered whether the Applicant had demonstrated how it would provide advice or support for people caring for themselves or their families. The Committee noted the Applicant's comments which also referred to the active and passive assessment tool and advice on treatment options, non-prescription medicines and lifestyle - that would be offered via non face to face methods. The Committee noted that the SOPs went into more detail about requests for advice and included recording advice on self care.

2.65 The Committee concluded the Applicant had demonstrated how it would provide advice or support for people caring for themselves or their families.

2.66 **Schedule 4, paragraph 22(b) & 22(c)** - The Committee considered whether the Applicant had explained how it will provide advice, assistance and support to and in respect of a health service patient

2.66.1 (a) recently discharged from hospital who is referred to P for advice, advice and support in respect of the patient's medication regimen by the staff of the hospital in which the patient stayed;

2.66.2 or (b) who is otherwise referred to P for advice, assistance and support in respect of the patient's medication regiment by the staff of an NHS trust or NHS foundation trust as part of arrangement linked to the transfer of care between different providers of NHS services.

2.67 The SOPs that were submitted includes a detailed description of the way the requirements of the discharge medicines service will be managed. This includes arranging a live videocall or audio call to assess patient or carer understanding of the medicines that the patient should be taking as well as the pharmacist explaining changes and offering advice.

2.68 The Committee was satisfied that it had been provided with information sufficient to show that there would be compliance with paragraph 22(b) and 22(c) of Schedule 4.

2.69 **Schedule 4, paragraph 28 –** The Committee considered whether the Applicant had demonstrated how it would comply with all components of clinical governance element of the Terms of Service. The Committee noted the Applicant's SOPs which stated: "All staff must receive training which includes training in the specific terms of service relating to distance selling pharmacies. All staff must receive training that includes the provision of essential services and covers clinical governance". The Committee also noted that the applicant had provided SOPs that cover; near miss, dealing with an incident, customer complaints, dealing with drug alerts and recalls and information governance.

2.70 The Committee concluded the Applicant had demonstrated how it would comply with all components of clinical governance element of the Terms of Service (paragraph 28).

2.71 **Schedule 4, paragraph 28(c)** - The Committee considered whether the Applicant had explained how it will ensure that it has a website for the use by the public for the purpose

of accessing pharmaceutical services from those premises, on which there is an interactive page, clearly promoted to any user of the website when they first access it, which provides public access to a reasonable range of up to date materials that promote healthy lifestyles by addressing a reasonable range of health issues.

2.72 The Committee noted information provided in the application which states that there will be a website for the use by the public for the purpose of accessing pharmaceutical services from the premises, on which there is an interactive page, clearly promoted to any user of the website when they first access it, which provides public access to a reasonable range of up to date materials that promote healthy lifestyles by addressing a reasonable range of health issues.

2.73 The Committee was satisfied that it had been provided with information sufficient to show that there would be compliance with paragraph 28(c) of Schedule 4.

2.74 The Committee noted that in addition to the broader information provided as part of the application, that very specific details were also available in the SOPs that had been provided as part of their response to comments from interested parties.

2.75 The Committee concluded that essential services would be provided safely and effectively without face-to-face contact between any person receiving the services whether on their own or on someone else's behalf, and the applicant or the applicant's staff.

2.76 **DECISION**

2.77 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.

2.78 The Committee determined the application as follows –

2.78.1 the Committee was satisfied that the proposed premises were not adjacent to or in close proximity to other chemist premises.

2.78.2 the Committee was satisfied that the premises of the Applicant are not on the same site or in the same building as the premises of a provider of primary medical services with a patient list.

2.78.3 the Committee was satisfied that all essential services were likely to be secured without interruption during the stated opening hours.

2.78.4 the Committee was satisfied that all essential services were likely to be secured for persons anywhere in England.

2.78.5 the Committee was satisfied that all essential services were likely to be secured in a safe and effective manner.

2.78.6 the Committee was satisfied that all essential services were likely to be secured without face-to-face contact.

2.79 The Committee determined to grant the application.

2.80 **Regulation 64(3)**

2.81 As the application is in respect of distance selling premises, by virtue of regulation 64(3) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, if the applicant is subsequently included in the pharmaceutical list for the

area of West Berkshire Health and Wellbeing board in respect of the premises included in the application that inclusion will be subject to the following conditions:

2.81.1 The applicant must not offer to provide pharmaceutical services to persons who are present at (which includes in the vicinity of) the proposed premises;

2.81.2 the means by which the applicant provides pharmaceutical services must be such that any person receiving those services does so otherwise than at the proposed premises;

2.81.3 the proposed premises must not be on the same site or in the same building as the premises of a provider of primary medical services with a patient list;

2.81.4 the pharmacy procedures for the premises must be such as to secure:

2.81.4.1 the uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services, and

2.81.4.2 the safe and effective provision of essential services without face-to-face contact between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff; and

2.81.5 nothing in the applicant's practice leaflet, in the applicant's publicity material in respect of the proposed premises, in material published on behalf of the applicant publicising services provided at or from the proposed premises or in any communication (written or oral) from the applicant or the applicant's staff to any person seeking the provision of essential services from the applicant must represent, either expressly or impliedly, that:

2.81.5.1 the essential services provided at or from the premises are only available to persons in particular areas of England, or

2.81.5.2 the applicant is likely to refuse, for reasons other than those provided for in the applicant's terms of service, to provide drugs or appliances ordered on prescription forms or repeatable prescription forms which are presented by particular categories of patients (for example, because the availability of essential services from the applicant is limited to other categories of patients)

2.82 THIRD PARTY RIGHTS OF APPEAL The application is granted so the applicant does not have appeal rights.

2.83 Day Lewis Plc had made a reasonable attempt to express their grounds for opposing the application adequately in their representations.

2.84 The Committee decided that the parties that should have third party rights of appeal are: Day Lewis Plc"

3 **The Appeal**

In a letter dated 21 November 2024, Day Lewis Plc ("the Appellant") appealed against the Commissioner's decision. The grounds of appeal are:

3.1 “We have been notified by NHS England, in a letter dated 28th October 2024, that the above application has been approved. I enclose a copy of that letter for your information.

3.2 On behalf of Day Lewis Plc I wish to appeal this decision for the following reasons:

3.3 We raised several points of objection in our letter to NHS England on 9th July 2024. I have enclosed a copy of that letter.

3.4 We believe that the reasons for approving this application are flawed. On behalf of our client, therefore, we appeal against the decision to approve this application for the following reasons:

3.5 To our knowledge the applicant did not respond to the objections we raised and therefore NHS England was not in receipt of the information it needed to be satisfied that the requirements of Regulation 25 have been met.

3.6 Furthermore, the decision report provided by NHS England makes no reference to having considered the legitimate concerns of objectors in making its decision to approve the application.

3.7 Our grounds of appeal are therefore that the application does not meet the regulatory tests for the reasons we have raised previously and should therefore have been refused. Namely:

3.7.1 Without the provision of a full set of Standard Operating Procedures (rather than a draft set of procedures) NHS England was not in possession of sufficient information to approve the application.

3.7.2 There is no information provided on measures that will be in place to ensure the continuity of service in the case of unplanned pharmacist absences.

3.7.3 There is no information is respect of how patients with impaired vision or other disabilities will be able to access essential pharmaceutical services without face to face contact.

3.7.4 There is other information within the application (referred to in our letter of objection) that would suggest that services may not be provided safely.

3.8 Most notably, in respect of this final point, the applicant lists various ‘advanced’ pharmaceutical services it intends to provide on the application form. These include ‘Flu Vaccinations and the Hypertension Case Finding Service. These services cannot be provided without face to face contact.

3.9 Whilst the applicant is permitted to offer ‘advanced’ pharmaceutical services on a face to face basis, measures must be put into place to ensure that ‘essential’ pharmaceutical services are not provided inadvertently at the same time. In fact, section 7.3 on the application form asks the applicant to address this specific question.

3.10 In response to this question, the applicant states:

3.11 “Only advanced services that can be provided remotely will be provided. The pharmacy does not intend to provide services that could require service users to come to the premises”.

3.12 There is clearly a significant contradiction here. In one part of the form the applicant states it will provide face to face advanced services and, in another, it states it will not.

3.13 In deciding whether these services are to be provided or not, the Primary Care Appeals committee may wish to have regard to the floor plan which clearly shows that a consultation room will be provided. There is no reason to provide a consultation room if the applicant does not intend to see patients. It appears, therefore, that patients will attend the premises.

3.14 Within the draft SOPs provided, there is no mention of any 'advanced' services. There is no evidence, therefore, that the applicant has considered what measures it will need to put in place to avoid the concurrent provision of face to face essential services when providing advanced services.

3.15 In summary, we believe that NHS England has failed to properly consider regulation 25 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 in determining this application and that its decision to approve the application is flawed.

3.16 Should Primary Care Appeals decide to hold an oral hearing to consider this matter we would wish to attend."

Letter to the Commissioner dated 9 July 2024

3.17 "Thank you for your letter dated 19th June informing us of the above application. On behalf of Day Lewis Plc, who provide pharmaceutical services from premises at Access House, Strawberry Hill, Newbury RG14 I would like to object to this application for the following reasons:

3.18 Firstly, we note that the applicant does not appear to have provided a full set of detailed Standard Operating Procedures ("SOPs"). This is apparent from the front page of the SOP document provided which states:

3.19 [Note: This is not a complete list of SOPs for the operation of the pharmacy. These SOPs are provided to demonstrate how essential services will be provided in a safe and effective manner without face-to-face contact with the patient.]

3.20 The applicant lists various Advanced and other services it intends to provide but does not provide SOPs for these. Whilst the applicant states on the application form that it does not intend to provide these services face to face (notwithstanding that the regulations do not prevent it from doing so), as SOPs have not been provided the mechanism for delivering these services is not clear.

3.21 This leaves significant doubt in respect of the applicant's compliance with the requirements of an application made under Regulation 25.

3.22 We would suggest that the ICB will not be in a position to grant this application if it is not in possession of this information in full. Whilst the applicant has provided some limited supporting information in respect of this application there are many gaps in the information provided.

3.23 The ICB is being asked to determine whether the application meets the regulatory tests and can therefore be approved. This can only be determined by reviewing each and every SOP in detail to ensure that:

3.24 (a) all essential services will be provided without interruption during the proposed opening hours of the pharmacy;

3.25 (b) all essential services will be made available to anybody in England who wishes to access them;

3.26 (c) all essential services are likely to be secured in a safe and effective manner;

3.27 (d) all essential services will be provided without the face to face contact between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff.

3.28 In the absence of a full set of SOPs we do not believe that the ICB can be confident that the requirements of Regulation 25(2)(b) will be met. For example:

3.29 (b) all essential services will be made available to anybody in England who wishes to access them;

3.30 From the information provided, it is not clear how certain patient groups such as those with severe disabilities, sight loss or hearing loss will have equal access to the services offered by this pharmacy. Where services require internet or telephone access they may discriminate against patients who are not able to make use of these communication methods for any reason.

3.31 The ICB will be unable to satisfy themselves that all patients will be able to access essential services unless communication methods (in the absence of face to face contact) are explained in detail.

3.32 The nature of distance selling pharmacies is that the model relies heavily on the use of either websites or apps. Whilst telephone services may be provided, many of the services referred to by the applicant appear to rely on access to the internet. This naturally excludes patients who do not have such access, through choice or lack of availability.

3.33 Where these patients are discriminated against, through lack of access to the pharmaceutical services provided by this pharmacy, it cannot be said that services are available to anyone in England who wants to use them.

3.34 (d) all essential services will be provided without the face to face contact between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff.

3.35 The applicant has provided floor plans that show a consultation area and the plan provided shows a door with the wording 'restricted access' next to it. These features suggest that the applicant expects patients to visit the premises.

3.36 It is clear that the applicant intends to provide 'face to face' advanced and enhanced services, but it is not clear what protections will be in place to prevent the inadvertent provision of 'essential' services on a face to face basis.

3.37 For example, a patient attending the pharmacy for the New Medicines service may well require signposting to other services or the provision of public health support. As both of these are 'essential' pharmacy services, providing them on a face to face basis does not meet the requirements of regulation 25. In our opinion, where a patient is present in person at the premises and in conversation with the staff it will be impossible to avoid the provision of face to face essential pharmacy services, even where this is unintentional.

3.38 The applicant has failed to provide sufficient information to enable the ICB to be confident that the application meets the requirements of Regulation 25. In fact, the information provided clearly demonstrates that those requirements will not be met. That being the case the application must be refused."

4 On reviewing the paperwork provided by the Commissioner, NHS Resolution noted that an amended decision report had been sent to the Applicant on 30 October 2024 with an amended proposed premises address of Unit 27b, Kingfisher Court, Newbury, RG14 5SJ. The amended report had not been sent to the interested parties. NHS Resolution therefore used its discretion in accordance with Schedule 3, Part 3, paragraph 7(1) in order to provide all parties with a copy of the amended report and invite comments upon it, together with the appeal.

5 **Summary of Representations**

This is a summary of representations received on the appeal.

5.1 BOOTS UK LTD

5.1.1 "We support the appeal submitted by Day Lewis Plc.

5.1.2 We have nothing in addition to add to the representations made in their appeal but please be aware that Boots UK Ltd may wish to attend any Oral Hearing that may be required in connection with this application."

5.2 THE APPELLANT

5.2.1 "Many thanks for your letter dated 5th December inviting us to make additional representations in respect of this appeal.

5.2.2 We note the amended decision report with interest and are somewhat surprised to receive it. This is the first time we have been made aware of any reference to the address shown within this amended report.

5.2.3 The report begins:

5.2.4 1.1. An application from Halo Pharmacy Ltd for a Distance Selling Premises Application was received on 13th June 2024 from Unit 27b, Kingfisher Court, Newbury RG14 5SJ.

5.2.5 If this is correct, then the application to which the PSCR make reference was never circulated for comments.

5.2.6 The application we have seen was dated 12th June, and clearly states the address to be "Unit 25, Kingfisher Court, Newbury, RG14 5SJ".

5.2.7 This is the application that was circulated and the one which we (amongst other parties) were invited to respond to.

5.2.8 If there was a subsequent application submitted for a different address this does not appear to have been circulated for comments as far as we are aware. If that is the case then the requirements for notification to third parties do not appear to have been met.

5.2.9 If there was no subsequent application in respect of "Unit 27b, Kingfisher Court, Newbury RG14 5SJ", then it is difficult to understand why the committee's report have been amended. [sic]

5.2.1 If, further to the ICB's decision being made, the applicant notified it of a change to the premises specified, in accordance with paragraph 32 of Schedule 2 to the Regulations, there is no evidence that the ICB considered whether the requirements of paragraph 32 were met. Furthermore, if that action was taken after the PSRC meeting on 28th August 2024, it would not be appropriate to

retrospectively change the minutes of that meeting, as they would no longer accurately reflect the facts of that meeting.

5.2.2 Whilst it is difficult for us to comment on why an amended report has been provided, our position is that the application was clearly made for Unit 25, Kingfisher Court, Newbury, RG14 5SJ and our appeal relates to those premises.

5.2.1 It appears to us that the only option available to the Primary Care Appeals committee is to consider the appeal in relation to the premises named in the application rather than the one discussed in the amended minutes."

5.3 THE APPLICANT

5.3.1 "I refer to your letter dated 5th of December 2024 where you informed us that there is an appeal against the decision of the commissioner to approve our application for inclusion in the pharmaceutical list for a distance selling pharmacy at unit 27b, kingfisher court, Newbury.

5.3.2 Whereas we believe that the observations, comments and ultimately the decision of the approving committee were elaborate, precise and clear enough for the resolution committee to corroborate the approval, we would like to use this opportunity to make further representation of our application with particular regards to the matters to be considered (as described in your letter) bearing in mind that this will be the third consideration of this application in the past 14 months.

5.3.1 Please find our comments below.

[In relation to Regulation 31]

5.3.2 Our application is an excepted application as it is for a Distance selling/Mail order/Internet Pharmacy.

5.3.3 We do not intend to operate it otherwise than as a distance selling Pharmacy where face-to-face contact between patients (or their representatives) is prohibited in respect of any and all Essential Services either on or in the vicinity of the premises.

5.3.4 The proposed location of the premises will be in a **dedicated managed business suite within a business centre** with restricted access in Newbury. None of the 43 units in the business centre is occupied by a provider of pharmaceutical services or currently listed on the NHS Pharmaceutical lists.

5.3.5 The units in the centre are occupied by businesses who will not in themselves invite or receive customers to the premises but only operate behind closed doors.

5.3.6 **Please see images as attached.** [Photographs provided]

[In relation to Regulation 25(2)(a)]

5.3.7 There are currently no providers of primary medical services with a patient list in Kingfisher Court, Newbury.

[In relation to 25(2)(b)(i)]

5.3.8 This pharmacy will be open for at least 40 hours a week.

5.3.9 The operation of the Pharmacy will be governed by the Responsible Pharmacy regulation.

5.3.10 The Pharmacy will have a fully functional website (**see sample pages attached… though still being developed**) available to any persons in England that can be assessed on a mobile phone or on a computer where the details of the Responsible Pharmacist will be clearly displayed during the opening hours.

5.3.11 The Pharmacy will use non-geographic phone numbers, (**03301131129 and 07497497937**) so that intending customers will not assume that the operational reach of the pharmacy is only within the geographic descriptions of a geographic phone number.

5.3.12 Patients will be able to reach the pharmacy to assess [sic] all NHS essential services through any possible method other than face-to-face. This will include website forms, text messages, voice calls, video calls, apps, posts, email, courier, online chats, social media platform either by themselves or through their representatives.

[In relation to 25(2)(b)(ii)]

5.3.13 We have provided a full set of the relevant SOPs required (by Regulation 25) to demonstrate that we will provide "safe and effective essential services without face-to-face contact between any person receiving the services, whether on their own or on someone else's behalf, and our staff members.

5.3.14 We have signed and accepted the condition for operating a Distance selling Pharmacy following the approval that was granted by the committee.

5.3.15 Kingfisher Court is not on a high street or neighbourhood shop or in a GP surgery. **Patients do not visit such places for NHS services.**

5.3.16 The premises will be registered with the GPhc before commencing our operations where will have to demonstrate further that the services we intend provide [sic] will be done effectively and safely. These principles form the crux of the SOPs we have shared (as attached) and are described on page 13 of the SOP documents.

5.3.17 At the same time, The Pharmacy has a risk Assessment which identifies risks and scores those risks (likelihood/impact score) to produce a Risk Matrix. The Risk Assessment does not form part of the SOPs, but feeds into the content of the SOPs. Each review of the SOPs will be undertaken along with a review of the Risk Matrix.

5.3.18 In section 1.3 of our SOPs, we have described the "Overriding Provisions Applicable to **all** SOPs in the pharmacy"… that they will be written in accordance with the requirements of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, the 'Regulations'.

5.3.19 Each workstation in the Pharmacy is designed and set up to communicate and provide services with patients in every possible way other than face-to-face. **Please see image attached.**

5.3.20 We however acknowledge that an appeal has been made against the approval of the application by Day Lewis Limited and we would like to further highlight some of the details in our application which we believe have either been misunderstood or misrepresented by the appellant. We believe the appellant's observations are either unfounded in some cases or misguided in others.

5.3.21 The Appellant has commented: [see paragraphs 3.18 – 3.21]

5.3.22 There are almost one hundred SOPs we are aware of that could govern the provision of services in a Pharmacy each of them playing a different role. We have provided the full set of SOPs that are **relevant** to reasonably satisfy the regulatory requirements for inclusion in the NHS Pharmaceutical list as a Distance selling Pharmacy. If the committee requires any more SOPS to be produced, we are quite happy to produce them if by any means they were necessary for this approval.

5.3.23 We have stated that we do not intend to provide Advanced services face to face in the premises or within the vicinity of the premises. **This is to forestall the unlikely chance of a patient requesting an essential service within the premises or in the vicinity of the premises**. Even though we believe this is not relevant for this application, we have included herewith a sample SOP for the provision of the Seasonal NHS Flu vaccination off site – remote from the location of the Pharmacy. This will usually be preceded by conducting a Risk Assessment of the provision of the service. (See attached).

5.3.24 The Appellant has commented: [see paragraph 3.72]

5.3.25 Every Pharmacy is required to have a business continuity plan in place. We have a plan in place to ensure continuity of service in the case of unplanned Pharmacist absence. The same applies in a brick-and-mortar neighbourhood pharmacy. The Superintendent Pharmacist is responsible for assessing the impact on the business of the pharmacy, the minimum number of staff and staff mix required to enable the pharmacy to continue to provide services and the contingency to be employed to maintain continuity of service.

5.3.26 The Appellant has commented: [see paragraph 3.30]

5.3.27 We are not aware of any such disabilities where the patient is unable to access essential NHS services either on their own **or by a representative**. Patients who have sight loss can use voice messages and patients who have hearing loss can use Video calls. Patients who are not inclined to using web-based services can use the postal services. This does not constitute discrimination.

5.3.28 However, section 36.6 of our SOPs state that:

5.3.28.1 At least every 6 months the Superintendent Pharmacist must

5.3.28.2 Review the previous Remote Access Plan

5.3.28.3 Consider any relevant changes in technology that could facilitate remote access to pharmaceutical services.

5.3.28.4 Review the use of remote access by patients to existing services

5.3.28.5 Review feedback from users of the services that have been accessed remotely

5.3.28.6 Update the Remote Access Plan to discuss with other pharmacy staff members and the providers of the IT solutions for the pharmacy

5.3.28.7 Agree processes and timescales for any changes to remote access

5.3.28.8 Produce a communications plan to be sent to patients about proposed changes

5.3.29 The Appellant has commented: [see paragraph 3.31]

5.3.30 Patients will be able to reach the pharmacy to assess **all NHS essential services** from anywhere in England through any possible method other than face-to-face. This will include website forms, text messages, voice calls, video calls, apps, posts, email, courier, online chats, social medium platform either by themselves or through their representatives. We are not sure how much more details the appellant requires. All these details are on our website and on our practice leaflet.

5.3.31 The Appellant has commented: [see paragraphs 3.32 – 3.33]

5.3.32 The latest OFCOM 2024 connected nations interactive report indicates that 100% of England is connected to either voice or data (2G, 3G, 4G or 5G). Even with such coverage, some patients who live in city centres still choose not to use internet or telephony services. This does not constitute discrimination. The appellant does not seem to have studied our SOPs enough to realise that we have made provisions for Posts, Courier or Collection services. Our services will be available to anyone in England who wants to use them without taking away their freedom to choose.

5.3.33 The Appellant has commented: [see paragraph 3.35]

5.3.34 This suggestion is false and misguided. Apart from patients, other categories of people visit Pharmacy premises. Contractors, Sales Representatives, Delivery Drivers, Families of Staff members etc. The restriction is to keep patient information confidential and to prevent unauthorised entry into the dispensary…not to receive patients. We believe this to be a reasonable approach to maintaining patient confidentiality.

5.3.35 The Appellant has commented: [see paragraphs 3.36 – 3.37]

5.3.36 The example made here is not consistent with our stated approach. Patients will **not** be invited or expected to visit the Pharmacy premises for any Advanced/Enhanced service. We do not intend to provide any Advanced or Enhanced services only if they can be provided remotely (that is, in a location other than the Pharmacy premises or using digital technology to consult with the patient). Once again, "**This is to forestall the unlikely chance of a patient requesting an essential service within the premises or in the vicinity of the premises**."

5.3.37 The Appellant has commented: [see paragraphs 3.8 – 3.12]

5.3.38 There is NO contradiction here. We believe the appellant needs to revisit the dictionary definition of the word "REMOTE".

5.3.39 Definitions from the Oxford dictionary of Languages, the word "REMOTELY" used as an adjective indicates "*conducted or working away from a usual workplace or location*".

5.3.40 In other words, “Only Advanced/Enhanced Services that can be provided in a location away from the Pharmacy premises will be provided. We do not intend to provide services that will require service users to come to the premises”.

5.3.41 The Appellant has commented: [see paragraphs 3.13]

5.3.42 In section 34.7 of our submitted SOPs, we have stated that we will “**make sure we provide the appropriate levels of privacy for patient consultations. This applies even though we are contacting patients in a non-face to face way**”

5.3.43 This is the key reason why a consultation room is required in a Pharmacy and so why we have one designated for Remote consultations….**not** to invite patients to attend the premises as is erroneously inferred by the appellant.

5.3.44 The Appellant has commented: [see paragraph 3.14]

5.3.45 The first measure is that only advanced services that can be provided remotely (away from the pharmacy premises) will be provided. The pharmacy does not intend to provide services that could require service users to come to the premises. This is to forestall the unlikely chance that an essential service could be requested by a service user.

5.3.46 The second is that where there is the possibility to provide the service remotely from the Pharmacy premises, a risk assessment will be undertaken before any visit to the location where the service will be provided.

5.3.47 Lastly, the procedure for conducting any service (Enhanced or Advanced) will reflect the overriding Provisions Applicable to all our SOPs”….that they will be in accordance with the requirements of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and regulation 25 the ‘Regulations’

5.3.48 Finally, while we believe we have provided sufficient information and evidence to the resolution committee to uphold the decision of the commissioner to grant this application, we are still prepared to provide any further details if the committee so requires. Unfortunately, we do not see any cogency or lucidity in the observations of the appellant and as such believe they should be disregarded.”

6 Summary of Observations

This is summary of observations received.

6.1 THE APPLICANT

6.1.1 “We would like to refer to your letter dated the 10th of January 2025.

6.1.2 We do not have any new information or representation to provide at this stage, not beyond what we have already provided.

6.1.3 It was observed that the application we made on the 12th of June 2024 erroneously had two addresses with different unit numbers (25 & 27B) in two different parts of the form – so we had to correct and confirm the correct address. Unit number 25 is right beside 27B - in the same building, same location, same vicinity and no change in the submitted floor plan.

6.1.4 We do not believe that the appellant has had any less opportunity to make whatever representation they wish to make in the consideration of this application. Besides confirming the correct unit number of the premises, no other changes were made to the application and so should not have any bearing on the validity of the application.

6.1.5 If they are now no longer fully convinced about the details of their appeal, they also still do have the opportunity to withdraw same."

7 Consideration

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

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

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

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

Amendment to address of the proposed premises

7.5 The Committee noted that on 23 September 2024 the Applicant emailed the Commissioner to inform it that an error had been made on its application form regarding the address of the proposed premises. The address of the proposed premises had been stated as "Unit 25, Kingfisher Court, Newbury, RG14 5SJ", although a document showing the floor plan of the proposed premises had been attached to the application with the file name on the application form stating "27b Kingfischer Court_HALO.pdf" [sic]. The Applicant stated that a correct form had been attached and queried whether this could be amended without further consultation or a re-application. The Committee noted that this floor plan itself, once opened, did not have a unit number indicated anywhere on the floor plan and considered that it would have been easy to assume that it was for Unit 25.

7.6 The Committee noted that at the time the Applicant sent the email, 23 September 2024, the Commissioner had already completed the usual consultation with statutory interested parties and had held its the Pharmaceutical Service Regulations Committee ("PSRC") meeting on 28 August 2024. The Commissioner decided that as there was an ambiguity on the application form that it had not picked up, the amendment to the address of the proposed premises could be accepted.

7.7 On 28 October 2024 the Commissioner issued the decision letters for the Application, which all referred to Unit 25. No further consultation was carried out with the statutory interested parties and on 30 October 2024 only the Applicant was sent a copy of an amended decision report, which now showed the address of the proposed premises as 'Unit 27b'. The Committee noted that the other decision letters were not amended or reissued.

7.8 The Committee had regard to Schedule 2, Part 1, paragraph 9 of the Regulations which states:

9.—*1) An applicant (A) must provide the following undertakings—*

(a) an undertaking to notify NHS England within 7 days of any material changes to the information provided in the application that occur before—

(i) the application is withdrawn,

(ii) while the application remains the subject of proceedings, the proceedings relating to the application reach their final outcome and any appeal through the courts has been disposed of, or

(iii) if the application is granted, A commences the provision of the services to which the application relates,

whichever is the latest of these events to take place;

7.9 The Committee noted the Appellant's view that "*the only option available to the Primary Care Appeals committee is to consider the appeal in relation to the premises named in the application rather than the one discussed in the amended minutes.*" The Committee was mindful, that as per Schedule 2 paragraph 9, an applicant is entitled to make material changes to the information provided in its application form while the application remains the subject of proceedings. Consequently, it considered that there was the possibility to consider the appeal in relation to a changed application, rather than its original content. However, the Committee noted that Schedule 2, paragraph 9 only provides that an applicant must inform the Commissioner of a material change but does not clarify if this change must be accepted, the process for accepting a change, or the consequences for making a change.

7.10 The Committee was mindful of the Applicant's statements that it had intended for the proposed premises to be at Unit 27b but had made an error, and that therefore a material change was required to the address of the proposed premises as stated on the application form. The Committee found it reasonable to assume that the Applicant had notified the Commissioner of the error as soon as it realised and the notification could be considered to have been sent to the Commissioner "*whilst the application remains the subject of proceedings…*".

7.11 The Committee considered whether there should be a further notification to the parties, as 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. There is nothing in the Regulations that overtly states that, if a material change is made, the application process should start again. However, the Committee considered that, where there is a material change in an application, the change in question will need to be considered in the context of the rest of the application and in particular whether or not is it considered appropriate in the circumstances such that a further notification under paragraph 19 of Schedule 2 should be made.

7.12 The Committee firstly considered the impact the change had, having regard to the nature of the application. The Committee was mindful that if the change would have had minimal impact on the application then there would be no need to make further notifications. Given that the address of an application is of vital importance to it and is referred to in both the title of the application and much of the communication with the Commissioner and interested parties, the Committee considered that it would inherently be impactful.

7.13 The Committee next considered the consequence of remitting the application to the Commissioner, in regard to whether its decision would remain the same. The Committee was mindful that the Commissioner had granted the application initially and did not change its decision, did not carry out further consultation when it was informed of the error on the application form, and did not seek to have the application re-considered by the PSRC. The Committee noted that the reason for the Commissioner accepting the change was on the basis of an existing "ambiguity" which it had not

identified. The Committee considered that it was unclear upon what basis the Commissioner determined that an ambiguity would allow for a change of address to be accepted, especially when the ambiguity was not immediately obvious. The Committee noted that the application form itself was clear that for this type of application "A full address must be provided 'best estimates' are not acceptable" and thus the address section needed to be specific. The Committee also considered that it was difficult to understand the reasoning behind a file name creating an ambiguity in relation to the location of the pharmacy, especially when file names are frequently of little importance. As such the relationship between the ambiguity and not having the PSRC reconsider the application was unclear. The Committee was therefore unable to determine whether the change would have had an impact on the outcome of the decision as it was unclear how the basis of the acceptance of the change related to the decision making process.

7.14 The Committee also noted the Appellant's statements that, in retrospectively changing the minutes of the meeting of 28 August 2024, it would mean that they no longer accurately reflect the facts of that meeting. Whilst it is possible that the PSRC may not change its decision on the basis of the amended proposed premises, the Committee considered that it had not actually been given the opportunity to consider the correct address. The Committee had specific regard to the comments in those minutes regarding Regulation 31 and Regulation 25(2)(a) which necessitate consideration of the address of the proposed pharmacy. The Committee considered that, as the PSRC had considered these in relation to Unit 25, then to change the minutes later would be creating statements that were not a true reflection of the decision. The Committee also noted that the other decision letters had not been amended, and that two conflicting versions of the meeting minutes were in circulation. As such the Committee considered that this likely had created confusion as to what the Applicant had applied for, and this simple amendment had failed to remedy this appropriately.

7.15 The Committee next looked at whether all parties involved had been given the proper opportunity to comment on the application, given that it was for a different address. The Committee noted that representations on Regulation 25 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 25. The Committee also noted that the parties that had made representations on the application had been invited to make further representations on the amendment to the address of the proposed premises as identified in the amended decision report.

7.16 The Committee noted the Applicant's comments that the application form had two addresses with different unit numbers on and therefore it had to "*correct and confirm the correct address*". The Applicant further states that "*Unit number 25 is right beside 27B - in the same building, same location, same vicinity and no change in the submitted floor plan.*" The Committee further noted the Applicant's comment that "*We do not believe that the appellant has had any less opportunity to make whatever representation they wish to make in the consideration of this application. Besides confirming the correct unit number of the premises, no other changes were made to the application and so should not have any bearing on the validity of the application.*".

7.17 The Committee noted the Appellant's reference to paragraph 32 of Schedule 2 of the Regulations concerning 'Changes to the premises specified in an application after its grant but before the listing of the premises'. However, the Committee considered that this paragraph explicitly only applies to routine applications, rather than excepted applications. As per Regulation 12, a routine application is any application, other than an excepted application. An excepted application is defined in Regulation 2 as any of

those contained in Part 4 of the Regulations. Regulation 25 is found in Part 4, and as such the Applicant has made an excepted application, rather than a routine application. The Committee considered therefore that this paragraph would not apply to the Applicant's application.

7.18 The Committee was also mindful of the comments regarding the alleged "ambiguity". The Committee noted that the Commissioner's emails were suggestive of the fact that no regard was given to the title of the floorplan document during the decision making process. Therefore, the Committee considered that the PSRC paid no heed to Unit 27b, and did not apply any of its decision making to that location. The Committee also noted that no further comments were received from the Commissioner as part of this appeal, which left ambiguity as to whether the PSRC had had the opportunity to consider the change and if any consequential impact had been assessed.

7.19 Whilst all parties have been invited, as part of this appeal, to make representations on the amended proposed premises, the Committee considered the Appellant's comments, and whilst it disagreed with the remarks made in relation to paragraph 32 of Schedule 2, it agreed with its comments regarding changing the meeting minutes. The Committee was also mindful of the Appellant's confusion regarding whether this was a new application or the one which it had appealed. The Committee considered that any change of address, regardless of its significance in terms of distance, would represent a significant change to an application. The Committee also noted the fact that there are specific Regulations regarding making applications for "best estimate" locations, and the paragraph to which the Appellant had regard in relation to changing address. As such, the Committee was mindful that such a change necessitated careful consideration and could not be taken lightly.

Summary

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

7.20.1 confirm the Commissioner’s decision;

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

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

7.21 Due to the fact that the Commissioner's reasoning for accepting the change was flawed, that the conflicting decision letters made it difficult for those in receipt of them to understand the application, the factual issues with the decision report and that a change of address was so significant that its impact on the decision of the Commissioner was impossible to guess, the Committee determined that the decision of the Commissioner must be quashed.

7.22 The Committee considered that a robust process resulting in correctly labelled letters and factually accurate minutes was necessary. In order to facilitate this, there should be a further notification to the parties, as detailed at paragraph 19 of Schedule 2 of the Regulations, to allow them to make representations if they so wished and that it was appropriate to remit the matter to the Commissioner.

8 Decision

8.1 The Committee:

8.1.1 quashes the decision of the Commissioner; and

8.1.2 remits the matter back to the Commissioner, for it to redetermine the application (making a further notification under paragraph 19 of Schedule 2 in relation to the change of address).

Case Manager
Primary Care Appeals