

28 March 2025

REF: SHA/26428

**APPEAL AGAINST NHS HERTFORDSHIRE AND WEST
ESSEX ICB DECISION TO REMOVE C CLICK LTD T/A
CHEMIST CLICK (FQ672) FROM THE
PHARMACEUTICAL LIST AT REGUS BUILDING,
CARDINAL POINT, PARK ROAD, RICKMANSWORTH,
HERTFORDSHIRE, WD3 1RE**

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

1 Outcome

- 1.1 I am of the view that under NHS Resolution's powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of the Commissioner or substitute for that decision any decision that the Commissioner could have taken when it took that decision.
- 1.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I confirm the decision of the Commissioner that the Appellant's premise is to be removed from the relevant pharmaceutical list.

A copy of this decision is being sent to:

C Click Ltd t/a Chemist Click
Hertfordshire and West Essex ICB

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1 The Decision Letter

A letter dated 22 November 2024 was sent from NHS Hertfordshire and West Essex ICB (“the Commissioner”) to C Click Ltd t/a Click Chemist, Regus Building, Cardinal Point, Park Road, Rickmansworth, WD3 1RE (“the Appellant”). The letter states:

- 1.1 “I am writing to you to inform you of the decision made following the oral hearing regarding the proposed removal of C Click Ltd t/a Chemist Click, Regus Building, Cardinal Point, Park Road, Rickmansworth, Hertfordshire, WD3 1RE from the pharmaceutical list for the area of Hertfordshire Health and Wellbeing Board under regulation 74(3)(a).
- 1.2 The panel comprised of two members of the Pharmaceutical Services Regulation Committee (PSRC):
 - 1.2.1 [AS] – Director of Primary Care Transformation, Hertfordshire and West Essex (HWE) ICB and Chair of PSRC
 - 1.2.2 [CL] – Independent Advisor, PSRCCommissioner Representations
- 1.3 The purpose of the oral hearing was to determine whether C Click Ltd have provided pharmaceutical services at Chemist Click, “the pharmacy premises”, in the preceding six months prior to the letter that was issued by HWE ICB on 8th October 2024. It was noted that the case was to be considered under Regulation 74(3)(a) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (the 2013 regulations).

74(3) If NHS England determines that C has not, during the preceding 6 months, provided pharmaceutical services at chemist premises (“the particular premises”) listed in a pharmaceutical list –

(a) if there are other chemist premises listed in that pharmaceutical list in relation to C, NHS England must remove the listing of the particular premises from that list;
- 1.4 It was acknowledged that this was the only matter to be determined by the oral hearing.

- 1.5 The representative for the Commissioner, provided some background to the case noting that services have not been provided by C Click Ltd for over 6 months and prior to removing C Click Ltd and the pharmacy premises from the pharmaceutical list for the area of Hertfordshire HWB under regulation 74(3)(a), the commissioner is required to give notice to C Click Ltd of the decision that it is minded to take and provide C Click Ltd with the opportunity to make representations. A mutually convenient date for the oral hearing was scheduled.
- 1.6 The panel was advised that normally the provision of pharmaceutical services would be evidenced by the submission of prescriptions and claims for pharmaceutical and any other NHS services provided.
- 1.7 The panel noted that NHS Business Services Authority (NHSBSA) and Primary Care Support England (PCSE) who process claims and make payments on behalf of Commissioners, confirmed that no claims for pharmaceutical or NHS services had been submitted under ODS code FQ672 prior to the letter that was issued by HWE ICB on the 8th October 2024.
- 1.8 The NHSBSA did confirm that FQ672 C Click Ltd t/a Chemist Click [sic] signed up to deliver Pharmacy First and the initial fixed payment of £2000 was paid on the November 2023 schedule of payments, payment date 1 February 2024. As the pharmacy did not carry out and/or claim any pharmacy first consultations within the given time frame set out in the Drug Tariff, the initial fee of £2000 was recovered on the June 2024 schedule, payment date 30 August 2025.
- 1.9 Furthermore, the NHSBSA confirmed that a declaration of two prescription items was made on 5 November 2024 in relation to October 2024 prescriptions and an advance of £19.06 calculated. This payment was recovered against the outstanding negative on the account.
- 1.10 The panel was advised that having reviewed all records there is no confusion that C Click Ltd is the legal entity included in the pharmaceutical list for the Hertfordshire HWB area in respect of the pharmacy premises. Based on the information available there is no evidence of pharmaceutical services having been provided by C Click Ltd at the pharmacy premises, prior to the issuing of the letter from HWE ICB in the preceding six months indeed since C Click Ltd was included in the relevant pharmaceutical list in respect of the pharmacy premises in February 2019.

Representations by Mr A Kanani, Director, C Click Ltd

- 1.11 You provided representations as director of C Click Ltd to provide some context and background as to the position of C Click Ltd.
- 1.12 You confirmed that C Click Ltd were included on the pharmaceutical list in 2019 in respect of the pharmacy premises and although the initial plan was to begin offering NHS prescription services through a delivery model, the landscape for NHS pharmacies has changed drastically and offering this service was not commercially viable. You cited multiple factors, including Brexit, which had driven up medication costs, and a worsening overall landscape for pharmacies.
- 1.13 With regards to the Pharmacy First, you stated that the only way to effectively promote Pharmacy First was to be listed on NHS Digital, but delays prevented this from happening. From the time you signed up until March 2024, there were repeated delays, with online pharmacies unable to register. By April 2024, you had lost momentum, despite receiving calls from the Local Pharmaceutical Committee (LPC) reminding you that you needed to complete a few consultations in the first month. You confirmed that

without being listed on NHS Digital, it was impossible to receive 111 referrals or make the service operational. You described the system as fragmented and nonsensical, which ultimately caused your team to lose momentum and cease pursuing NHS Digital registration.

- 1.14 You did admit that although C Click Ltd was not fully utilising its NHS contract, the pharmacy had fulfilled an NHS prescription the previous month. However, you described the process as a nightmare, involving significant delays. For example, even obtaining NHS tokens took weeks, requiring numerous follow-ups. You provided an example where it took ten days for a response after you raised a complaint, only for them to promise a link that he never received. Such inefficiencies, you explained, made the system incredibly challenging to navigate.
- 1.15 Upon questioning, you confirmed:
- 1.15.1 that the prescription was submitted to the NHS Prescription Services after C Click Ltd received the letter to inform it of the decision PSRC was minded to take;
- 1.15.2 you have not updated the pharmacy premises' profile on the Directory of Services to confirm that it provides the Pharmacy First service;
- 1.15.3 you have not registered for the NHS Profile Manager.
- 1.16 You advised the panel that you wished to make a closing statement before the oral hearing was brought to a close. You began by expressing your gratitude for your success in the private pharmacy sector, emphasising the easier market penetration within the NHS framework, given the volume of prescriptions processed. You noted that many private patients have approached you to handle their NHS prescriptions, which reflects the demand for the pharmacy's services. However, you acknowledged that even if your NHS contract was rescinded, your business would continue as usual, albeit with a sense of regret. Delivering NHS services holds personal significance for you, as it aligns with your background in hospital and community pharmacy, but it cannot come at the expense of your existing business operations. Mr A Kanani reflected on the challenges posed by the last 14 years of government policy, which have contributed to the closure of many pharmacies and a general decline in primary care and healthcare services.
- 1.17 You expressed hope that a change in government might reverse these trends and reaffirmed your desire to deliver NHS services, which you view as a source of national pride. While you are not proud of being unable to offer NHS services currently, you highlighted the commercial challenges you faced entering the market, including the prohibitive costs of acquiring a community pharmacy at the time. Despite the current state of the sector, you believe your business is well equipped to provide excellent NHS services as evidence by your Trustpilot reviews and your dedicated team. You concluded by stating your commitment to delivering exceptional care and thanked the panel for their time and understanding.

Decision

- 1.18 In conclusion:
- 1.19 **The panel determined that C Click Ltd and the pharmacy premises are to be removed from the pharmaceutical list of the area of Hertfordshire HWB under regulation 74(3)(a).**

- 1.20 Whilst the panel had some sympathy for the position C Click Ltd are in regarding the decision not to provide pharmaceutical services due to viability reasons, the commissioner is required to work within the specific regulations. C Click Ltd has admitted that it has not provided pharmaceutical services from the pharmacy premises between February 2019 and 8 October 2024.
- 1.21 You have a right of appeal to the Secretary of State against this decision.
- 1.22 Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 calendar days of the date of this notice to appeals@resolution.nhs.uk or:
- 1.23 NHS Resolution
- 8th Floor
- 10 South Colonnade
- Canary Wharf
- London
- E14 4PU”

2 The Appeal

In a letter dated 19 December 2024 addressed to NHS Resolution, the Appellant appealed against the Commissioner decision. The grounds of appeal are:

- 2.1 “I am emailing to appeal the decision to remove C Click Ltd from the pharmaceutical list of the area of Hertfordshire HWB under regulation 74(3)(a).
- 2.2 We received an email notifying us that we would be removed from the pharmaceutical list.
- 2.3 I was not aware of this regulation, otherwise we would have made a concerted effort to promote NHS services. I am sorry for this, and we are now providing NHS services.
- 2.4 Since we received the letter, we have been promoting NHS services and we are now providing a repeat dispensing service to a number of patients.
- 2.5 I am asking you to reconsider your decision and reinstate our inclusion on the pharmaceutical list, mainly for the following reasons:
- 2.5.1 So that we can have uninterrupted service to the patients we are currently providing an NHS service to;
- 2.5.2 Over 400 pharmacies have closed in the last year (around 8 a week) and revoking our inclusion is counterproductive in the overall plan to use pharmacies instead of GPs for certain conditions;
- 2.5.3 Some of our patients that we are dispensing medication for are coming to us as their NHS pharmacy have closed down;

- 2.5.4 If we are removed, I plan to apply again, as we are now in a position to promote NHS services (which we have been doing). This will not only incur us an unnecessary cost, but also an unnecessary cost to the NHS to assess and re onboard a pharmacy;
- 2.5.5 We are doing many private prescriptions on a monthly basis, and we are operationally geared to be able to scale up our NHS service rapidly and effectively;
- 2.5.6 We have a 4.8/5 Trustpilot score and we have received an award from our MP Gagan Mohindra in 2021, for “most trusted online pharmacy” in 2021 – we were featured in the local paper. The general public would benefit from using us as an NHS pharmacy;
- 2.5.7 Scaling up our NHS operation would provide employment for local people. We have an incredibly high staff retention and we are a progressive company, very much focused on career progression.
- 2.6 Again, I apologise and I was unaware of this regulation, we were simply waiting to see when the best time was to actively start promoting our NHS services was.
- 2.7 It would be a shame to see another pharmacy cease to provide NHS services at a time where the closure rate of NHS pharmacies is unprecedented. We are now promoting our NHS services and would like to be given another opportunity to provide NHS services to the general public.
- 2.8 Thank you for considering this appeal and I sincerely hope to be given the opportunity to provide value to the public through offering NHS services.”

3 Summary of Representations

This is a summary of representations received on the appeal.

3.1 THE COMMISSIONER

- 3.1.1 “Please note that from the 1 April 2023, community pharmacy contracting and commissioning has been delegated to Integrated Care Boards (ICBs). Hertfordshire and West Essex (HWE) ICB are hosting the function on behalf of the six East of England ICBs.
- 3.1.2 The appeal has been submitted by Mr Abbas Kanani, Director of C Click Ltd trading as Chemist Click and shall be referred to as the Appellant within this document.
- 3.1.3 The ICB would like to make the following representations:
- 3.1.4 As background, Regulation 74(3)(a) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (the Regulations) sets out the following:

74(3) If NHS England determines that C has not, during the preceding 6 months, provided pharmaceutical services at chemist premises (“the particular premises”) listed in a particular pharmaceutical list—

(a) if there are other chemist premises listed in that pharmaceutical list in relation to C, NHS England must remove the listing of the particular premises from that list; or

(b) if there are no other chemist premises listed in that pharmaceutical list in relation to C, NHS England must remove C from that list.

- 3.1.5 The Appellant has been on the Hertfordshire Health and Wellbeing Board (HWB) pharmaceutical list since February 2019 and had not submitted any NHS prescriptions for over a 2-year period.
- 3.1.6 Regulation 74(3)(a) referenced above sets out that the ICB must in these circumstances remove a contractor from the relevant pharmaceutical list. There is no discretion in this matter.
- 3.1.7 Whilst the Appellant recognises that NHS pharmaceutical services were not provided, the Appellant is appealing because he was unaware of this regulation. The Appellant states *"I am not aware of this regulation, otherwise we would have made a concerted effort to promote NHS services"* (appeals letter).
- 3.1.8 It is the responsibility of any pharmaceutical contractor on the pharmaceutical list to ensure they are fully aware of their contractual requirements.
- 3.1.9 NHS Resolution will see from the email exchange that in conjunction with the Appellant not submitting any NHS prescriptions for over two years, only private services are advertised on the Appellant's website. The Appellant responded to the ICB confirming that he hoped to launch NHS services in "Q2 2025" (see attached email).
- 3.1.10 This demonstrates that from 25 February 2019 to 20 September 2024, a time frame of over 3 years, no NHS services were provided.
- 3.1.11 The Appellant states: *".... I am sorry for this and now providing NHS Services" and "since we received the letter, we have been promoting NHS Services and we are now providing a repeat dispense service to a number of patients"* (appeals letter).
- 3.1.12 The screen shots below taken from the Appellant's website still confirms they do not dispense NHS prescriptions. The ICB notes there are no references to the full suite of pharmaceutical services that should be provided as per the terms for service for distant selling premises (DSP):
- 3.1.12.1 Chemist Click home page, screenshot taken 8 January 2025
- 3.1.12.2 Chemist Click home page, screenshot taken 8 January 2025
- 3.1.12.3 Chemist Click FAQ page, screenshot taken 8 January 2025
- 3.1.12.4 Chemist Click home page, screenshot taken 13 January 2025
- 3.1.13 The ICB received an email on 5 November 2024 showing the Appellant had submitted one ESP prescription form (which included 2 exempt items) to the NHS Business Services Authority (NHSBSA) for processing. This was done in response to a letter sent to Appellant on the 8 October 2024 detailing the

consideration of removal in line with regulation 74(3). The letter is enclosed with these representations.

- 3.1.14 This one claim is too late and irrelevant. Regulation 74(3) references “*the preceding six month...*”. The letter issued by the ICB was dated 8 October 2024 and 6 months preceding this date would mean claims must be submitted on or before 8 April 2024.
- 3.1.15 When making decisions or taking action, the ICB must do so in line with the Regulations. Whilst the ICB must remove the contractor for not providing NHS services in the preceding 6 months, (indeed 3 years in this case) we are mindful of comments made by the Appellant.
- 3.1.16 The Appellant argues that NHS pharmaceutical services will be interrupted should the removal take place however the ICB is satisfied that the full range of NHS pharmaceutical services are not being provided by the Appellant.
- 3.1.17 Primary Care Services England (PCSE) and the NHSBSA were contacted on 13 January 2025 and asked to provide details of any payments made to the Appellant since 8 October 2024. The NHSBSA confirmed the following:
- 3.1.17.1 2 items in November 2024 which are currently being processed
- 3.1.17.2 No items declared for December
- 3.1.17.3 9 electronic items have been received which is assumed relate to January 2025
- 3.1.18 PSCE confirmed that no payments have been processed.
- 3.1.19 People requiring the services of a distance selling premises (DSP) can access DSP nationwide. If the Appellant has recently provided an NHS service to a patient, any patient will be given 30 days to transfer to any alternative provider of their choice.
- 3.1.20 The ICB recognises that services offered by DSPs are nationwide, however there are four DSP's within Hertfordshire HWB area. Information is provided below on dispensing:

DSP name	Number of items dispensed
FQ672 Chemist Click	0
FPN12 Med Mart	14376
FA631 Gate2 Pharma	7139
FRW19 Careplus Pharmacy	40178
FJM04 Care2homes	38573

(NHS BSA, Dispensing contractors data: September 2024)

- 3.1.21 In addition to this, there is no data showing for Chemist Click when viewing the information on the Local Authority Shape Tool.

- 3.1.22 The Appellant states *“if we are removed, I plan to apply again, as we are now in a position to promote NHS services (which we have been doing). This will not only incur us unnecessary costs, but also an unnecessary cost to the NHS to assess and re onboard a pharmacy”* (appeals letter).
- 3.1.23 The Appellant has provided no evidence to show how NHS pharmaceutical services are or have been promoted. As shown via screenshots included in these representations and as per the Appellant's own FAQ document on their website, it says they do not dispense NHS prescriptions.
- 3.1.24 Furthermore, the ICB must make decisions as per the Regulations. The Regulations state that if services have not been provided in the preceding 6 months, the ICB *must* remove the contractor from the pharmaceutical list. There is no discretion and no opportunity to consider future applications that might be made.
- 3.1.25 The Appellant states *“We are doing many private prescriptions on a monthly basis, and we are operationally geared to be able to scale up our NHS service rapidly and effectively”* (appeal letter). The Appellant's ability to provide private prescriptions is of no relevance. The Appellant has not provided any evidence to demonstrate that NHS pharmaceutical services were provided 6 months prior (or indeed 3 years prior) to the ICB contacting them in October 2024.

Oral Hearing

- 3.1.26 The letter dated 8 October 2024 advised the Appellant that the ICB were considering removing them from the pharmaceutical list. The Appellant was advised of the decision the ICB was minded to take and given the opportunity to make written and oral representations on the matter.
- 3.1.27 The Appellant requested an oral hearing which took place on 15 November 2024. The Appellant was advised that the purpose of the oral hearing was to determine whether C Click Ltd have provided pharmaceutical services at Chemist Click, “the pharmacy premises”, in the preceding six months prior to the letter that was issued by HWE ICB on 8th October 2024.
- 3.1.28 During the Oral hearing, the panel were provided with the following information:
- 3.1.28.1 *“The NHSBSA did confirm that FQ672 C Click Ltd t/a Chemist Click signed up to deliver Pharmacy First and the initial fixed payment of £2000 was paid on the November 2023 schedule of payments, payment date 1 February 2024. As the pharmacy did not carry out and/or claim any pharmacy first consultations within the given time frame set out in the Drug Tariff, the initial fee of £2000 was recovered on the June 2024 schedule, payment date 30 August 2024.*
- 3.1.28.2 *Furthermore, the NHSBSA confirmed that a declaration of two prescription items was made on 5 November 2024 in relation to October 2024 prescriptions and an advance of £19.06 calculated. This payment was recovered against the outstanding negative on the account.”*
- 3.1.29 During the oral hearing, the Appellant confirmed the following:

- 3.1.29.1 that the prescription was submitted to the NHS Prescription Services after C Click Ltd received the letter to inform it of the decision PSRC was minded to take;
- 3.1.29.2 it had not updated the pharmacy premises' profile on the Directory of Services to confirm that it provides the Pharmacy First service;
- 3.1.29.3 it had not registered for the NHS Profile Manager.
- 3.1.29.4 The delivery of NHS pharmaceutical services could not come at the expense of its existing business operation.
- 3.1.29.5 C Click Ltd had not provided pharmaceutical services between February 2019 and 8 October 2024.
- 3.1.30 The full minutes of the oral hearing have been included along with the final letter sent to the Appellant following the oral hearing.

Conclusion

- 3.1.31 In summary, we remain of the opinion that C Click Ltd and the pharmacy premises should be removed from the pharmaceutical list of the area of Hertfordshire HWB under regulation 74(3)(a).
- 3.1.32 The regulatory requirements have not been met by C Click Ltd."

Email from the Commissioner to the Appellant dated 20 September 2024

- 3.1.33 "I hope this message finds you well.
- 3.1.34 I have received an enquiry from the NHS Business Services Authority (NHSBSA) regarding your account (FQ672). They have noted that C Click Ltd, trading as Chemist Click (FQ672) has not submitted any NHS prescriptions for over two years.
- 3.1.35 Upon investigation, our records show that you were added to the Hertfordshire Health & Wellbeing Board NHS Pharmaceutical List around February 2019. Additionally, your pharmacy webpage indicates that you are currently handling only private prescriptions and do not appear to be offering any NHS services. There is also no mention of participation in the NHS Electronic Prescription Service.
- 3.1.36 According to 'The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (as amended)', Regulation 74(3) states:
 - (3) *If NHS England determines that NHS chemist (c) has not, during the preceding 6 months, provided pharmaceutical services at chemist premises ("the particular premises") listed in a particular pharmaceutical list –*
 - (a) *if there are other chemist premises listed in that pharmaceutical list in relation to C, NHS England must remove the listing of the particular premises from that list; or*
 - (b) *if there are no other chemist premises listed in that particular list in relation to C, NHS England must remove C from that list.*

- 3.1.37 Before we proceed with removing C Click Ltd from the Hertfordshire Health & Wellbeing Board NHS Pharmaceutical List, we would like your confirmation that no NHS services are being delivered and that no NHS prescriptions have been submitted to the NHSBSA in the last six months, and therefore agree that removal from NHS services should be considered.
- 3.1.38 Please note that being removed from this pharmaceutical list will not affect your ability to provide your current private services.
- 3.1.39 I will follow up with a call if I do not receive a reply by 27th September 2024.
- 3.1.40 Thank you, and I look forward to your response.”

Letter from the Commissioner dated 8 October 2024

- 3.1.41 “Consideration of removal from the pharmaceutical list for the area of Hertfordshire and Wellbeing Board in respect of Chemist Click, Regus Building, Cardinal Point, Park Road, Rickmansworth, Hertfordshire, WD3 1RE
- 3.1.42 I am writing to you as it has been noticed that C Click Ltd has submitted no claims for payments in relation to Chemist Click (FQ672) since being included in the pharmaceutical list for the area of Hertfordshire Health and Wellbeing Board with effect from February 2019.
- 3.1.43 As you may be aware, under regulation 74 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, where Hertfordshire and West Essex Integrated Care Board (H&WE ICB) determines that a contractor has not, in the preceding six months, provided pharmaceutical services at its pharmacy premises, it must remove those premises from the relevant pharmaceutical list. Where the contractor does not have any other premises included in that pharmaceutical list, H&WE ICB must remove the contractor as well.
- 3.1.44 Before doing so it is required to give notice to you of the decision that it is minded to take and provide you with the opportunity to make:
- 3.1.44.1 Written representations on the matter within 30 days of the date of this letter, Thursday 7 November 2024, and
- 3.1.44.2 Oral representations providing you notify me of your wish to do so within 30 days of the date of this letter, Thursday 7 November 2024, and attend the hearing I arrange for the purpose of hearing those representations which will take place on Friday 15 November 2024 at 15:30 via Teams (a link will be provided).
- 3.1.45 Separately, we will make contact with Community Pharmacy Hertfordshire on the matter in due course.
- 3.1.46 I therefore look forward to hearing from you at your earliest convenience.”

4 Observations

4.1 C CLICK LTD

- 4.1.1 “Please find my response below.

ICB

- 4.1.2 Regulation 74(3)(a) referenced above sets out that the ICB must in these circumstances remove a contractor from the relevant pharmaceutical list. There is no discretion in this matter. Whilst the Appellant recognises that NHS pharmaceutical services were not provided, the Appellant is appealing because he was unaware of this regulation. The Appellant states “I am not aware of this regulation, otherwise we would have made a concerted effort to promote NHS services” (appeals letter). It is the responsibility of any pharmaceutical contractor on the pharmaceutical list to ensure they are fully aware of their contractual requirements.

My response

- 4.1.3 This matter has been duly acknowledged. It is understood that errors can occur, and certain details may be inadvertently overlooked. In this instance, the ICB failed to recognise that we had not submitted any prescriptions for a period exceeding two years, subsequently serving us in October 2024 without accounting for the time prior to April 2024. I would like to respectfully highlight that, just as an oversight appears to have occurred on their part, it is reasonable and consistent that we be afforded the same consideration. Despite demonstrating a clear willingness to rectify the situation, we have not been granted the opportunity to do so.

ICB

- 4.1.4 NHS Resolution will see from the email exchange that in conjunction with the Appellant not submitting any NHS prescriptions for over two years, only private services are advertised on the Appellant's website. The Appellant responded to the ICB confirming that he hoped to launch NHS services in “Q2 2025” (see attached email). This demonstrates that from 25 February 2019 to 20 September 2024, a time frame of over 3 years, no NHS services were provided. The Appellant states: “... I am sorry for this and now providing NHS services” and “since we received the letter, we have been promoting NHS services and we are now providing a repeat dispense service to a number of patients” (appeal letter). The screen shots below taken from the Appellant's website still confirms that they do not dispense NHS prescriptions. The ICB notes that there are no references to the full suite of pharmaceutical services that should be provided as per the terms for service for distant selling pharmacies (DSP):

My response

- 4.1.5 We informed the ICB of our intention to launch in Q2 2025. Despite this, over a three-year period, the ICB failed to identify that we were not providing NHS services. In the same manner that they overlooked this contractual obligation, so too did we. This was an unintentional oversight, for which I have offered my sincere apologies and sought the opportunity to rectify the matter – an opportunity that was regrettably denied.
- 4.1.6 Notwithstanding our response to the email notifying the ICB of our planned NHS service rollout in Q2 2025, we were served without prior notice. A formal warning would have been both appropriate and reasonable, particularly given that this was a minor, rectifiable oversight on our part. The issue could have been swiftly resolved by expediting our service implementation.

- 4.1.7 The screenshots in question were taken in January 2025, however, we received notice of our removal from the pharmaceutical list in November 2024. Accordingly, our website remains accurate, as we are presently unable to provide NHS services. However, we had already commenced promoting our NHS service, which enabled us to dispense NHS prescriptions for a brief period before the contract was revoked. This should serve as clear evidence that we had proactively accelerated our launch timeline in good faith, with the expectation that we would be afforded a fair opportunity to remedy the situation.

ICB

- 4.1.8 The ICB received an email on 5 November 2024 showing the Appellant had submitted one ESP prescription form (which included 2 exempt items) to the NHS Business Services Authority (NHSBSA) for processing. This was done in response to a letter sent to the Appellant on the 8 October 2024 detailing the consideration of removal in line with regulation 74(3). The letter is enclosed with these representations. This one claim is too late and irrelevant. Regulation 74(3) references “the preceding six month....”, The letter issued by the ICB was dated 8 October 2024 and 6 months preceding this date would mean claims must be submitted on or before 8 April 2024. When making decisions or taking action, the ICB must do so in line with the Regulations. Whilst the ICB must remove the contractor for not providing NHS services in the preceding 6 months, (indeed 3 years in this case) we are mindful of comments made by the Appellant. The Appellant argues that NHS pharmaceutical services will be interrupted should the removal take place however the ICB is satisfied that the full range of NHS pharmaceutical services are not being provided by the Appellant Primary Care Services
- 4.1.9 England (PCSE) and the NHSBSA were contacted on the 13 January 2025 and asked to provide details of any payments made to the Appellant since 8 October 2024. The NHSBSA confirmed the following:
- 4.1.9.1 2 items in November 2024 which are currently being processed
- 4.1.9.2 No items declared for December
- 4.1.9.3 9 electronic items have been received which is assumed relate to January 2025. PCSE confirmed that no payments have been processed.

My response

- 4.1.10 While the ICB may deem our submission “too late and irrelevant”, our decision to promote NHS services was made in good faith, with the intent to demonstrate our commitment to working collaboratively with the ICB and to rectify our previous oversight.
- 4.1.11 In this instance, NHS services had not been provided for a period of three years. Given this extended timeframe, it is unclear why, after a prolonged period, action was suddenly taken against us without providing the opportunity to commence NHS service. Furthermore, I seek clarification on the legislative piece governing this matter. Had we begun dispensing prescriptions on September 19, 2024 – just one day prior to being notified of our removal – would we have been permitted to remain on the pharmaceutical list? If so, what would have been the position for the six months preceding that date?

Technically, a contractual breach would still have existed. Does the enforcement of this provision simply depend on when it is identified?

- 4.1.12 Moreover, we had enrolled NHS patients and had begun dispensing prescriptions, particularly for those whose community pharmacies had closed. I do not believe that the full range of NHS services must be provided to avoid disruption. The repeat prescription service we were offering was of significant benefit to patients, and its abrupt cessation undoubtedly caused disruption to those who relied upon it.

ICB

- 4.1.13 The Appellant has provided no evidence to show how NHS pharmaceutical services are or have been promoted. As shown via screenshots included in these representations and as per the Appellant's own FAQ document on their website, it says they do not dispense NHS prescriptions. Furthermore, the ICB must make decisions as per the Regulations. The Regulations state that if services have not been provided in the preceding 6 months, the ICB must remove the contractor from the pharmaceutical list. There is no discretion and no opportunity to consider future applications that might be made. The Appellant states "We are doing many private prescriptions on a monthly basis, and we are operationally geared to be able to scale up our NHS service rapidly and effectively" (appeal letter). The Appellant's ability to provide private prescriptions is of no relevance. The Appellant has not provided any evidence to demonstrate that NHS pharmaceutical services were provided 6 months prior (or indeed 3 years prior) to the ICB contacting them in October 2024.

My response

- 4.1.14 As demonstrated, there has been a clear and exponential increase in the number of NHS items being dispensed, substantiating our proactive efforts towards the provision of NHS services.
- 4.1.15 Regarding the screenshots, I have addressed their relevance, as they were captured after our removal from the pharmaceutical list and, therefore, do not pertain to the current matter.
- 4.1.16 Whilst I fully acknowledge that the decision was made in accordance with the applicable regulation, it remains unclear why this action was not taken in the preceding years. Furthermore, it is difficult to understand why such a disproportionate measure – namely, removal from the list – was implemented without first providing an opportunity to rectify a genuine oversight. This oversight was neither intentional nor to my knowledge, been at the detriment to any person or organisation.
- 4.1.17 In the light of the unprecedented rate at which community pharmacies are closing, I believe our operational set up is highly relevant. We are committed to providing NHS services to patients affected by these closures. Our willingness to contribute is evident, and we respectfully request to be given the courtesy of a formal reminder of the relevant legislation, rather than facing a removal order without due consideration or opportunity for correction.

ICB

- 4.1.18 The letter dated 8 October 2024 advised the Appellant that the ICB were considering removing them from the pharmaceutical list. The Appellant was

advised of the decision the ICB was minded to take and given the opportunity to make written and oral representations on the matter. 6 The Appellant requested an oral hearing which took place on 15 November 2024. The Appellant was advised that the purpose of the oral hearing was to determine whether C Click Ltd have provided pharmaceutical services at Chemist Click, “the pharmacy premises”, in the preceding six months prior to the letter that was issued by HWE ICB on 8th October 2024.

My response

- 4.1.19 The letter did not indicate that the ICB was considering the removal of our name from the pharmaceutical list, but rather than the removal was a mandatory action, with the letter serving as notice to offer us the opportunity for an oral hearing. It was not presented as a consideration. Had we been issued a formal consideration along with a reminder, that would have presented a fair and just course of action. In such a case, we would have acted promptly to expedite the delivery of the NHS service at the earliest opportunity, rather than waiting until Q2 2025.

ICB

- 4.1.20 During the oral hearing, the Appellant confirmed the following:
- 4.1.20.1 that the prescription was submitted to the NHS Prescription Services after C Click Ltd received the letter to inform it of the decision PSRC was minded to take;
 - 4.1.20.2 it had not updated the pharmacy premises’ profile on the Directory of Services to confirm that it provides the Pharmacy First service;
 - 4.1.20.3 it had not registered for the NHS Profile Manager.
 - 4.1.20.4 The delivery of NHS pharmaceutical services could not come at the expense of its existing business operation.
 - 4.1.20.5 C Click Ltd had not provided pharmaceutical services between February 2019 and 8 October 2024.

My response

- 4.1.21 *“that the prescription was submitted to the NHS Prescription Services after C Click Ltd received the letter to inform it of the decision PSRC was minded to take”* – “minded to take” suggests that we would have been provided with an official notice or a reminder. Again, the letter we received was not a consideration, but a directive stating that we must be removed from the pharmaceutical list. As such, this action has effectively prevented us from proceeding with the rollout of NHS services in 2025.
- 4.1.22 *“it had not updated the pharmacy premises’ profile on the Directory of Services to confirm that it provides the Pharmacy First service”* - This situation reflects a failure on the part of the Pharmacy First service, perhaps, reflecting the nature of the rollout. While DSPs were permitted to participate in the service, we encountered an issue that prevented us from updating the Directory of Services for the initial months, likely due to an IT-related matter, though my recollection may not be entirely precise of the exact cause of this disruption. As a result, we were unable to receive referrals from key source, such as NHS

111, as they were not made aware that we were offering the Pharmacy First service.

- 4.1.23 *“the delivery of NHS pharmaceutical services could not come at the expense of its existing business operation. C Click Ltd had not provided pharmaceutical services between February 2019 and 8 October 2024.”* – I acknowledge that the period in question has been particularly challenging for NHS pharmacies, and under those circumstances, it did not appear commercially viable to initiate NHS services. However, after reassessing the market, we made the decision to proceed with our planned launch in 2025. I must highlight that these decisions were made without the knowledge that we were under an obligation to commence the provision of NHS services within six months. Had we been aware of this requirement, we would have complied accordingly.
- 4.1.24 I have taken full responsibility for the oversight and acknowledged that we were unaware of this particular piece of legislation. I have expressed my sincere apologies for this lapse and have committed to initiating these services at a time when we can add significant value, particularly in light of the increasing number of high street pharmacy closures.
- 4.1.25 Regrettably, we were not afforded the opportunity to rectify this oversight. Instead, we were informed that we were to be removed from the pharmaceutical list. This response seems disproportionate, given the nature of the oversight, especially considering that we have made it clear that we would welcome an extension to allow us to rectify the situation.
- 4.1.26 I am unsure as to why the ICB did not act on this piece of legislation over the past three years and remain uncertain regarding the rationale behind this ruling. It would have been more equitable to remind us of our contractual obligations before issuing a decision to remove us from the list.
- 4.1.27 I am aware that other pharmacies have made breaches of their contractual obligation, such as closing early on certain days, without facing removal. The usual practice in such instances is to issue a warning and allow the opportunity for correction. We respectfully request to be treated with the same fairness and provided the same opportunity.
- 4.1.28 Unfortunately, errors can occur, and it is essential to consider factors such as the nature of the mistake, the presence (or absence) of any bad faith, and the consequences of such breaches. Given these considerations, along with my acknowledgement of the oversight and my willingness to rectify it, I believe it would be both reasonable and fair to afford me the opportunity to continue providing NHS services, particularly as our service provision was progressing in a positive direction, with exponential growth.
- 4.1.29 Should we fail to fulfil our obligations after six months, we would accept the decision; however, we request the opportunity to make amends in the interim.”

5 Consideration

- 5.1 The Appellant seeks to appeal against the decision of the Commissioner to remove its premises from the pharmaceutical list under Regulation 74(3) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

- 5.2 I note that the Notification of removal from the pharmaceutical list is dated 22 November 2024. The Notification states that:
- 5.2.1 *“The panel determined that C Click Ltd and the pharmacy premises are to be removed from the pharmaceutical list of the area of Hertfordshire HWB under regulation 74(3)(a).*
- ...
- C Click Ltd has admitted that it has not provided pharmaceutical services from the pharmacy premises between February 2019 and 8 October 2024.”*
- 5.3 It is not disputed that prior to the Notification being issued there was a letter of intention to remove sent to the Appellant on 8 October 2024. The Commissioner has provided a copy of that letter which I note invited representations and the offer for the Appellant to make oral representations; I note that there was an Oral Hearing in relation to this matter which the Appellant attended.
- 5.4 Regulation 74(5) states:
- “(5) Before taking a decision to remove C, or chemist premises listed in relation to C, from a pharmaceutical list under paragraph (1) or (3), NHS England must–*
- (a) give notice to C (or, in appropriate circumstances, a person whom NHS England reasonably believes is representing C or is an executor of C) of the decision that NHS England is minded to take;*
- (b) as part of that notification, advise C (or the representative or executor) that they may make–*
- (i) written representations to NHS England with regard to that action, provided they notify NHS England with those representations within 30 days beginning with the date of the notification by NHS England, and*
- (ii) oral representations to NHS England with regard to that action, provided–*
- (aa) they notify NHS England of their wish to do so within 30 days beginning with the date of the notification by NHS England, and*
- (bb) C (or the representative or executor, or someone representing the representative or executor) attends the hearing that NHS England arranges for the purpose of hearing those representations, which NHS England must give C reasonable notice of; and*
- (c) consult any Local Pharmaceutical Committee whose area includes the chemist premises that NHS England is minded to remove from the pharmaceutical list.”*
- 5.5 I note that the Appellant has stated that the letter of 8 October 2024 *“did not indicate that the ICB was considering the removal of our name from the pharmaceutical list, but rather that the removal was a mandatory action, with the letter serving as notice to offer us the opportunity for an oral hearing. It was not presented as a consideration.”* I further note that the subject of the 8 October 2024 was **“Consideration of the removal...”** [emphasis added] and later refers to the action that the Commissioner is minded to

take. I am therefore of the view that the Commissioner sufficiently stated that the matter was still under consideration.

- 5.6 Based upon the 8 October 2024 letter and the fact that the Appellant attended the hearing on 15 November 2024, I am satisfied that the Commissioner gave proper notice to the Appellant of its intention to remove its premises from the pharmaceutical list, in accordance with Regulation 74(5).
- 5.7 I note that Appellant has argued that the “oversight” of it not providing pharmaceutical services at its premises for a period of more than 6 months (indeed, since February 2019) is effectively off-set by the Commissioner similarly experiencing an ‘oversight’ in that it had not proposed to remove the premises from the pharmaceutical list before October 2024. I am of the view that the Regulations do not include a timescale for the Commissioner to issue the intention to remove letter and, although the Regulations refer to a period of six months in order to trigger the removal under 74(3), the Appellant has, by its own admission, neglected to provide any NHS pharmaceutical services for a period far exceeding that.
- 5.8 Regulation 74 “Removal of listing: cases relating to death, incapacity or cessation of service” of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulation 2013 (“the Regulations”), states:
- “74. (3) If NHS England determines that C has not, during the preceding 6 months, provided pharmaceutical services at the chemist premises (“the particular premises”) listed in a particular pharmaceutical list–*
- (a) if there are other chemist premises listed in that particular list in relation to C, NHS England must remove the listing of the particular premises from that list; or*
- (b) if there are no other chemist premises listed in that pharmaceutical list in relation to C, NHS England must remove C from that list.”*
- 5.9 I note the Appellant queries whether submitting a prescription the day prior to the Notification had been issued would then have negated the entire process of removal void. Although I am unable to take a view on a hypothetical question, I do note that the Appellant was sent an email from the Commissioner on 20 September 2024 informing it of the investigation started by NHSBSA in relation to the 74(3) requirements. Whilst I can see that the Appellant replied to that email with *“We are currently developing our app and hoping to start with the launch of our NHS service Q2 2025. Please can you leave us on and we can catch up in a few months”*, from the information provided by the Commissioner, the Appellant did not seek to submit a prescription for payment until after the 8 October 2024 letter was received.
- 5.10 I note that the Appellant has stated that it was unaware of the particulars of Regulation 74(3) and that if it had been, then services would have been offered. I agree with the Commissioner that it is the responsibility of contractors to make themselves aware of the contractual requirements expected of them as an NHS Pharmaceutical provider.
- 5.11 I am of the view that where a Commissioner takes a decision to remove premises from the pharmaceutical list on the basis that no pharmaceutical services have been provided for six months, the burden is on the Commissioner to be reasonably satisfied that, in fact, no pharmaceutical services have been provided. In this case, I note that there is no dispute that the Appellant did not provide NHS pharmaceutical services at the pharmacy for a six month period prior to the Notification of the removal.

- 5.12 On the basis of the information provided, I am satisfied that the Appellant has not provided NHS pharmaceutical services from the relevant premises for at least a six month period.

6 Decision

- 6.1 I am of the view that under NHS Resolution's powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of the Commissioner or substitute for that decision any decision that the Commissioner could have taken when it took that decision.
- 6.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I confirm the decision of the Commissioner that the Appellant's premise is to be removed from the relevant pharmaceutical list.

Head of Appeals
NHS Resolution