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

REF: SHA/26451

**APPEAL AGAINST NHS HEREFORDSHIRE AND
WORCESTERSHIRE ICB DECISION TO GRANT SNJ
HEALTH LTD APPLICATION FOR CHANGE OF
OWNERSHIP FROM BOOTS UK LTD IN RESPECT OF
18 CORN SQUARE, LEOMINSTER, HEREFORDSHIRE,
HR6 8LR**

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

1 Outcome

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

A copy of this decision is being sent to:

SNJ Health Ltd
PCSE on behalf of Herefordshire and Worcestershire ICB
H G Clewer Ltd
Boots UK Ltd
Community Pharmacy Herefordshire and Worcestershire

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APPEAL AGAINST NHS HEREFORDSHIRE AND WORCESTERSHIRE ICB DECISION TO GRANT SNJ HEALTH LTD APPLICATION FOR CHANGE OF OWNERSHIP FROM BOOTS UK LTD IN RESPECT OF 18 CORN SQUARE, LEOMINSTER, HEREFORDSHIRE, HR6 8LR

1 The Application

By application dated 19 December 2023, SNJ Health Ltd (“the Applicant”) applied to Herefordshire and Worcestershire ICB (“the Commissioner”) for a change of ownership from Boots UK Ltd in respect of Boots, 18 Corn Square, Leominster, Herefordshire HR6 8LR. In support of the application it was stated:

- 1.1 In response to “*In my/our view this application should not be refused pursuant to Regulation 31 for the following reasons*” the Applicant stated “*Application for change of ownership. Regulation 31 is not engaged.*”
- 1.2 In response to “*Are the services you are undertaking to provide the same as those that the current owner is providing?*” the Applicant ticked “Yes”.
- 1.3 In response to “*Will there be any interruption to service provision?*” the Applicant ticked “No”.

2 The Decision

The Commissioner considered and decided to grant the application. The decision letter dated 12 December 2024 states:

- 2.1 “Herefordshire and Worcestershire 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.”

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

Decision report

- 2.2 “The Committee have approved and ratified the following change of ownership application:
- 2.3 **CAS-266404-P3X0R3 SNJ Health Ltd 18 Corn Square, Leominster, Herefordshire, HR6 8LR**
- 2.4 **Regulation 26 – Change of Ownership Application**
- 2.5 Regulation 26 (1)(a)(i)

- 2.6 It is concluded that this regulation is met as the premises are listed as chemist premises.
- 2.7 Regulation 26 (1)(a)(ii)
- 2.8 It is concluded that this regulation is met as Pharmaceutical services are already being provided from the same premises.
- 2.9 Regulation 26 (1)(b)
- 2.10 It is concluded that this regulation is met as the Applicant is continuing to provide pharmaceutical services from the same premises.
- 2.11 Regulation 26 (1)(c)
- 2.12 It is concluded that this regulation is met as the Applicant is undertaking to provide the same services as those already being provided by the current owner.
- 2.13 Regulation 26(1)(d)
- 2.14 It is concluded that this regulation is met as the provision of pharmaceutical services will not be interrupted.
- 2.15 Regulation 26(2)
- 2.16 It is concluded that this regulation does not apply as the services will continue to be provided at the existing premises.
- 2.17 **Regulation 31 - Refusal: Same or Adjacent Premises**
- 2.18 Regulation 31 does not apply as the premises will remain unchanged for this change of ownership.
- 2.19 **Regulation 66 - Conditions Relating to Providing Directed Services**
- 2.20 Regulation 66 is not applicable as before the current pharmaceutical regulations came into force the applicant had not been directed to provide directed services from these premises by NHS England or the former Primary Care Trust."

3 The Appeal

Using the NHS Resolution Online Form dated 6 January 2025, H G Clewer Ltd ("the Appellant") appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "An objection is being raised for two reasons:
- 3.2 Regulation 26(1) C – 'The applicant undertakes to provide the same services as those already being undertaken by the current owner'. – One of the services offered by Boots Chemists is Substance Misuse, Supervised Consumption and daily dosing. Currently this service has been commissioned by Turning Point, Hereford. Over the last four months the majority of service users have transferred to Westfield Walk Pharmacy from Jhoots. We have been advised by the key workers of the clients concerned this is because of erratic opening times and Pharmacist availability at the aforementioned business. This indicates that the same services are not being provided.
- 3.3 Regulation 26(1) D – 'It is concluded that this regulation is met as the provision of Pharmaceutical Services will not be interrupted'.

- 3.4 A question needs to be raised concerning Jhoots opening times. The Pharmacy has not been open on Fridays for the whole of December and before. A copy of the notice on their door has been attached to confirm this [see Appendix A]. Also, they are not open on a Saturday. Clarification is therefore sought as to whether Jhoots have applied to change their core hours, or whether the days they close are classed as supplementary hours? In this case has the statutory five weeks notice been sought? Or, are these classed as temporary closures? In these cases neither the GP surgery or other Pharmacies in Leominster have been informed. This had led to disruption of essential services from the premises leading to disruption for patients.”

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 Community Pharmacy Herefordshire and Worcestershire

- 4.1.1 “In relation to the above, we acknowledge receipt of the appeal documents. As an LPC we have heard some anecdotal concerns voiced around failure to open on occasion during the transition period, but with member of the LPC team having spoken with the pharmacy we were given to believe that things had been resolved. We agree that it is essential that the pharmacy opens its required hours and provides the services that the previous contractor offered as per expectations with a change of ownership.
- 4.1.2 We would expect that the Office of West Midlands and the ICB may have some knowledge of issues and instances of temporary closures.”

4.2 Boots UK Ltd

- 4.2.1 “Thank you for your letter dated 17th January 2025 informing us of the appeal regarding the above application. Boots UK Limited has the following comments to make.
- 4.2.2 When determining a Change of Ownership application, the ICB must have regards to the matters set out in Regulation 26 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The application should be granted if the applicant undertakes to provide the “same pharmaceutical services” and provide “the provision of pharmaceutical services at the premises will not be interrupted” (unless there is good cause). Dealing with each in turn:
- 4.2.3 **“Same pharmaceutical services”**
- 4.2.4 The definition of “pharmaceutical services” is provided in Regulation 2 and is distinct from “directed services” or “additional pharmaceutical services”. The substance misuse, supervised consumption and daily dosing service as mentioned by the appellant, is a locally commissioned service i.e. an additional pharmaceutical service.
- 4.2.5 Should the incoming provider wish to continue to provide additional pharmaceutical services or private services, then new arrangements will need to be put in place.
- 4.2.6 Any proposed change to additional pharmaceutical services by the incoming provider is not grounds for an appeal of a Change of Ownership application.
- 4.2.7 **“The provision of pharmaceutical services at the premises will not be interrupted”**

- 4.2.8 There will not be any interruption to the provision of pharmaceutical services. Whilst we acknowledge there have been occasional instances of temporary closures due to unavailability of a pharmacist, this is not an interruption to the provision of services as noted under Regulation 26 and, should there be any concern regarding a pharmacy not opening for its contracted hours, there is already a mechanism in place to manage that.
- 4.2.9 Occasional instances of unavoidable temporary closures is not grounds for appeal of a Change of Ownership application.
- 4.2.10 Boots UK Limited respectfully asks that NHS Resolution dismisses the appeal and uphold the decision of the ICB to approve the application.”
- 4.3 Jhoots Pharmacy on behalf of the Applicant
 - 4.3.1 “Thank you for your letter dated 17th January 2025 advising of the appeal with regards to the above change of ownership application. On behalf of SNJ Health Ltd I would wish to respond as follows.
 - 4.3.2 We note essentially the appeal appears to be around opening hours and services provided. As the applicant, SNJ Health Ltd accepts the services and contracted, and total hours of the pharmacy as held by Boots UK Ltd and specified in the application. These hours and services are the same and therefore the NHS/ICB was correct to approve the application. Any pharmacy as part of its day-to-day operation, may, have times where an item is out of stock or may have to temporarily close the pharmacy if a pharmacist is unavailable, but this is part of the contract management process of the pharmacy (and would be handled by the relevant ICB). It does not and should not mean the contract cannot transfer from one owner to another.
 - 4.3.3 With regards to the service of Methadone provision the appellant says they have been advised by key workers of the clients concerned. It is not clear as to the context of this. Jhoots is committed and will provide the same services. There were some temporary occasional issues over pharmacist availability in December. That is not uncommon for many pharmacies. As the Appeal Committee will be aware should a pharmacist not be available then the Registered premises cannot open in line with GPhC guidelines. This does not and should not prevent a change of ownership taking place. It is then for NHS England to manage on going contractual and service management. The notices on the window stated that the regular pharmacist was back on 3rd January 2025. There has not been a change to the core hours of the pharmacy. These remain and will remain as contracted as listed on the application and approved by the NHS Committee.
 - 4.3.4 The matters raised by the appellant should not prevent a change of ownership. If a query is raised about concerns existing service delivery this should be discussed through the relevant contract management process.
 - 4.3.5 As part of the change of ownership application Fitness to Practice [sic] was applied for and approved and there is no suggestion that SNJ Health Ltd is not a fit and proper Company to take over the Boots Pharmacy. NHS England followed the correct procedure to determine the application, and all the relevant information was provided.
 - 4.3.6 We submit that the appeal be dismissed and that a change of ownership should continue to be approved.”

5 Observations

No observations were received by NHS Resolution in response to the representations received on appeal.

6 Consideration

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

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

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

6.4 The Committee noted from parties submissions that it would appear as though the change of ownership has already taken place, despite the Commissioner's decision letter dated 12 December 2024 stating *"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. Should this happen Herefordshire and Worcestershire ICB will remove you from the relevant pharmaceutical list in respect of these premises and reinstate the previous contractor."*

6.5 The Committee whilst mindful that it is the application before it which is subject to appeal and therefore it must consider the application in line with the relevant Regulations, the Applicant involved should not have actioned the change of ownership until such time as the appeal period lapsed or if a valid notice of appeal is lodged (as is the case here) until such time as the appeal process is completed.

6.6 The Committee first considered Regulation 31 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), which states:

(1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.

(2) This paragraph applies where -

(a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -

(i) the premises to which the application relates, or

(ii) adjacent premises; and

(b) NHS England is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).

6.7 In its decision report, the Commissioner concluded that *"Regulation 31 does not apply as the premises will remain unchanged for this change of ownership."*

6.8 Regulation 31(2)(a) relates to where a person on the pharmaceutical list is providing pharmaceutical services from the premises to which the application relates. This is the case here as it is a change of ownership application. Therefore the Committee went on to consider Regulation 31(2)(b).

- 6.9 The Committee was mindful of the Judgment 'R (on the application of Pharmacy Care Plus Ltd) v Family Health Services Appeals Unit [2013] EWHC 824 (Admin)'. The Committee considered that this Judgment constituted judicial guidance on wording that is similar to the current Regulation 31(2)(b).
- 6.10 The Committee noted that the application was submitted by SNJ Health Ltd. Further the current owner of the listed premises is Boots UK Ltd. The Committee noted no party had sought to argue that Regulation 31(2)(b) would require it to refuse the application.
- 6.11 The Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.
- 6.12 The Committee noted Regulation 26(1) (*Change of ownership applications*) of the Regulations, which reads:

"Section 129(2A) of the 2006 Act (regulations as to pharmaceutical services) does not apply to an application from a person who is not included in a pharmaceutical list for inclusion in the list, or from a person included in a pharmaceutical list for inclusion in that list also in respect of other premises than those already listed in relation to that person, if-

- (a) the applicant (X) is undertaking to provide pharmaceutical services at premises-*
 - (i) that are already listed chemist premises, and*
 - (ii) at which another person (Y) is providing pharmaceutical services;*
- (b) X is proposing to carry on at the listed chemist premises, in place of Y, the business in the course of which Y is providing pharmaceutical services at those premises;*
- (c) X is undertaking to provide the same pharmaceutical services as those that Y is providing; and*
- (d) the provision of pharmaceutical service at the premises will not be interrupted (except for such period as NHS England may for good cause allow)."*

- 6.13 The Committee considered the position in relation to each condition.
- 6.14 The Committee noted that the Regulations are specific in the conditions the applicant must satisfy, if its proposed change of ownership is to succeed.
- 6.15 The Committee has considered each of these paragraphs in turn, applying them to the information provided in the application form, unless (in relation to any of those paragraphs) the Applicant has provided amended/updated information.

Regulation 26(1)(a)

- 6.16 The Committee noted there is no dispute that the application is in respect of listed chemist premises at 18 Corn Square, Leominster, Herefordshire, HR6 8LR. The Committee was satisfied that this was sufficient for the purposes of paragraph (a).

Regulation 26(1)(b)

6.17 The Committee noted the Applicant is proposing to carry on at the listed premises in place of Boots UK Ltd, the business in the course of which Boots UK Ltd is providing pharmaceutical services at those premises.

6.18 The Committee was satisfied that this was sufficient for the purposes of paragraph (b).

Regulation 26(1)(c)

6.19 The Committee noted the Applicant intends to provide the same pharmaceutical services as those provided by Boots UK Ltd and that this had been confirmed by the Applicant ticking "Yes" on the application form in response to "Are the services you are undertaking to provide the same as those that the current owner is providing?".

6.20 The Appellant however contends that the same services are not being provided. The Appellant states that *"One of the services offered by Boots Chemists is Substance Misuse, Supervised Consumption and daily dosing. Currently this service has been commissioned by Turning Point, Hereford. Over the last four months the majority of service users have transferred to Westfield Walk Pharmacy from Jhoots. We have been advised by the key workers of the clients concerned this is because of erratic opening times and Pharmacist availability at the aforementioned business."*

6.21 Boots in its response to the appeal, states that *"The definition of "pharmaceutical services" is provided in Regulation 2 and is distinct from "directed services" or "additional pharmaceutical services". The substance misuse, supervised consumption and daily dosing service as mentioned by the appellant, is a locally commissioned service i.e. an additional pharmaceutical service. Should the incoming provider wish to continue to provide additional pharmaceutical services or private services, then new arrangements will need to be put in place."*

6.22 The Committee noted Regulation 2 states:

"(2) In these Regulations, "pharmaceutical services", in the context of—

(a) Part 2 and Schedule 1, means the pharmaceutical services to which a pharmaceutical needs assessment must relate by virtue of regulation 3(2); or

(b) arrangements made or to be made for the provision of pharmaceutical services by a medical practitioner, means the dispensing of drugs and appliances but not pharmaceutical services as mentioned in section 132(7)(a) or (b) of the 2006 Act (persons authorised to provide pharmaceutical services),

but otherwise (except in the phrase "local pharmaceutical services") has the meaning given in section 126(8) of the 2006 Act (arrangements for pharmaceutical services)."

6.23 Further the Regulations define "advanced services" "directed services" and "enhanced services" as additional pharmaceutical services provided in accordance with directions under section 127 of the NHS Act 2006.

6.24 The Committee was mindful that the services highlighted by the Appellant at paragraph 6.20 are 'additional pharmaceutical services' which contractors would be commissioned to provide should there be a need, as opposed to 'pharmaceutical services'. Regulation 26(1)(c) requires the Applicant to provide the same pharmaceutical services as the existing provider.

6.25 Further Jhoots on behalf of the Applicant states *"Any pharmacy as part of its day-to-day operation, may, have times where an item is out of stock or may have to temporarily close the pharmacy if a pharmacist is unavailable, but this is part of the contract*

management process of the pharmacy (and would be handled by the relevant ICB). It does not and should not mean the contract cannot transfer from one owner to another.”

6.26 The Committee was mindful of the criteria before it when considering an application for a change of ownership and was of the view that any concerns regarding access to stock or pharmacist availability would need to be managed by the Commissioner.

6.27 The Committee was satisfied that this was sufficient for the purposes of paragraph (c).

Regulation 26(1)(d)

6.28 The Appellant contends that *“The Pharmacy has not been open on Fridays for the whole of December and before. ... Also, they are not open on a Saturday. Clarification is therefore sought as to whether Jhoots have applied to change their core hours, or whether the days they close are classed as supplementary hours? In this case has the statutory five weeks notice been sought? Or, are these classed as temporary closures? In these cases neither the GP surgery or other Pharmacies in Leominster have been informed. This had led to disruption of essential services from the premises leading to disruption for patients.”*

6.29 If the Committee’s understanding is correct that the change of ownership has already taken place, this change and the fact there has been some instances of interruption potentially places the Committee in a difficult position. However, in the Committee’s view, its consideration of Regulation 26(1)(d) relates to interruption at the time of the change of ownership and not instances following the change of ownership.

6.30 In this regard, both Boots and Jhoots on behalf of the Applicant acknowledged that there have been some circumstances whereby the pharmacy has been closed due to unavailability of a pharmacist.

6.31 The Committee is mindful that it is the application before it that it must have regard to and further, any concerns relating to a pharmacy not opening its core hours should be managed locally by the Commissioner.

6.32 On the information before it, the Committee was satisfied that no interruption, as described in paragraph (d), would occur.

Consequences of satisfying paragraphs (a) to (d) of Regulation 26(1)

6.33 Being satisfied of the various matters set out in Regulation 26(1), the Committee considered that the application should be granted.

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

6.34.1 confirm the Commissioner’s decision;

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

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

6.35 In light of its failure to properly consider Regulation 31, the Committee determined that the decision of the Commissioner must be quashed.

7 Decision

- 7.1 The Committee quashes the decision of the Commissioner and re-determines the application.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has determined that it should be granted on the following basis:
 - 7.3.1 the Applicant is proposing to continue in place of the existing contractor, the business in the course of which that contractor is providing pharmaceutical services at the same premises;
 - 7.3.2 they can provide the same pharmaceutical services as those that the existing contractor is providing;
 - 7.3.3 that the provision of pharmaceutical services will not be interrupted (except for such period as the Commissioner may for good cause allow).
- 7.4 The application is granted.

Technical Case Manager
Primary Care Appeals