

10 April 2025

REF: SHA/26386

**APPEAL AGAINST SOUTH YORKSHIRE ICB
DECISION TO REFUSE OAKFIELD PHARMA LTD
APPLICATION FOR CHANGE OF OWNERSHIP FROM
LP SD FORTY FOUR LIMITED t/a ALLIED PHARMACY
ASTON IN RESPECT OF 82 WORKSOP ROAD,
SWALLOWNEST, SHEFFIELD, S26 4WD**

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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:

Temple Bright on behalf of Oakfield Pharma Ltd
Community Pharmacy South Yorkshire
PCSE on behalf of South Yorkshire ICB

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ASTON IN RESPECT OF 82 WORKSOP ROAD,
SWALLOWNEST, SHEFFIELD, S26 4WD****1 The Application**

By application dated 10 October 2024, Oakfield Pharma Ltd (“the Applicant”) applied to South Yorkshire ICB (“the Commissioner”) for a change of ownership from LP SD Forty Four Ltd in respect of Allied Pharmacy Aston, 82 Worksop Road, Swallownest, Sheffield, S26 4WD. In support of the application it was stated:

1.1 “I/we proposed to carry on at the above premises the business in the course of which the above owner is providing pharmaceutical services at the above premises.

1.2 Opening hours

1.3 Core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9.00 – 12:30 14:00 – 18:00	9.00 – 12:30 14:00 – 18:00	9.00 – 12:30 14:00 – 18:00	9.00 – 12:30 14:00 – 18:00	9.00 – 12:30 14:00 – 18:00	9:30 – 12:00	Closed	40

1.4 Total opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9.00 – 18:00	9.00 – 18:00	9.00 – 18:00	9.00 – 18:00	9.00 – 18:00	9:30 – 12:00	Closed	48

1.5 The Applicant confirmed that Essential services (paragraphs 3 to 22, Schedule 4) were to be provided.

1.6 In response to “If you are undertaking to provide appliances, specify the appliances that you undertake to provide” the Applicant stated:

1.6.1 Appliances as listed in Part IX of the Drug Tariff

1.7 The Applicant confirmed that the pharmacy premises will have a consultation room that meets the requirements of paragraph 28A, Schedule 4 of the Regulations.

1.8 In response to why the application should not be refused pursuant to Regulation 31, the Applicant stated:

1.8.1 No premises adjacent to or in close proximity to.

1.9 The Applicant confirmed by ticking “Yes” that the services they are undertaking to provide are the same as those that the current owner is providing.

1.10 The Applicant confirmed by ticking “No” that there would not be any interruption to service provision.”

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 5 November 2024 states:

2.1 “We have considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.”

Extract from the Change of Ownership application by Oakfield Pharma Ltd in respect of the pharmacy at 82 Worksop Road, Swallownest, Sheffield, S26 4WD report

2.2 “I can confirm that the application has been refused on the grounds that Regulation 31 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 applies.

2.3 Regulation 31 states that where a pharmacy contractor is providing or has undertaken to provide pharmaceutical services in the premises to which the application relates, or adjacent premises, and the services in the application are deemed to be part of the same service as the existing services, the application must be refused.

2.4 After reviewing Companies House, it has been confirmed that Oakfield Pharma Ltd (the applicant) and LP SD Forty Four Ltd (the current owner) have the same directors at the point of writing the Committee Report. The directors are named Suhaib Abdullah, Qamar Riaz and Suhail Sharief. This confirms there is a degree of shared control and ownership and thus in virtue of Regulation 31, the application must be refused.

Right of appeal

2.5 Oakfield Pharma Ltd”

3 The Appeal

In a letter dated 12 November 2024, Temple Bright on behalf of the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

3.1 “We act for Oakfield Pharma Limited. On behalf of our client we write to appeal a decision of NHS England to refuse our client’s application for change of ownership of listed pharmacy premises at 82 Worksop Road, Swallownest, Sheffield, S26 4WD by Oakfield Pharma Limited (“the Premises”). The decision was notified to our client by letter dated 4th November 2024.

3.2 By way of background, the Premises are currently included in the pharmaceutical list in the name of LP SD Forty Four Limited. LP SD Forty Four Limited was previously owned by Lloyds Pharmacy Limited. Ownership of the entire shareholding of the company was transferred from Lloyds Pharmacy Limited to Sharief Oakfield Shares 2 Limited on 18th August 2023.

3.3 Upon completion of the share sale, it was the company’s owners’ intention to transfer the NHS business into an existing company within the Sharief Pharmacy Group –

Oakfield Pharma Limited, thereby allowing LP SD Forty Four Limited to be wound up. Oakfield Pharma Limited therefore submitted a change of ownership application to NHS England to transfer the inclusion in the pharmaceutical list of the Premises from LP SD Forty Four Limited to Oakfield Pharma Limited.

- 3.4 The current directors of LP SD Forty Four Limited are Mr Suhaib Abdullah, Mr Qamar Riaz and Mr Suhail Sharief. The same individuals are directors of Oakfield Pharma Limited.
- 3.5 NHS England considered and refused the change of ownership application by Oakfield Pharma Limited by reason of regulation 31 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. In its decision report, NHS England stated relevantly as follows:
- “Regulation 31 states that where a pharmacy contractor is providing or has undertaken to provide pharmaceutical services in the premises to which the application relates, or adjacent premises, and the services in the application are deemed to be part of the same service as the existing services, the application must be refused.*
- After reviewing Companies House, it has been confirmed that Oakfield Pharma Ltd (the applicant) and LP SD Forty Four Ltd (the current owner) have the same directors at the point of writing the Committee Report. The directors are named Suhaib Abdullah, Qamar Riaz and Suhail Sharief. This confirms there is a degree of shared control and ownership and thus in virtue of Regulation 31, the application must be refused.”*
- 3.6 In refusing the application by Oakfield Pharma Limited pursuant to regulation 31, NHS England has fundamentally misunderstood the relevant statutory provisions and has, consequently, misapplied the regulatory test.
- 3.7 Whilst it is accepted that regulation 31 may apply to a change of ownership application submitted pursuant to regulation 26, it is clear that it does not apply in the circumstances which arise in this case.
- 3.8 As a starting point, it is of note that, importantly, there is only one pharmacy premises included in the NHS pharmaceutical list at the 82 Worksop Road – the premises operated by LP SD Forty Four Limited which are the subject matter of the change of ownership application by Oakfield Pharma Limited.
- 3.9 As NHS Resolution will be aware, regulation 26(1)(b) provides that an application for change of ownership applies where the applicant “is proposing to carry on at the listed premises, in place of Y, the business in the course of which Y is providing pharmaceutical services at those premises”.
- 3.10 The consequence of a change of ownership application is, therefore, that if the application is granted and a notice of commencement is submitted by the applicant, NHS England must enter the applicant in the pharmaceutical list on the date specified in the notice of commencement (pursuant to paragraph 35 of schedule 2) and must remove the previous owner from the pharmaceutical list (pursuant to regulation 75(1)).
- 3.11 It is therefore the statutory position that where an application for change of ownership is granted and a valid notice of commencement filed, the new owner must replace the current owner in the pharmaceutical list. Provided that there are no other premises than the one to which the change of ownership application relates included in the pharmaceutical list at the same or adjacent address, regulation 31 will not apply to a change of ownership application.

- 3.12 Whilst we submit that the above proposition is self-evident (otherwise it would prevent a new owner from “hiving up” a newly purchased pharmacy into an existing pharmacy business which has the same ownership), it is also consistent with the purpose of regulation 31. NHS Resolution is referred to its Guidance Note on regulation 31 which provides relevantly as follows:

16. The Committee noted that the Department of Health guidance clearly indicated the intent of Regulation 31:

“The purpose of this regulation is to prevent a contractor from applying for multiple inclusions in a pharmaceutical list at the same address with no benefit to patients.”

- 3.13 Applying the above extract to the facts which apply in this case, since there is only one pharmacy included in the pharmaceutical list at the Premises, and since the change of ownership application requires NHS England to remove LP SD Forty Four Limited from the pharmaceutical list at the same time that it includes Oakfield Pharma Limited in the pharmaceutical list, the application cannot result in “multiple inclusions in a pharmaceutical list” at the same Premises.
- 3.14 NHS England therefore misdirected itself in relation to the relevant regulatory test, and irrelevantly had regard to the ownership of the two companies when it determined the change of ownership application. Had NHS England properly applied the regulatory test, it would have been clear to NHS England that regulation 31 does not apply in the circumstances of this case and it should have granted the application.
- 3.15 For the reasons given above, we therefore invite NHS Resolution to uphold this appeal and to grant our client’s application.”

4 **Summary of Representations**

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

- 4.1.1 “Thank you for your letter dated 19 November 2024 regarding the above appeal. NHS South Yorkshire Integrated Care Board (ICB) determined that the application must be refused by reason of Regulation 31(2) of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 4.1.2 The ICB determined that Regulation 31(2)(a) is satisfied as a person on the pharmaceutical list is providing pharmaceutical services (“the existing services”) from the premises to which the application relates. LP SD Forty Four Ltd is currently providing pharmaceutical services from the premises at 82 Worksop Road, Swallownest, S26 4WD.
- 4.1.3 The ICB then considered the second strand of the test, Regulation 31(2)(b); whether it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services. The ICB noted the judicial review judgement, R (Pharmacy Care Plus) v FHSU [2013] EWHC 824 (Admin), which considered this point albeit in relation to the NHS (Pharmaceutical Services) Regulations 2005 and found that “it will almost always be an extremely relevant consideration to know whether or not there is any connection in terms of ownership and control between the entities who carry on the existing business and who propose to carry on the proposed new

business". The ICB also noted appeal cases that have considered this point in light of the judicial review judgement.

- 4.1.4 The ICB reviewed its records and compared them with the information published by Companies House. It was confirmed that the applicant, Oakfield Pharma Ltd, has the same directors as the entity that is carrying on the existing business, LP SD Forty Four Ltd. At the time of writing, the directors are Mr Suhaib Abdullah, Mr Qamar Riaz and Mr Suhail Sharief.
- 4.1.5 The ICB was satisfied that there is a degree of shared control and ownership between the applicant and the existing contractor and that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services. Therefore, the application was refused."

4.2 COMMUNITY PHARMACY SOUTH YORKSHIRE

- 4.2.1 "Thank you for your letter dated 19th November 2024 concerning the above appeal. Members of Community Pharmacy South Yorkshire considered this appeal and it is on behalf of them that I am responding.
- 4.2.2 In considering this appeal members were mindful of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 4.2.3 They have asked me to make the following comments:
 - 4.2.3.1 The original decision made by South Yorkshire ICB and the subsequent appeal hinge on the interpretation of Regulation 31 of these regulations.
 - 4.2.3.2 The interpretation is a technical matter upon which Community Pharmacy South Yorkshire have no comments to make at this time.
 - 4.2.3.3 To the best of our knowledge the outcome of this appeal will have no bearing on patients or the provision of pharmaceutical services.
- 4.2.4 Please keep Community Pharmacy South Yorkshire informed of progress. We may like to comment further should the opportunity arise including attending and commenting at any oral hearing."

5 Observations

The following observations were received by NHS Resolution in response to the representations received on appeal.

5.1 TEMPLE BRIGHT LLP ON BEHALF OF THE APPLICANT

- 5.1.1 "I continue to act for Oakfield Pharma Limited and write further to your letter of 2nd January 2025.
- 5.1.2 In relation to the correspondence received by NHS Resolution from South Yorkshire ICB, as will be clear from my client's letter of appeal, my client accepts that there is a commonality of directorship between LP SD Forty Four Limited and Oakfield Pharma Limited. However, notwithstanding this commonality of directorship, the ICB was not required to refuse my client's application for change of ownership for the simple reason that LP SD Forty Four Limited must be removed from the pharmaceutical list at the time that the change of ownership to Oakfield Pharma Limited takes effect. Were the ICB's

interpretation of regulation 31 to be correct, it would prevent any purchaser of a pharmacy by way of share sale from “hiving up” the pharmacy into the parent company post-acquisition.

- 5.1.3 For the reasons given above and in my client’s appeal, Limb 2 of regulation 31 is not engaged in the circumstances of this case, since it is not reasonable to treat the services currently being provided by LP SD Forty Four Limited as being part of the same service that would be provided by Oakfield Pharma Limited pursuant to this application.
- 5.1.4 I therefore invite NHS Resolution to conclude that regulation 31 is not engaged in the circumstances of this case and to grant my client’s application for change of ownership.”

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 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).*
- 6.5 The Committee noted that in Part 5 of the application form, the Applicant had stated “No premises adjacent to or in close proximity to.”
- 6.6 The Committee noted that the Commissioner had sought to refuse the application on the provisions of Regulation 31. The Committee considered that, as the application was not a consolidation application, it must be refused if both Regulation 31(2)(a) and 31(2)(b) were to apply.
- 6.7 The Committee noted that there is no dispute between the parties that LP SD Forty Four Ltd, which was previously owned by Lloyds Pharmacy, transferred ownership of its entire shareholding to Sharief Oakfield Shares 2 Limited on 19 August 2023.

- 6.8 The Committee further noted the comments from the Applicant's representative that the Applicant is wishing to bring the pharmacy under the control of the main pharmacy group.
- 6.9 There is no dispute between the parties that the directors of Sharief Oakfield Shares 2 Limited are the same as the directors of Oakfield Pharma Ltd.
- 6.10 The Applicant's representative did not specify in its appeal which part of Regulation 31 did not apply, however, the Committee noted that in its observations it subsequently stated that it was "Limb 2". However, the Committee noted that the language used in paragraph 3.11 by the Applicant was reflective of the wording in Regulation 31(2)(a), regarding the type of premises to which Regulation 31 applies. The Committee considered that Regulation 31(2)(a) does not refer to a point in time in the future but instead looks to the situation as it is when the decision-maker is making their decision in respect of the application.
- 6.11 The Committee took the Applicant's representative's comments to be in reference to a secondary pharmacy to which Regulation 31 could also apply, based on its later reference to "Limb 2", rather than a suggestion that Regulation 31(2)(a) did not apply to its current application. Consequently, the Committee considered that Regulation 31(2)(a) applied as a person on the pharmaceutical list, LP SD Forty Four Ltd, is providing pharmaceutical services from the premises to which the application relates, i.e. LP SD Forty Four Ltd t/a Allied Pharmacy Aston and that this was not disputed by either of the parties.
- 6.12 The Committee next considered whether Regulation 31(2)(b) applied.
- 6.13 In its appeal the Applicant's representative explained the process by which a change of ownership under Regulation 26 occurs. The Committee noted that the Applicant's representative had made an error in relation to the relevant sections of the Regulations which it cited. The Applicant's representative stated that the Commissioner must enter the applicant into the pharmaceutical list, following a commencement notice, as a result of paragraph 35 of Schedule 2 of the Regulations. However, the Committee considered that this paragraph explicitly only applies where the Commissioner has granted a routine application. 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 26 is found in Part 4, and as such is an excepted application, rather than a routine application. The Committee therefore considered that the Applicant's representative must have intended to refer to paragraph 34 of Schedule 2 of the Regulations, as this contains the provisions regarding the commencement notices for excepted applications.
- 6.14 The Committee did not consider that this error had a material impact on the reasoning set out in the appeal, as the difference between the two paragraphs relates to who is responsible for issuing the notice of commencement. Under paragraph 34 it is the applicant who must provide it to the Commissioner. However, the Committee considered that the outcome would be the same under either paragraph; following the notice of commencement the Commissioner may change the pharmaceutical list to give effect to that notice.
- 6.15 The Applicant's appeal states that due to the operation of Regulation 75 and paragraph 35 (to be read as 34) then "*regulation 31 will not apply to a change of ownership application*". It goes on to state that this is "self-evident". The Committee considered that it was not self-evident why these other Regulations would result in the disapplication of Regulation 31.

- 6.16 The Committee also noted the Commissioner's reference to *R (Pharmacy Care Plus) v FHSU [2013] EWHC 824 (Admin)*. The Committee considered that this case would likely provide a guide to interpreting Regulation 31(2)(b). Having had regard to it, the Committee noted the following wording:

"it will almost always be an extremely relevant consideration to know whether or not there is any connection in terms of ownership and control between the entities who carry on the existing business and who propose to carry on the proposed new business. So, for example, if an existing business was owned by Company A and the proposed new business was owned by Company B, and there was absolutely no connection at all in terms of ownership and control between the two of them, it would be difficult to see how they could be regarded as providing the same service, even if the services which they were going to provide were complementary to each other. In contrast, if they were both to be provided by exactly the same company, then that would also be an extremely relevant consideration going the other way."

- 6.17 The Committee noted that the language used by Davies J was not such that if the services were to be provided by the same company this should be definitive but rather that it would be an *"extremely relevant consideration"*. The Committee considered, therefore, that where an applicant is making a routine or excepted application, other than a consolidation application, and the premises to which the application relates, or the adjacent premises, are run by the same directors, then the starting point should be that the application should not be granted under Regulation 31(2)(b). This is on the basis that the connection between the existing and proposed pharmacies would be such that, in most circumstances, the condition set out in Regulation 31(2)(b) would be met.

- 6.18 The Committee considered that this is not an irrebuttable presumption and that circumstances might arise whereby, despite the close connection, the application may not need to be refused. The Committee specifically noted that Regulation 31(2)(b) includes a reasonableness element. It is not, therefore, merely factual but provides for some level of discretion in its application. The Committee therefore proceeded to consider the reasoning set out by the Applicant.

- 6.19 The Applicant had stated that where a change of ownership application was made under Regulation 26 the new owner must replace the current owner in the pharmaceutical list, citing Regulation 75(1). The Committee notes that Regulation 75(1) provides that:

75.—(1) *If, as a consequence of a change of ownership application or a consolidation application, an NHS chemist (C) is no longer to be the person listed in a pharmaceutical list in relation to particular pharmacy premises—*

- (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 in relation to C from that list; or*
- (b) if there are no other chemist premises listed in that pharmaceutical list in relation to C, subject to regulation 76, NHS England must remove C from that pharmaceutical list.*

- 6.20 The Committee considered that the Applicant's representative's construction was correct; where a successful change of ownership application is made, and the notice of commencement is made under Schedule 2 Paragraph 34, then, when the Commissioner updates the relevant pharmaceutical list, the preceding entity must be replaced by the incoming. The Committee considered that a change of ownership

application will not allow for the continued existence of the pharmacy that is to be changed. The Committee noted that the notice of commencement was necessary for the new owners to be included in the pharmaceutical list; it could not begin to provide services without it. The Committee considered that, if there was no notice of commencement, the existing pharmacy owners would continue to provide services, and the new pharmacy owners would not. The Committee concluded that the combined operation of paragraph 34 of Schedule 2 and Regulation 75 was such that either the new owner could operate, or the old owner could operate, but would not permit both owners to operate at the same time.

- 6.21 The Committee applied this understanding to the wording of Regulation 31(2)(b). The Committee noted that the Applicant's representative had not elaborated on how the operation of Regulation 75 meant that it was not reasonable to treat the services the Applicant proposed to provide as part of the same service as the existing services, only that it did. The Applicant's representative did indicate that this interpretation was consistent with NHS Resolution's guidance on Regulation 31. That guidance notes that the Department of Health guidance clearly indicated the intent of Regulation 31:

"The purpose of this regulation is to prevent a contractor from applying for multiple inclusions in a pharmaceutical list at the same address with no benefit to patients."

- 6.22 The Committee considered that this elaborated on the point that the operation of Regulation 31 was to prevent there being two pharmacies operating at the same location.
- 6.23 Following this, the Committee then considered if it would be reasonable to treat the proposed services as part of the same service as the existing services in accordance with the wording of Regulation 31(2)(b). The Committee noted the Applicant's representative's statements regarding the fact that LP SD Forty Four Limited would have to be removed from the pharmaceutical list at the time of the change of ownership. The Committee considered that, despite there being the same directors for both companies, this mandated removal from the pharmaceutical list under Regulation 75 and Schedule 2 Paragraph 34 needed to be accounted for. The Committee noted that the application of Regulation 75 was automatic, mandated and specific. It considered that the existing services would have to, by necessity, cease when the new owner was entered into the pharmaceutical list, as they would no longer be on the pharmaceutical list and so no longer be able to operate under the Regulations. The Committee therefore concluded that there could not be two operational pharmacies, as a result of Regulation 75, aligning with the understood intention of Regulation 31.
- 6.24 The Committee also noted that existing guidance on Regulation 31 did not refer to any determinations that were pure change of ownership applications, as is the case in this appeal. The Committee considered that other routine or excepted applications that do not mandate the removal of the existing owner should, by necessity, be treated entirely differently to the current appeal. The Committee considered that if there was any possibility for the continued service provision by the existing contractor this would result in it requiring the application to be refused. The Committee also considered that each change of ownership needed to be considered on its own facts as there may be certain circumstances that lead to it being reasonable to determine that Regulation 31 (2)(b) is satisfied and the application should be refused.
- 6.25 The Committee considered that it is not required to refuse the application pursuant to Regulation 31 as, due to the mandatory requirement to remove LP SD Forty Four Limited from the pharmaceutical list, it would not be reasonable to treat the services currently being provided by LP SD Forty Four Limited as part of the same services that would be provided by Oakfield Pharma Limited, under the application.

- 6.26 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.26.1 confirm the Commissioner's decision;
 - 6.26.2 quash the Commissioner's decision and redetermine the application;
 - 6.26.3 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.
- 6.27 The Committee went on to consider 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, in relation to Regulation 26(1). However, as a change of ownership application under Regulation 26(1) is not a notifiable application, then paragraph 19 of Schedule 2 of the Regulations did not apply to this appeal. Consequently, paragraph 9(1)(a)(iii) did not apply and the Committee was unable to remit the decision to the Commissioner.
- 6.28 Given that the Committee had found that the application should not have been refused under Regulation 31, the Committee determined that the decision of the Commissioner must be quashed. The Committee noted that due to determining that Regulation 31 applied the Commissioner did not go on to consider the application of Regulation 26(1) in relation to the application. The Committee had therefore invited comments from all parties in relation to Regulation 26(1) but no further representations or observations had been received. The Committee therefore proceeded to consider Regulation 26(1) on the basis of the Applicant's original application, and any other relevant information, in relation to each condition.
- 6.29 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)."*

- 6.30 The Committee noted that the Regulations are specific in the conditions an applicant must satisfy if its proposed change of ownership is to succeed.
- 6.31 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)

- 6.32 The Committee noted there is no dispute that the application is in respect of listed chemist premises at 82/82a Worksop Road, Swallownest, Sheffield, S26 4WD at which another person is providing pharmaceutical services. The Committee was satisfied that this was sufficient for the purposes of paragraph (a).

Regulation 26(1)(b)

- 6.33 The Committee noted the Applicant is proposing to carry on at the listed premises in place of LP SD Forty Four Limited t/a Allied Pharmacy Aston, the business in the course of which Allied Pharmacy Aston is providing pharmaceutical services at those premises.
- 6.34 The Committee was satisfied that this was sufficient for the purposes of paragraph (b).

Regulation 26(1)(c)

- 6.35 The Committee noted the Applicant intends to provide the services as those provided by the existing pharmacy. The Committee was satisfied that this was sufficient for the purposes of paragraph (c).

Regulation 26(1)(d)

- 6.36 On the information before it, the Committee was satisfied that were the actual change of ownership to take place, no interruption, as described in paragraph (d), would occur.

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

- 6.37 Being satisfied of the various matters set out in Regulation 26(1), and the lack of any opposition from the Commissioner, or any other party, the Committee considered that the application should be granted.

7 Decision

- 7.1 The Committee quashes the decision of the Commissioner and re-determines the application.
- 7.2 The Committee concluded that the Commissioner 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 the Applicant can provide the same pharmaceutical services as those that the existing contractor is providing; and

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.

Primary Care Appeals