

25 April 2025

REF: SHA/26408

**APPEAL AGAINST NHS NORFOLK AND WAVENEY
ICB DECISION TO REFUSE MAGDALEN MEDICAL
SUPPLIES LTD APPLICATION FOR CHANGE OF
OWNERSHIP FROM T&C HUNT (PHARMACY) LIMITED
IN RESPECT OF 77 MAGDALEN WAY, GORLESTON-
ON-SEA, GREAT YARMOUTH, NORFOLK, NR31 7AA**

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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:

Pharmacy Sales & Consultancy (on behalf of Magdalen Medical Supplies Ltd)
Primary Care Support England (on behalf of NHS Norfolk and Waveney ICB)
Community Pharmacy Norfolk and Suffolk

SHA/26408

APPEAL AGAINST NHS NORFOLK AND WAVENEY ICB DECISION TO REFUSE MAGDALEN MEDICAL SUPPLIES LIMITED APPLICATION FOR CHANGE OF OWNERSHIP FROM T&C HUNT (PHARMACY) LIMITED IN RESPECT OF 77 MAGDALEN WAY, GORLESTON-ON-SEA, GREAT YARMOUTH, NORFOLK, NR31 7AA

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1 The Application

By application dated 24 June 2024, Magdalen Medical Supplies Limited (“the Applicant”) applied to Norfolk and Waveney ICB (“the Commissioner”) for a change of ownership from T & C Hunt (Pharmacy) Limited in respect of 77 Magdalen Way, Gorleston-on-Sea, Great Yarmouth, Norfolk, NR31 7AA. In support of the application it was stated:

1.1 “I/we propose 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
08:30 – 11:30; 13:00 – 14:30; 16:00 – 18:30	08:30 – 11:30; 13:00 – 14:30; 16:00 – 18:30	08:30 – 11:30; 13:00 – 14:30; 16:00 – 18:30	08:30 – 11:30; 13:00 – 14:30; 16:00 – 18:30	08:30 – 11:30; 13:00 – 14:30; 16:00 – 18:30	08:30 – 11:30; 11:30; 15:00 – 17:00	None	40

1.4 Total Opening Hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
08:30 – 18:30	08:30 – 18:30	08:30 – 18:30	08:30 – 18:30	08:30 – 18:30	08:30 – 17:00	closed	58.5

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

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

- 1.7 In response to why the application should not be refused pursuant to Regulation 31, the Applicant stated “n/a – *there is no other pharmacy in the same or adjacent premises*”.
- 1.8 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.
- 1.9 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 2 December 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.
- 2.2 You have a right of appeal to the Secretary of State against Norfolk and Waveney ICB’s decision. Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:
- 2.3 Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.”

DECISION REPORT

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

- 2.4 “Re: Change of Ownership application
- 2.5 The Pharmaceutical Services Regulations Committee (hereafter referred to as “the Committee”) considers all pharmaceutical services applications for the 6 Integrated Care Boards (ICB) within the East of England footprint. NHS Hertfordshire & West Essex ICB hosts the meeting on behalf of the 6 ICBs, in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended (hereinafter referred to as “the Regulations”).
- 2.6 The Committee gave careful consideration to the above application, and I am writing to confirm that it has been refused.
- 2.7 The application was considered under the following regulations:
- 2.8 Regulation 31 – refusal: same or adjacent premises:

31.— (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).

Regulation 31(1)

- 2.9 The Committee agreed that a change of ownership application is an excepted application and therefore regulation 31(2) was considered.

Regulation 31(2)(a)

- 2.10 The Committee noted that T&C Hunt (Pharmacy) Ltd is currently included in the pharmaceutical list for the area of Norfolk Health and Wellbeing Board (HWB) in respect of the premises listed in the application i.e. at 77 Magdalen Way, Gorleston on Sea, Great Yarmouth, Norfolk, NR31 7AA.

- 2.11 The Committee agreed that Regulation 31(2)(a) therefore applies and moved on to consider Regulation 31(2)(b).

Regulation 31(2)(b)

- 2.12 The Committee noted that whilst the person included in the pharmaceutical list for the area of Norfolk HWB (T & C Hunt (Pharmacy) Ltd) is different to the application (Magdalen Medical Supplies Ltd), Mr Mitul Harshad Patel is listed as one of the directors of T & C Hunt (Pharmacy) Ltd and is also listed as the director and superintendent of Magdalen Medical Supplies Ltd.

- 2.13 Guidance has been provided by the Administrative Court in R (Pharmacy Care Plus) v FHSU [2013] EWHC 824 (Admin) as to how it is to be determined whether it would be reasonable to treat services provided by an application as part of the same service as an existing provider.

- 2.14 *“34. It is clear ... 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. 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 service 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.*

- 2.15 *35. But also I can well accept that there may be intermediate positions; so, for example, there may be a commonality of ownership but the owners may not be exactly the same, and it may very well be that in such cases one would have to consider things such as the nature of the respective businesses; whether or not they are going to be physically separate or separate from a business point of view; whether or not the employees would be working in both businesses, and any other relevant matters ...”*

- 2.16 The Committee agreed that there is a common link in terms of ownership and control although it is not precisely co-extensive – the entity currently included in the

pharmaceutical list for the area of Norfolk HWB is Mr Mitul Harshad Patel who is also the superintendent and director of the applicant, Magdalen Medical Supplies Ltd.

- 2.17 The Committee agreed it was satisfied that it is reasonable to treat the services that Magdalen Medical Supplies Ltd proposes to provide, as part of the same service as the existing services provided by T & C Hunt (Pharmacy) Ltd at the premises listed in the application.
- 2.18 The Committee agreed that Regulation 31(2)(b) applies.
- 2.19 The Committee noted for an application to be refused pursuant to Regulation 31, both 31(2)(a) and (b) must apply.
- 2.20 The Committee agreed it was satisfied that both Regulation 31(2)(a) and (b) do apply and refused the application.

Regulation 26(1) – change of ownership:

- 2.21 As the Committee determined that the application was to be refused under Regulation 31, the Committee was not required to consider Regulation 26 in relation to the application.

Regulation 66 – conditions relating to providing directed services:

- 2.22 As the Committee had determined that the application was to be refused under Regulation 31, the Committee was not required to consider Regulation 66.
- 2.23 The Committee agreed that the right of appeal be given to the application, Magdalen Medical Supplies Ltd."

3 The Appeal

In a letter dated 3 December 2024, Pharmacy Sales & Consultancy on behalf of the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "We act for Magdalen Medical Supplies Limited and have enclosed a letter of authorisation confirming our instructions in this matter.
- 3.2 Our client has been notified by East of England Pharmaceutical Services Regulation Committee ("PSRC") that the above application, made pursuant to Regulation 26 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), has been refused. I have enclosed a copy of their decision letter and report for your information.
- 3.3 Our client wishes to appeal this decision. The grounds for our client's appeal are that the ICB has misdirected itself in its understanding of Regulation 31.

Context

- 3.4 Regulation 31 exists to prevent an application for inclusion in the pharmaceutical list being granted where this is a risk that granting that application could result in the applicant providing "the same services as the existing services" from the same or adjacent site.
- 3.5 Its intention is to prevent two inclusions in the pharmaceutical list at the same site or adjacent sites where the pharmacies are under the same control, such that the two pharmacies could be run as though they were a single pharmacy.

- 3.6 The Primary Care Appeals committee is very familiar with the intentions of Regulation 31 and of the judicial guidance in relation to it.
- 3.7 Where the PSRC has misdirected itself, is that it has failed to take into account the effect of an application for a change of ownership. In this case, unlike an application for a new pharmacy or a relocation, the original entry on the pharmaceutical list is replaced by the applicant when the change of ownership comes into effect i.e. there is no risk that two pharmacies could operate from the same site because the original pharmacy will cease to be listed.
- 3.8 In respect of the relevant regulatory tests we have considered both Regulations 31 and 26.
- Regulation 31
- 3.9 Regulation 31 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), states:
- 3.10 *(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) the NHSCB is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).*
- 3.11 Part 5 of the application form for a change of ownership states (emphasis added):
- 3.11.1 "Applications in relation to premises that are in close proximity to **other** listed chemist premises.
- 3.11.2 This section should only be completed if the premises included in section 2 above are adjacent to, or in close proximity to, **another pharmacy** or dispensing appliance contractor premises."
- 3.12 The question is clearly intended to establish whether there is a further pharmacy (other than the pharmacy subject to the application) within the same or adjacent premises. It is not asking whether there is already a pharmacy at the premises subject to the application, as that will always apply in the case of a change of ownership application.
- 3.13 The answer provided by our client to this question was "N/A - there is no other pharmacy in the same or adjacent premises".
- 3.14 In this case, our client answered the question accurately.

3.15 There is another pharmacy nearby, namely Well within the East of England Co-Op store (Magdalen Way, Gorleston-on-Sea, Great Yarmouth NR31 7AA) a short distance away, but:

3.15.1 This is located on the opposite side of Stuart Close, so could not be said to be adjacent as there is a road between the two pharmacies and;

3.15.2 It is owned and operated by Bestway National Chemists Limited (trading as Well), a large multiple pharmacy company that has no shared ownership or control as the applicant.

3.16 It is clear, therefore, that Regulation 31 does not apply to this application.

Regulation 26

3.17 Regulation 26(1) (Change of ownership applications) of the Regulations, 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 the NHSCB may for good cause allow)."

3.18 The ICB determined (having incorrectly decided that Regulation 31 applied) that it did not need to consider Regulation 26, but we have addressed these matters for completeness.

3.19 Taking each of these matters in turn:

Regulation 26(1)(a)

3.20 There is already a pharmacy located at the proposed premises. It is therefore already 'listed premises'. There is also no dispute that the applicant company (X) is different to the existing company (Y) listed at that site. The fact these two companies are connected is not relevant to Regulation 26.

Regulation 26(1)(b)

3.21 It is clear from the application that our client is proposing to carry on at the listed premises (77 Magdalen Way, Gorleston-On-Sea, Great Yarmouth, Norfolk, NR31 7AA), in place of T&C Hunt (Pharmacy) Limited, the business in the course of which T&C Hunt (Pharmacy) Limited is providing pharmaceutical services at those premises;

Regulation 26(1)(c)

- 3.22 It is clear from the application that our client is undertaking to provide the same pharmaceutical services as those that T&C Hunt (Pharmacy) Limited is providing.

Regulation 26(1)(d)

- 3.23 Our client has confirmed on the application that that were [sic] the actual change of ownership to take place, no interruption, as described in paragraph (d), would occur.
- 3.24 In summary therefore, it is clear that the requirements of Regulation 26 are met.
- 3.25 Given than [sic] Regulation 31 does not apply for the reasons provided above, the application should not have been refused.
- 3.26 We believe there is enough evidence within our client's application and appeal for the Primary Care Appeals committee to grant the application based on the written evidence. However, should the committee wish to convene a hearing our client wish to attend.
- 3.27 We look forward to hearing the outcome of this appeal in due course."

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

- 4.1.1 "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. The six ICBs have formed one Pharmaceutical Services Regulation Committee (PSRC) which is also hosted by HWE ICB.
- 4.1.2 Thank you for your letter dated 09 December 2024 advising us that Magdalen Medical Supplies Ltd T/A Magdalen Pharmacy (the Appellant) have submitted an appeal against the decision by Norfolk and Waveney ICB to refuse a Change of Ownership (COO) application. The grounds for the appeal are that the ICB have misdirected itself in its understanding of Regulation 31 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (the Regulations).
- 4.1.3 The ICB has reviewed the appeal and believe the decision to refuse the COO is correct and we wish to make the following representations:
- 4.1.4 Section 129 includes a requirement on NHS England to prepare and publish lists of persons who undertake to provide pharmaceutical services from premises in England, and how applications to be included in a pharmaceutical list are to be made and the information that must be contained. Section 129 then goes on to describe applications for inclusion in a pharmaceutical list which may only be granted if NHS England is satisfied with arrangements as mentioned in section 129(2A) – what is referred to as the market entry test i.e. "routine applications." It also allows for applications where NHS England does not have to consider the market entry test i.e. "excepted applications."
- 4.1.5 Regulation 26(1)(a) states that section 129(2A) of the NHS Act 2006 (the market entry test) does not apply to an application from a person who is not

included in a pharmaceutical list for inclusion in that list, or from a person who is already included in that pharmaceutical in respect of other premises, if the matters in regulation 26(1)(a) to (d) are satisfied.

- 4.1.6 A change of ownership application is therefore an application to be included in a particular pharmaceutical list in respect of premises that are already included in that pharmaceutical list but are listed in respect of a different person.
- 4.1.7 Coinciding with the submission of the appeal to NHS Resolution, the Appellant's representative Pharmacy Sales and Consulting (PSC) contacted the ICB via email, as a courtesy, advising the ICB that they would be appealing the decision. The email is enclosed with this correspondence. PSC enclosed a previous appeal (SHA/26086) and appears to rely on this noting that NHS Resolution will overturn the COO decision for Magdalen Medical Supplies Ltd (SHA/26408) based on this appeal (SHA/26086).
- 4.1.8 In reviewing the SHA/26086 decision, the ICB notes:
 - 4.1.8.1 Paragraph 5.6 - NHS Resolution noted that the applicant had not provided any information on regulation 31 in its application but noted "that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises." The applicant appears to be of the opinion that it did not need to provide any information on that point. NHS Resolution concluded that the applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or Dispensing Appliance Contractor premises.
 - 4.1.8.2 Paragraph 5.7 - NHS Resolution noted that the applicant stated that there is no person on the relevant pharmaceutical list providing pharmaceutical services from the same or adjacent premises. The ICB did not dispute that statement despite the fact the applicant is clearly not correct. The pharmacy premises listed in the application (87 Oakdale Road, Bakersfield, Nottingham, NG2 7EJ) are already included in the relevant pharmaceutical list in respect of Harts Chemist Ltd. Harts Chemist Ltd is providing pharmaceutical services from the premises to which the application relates.
 - 4.1.8.3 As no-one disputed what the appellant stated, NHS Resolution assumed the appellant was correct even though there is already someone providing pharmaceutical services at the premises – the seller of the pharmacy – and in paragraph 5.12 NHS Resolution refers to the "listed chemist premises" at 87 Oakdale Road, Bakersfield, Nottingham, NG3 7EJ.
 - 4.1.8.4 Regulation 2 states that "Listed chemist premises" is to be construed in accordance with regulation 10(3)(a) – a pharmaceutical list is a list of persons who undertake to provide pharmaceutical services either in particular by way of the provision of drugs or only by way of the provision of appliances. NHS Resolution therefore later acknowledged in its decision that there is already a person on the relevant pharmaceutical list providing pharmaceutical services from the premises to which the application related.
- 4.1.9 Looking at the grounds of appeal for the application by the Appellant for the pharmacy premises at 77 Magdalen Way, Gorleston-on-Sea, Great Yarmouth,

Norfolk, NR31 7AA, PSC outlines the alleged intent of regulation 31. However, it is the wording of the regulation that is to be considered.

- 4.1.10 Regulation 31(1) states that a routine or excepted application other than a consolidation application must be refused where regulation 31(2) applies. As identified above, a change of ownership application is an excepted application. If the intention was that regulation 31 could never apply to a change of ownership application, then regulation 31(1) would specifically exclude change of ownership applications as well as consolidation applications. There are other regulations which explicitly state they are only to be considered in relation to certain types of application e.g. regulation 32 (only routine applications) and regulation 40 (routine applications from an NHS pharmacist). The ICB is therefore satisfied that regulation 31 must be considered in relation to the change of ownership application submitted by Magdalen Medical Supplies Ltd.

Regulation 31(2)(a)

- 4.1.11 There is a person included in the pharmaceutical list for the area of Norfolk Health and Wellbeing Board (HWB) who is providing pharmaceutical services ("the existing services") from the premises to which the application relates i.e. 77 Magdalen Way, Gorleston-on-Sea, Great Yarmouth, Norfolk, NR31 7AA. This is T&C Hunt (Pharmacy) Ltd. This is evidenced by NHS England's published consolidated pharmaceutical list.

Regulation 31(2)(b)

- 4.1.12 As NHS Resolution will be aware, both strands of regulation 31(2) must apply for a routine or excepted application (other than a consolidation application) to be refused. The ICB considered the following case as part of its decision. Whilst it is noted this is centred on regulation 17A of the NHS (Pharmaceutical Services) Regulation 2005, the wording of regulation 31 is similar and it is therefore relevant. *R (on the application of Pharmacy Care Plus Ltd) v Family Health Services Appeals Unit* [2013] EWHC 824 (Admin).
- 4.1.13 The Appellant, Magdalen Medical Supplies Limited, is a different body corporate to the person included in the relevant pharmaceutical list (T & C Hunt (Pharmacy) Ltd), and this has been confirmed via checks on the Companies House website.
- 4.1.14 However, in his judgment the judge stated he accepted "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". He described two ends of a spectrum where:
- 4.1.14.1 the applicant and existing contractor are separate legal entities and there is no connection at all in terms of ownership and control – regulation 31(2)(b) could not apply, and
- 4.1.14.2 the applicant and existing contractor are the same legal entity – regulation 31(2)(b) would apply.
- 4.1.15 He also accepted "that there may be intermediate positions; so, for example, there may be a commonality of ownership, but the owners may not be exactly the same." In this case he said it may be appropriate to consider other relevant matters.

- 4.1.16 The director and superintendent for the Appellant is Mitul Harshad Patel (date of birth June 1981).
- 4.1.17 The directors of T&C Hunt (Pharmacy) Limited (the person currently included in the relevant pharmaceutical list in respect of the premises to which the application relates) are:
- 4.1.17.1 Divya Harshad Patel (date of birth January 1958),
- 4.1.17.2 Harshad Haribhai Patel (date of birth January 1957),
- 4.1.17.3 Mitul Harshad Patel (date of birth June 1981), and
- 4.1.17.4 Sonali Mitul Patel (date of birth December 1981).
- 4.1.18 The registered office addresses of both bodies corporate are the same - 205 Plumstead Road, Norwich, England, NR1 4AB. The ICB accepts that this is not unusual as bodies corporate often use their accountant's address as their registered office. However, in this instance the registered office address is Hunts Pharmacy which is included in the pharmaceutical list for the area of Norfolk HWB in respect of T & C Hunt Limited. According to the Companies House website there are 32 bodies corporate that have the same registered office address (attached spreadsheet) [provided for Committee at Appendix B] and several of these operate pharmacies in the area of Norfolk HWB and there is a commonality in ownership and control of them e.g. Beccles H.C.C. Limited whose directors are:
- 4.1.18.1 Patrick Jonathan Newton (date of birth April 1961),
- 4.1.18.2 Harshad Haribhai Patel (date of birth January 1957),
- 4.1.18.3 Mitul Harshad Patel (date of birth June 1981), and
- 4.1.18.4 Anthony Ailwyn Prendergast (date of birth December 1966).
- 4.1.19 According to the GPhC register of superintendents who act as such for more than one body corporate, Mitul Patel is also the superintendent of four other bodies corporate including Beccles H.C.C. Limited.
- 4.1.20 Noting the judgment (Pharmacy Care Plus Ltd V Family Health Services Appeals Unit), there is clearly a degree of commonality of ownership between the Appellant (Magdalen Medical Supplies Limited) and the person currently included in the relevant pharmaceutical list in respect of the premises to which the application relates (T & C Hunt Limited) – Mitul Harshad Patel is a director of both.
- 4.1.21 In its application Magdalen Medical Supplies Limited has undertaken to provide the same pharmaceutical services as those that T & C Hunt Limited provides (the existing services). The ICB is of the opinion that the premises to which the application relates (77 Magdalen Way, Gorleston-on-Sea, Great Yarmouth, Norfolk, NR31 7AA) and the existing listed chemist premises (77 Magdalen Way, Gorleston-on-Sea, Great Yarmouth, Norfolk, NR31 7AA) should be treated as the same site. Indeed, they are exactly the same premises.
- 4.1.22 In conclusion, both strands of regulation 31(2) must apply for a routine or excepted application (other than a consolidation application) to be refused. As outlined in these representations, both 31(2)(a) and 31(2)(b) apply and

therefore the ICB remains of the opinion that the application should be refused.”

4.2 COMMUNITY PHARMACY NORFOLK & SUFFOLK

- 4.2.1 “Community Pharmacy Norfolk & Suffolk did not respond to the original Change of Ownership application in this matter, because we viewed it as a common and routine change of ownership application, the like of which we have seen so many over recent months and years. We saw no reason why it should not be granted.
- 4.2.2 We were extremely surprised, and indeed concerned, therefore, when informed that the application had been refused by NHS Norfolk & Waveney ICB, via the PSRC.
- 4.2.3 Having ourselves taken advice, we would agree with the Applicant that NHS Norfolk & Waveney ICB has misdirected itself in refusing the application due to a miss-application of Regulation 31.
- 4.2.4 We agree with the premise that Regulation 31 was designed and introduced to prevent two inclusions in the pharmaceutical list at the same site or adjacent sites where the pharmacies are under the same control, such that the two pharmacies could be run as though they were a single pharmacy. However, in a change of ownership application there are no ‘existing services’ (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site (reg 31(2)(b))’ as by definition the existing services or entity closes as the new services or entity takes over. There is therefore no risk that two pharmacies could operate from the same site because the original pharmacy automatically ceases to be listed. For this reason we believe the application should not have been refused due to Regulation 31.
- 4.2.5 Community Pharmacy Norfolk and Suffolk can also see no reason why the original application should not have been approved under Regulation 26.
- 4.2.6 I [sic] addition to our concern at this mistake in the application of the Regulations in this case, we would also point out that this introduces unhelpful delay in arrangements for pharmaceutical services in this location reaching a stable conclusion, which is not in the interests of anyone, including staff and patients in the area. We would therefore request that this matter is expedited by NHS Resolution.
- 4.2.7 We would appreciate being kept informed of the progress of this appeal.”

5 Observations

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

5.1 PHARMACY SALES & CONSULTANCY (ON BEHALF OF THE APPLICANT)

- 5.1.1 “Thank you for your letter dated 10 January enclosing third party representations in respect of this appeal. We continue to act for Magdalen Medical Supplies Limited and wish to make the following final observations in response.

Letter from Community Pharmacy Norfolk and Suffolk – undated

- 5.1.2 We note that Community Pharmacy Norfolk and Suffolk (the LPC) shares my client's position that the PSRC (on behalf of the ICB) misdirected itself in respect of both the intention of, and the wording used in, Regulation 31.
- 5.1.3 Indeed the LPC has expressed genuine concern that the PSRC has made this decision because of the impact this may have on the applicant, staff and patients who are reliant on a stable community pharmacy sector.
- 5.1.4 The LPC has taken independent advice on this matter which supports our client's view that the PSRC's interpretation of Regulation 31 is simply wrong. The LPC set out clearly and articulately why this is the case.

Letter from NHS Hertfordshire and West Sussex ICB – dated 7 January 2025

- 5.1.5 We note that the representations submitted by the ICB are made by reference to various parts of the NHS Act 2006 and the NHS (Pharmaceutical & Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 5.1.6 We use the same headings in response to address these representations.

Section 129 [of the NHS Act 2006]

- 5.1.7 The ICB correctly summarises the provision of Section 129 in respect of the obligations on NHS England to publish pharmaceutical lists and consider applications for inclusion in these lists.

Regulation 26(1)(a) [of the Regulations]

- 5.1.8 The ICB has clearly misunderstood why we submitted a copy of a previous appeal decision relating to the way Regulation 31 has been interpreted in respect of a change of ownership application.
- 5.1.9 Whilst we accept that the circumstances might not be exactly the same in the case of this appeal and in SHA/26086, the approach taken by Primary Care Appeals in that case is still relevant.
- 5.1.10 The case being made by the ICB in its letter of 7 January, when reviewing the decision in SHA/28086, appears to be that, because the applicant did not disclose (in section 5 of the application form) that there was already a pharmacy at the location to which the application applied (this being the pharmacy subject to the application), and because nobody disputed this, "NHS Resolution assumed the appellant was correct" i.e. there was no existing pharmacy.
- 5.1.11 In other words, the ICB appear to be of the opinion that NHS Resolution would not know, as a matter of course, that when an application is submitted under Regulation 26 for a change in pharmacy ownership, the purpose of this application is for the applicant to replace the existing contract **at the same address**. [Emphasis added by the Applicant.] This applies to every change of ownership application (unless it is a combined application for a change of ownership and no significant relocation).
- 5.1.12 With respect to the ICB, it is somewhat shocking that it appears to genuinely believe that NHS Resolution does not understand what a change of ownership application entails.

5.1.13 We address later why Regulation 31 *could* apply (in very rare circumstances) to a change of ownership application but, in the case of SHA/26086, it is clear that NHS Resolution would have understood that there was an existing pharmacy at 87 Oakdale Road (that was the subject of the change of ownership application), but took the lack of response in section 5 (and in the absence of any information to the contrary) as evidence that there was no *other* pharmacy in the same or adjacent premises.

5.1.14 Indeed, had NHS Resolution taken the view that Regulation 31(2)(a) applied by virtue of the presence of the pharmacy subject to the application, it would have been obliged to then consider whether Regulation 31(2)(b) also applied. However, it did not feel there was any need to do so, and therefore “concluded that it was not required to refuse the application under the provisions of Regulation 31”.

Regulation 31 [of the Regulations]

5.1.15 Before addressing the comments made by the ICB, we direct the Primary Care Appeals committee to the enclosed Guidance Note produced by NHS Resolution in respect of Regulation 31. [Appendix A provided to Committee.]

5.1.16 Paragraph 16 states:

5.1.17 *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.”*

5.1.18 Expanding on this further, Regulation 31 was introduced at a time when pharmacy contractors received ‘Establishment Payments’ for each pharmacy they owned, provided certain dispensing thresholds were met. There was a risk that two pharmacies could exist within the same or adjacent (connected) premises, and be run as though they were one pharmacy. That way they would attract two sets of Establishment Payments but there would be no patient benefit. It is this matter of whether it is possible to run two pharmacies as though it were one pharmacy that requires the decision maker to consider whether the two parties are ‘connected’.

5.1.19 In fact, referring to the judicial guidance cited by the ICB later in its letter, namely [R \(on the application of Pharmacy Care Plus Ltd\) v Family Health Services Appeal Unit \[2013\] EWHC 824 \(Admin\)](#), His Honour Judge Stephen Davis stated (para 14), when referring to Regulation 17A of previous regulations (that was superseded by Regulation 31 in the current Regulations) “*It is also apparent from guidance promulgated by the defendant, to which I have been referred, that the principal if not the only reason for introducing paragraph 17A of the Regulations is to be prevent what is in substance the same business from opening up two ostensibly separate businesses from the same or adjacent premises, and thereby getting the benefit of two sets of annual payments, and also, as I understand the way the scheme operates, obtaining the benefit of economy of scale without having to make consequential rebates on the basis of its size*”.

5.1.20 Referring back to the intent of Regulation 31, it is clear that this risk of ‘multiple inclusions’ cannot apply where the effect of granting an application results in one entry in the pharmaceutical list being replaced with another, as it the case with a change of ownership application.

- 5.1.21 When considering *why* Regulation 31 needs to be considered for a change of ownership application at all, there could, for example, be a situation where an applicant applies to change the ownership of a pharmacy where it already owns a pharmacy in adjacent premises. In that case if the change of ownership takes place there is a risk that the two properties could be knocked together and there would then be multiple inclusions at the same premises.
- 5.1.22 In the case of our client's application, there is no pharmacy (other than the one to which the application applies) in the same or adjacent premises.
- 5.1.23 There *is* another pharmacy (owned by the Well Pharmacy group) nearby, but it is on the opposite side of the road. In any event, it is clearly not under the same ownership or control, so Reg 31(2)(b) would not be engaged in any event.
- 5.1.24 It is our client's case, therefore, that, when considering the *intent* of Regulation 31, it is clear this is not engaged.
- 5.1.25 The ICB go on to say "*PSC outlines the alleged intent of regulation 31. However, it is the wording of the regulation that is to be considered*".
- 5.1.26 Notwithstanding the fact that the 'intent' was taken from Department of Health guidelines (so our 'allegation' is simply that the DoH who drafted the Regulations would know what they wished to achieve) we have also considered the *wording* of Regulation 31.
- 5.1.27 Considering Regulation 31(2)(a), it is accepted that there is current a 'person' included on the pharmaceutical list at the proposed address. However, even if it was accepted that 31(2)(a) applies to a change of ownership application in these circumstances (and in fact would apply to every application for change of ownership), Regulation 31(2)(b) would also have to apply for our client's application to be refused.
- 5.1.28 In considering 31(2)(b) the ICB quotes extracts from the judicial guidance and goes on to consider whether there [sic] is "*any connection in terms of ownership and control between the entities*" i.e. the applicant and the existing pharmacy owner.
- 5.1.29 For the avoidance of doubt, my client does not dispute that the parties are connected so has nothing more to say on that matter.
- 5.1.30 However we refer NHS Resolution back to its guidance note on Regulation 31, specifically paragraph 29, which states, when referring to the judicial guidance:

29. In light of that Judgement, the Committee has previously considered the following factors:

*Whether the same company would be operating **both sets of premises**;*

Whether the two providers are separate legal entities;

Whether there is any shared ownership or control and, if so, what its impact might be;

Whether any employees would work for both enterprises; and

Any other matters which appear to the Committee to be relevant.

- 5.1.31 It is clear that, by referring to ‘**both** sets of premises’, NHS Resolution has found that Regulation 31 can only apply if the outcome of the application is that there are two pharmacies. In the case of a change of ownership application, there will not be.
- 5.1.32 Looking then at the wording of Regulation 31(2)(b), this states:
- 5.1.33 *the NHSCB is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).*
- 5.1.34 In referring to “the services that the applicant proposes to provide” and to the “existing services” it is clear that these two separate services i.e. for Regulation 31(2)(b) to apply, two entries on the pharmaceutical list would have to result from granting the application.
- 5.1.35 However, in the case of a change of ownership, the previous services cease to exist as soon as the change of ownership takes. At that point there are no “existing” services, there are only those proposed by the applicant.
- 5.1.36 It is clear, therefore, that Regulation 31 cannot and does not apply in these circumstances.

Conclusion

- 5.1.37 In conclusion, we ask NHS Resolution to consider, not only the evidence we have submitted, but the hundreds of applications that have been approved by NHS England over the years in similar circumstances.
- 5.1.38 The decision made by the Pharmaceutical Services Regulations Committee (“PSRC”) on behalf of the ICB is at odds, not only with the very many similar decisions made by other committees across the country, but also those it has made itself over the years. It is very difficult to understand why it should now suddenly decide to interpret Regulation 31 in a different way to every other ICB across the country.
- 5.1.39 What the PSRC appears to have failed to do is take a step back and ask itself why Regulations would be drafted that would prevent a pharmacy contractor from changing the ownership of a pharmacy to another company under its control. Such a restriction would severely limit the ability of any pharmacy company to restructure and would achieve no benefits whatsoever for NHS England.
- 5.1.40 Unlike applications for new pharmacies or for relocations, applications for Change of Ownership do not require NHS England to make judgements. These applications simply require NHS England to understand the Regulations and apply them correctly.
- 5.1.41 It is of significant concern that this PSRC is ‘going out on a limb’ on this matter and, despite claiming to have taken advice, continues to ‘double down’ on a position that is simply wrong.
- 5.1.42 Since submitting our client’s appeal we have become aware of other refusals by this same PSRC for other contractors in the same circumstances. NHS

England should be aware that the delays caused to contractors by these spurious refusals are not only inconvenient, but can also be costly and commercially damaging to applicants at a time when the sector is already under huge strain. These 'rogue decisions' do nothing to benefit patients, pharmacy owners or the NHS itself.

5.1.43 We therefore urge NHS Resolution to be very clear in its decision report regarding the manifest errors being made by this PSRC in the hope further such decisions will not be repeated.

5.1.44 We look forward to hearing the outcome of this appeal in due course."

5.2 THE COMMISSIONER

5.2.1 "Thank you for your letter dated 10 January 2025, sharing representations made by Community Pharmacy Norfolk and Suffolk. We note Community Pharmacy Norfolk and Suffolk's acknowledgement that they did not respond to the original change of ownership (COO) application in this matter. We also note that they are in agreement with the applicant.

5.2.2 Similar to Community Pharmacy Norfolk and Suffolk, the ICB has taken advice and have applied this recent advice to the application of regulation 31 in relation to a COO. The rationale for the refusal is set out in our representations and we have nothing further to add at this stage.

5.2.3 Community Pharmacy Norfolk and Suffolk have requested that NHS Resolution expedite this matter. The ICB would also be most grateful if the matter could be determined as soon as possible."

6 Further circulation

NHS Resolution used its discretion to provide parties with the opportunity to comment specifically on Regulation 26(1) in relation to the application, as it was unclear if the application would have been granted if the Commissioner had proceeded to consider this provision. The following representations were received.

6.1 COMMUNITY PHARMACY NORFOLK & SUFFOLK

6.1.1 "Please see attached our initial submission on this Appeal [referenced at 4.2 above], in which we clearly state the view that there is nothing under Regulation 26 which could or should have given rise to the refusal of this application or subsequently rejection of the appeal.

6.1.2 Were [sic] deeply concerned that, on top of what we view as the initial self-misdirection by NHS Norfolk & Waveney ICB (via HWE PSRC) regarding Regulation 31, this additional failure to consider all of the appropriate Regulations in the initial decision will mean further delays to the final determination of the outcome. While this is in no way the fault of NHS Resolution, we would again plea for this matter to be concluded as soon as possible, as the delay is already impacting on our Contractor's ability to bring certainty and stability to local service provision for the good of patients and staff alike."

6.2 THE COMMISSIONER

6.2.1 "Thank you for your letter dated 27 February 2025 providing the ICB with the opportunity to make representations on Regulation 26(1) of the NHS

(Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (the Regulations).

- 6.2.2 The matter was discussed at our Pharmaceutical Services Regulations Committee (PSRC) on 12 March 2025. The PSRC reviewed each part of the regulation and noted the following:
- 6.2.3 Reg 26(1)(a)(i): The Committee agreed this was met, as the premises is already a listed chemist premises.
- 6.2.4 Reg 26(1)(a)(ii): The Committee agreed this was met, as pharmaceutical services are being provided at the premises.
- 6.2.5 Reg 26(1)(b): The Committee agreed this was met as the applicant is proposing to carry on at the listed chemist premises, in place of the current owner.
- 6.2.6 Reg 26(1)(c): The Committee agreed this was met as the applicant has stated they will undertake to provide the same pharmaceutical services at those premises.
- 6.2.7 Reg 26(1)(d): The Committee agreed this was met as the applicant has stated pharmaceutical services at the premises will not be interrupted.
- 6.2.8 The Committee agreed that all the tests of Regulations 26(1) have been met."

7 Consideration

- 7.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution, had before it the papers considered by the Commissioner.
- 7.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 7.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 7.4 The Committee 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).

- 7.5 The Committee noted that in Part 5 of the application form, the Applicant had stated: “n/a – there is no other pharmacy in the same or adjacent premises.”
- 7.6 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.
- 7.7 The Committee noted that there is no dispute between the parties that one of the directors (namely Mitul Harshad Patel) of T&C Hunt (Pharmacy) Ltd is also a director of Magdalen Medical Supplies Ltd.
- 7.8 The Committee noted the comment in the appeal that the Applicant believed the Commissioner has misdirected itself in the understanding of Regulation 31 however did not clarify which part of Regulation 31 it believed to be misdirected. The Committee noted that the Commissioner did not seek to refuse the application pursuant to Regulation 31(2)(a). 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.
- 7.9 The Committee took the Applicant’s comments to be in reference to a secondary pharmacy to which Regulation 31 could also apply. Consequently, the Committee considered that Regulation 31(2)(a) applied as a person on the pharmaceutical list, T&C Hunt (Pharmacy) Ltd, is providing pharmaceutical services from the premises to which the application relates i.e. T&C Hunt (Pharmacy) Ltd and that this was not disputed by either of the parties.
- 7.10 The Committee next considered whether Regulation 31(2)(b) applied.
- 7.11 The Committee noted the reference in the Commissioner’s decision 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 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 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 service 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.”*
- 7.12 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.

- 7.13 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.
- 7.14 The Applicant had stated that where a change of ownership was made under Regulation 26, the new owner will replace the original owner in the pharmaceutical list. The Committee noted 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 a particular pharmacy premises—*
- (a) if there are other chemist premises listed in the 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.*
- 7.15 The Committee considered that 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.
- 7.16 The Committee applied this understanding to the wording of Regulation 31(2)(b) and noted that this was consistent with NHS Resolution's published 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."*
- 7.17 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.
- 7.18 The Committee noted the Commissioner, in its decision, referred to multiple corporate bodies that have Mitul Harshad Patel in either a director or Superintendent Pharmacist capacity. The Committee was of the view that Regulation 31 specifically references, as above, *"multiple inclusions in a pharmaceutical list at the same address"* (emphasis added) and does not consider that the Regulations exclude an individual from being linked to more than one corporate entity, provided that the premises is not the same.

- 7.19 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 considered that, despite there being the directors in common for both T&C Hunt (Pharmacy) Ltd and Magdalen Medical Supplies Ltd, 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 would not be two operational pharmacies, as a result of Regulation 75, aligning with the understood intention of Regulation 31.
- 7.20 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.
- 7.21 The Committee considered this it is not required to refuse the application pursuant to Regulation 31 as, due to the mandatory requirement to remove T&C Hunt (Pharmacy) Ltd from the pharmaceutical list, it would not be reasonable to treat the services currently being provided by T&C Hunt (Pharmacy) Ltd as part of the same services that would be provided by Magdalen Medical Supplies Ltd, under the application.
- 7.22 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 7.22.1 confirm the Commissioner's decision;
 - 7.22.2 quash the Commissioner's decision and redetermine the application;
 - 7.22.3 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.
- 7.23 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). The Committee noted the comments provided from the parties, in particular the Commissioner's statement that all the tests of Regulation 26(1) would have been met if it had proceeded to consider these at the time of determination.
- 7.24 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)."*

7.25 The Committee considered the position in relation to each condition.

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

7.27 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)

7.28 The Committee noted there is no dispute that the application is in respect of listed chemist premises at 77 Magdalen Way, Gorleston-on-Sea, Great Yarmouth, Norfolk, NR31 7AA. The Committee was satisfied that this was sufficient for the purposes of paragraph (a).

Regulation 26(1)(b)

7.29 The Committee noted the Applicant is proposing to carry on at the listed premises in place of T&C Hunt (Pharmacy) Ltd, the business in the course of which T&C Hunt (Pharmacy) Ltd is providing pharmaceutical services at those premises.

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

Regulation 26(1)(c)

7.31 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)

7.32 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)

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

8 Decision

8.1 The Committee quashes the decision of the Commissioner and re-determines the application.

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

8.3 The Committee has determined that it should be granted on the following basis:

8.3.1 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;

8.3.2 the Applicant can provide the same pharmaceutical services as those that the existing contractor is providing;

8.3.3 that the provision of pharmaceutical services will not be interrupted (except for such period as the Commissioner may for good cause allow).

8.4 The application is granted.

**Case Manager
Primary Care Appeals**