

30 April 2025

REF: SHA/26483

**APPEAL AGAINST HERTFORDSHIRE AND WEST
ESSEX ICB DECISION TO REFUSE PUNNI PHARMACY
LTD APPLICATION FOR CHANGE OF OWNERSHIP
FROM PUNNI HS IN RESPECT OF PUNNI PHARMACY,
49 HIGH STREET, CHESHUNT, HERTFORDSHIRE,
EN8 0BS**

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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 Punni Pharmacy Ltd)
Primary Care Support England (on behalf of the Commissioner)
Community Pharmacy Hertfordshire

REF: SHA/26483

Tel: 020 3928 2000
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APPEAL AGAINST HERTFORDSHIRE AND WEST ESSEX ICB DECISION TO REFUSE PUNNI PHARMACY LTD APPLICATION FOR CHANGE OF OWNERSHIP FROM PUNNI HS IN RESPECT OF PUNNI PHARMACY, 49 HIGH STREET, CHESHUNT, HERTFORDSHIRE, EN8 0BS

1 The Application

By application dated 21 March 2024, Punni Pharmacy Ltd (“the Applicant”) applied to Hertfordshire and West Essex ICB (“the Commissioner”) for a change of ownership from Punni HS in respect of 49 High Street, Cheshunt, Hertfordshire, EN8 0BS. 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
09:00 – 16:00	09:00 – 16:00	09:00 – 16:00	09:00 – 16:00	09:00 – 16:00	09:00 – 14:00	Closed	40

1.4 Total Opening Hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 18:00	09:00 – 18:00	09:00 – 18:00	09:00 – 18:00	09:00 – 18:00	09:00 – 14:00	Closed	50

1.5 The Applicant confirmed that Essential Services (paragraphs 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 this is a change of ownership application and the nearest pharmacy is located 0.1 miles away according to NHS Choices*”.

- 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 10 January 2025 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 Hertfordshire and West Essex ICB’s decision. Should you choose to appeal then you should either complete the online form 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 “The Pharmaceutical Services Regulation 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 ICB’s, in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (hereafter referred to as “the Regulations”).
- 2.5 The Committee gave careful consideration to the above application, and I am writing to confirm that it has been refused.
- 2.6 The application was considered under the following regulations:

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)

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

Regulation 31(2)(a)

- 2.8 The Committee noted that Punni HS is currently included in that list in respect of the premises listed in the application i.e. at 49 High Street, Cheshunt, Hertfordshire, EN8 0BS. Regulation 31(2)(a) therefore applies.
- 2.9 The Committee agreed that Regulation 31(2)(a) therefore applies and moved on to consider Regulation 31(2)(b).

Regulation 31(2)(b)

- 2.10 The Committee noted that whilst the person included in the pharmaceutical list for the area Hertfordshire HWB (Punni HS) is different to the applicant (Punni Pharmacy Ltd), it is noted that Mr Harbhajan Singh Punni is listed as the owner of Punni HS and is also listed as the director and superintendent of Punni Pharmacy Ltd. Guidance has been provided by the Administrative Court in R (Pharmacy Care Plus) v FHSAU [2013] EWHC 824 (Admin) as to how it is to be determined whether it would be reasonable to treat services provided by an applicant as part of the same service as an existing provider.

"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 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.

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 ..."

- 2.11 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 Hertfordshire HWB is Mr Harbhajan Singh Punni who is also the superintendent and one of the two directors of the applicant, Punni Pharmacy Ltd.
- 2.12 The Committee agreed it was satisfied that it is reasonable to treat the services that Punni Pharmacy Ltd. Ltd proposes to provide, as part of the same service as the existing services provided by Punni HS at the premises listed in the application.
- 2.13 The Committee agreed that Regulation 31(2)(b) applies.

- 2.14 The Committee noted for an application to be refused pursuant to Regulation 31, both 31(2) (a) and (b) must apply.
- 2.15 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:

- 2.16 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:

- 2.17 As the Committee had determined that the application was to be refused under Regulation 31, the Committee was not required to consider Regulation 66.
- 2.18 The Committee agreed that the right of appeal be given to the applicant, Punni Pharmacy Ltd."

3 The Appeal

In a letter dated 21 January 2025, Pharmacy Sales & Consultancy on behalf of the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "We act for Punni Pharmacy Ltd and have enclosed a letter of authorisation confirming our instructions in this matter.
- 3.2 Our client has been notified of Pharmaceutical Services Regulations Committee ("PSRC") for Hertfordshire and West Essex ICB's 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 there is a risk that granting that application could result in the applicant providing "the same service 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:

(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).

- 3.10 Part 5 of the application form for a change of ownership states (emphasis added):

3.10.1 "Applications in relation to premises that are in close proximity to **other** listed chemist premises.

3.10.2 *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."*

- 3.11 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.

- 3.12 The answer provided by our client to this question was "There is no other pharmacy in the same or adjacent premises".

- 3.13 In this case, our client answered the question accurately.

- 3.14 The nearest *other* pharmacy is Whitefield Chemist, located at 76 High Street, Cheshunt, Hertfordshire EN8 0AJ 0.1 miles away.

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

Regulation 26

- 3.16 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)."

3.17 The ICB determined (having incorrectly decided that Regulation 31 applied) that "the requirements of Regulation 26(1) are satisfied; there is to be no change in pharmaceutical services and no interruption in service delivery".

3.18 That being the case, it is clear that had it not erroneously refused our client's application under Regulation 31 it would have been approved.

3.19 However, for completeness, 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 providing pharmaceutical services at the listed premises (Punni Chemist, 49 High Street, Cheshunt, Hertfordshire, EN8 0BS), in place of Punni HS, the business in the course of which Punni HS 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 Punni HS is providing.

Regulation 26(1)(d)

3.23 Our client has confirmed on the application form that that were 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 that 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 would 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 07 February 2025 advising us that Pharmacy Sales and Consultancy (PSC) on behalf of Punni Pharmacy Ltd (the Appellant) have submitted an appeal against the decision by HWE 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 Looking at the grounds of appeal for the application by the Appellant for the pharmacy premises at 49 High Street, Cheshunt, Hertfordshire, EN8 0BS, PSC outlines the alleged intent of regulation 31. However, it is the wording of the regulation that is to be considered.

- 4.1.8 The ICB notes that the requirements of Regulation 26(1) are satisfied as the Appellant states that there is to be no change in pharmaceutical services and no interruption in service delivery.
- 4.1.9 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 Punni Pharmacy Ltd.

Regulation 31(2)(a)

- 4.1.10 There is a person included in the pharmaceutical list for the area of Hertfordshire Health and Wellbeing Board (HWPB) who is providing pharmaceutical services ("the existing services") from the premises to which the application relates i.e. 49 High Street, Cheshunt, Hertfordshire, EN8 0BS. This is Punni HS. This is evidenced by NHS England's published consolidated pharmaceutical list.

Regulation 31(2)(b)

- 4.1.11 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).
- 4.1.12 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:
- 4.1.12.1 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
- 4.1.12.2 the applicant and existing contractor are the same legal entity – regulation 31(2)(b) would apply.
- 4.1.13 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.
- 4.1.14 The director and superintendent for the Appellant is Harbhajan Singh Punni (date of birth June 1957)

4.1.15 The sole trader, Punni HS, (the person currently included in the relevant pharmaceutical list in respect of the premises to which the application relates) is:

4.1.15.1 Harbhajan Singh Punni (date of birth June 1957)

4.1.16 In its application Punni Pharmacy Ltd has undertaken to provide the same pharmaceutical services as those that Punni HS provides (the existing services). The ICB is of the opinion that the premises to which the application relates (49 High Street, Cheshunt, Hertfordshire, EN8 0BS) and the existing listed chemist premises (49 High Street, Cheshunt, Hertfordshire, EN8 0BS) should be treated as the same site. Indeed, they are exactly the same premises.

4.1.17 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.”

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 17th March 2025 enclosing third-party representations in respect of this appeal. We continue to act for Punni Pharmacy Limited and wish to make the following final observations in response.

Letter from NHS Hertfordshire and West Essex ICB – dated 6th March 2025

5.1.2 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 Services & Local Pharmaceutical Services) Regulations 2013 (“The Regulations”).

5.1.3 We use the same headings in response to address these representations.

Section 129 [of the NHS Act 2006]

5.1.4 The ICB correctly summarise the provisions 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]

5.1.5 The ICB have accepted that this regulation is satisfied as there will be no change in pharmaceutical services and no interruption in service delivery.

Regulation 31 [of the Regulations]

5.1.6 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.

- 5.1.7 Paragraph 16 states:
- 5.1.8 *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.”*
- 5.1.9 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’.
- 5.1.10 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 Appeals Unit [2013] EWHC 824 (Admin), His Honour Judge Stephen Davies 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 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.”*
- 5.1.11 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 is the case with a change of ownership application.
- 5.1.12 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 address.
- 5.1.13 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.
- 5.1.14 There *is* another pharmacy (owned by Whitefields (Cheshunt) Ltd) 80 metres from our clients pharmacy. 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.
- 5.1.15 It is our client’s case, therefore, that, when considering the *intent* of Regulation 31, it is clear this is not engaged.
- 5.1.16 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”*.

- 5.1.17 Notwithstanding the fact 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.
- 5.1.18 Considering Regulation 31(2)(a), it is accepted that there is currently 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.
- 5.1.19 In considering 31(2)(b) the ICB quotes extracts from the judicial guidance and goes on to consider whether there is “*any connection in terms of ownership and control between the entities*” i.e. the applicant and the existing pharmacy owner.
- 5.1.20 For the avoidance of doubt, my client does not dispute that the parties are connected so has nothing more to say on that matter.
- 5.1.21 However, we refer NHS Resolution back to its guidance note on Regulation 31, specifically paragraph 29, which states, when referring to the judicial guidance:
- 5.1.22 *29. In light of that Judgment, 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.*
- 5.1.23 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.
- 5.1.24 Looking then at the wording of Regulation 31(2)(b), this states:
- 5.1.25 *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).*
- 5.1.26 In referring to “the services that the applicant proposes to provide” and to the “existing services” it is clear that these are 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.

- 5.1.27 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.
- 5.1.28 It is clear, therefore, that Regulation 31 cannot and does not apply in these circumstances.

Conclusion

- 5.1.29 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.
- 5.1.30 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.
- 5.1.31 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.
- 5.1.32 Unlike applications for new pharmacies or for relocations, applications for Change of Ownership do not require NHS England to make judgments. These applications simply require NHS England to understand the Regulations and apply them correctly.
- 5.1.33 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.
- 5.1.34 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.
- 5.1.35 We look forward to hearing the outcome of this appeal in due course.”

5.2 COMMUNITY PHARMACY HERTFORDSHIRE

- 5.2.1 “Thank you for your letter dated 17 March 2025 regarding the appeal by Punni Pharmacy Ltd against the decision to refuse their Change of Ownership (COO) application for Punni Pharmacy, 49 High Street, Cheshunt, Hertfordshire, EN8 0BS (SHA/26483).
- 5.2.2 Community Pharmacy Hertfordshire (CPH) wishes to respond to the representations made by the Hertfordshire and West Essex (HWE) ICB and strongly believes that the ICB has incorrectly applied Regulation 31 of the NHS

(Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, in this case.

- 5.2.3 Our position is based on the following key points:

Misinterpretation of Regulation 31's Intent:

- 5.2.4 CPH agrees with the appellant's assertion that Regulation 31 is primarily intended to prevent the duplication of pharmaceutical services from the same or closely adjacent premises under common control. The focus of the regulation, particularly as reflected in the Change of Ownership application form is on the proximity of other *listed chemist premises*, not on the directors or ownership arrangements of the existing contract.

Nature of Change of Ownership:

- 5.2.5 A Change of Ownership application, by its very nature, signifies a transition. The existing services provided by the previous entity cease, and a new entity takes over. Therefore, the premises that "the services the applicant proposes to provide are the existing services" as described in Regulation 31(2)(b) is not applicable in the way interpreted by the ICB. The applicant is not proposing to provide separate services that could be treated as part of the same service as the existing service; they are proposing to *replace* the existing service with a new entity.

Absence of Risk of Duplication

- 5.2.6 As the original pharmacy automatically ceases upon a successful Change of Ownership, there is no risk of two pharmacies operating from the same site. The scenario Regulation 31 aims to prevent – two separate listings operating in a way that functions as a single pharmacy – simply cannot occur in a standard Change of Ownership.

Precedent of Similar Approvals

- 5.2.7 It is pertinent to note that Community Pharmacy Hertfordshire, along with other community pharmacy organisations, has witnessed numerous approvals of Change of Ownership applications in the past under similar circumstances. The ICB's current interpretation of Regulation 31 in this instance appears to be a significant departure from established precedent and raises serious questions as to why this specific application is being treated differently. This raises significant concerns as to why this interpretation of Regulation 31 is being applied now when countless similar applications have been processed without issue.

Unnecessary Delay and Impact on Services

- 5.2.8 We are concerned that the ICB's decision has introduced an unhelpful delay in finalising arrangements for pharmaceutical services in Cheshunt. This uncertainty can negatively impact both pharmacy staff and the patients who rely on these services. We urge NHS Resolution to expedite the appeal process to bring this matter to a stable conclusion.
- 5.2.9 Community Pharmacy Hertfordshire respectfully disagrees with the ICB's interpretation and application of Regulation 31 in this Change of Ownership case. We believe the refusal of the application is based on a misdirection regarding the regulation's intent and the specific circumstances of a change of

ownership, particularly given the established practice of approving similar applications.

5.2.10 We would appreciate being kept informed of the progress of this appeal.”

6 Consideration

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

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

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

6.4 The Committee 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: *“n/a this is a change of ownership application and the nearest pharmacy is located 0.1 miles away according to NHS Choices”.*

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 that the director of Punni HS is also a director of Punni Pharmacy Ltd.

6.8 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.

6.9 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, Punni HS, is providing pharmaceutical services from the premises to which the application relates i.e. Punni HS and that this was not disputed by either of the parties.

6.10 The Committee next considered whether Regulation 31(2)(b) applied.

6.11 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."

6.12 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.

6.13 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.

6.14 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.

- 6.15 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.
- 6.16 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."*
- 6.17 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.
- 6.18 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 considered that, despite there being the same director for both Punni HS and Punni Pharmacy 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.
- 6.19 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.
- 6.20 The Committee considered this it is not required to refuse the application pursuant to Regulation 31 as, due to the mandatory requirement to remove Punni HS from the pharmaceutical list, it would not be reasonable to treat the services currently being provided by Punni HS as part of the same services that would be provided by Punni Pharmacy Limited, under the application.
- 6.21 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:

- 6.21.1 confirm the Commissioner's decision;
 - 6.21.2 quash the Commissioner's decision and redetermine the application;
 - 6.21.3 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.
- 6.22 The Committee went on to consider whether there should be a further notification to 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.
- 6.23 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 noted that although the Commissioner did not consider Regulation 26(1) within its determination, it provided the statement in its representations on appeal that *"The ICB notes that the requirements of Regulation 26(1) are satisfied as the Appellant states that there is to be no change in pharmaceutical services and no interruption in service delivery."* The Committee further noted that no party sought to dispute this statement.
- 6.24 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)."*

- 6.25 The Committee noted that the Regulations are specific in the conditions an applicant must satisfy, if its proposed change of ownership is to succeed.
- 6.26 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)

- 6.27 The Committee noted there is no dispute that the application is in respect of listed chemist premises at 49 High Street, Cheshunt, Hertfordshire, EN8 0BS. The Committee was satisfied that this was sufficient for the purposes of paragraph (a).

Regulation 26(1)(b)

- 6.28 The Committee noted the Applicant is proposing to carry on at the listed premises in place of Punni HS, the business in the course of which Punni HS is providing pharmaceutical services at those premises.
- 6.29 The Committee was satisfied that this was sufficient for the purposes of paragraph (b).

Regulation 26(1)(c)

- 6.30 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)

- 6.31 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)

- 6.32 Being satisfied of the various matters set out in Regulation 26(1), 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 it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has determined that it should be granted on the following basis:
- 7.3.1 the Applicant is proposing to continue in place of the existing contractor, the business in the course of which that contractor is providing pharmaceutical services at the same premises;
 - 7.3.2 the Applicant can provide the same pharmaceutical services as those that the existing contractor is providing;
 - 7.3.3 that the provision of pharmaceutical services will not be interrupted (except for such period as the Commissioner may for good cause allow).

7.4 The application is granted.

Case Manager
Primary Care Appeals