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9 May 2025

REF: SHA/26506

APPEAL AGAINST HAMPSHIRE AND ISLE OF WIGHT ICB DECISION TO REFUSE AN APPLICATION BY JCL (UK) LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT UPPER FLOOR, 25A HIGH STREET, COSHAM

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 refused.

A copy of this decision is being sent to:

JCL (UK) LTD
PCSE on behalf of Hampshire & Isle of Wight ICB

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1 The Application

By application dated 13 August 2024, JCL (UK) Ltd ("the Applicant") applied to Hampshire and Isle of Wight ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Upper Floor, 25a High Street, Cosham. In support of the application it was stated:

1.1 Under "Pharmaceutical Services to be provided at these premises", in response to the services that would be provided, the Applicant ticked "Terms of Service (paragraphs 3 to 12, Schedule 5 – DACs)".

1.2 In response to "If you are undertaking to provide appliances, specify the appliances that you undertake to provide (or write 'none' if the pharmacy does not provide appliances), the Applicant stated:

1.2.1 "Stoma Care Appliances

1.2.1.1 Stoma Bags (Ostomy Bags): colostomy, ileostomy, or urostomy,

1.2.1.2 Stoma Skin Barriers

1.2.1.3 Stoma Adhesive Sprays and Wipes

1.2.1.4 Stoma Belts

1.2.2 Incontinence Appliances

1.2.2.1 Urinary Catheters: including intermittent, indwelling (Foley), and suprapubic catheters.

1.2.2.2 Catheter Fixation Devices

1.2.2.3 Urine Drainage Bags

1.2.2.4 Sheath Systems/convenes

1.2.2.5 Incontinence Pads and Pants

1.2.3 Wound Care Appliances

1.2.3.1 Dressings and bandages: including hydrocolloid, foam, and alginate dressings for chronic or surgical wounds.

1.2.3.2 Compression bandages.

1.2.3.3 Wound drainage systems. Currently exploring market for this."

1.3 The Applicant did not answer why, in its view, this application should not be refused pursuant to Regulation 31.

Additional information provided by the Applicant

1.4 "Remote Consultation and Support:

1.4.1 Telehealth Services: Providing remote consultations to assist patients with appliance usage, troubleshooting, and education via video calls if required.

1.4.2 Helpline: Establishing a helpline for urgent queries related to the use of appliance

1.5 Home Delivery and Setup:

1.5.1 Comprehensive Delivery Services: Offering prompt and reliable home delivery of appliances, ensuring patients receive their necessary equipment without delay.

1.5.2 In-Home Setup Assistance: Providing in-home setup and demonstration services to ensure correct usage of appliances.

1.6 Dispensing of Prescribed Appliances: Accurate and efficient dispensing of a wide range of medical appliances as prescribed by healthcare professionals.

1.7 Patient Consultation and Support: Personalised consultations to ensure patients understand the correct use of their appliances, including initial setup and troubleshooting.

1.8 Home Delivery Service: Convenient delivery options for patients who are unable to visit the premises, ensuring continuity of care.

1.9 Ongoing Patient Care: Regular follow-up to monitor patient satisfaction and appliance efficacy, with proactive management of any issues that arise.

1.10 Quality Assurance and Compliance

1.10.1 Staff Training: All staff members are trained in the latest guidelines and best practices for dispensing appliances. Continuous professional development is encouraged and supported. Current nurse and GP expertise with experience in community hospital, secondary care and GP setting. This will ensure quality is held at highest regard.

1.10.2 Storage and Handling: The premises are equipped with state-of-the-art facilities to ensure appliances are stored and handled in accordance with regulatory standards.

1.10.3 Data Protection: We adhere strictly to GDPR and NHS guidelines on patient data protection, ensuring all personal information is securely managed and confidential.

1.11 Community Commitment

1.11.1 Patient-Centric Approach: We are committed to providing high-quality care tailored to the needs of our patients. Our services are designed to improve patient outcomes and support the overall healthcare system. Our engagement with local GP practices, community hubs and secondary care (Queen Alexandra Hospital) will ensure appliance dispensing allows continuity of care and supply is maintained.

1.12 Local Health Needs: Portsmouth and the wider Hampshire surrounding areas has a significant proportion of elderly residents and individuals with chronic conditions requiring regular use of medical appliances. We aim to address these needs by offering specialized services such as:

1.12.1 Stoma Care Support: Providing stoma appliances and personalised care plans to improve quality of life for stoma patients.

1.12.2 Incontinence Products: Dispensing a range of high-quality incontinence products with expert advice on usage and management.

1.12.3 Ostomy Care: Ensuring ostomy patients receive the best possible care through regular consultations and follow-up services. Our existing medical expertise will help further in this service.

1.12.4 Community Outreach Programs: Conducting health awareness workshops and home visits to educate patients on the use of their medical appliances and to identify any issues early.

1.13 We believe that JCL UK Ltd is well-positioned to deliver outstanding dispensing appliance services to the wider community. Our commitment to quality, patient care, and regulatory compliance ensures that we will be a valuable addition to the local healthcare infrastructure."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 8 January 2025 states:

2.1 "Hampshire & Isle of Wight ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning."

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

Extract from the Pharmaceutical Services Regulations Committee meeting in common for Buckinghamshire, Oxfordshire and Berkshire West ICB, Hampshire and Isle of Wight ICB and Frimley ICB

2.2 "JCL (UK) Ltd – Unforeseen Benefits (Reg 18) - Unforeseen Benefits application for a Dispensing Appliance Contract (DAC)

2.3 Upper Floor, 25a High Street, Cosham, PO6 3BT

2.4 Portsmouth HWB

Introduction and background

2.5 An unforeseen benefits application had been received from JCL (UK) Ltd, on 15th August 2024 at Upper Floor, 25a High Street, Cosham, PO6 3BT.

2.6 The Committee was now required to consider the application in accordance with Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.7 Full details of the applicant's proposal had been notified to the various interested parties in accordance with the regulations. Comments had been received from Community Pharmacy South Central LPC.

Consideration by the Committee

2.8 The Committee had before it:

2.8.1 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.8.2 Department of Health guidelines on market entry by means of pharmaceutical needs assessment – Chapter 8 – Unforeseen Benefits.

2.8.3 The Report which included:

2.8.3.1 the application form and information provided by the Applicant,

2.8.3.2 letters from interested parties,

2.8.3.3 maps of the location,

2.8.3.4 opening times and distances to surrounding pharmacies and GP Practices,

2.8.3.5 a site visit report,

2.8.3.6 Portsmouth PNA 2022 extracts and supplementary information and a link to the full PNA,

2.8.3.7 demographic information including population density,

2.8.3.8 public transport information,

2.8.3.9 prescription information,

2.8.3.10 the relevant Regulations (18, 19, 31)

2.9 In relation to the application, the Committee noted the following:

2.9.1 the applicant's fitness information was approved on 2nd December 2024.

2.9.2 The Committee noted that the applicant was applying to open a DAC and proposing to provide the following Advanced Services, Stoma Appliance Customisation (SAC) and Appliance Use Reviews (AUR), if commissioned.

2.9.3 The applicant also proposed core opening of 40 hours per week and total proposed opening of 49 hours per week.

2.9.4 The Committee considered the applicant's statement as to the unforeseen benefits it is offering. The Applicant has stated that

"Remote Consultation and Support:

Telehealth Services: Providing remote consultations to assist patients with appliance usage, troubleshooting, and education via video calls if required.

Helpline: Establishing a helpline for urgent queries related to the use of appliance.

Home Delivery and Setup:

Comprehensive Delivery Services: Offering prompt and reliable home delivery of appliances, ensuring patients receive their necessary equipment without delay.

In-Home Setup Assistance: Providing in-home setup and demonstration services to ensure correct usage of appliances"

2.10 The Committee considered information from a virtual site visit of the Cosham area in Portsmouth that had been undertaken by a Pharmacy Commissioning Hub representative.

2.10.1 Cosham is a northern suburb of Portsmouth lying within the city boundary but off Portsea Island. The M27 & A27 run along the south of Cosham dividing it from the city of Portsmouth (Portsea Island).

2.11 The Committee considered the representation made by Community Pharmacy South Central LPC and noted they did not oppose the application.

2.12 The applicant did not provide a response to the representations received during the consultation period.

Regulation 31 – Refusal: same or adjacent premises

2.13 The Committee noted that the proposed premises is located on the Upper Floor, 25a High Street, Cosham directly below the premises is a community pharmacy (Lalys Pharmacy) also owned by the applicant. The Committee noted that this pharmacy is on the Pharmaceutical List for the Portsmouth HWB area, and the application is for inclusion on the DAC Pharmaceutical List for the Portsmouth HWB area.

2.14 The Committee first considered Regulation 31(2)(a)(i) and was of the view that Regulation 31(2)(a)(i) is not met as there is currently no person on the DAC pharmaceutical list at the premises to which the application relates.

2.15 The Committee went on to consider paragraph (a)(ii) of Regulation 31(2); whether there is a person on the pharmaceutical list providing pharmaceutical services from adjacent premises.

2.16 The Committee was satisfied that there is no pharmacy providing pharmaceutical services only by way of the provision of appliances within the Cosham area of Portsmouth. The application did not therefore need to be refused in accordance with Regulation 31.

Regulations 40,41 and 44

2.17 The Committee noted that the proposed pharmacy location was not in a controlled locality, and therefore Part 7 of the Regulations (in particular Regulations 40, 41 and 44) did not have to be considered.

Oral Hearing

2.18 The Committee decided that it was not necessary to hold an oral hearing before determining the application.

Regulation 18 – Unforeseen benefits application

2.19 The Committee noted that this was an application for "unforeseen benefits" and fell to be considered under the provisions of Regulation 18 which states: [quoted in full].

2.20 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

2.21 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs (the 'PNA') in accordance with paragraph 4 of Schedule 1 of the Regulations.

2.22 The Committee had regard to the Portsmouth PNA 2022-2025 (issue date 1st October 2022) (the 'PNA') and noted that supplementary statements had been issued in July 2022 regarding two pharmacy consolidations but were not in relation to the Cosham area of Portsmouth.

2.23 The Committee noted that in relation to Dispensing Applicant [sic] Contractor the PNA stated "*Portsmouth has one dispensing appliance contractor (DAC). This type of contractor only supplies appliances e.g. stoma care products (rather than medicines). Many prescriptions for specialist appliances are dispensed by specialist appliance contractors, located across the country and providing delivery services. All pharmacies within the city are also able to dispense appliances*." [Page 14, Portsmouth PNA, 2022-25].

2.24 In relation to Appliance Use Review Service the PNA stated "*Appliance Use Reviews (AURs) can be carried out by a pharmacist or a specialist nurse in the pharmacy or at the patient's home. AURs should improve the patient's knowledge and use of any listed appliances that include stoma care products. Nationally, NHS England data shows little activity is recorded for this service. The contractor questionnaire issued to all 38 community pharmacies and one DAC in Portsmouth had 12 responses. None of the pharmacies reported to provide the AUR service and two reported they would soon be providing the service. Only a very small number of patients would have need to access the AUR service. Locally many GP practices have provided targeted information or signposted patients to specialist nurse services that allow similar reviews to be carried out in the patient's home. Patients have good access to these services."* [Page 29, Portsmouth PNA, 2022-25].

2.25 In relation to Appliance Use Review Service the PNA stated "*Stoma customisation services aim to ensure proper use and comfortable fitting of the stoma appliance and to improve the duration of usage, thereby reducing waste. This service is for a very limited number of patients, many of whom may access this service from specialist appliance contractors located outside the city, who operate a mail order service. Patients have a good choice of providers for this specialised service. These patients may also access specialist nurse services. NHS England data show 15 of 38 pharmacies (39%) were accredited to provide stoma customisation services for 2020-21*." [Page 29, Portsmouth PNA, 2022-25].

2.26 The Committee also noted that, having considered the entire Portsmouth locality including the area of Cosham, the HWB had reached the conclusion that

• *"The current need for pharmaceutical services is met by the existing providers on the pharmaceutical list.*

• *There will not be substantial changes in population areas, nor major development, during the three-year lifespan of this PNA, which would warrant the need for additional pharmaceutical services. Smaller changes would be managed by existing providers.*

• *There is good coverage across the city of Advanced, Enhanced and locally commissioned services in place.*

• *Despite consolidations and changes in provision and extended hours in the last three years which have reduced the availability of pharmaceutical services, we still believe that there is a good range of pharmaceutical services provided in the city. However, further reductions in provision of services would require an updated assessment of the needs of the local population.*

• *That there are no identified specific improvements or better access that could be met by an additional pharmaceutical services provider at this time. Future improvements could be met by the current pharmaceutical service providers*." [Page 104, Portsmouth PNA, 2022-25].

2.27 The Committee noted that the HWB had considered access (distance, travelling times and opening hours') to assess how current service provisions will meet the needs of the population within the lifetime of the PNA.

2.28 The Committee noted that the Applicant had not mentioned the PNA in their application.

2.29 The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs' assessment in accordance with paragraph 4 of Schedule 1.

2.30 The Committee was satisfied that the unforeseen benefits claimed in the application were not identified in the PNA.

2.31 In order to be satisfied in accordance with Regulation 18(1), the Committee went on to consider those matters set out at Regulation 18(2).

2.32 Regulation 18(2)(a)(i) - whether or not granting the application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services.

2.33 The Committee was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans. None of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee concluded that granting the application would not cause significant detriment in this regard.

2.34 Regulation 18(2)(a)(ii) - whether or not granting the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services.

2.35 None of the submissions included any evidence on this question and the Committee found no proof to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.

2.36 The Committee did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse the application under Regulation 18(2)(a).

2.37 Regulation 18(2)(b)(i) – *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB – granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published*.

2.38 On this point the Applicant had not mentioned anything relating to choice of pharmaceutical services or the provision of appliances.

2.39 The representations from Community Pharmacy South Central LPC did not include comments relating to choice.

2.40 In order to determine if patients in the area already had a reasonable choice, the Committee considered access (distance, travelling times and opening hours) as an important factor in determining the extent to which the current pharmaceutical service provision meets the needs of the population in the Cosham area of Portsmouth but noted that most patients using a DAC receive their appliances by a delivery service. The Committee also noted that all pharmacies are able to dispense appliances and provide the Stoma Appliance Customisation and Appliance Use Review Advanced Services.

2.41 The Committee had regard to the current service provision in the immediate area of Cosham and noted that there are 6 pharmacies within 1.5-mile radius of the proposed address. This includes a mix of independent and multiple pharmacies.

2.42 The opening hours of the 6 pharmacies range from 08:30 to 21:00 Monday to Friday, from 09:00 to 21:00 on Saturdays and from 10:00-16:00 Sundays.

2.43 The Committee noted that the Applicant had offered to open from 09:00 to 18:00 on Monday to Friday, 09:00 to 13:00 on Saturdays and closed on Sundays. There are already pharmacies in the area providing longer opening hours on weekdays and weekends.

2.44 The Committee noted that there are 2 Dispensing Appliance Contractors within 13 miles (5.9 & 12.2 miles) of the proposed address.

2.45 The Committee noted that there was no evidence of anyone struggling with access to appliances or the two associated advanced services in Cosham or Portsmouth.

2.46 Having considered the factors above, the Committee was satisfied that residents of Cosham already have reasonable choice with regard to obtaining pharmaceutical services.

2.47 Regulation 18(2)(b)(ii) - *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published*.

2.48 The Committee reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those within such characteristics.

2.49 The Applicant did not mention anything regarding people who share a protected characteristic in their application.

2.50 The representations from Community Pharmacy South Central LPC did not include comments relating to groups of patients having difficulty accessing pharmaceutical services.

2.51 The Committee therefore concluded that the application did not satisfy the test in this part of the Regulation.

2.52 Regulation 18(2)(b)(iii) - *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being innovative approaches taken with regard to the delivery of pharmaceutical services - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.*

2.53 The Committee agreed that the applicant had not provided evidence that an innovative approach would be taken with regard to the delivery of pharmaceutical services.

2.54 Therefore, the Committee concluded that there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.

2.55 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the relevant area of the HWB which were not foreseen when the PNA was published.

Other Considerations

2.56 Regulation 18(2)(c)-(f) - The Committee had previously determined that there was no need to defer the application under Regulation 18(2)(c) to (f).

Decision

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

2.58 The Committee had considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and was not satisfied that it would.

2.59 The Committee determined that the application should be refused on the following basis:

2.59.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –

2.59.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services including those for the provision of appliances;

2.59.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services including those for the provision of appliances; and

2.59.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services including those for the provision of appliances.

2.60 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Rights of appeal

2.61 The application is refused so the applicant has the right to appeal.

2.62 The Committee decided not to grant third party rights of appeal to the decision to any of the parties that responded during the consultation period because the application had been refused."

3 The Appeal

In a letter dated 6 February 2025 addressed to NHS Resolution, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

"Introduction

3.1 We, JCL (UK) Ltd, hereby submit our appeal against the decision made by Hampshire & Isle of Wight ICB on 8th January 2025, refusing our application for a dispensing appliance contract at Upper Floor, 25a High Street, Cosham. This appeal addresses the specific points of refusal as outlined in the decision letter and provides a detailed justification for why the application should be reconsidered.

Response to Refusal Points

Existing Choice of Services

3.2 The ICB has indicated that the area already offers a reasonable choice of dispensing appliance services.

3.3 Response:

3.4 The nearest dispensing appliance contract currently operating within the locality do not adequately meet the demand of vulnerable populations, particularly elderly patients, disabled individuals, and those with mobility issues.

3.5 Our application proposed unique benefits, including:

3.5.1 Comprehensive home delivery services for immobile patients.

3.5.2 Tailored stoma customisation services, which are not extensively available in the vicinity.

3.5.3 Flexible consultation hours, addressing accessibility challenges for working professionals and caregivers.

3.6 The current providers have limited capacity to expand these services, as demonstrated by feedback from local patients and healthcare providers.

Accessibility

3.7 The decision stated that existing pharmacies are sufficiently accessible by walking routes, bus services, and private vehicles.

3.8 Response:

3.9 While public transport links are available, they do not cater to individuals with severe health limitations. For example, the high dependency of wheelchair users on direct services to dispensing pharmacies has not been fully addressed.

3.10 Our proposed location is strategically positioned within a community hub, making it easily accessible for individuals reliant on pedestrian routes and shorter travel times.

3.11 Evidence from a local accessibility survey highlights that over 30% of respondents have expressed dissatisfaction with current transportation options to existing pharmacies.

Negative Effects on Existing Pharmacies

3.12 The ICB expressed concerns about potential negative impacts on current providers.

3.13 Response:

3.14 We respectfully argue that the introduction of a new dispensing appliance contract would complement, rather than compete with, existing services by reducing pressure on their capacity. Also specific expertise would then be incorporated for appliance services, freeing up on pharmacy dispensing and community pharmacy services.

3.15 The increased availability of specialised services would ensure more equitable distribution of resources, especially during peak periods such as winter flu season.

3.16 Our projected service focus on niche areas like wound care appliances and appliance use reviews would not detract significantly from the general services provided by existing pharmacies.

Significant Benefits

3.17 The ICB concluded that the proposed pharmacy would not provide significant benefits to the local population.

3.18 Response:

3.19 Our application clearly outlined several key benefits that remain unaddressed:

3.19.1 Customisation Services: Enhanced stoma and wound care appliance customisation are critical for improving patient comfort and reducing hospital readmissions.

3.19.2 Community Support: Our appliance team plans to introduce educational workshops and support groups for patients managing long-term appliance needs, filling a gap in the current provision.

3.19.3 Emergency Supplies: Our location's extended hours would ensure timely access to urgent appliances outside traditional working hours.

3.20 These initiatives align with NHS goals of improving patient outcomes and reducing strain on secondary care facilities.

Additional Commentary – Carer Testimony (With patients' permission/agreement)

3.21 Stoma Devices - Immediately post-op:

3.22 Patient X - given the diagnosis of severe diverticulitis and the resulting stoma, I was surprised that no dietary guidance was offered – even if only to confirm that anything goes. Little- no information given to the patient. Feel partner/care giver should very much be included in any such information exchange as it doesn't always make it beyond the patient.

3.23 Similarly, no post op exercise programme was suggested to either patient X or carer. Developed an inguinal hernia that complicated matters, but his post-op approach was very much to sit on most of the day. When he did decide to take exercise, it was weight-bearing and entirely inappropriate post abdominal surgery. Formal guidance/strictures (a simple leaflet?) would have been helpful. Instead, of us carers and patients resorting repeatedly to Google (for all things stoma/exercise/medication/supplement related) until answers found.

Education

3.24 Very much confined to the patient rather than the 'care giver'/partner as a collective.

3.25 Think it would be helpful though if partners/care givers were automatically approached and given the opportunity for some sort of interface separate from the patients.

3.26 Appointments were quite frequent – every 4/every 6 weeks however at times feel like a reliable ad hoc support service would have been beneficial. At the last one though (towards end last year) he was signed off until June this year. This despite the known fact that the stoma has prolapsed and been quite troublesome.

3.27 Call service offered through stoma nurses but sense they are overloaded and don't tend to feel able to use.

Device Supply

3.28 Very well organised initial set-up with various agencies giving home-visits to measure/prescribe/set up supply etc.

3.29 System seems to work well for [J]:

3.30 As and when goods required, he rings the prescribing service – CUSP (Community Urology & Stoma Prescribing Service)

3.31 If busy/no answer, they promise to get back within 24 hours.

3.32 CUSP contact the suppliers, Respond.

3.33 Respond dispatch the goods

3.34 If there are any issues/delays, he can also call Respond directly however often can have delays.

3.35 Main criticism/concern is that since the initial fitting Patient X has lost approx. 10kg and the stoma has prolapsed. He's been finding it more difficult to manage of late, so I think he possibly ought to be refitted. No known mechanism for review. Automatic review wouldn't go amiss as it appears that prolapse is quite a common occurrence. Ability to access advice as and when and opportunity for needs to be catered to the individual would be very welcome. There were also times when delivery of appliances would be useful as perhaps, I was at work and he simply wasn't well enough to travel to collect items

Straw Poll General Practitioners:

3.36 In a straw poll carried out on 20th January 2025, of Portsmouth and South East Hants General Practitioners and Acute Nurse Practitioners, working both in and out of hours, where N= 25, 20 clinicians, advised they believe that supply and education around appliances including stomas and wound are devices was a problem based on anecdotal evidence of patients trying to gain support through general practice to support with issues related to the above. 4 stated they did not feel this was something they saw in their day-to-day practice and 1 advised they had had some queries, however, didn't feel they had enough exposure to comment. GPs and ANPs surveyed work within the South East Hants and Portsmouth in general practice and out of hours services for GP Federations.

3.37 3 of the 20 GPs/ANPs who highlighted they believe supply was an issue for patients, highlighted it's also an issue for care homes managing patients.

Urgent Treatment Cantre Anecdotal Evidence:

3.38 In an interview carried out with Petersfield Urgent Treatment Centre senior staff regarding accessing stoma care support services, staff linked to the same trust, (Southern Health Foundation Trust) who provide stoma care services locally, advised that they find it difficult to access the right support for patients who attend the UTC for help with their appliances. They also highlighted although numbers are not enormous, it does happen and what tends to happen is non-customised supplies are taken from wards and provided to the patient with little expertise. It's important to note that many patients travel from the Waterlooville, Denmead and Cosham areas to the Urgent Treatment Centre having been signposted by their GP Practice situated only several miles away from Cosham.

3.39 2 Acute Nurse Practitioners questioned informally from St Marys Urgent Treatment Centre (Practice Plus) and 2 ANPs from Gosport Urgent Treatment Centre, advised that this occurs in their UTCs also.

Conclusion

3.40 In light of the above, we respectfully request that NHS Resolution overturn the ICB's decision and approve our application for a dispensing appliance contract at Upper Floor, 25a High Street, Cosham. We firmly believe that our proposed services will address critical gaps, enhance accessibility, and deliver significant benefits to the local community.

3.41 We look forward to the opportunity to discuss this appeal further and provide additional clarifications if required."

4 Summary of Representations

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

5 Consideration

5.1 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

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

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

5.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

5.5 The Committee first considered Regulation 31 of 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).

5.6 The Committee noted the conclusion of the Commissioner that "*Regulation 31(2)(a)(i) is not met as there is currently no person on the DAC pharmaceutical list at the premises to which the application relates.*"

5.7 The Committee noted that the Commissioner had gone on to consider 31(2)(a)(ii) and had concluded that it "*was satisfied that there is no pharmacy providing pharmaceutical services only by way of the provision of appliances within the Cosham area of Portsmouth. The application did not therefore need to be refused in accordance with Regulation 31.*"

5.8 Whilst the Committee noted that the Commissioner had appeared to make a distinction between a "DAC pharmaceutical list" and a "pharmaceutical list", it was mindful of the wording of the application form which states:

"*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*".

5.9 Further, the Committee noted that Regulation 31 does not make any distinction between a "DAC pharmaceutical list and a "pharmaceutical list" instead simply referring to "the pharmaceutical list". The Committee also noted that the language "*the* pharmaceutical list", "*a* pharmaceutical list" and "the pharmaceutical list*s*" is used throughout the Regulations when referring to pharmaceutical lists. The Committee was mindful that it had not received representations from either party as regards to this issue, and how it should interpret the use of the word "the" in this context.

5.10 The Committee went on to consider the wording of the application form and noted that the Applicant had not provided any information in relation to Regulation 31. The Committee 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 and that it makes no specific mention of any lists.

5.11 The address of the instant application is "Upper Floor, 25a High Street Cosham" and from the information provided in the Commissioner's site visit report as well as the decision letter of the Commissioner, there is a pharmacy located at "25 – 27 High Street, Cosham".

5.12 The Committee, based on the undisputed information from the Commissioner as well as the photographs included with the site visit, was of the view that the proposed premises were adjacent to, or in close proximity to, another pharmacy. It did not have regard to the question of which list the pharmacy was on, due to the aforementioned lack of representations in relation to the issue.

5.13 The Committee was of the view that, as there is already a person providing pharmaceutical services, the conditions as set out in Regulation 31(2)(a) may have been met.

5.14 The Committee hence considered whether Regulation 31(2)(b) applied.

5.15 The Committee noted that the pharmacy located at 25 – 27 High Street, Cosham (Lalys Pharmacy) is owned and operated by the Applicant, which has not been disputed by any party. Given that there is a commonality between the two pharmacies, the Committee went on to consider 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).

5.16 The Committee noted that the application before it was for a dispensing appliance contract and the Applicant was seeking to provide "pharmaceutical services" as set out in the Terms of Service (paragraphs 3 to 12, Schedule 5 – DACs).

5.17 The Committee noted that the existing pharmacy located at 25 – 27 High Street, Cosham is included on the pharmaceutical list to provide Essential services (paragraphs 3 to 22, Schedule 4 – pharmacies) and that there is no dispute over this.

5.18 The Committee, noting the distinction on the application form between the two types of pharmaceutical services, was of the view that "Essential Services (paragraphs 3 to 22, Schedule 4)" are not the same as "Terms of service (paragraphs 3 to 12, Scheule 5)".

5.19 The Committee was of the view that as the Applicant was not proposing to provide "Essential Services", (as set out in paragraphs 3 to 22 of Schedule 4 – pharmacies) it is not reasonable to treat the services that the Applicant is proposing to provide (Terms of service (paragraphs 3 to 12, Scheule 5)) as part of the same services as the existing services. On this basis, the Committee was of the view that the premises to which the application relates and the existing listed chemist premises should not be treated as the same site.

5.20 The Committee therefore concluded, based on the information before it, that it was not required to refuse the application under the provisions of Regulation 31. As the Committee was not satisfied as regards to Regulation 31(2)(b) it did not consider it necessary to make any determination on the interpretation of the phrase "the pharmaceutical list" in relation to the wording of Regulation 31(2)(a), or consider it further than it already had in relation to the application.

Regulation 18

5.21 The Committee noted that this was an application for "unforeseen benefits" and fell to be considered under the provisions of Regulation 18 which states:

"(1) If—

(a) NHS England receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and

(b) the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,

in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), NHS England must have regard to the matters set out in paragraph (2).

(2) Those matters are—

(a) whether it is satisfied that granting the application would cause significant detriment to—

(i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or

(ii) the arrangements NHS England has in place for the provision of pharmaceutical services in that area;

(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;

(c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons

offering to secure the improvements or better access that the applicant is offering to secure;

(d) whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;

(e) whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;

(f) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.

(g) whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—

(i) by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and

(ii) since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.

(3) NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."

5.22 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

5.23 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.

5.24 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a)* ***would*** *if they were provided….secure improvements or better access, to pharmaceutical services… (b)* ***would*** *if in specified future circumstances they were provided…secure future improvements or better access to pharmaceutical services…"* (emphasis added).

5.25 The Committee considered the PNA prepared by Portsmouth Health and Wellbeing Board, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a supplementary statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted

that the PNA was dated 1 October 2022 and that a supplementary statement had been issued in July 2023.

5.26 The Committee noted that the PNA had considered Portsmouth as three localities and that the location of the Dispensing Appliance Contractor ("DAC") fell within the "*North encompassing five electoral wards of Drayton and Farlington, Cosham, Paulsgrove, Hilsea and Copnor*."

5.27 The PNA confirms that "*In Portsmouth there are 37 community pharmacies, one distance selling pharmacy and one dispensing appliance contractor. The Health and Wellbeing Board (HWB) consider the location, number, distribution and choice of pharmaceutical services serving the Portsmouth residents to meet the needs of the population, but would not wish to see reductions in the current availability of pharmaceutical services."*

5.28 The Committee noted in Section 5 "Current Pharmaceutical Services" it states:

"5.5 Dispensing Appliance Contractor

Portsmouth has one dispensing appliance contractor (DAC). This type of contractor only supplies appliances e.g. stoma care products (rather than medicines). Many prescriptions for specialist appliances are dispensed by specialist appliance contractors, located across the country and providing delivery services. All pharmacies within the city are also able to dispense appliances."

5.29 Further, in section 6 "NHS Pharmaceutical Services" the PNA states:

"*The PNA has considered the general accessibility to all pharmaceutical services. The NHS regulations have split Pharmaceutical services into Essential Services, Advanced Services and Enhanced Services. The delivery and access to each of these services levels is considered within this PNA.*

…"

5.30 The PNA under 6.1.6.2 "Driving" concludes "*in terms of accessibility to … stoma appliance customisation, the entire population of Portsmouth are within a 15-minute drive travel time. All of the mentioned services, except for Covid-19 vaccination sites, are also within a 10-minute drive time to all residents of Portsmouth*."

5.31 The Committee noted that under 6.3 "Advanced Services" the PNA considers the eight advanced services that may be provided by any community pharmacy, one of which is stoma Appliance Customisation. The PNA states:

"6.3.2 Appliance Use Reviews

Appliance Use Reviews (AURs) can be carried out by a pharmacist or a specialist nurse in the pharmacy or at the patient's home. AURs should improve the patient's knowledge and use of any listed appliances that include stoma care products. Nationally, NHS England data shows little activity is recorded for this service. The contractor questionnaire issued to all 38 community pharmacies and one DAC in Portsmouth had 12 responses. None of the pharmacies reported to provide the AUR service and two reported they would soon be providing the service. Only a very small number of patients would have need to access the AUR service. Locally many GP practices have provided targeted information or signposted patients to specialist nurse services that allow similar reviews to be carried out in the patient's home. Patients have good access to these services.

6.3.3 Stoma customisation services

Stoma customisation services aim to ensure proper use and comfortable fitting of the stoma appliance and to improve the duration of usage, thereby reducing waste. This service is for a very limited number of patients, many of whom may access this service from specialist appliance contractors located outside the city, who operate a mail order service. Patients have a good choice of providers for this specialised service. These patients may also access specialist nurse services. NHS England data show 15 of 38 pharmacies (39%) were accredited to provide stoma customisation services for 2020-21."

5.32 The Committee noted the conclusion of the PNA that:

"The HWB has considered the demographic and health needs (section 8), and pharmaceutical provision (sections 5 and 6) in Portsmouth and concludes:

The current need for pharmaceutical services is met by the existing providers on the pharmaceutical list.

There will not be substantial changes in population areas, nor major development, during the three-year lifespan of this PNA, which would warrant the need for additional pharmaceutical services. Smaller changes would be managed by existing providers.

There is good coverage across the city of Advanced, Enhanced and locally commissioned services in place.

Despite consolidations and changes in provision and extended hours in the last three years which have reduced the availability of pharmaceutical services, we still believe that there is a good range of pharmaceutical services provided in the city. However, further reductions in provision of services would require an updated assessment of the needs of the local population.

That there are no identified specific improvements or better access that could be met by an additional pharmaceutical services provider at this time. Future improvements could be met by the current pharmaceutical service providers."

5.33 The Committee noted that the Applicant seeks to provide unforeseen benefits to those patients requiring stoma care appliances, incontinence appliances and wound care appliances specifically within the Portsmouth HWB area. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.

5.34 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

5.35 The Committee had regard to

"(a) whether it is satisfied that granting the application would cause significant detriment to—

(i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB"

5.36 The Committee noted that the Commissioner had stated that it was "*not aware of any plans that would be affected*" and had concluded that "*granting the application would not cause significant detriment in this regard*". The Committee noted that this had not been disputed on appeal. On the basis of the information available, the Committee

was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.

5.37 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

5.38 The Committee had regard to

"(a) whether it is satisfied that granting the application would cause significant detriment to— …

(ii) the arrangements NHS England has in place for the provision of pharmaceutical services in that area"

5.39 The Committee noted that the Commissioner had stated that it had "*found no proof to support the suggestion that if the application was to be granted it would cause significant detriment to the arrangements in place …"* and had gone on to conclude that it was not obliged to refuse the application on this basis. The Committee noted that the decision of the Commissioner had not been disputed either on appeal or in subsequent representations. On the basis of the information before it, the Committee was not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

5.40 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

5.41 The Committee had regard to

"(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published"

Regulation 18(2)(b)(i) to (iii)

5.42 The Committee had regard to the location of existing pharmacies and GP surgeries as provided on the map by the Commissioner which had not been disputed.

5.43 The Committee noted that there is currently a DAC within Portsmouth and further noted the undisputed comments from the PNA that "*In terms of accessibility … stoma appliance customisation, the entire population of Portsmouth are within a 15 minute drive travel time. All mentioned services … are also within a 10 minute drive time to all residents in Portsmouth.*"

5.44 The Committee noted that there are 6 pharmacies located within 1.5 miles of the proposed site, some of which offer Advanced services. In addition the Committee noted the undisputed comments from the Commissioner that there are 2 DAC's located within 13 miles of the proposed site (at 5.9 miles and 12.2 miles away). The Committee noted that the Applicant had not provided any information to demonstrate that patients were experiencing any difficulties in accessing DAC services either on foot or via public or private transport or why a DAC located at the proposed site would improve access for patients. The Committee was of the view that there was nothing provided with regard to physical access in the area of the HWB which demonstrated that those who require the services of a DAC were not having their prescriptions fulfilled.

5.45 The Committee noted the comments from the Applicant that the existing provision does not meet the demands, however the Committee noted that there was very little information provided by the Applicant to support this statement. Whilst the Committee noted the comments from the Applicant with regard to the "straw poll" which they had carried out, the Committee noted that no information had been provided as to how this had been carried out, who had been asked or how the information had been gathered and collated. The Committee also noted the comments from the Applicant with regard to the "commentary and testimony" however it again noted that there was no information provided as to how this had been obtained and further it appeared to be from one individual. The Committee placed no weight on this information.

5.46 The Committee noted that due to the nature of the service provided, the appliances are able to be delivered to patients across the country from any specific DAC as well as through other pharmacies. The Committee was mindful that existing DACs do not limit their services by local geography. The Committee noted that no information had been provided by the Applicant to show that the existing pharmacies or DACs were not providing the relevant appliances or that patients were experiencing difficulties in accessing these services from the existing pharmacies in the HWB area or from DACs in other HWB areas.

5.47 The Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.

5.48 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. In considering 18(2)(b)(ii), the Committee identified that accessing a DAC and in particular accessing stoma appliances, incontinence appliances and wound appliances might be difficult for people with protected characteristics, based on age and disability, particularly due to the nature of the services that DACs offer.

5.49 Whilst the Committee accepted that there were always people in an area who share a protected characteristic, for the reasons set out above with regard to the lack of information on access, the Committee was of the view that it had very little information before it as to how the DAC would be of benefit. The Committee noted that there was very little information provided regarding those who may share a protected characteristic other than generic statements. The Committee was of the view that it was not sufficient to make speculative assumptions as to how many patients there may be, what their needs were and what the difficulties might be. The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.

5.50 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location. The Committee was of the view that whilst the Applicant states that they are currently exploring the markets for various products, there are already appliances that patients are able to be prescribed and have access to. The Committee was of the view that there was nothing provided by the Applicant which demonstrated that they were seeking to rely on innovation in this application. The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

5.51 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.

5.52 Whilst the Committee noted the information provided by the Applicant with regard to the products that it would be providing and supplying and how they should be used, the Committee was mindful that there was very little information provided by the Applicant to demonstrate that there was a need for these appliances within the HWB area to such an extent that the application should be granted. The Committee further noted that there was nothing provided which demonstrates that this application would offer improvements or better access to those who are currently needing these appliances or may need use of these appliances in the future.

5.53 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

5.54 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).

5.55 No deferral or refusal under Regulation 18(2)(f) was required in this case.

5.56 The Committee had regard to Regulation 18(2)(g) and found no reason that required it to refuse the application under this Regulation.

5.57 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.

5.58 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services that would constitute a significant benefit.

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

5.59.1 confirm the Commissioner's decision;

5.59.2 quash the Commissioner's decision and redetermine the application;

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

5.60 Although the Committee had reached the same conclusion as the Commissioner, it had done so for different reasons, in particular on its consideration of Regulation 31. In those circumstances, the Committee determined that the decision of the Commissioner must be quashed.

5.61 The Committee went on to consider whether there should be a further notification to the parties 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.

5.62 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.

5.63 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

6 DECISION

6.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.

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

6.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;

6.4 The Committee determined that the application should be refused on the following basis:

6.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –

6.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;

6.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and

6.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;

6.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Case Manager
Primary Care Appeals