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23 May 2025

REF: SHA/26526

APPEAL AGAINST NORTH EAST LONDON ICB DECISION TO GRANT AN APPLICATION BY GREENLIGHT HEALTHCARE LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST AT PHARMACY UNIT, HARFORD HEALTH CENTRE, 115 HARFORD STREET, LONDON, E1 4FG WITH REGARD TO FUTURE NEED UNDER REGULATION 15

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, subject to the condition as set out in the PNA that "pharmaceutical services are not provided at the premises to which the application relates (115 Harford Street, London E1 4FG) until the services provided by the current LPS pharmacy at Harford Health Centre cease to be provided".

A copy of this decision is being sent to:

Rushport Advisory LLP on behalf of Greenlight Healthcare Ltd
Lyngold Ltd, Sinclair Pharmacy, 557 – 559 Roman Road, Bow, London, E3 5EL
Lyngold Ltd, Sinclair Pharmacy, 50 Ben Jonson Road, London, E1 3NN
Mildcare Ltd
The Old Maids Pharmacy
Kamsons
PCSE on behalf of North East London ICB

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1 The Application

By application dated 2 October 2024, Greenlight Healthcare Ltd ("the Applicant") applied to North East London ICB ("the Commissioner") for inclusion in the pharmaceutical list at Pharmacy Unit, Harford Health Centre, 115 Harford Street, London, E1 4FG with regard to future need under Regulation 15. In support of the application it was stated:

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

1.1.1 "The existing pharmacy operating at the medical centre does so under an LPS contract and is therefore not included in the pharmaceutical list for the HWB.

1.1.2 Regulation 31(2)(a) is clear that an application would only be refused where there is an existing pharmacy that is "on the pharmaceutical list" and that is not the case here.

1.1.3 In addition, the PNA is clear that a condition must be placed upon the opening of a pharmacy following a successful future needs application which acts to ensure that the new pharmacy does not commence services until the previous LPS pharmacy ceases to provide services.

1.1.4 For these reasons regulation 31 does not apply."

1.2 In making this application the Applicant is seeking to meet the future need identified on page 67 of the HWB's pharmaceutical needs assessment.

1.3 "Since 2012 a pharmacy has operated at 115 Harford St, E1 4FG, this being collocated with the Harford Health Centre, under a contract for local pharmaceutical services (a "LPS contract") in order to provide pharmaceutical services. This LPS contract terminates on 1 April 2025. Tower Hamlets Health & Wellbeing Board recognises the important function of a pharmacy at the Harford Health Centre and has determined that the termination of the current LPS contract will create a gap in provision. Tower Hamlets Health & Wellbeing Board determines that, an NHS pharmacy, at the same premises as the current LPS pharmacy, will be needed to secure access to pharmaceutical services in the event that the existing LPS pharmacy at Harford Health Centre ceases to provide pharmaceutical services under their LPS contract.

1.4 Any routine application should only be granted subject to a condition that pharmaceutical services are not provided at the premises to which the application relates until the services provided by the current LPS pharmacy at Harford Health Centre cease to be provided and this condition should be included within any approval

of a routine application in accordance with Schedule 2, Part 5, 33(2)(a) of the Regulations."

1.5 In response to "please explain how you intend to meet the identified future need either in whole or in part" the Applicant stated:

1.5.1 "The need will be met in full by opening a pharmacy at the premises identified in the PNA."

2 **The Decision**

The Commissioner considered and decided to grant the application. The decision letter dated 24 January 2025 states:

2.1 "North East London ICB has considered the above application and I am writing to confirm that it has been granted. Please see the enclosed report for the full reasoning."

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

Extract from the London Region Pharmaceutical Services Regulations Committee

2.2 Name of Applicant: Greenlight Healthcare Ltd

2.3 Identified future need that the applicant is offering to meet, as stated in the HWB's PNA: Page 67 of the PNA.

2.4 Status of location: non-controlled locality

2.5 Relevant regulations and guidance:

2.5.1 Regulations 15 and 16 – future needs: additional matters and consequences.

2.5.2 Regulation 31 – refusal: same or adjacent premises.

2.5.3 Regulation 65 – core opening hours conditions.

2.5.4 Regulation 66 – conditions relating to providing directed services.

2.5.5 DH market entry guidance chapter 6.

2.6 Consider impact of decision on those with protected characteristics under the Equalities Act 2010 and is this in accordance with NHS England's Public Sector Equality Duty

2.7 Consider impact of decision on NHS England's duty on health inequality

2.8 None identified

2.9 The London Region PSRC have determined that there is enough information within the papers to decide the application without an oral hearing.

Regulation 31

2.10 There are no pharmacies adjacent to the site in question; therefore regulation 31 does not apply.

2.11 There is currently an LPS on site under the same company name, however, this has been given notice of termination; to expire on 25 March 2025, a new pharmacy would not be opened until this had been closed.

Regulation 32

2.12 There are currently no LPS designations in this area therefore regulation 32 is not engaged.

2.13 Information from the Applicant

2.13.1 See paragraphs 1.3 – 1.4 above.

2.13.2 Regulation 31 – see paragraphs 1.1.1 – 1.1.4 above.

2.14 Boots Comments

2.14.1 The applicant has submitted an application under Regulation 15 of these regulations offering to meet an identified future need.

2.14.2 The Tower Hamlets PNA appears to suggest that when the current LPS contract at the Health Centre ceases, a gap will be created at this location. We ask that the deciding committee are satisfied that this application meets the relevant criteria and at no point will there be two pharmacies at the same location.

2.15 Community Pharmacy North East London (LPC) Comments

2.15.1 North East London LPC have noted this application in respect of an application offering to meet an identified future need at Harford Health Centre, 115 Harford Street, London E1 4FG by Greenlight Healthcare Limited.

2.15.2 We would like to be reassured that NHSE will ensure all the requirements and regulations are met with respect to this this [sic] application.

2.15.3 We would also like to remind NHSE that there are 16 pharmacies within 1 mile and 42 pharmacies within 1.5miles.

2.15.4 NEL LPC would like to be updated on any further communication on this application.

2.16 Kamsons Comments

2.16.1 I consider that the application should be refused.

2.16.2 The applicant is applying to change their Local Pharmaceutical Services (LPS) contract to a Pharmaceutical Services (PhS) contract as their LPS contract is ending.

2.16.3 There are a number of points that the Pharmaceutical Services Regulations Committee (PSRC) should consider with this application.

2.16.4 The applicant states, in capital letters, that their application should not be refused under Paragraph 31 of the Regulations [quoted in full]:

2.16.5 It is clear that the applicant is:

2.16.5.1 Already on the pharmaceutical list and has premises providing pharmaceutical services under a LPS contract and others under a Pharmaceutical Services (PhS) contract.

2.16.5.2 The applicant is already providing pharmaceutical services from the premises.

2.16.6 It is also clear that Regulation 31(2)(a) uses the words "pharmaceutical services" in a context that does not preclude meaning either services provided under a LPS or a PhS contract.

2.16.7 As there is already someone, which happens to also be the applicant, who is

2.16.7.1 On a Pharmaceutical List

2.16.7.2 Already providing "pharmaceutical services" from the premises applied for and

2.16.7.3 It is also most certainly "reasonable" for NHS England 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)."

2.16.8 The Regulation gives the PRSC no choice and the application "must be refused where paragraph (2) applies."

2.16.9 Upon awarding the LPS contract at this site in 2012, the contract letter sent out by the PCT on 12th April 2012 clearly stated The PCT [sic] can also confirm that as this contract is a new contract there will be no right of return to the PCT's pharmaceutical list at either the end of the 10-year contract or at any other time where the contract is terminated. This letter is attached as Appendix 1 [see 4.3.15 – 4.3.19 below]. Therefore, from the outset, this LPS contract was not intended to simply convert into a Pharmaceutical Services contracted pharmacy at the end of the term of the LPS contract. Of course, the applicant, like anyone, is entitled to apply for a Pharmaceutical Services contract but it should be to meet a significant need and to fill a gap in services and not just to continue services which the PCT, a body which no longer exists, thought desirable to tender for over a decade ago via a mechanism designed to circumvent the legal tests for a new Pharmaceutical Services contract.

2.17 Lansbury Comments

2.17.1 As you are aware, the soon-expired Local Pharmaceutical Services (LPS) Contract was originally granted to Greenlight Healthcare Limited by the Tower Hamlets PCT in April 2012 with specific service delivery markers and KPIs. Sadly, the contractor has allegedly not fulfilled its contractual obligation by failing to open the pharmacy from 8am to 8pm. As such, by granting the above application to the incumbent contractor, it essentially becomes a reward and disregards the wrongdoings thus raising the question of making the ICB abetting a legal right to do legal wrong. If NHS England shares our views, then the application should be refused.

2.17.2 As you are also aware, it was also a condition that whilst the above contract was a new contract, there would be no right of return to the PCT's pharmaceutical lists at either the end of the 10-year contract or at any other time when the contract is terminated. This was clearly stipulated and accepted by the applicant at the time. We refer our observation to Regulation 108 of The

National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 which states "If a contractor, on entering into the standard form of LPS scheme, gives up a right to be on a pharmaceutical list". If our interpretation is correct, then this application must be refused.

2.17.3 Moreover, by granting the above contract, it essentially rollovers the LPS contract to the standard NHS dispensing contract without due consideration and that we are unsure if the decision would be unlawful. This is because if the contract were to be granted without sufficient procurement due diligent via a wider expression of interest, the decision making akin that of the unlawful use of the "VIP Lane" by the Government to award contracts for the PPE. If NHS England shares our concern in avoiding drawing unnecessary comparison, then this application must be refused.

2.17.4 It also follows that upon the end of the LPS contract, should there be a need for pharmaceutical services identified as per the PNA, then there should be an open consultation to seek innovative ways to deliver pharmaceutical care fit for the future. In contrast, we consider the above contract application represents a reincarnation of the old LPS service delivery model, which was 12 years old in the making, and sadly, there was nothing new and without any ground breaking innovation. If NHS England shares our visions, then the application should be disregarded.

2.17.5 Indeed, we feel the expiry of these LPS contracts presents a fantastic opportunity for the ICB to create a future-looking pharmaceutical hub by leveraging the most abundant and exceptional resource within Tower Hamlets – the pharmacists. Not only Tower Hamlets have one of the highest numbers of IPP working in community pharmacy, with many already making significant differences to patients with diabetes, hypertension etc., but some of us also have special interests in genomics, alternative therapy, diagnostics, artificial intelligence, blockchain technology etc. These are untapped human capital. Furthermore, the technology is already here. For example, "AI Chat box in Pharmacy" has already been featured in the Pharmaceutical Journal [August 23] and so has genomics testing in community pharmacy [June 22] as well as 3D printing and personalised medicine [March 22].

2.17.6 With a patient-centric and technologically minded workforce amongst the community pharmacists within Tower Hamlets, we believe the timing is perfect. For example, could this site become a consortium hub to deliver the future of pharmaceutical services by embracing nascent healthcare technology? Could the ICB use this opportunity to leverage the strengths of many talented and future-ready Tower Hamlets pharmacists? Could the North East London ICB become the first ICB to trailblazing these nascent technologies and innovative concepts in patient-centred pharmaceutical care?

2.17.7 In summary, would decision-makers be satisfied to grant a contract to a single operator that has failed in the past or would they like to capitalise on this perfect opportunity to harness the strengths of the many talented pharmacists for the future? We consider the evidence apparent and ask NHS England to disregard the above application, promote NEL ICB to seek collaboration interests from many Tower Hamlets pharmacists and start to embrace a visionary healthcare journey for the population in Tower Hamlets.

2.17.8 Finally, please note that in the event that NHS England (or NHS Resolution in the event of an appeal) decides to hold First-tier Tribunal (Health, Education and Social Care) hearing, we would wish to attend such a hearing and make oral representations.

2.18 Lincoln Pharmacy Comments

2.18.1 I am writing to formally object to the automatic awarding of a Change to a Pharmaceutical Services (PhS) NHS Pharmaceutical contracts to Greenlight Healthcare Ltd at the following locations upon the expiration of their Local Pharmaceutical Services (LPS) contracts on 7th June 2025 and 1st April 2025 respectively.

2.18.1.1 St Andrews Health Centre, E3 3FF Ref - CAS-332489-K9Q7Q5

2.18.1.2 Harford Health Centre, E1 4FG Ref - CAS-332491-Q2G0X2

2.18.2 I strongly object to their applications to automatically change their Local Pharmaceutical services (LPS) contract to a Pharmaceutical services (PhS) contract upon expiration for the following reasons below:

2.18.3 Both sites are designated LPS sites

2.18.4 It is my understanding that whilst both these sites are LPS sites, no application for Pharmaceutical Services (PhS) should be considered at these sites or any site in the neighbourhoods.

2.18.5 "Pharmaceutical list applications means applications for inclusion in a Pharmaceutical list"

2.18.6 The relevant Regulations (made under this paragraph and other powers) are the National Health service (local Pharmaceutical Services etc) Regulations 2006 ("the LPS Regulations"). Regulation 4 provides:

"(1) Subject to following provisions of this Regulation a Primary Care Trust may designate neighbourhoods, premises or descriptions of premises for purpose of paragraph 2 of schedule 8A to the Act.

(2) Where a destination has been made or varied under this Regulation, the Primary Care Trust may defer consideration of all other part 2 applications in respect of the designated neighbourhoods, premises or description of premises, until such time as the designation is cancelled.

2.18.7 Furthermore, when these contracts were awarded, the then PCT confirmed by letter "that as this contract is a new contract there will be no right of return to the PCT's pharmaceutical list at either the end of the 10-year contract or at any other time where the contract is terminated."

2.18.8 Purpose PCT considered LPS despite there being adequate NHS Pharmaceutical provision

2.18.9 The PCT actively considered that LPS might play a role in innovative future provision and delivery of Pharmaceutical services with extended hours that would have a positive impact in the health and wellbeing of the local population and support the development of the Community Pharmacies within the respective neighbourhoods. On this basis the LPS contracts were granted to Greenlight in the hope they would fulfil this ambition under the protection of an LPS where no other PHS contact could apply or minor relocate to do the same within these neighbourhoods. I would like to remind the committee Waremoss Ltd was less than 500 meters away and their application to minor relocate to this site was rejected.

2.18.10 Furthermore, Greenlight Healthcare Ltd were given financial support of public funds to achieve this whereas existing pharmacies within respective neighbourhoods did not have this umbrella of protection, security or funding. As far as we are concerned, they have not fulfilled on this ambition and no innovation has taken place that has had a positive impact on the health and wellbeing of the local population or the network of Pharmacies within the neighbourhoods.

2.18.11 In fact, they reduced their contracted working hours and access to services proving that there was more than adequate provision of services within both neighbourhoods. In all these years I was never contacted by Greenlight on how they could help me develop services in an innovate way or provide ground breaking support to me or all the other contractors. On the contrary they used this valuable funding to develop CPD of their own workforce and merely invited us to join in the training that we individually already had in place. In twelve years, never once have I been approached by Greenlight to ask me what are my teams training needs or my training needs to better serve my community.

2.18.12 I would go further to say that without any public funding, I have been more innovative, invested more in the community and have developed a state-of-the-art Pharmacy premises with three consultation rooms. I have invested in automation and have a total of 7 apprentices working their way to accuracy checking technicians. They are highly skilled in ear micro suction, vaccination, Phlebotomy and healthy living advice. We were the first Phase pharmacy to be involved in Covid vaccination delivery, polio vaccination delivery and now MMR vaccination delivery. We have supported all PCN networks which includes Harford Health Centre in vaccinating their housebound patients for Covid and Flu vaccinations over the last three campaigns. We have, I believe, vaccinated more of the local population then both Greenlight Pharmacy sites put together.

2.18.13 I am an Independent Prescriber and have used this skill to support the local population. All this without using a penny of public funds. I am inviting the committee to come visit my practice to see for themselves the level of innovation and investment we have made and continue to make.

2.18.14 We along with all the other neighbouring pharmacies in both neighbourhoods are more than capable of fulfilling the Pharmaceutical needs to the local population when both these LPS ends and have already made investments and have the capacity to fulfil the needs of an increase in local population. Please see two supporting articles attached to this email for the committee to read and also a link to 360Degree Society:

2.18.14.1 Pharmacy Business Magazine – “Robotic revolution: Atul Patel’s prescription for pharmacy innovation” (attached to email)

2.18.14.2 P3 Magazine – “A Vision for Community” Pages 1-8 (attached to email)

2.18.14.3 https://www.360degreesociety.org/about-us - (you can see my profile on this page)

2.18.15 Contravention of Fair Competition Principles

2.18.16 Automatically awarding the NHS contracts to Greenlight Pharmacy without opening the sites to a competitive application process breaches the principles of fair competition outlined in The Enterprise Act 2002 and The Competition Act 1998. Such a decision would preclude other potential providers from applying for these sites, which is inherently anti-competitive. This could lead to

reduced innovation, diminished service quality, and a lack of transparency in the allocation process.

2.18.17 Lack of a Proper Impact Assessment

2.18.18 The Pharmaceutical Needs Assessment (PNA) has not accounted for the potential impact on local pharmacies if Greenlight Pharmacy to automatically switch from LPS contract to PsH contracts [sic]. Existing local pharmacies, including ours, have made significant investments in technology such as robotics, automation, and artificial intelligence, equipping them to meet the growing demands of the community without the need for additional NHS-funded contracts. No proper consultation or evaluation has been conducted to determine whether existing pharmacies could absorb the demand following the expiration of the LPS contracts as well as increase in expected population within both neighbourhoods.

2.18.19 We believe the Pharmaceutical Needs Assessment (PNA) is outdated and the committee reject these applications and should defer any future applications until the new PNA is published in 2025 and a robust impact study has been carried out.

2.18.20 Failure to Justify Continuation Under Pharmaceutical Services (PhS) NHS Pharmaceutical contracts

2.18.21 Greenlight Pharmacy has benefited from local authority support during its tenure as an LPS provider, which is not available to other pharmacies in the area. There is no guarantee that Greenlight Pharmacy will continue to deliver the same level of services or maintain extended opening hours under an NHS contract. This raises concerns about the justification for their automatic award when other providers have proven their ability to meet community needs without additional support.

2.18.22 Risk of Service Duplication and Inefficiency

2.18.23 Automatically awarding these sites to Greenlight Pharmacy risks duplicating services already provided by existing pharmacies, leading to inefficiencies and potential over-saturation in the area. The transition from LPS to NHS contracts without proper evaluation could lead to redundant service provision, diverting resources away from more pressing community needs. Government world class commissioning guidelines on procuring new services clearly indicate that, commissioning of new services should not have any detriment effect or risk to the access of current services available to the population in the respective neighbourhoods. Granting of this application will clearly put at risk access to current services that are available to the communities via current PhS contracts in both neighbourhoods, especially in the current economic climate where many pharmacies have been forced to close. These applications are not in the best interest of the overall population and will destabilise the current investment in services by the current PhS contractors in the neighbourhoods. The committee needs to take all the above points into consideration now after the European Court of Justice ruling on 19th May 2009. Extract from the court order below:

2.18.24 It is undeniable that a Pharmacist, like other person, peruses the objective of making a profit. However, as a pharmacist by profession, he is presumed to operate the Pharmacy not with purely economic objective, but also from a professional viewpoint. His private interest connected and by the responsibility which he owes, given that any breach of rules of the law or professional

conduct undermines not only the value of his investment but also his own professional existence.

2.18.25 Prejudicing Future Applications

2.18.26 Granting Greenlight Pharmacy automatic inclusion on the NHS Pharmaceutical list would deny other providers the opportunity to apply for PsH contracts [sic] if indeed the new robust PNA deems with a more detail impact study indicates there is a gap in Pharmaceutical services. This limits competition and fails to allow a fair process for determining the most suitable provider to meet the pharmaceutical needs of the community.

2.18.27 Community Needs Can Be Met by Existing Pharmacies

2.18.28 Local pharmacies in the vicinity have proactively invested in infrastructure to address the current and future needs of the population. These investments, made without external funding, demonstrate the capability and readiness of existing providers to meet the community's pharmaceutical requirements without the need for additional NHS contracts at these locations. Once again I am inviting the committee to come see our practice before making any decision on both these applications made by Greenlight Healthcare Ltd.

2.18.29 Conclusion

2.18.30 For all the reasons outlined above, I strongly urge Pharmaceutical Services Regulations Committee refuse both these application made by Greenlight Healthcare Ltd and furthermore defer granting any future applications for a PsH contract [sic] until the new PNA is published in 2025 replacing this outdated PNA that has not taken into account the investment in premises improvements, automation, artificial intelligence, etc that current PsH contractors have made in both neighbourhoods. Pharmacies like myself made these investments in both neighbourhoods to ensure there would be no gaps in Pharmaceutical services in anticipation of these LPS contracts coming to an end and any anticipated increase in population via new developments.

2.18.31 Thank you for considering this objection. I trust that the committee will uphold the principles of fairness, transparency, and competition in its decision-making process.

2.19 Nash Pharamcy Comments

2.19.1 As you are aware, the soon-expired Local Pharmaceutical Services (LPS) Contract was originally granted to Greenlight Healthcare Limited by the Tower Hamlets PCT in April 2012 with specific service delivery markers and KPIs. Sadly, the contractor has allegedly not fulfilled its contractual obligation by failing to open the pharmacy from 8am to 8pm. As such, by granting the above application to the incumbent contractor, it essentially becomes a reward and disregards the wrongdoings thus raising the question of making the ICB abetting a legal right to do legal wrong. If NHS England shares our views, then the application should be refused.

2.19.2 As you are also aware, it was also a condition that whilst the above contract was a new contract, there would be no right of return to the PCT's pharmaceutical lists at either the end of the 10-year contract or at any other time when the contract is terminated. This was clearly stipulated and accepted by the applicant at the time. We refer our observation to Regulation 108 of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 which states "If a contractor, on entering into the standard

form of LPS scheme, gives up a right to be on a pharmaceutical list". If our interpretation is correct, then this application must be refused.

2.19.3 Moreover, by granting the above contract, it essentially rollovers the LPS contract to the standard NHS dispensing contract without due consideration and that we are unsure if the decision would be unlawful. This is because if the contract were to be granted without sufficient procurement due diligent via a wider expression of interest, the decision making akin that of the unlawful use of the "VIP Lane" by the Government to award contracts for the PPE. If NHS England shares our concern in avoiding drawing unnecessary comparison, then this application must be refused.

2.19.4 It also follows that upon the end of the LPS contract, should there be a need for pharmaceutical services identified as per the PNA, then there should be an open consultation to seek innovative ways to deliver pharmaceutical care fit for the future. In contrast, we consider the above contract application represents a reincarnation of the old LPS service delivery model, which was 12 years old in the making, and sadly, there was nothing new and without any ground breaking innovation. If NHS England shares our visions, then the application should be disregarded.

2.19.5 Indeed, we feel the expiry of these LPS contracts presents a fantastic opportunity for the ICB to create a future-looking pharmaceutical hub by leveraging the most abundant and exceptional resource within Tower Hamlets – the pharmacists. Not only Tower Hamlets have one of the highest numbers of IPP working in community pharmacy, with many already making significant differences to patients with diabetes, hypertension etc., but some of us also have special interests in genomics, alternative therapy, diagnostics, artificial intelligence, blockchain technology etc. These are untapped human capital. Furthermore, the technology is already here. For example, "AI Chat box in Pharmacy" has already been featured in the Pharmaceutical Journal [August 23] and so has genomics testing in community pharmacy [June 22] as well as 3D printing and personalised medicine [March 22].

2.19.6 With a patient-centric and technologically minded workforce amongst the community pharmacists within Tower Hamlets, we believe the timing is perfect. For example, could this site become a consortium hub to deliver the future of pharmaceutical services by embracing nascent healthcare technology? Could the ICB use this opportunity to leverage the strengths of many talented and future-ready Tower Hamlets pharmacists? Could the North East London ICB become the first ICB to trailblazing these nascent technologies and innovative concepts in patient-centred pharmaceutical care?

2.19.7 In summary, would decision-makers be satisfied to grant a contract to a single operator that has failed in the past or would they like to capitalise on this perfect opportunity to harness the strengths of the many talented pharmacists for the future? We consider the evidence apparent and ask NHS England to disregard the above application, promote NEL ICB to seek collaboration interests from many Tower Hamlets pharmacists and start to embrace a visionary healthcare journey for the population in Tower Hamlets.

2.19.8 Finally, please note that in the event that NHS England (or NHS Resolution in the event of an appeal) decides to hold First-tier Tribunal (Health, Education and Social Care) hearing, we would wish to attend such a hearing and make oral representations.

2.20 Old Maids Pharmacy Comments

2.20.1 The applicant is applying to convert a Local Pharmaceutical Service (LPS) contract to Pharmaceutical Service (PhS) contract as their LPS contract is coming to an end.

2.20.2 I would like to raise the following points when considering this application.

2.20.3 The applicant is providing pharmaceutical service under LPS contract which was granted by the PCT in 2012. To provide pharmaceutical services and specific local services at the backdrop of the 2012 Olympic Games and the anticipated increase in demands for pharmaceutical services. It is important to note the contract has no right of return (please see attached PCT letter). If there was any anticipated need or future gaps the PCT would have made provision for renewal or extension. The application mentions it has been providing services since 2012; this is not a reason to be granted a new PhS contract.

2.20.4 The applicant mentions to meet future needs. The PNA is over two years old and lot has changed since then locally and nationally in the sector. It has to be noted we have had a significant number of pharmacy closures and that has not created any gap in the service provision as both nearby pharmacies and distance selling pharmacies are able to adequately continue to provide a good pharmaceutical service without creating any gaps. Just to mention, we have had local pharmacy closures, Lloyds Chemist in Sainsbury, E1 5SD. Also, consolidation (which gives protection against new pharmacy under the PNA) of Day Lewis and Shanty's Chemist in Whitechapel, Bell and Day Lewis in Bow. This inevitably meant loss of pharmacy contracts in our locality and resulted in no gap in pharmaceuticals service provisions.

2.20.5 The PNA identifies that there are currently no gaps in any service. With the ending of the LPS contract, there will still be no gaps in services. The majority of the patients at Harford Health Centre live in the Ocean Estate and surrounding areas and there are two pharmacies within the vicinity, Sinclair's Pharmacy and Medichem Pharmacy which are minutes walking distance meeting the patient's needs. Furthermore are 9 other pharmacies within 2km who will more than adequately meet the pharmaceutical needs of the population and any future identified needs. I will urge the committee to visit the locality to realise that there are no need for another pharmacy. The PNA also indicates that no new contract may be granted until the LPS contract is terminated. So the consideration that PSRC has to take is that if a new contract application is made in the area, not necessarily in the same premises, would the granted. In my opinion, it should NOT be granted as there are numerous pharmacies within the area that provide all the commissioned services and are willing to provide any commissioned services in the future.

2.20.6 It is not clear how there will be any gaps and if that was to be the case, there has not been any consultation on how the Health and Well Being Board (HWB) came to the conclusion that there will be a gap in services. The HWB needs to conduct consultation taking all factors and views of stakeholders and make a supplemental statement to reflect the changes in the sector.

2.20.7 It is important to note the current LPS pharmacy will come to an end on 25th of March 2025 and thus there is currently no gap at all and any assumed future gaps after the closure of the LPS contract will be adequately met by the many local PhS contracts. It is also important to note a new PNA is due out in October 2025, a few months after the end of the LPS contract. I believe PSRC should wait until the new PNA is out before making any decision of any future gaps in provision.

2.20.8 The LPS contract was granted for essential and advance services as well as specific local pharmaceutical services namely developing model to support adherence, Integrated NMS and targeted MUR into care pathways (MUR services has been decommissioned few years back), developing pharmacy workforce and opening from 8am to 8pm. With due respect Greenlight has failed on all the specific local services set out by the PCT who have not monitored as the PCT does not exist. We have seen no evidence of successful delivery of any of those services. As for NMS, essential and advanced services in the CPCF and locally commissioned services are being adequately provided by the numerous local PhS contract pharmacies.

2.20.9 We all the local pharmacies in the area have made significant investments in our teams, premises, technology, training and education to deliver positive outcomes to our patients and are equipped to meet all current and any future needs, as will be identified in the new PNA. I would urge the committee to take all these into consideration to support the viability of our local PhS contracts, as pharmacies have been struggling for survival from underfunding for years, future funding uncertainties and increases in operational costs.

2.20.10 In summary

2.20.11 There is sufficient choice of pharmacy in Tower Hamlet. There are neither current nor future gap in Essential, Advanced, Enhanced and locally commissioned services across the whole borough as noted on the conclusion page of the current PNA and the loss of this LPS contract when it ends on 25th of March 2025 will not create any gap. The HWB needs to carry out consultation at that time to conclude any perceived gaps or wait till the new PNA in October 2025. I therefore believe this application should be refused.

2.21 Sinclairs Pharmacy (Roman Road) comments

2.21.1 I am writing to formally express my objection to the applications submitted by Greenlight Healthcare Ltd. for the conversion of their Local Pharmaceutical Services (LPS) contracts to permanent NHS Pharmaceutical Services (PhS) contracts at the following locations:

2.21.1.1 Harford Health Centre (E1 4FG), Reference: CAS-332491-Q2G0X2

2.21.2 I believe these applications should be rejected, and I will outline the key reasons for my objections for the committee's consideration.

2.21.3 Unjustified Expansion of Services

2.21.4 Greenlight Healthcare Ltd. was initially established as a temporary healthcare provider to meet increased demand during the 2012 Olympic Games. Since that period, the local area has been adequately served by a network of existing pharmacies, all of which hold NHS Pharmaceutical Services contracts. These providers have consistently delivered high-quality services and effectively addressed local pharmaceutical needs. Transitioning Greenlight to a permanent contract would introduce unfair competition and could disadvantage established local businesses that have been integral to the community for many years.

2.21.5 Given that the pharmaceutical services landscape in the area is already sufficiently robust, the establishment of an additional permanent provider would create unnecessary duplication and potentially undermine the financial stability of existing service providers.

2.21.6 Potential Disruption to Existing Services

2.21.7 Greenlight's operations have diverted patients away from established providers, leading to unnecessary disruption in the local pharmaceutical network and an increase in operational costs. The resulting destabilization of well-established services poses a significant risk to the ongoing viability of local pharmacies that have long served the community.

2.21.8 Inconsistency with the Primary Care Needs Assessment (PNA)

2.21.9 The local Primary Care Needs Assessment (PNA) clearly indicates that there are no identified gaps in the provision of pharmaceutical services. The existing NHS-contracted pharmacies are well-equipped to meet community needs and have demonstrated their ability to adapt to changing circumstances. Approval of Greenlight's application would contradict the PNA's findings, undermining the strategic planning intended to maintain an efficient and effective healthcare delivery system.

2.21.10 Financial Implications

2.21.11 Given the ongoing pressures on NHS funding, approving an additional permanent provider in a sufficiently served area would place further strain on already limited healthcare resources. The existing network of NHS-contracted pharmacies has consistently demonstrated its ability to manage resources effectively and expand services without the need for additional funding.

2.21.12 Granting Greenlight a permanent contract would represent an unnecessary financial burden.

2.21.13 Breach of Original Contractual Terms

2.21.14 The original LPS contracts explicitly stipulated that these sites would not transition automatically to the NHS Pharmaceutical Services contract list. Greenlight's application contravenes these terms and, if approved, would set a concerning precedent for future contractual arrangements.

2.21.15 Risk to Local Pharmacy Investments

2.21.16 Local pharmacies have made significant investments in service expansion, automation, and innovation to improve patient care. The introduction of a new permanent provider would undermine these investments, potentially devaluing the financial and strategic commitments made by existing businesses, and could deter future investment in the sector.

2.21.17 Concerns Regarding Service Duplication

2.21.18 Approving Greenlight's application would likely result in a duplication of services, leading to inefficient allocation of resources. This could divert attention from other critical areas of healthcare provision and potentially diminish the overall quality of services available to the community.

2.21.19 Recommendations

2.21.20 In light of the aforementioned concerns, I respectfully recommend the following actions:

2.21.20.1 Reject Greenlight Healthcare Ltd.'s applications for PhS contracts at Harford Health Centre (E1 4FG), Reference: CAS-332491-Q2G0X2

2.21.20.2 Support the continued operation of existing NHS Pharmaceutical Services contract holders who have demonstrated their ability to meet local healthcare needs.

2.21.20.3 Initiate a comprehensive review of local healthcare requirements as part of the 2025 Primary Care Needs Assessment to ensure continued alignment between service provision and community needs.

2.21.21 These measures will safeguard the stability and effectiveness of the local pharmacy network while protecting the interests of established providers and the broader community.

2.22 Sinclairs Pharmacy (Ben Johnson Road [sic]) comments

2.22.1 I am writing to formally express my objection to the applications submitted by Greenlight Healthcare Ltd. for the conversion of their Local Pharmaceutical Services (LPS) contracts to permanent NHS Pharmaceutical Services (PhS) contracts at the following locations:

2.22.1.1 St Andrews Health Centre (E3 3FF), Reference: CAS-332489-K9Q7Q5

2.22.1.2 Harford Health Centre (E1 4FG), Reference: CAS-332491-Q2G0X2

2.22.2 I believe these applications should be rejected, and I will outline the key reasons for my objections for the committee's consideration.

2.22.3 Unjustified Expansion of Services

2.22.4 Greenlight Healthcare Ltd. was initially established as a temporary healthcare provider to meet increased demand during the 2012 Olympic Games. Since that period, the local area has been adequately served by a network of existing pharmacies, all of which hold NHS Pharmaceutical Services contracts. These providers have consistently delivered high-quality services and effectively addressed local pharmaceutical needs. Transitioning Greenlight to a permanent contract would introduce unfair competition and could disadvantage established local businesses that have been integral to the community for many years.

2.22.5 Given that the pharmaceutical services landscape in the area is already sufficiently robust, the establishment of an additional permanent provider would create unnecessary duplication and potentially undermine the financial stability of existing service providers.

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2.22.7 Greenlight's operations have diverted patients away from established providers, leading to unnecessary disruption in the local pharmaceutical network and an increase in operational costs. The resulting destabilization of well-established services poses a significant risk to the ongoing viability of local pharmacies that have long served the community.

2.22.8 Inconsistency with the Primary Care Needs Assessment (PNA)

2.22.9 The local Primary Care Needs Assessment (PNA) clearly indicates that there are no identified gaps in the provision of pharmaceutical services. The existing NHS-contracted pharmacies are well-equipped to meet community needs and have demonstrated their ability to adapt to changing circumstances. Approval

of Greenlight's application would contradict the PNA's findings, undermining the strategic planning intended to maintain an efficient and effective healthcare delivery system.

2.22.10 Financial Implications

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2.22.13 The original LPS contracts explicitly stipulated that these sites would not transition automatically to the NHS Pharmaceutical Services contract list. Greenlight's application contravenes these terms and, if approved, would set a concerning precedent for future contractual arrangements.

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2.22.15 Local pharmacies have made significant investments in service expansion, automation, and innovation to improve patient care. The introduction of a new permanent provider would undermine these investments, potentially devaluing the financial and strategic commitments made by existing businesses, and could deter future investment in the sector.

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2.22.17 Approving Greenlight's application would likely result in a duplication of services, leading to inefficient allocation of resources. This could divert attention from other critical areas of healthcare provision and potentially diminish the overall quality of services available to the community.

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2.22.19.3 Initiate a comprehensive review of local healthcare requirements as part of the 2025 Primary Care Needs Assessment to ensure continued alignment between service provision and community needs.

2.22.20 These measures will safeguard the stability and effectiveness of the local pharmacy network while protecting the interests of established providers and the broader community.

2.23 Applicant's Response

2.23.1 I note that the parties repeat the same objections and I have therefore dealt with the objections by way of listing the points made rather than the identity of the objector.

2.23.2 LPS Areas

2.23.3 The Regulations give the ICB the power to defer hearing applications within LPS areas, however there is no obligation to do so. In this case the HWB has properly identified a future need for pharmaceutical services to meet the needs of patients once the LPS contract terminates and there is no justification for delaying consideration of the application.

2.23.4 No "Right of Return" to the Pharmaceutical List

2.23.5 Multiple objectors seem to be under the impression that my client is seeking a "right of return" to the pharmaceutical list or to "convert" its LPS contract to an entry on the pharmaceutical list. This is incorrect. Had a right of return to a pharmaceutical list existed then there would be no need for this identified future need application. Instead, it is acknowledged that the current LPS contract will cease with no right of return to the pharmaceutical list and my client is therefore using the correct procedure of making a new application for inclusion in the pharmaceutical list. My client has therefore followed the correct procedure.

2.23.6 The Operation of / Success of the Current LPS Contract

2.23.7 Multiple parties comment on the operation of the existing LPS contract. Respectfully, this is not relevant to the test that the ICB must apply in this case, which is set out in the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (as amended) (the "Regulations"). The operation of the LPS is a matter between the ICB and my client.

2.23.8 Fair Competition

2.23.9 It is open to any party to submit the same type of application that my client has already submitted and the ICB must make its decision by reference to the Regulations.

2.23.10 Lack of Proper Impact Assessment

2.23.11 The Regulations specifically do not permit grounds for opposing the application, which are a challenge to the legality or reasonableness of a pharmaceutical needs assessment, or to the fairness of the process by which a HWB or Primary Care Trust undertook that assessment.

2.23.12 Service Duplication

2.23.13 It is important to note that there is already a pharmacy at this location, but it will close. The HWB and my client wish to maintain access to a pharmacy and are not duplicating anything.

2.23.14 Regulation 31

2.23.15 One objector seeks to argue that my client's application must be refused under regulation 31. This is incorrect

2.23.16 Regulation 31 states as follows; 31 [quoted in full].

2.23.17 For regulation 31 to apply both of parts (a) and (b) must be true.

2.23.18 Regulation 31(a) only applies where "a person on the pharmaceutical list" is providing or has undertaken to provide pharmaceutical services ("the existing services"). Regulation 31 also makes it clear that the entry on the pharmaceutical list is not for the entire HWB but only relates to either (i) the premises to which the application relates, or (ii) adjacent premises.

2.23.19 An LPS chemist is not included on the pharmaceutical list and there is no person "on the pharmaceutical list" at Harford Health Centre or any adjacent premises.

2.23.20 It is notable that multiple objectors state forcefully that the LPS pharmacy has "no right of return to the pharmaceutical list", so they are clearly aware that my client is not currently on the pharmaceutical list for any premises at Harford Health Centre.

2.23.21 Further, in this case the PNA has specifically stated that a condition of the approval of any application should be that the new pharmacy is not permitted to commence services until the LPS contract has terminated. It is therefore impossible for the new pharmacy to be providing services as the same time as the LPS pharmacy and as a result regulation 31(b) does not apply.

2.23.22 As neither regulation 31(a) nor (b) applies (and both must apply to refuse the application), regulation 31 is not relevant in this case.

2.23.23 As my client's application meets all relevant legal tests under the Regulations it should be approved and we look forward to hearing from you in due course.

General Comments

2.24 Tower Hamlets last published a PNA on September 2024, this is the relevant PNA. The document does state 2023 on the cover, but was only signed off by the HWBB in September 2024. The page that the applicant is relying on was in the draft document as well as the published PNA.

2.25 Page 67 of the PNA states:

"5.2 Local Pharmaceutical Services (LPS) contract

A Local Pharmaceutical Services (LPS) contract is one that is commissioned locally by the local commissioner, not nationally by NHSE. Tower Hamlets has two LPS contracts, initially commissioned by NHS London, both of which terminate in 2025. …… (text removed for LPS not associated with this application).

Since 2012 a pharmacy has operated at 115 Harford St, E1 4FG, this being co-located with the Harford Health Centre, under a contract for local pharmaceutical services (a "LPS contract") in order to provide pharmaceutical services. This LPS contract terminates on 1 April 2025. Tower Hamlets Health & Wellbeing Board recognises the important function of a pharmacy at the Harford Health Centre and has determined that the termination of the current LPS contract will create a gap in provision. Tower Hamlets Health & Wellbeing Board determines that, an NHS pharmacy, at the same premises as the current LPS pharmacy, will be needed to secure access to pharmaceutical services in the event that the existing LPS pharmacy at Harford Health Centre ceases to provide pharmaceutical services under their LPS contract.

Any routine application should only be granted subject to a condition that pharmaceutical services are not provided at the premises to which the application

relates until the services provided by the current LPS pharmacy at Harford Health Centre cease to be provided and this condition should be included within any approval of a routine application in accordance with Schedule 2, Part 5, 33(2)(a) of the Regulations.

The conclusions of the PNA state:

The detailed conclusions are as follows (key types of pharmacy services are specifically detailed below).

8.1 Essential services

> *No gaps have been identified in essential services that if provided either now or over the next three years would secure improvements, or better access, to essential services across the whole borough.*
>
> *There is no gap in the provision of essential services during normal working hours across the whole borough.*
>
> *There are no gaps in the provision of essential services outside of normal working hours across the whole borough.*

8.2 Advanced Services

> *No gaps have been identified that if provided either now or in the future would secure improvements, or better access to advanced services across the whole borough.*
>
> *There are no gaps in the provision of advanced services across the whole borough.*

8.3 Enhanced Services

> *No gaps have been identified that if provided either now or in the future would secure improvements, or better access to enhanced services (relevant services) across the whole borough.*
>
> *There are no gaps in the provision of enhanced services across the whole borough.*

8.4 Locally Commissioned Services

> *There are no gaps in the provision of locally commissioned services (relevant services) at present or over the next three years that would secure improvement or better access to locally commissioned services across the whole borough.*
>
> *There are no gaps in the provision of locally commissioned services across the whole borough.*

The conclusions reached in this PNA report include assessments that have addressed protected characteristics of groups living in the borough localities in relation to access to pharmacies. The assessments show no evidence of any overall differences between or within the localities in Tower Hamlets.

Based on the review of building plans and population projections, there may be a need to review the level of pharmacy services in specific places in the borough in the period up to 2025.

Regular reviews of all the above services are recommended in order to establish if in the future whether changes in these services will secure improvement or better access to pharmacies across the whole borough.

Whether there is sufficient choice of pharmacy in Tower Hamlets has been reviewed, it was decided there was sufficient choice of pharmacy in Tower Hamlets. London boroughs have a greater choice of pharmacy provider compared to many other areas in England."

2.26 The PNA at page 67 states that if the LPS ceases on its expiry, that there is a need to secure pharmaceutical services at that location as a gap would have been created. When the conclusions were made, there was no confirmation that the LPS contracts would be renewed or terminated.

2.27 The two LPS contracts in Tower Hamlets at Harford St Health Centre and St Andrews Health Centre, have now been given a termination notice and will cease on the 25 March 2025 and 7 June 2025 respectively. This will trigger the future need determined by the HWBB in its PNA.

2.28 This application is NOT a right of return application, as this LPS was not given a right of return, this is a fresh application that has been made against the regulations. The LPS termination dates are published in the PNA and is available to anyone that read the PNA. Therefore, it is an option for anyone to apply to open a pharmacy.

15(2)(a) to (e) Deferral

2.29 This Application has not been deferred.

15(2)(e) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs, or future needs, for pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in that area;

2.30 Whilst there have been changes, these are not such that it is essential to refuse the application.

2.31 The LPS contract at Harford St, Health Centre will expire on 25 March 2025 and this has triggered the future need outlined in the PNA.

2.32 The London Region PSRC is satisfied that since the publication of the PNA there have been changes to the future circumstances specified in the PNA and there is not sufficient evidence to suggest whether or not these are significant and that the application should be refused in order to prevent significant detriment to the provision of pharmaceutical services in the area.

15(2)(f) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs, or future needs, for pharmaceutical services in the area of the relevant HWB that are such that-

> *(i) the future circumstances specified in accordance with paragraph 2(b) of Schedule 1 will not, or are now unlikely to, arise (in whole or in part), and*

(ii) granting the application would not secure improvements, or better access, to pharmaceutical services in the area of the new HWB

2.33 The future need has arisen already as the LPS contracts will be ceasing. This application has been made to fill this future need. If this application were granted, this would fulfil the need identified at Harford St.

2.34 The London Region PSRC is satisfied that since the publication of the PNA there have been changes to the future circumstances specified in the PNA, as the future need has arisen.

15(2)(g) whether it is satisfied that

(i) granting the application would only meet the future need mentioned in paragraph (1) in part, and

(ii) if the application were granted, it would be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met

2.35 The future need has arisen already as the LPS contracts will be ceasing. This application has been made to fill this future need. If this application were granted, this would fulfil the need identified at Harford St but not at the other location.

2.36 The London Region PSRC is satisfied that granting this application would meet the future need in full for Harford St. The remaining need identified at St Andrews is likely to be met in the foreseeable future.

15(2)(h) whether –

(i) it is satisfied that granting the application would only meet the future need mentioned in paragraph(1) in part, but

(ii) it considers that, if the application were granted, it would not be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met.

2.37 The future need has arisen already as the LPS contracts will be ceasing. This application has been made to fill this future need. If this application were granted, this would fulfil the need identified at Harford St but not at the other location.

2.38 The London Region PSRC is satisfied that granting this application would meet the future need in full for Harford St, but not any other location, therefore only meeting in part. The remaining need is likely to be met in the foreseeable future.

15(2)(i) whether it is satisfied that-

(i) the future need mentioned in paragraph (1) was for services other than essential services, and

(ii) granting the application would result in an increase in the availability of essential services in the area of the relevant HWB

2.39 The future need identified is for essential services and not for other services, therefore this criterion has not been met.

2.40 The London Region PSRC have determined that that the statement in the PNA only referred to essential services. Therefore, this part of the regulations does not apply.

15(2)(j) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the future need mentioned in paragraph (1) has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services

2.41 The future need mentioned in the PNA has not been met or due to be met by anyone else, therefore this criterion has not been met.

2.42 The London Region PSRC is satisfied that there have not been changes that means the future need has been met or is due to be met.

Decision

2.43 The London Region PSRC have determined that there is enough information within the papers to decide the application without an oral hearing.

2.44 There are no pharmacies adjacent to the site in question; therefore regulation 31 does not apply.

2.45 15(1) The London Region PSRC have determined that there is a future need identified in the PNA and the termination of the LPS contracts in Tower Hamlets at Harford St Health Centre and St Andrews Health Centre has triggered this future need. Therefore, the remaining parts of the regulations need to be assessed.

2.46 15(2)(1) to (d) [sic] The application was not deferred so these parts of the regulations do not apply.

2.47 15(2)(e) The London Region PSRC have determined that it is satisfied that since the publication of the PNA there have been changes to the future circumstances specified in the PNA and there is not sufficient evidence to suggest whether or not these are significant and that the application should be refused in order to prevent significant detriment to the provision of pharmaceutical services in the area.

2.48 15(2)(f) The London Region PSRC have determined that it is satisfied that since the publication of the PNA there have been changes to the future circumstances specified in the PNA as the future need has arisen.

2.49 15(2)(g) The London Region PSRC have determined that it is satisfied that granting this application would meet the future need in full for Harford St. The remaining need identified at St Andrews is likely to be met in the foreseeable future.

2.50 15(2)(h) The London Region PSRC have determined that it is satisfied that granting this application would meet the future need in full for Harford St. but not any other location, therefore meeting the need in part. The remaining need is likely to be met in the foreseeable future.

2.51 15(2)(i) The London Region PSRC have determined that the statement in the PNA only referred to essential services. Therefore, this part of the regulations does not apply.

2.52 15(2)(j) The London Region PSRC have determined that it is satisfied that there have not been changes that means the future need has been met or is due to be met.

2.53 The London Region PSRC have determined that the application does fulfil the criteria at 15(2)(h) and has been granted.

2.54 Determination made by London PSRC on behalf of NHS North East London ICB."

3 **The Appeals**

In a letter dated 16 February 2025, The Old Maids Pharmacy appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "I will like to appeal [sic] against the granting of the above new Pharmaceutical Service (PhS) Contract by North East London ICB. I would like your honour to take the following matters into consideration.

3.1.1 There is currently NO gaps according to the PNA in services, Locally commissioned services or any future services that may be commissioner [sic] as numerous pharmacies in Tower Hamlet in fact 2 pharmacies a within a 2 minute of the new proposed pharmacy site and 9 within 10 minutes walking distance of the new pharmacy site.

3.1.2 The PNA is old and was conducted in 2023 over 2 years ago, although published in September 2024, thus it was outdated by the time it was published. A new consultation or amendment should have been conducted prior to the publication. Also note a new PNA is due in October 2025. A lot has changed in the sector since the last PNA. I urge your honour to wait until the new PNA is out to see if any future Gaps are identified.

3.1.3 Since the last PNA as mentioned a lot has changed, the sector is in crisis due to chronic decade long under funding. A number of closures, mergers, consolidations and multiple exiting the sector due the financial pressures like the Lloyds group. We have had local closures and mergers. Even with all these adversities there has been No gaps in services as other contractors have picked up the services and the sector is over delivering.

3.1.4 The PNA mentions there may be gaps due to the closures of the LPS contract; however we have had a number of pharmacy closures and consolidation in the locality and loss of contracts. This has not created and [sic] any gaps. Just to mention, we have had local pharmacy closures, Lloyds Chemist in Sainsbury, E1 5SD. Also, consolidation (which gives protection against new pharmacy under the PNA) of Day Lewis and Shanty's Chemist in Whitechapel, Bell and Day Lewis in Bow. Please note a number of these have taken place after the PNA was conducted.

3.1.5 We note an LPS contract operated since 2012 and was granted at the anticipated increase in demand of Olympic Games which never materialised. The government assessment of the sector in 2016 felt there were too many pharmacies close to each other and this LPS contract contributed to that view. The government of the time wanted a closure of 3000 pharmacies. The report concluded 40% pharmacies are located in clusters of 3 or more, which are more prominent in London. Tower Hamlet and this locality is a perfect example of this as more than 11 pharmacies are within 10 minutes of the proposed new pharmacies.

3.1.6 The LPS contract served its term and purpose and this is not a reason to feel a gap will be created due to its termination. As evidence nationally and locally proves there is adequate services provision by other contractors in the events of closures.

3.1.7 The sector is fragile and facing immense financial pressures and uncertain future with increases in national living wages and increase in national insurance which will add increase operating costs and further impact the sector. Granting a new pharmacy in the locality will further compound other contractors' ability to continue to operate. This will lead to further closure which

will in turn impact the pharmaceutical services provided and our patients accessing the service and create more gaps.

3.2 I would be grateful if you honour takes all this into consideration and pray that you will uphold our appeal to the benefit of the sector."

In a letter dated 18 February 2025, Mildcare Ltd (t/a Lincoln Pharmacy) appealed against the Commissioner's decision. The grounds of appeal are:

3.3 "I am writing to formally appeal the decision to automatically award a change to a Pharmaceutical Services (PhS) NHS Pharmaceutical Contract to Greenlight Healthcare Ltd at Harford Health Centre, E1 4FG, upon the expiration of their Local Pharmaceutical Services (LPS) contract. Below, I have outlined my reasons for this appeal in detail:

Regulation 31 Applies

3.4 I respectfully disagree with the decision not to hold an oral hearing. Given the number of objections raised, the Committee has failed to provide contractors in the neighbourhood the opportunity to elaborate on our concerns.

3.5 Furthermore, the Committee's conclusion incorrectly states that there are no pharmacies adjacent to the site in question. In fact, there is a pharmacy adjacent to the site, fully capable of continuing services after the LPS contract ends. Additionally, there are 16 pharmacies within a 1-mile radius and 42 within 1.5 miles. This information alone underscores that Regulation 31 applies, and my appeal against the London Region PSRC should be upheld, reversing the Committee's decision.

Breach of Fair Competition Principles

3.6 The automatic awarding of the NHS contract to Greenlight Pharmacy without a competitive application process contravenes fair competition principles outlined in The Enterprise Act 2002 and The Competition Act 1998.

3.7 By excluding other potential providers from the opportunity to bid, the decision stifles innovation, compromises service quality, and undermines transparency in the allocation of NHS contracts. This lack of a competitive process fails to uphold the principles of fairness and equity in service provision.

Lack of Proper Impact Assessment

3.8 The Pharmaceutical Needs Assessment (PNA) does not adequately address the impact on existing local pharmacies should Greenlight Pharmacy transition from an LPS to a PsH contract. It also falls short in providing clear evidence as to how it came to the conclusion there will be a Gap in NHS services.

3.9 Local pharmacies, including ours, have made significant investments in technology—such as robotics, automation, and artificial intelligence—to meet growing community demands without the need for additional NHS-funded contracts. Despite this, no proper consultation or impact evaluation has been conducted to assess whether current providers can meet the needs of the population, particularly in light of anticipated population growth.

3.10 The PNA, conducted in 2023, is outdated and insufficient to justify the automatic awarding of contracts. The decision should be deferred until the new PNA is published in 2025, accompanied by a robust impact and needs assessment study is done. Without evidence to substantiate claims of service gaps, the Committee's conclusions lack credibility.

Community Needs Can Be Met by Existing Pharmacies

3.11 Local pharmacies have proactively invested in infrastructure to address both current and future community needs. These investments, made without external funding, demonstrate the readiness of existing providers to meet demand. Granting additional NHS contracts at this location is unnecessary and undermines the sustainability of current providers.

Invitation for Site and Neighbourhood Visit Ignored

3.12 I extended an invitation to the Committee to visit my pharmacy and assess our ability to meet community needs. This opportunity was not taken up, denying us a fair chance to present our case.

3.13 I urge the Committee to uphold my appeal and defer any decisions until a site visit and oral hearing have been conducted.

Risk of Service Duplication and Inefficiency

3.14 Automatically awarding the NHS contract to Greenlight Pharmacy risks duplicating services already provided by existing pharmacies. This could lead to inefficiencies, over-saturation, and a diversion of resources from more pressing community needs.

3.15 Government guidelines on world-class commissioning emphasize that new services should not negatively impact access to current services. Granting this application will destabilize existing service providers, particularly in the current economic climate, where many pharmacies are already under financial strain.

Prejudice Against Future Applications

3.16 By granting Greenlight Pharmacy automatic inclusion on the NHS Pharmaceutical list, other potential providers will be denied the opportunity to apply for PsH contracts [sic] if a gap in services is identified under the forthcoming 2025 PNA.

3.17 This decision limits competition and fails to allow a fair process to determine the most suitable provider to meet the community's needs.

Conclusion

3.18 In light of the above, I respectfully request that the Pharmaceutical Services Regulations Committee:

3.18.1 Uphold my appeal.

3.18.2 Defer any decisions regarding this or future PsH contract [sic] applications until the new PNA is published in 2025 and a comprehensive impact/needs assessment is conducted.

3.19 Local pharmacies, including mine, have made significant investments to ensure that there are no gaps in pharmaceutical services. These investments were made in anticipation of the LPS contracts ending and anticipated population growth.

3.20 Thank you for considering this appeal. I trust that the Committee will act in the interest of fairness, transparency, and competition when reviewing this appeal."

In a letter dated 19 February 2025, Lyngold Ltd (t/a Sinclairs Pharmacy, 50 Ben Jonson Road) appealed against the Commissioner's decision. The grounds of appeal are:

3.21 “I am writing to formally appeal the decision to grant the PHS contract to Greenlight Pharmacy at Harford Health Centre. As the owner of Sinclairs Pharmacy, located at 50 Benjonson [sic] Road, London E1 3NN, I have witnessed firsthand the adverse effects on our business since Greenlight Pharmacy opened its Harford Street branch in 2012.

3.22 Background: From its inception, Greenlight Pharmacy has drawn existing patients away from Sinclairs Pharmacy, contrary to the needs assessment conducted for the LPS contract. The anticipated population influx around Ocean Estate, expected due to the London Olympics development, did not materialize, thus not justifying the opening of a new pharmacy. Sinclairs Pharmacy had been in negotiations to relocate to Harford Health Centre before the PCT set up a tender for the LPS contract.

3.23 Key Issues:

3.23.1 Population Growth Misestimation: The expected influx of population following the London Olympics did not occur. Current population levels do not justify the need for additional healthcare services in Ocean Estate.

3.23.2 Reduction in Service Hours: Greenlight Pharmacy reduced its operating hours from 100 to 60 per week, indicating insufficient demand for two pharmacies in such proximity.

3.23.3 Adequate Existing Infrastructure: The existing healthcare infrastructure already meets the current demand. Additional services from Greenlight Pharmacy are not necessary.

3.23.4 Resource Allocation: Allocating the PHS contract [sic] to Greenlight Pharmacy would be inefficient, given the lower-than-expected demand. Resources could be better utilized in areas with higher demand.

3.23.5 Cost-Effectiveness: With demand not increasing as projected, it is more prudent to invest in maintaining and improving existing services rather than unnecessary expansion.

3.23.6 Service Redundancy: Granting the PHS contract [sic] to Greenlight Pharmacy could lead to redundancy in services, which might not be beneficial for the overall healthcare system.

3.23.7 Community Feedback: The community has not experienced the expected increase in demand and may be satisfied with the current level of services.

3.23.8 Strategic Planning: The decision should be based on accurate and up-to-date data regarding community needs. If initial projections were incorrect, it is necessary to reassess and develop a more strategic plan for healthcare services.

3.23.9 Pharmacy Closures in Tower Hamlets: Three pharmacies have closed in recent years in Tower Hamlets. Despite these closures, there was no significant gap in services. The existing pharmacies have demonstrated more than sufficient capacity to absorb the increased demand and maintain the vitality of services. This suggests that the current healthcare infrastructure is robust and can effectively handle any future fluctuations in demand without the need for additional pharmacies.

3.23.10 Proximity of Sinclairs Pharmacy: One of the reasons given by the committee was that there was no nearby pharmacy. This is incorrect, as Sinclairs Pharmacy is only 100 metres from Greenlight Pharmacy and is just a 2-minute walk away. It has been in present management since 1985 that’s 40 years.

3.24 Conclusion: Considering the above points, I respectfully request the committee to delay the approval of the application and wait for the new Pharmaceutical Needs Assessment (PNA) to be published in October 2025. This will ensure that the decision is based on the most current and accurate data.

3.25 Thank you for your consideration. I look forward to your favourable response."

In a letter dated 22 February 2025, Lyngold Ltd (t/a Sinclairs Pharmacy, 557 – 559 Roman Road) appealed against the Commissioner's decision. The grounds of appeal are:

3.26 "I am writing to formally appeal the decision to automatically grant a Pharmaceutical Services (PhS) NHS contract to Greenlight Healthcare Ltd at Harford Health Centre, E1 4FG, following the expiration of their Local Pharmaceutical Services (LPS) contract.

3.27 This decision appears to undermine the principles of fair competition, transparency of the NHS as an organization, and the proper allocation of resources.

3.28 In the following, I have outlined the key reasons for this appeal:

3.28.1 The contract mandates the provision of a range of locally commissioned services, in line with the enhanced services commissioned from other community pharmacies in Tower Hamlets.

3.28.2 The contract specifies the requirement for the pharmacy to provide an anticoagulation service. The information provided suggests that the pharmacy may not be fulfilling this contractual obligation.

3.28.3 Risks of oversaturation and inefficiency.

3.29 Below I will elaborate on these reasonsings: [sic]

3.30 The contract mandates the provision of a range of locally commissioned services, in line with the enhanced services commissioned from other community pharmacies in Tower Hamlets.

3.30.1 Whilst the details of the LPS scheme emphasise the need for the development of a "fit for purpose pharmacy" which serves the needs of the local community as well as serving the QIPP agenda- I would argue that these are already being fulfilled by local service providers.

3.30.2 Regulation 31 applies, challenging the previous conclusion of the committee, that there are no adjacent pharmacies to the site highlighted.

3.30.3 As well as there being a pharmacy next to the highlighted site, 16 pharmacies operate within a 1-mile radius and 42 within 1.5 miles, showcasing how the area is already well-served. This appeal against the London Region PSRC should therefore be upheld.

3.31 The contract includes the provision of three specific local pharmaceutical services, which the pharmacy appears to have not fully implemented. These include:

3.31.1 Developing and implementing a model to support and improve medicines adherence, particularly for patients with a history of poor adherence.

3.31.2 Integrating the provision of the New Medicines Service (NMS) and targeted Medicines Use Reviews (tMUR) into local care pathways, and developing the MUR model with local GPs and other healthcare professionals.

3.31.3 Developing a fit-for-purpose pharmacy workforce across Network 3 that is sufficiently upskilled to deliver the required services and support the delivery of the QIPP agenda.

3.32 Risks of oversaturation, inefficiency as well as unfairness to pre-existing pharmacies in the area.

3.32.1 The automatic awarding of this NHS contract without the fair and appropriate bidding process undermines the core principles of The Enterprise Act 2002, in addition The Competition Act 1998.

3.33 Furthermore, a decision of this manner:

3.33.1 Excludes other potential health care providers.

3.33.2 Prevents principles of fair competition.

3.33.3 Lacks transparency, and subsequently raises questions around the allocation process of NHS contracts.

3.34 In addition to these key reasons, I feel as though it's imperative to raise the following which further raise questions around the allocation of this contract.

3.35 The contract stipulates that the pharmacy should be open from 8am to 8pm every day of the year, and details suggest that the pharmacy may not be adhering to these opening hours. This therefore raises questions about the pharmacy and their upholding of the original 10-year LPS contract.

3.36 In light of the above, I respectfully urge the Pharmaceutical Services Regulations Committee to uphold this appeal and reverse the decision to automatically award the contract as well as defering [sic] all decisions until the 2025 PNA is published and a full impact/needs assessment is conducted.

3.37 Local pharmacies have invested to ensure no service gaps exist in pharmaceutical services as well as that the present and future needs of the local community are met. These investments were made in anticipation of the LPS contract expiration and expected population growth.

3.38 Thank you for your time and consideration. I trust that the Committee will act in the interest of fairness, transparency, and competition when reviewing this appeal."

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

4.1.1 "I am responding in relation to the above appeal. Please read this in conjunction with the PSRC (London) decision report, dated 15th January 2025 [see section 2 above]. Please also note that the application is made in the name Greenlight Healthcare Ltd and not Greenlight Pharmacy Ltd.

4.1.2 There are several comments regarding regulation 31. From the comments made it appears that those making appeals have mis-understood this regulation.

4.1.3 For ease, the amended regulation states the following:

4.1.4 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) 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).

4.1.5 The interpretation of this regulation is that it only relates to premises on the pharmaceutical list, on the same site or adjacent to it, and that it is reasonable to apply the regulation to treat the services in the same way. LPS Pharmacies are listed separately so this regulation does not apply.

4.1.6 There are several comments that relate to the LPS contract and services provided by this contract and hours that the contract operated. As this application is a future need application these are not relevant to this application. The application is assessed against the Pharmaceutical Needs Assessment (PNA) and the information provided as part of the application only.

4.1.7 There are also several comments relating to the PNA. This is a document that is published by the Health & Well Being Board and it is for them to make the necessary assessments and, where relevant, mandate a new PNA, or issue a supplementary statement.

4.1.8 An application can only be assessed against the published PNA, other than to make the assessments under the regulations that do? [sic] provide for an assessment of any changes.

4.1.9 The published PNA clearly states that if the LPS terminates this will create a gap in pharmacy provision. The supplementary detail being that that patients have been accessing the LPS for over 10 years, and this has become a part of the local health delivery, providing a service to patients. [sic]

4.1.10 Given, it was widely known that the LPS was expiring, any provider on the pharmaceutical list was at liberty to apply on the basis that there was an identified future need for pharmaceutical services. Had other applications been forthcoming, PSRC (London) would have made a determination on these, subject to regulation. It should be noted that, apart from the application in question, no other applications were received in respect of this specific site.

4.1.11 The application in question was not automatically granted, as has been inferred, and was subject to the usual scrutiny that any application would have applied to it.

4.1.12 As there has been a service provided on this site for over 10 years, the comments in the Appeals regarding duplication of services or over saturation of pharmacies do not have any merit.

4.1.13 The HWBs are statutorily responsible for the mandating of PNAs and ensuring its publication. The timescale for updating a PNA is usually 3 years after the previous publication, or earlier if there are sufficient changes in the area. Currently, PSRC (London) and the Community Pharmacy commissioning function delivered to the ICBs have received no indication that a refreshed PNA will be undertaken during 2025.

4.1.14 The PSRC (London) has determined that the application fits the criteria for a future needs application and would request that the appeals are dismissed."

4.2 RUSHPORT ADVISORY LLP ON BEHALF OF THE APPLICANT

4.2.1 "Thank you for your letter of 6 March 2025. I act for Greenlight Healthcare Limited in the above application and have been instructed by my client to submit the following reply to the appeals received from interested parties.

4.2.2 I note that the parties repeat the same objections and I have therefore dealt with the objections by way of listing the points made rather than the identity of the objector. Some of the points raised in the objections are quite clearly irrelevant to the legal test or simply discuss issues such as pharmacy funding and we do not address those points directly as they should have no bearing on the outcome of this appeal.

Background

4.2.3 The future identified need that forms the basis for this application is contained in the current Tower Hamlets PNA 2023. Whilst the PNA states it is a 2023 document and has the date of 27/4/2023 on each page, the PNA was not in fact published until 23 September to many futures2024. [sic] The Regulations repeatedly refer to the date of the PNA being published and this date is therefore of importance in some areas.

4.2.4 The future identified need can be found on page 67 of the PNA and states;

"Since 2012 a pharmacy has operated at 115 Harford St, E1 4FG, this being collocated with the Harford Health Centre, under a contract for local pharmaceutical services (a "LPS contract") in order to provide pharmaceutical services. This LPS contract terminates on 1 April 2025. Tower Hamlets Health & Wellbeing Board recognises the important function of a pharmacy at the Harford Health Centre and has determined that the termination of the current LPS contract will create a gap in provision. Tower Hamlets Health & Wellbeing Board determines that, an NHS pharmacy, at the same premises as the current LPS pharmacy, will be needed to secure access to pharmaceutical services in the event that the existing LPS pharmacy at Harford Health Centre ceases to provide pharmaceutical services under their LPS contract.

Any routine application should only be granted subject to a condition that pharmaceutical services are not provided at the premises to which the application relates until the services provided by the current LPS pharmacy at Harford Health Centre cease to be provided and this condition should be included within any approval of a routine application in accordance with Schedule 2, Part 5, 33(2)(a) of the Regulations."

LPS Areas

4.2.5 The Regulations give the ICB the power to defer hearing applications within LPS areas, however there is no obligation to do so. In this case the HWB has properly identified a future need for pharmaceutical services to meet the needs of patients once the LPS contract terminates and there is no justification for delaying consideration of the application.

No "Right of Return" to the Pharmaceutical List

4.2.6 Appellants appear to be under the impression that my client is seeking a "right of return" to the pharmaceutical list or to "convert" its LPS contract to an entry on the pharmaceutical list.

4.2.7 This is incorrect. Had a right of return to a pharmaceutical list existed then there would be no need for this identified future need application. Instead, it is acknowledged that the current LPS contract will cease with no right of return to the pharmaceutical list and my client is therefore using the correct procedure of making a new application for inclusion in the pharmaceutical list. My client has therefore followed the correct procedure.

The Operation of / Success of the Current LPS Contract

4.2.8 The objectors comment on the operation of the existing LPS contract. Respectfully, this is not relevant to the test that the Committee must apply in this case, which is set out in the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (as amended) (the "Regulations"). The operation of the LPS is a matter between the ICB and my client.

Fair Competition

4.2.9 It is open to any party to submit the same type of application that my client has already submitted and the decision maker must make its decision by reference to the proper regulatory test.

Lack of Proper Impact Assessment / Other Criticism of the PNA and/ or Process

4.2.10 In order for an appeal to be valid it must satisfy the requirements of paragraph 30 "*Third party rights of appeal to the Secretary of State where an application is granted*". Paragraph 30(3)(c) requires that an appellant;

(ii) has grounds for opposing the application, which—

> (aa) do not amount to a challenge to the legality or reasonableness of a pharmaceutical needs assessment, or to the fairness of the process by which a HWB or Primary Care Trust undertook that assessment, and
>
> (bb) are not vexatious or frivolous. [my emphasis]

4.2.11 The Regulations specifically do not permit grounds for opposing the application, which are a challenge to the legality or reasonableness of a pharmaceutical needs assessment, or to the fairness of the process by which a HWB or ICB undertook that assessment. All such points of appeal should be ignored.

Service Duplication

4.2.12 It is important to note that there is already an LPS pharmacy operated by my client at this location, but it will close. The HWB wishes to maintain access to a pharmacy and are not duplicating anything.

Other Pharmacy Closures

4.2.13 The Appellants are correct that a number of pharmacies have closed in the wider area in recent years. Whilst this is not relevant to the test in this application it may explain why the HWB is so keen to maintain patient access to pharmaceutical services at this location.

Regulation 31

4.2.14 Appellants submit that regulation 31 applies in this case. This is incorrect.

4.2.15 Regulation 31 states as follows; [quoted in full]

4.2.16 For regulation 31 to apply both of parts (a) and (b) must be true.

4.2.17 Regulation 31(a) only applies where "a person on the pharmaceutical list" is providing or has undertaken to provide pharmaceutical services ("the existing services"). Regulation 31 also makes it clear that the entry on the pharmaceutical list is not for the entire HWB but only relates to either (i) the premises to which the application relates, or (ii) adjacent premises.

4.2.18 An LPS chemist is not included on the pharmaceutical list and there is no person "on the pharmaceutical list" at Harford Health Centre or any adjacent premises.

4.2.19 Further, in this case the PNA has specifically stated that a condition of the approval of any application should be that the new pharmacy is not permitted to commence services until the LPS contract has terminated. It is therefore impossible for the new pharmacy to be providing services as the same time as the LPS pharmacy and as a result regulation 31(b) does not apply.

4.2.20 As neither regulation 31(a) nor (b) applies (and both must apply to refuse the application), regulation 31 is not relevant in this case.

Correct Approach to the Regulatory Test

4.2.21 In relation to Regulation 15, the matters to which consideration will be given are:

(e) whether it is satisfied that, since the ***publication of*** *the relevant pharmaceutical needs assessment, there have been changes to the needs, or future needs, for pharmaceutical services in the area of the relevant Health and Wellbeing Board that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area;*

NOTE**:** Your letter of 6 March 2025 misstates the legal test and omits the words highlighted in bold above.

4.2.22 The relevant PNA is the Tower Hamlets PNA. Whilst the PNA is titled "Pharmaceutical Needs Assessment 2023" and shows a date on each page of 27/04/2023, it was not in fact published until 23 September 2024 (see item 4.1 of attached HWB minutes) and this is why my client has had to wait until after this time to submit their application. The objectors do not identify any "changes

to the needs, or future needs, for pharmaceutical services in the area of the relevant HWB" that have occurred since the PNA was published. Nor have there been any such changes since 23 September 2024.

(f) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs, or future needs, for pharmaceutical services in the area of the relevant Health and Wellbeing Board that are such that— (i) the future circumstances specified in accordance with paragraph 2(b) of Schedule 1 will not, or are now unlikely to, arise (in whole or in part), and (ii) granting the application would not secure improvements to, or better access to, pharmaceutical services in that area

4.2.23 No such changes have been identified by any party and none have occurred.

(g) whether it is satisfied that— (i) granting the application would only meet the future need mentioned in paragraph (1) in part, and (ii) if the application were granted, it would be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;

4.2.24 The need identified would be met in full by granting the application.

(h) whether — (i) it is satisfied that granting the application would only meet the future need mentioned in paragraph (1) in part, but (ii) it considers that, if the application were granted, it would not be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;

4.2.25 The need identified would be met in full by granting the application.

(i) whether it is satisfied that— (i) the future need mentioned in paragraph (1) was for services other than essential services, and (ii) granting the application would result in an increase in the availability of essential services in the area of the relevant HWB;

4.2.26 The PNA identifies a need for "pharmaceutical services" and references the services provided by the existing LPS pharmacy (which included all essential services).

4.2.27 The term "pharmaceutical services" derives from the Health Act 2006, specifically section 126 which states,

(8) The services provided under this section are, together with additional pharmaceutical services provided in accordance with a direction under section 127, referred to in this Act as "pharmaceutical services".

4.2.28 The relevant services are listed at 126(3) and include jurisdictions of Scotland, Wales and Northern Ireland. In relation to England and in relation to pharmacies (rather than dental practitioners) the relevant services are;

126 3)(a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown,

4.2.29 The provision of proper and sufficient drugs and medicines is an essential service and therefore regulation 15(i) does not apply in this case.

(j) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the future need mentioned in paragraph

(1) has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant Health and Wellbeing Board or in the area of another Health and Wellbeing Board, NHS services.

4.2.30 No party either is, or has undertaken to meet the future need identified, which is specific to premises at Harford Health Centre and therefore cannot be met by pharmacies located elsewhere.

4.2.31 As my client's application meets all relevant legal tests under the Regulations it should be approved and the appeals dismissed. We look forward to hearing from you in due course."

4.3 KAMSONS

4.3.1 "Thank you for your letter dated 6th March with details of the above application.

4.3.2 I consider that the application should be refused and I support the arguments made by the appellants.

4.3.3 The applicant is applying to change their Local Pharmaceutical Services (LPS) contract to a Pharmaceutical Services (PhS) contract as their LPS contract is ending.

4.3.4 I refer NHS Resolution to the points in my letter of objection submitted to PCSE on 9th December 2024."

In a letter to PCSE of 9 December 2024, Kamsons stated:

4.3.5 "Thank you for your letter dated 29th October with details of the above application.

4.3.6 I consider that the application should be refused.

4.3.7 The applicant is applying to change their Local Pharmaceutical Services (LPS) contract to a Pharmaceutical Services (PhS) contract as their LPS contract is ending.

4.3.8 There are a number of points that the Pharmaceutical Services Regulations Committee (PSRC) should consider with this application.

4.3.9 The applicant states, in capital letters, that their application should not be refused under Paragraph 31 of the Regulations. This states:

31.— 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).

4.3.10 It is clear that the applicant is:

4.3.10.1 Already on the pharmaceutical list and has premises providing pharmaceutical services under a LPS contract and others under a Pharmaceutical Services (PhS) contract.

4.3.10.2 The applicant is already providing pharmaceutical services from the premises.

4.3.11 It is also clear that Regulation 31(2)(a) uses the words "*pharmaceutical services*" in a context that does not preclude meaning either services provided under a LPS or a PhS contract.

4.3.12 As there is already someone, which happens to also be the applicant, who is

4.3.12.1 On a Pharmaceutical List

4.3.12.2 Already providing "pharmaceutical services" from the premises applied for and

4.3.12.3 It is also most certainly "*reasonable*" for NHS England 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)*."

4.3.13 The Regulation gives the PRSC no choice and the application "***must** be refused where paragraph (2) applies.*" [emphasis added by Kamsons]

4.3.14 Upon awarding the LPS contract at this site in 2012, the contract letter sent out by the PCT on 12th April 2012 clearly stated ***The PCT can also confirm that as this contract is a new contract there will be no right of return to the PCT's pharmaceutical list at either the end of the 10-year contract or at any other time where the contract is terminated***. This letter is attached as Appendix 1. Therefore, from the outset, this LPS contract was not intended to simply convert into a Pharmaceutical Services contracted pharmacy at the end of the term of the LPS contract. Of course, the applicant, like anyone, is entitled to apply for a Pharmaceutical Services contract but it should be to meet a significant need and to fill a gap in services and not just to continue services which the PCT, a body which no longer exists, thought desirable to tender for over a decade ago via a mechanism designed to circumvent the legal tests for a new Pharmaceutical Services contract. [emphasis added by Kamsons]"

Kamsons enclosed a letter from North East London and the City letter dated 12 April 2012 which stated:

4.3.15 **"Re: Local Pharmaceutical Services Schemes at Harford Street Health Centre and St. Andrew's Health Centre.**

4.3.16 We are writing to update you of recent developments in the procurement of two Local Pharmaceutical Services (LPS) Contracts in Tower Hamlets

4.3.17 **Harford Street Health Centre, 115 Harford Street, London E1**

4.3.18 We are pleased to inform you that on 2nd April 2012 the PCT signed a 10-year LPS contract with Greenlight Healthcare Limited T/A Green Light Pharmacy. The pharmacy should be open and providing the LPS scheme at the end of April. The details for this LPS scheme that have been developed are:-

4.3.18.1 The provision of the same services as described as essential and advanced services in the national community pharmacy contractual framework;

4.3.18.2 The provision of a range of locally commissioned services, in line with local enhanced services commissioned from other community pharmacies in Tower Hamlets;

4.3.18.3 The provision of an anticoagulation service;

4.3.18.4 The provision of 3 specific local pharmaceutical services, namely:-

4.3.18.4.1 Developing and implementing a model to support and improve medicines adherence, particularly in patients with a history of poor adherence.

4.3.18.4.2 Integrating the provision of the New Medicines Service (NMS) and targeted Medicines Use Reviews (tMUR) into care pathways and develop the MUR model with local GPs and other health care professional to meet local need.

4.3.18.4.3 To develop a fit for purpose pharmacy workforce across network 3 that is sufficiently up-skilled to deliver services as required by the commissioning bodies and support the delivery of the QIPP agenda.

4.3.18.5 The Contract includes a number of KPIs, the achievement of which will trigger agreed quality payments.

4.3.18.6 The pharmacy will be open 8am - 8pm each day of the year.

4.3.19 The PCT can confirm that as this contract is a new contract there is no right of return to the PCT's pharmaceutical list at either the end of the 10-year contract or at any other time where the contract is terminated."

5 **Unsolicited comments**

5.1 CORDEVE LTD

5.1.1 "I am writing to formally appeal the decision to automatically award a Pharmaceutical Services (PhS) NHS contract to Greenlight Healthcare Ltd at Harford Health Centre, E1 4FG, following the expiration of their Local Pharmaceutical Services (LPS) contract. This decision undermines fair competition, transparency, and the proper allocation of NHS resources. Below, I have outlined the key reasons for this appeal:

Regulation 31 Applies

5.1.2 I respectfully challenge the Committee's conclusion that there are no adjacent pharmacies to the site in question. There is a pharmacy located next to the

site, which is fully capable of continuing services upon the LPS contract's expiration.

5.1.3 Additionally, 16 pharmacies operate within a 1-mile radius and 42 within 1.5 miles, demonstrating that the area is well-served and that Regulation 31 applies. This appeal against the London Region PSRC should therefore be upheld.

Breach of Fair Competition Principles

5.1.4 The automatic awarding of this NHS contract without a competitive bidding process contravenes the principles of The Enterprise Act 2002 and The Competition Act 1998. This decision:

5.1.4.1 Excludes other potential providers, preventing fair competition.

5.1.4.2 Stifles innovation and compromises service quality.

5.1.4.3 Lacks transparency, raising concerns about how NHS contracts are allocated.

5.1.5 By allowing Greenlight Pharmacy automatic inclusion, the NHS is failing to uphold fairness and equity in service provision.

Lack of Proper Impact Assessment

5.1.6 The Pharmaceutical Needs Assessment (PNA) does not adequately evaluate the impact on existing pharmacies following the transition of Greenlight Pharmacy from an LPS to a PhS contract.

5.1.6.1 The 2023 PNA is outdated, and an updated 2025 PNA is due soon.

5.1.6.2 No consultation or evaluation was conducted to assess whether existing providers can meet community needs without new contracts.

5.1.6.3 Many local pharmacies, including, JayPharm Chemist, and Sai Pharmacy, Chap Pharmacy have invested heavily in technology (automation, robotics, AI) to improve efficiency and meet demand.

Community Needs Can Be Met by Existing Pharmacies

5.1.7 Local pharmacies have proactively upgraded infrastructure to serve both current and future community needs without external funding. Granting this additional NHS contract is unnecessary and undermines the sustainability of current providers.

Invitation for Site and Neighbourhood Visit

5.1.8 I invited the Committee to visit my pharmacy and assess whether we can adequately meet patient demand, but this A site visit and oral hearing should be conducted before any further decisions.

Risk of Service Duplication and Inefficiency

5.1.9 Awarding this contract to Greenlight Pharmacy duplicates existing services, leading to:

5.1.9.1 Over-saturation of pharmacies in the area.

5.1.9.2 Wastage of NHS resources.

5.1.9.3 Increased financial strain on independent pharmacies in the current economic climate.

Prejudice Against Future Applications

5.1.10 This decision prevents other providers from applying for PhS contracts in 2025 if a genuine gap in services is identified. It restricts fair competition and limits future opportunities for NHS service expansion.

Conclusion & Request

5.1.11 In light of the above, I respectfully request that the Pharmaceutical Services Regulations Committee:

5.1.11.1 Uphold this appeal and reverse the decision to automatically award the contract.

5.1.11.2 Defer all decisions until the 2025 PNA is published and a full impact/needs assessment is conducted.

5.1.12 Local pharmacies, including, JayPharm Chemist, and Sai Pharmacy, Lincoln Pharmacy Nash Pharmacy have invested significantly to ensure no service gaps exist in pharmaceutical services. These investments were made in anticipation of the LPS contract expiration and expected population growth.

5.1.13 Thank you for your time and consideration. I trust that the Committee will act in the interest of fairness, transparency, and competition when reviewing this appeal."

6 Summary of Observations

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

7 Consideration

7.1 The Pharmacy Appeals Committee ("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.

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

7.3 The Committee had before it a copy of the Tower Hamlets PNA dated 27 April 2023 and prepared by Tower Hamlets Health and Wellbeing Board, which had been provided by the Commissioner. The Commissioner advised that there have been no further updates or Supplementary Statements to the PNA.

7.4 The Committee noted the comments from an Appellant with regard to an Oral Hearing, however the Committee considered that to determine an application by way of an Oral Hearing, there needs to be conflicting evidence from parties that it cannot resolve on the papers. The Committee did not consider that to be the case here. Therefore, on

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

7.5 The Committee dealt with the appeals by way of consideration of all the issues.

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

Regulation 31

7.7 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).

7.8 The Committee noted that in response to the question of Regulation 31 in the application form the Applicant had stated:

7.8.1 *"The existing pharmacy operating at the medical centre does so under an LPS contract and is therefore not included in the pharmaceutical list for the HWB.*

7.8.2 *Regulation 31(2)(a) is clear that an application would only be refused where there is an existing pharmacy that is "on the pharmaceutical list" and that is not the case here.*

7.8.3 *In addition, the PNA is clear that a condition must be placed upon the opening of a pharmacy following a successful future needs application which acts to ensure that the new pharmacy does not commence services until the previous LPS pharmacy ceases to provide services.*

7.8.4 *For these reasons regulation 31 does not apply."*

7.9 The Committee further noted the decision of the Commissioner that:

7.9.1 *"There are no pharmacies adjacent to the site in question; therefore regulation 31 does not apply.*

7.9.2 *There is currently an LPS on site under the same company name, however, this has been given notice of termination; to expire on 25 March 2025, a new pharmacy would not be opened until this had been closed."*

7.10 The Committee was mindful of the comments from all of the Appellants and parties that Regulation 31 applied and that the application should be refused on the basis of Regulation 31.

7.11 The Committee noted that there was no dispute between parties that, at the time of the application, there was a pharmacy located at 115 Harford Street, London, E1 4FG which is the proposed site of the pharmacy in the application. It is also agreed by all parties that this pharmacy operated under the provisions of an Local Pharmaceutical Services (LPS) contract and had done since 2 April 2012.

7.12 The Committee also noted the comments from Cordeve Ltd that there is a pharmacy located "next to the site". The Committee noted that no party had provided any information to support this statement and, from the information that it did have before it, including the map provided by the Commissioner, the Committee was of the view that apart from the pharmacy operating the LPS contract there is no other pharmacy at the site of the application.

7.13 The Committee noted the underlying legislation in the NHS Act 2006 and in particular s147A which provides that:

(1) Regulations may make provision of the preparation, maintenance and publication by NHS England of one or more lists of

(a) persons approved for the purposes of assisting in the provision of pharmaceutical services and

(b) persons approved by NHS England for the purposes of performing local pharmaceutical services.

7.14 The Committee was of the view that there was a clear intention that there are two "lists".

7.15 The Committee then considered the Regulations and firstly noted the interpretation as set out in Regulation 2 of Part 1 which state:

7.15.1 "*LPS chemist"* means a party to

(a) an LPS pilot scheme or

(b) and LPS scheme for the provision of LP services

7.15.2 *"NHS chemist"* means an NHS appliance contractor or an NHS pharmacist;

7.15.3 *"NHS pharmacist"* means a person included in a pharmaceutical list of the type referred to in regulation 10(2)(a).

7.16 Part 3 of the Regulations "General matters relating to pharmaceutical lists and applications in respect of them" and in particular Regulation 10 "Pharmaceutical Lists" requires NHS England to prepare maintain and publish 2 lists of persons who undertake to provide pharmaceutical services from premises in the HWB area. Regulation 10(2)(a) states:

(2) Those lists (which are pharmaceutical lists) are –

(a) a list of persons who undertake to provide pharmaceutical services in particular by way of the provision of drugs; and

(b) a list of persons who undertake to provide pharmaceutical services only by way of the provision of appliances.

7.17 The Committee was mindful that there is no reference to LPS contained within Regulation 10.

7.18 As there is an LPS chemist located at the health centre and that it had been commissioned under the provision of an LPS contract, the Committee went on to consider the provisions of Part 13 "Local Pharmaceutical Services" of the Regulations and in particular Regulation 114 "Lists of LPS chemist".

7.19 The Committee noted that Regulation 114 states:

Lists of LPS chemists

114.—(1) In respect of the area of each HWB, NHS England must prepare, maintain and publish a list of the LPS chemists (if there are any) who provide local pharmaceutical services at or from premises situated in that area.

(2) The lists must include—

(a) the addresses of the premises at or from which the local pharmaceutical services are provided;

(b) the days on which and times at which, at those premises, the LPS chemist is to provide those services;

(c) a description of the services the LPS chemist is to provide.

(3) NHS England must ensure that each HWB has access to the lists of LPS chemists that it holds which is sufficient to enable the HWB to carry out its functions under these Regulations.

7.20 The Committee was of the view that Greenlight Healthcare Ltd had been included on the list of LPS chemists in accordance with Regulation 114.

7.21 The Committee was of the view that, as set out above, an LPS chemist is not included in the pharmaceutical list, therefore Regulation 31 did not apply in this case.

7.22 Based on the information before it, the Committee was not required to refuse the application under the provisions of Regulation 31.

Regulation 15

7.23 The Committee noted the various comments from the Appellants and parties that this is an application to "return to the pharmaceutical list". The Committee noted that the Applicant, in neither their original application form or any subsequent correspondence, either to the Commissioner or in subsequent representations has stated that they are applying under the provision of a "right to return to the pharmaceutical list".

7.24 The Committee noted that there is no dispute that the Applicant is the same body corporate who had held the LPS contract at the extant site. The Committee noted that, in the Regulations, there is provision for a LPS pharmacy to return to the pharmaceutical list under Regulation 108 "Right of return to pharmaceutical lists: LPS contractors". The Committee noted however that, as part of the LPS contract being awarded there was no such provision provided and this is confirmed in the NHS North East London and City letter of 12 April 2012 which states:

7.24.1 *"The PCT can confirm that as this contract is a new contract there is no right of return to the PCT's pharmaceutical list at either the end of the 10-year contract or at any other time where the contract is terminated."*

7.25 The Committee noted that the application had been made by the Applicant on an application form entitled "Chapter 13, Annex 1, Application Form "Application offering to meet an identified future need". The Committee noted that the application form, on page 1, in the standard opening paragraphs states:

> "*Application for inclusion in the pharmaceutical list for the area of Tower Hamlets Health and Wellbeing Board.*
>
> *This is an application to meet an identified future need and as such is a routine application under regulation 15 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the Regulations)."*

7.26 The Committee further noted that the standard application form, as completed by the Applicant, at page 8 in section 6 under the heading "Information in support of the standard wording of the application" states:

"In making this application I/we am/are seeking to meet the future need identified on page … of the HWB's pharmaceutical needs assessment"

7.27 The Committee noted that the Applicant had completed this section of the application form and, as set out above in Section 1, had confirmed the relevant page number of the PNA.

7.28 The Committee was of the view that the Applicant had not sought to apply for a "right to return" to the pharmaceutical list. The application (which was to be determined in accordance with the procedures in Schedule 2) was submitted by the Applicant based on addressing a future need for pharmaceutical services.

7.29 The Committee noted the Appellants comments regarding the current provision of services by the Applicant under the LPS contract. The Committee was of the view that any issues with the LPS contract not being fulfilled were not a relevant consideration in respect of this application which had been made under the provisions of Regulation 15.

7.30 The Committee further noted the comments from the parties with regard to fair competition. The Committee was mindful that the PNA is a publicly accessible document which was published in 2023 and further noted the comments from the Commissioner that it was "widely known" that the LPS contract was expiring. The Committee was mindful that whilst the application happens to have been made by the body corporate who had been awarded the LPS contract in April 2012, and would have been more acutely aware that the LPS contract was ending, there was nothing preventing any other pharmacy contractor from making the same application in line with the purported needs identified in the PNA.

7.31 The Committee considered whether the need on which the Applicant based its application satisfied the elements of Regulation 15(1) which reads as follows:

"(1) If—

> *(a) NHS England receives a routine application and is required to determine whether granting it, or granting it in respect of some only of the services specified in it, would meet a future need for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*

(b) the future need has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(b) 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)."

7.32 The Committee noted that paragraph 2(b) of Schedule 1 states:

2. Necessary services: gaps in provision

A statement of the pharmaceutical services that the HWB has identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied—

(a) …

(b) will, in specified future circumstances, need to be provided (whether or not they are located in the area of the HWB) in order to meet a future need for pharmaceutical services, or pharmaceutical services of a specified type, in its area.

7.33 The Committee noted that in its application form, the Applicant had referred to page 67 of the 2023 PNA which states:

"5.2 Local Pharmaceutical Services (LPS) contract

A Local Pharmaceutical Services (LPS) contract is one that is commissioned locally by the local commissioner, not nationally by NHSE. Tower Hamlets has two LPS contracts, initially commissioned by NHS London, both of which terminate in 2025. In addition, there is a nearby LPS pharmacy in Newham which will likewise terminate in 2024.

…

Since 2012 a pharmacy has operated at 115 Harford St, E1 4FG, this being co-located with the Harford Health Centre, under a contract for local pharmaceutical services (a "LPS contract") in order to provide pharmaceutical services. This LPS contract terminates on 1 April 2025. Tower Hamlets Health & Wellbeing Board recognises the important function of a pharmacy at the Harford Health Centre and has determined that the termination of the current LPS contract will create a gap in provision. Tower Hamlets Health & Wellbeing Board determines that, an NHS pharmacy, at the same premises as the current LPS pharmacy, will be needed to secure access to pharmaceutical services in the event that the existing LPS pharmacy at Harford Health Centre ceases to provide pharmaceutical services under their LPS contract.

Any routine application should only be granted subject to a condition that pharmaceutical services are not provided at the premises to which the application relates until the services provided by the current LPS pharmacy at Harford Health Centre cease to be provided and this condition should be included within any approval of a routine application in accordance with Schedule 2, Part 5, 33(2)(a) of the Regulations."

7.34 The Committee noted that the PNA had considered the existing provision in the area of the HWB, which included the current provision of services at the Harford Health Centre by way of an LPS contract. The HWB had also considered what would happen when the LPS contract ended, which was within the lifetime of the 2023 PNA. The Committee noted that the PNA states that the "*termination of the current LPS contract will create a gap in provision*" and that the HWB had determined that a NHS pharmacy, at the same premises, will be needed to secure access to pharmaceutical services.

7.35 The Committee determined that the future need was included in the PNA dated 2023 in accordance with paragraph 2(b) of Schedule 1 as referred above.

7.36 In this case, the provisions of Regulation 15(1) were met.

7.37 The Committee therefore proceeded to consider the application having regard to those matters set out at 15(2), which states:

(a) 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 meet the future need mentioned in paragraph (1) that the applicant is offering to meet;

7.38 The Committee was not aware of any other application for the area offering to meet the future need mention in paragraph (1).

(b) whether it is satisfied that it would be desirable to defer consideration of the application until some or all of the future circumstances specified in accordance with paragraph 2(b) of Schedule 1 have arisen (should they arise);

7.39 The Committee considered that, for the reasons provided above, it was satisfied that the future circumstances have arisen. In the Committee's view therefore, deferral under this paragraph was not necessary.

(c) whether it is satisfied that another application offering to meet the future need mentioned in paragraph (1) has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;

7.40 The Committee has already noted above, that there are no other applications for consideration in respect of the area of the Applicant's proposed pharmacy.

(d) whether it is satisfied that an appeal relating to another application offering to meet the future need mentioned in paragraph (1) is pending, and it would be desirable to await the outcome of that appeal before determining the applicant's application;

7.41 The Committee noted there are no other appeals pending so deferral under this paragraph was not necessary.

(e) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs, or future needs, for pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area;

7.42 The Committee noted the comments from parties with regard to the number of pharmacies already providing services in the area and the location of these pharmacies as well as the comments regarding the consolidation of pharmacies and the closure of some pharmacies in the area.

7.43 The LPS contract had originally been granted in 2012 against a backdrop that, following the 2012 Olympic Games, it was anticipated that there would be a significant increase in demand in East London (the site of the Olympic park and stadia). Whilst parties state that this need has not continued, the Committee was mindful that Regulation 15 limits its consideration to changes to the needs or future needs which have occurred since the PNA was published of which there is no evidence of changes since that date contained within the PNA.

7.44 The Committee noted that granting the application would not change the number of providers in the area and whilst it noted the comments from parties regarding the

stability of the existing pharmacies it was of the view that there was nothing provided by any party, either on appeal or in subsequent representations, which demonstrated that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services.

(f) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs, or future needs, for pharmaceutical services in the area of the relevant HWB that are such that—

(i) the future circumstances specified in accordance with paragraph 2(b) of Schedule 1 will not, or are now unlikely to, arise (in whole or in part), and

(ii) granting the application would not secure improvements to, or better access to, pharmaceutical services in that area;

7.45 The Committee accepted, for the reasons stated above, the future circumstances referred to in the PNA have arisen. The Committee therefore considered that it was not satisfied as set out in this paragraph.

(g) whether it is satisfied that—

(i) granting the application would only meet the future need mentioned in paragraph (1) in part, and

(ii) if the application were granted, it would be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;

(h) whether —

(i) it is satisfied that granting the application would only meet the future need mentioned in paragraph (1) in part, but

(ii) it considers that, if the application were granted, it would not be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;

7.46 The Committee considered that the PNA does not expressly refer to any particular requirements that form part of the future need other than securing access to pharmaceutical services. In the circumstances, the Committee considered that granting the application would meet the future need in full. The Committee therefore consider that it was not satisfied as set out in these paragraphs.

(i) whether it is satisfied that—

(i) the future need mentioned in paragraph (1) was for services other than essential services, and

(ii) granting the application would result in an increase in the availability of essential services in the area of the relevant HWB;

7.47 The Committee again noted that the PNA did not specify a need for services other than securing access to pharmaceutical services. The Committee noted that this paragraph sets out a two part test. The Committee was not satisfied as to the first paragraph and so it could not be satisfied as set out in this paragraph.

(j) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the future need mentioned in paragraph (1) has been met by

another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services—

7.48 The Committee had no information to show that the future need referred to in the PNA has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services.

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

7.49 The Committee had no information to show that the application needed to be deferred or refused by virtue of any provision of Part 5 to 7.

Regulation 21(A)

7.50 The Committee noted that Regulation 21A of the Regulations has been in effect since 1 January 2022. Regulation 21A states:

(1) Paragraph (2) applies where NHS England receives a routine application which is in respect of premises not already listed, where—

(a) the applicant's stated intention (in accordance with paragraph 7(1)(a) of Schedule 2) is to meet a need, or secure improvements or better access, identified in the relevant pharmaceutical needs assessment (whether current or future gaps in provision); and

(b) the need is, or the improvements are or the better access is, in respect of the days on which or the times at which essential services are provided in the area of the relevant HWB.

(2) In determining whether or not it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), NHS England must have regard to whether granting the application would result in an undesirable increase in the availability of essential services in the area of the relevant HWB.

(3) If NHS England is satisfied that granting the application would result in the undesirable increase in availability mentioned in paragraph (2), it must refuse the application.

7.51 The Committee considered that, in relation to Regulation 21A(1)(a), the Applicant's stated intention is to meet a need identified in the PNA. Regulation 21A(1)(b) states that the need is in respect of the days on which or the times at which essential services are provided in the area of the relevant HWB. The Committee considered that this means that Regulation 21A applies where the need refers to certain days on which and times at which essential services have been identified as needing to be provided.

7.52 The PNA had not specified the days on which or times at which pharmaceutical services were to be provided, just that "*an NHS pharmacy, at the same premises as the current LPS pharmacy, will be needed to secure access to pharmaceutical services in the event that the existing LPS pharmacy at Harford Health Centre ceases to provide pharmaceutical services under their LPS contract."* The Committee was mindful that whilst parties have sought to argue that an additional pharmacy could have adverse consequences there was no information to conclude that granting the application creates an undesirable increase in essential services. The Committee further noted

that no party had specifically commented on the application of Regulation 21A. The Committee determined that granting the application would not result in an undesirable increase in the availability of essential services in the area of the relevant HWB.

Summary

7.53 The Committee was not required to refuse the application under the provisions of Regulation 31.

7.54 The Committee found reference in the PNA to services which would fall within the description set out in paragraph 2(b) of Schedule 1 to the Regulations.

7.55 The Committee determined that the provisions of Regulation 15(1) were met.

7.56 The Committee determined that the provisions of Regulation 15(2) were met.

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

7.57.1 confirm the Commissioner's decision;

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

7.57.3 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.

7.58 In those circumstances, although the Committee has reached the same conclusion as the Commissioner it has also considered Regulation 21A therefore the Committee determined that the decision of the Commissioner must be quashed.

7.59 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.

7.60 The Committee noted that representations on Regulation 15 had already been made by parties to the Commissioner, and 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 15.

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

8 Decision

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

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

8.3 The Committee has determined that the application should be granted for the following reason:

8.3.1 The PNA has identified a future need which this application could meet.

8.4 The Committee noted Schedule 2, Part 5 paragraph 33 (2)(a) of the Regulations which states:

(2) Where this sub-paragraph applies, NHS England may grant the application subject to a condition that pharmaceutical services are not provided at the listed chemist premises to which the application relates (or at any premises to which the business relocates) until—

(a) some or all of the future circumstances, as a consequence of which the application was granted, have arisen;

8.5 Accordingly, the application is granted, subject to the condition as set out in the PNA that "pharmaceutical services are not provided at the premises to which the application relates (115 Harford Street, London E1 4FG) until the services provided by the current LPS pharmacy at Harford Health Centre cease to be provided".

Case Manager
Primary Care Appeals