

8 May 2025

REF: SHA/26541

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**APPEAL AGAINST LEICESTER, LEICESTERSHIRE
AND RUTLAND ICB DECISION TO REFUSE PARKEM
GROUP LTD APPLICATION FOR CHANGE OF
OWNERSHIP FROM PARKEM CHEMIST LTD IN
RESPECT OF 102 DOMINION ROAD, LEICESTER, LE3
8FB**

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the application.
- 1.2 The Committee determined that the application should be granted.

A copy of this decision is being sent to:

Parkem Group Ltd
PCSE on behalf of Leicester, Leicestershire and Rutland ICB

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APPEAL AGAINST LEICESTER, LEICESTERSHIRE AND RUTLAND ICB DECISION TO REFUSE PARKEM GROUP LTD APPLICATION FOR CHANGE OF OWNERSHIP FROM PARKEM CHEMIST LTD IN RESPECT OF 102 DOMINION ROAD, LEICESTER, LE3 8FB

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1 The Application

By application dated 22 November 2024, Parkem Group Ltd (“the Applicant”) applied to Leicester, Leicestershire and Rutland ICB (“the Commissioner”) for a change of ownership from Parkem Chemist Ltd in respect of 102 Dominion Road, Leicester, LE3 8FB. In support of the application it was stated:

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

1.2 Opening hours

1.3 Core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9-6	9-6	9-6	9-6	9-6			45

1.4 Total opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
8-6.30	8-6.30	8-6.30	8-6.30	8-6.30	8.30-5.30		61.5

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

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

1.7 In response to why the application should not be refused pursuant to Regulation 31, the Applicant left this box blank.

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

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

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 19 February 2025 states:

- 2.1 “We have considered the above application, and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.
- 2.2 You have a right of appeal to the Secretary of State against Leicester, Leicestershire and Rutland ICB’s decision. Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:
- 2.2.1 Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London E14 4PU”

Decision report

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

- 2.3 “The committee noted that the applicant is already included in the pharmaceutical list for the area of Leicestershire HWB and therefore paragraph 23, Schedule 2 does not apply.
- 2.4 **Regulation 26 – Change of Ownership**
- 2.5 **Regulation 26(1)(a)**
- 2.6 The committee noted that the applicant has undertaken to provide pharmaceutical services at 102 Dominion Road, Leicester, LE3 8FB (the listed chemist premises) which are included in the pharmaceutical list for the area of Leicestershire HWB in respect of Parkem Chemist Ltd.
- 2.7 **Regulations 26(1)(b)**
- 2.8 The committee noted that the applicant is proposing to carry on at the listed chemist premises, in place of Parkem Chemist Ltd, the business in the course of which Parkem Chemist Ltd is providing pharmaceutical services at those premises.
- 2.9 **Regulation 26(1)(c)**
- 2.10 The committee noted that the applicant has undertaken to provide the following pharmaceutical services:
- 2.10.1 New Medicine Service
- 2.10.2 Pharmacy First Service
- 2.10.3 Seasonal Flu Vaccination
- 2.10.4 Pharmacy Contraception Service

- 2.10.5 Hypertension Case Finding Service
- 2.10.6 Lateral Flow Service
- 2.11 These are the same services that Parkem Chemist Ltd provide.
- 2.12 **Regulation 26(1)(d)**
- 2.13 The committee noted that the provision of pharmaceutical services at the premises will not be interrupted.
- 2.14 **Regulation 26(3)**
- 2.15 The committee noted that this regulation is not applicable as the listed chemist premises are not distance selling premises.
- 2.16 Noting the above the committee cannot refuse the application pursuant to any elements of regulation 26.
- 2.17 **Regulation 31 – refusal: same or adjacent premises**
- 2.18 The committee noted that regulation 31(2)(a) applies as Parkem Chemist Ltd is currently included in the pharmaceutical list for the area of Leicestershire HWB in respect of the pharmacy premises at 102 Dominion Road, Leicester, LE3 8FB and is providing pharmaceutical services from these premises.
- 2.19 The committee therefore went on to consider whether regulation 31(2)(b) also applies. It noted that there is shared ownership and control of the applicant and the current contractor – the directors and superintendent of both bodies' corporate are the same, as are the registered offices. The committee was therefore satisfied that it is reasonable to treat the applicant's services as part of the existing services and that regulation 31(2)(b) applies. The committee therefore **refused** the application by virtue of regulation 31.
- 2.20 **Regulation 66 – Conditions relating to Providing Directed Services**
- 2.21 Although the applicant has undertaken to provide directed services, the committee did not consider this regulation as it had refused the application."

3 The Appeal

By email dated 4 March 2025, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "I am seeking your assistance to resolve an important matter.
- 3.2 We have received the attached response from the ICB concerning the change of ownership of Parkem Chemist. As part of our ongoing restructuring, we need to transfer the legal ownership of Parkem Chemist (FEC08) from Parkem Chemist Ltd to Parkem Group Ltd.
- 3.3 It is important to note that there will be no change in service provisions or ownership details, only the legal owner. Parkem Chemist Ltd will be closed in the near future, necessitating this change of ownership to the new company.
- 3.4 I am unable to understand why the ICB has rejected this application, given that there will be no impact on service delivery or the population served.

- 3.5 I kindly request your prompt response as the entire project is contingent upon the approval of this change of ownership.”

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

- 4.1.1 “Thank you for your letter dated 12th March 2025, which was sent to ... PCSE, I am responding for the East Midlands Primary Care Team on behalf of Leicester, Leicestershire & Rutland Integrated Care Board and would like to make the following representations.

4.1.2 Relevant Regulations in respect of a change of ownership

- 4.1.3 Regulations 26(1) – change of ownership applications. **The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013**

- 4.1.4 Regulation 31 – refusal: same or adjacent premises. **The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013**

- 4.1.5 [Regulation 66 – conditions relating to providing directed services¹.] **The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013**

- 4.1.6 The application for a change of ownership by Parkem Chemist Ltd was reviewed at the Pharmaceutical Services Regulations Committee on 21st January 2025.

- 4.1.7 The committee noted that the applicant is already included in the pharmaceutical list for the area of Leicestershire HWB and therefore paragraph 23, Schedule 2 does not apply.

4.1.8 Regulation 26 – Change of Ownership

4.1.9 Regulation 26(1)(a)

- 4.1.10 The committee noted that the applicant has undertaken to provide pharmaceutical services at 102 Dominion Road, Leicester, LE3 8FB (the listed chemist premises) which are included in the pharmaceutical list for the area of Leicestershire HWB in respect of Parkem Chemist Ltd.

4.1.11 Regulations 26(1)(b)

- 4.1.12 The committee noted that the applicant is proposing to carry on at the listed chemist premises, in place of Parkem Chemist Ltd, the business in the course of which Parkem Chemist Ltd is providing pharmaceutical services at those premises.

4.1.13 Regulation 26(1)(c)

- 4.1.14 The committee noted that the applicant has undertaken to provide the following pharmaceutical services:

- 4.1.14.1 New Medicine Service
- 4.1.14.2 Pharmacy First Service
- 4.1.14.3 Seasonal Flu Vaccination
- 4.1.14.4 Pharmacy Contraception Service
- 4.1.14.5 Hypertension Case Finding Service
- 4.1.14.6 Lateral Flow Service
- 4.1.15 These are the same services that Parkem Chemist Ltd provide.
- 4.1.16 **Regulation 26(1)(d)**
- 4.1.17 The committee noted that the provision of pharmaceutical services at the premises will not be interrupted
- 4.1.18 **Regulation 26(3)**
- 4.1.19 The committee noted that this regulation is not applicable as the listed chemist premises are not distance selling premises.
- 4.1.20 Noting the above the committee cannot refuse the application pursuant to any elements of regulation 26
- 4.1.21 **Regulation 31 – refusal: same or adjacent premises**
- 4.1.22 The application cannot be refused pursuant to this Regulation 31 as no persons on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services from
 - 4.1.22.1 The premises to which the application relates, or adjacent premises and
 - 4.1.22.2 The Integrated Care Board 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's premises should be treated as the same site).
- 4.1.23 The committee noted that regulation 31(2) (a) applies as Parkem Chemist Ltd is currently included in the pharmaceutical list for the area of Leicestershire HWB in respect of the pharmacy premises at 102 Dominion Road, Leicester, LE3 8FB and is providing pharmaceutical services from these premises.
- 4.1.24 It is noted that there is shared ownership or control of the applicant and the current contractor – the directors of both bodies' corporate are the same, the two bodies corporate have the same registered offices, and the superintendents are the same. The committee therefore must refuse this application pursuant to regulation 31 (2) (b)
- 4.1.25 The committee therefore **refused** the application by virtue of regulation 31.
- 4.1.26 **Regulation 66 – Conditions relating to Providing Directed Services**

- 4.1.27 As the applicant has undertaken to provide the directed services listed in the application if they are commissioned within three years of the date of either the grant of the application or, if later, the listing in relation to the applicant of the premises to which the application relates, to provide those services in accordance with an agreed service specification if they are commissioned, and not to withhold agreement to a service specification unreasonably.
- 4.1.28 By virtue of regulation 66(5) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, the applicant must provide the following directed services and not unreasonably withhold agreement to the service specifications for those services.
- 4.1.28.1 New Medicine Service
- 4.1.28.2 Pharmacy First Service
- 4.1.28.3 Seasonal Flu Vaccination
- 4.1.28.4 Pharmacy Contraception Service
- 4.1.28.5 Hypertension Case Finding Service
- 4.1.28.6 Lateral Flow Service
- 4.1.29 The committee confirms that the ICB will commission these services within eight weeks of the applicant being included in the pharmaceutical list for the area of Nottinghamshire HWB in respect of the premises listed in the application. The applicant must therefore register to provide the advanced services with the NHSBSA and return the SLA for the Covid vaccination service to the ICB within eight weeks of that date.
- 4.1.30 The committee was of the opinion that there are no persons included in a pharmaceutical list or entitled to be included in a pharmaceutical list because of the grant of a routine or excepted application but who is not (yet) included, or a LPS chemist, whose interests might be significantly affected by the decision. No third-party rights of appeal against the decision were therefore given.
- 4.1.31 I would like to take this opportunity to respond to any further representations provided by Parkem Group Ltd, Parkem Chemist (FEC08) 103 Dominion Road, Leicester, LE3 8FB."

5 Observations

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

6 Consideration

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

- 6.4 The Committee first considered Regulation 31 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), which states:

(1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.

(2) This paragraph applies where -

(a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -

(i) the premises to which the application relates, or

(ii) adjacent premises; and

(b) NHS England is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).

- 6.5 The Committee noted that in Part 5 of the application form, the Applicant had not provided any information on this point but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises.
- 6.6 The Committee noted that the Commissioner had sought to refuse the application on the provisions of Regulation 31. The Committee considered that, as the application was not a consolidation application, it must be refused if both Regulation 31(2)(a) and 31(2)(b) were to apply.
- 6.7 There is no dispute between the parties that a person on the pharmaceutical list, Parkem Chemist Ltd, is providing pharmaceutical services from the premises to which the application relates. Consequently, the Committee considered that Regulation 31(2)(a) applied.
- 6.8 The Committee next considered whether Regulation 31(2)(b) applied.
- 6.9 There is no dispute between the parties that the directors and superintendent of both Parkem Group Ltd and Parkem Chemist Ltd are the same, as are the registered offices.
- 6.10 The Committee had regard to *R (Pharmacy Care Plus) v FHSU [2013] EWHC 824 (Admin)*. The Committee considered that this case would likely provide a guide to interpreting Regulation 31(2)(b). Having had regard to it the Committee noted the following wording:

"it will almost always be an extremely relevant consideration to know whether or not there is any connection in terms of ownership and control between the entities who carry on the existing business and who propose to carry on the proposed new business. So, for example, if an existing business was owned by Company A and the proposed new business was owned by Company B, and there was absolutely no connection at all in terms of ownership and control between the two of them, it would be difficult to

see how they could be regarded as providing the same service, even if the services which they were going to provide were complementary to each other. In contrast, if they were both to be provided by exactly the same company, then that would also be an extremely relevant consideration going the other way."

- 6.11 The Committee noted that the language used by Davies J was not such that if the services were to be provided by the same company this should be definitive but rather that it would be an *"extremely relevant consideration"*. The Committee considered, therefore, that where an applicant is making a routine or excepted application, other than a consolidation application, and the premises to which the application relates, or the adjacent premises, are run by the same directors, then the starting point should be that the application should not be granted under Regulation 31(2)(b). This is on the basis that the connection between the existing and proposed pharmacies would be such that, in most circumstances, the condition set out in Regulation 31(2)(b) would be met.
- 6.12 The Committee considered that this is not an irrebuttable presumption and that circumstances might arise whereby, despite the close connection, the application may not need to be refused. The Committee specifically noted that Regulation 31(2)(b) includes a reasonableness element. It is not, therefore, merely factual but provides for some level of discretion in its application.
- 6.13 The Committee was mindful that where a change of ownership application was made under Regulation 26 the new owner must replace the current owner in the pharmaceutical list under Regulation 75(1). The Committee notes that Regulation 75(1) provides that:
- 75.—(1) *If, as a consequence of a change of ownership application or a consolidation application, an NHS chemist (C) is no longer to be the person listed in a pharmaceutical list in relation to particular pharmacy premises—*
- (a) *if there are other chemist premises listed in that pharmaceutical list in relation to C, NHS England must remove the listing of the particular premises in relation to C from that list; or*
- (b) *if there are no other chemist premises listed in that pharmaceutical list in relation to C, subject to regulation 76, NHS England must remove C from that pharmaceutical list.*
- 6.14 The Committee noted that where a successful change of ownership application is made, and the notice of commencement is made under Schedule 2 paragraph 34, then, when the Commissioner updates the relevant pharmaceutical list, the preceding entity must be replaced by the incoming. The Committee considered that a change of ownership application will not allow for the continued existence of the pharmacy that is to be changed. The Committee noted that the notice of commencement was necessary for the new owners to be included in the pharmaceutical list; it could not begin to provide services without it. The Committee considered that, if there was no notice of commencement, the existing pharmacy owners would continue to provide services, and the new pharmacy owners would not. The Committee concluded that the combined operation of paragraph 34 of Schedule 2 and Regulation 75 was such that either the new owner could operate, or the old owner could operate, but would not permit both owners to operate at the same time.
- 6.15 The Committee applied this understanding to the wording of Regulation 31(2)(b) and noted this was consistent with NHS Resolution's published guidance on Regulation 31.

That guidance notes that the Department of Health guidance clearly indicated the intent of Regulation 31:

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

- 6.16 The Committee considered that this elaborated on the point that the operation of Regulation 31 was to prevent there being two pharmacies operating at the same location.
- 6.17 Following this the Committee then considered if it would be reasonable to treat the proposed services as part of the same service as the existing services in accordance with the wording of Regulation 31(2)(b). The Committee considered that, despite there being the same directors for both companies, this mandated removal from the pharmaceutical list under Regulation 75 and Schedule 2 paragraph 34 needed to be accounted for. The Committee noted that the application of Regulation 75 was automatic, mandated and specific. It considered that the existing services would have to, by necessity, cease when the new owner was entered into the pharmaceutical list, as they would no longer be on the pharmaceutical list and so no longer be able to operate under the Regulations. The Committee therefore concluded that there could not be two operational pharmacies, as a result of Regulation 75, aligning with the understood intention of Regulation 31.
- 6.18 The Committee also noted that existing guidance on Regulation 31 did not refer to any determinations that were pure change of ownership applications, as is the case in this appeal. The Committee considered that other routine or excepted applications that do not mandate the removal of the existing owner should, by necessity, be treated entirely differently to the current appeal. The Committee considered that if there was any possibility for the continued service provision by the existing contractor this would result in it requiring the application to be refused. The Committee also considered that each change of ownership needed to be considered on its own facts as there may be certain circumstances that lead to it being reasonable to determine that Regulation 31 (2)(b) is satisfied and the application should be refused.
- 6.19 The Committee considered that it is not required to refused the application pursuant to Regulation 31 as, due to the mandatory requirement to remove Parkem Chemist Ltd from the pharmaceutical list, it would not be reasonable to treat the services currently being provided by Parkem Chemist Ltd as part of the same services that would be provided by Parkem Group Ltd, under the application.
- 6.20 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.20.1 confirm the Commissioner’s decision;
 - 6.20.2 quash the Commissioner’s decision and redetermine the application;
 - 6.20.3 if it considers that there should be a further notification to the parties to make representations, quash the Commissioner’s decision and remit the matter to the Commissioner.
- 6.21 The Committee went on to consider whether there should be a further notification to the parties as detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application, in relation to Regulation 26(1). However, as a change of ownership application under Regulation 26(1) is not a notifiable application, then

paragraph 19 of Schedule 2 of the Regulations did not apply to this appeal. Consequently, paragraph 9(1)(a)(iii) did not apply and the Committee was unable to remit the decision to the Commissioner.

6.22 Given that the Committee had found that the application should not have been refused under Regulation 31, the Committee determined that the decision of the Commissioner must be quashed. The Committee therefore proceeded to consider Regulation 26(1).

6.23 The Committee noted Regulation 26(1) (*Change of ownership applications*) of the Regulations, which reads:

"Section 129(2A) of the 2006 Act (regulations as to pharmaceutical services) does not apply to an application from a person who is not included in a pharmaceutical list for inclusion in the list, or from a person included in a pharmaceutical list for inclusion in that list also in respect of other premises than those already listed in relation to that person, if-

- (a) the applicant (X) is undertaking to provide pharmaceutical services at premises-*
 - (i) that are already listed chemist premises, and*
 - (ii) at which another person (Y) is providing pharmaceutical services;*
- (b) X is proposing to carry on at the listed chemist premises, in place of Y, the business in the course of which Y is providing pharmaceutical services at those premises;*
- (c) X is undertaking to provide the same pharmaceutical services as those that Y is providing; and*
- (d) the provision of pharmaceutical service at the premises will not be interrupted (except for such period as NHS England may for good cause allow)."*

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

6.25 The Committee has considered each of these paragraphs in turn, applying them to the information provided in the application form, unless (in relation to any of those paragraphs) the Applicant has provided amended/updated information.

Regulation 26(1)(a)

6.26 The Committee noted there is no dispute that the application is in respect of listed chemist premises at 102 Dominion Road, Leicester LE3 8FB at which another person is providing pharmaceutical services. The Committee was satisfied that this was sufficient for the purposes of paragraph (a).

Regulation 26(1)(b)

6.27 The Committee noted the Applicant is proposing to carry on at the listed premises in place of Parkem Chemist Ltd, the business in the course of which Parkem Chemist Ltd is providing pharmaceutical services at those premises.

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

Regulation 26(1)(c)

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

Regulation 26(1)(d)

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

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

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

7 Decision

- 7.1 The Committee quashes the decision of the Commissioner and re-determines the application.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has determined that it should be granted on the following basis:
- 7.3.1 the Applicant is proposing to continue in place of the existing contractor, the business in the course of which that contractor is providing pharmaceutical services at the same premises;
 - 7.3.2 the Applicant can provide the same pharmaceutical services as those that the existing contractor is providing;
 - 7.3.3 that the provision of pharmaceutical services will not be interrupted (except for such period as the Commissioner may for good cause allow).
- 7.4 The application is granted.

**Technical Case Manager
Primary Care Appeals**