6 June 2025

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REF: SHA/ 26552

APPEAL AGAINST CORNWALL AND THE ISLES OF SCILLY ICB DECISION TO REFUSE AN APPLICATION BY AROMPI UK LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST AT POLKYTH PARADE, CARLYON VICINITY, SLADE ROAD VICINITY, VICTORIA ROAD VICINITY, ST. AUSTELL PL25 4RD (BEST ESTIMATE) WITH REGARD TO CURRENT NEED UNDER REGULATION 13

1 Outcome

1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the application.

1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:
Arompi UK Limited
PCSE on behalf of Cornwall and The Isles of Scilly ICB
Boots UK Limited
Rushport Advisory LLP on behalf of Banns Pharmacy Limited

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APPEAL AGAINST CORNWALL AND THE ISLES OF SCILLY ICB DECISION TO REFUSE AN APPLICATION BY AROMPI UK LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST AT POLKYTH PARADE, CARLYON VICINITY, SLADE ROAD VICINITY, VICTORIA ROAD VICINITY, ST. AUSTELL PL25 4RD (BEST ESTIMATE) WITH REGARD TO CURRENT NEED UNDER REGULATION 13

NHS Resolution

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1 The Application

By application dated 10 June 2024, Arompi UK Limited ("the Applicant") applied to Cornwall and The Isles of Scilly ICB ("the Commissioner") for inclusion in the pharmaceutical list at Polkyth Parade, Carlyon Vicinity, Slade Road vicinity, Victoria Road vicinity, St. Austell PL25 4RD (best estimate) with regard to Current Need under Regulation 13. In support of the application it was stated:

In response to Section 2 'Proposed premises', the Applicant stated:

1.1 "Polkyth Parade, Carlyon vicinity, Slade Road Vicinity, Victoria Road vicinity, St. Austell, PL25 4RD.

1.2 The premise will be acquired within the vicinities which are approximately in close proximity."

In response to Section 5 'Applications in relation to premises that are in close proximity to other listed chemist premises', the Applicant left this box blank.

Information in support of the application

In making this application I/we am/are seeking to meet the current need identified on:

1.3 "Page 44-45 of the HWB's pharmaceutical needs assessment."

Please insert the identified current need you are offering to meet here.

1.4 "Improvement and better access to pharmaceutical services: The number of people who requires pharmaceutical services in the area has increased, the population of St Austell in 2021 census was 24,375 and in 2023 the population rose to 34,700 with more houses being built. There are massive changes to the pharmacy need from 2021 in St Austell to now as the population has increased and fewer pharmacies compared to 2021. When PNA Cornwall Council was written there were Five pharmacies. Now out of the five pharmacies in St Austell town one (Boots) has closed down while the second (ASDA) is closing down soon (July) so there is a current need for a new pharmacy. There are more than 1 hour wait for patients in a long queue in the remaining three pharmacies in St Austell. Patient (capable ones) now travel to Mevagissey of 6.1miles away to get prescription to avoid waiting time.

1.5 Two of these operating pharmacies are located in the town centre within two minutes' walk while the three [sic] is at the far end. Therefore, patients who are slightly out of town can access the proposed new pharmacy easily which have a good bus access and easy parking to visit the pharmacy, Also Par which is average [sic] of 10minutes drive from St Austell will have only two pharmacies instead of three from July.

1.6 As the ageing population increases, the pressure of the health care also increases, therefore, the new pharmacy will be working closely with the surgeries and provide easy access to everyone especially the elderly enhancing the primary care network. Services will be done like the blood pressure check, pharmacy first, addiction services as there is shortage of service in the area, and others to meet the health need of the community. As the wait time in surgeries and the remaining three pharmacies increases due to increase in population, the new pharmacy can help reduce the time especially by offering pharmacy first, walk in services and in addition to local commission PGDs. The new pharmacy will also be involved with teaching of students as Plymouth will be starting pharmacy school soon."

In the box below please explain how you intend to meet the identified current need either in whole or in part.

1.7 "By opening at the opening hours, doing the services needed in the area with the employment of staff and proper training."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 13 February 2025 states:

2.1 "Cornwall and the Isles of Scilly ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.

2.2 You have a right of appeal to the Secretary of State against Cornwall and the Isles of Scilly ICB's decision. Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

2.3 Primary Care Appeals
NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU".

PSRC Report

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

Case reference	ME3478 - CAS-310576-K3V7Y7
Name of applicant 1	Arompi UK Limited
Application type	Application for inclusion in a pharmaceutical list: routine application offering to meet a current need
Address of proposed premises	Polkyth Parade Carlyon vicinity Slade road Vicinity Victoria Road vicinity

	St. Austell PL25 4RD – best estimate
Case reference	CAS-322762-S4Q0F5
Name of applicant 2	Banns Pharmacy Ltd
Application type	Application for inclusion in a pharmaceutical list: routine application offering to secure unforeseen benefits
Address of proposed premises	From 14 Treverbyn Road to 26 Slades Road (both sides) and from 21 Carclaze Road to 129 Tregonissy Road (both sides) – best estimate

2.4 **The SW Committee noted:**

2.5 St Austell is a town in Cornwall, England. At the time of the 2021 Census the population was 20,900. St Austell lies South of Bodmin and 30 miles west of the border with Devon. It is the main centre of employment for the china clay industry in Cornwall.

2.6 There are currently 7 pharmacies located within 5 miles of the postcode in application 1. It is more difficult to calculate a similar count for the best estimate in application 2, however, the location is only slightly north of the best estimate for application 1. Asda Pharmacy, Cromwell Road is a 100-hour pharmacy, delivering 72.5 hours per week following the change in regulations: it is located 0.7miles from the postcode in application 1.

2.7 There was a Boots Pharmacy in Polkyth Parade, Carlyon Road until January 2024; this pharmacy closed under the Market Exit process. They were open 08:30-18:00 Monday to Friday and 09:00-13:00 on Saturdays. There was also previously a Boots Pharmacy at 67 Victoria Road, PL25 4QF until March 2020 which was open 09:00-18:00 Monday to Friday and 09:00-13:00 Saturdays; this closed as a result of an agreed consolidation with the Boots at Polkyth Parade. Application 1 is a best estimate which includes the location of both former Boots stores. Application 2 is a best estimate which is slightly north of the former Boots locations.

2.8 There has also been a closure of a 100hr contract in St Blazey in July 2024, following Market Exit processes (approx 3.6 miles from the best estimate postcode given in application 1).

2.9 The SW Committee noted the applications will be considered in relation to each other. Both applicants are aware that this is how the SW Committee will consider the cases. The Arompi UK Limited application was received in June 2024 and the Banns Pharmacy Limited application was received in August 2024.

2.10 <u>Summary of application 1 – Arompi UK Limited - Identified Current Need</u>

2.11 The application is for a best estimate to include Polkyth Parade, Carlyon vicinity, Slade Road vicinity, Victoria Road vicinity, St. Austell, PL25 4RD.

2.12 Boots Pharmacy occupied a premises at 25 Polkyth Parade, Carlyon Road, St Austell, PL25 4RD. The pharmacy ceased trading in January 2024.

2.13 The application from Arompi UK Ltd was received in June 2024 and whilst the Fitness to Practise process was undertaken the application from Banns Pharmacy Limited was received.

2.14 **PRELIMINARY ISSUES**

2.15 Summary of the application:

2.16 The applicant is proposing to open 9am – 7pm Monday to Friday, 9am – 1pm Saturdays. Only the weekday hours are core hours (60) as can be seen at section 3 of the application form:

2.17 Proposed core opening hours:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 19:00	09:00 – 19:00	09:00 – 19:00	09:00 – 19:00	09:00 – 19:00	0	Closed	50:00

2.18 Total proposed opening hours:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 19:00	09:00 – 19:00	09:00 – 19:00	09:00 – 19:00	09:00 – 19:00	09:00 – 13:00	Closed	54:00

2.19 The applicant proposes to provide Essential services, appliances in part IX of the drug tariff, advanced services and enhanced services at section 4 of the application form.

2.20 A copy of the floor plan is not included as the premises has not been acquired.

2.21 At part 6 of the application form, the applicant states the current need is in the PNA on pages 44-45 and describes it as:

2.22 Please insert the identified current need you are offering to meet here.

2.23 Improvement and better access to pharmaceutical services: The number of people who requires pharmaceutical services in the area has increased, the population of St Austell in 2021 census was 24,375 and in 2023 the population rose to 34,700 with more houses being built. There are massive changes to the pharmacy need from 2021 in St Austell to now as the population has increased and fewer pharmacies compared to 2021. When PNA Cornwall Council was written there were Five pharmacies. Now out of the five pharmacies in St Austell town one (Boots) has closed down while the second (ASDA) is closing down soon (July) so there is a current need for a new pharmacy.

2.24 There are more than 1 hour wait for patients in a long queue in the remaining three pharmacies in St Austell. Patient (capable ones) now travel to Mevagissey of 6.1 miles away to get prescription to avoid waiting time.

2.25 Two of these operating pharmacies are located in the town centre within two minutes walk while the three [sic] is at the far end. Therefore. patients who are slightly out of town can access the proposed new pharmacy easily which have a good bus access and easy parking to visit the pharmacy, Also Par which is average [sic] of 10minutes drive from St Austell will have only two pharmacies instead of three from July.

2.26 As the ageing population increases, the pressure of the health care also increases, therefore, the new pharmacy will be working closely with the surgeries and provide easy access to everyone especially the elderly enhancing the primary care network. Services will be done like the blood pressure check, pharmacy first, addiction services as there is shortage of service in the area, and others to meet the health need of the community.

2.27 As the wait time in surgeries and the remaining three pharmacies increases due to increase in population, the new pharmacy can help reduce the time especially by offering pharmacy first, walk in services and in addition to local commission PGDs. The new pharmacy will also be involved with teaching of students as Plymouth will be starting pharmacy school soon.

2.28 **PUBLIC INVOLVEMENT / REPRESENTATIONS**

2.29 The SW Committee noted full details of the applicant's proposals were notified to interested parties in accordance with the Regulations. Representations have been received from:

2.29.1 Boots UK Limited state the PNA does not reference a current gap.

2.29.2 Day Lewis PLC state the PNA does not identify a gap.

2.29.3 Asda Pharmacy state there is no plan to close their St. Austell pharmacy and that the currently available pharmacies are sufficient to meet patient needs.

2.30 In their response to the representations, the applicant includes some feedback about long waits at the Asda pharmacy and Day Lewis pharmacy. They also refer to support for an additional pharmacy by the town council.

2.31 The SW Committee noted the dispensing activity data for the closed Boots Pharmacy at Polkyth Parade for 2023-2024.

2.32 **The SW Committee agreed that it is not necessary to hold an oral hearing to determine the application.**

2.33 **CONTROLLED LOCALITY ISSUES**

2.34 The application does not relate to a controlled locality but is within 1.6km of a controlled locality.

2.35 Regulation 31 (same or adjacent premises) [quoted in full].

2.36 **REGULATION 13 – CURRENT NEEDS**

2.37 Regulation 13 states: [Regulation 13(1) – (3) quoted in full].

2.38 Paragraph 2 of Schedule 1 reads as follows [quoted in full].

2.39 The SW Committee noted it needs to be satisfied there is a current need, as defined in paragraph 2 of Schedule 1, which "has been included in the relevant PNA" (reg 13(1)(b)).

2.40 The SW Committee noted a PNA supplementary statement in January 2024 notes the closure of Boots on Polkyth Parade and concludes that the change did not create a gap in pharmaceutical services that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services. A subsequent Supplementary statement notes (aligned with a range of changes/closures including the closure of the 100 hour contract in St Blazey and others elsewhere in the county) that a revised PNA would be appropriate and will be prepared for 2025 – it is unclear whether it is the number of changes or one in particular which has resulted in that position. The SW Committee noted PNA's are due to be revised in 2025 as part of their 3 yearly cycle in any case.

2.41 Reviewing the PNA, it was noted the applicant refers to pages 44-45, indicating this is where the current need is identified. Reviewing these references, the SW Committee noted demographic and service provision context for the area of this application.

2.42 The SW Committee noted the 2022 PNA states data available at the time of publication in relation to the current provision of pharmacies suggests that a gap in pharmaceutical services is unlikely to exist during the lifetime of this PNA.

2.43 The SW Committee noted that supplementary statements were published following the Market Exit of the Boots pharmacy in St. Austell and do not indicate a gap was created. The August 2024 statement does signal that a review of the PNA is going to take place, as part of the 3-year PNA cycle.

2.44 **The SW Committee is of the opinion that the PNA does NOT include a current need which satisfies the requirements of paragraph 2(a) of Schedule.**

2.45 As the Committee concludes that the PNA does not adequately identify a current need the application is refused as the requirements of regulation 13(1) are not be [sic] met.

2.46 Reg 13(2) Other matters to which the SW Committee must have regard

2.47 Regulation 13 sets out the consequences of each matter, as set out in the table overleaf.

Matter in regulation 13(2)	**Consequence in regulation 13**	**Recommendation**
(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 current need mentioned in paragraph (1) that the applicant is offering to meet;	(1) may invite other applications and consider the applications together	There does not appear to be any reason to invite competing applications
(b) whether it is satisfied that another application offering to meet the current 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;	(2) may defer for such period as is reasonable	No other applications have been received, though there is an unforeseen benefits application to consider alongside this case.

(c) whether it is satisfied that an appeal relating to another application offering to meet the current need mentioned in paragraph (1) is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;	(3) may defer until the applications can be considered together	There are no appeals.
(d) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the 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;	(4) must refuse	No party has suggested that there have been changes to the needs of the area as envisaged by this paragraph.
(e) Whether [NHS England] is satisfied that, (i) granting the application would only meet the current 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;	(5) must refuse	The PNA does not appear to identify a need.
Matter in regulation 13(2)	**Consequence in regulation 13**	**Recommendation**
(f) Whether [NHS England]— (i) it is satisfied that granting the application would only meet the current 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;	(6) may only grant if satisfied that to do so would secure improvements, or better access, to pharmaceutical services	The PNA does not appear to identify a need
(g) Whether [NHS England] is satisfied that— (i) the current 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;	(5) must refuse	The PNA does not appear to identify a need
(h) Whether [NHS England] is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the current 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;	(5) must refuse	

2.48 **Reg 13: conclusion**

2.49 The SW Committee is satisfied that the application should not be granted.

2.50 Regulation 66 – conditions relating to providing directed services

2.51 The SW Committee noted, had an application been approved, the proposed pharmacy would be located within 1.6Km of a controlled locality so the impact on any dispensing patients in the controlled locality area was considered. Details of the number of dispensing patients affected are:

Practice	**Disp within 1.6km**
Clays Practice	18
Probus Surgery	17

2.52 **Chapter 32 of the Manual states:**

2.53 *Periods of gradualisation should generally be no shorter than one month and, other than in exceptional circumstances, should last no longer than three months. Exceptional circumstances may include:*

2.53.1 *the loss by a dispensing practice of all its dispensing patients,*

2.53.2 *where the reduction in the number of dispensing patients would lead to staff changes or redundancies, or*

2.53.3 *where there is only one pharmacy within a 1.6km of the practice premises and that is the pharmacy that is opening and its ability to absorb former dispensing patients effectively needs to be staged over time.*

2.54 No party has made any representations on the matter of gradualisation. The SW Committee determined a period of 1-month gradualisation for the removal of patients from the practice dispensing lists if the application is granted on appeal.

2.55 Appeal Rights

2.56 The SW Committee is satisfied that the following practices have appeal rights against any gradualisation decision if the application is granted on appeal: Clays Practice and Probus Surgery.

2.57 As the application is refused the applicant, Arompi UK Limited, has appeal rights.

2.58 Summary of application 2 – Banns Pharmacy Ltd (Unforeseen benefits)".

2.59 [removed by NHSR]

3 **The Appeal**

In a letter dated 9 March 2025 addressed to NHS Resolution, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "Following the decision of the above body on my application for inclusion in a pharmaceutical list -routine application I hereby appeal the decision pursuant to paragraph 36 of Schedule 2 of The National Health Services (Pharmaceutical and Local Pharmaceutical services) Regulations 2013.

3.2 The Cornwall and Isles of Scilly ICB Committee had considered my application for inclusion of my company into the pharmaceutical list of pharmaceutical services providers in St Austell and in reaching their decision refused my application on the

ground that St Austell PNA report of 2022 does not include a current need which satisfies the requirements of paragraph 2(a) of schedule 1 of the Regulations. And in fact, that PNA does not adequately identify a current need. No further consideration was taken.

3.3 It is submitted that SW Committee decision is fundamentally flawed, recklessly reached in error in that they had failed to consider the mandatory factors as set out in regulations 13 , 15, 17 , 18 and 21A of the 2013 Regulations before reaching their conclusion. I, therefore, appeal against the decision under the grounds below.

3.4 <u>The Committee's decision is fundamentally flawed, unfair and recklessly reached as it failed to consider the mandatory factors before reaching its decision.</u>

3.5 The committee had considered an application for inclusion in a pharmaceutical list in St Austell which is a routine application offering to secure unforeseen benefits. The Committee in reaching its decision considered the current needs criteria under regulation 13, the necessary services: gabs [sic] provision under Paragraph 2 of Schedule 1 of the 2013 Regulations and the 2022 PNA report relating to St Austell and concluded at paragraph 25 of their decision letter that in so far as the 2022 PNA report of St Austell does not include a current need or adequately identify a current need the application that aims to secure unforeseen benefits to the members of St Austell public should be refused.

3.6 The Committee despite setting out the applicant's proposed current and enhanced needs services at paragraph 12 of their decision letter failed woefully to carry out the mandatory tests as required by the legislations before reaching its decision.

3.7 Regulation 13 has its heading as 'Current **needs: additional matters to which NHS England) <u>must</u> have regard**

3.8 **Reg 13(1)**

3.9 **(a) provides:** *[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 current need for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB and*

3.10 ***(b)*** *the current need has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) of schedule* ***1***

3.11 *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* ***]***

3.12 The relevant maters as set out in paragraph 2 relating to this appeal are paragraphs 2 (d) and 2 (g **)** The Committee should have as a matter of mandatory requirement carried out a test with regards [sic] to paragraph **2(d)** to consider *whether it is satisfied that since the publication of the relevant pharmaceutical needs assessment [regarding St Austell in 2022] there has been changes to the needs for the 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.*

3.13 This test is a mandatory requirement in that provision of pharmaceutical services are public interest oriented and the refusal of any application for such public interests must be outweighed by another public interest factor -which is prevention of significant detriment to the provision of pharmaceutical services. This implies that if it is satisfied that granting an application for inclusion in a list will not cause significant detriment that

application should be granted. The committee failed to conduct this mandatory test before refusing the application.

3.14 The committee was completely wrong to refuse the application only on the basis that the PNA of St Austell does not include current need or identified adequate need and as such the application must be refused. They were completely wrong in that the mandatory test originated from National Health Act 2006. Section 129(2A) provides:

3.15 *[NHS England] is satisfied as mentioned in this subsection, if having regard to the needs statement for the relevant area* ***and t****o any matters prescribed by the secretary of state in the regulations, it is satisfied that to grant the application would*

3.16 *Meet a need in that area for the services or some of the services specified in the application or*

3.17 *Secure improvements, better access to pharmaceutical services in that area* (that application should be granted) my emphasis.

3.18 Given the provisions of section 129(2A), the committee is required not only to consider the PNA of the area but should conduct a test having regards to mandatory factors set out in the regulations to determine whether granting the application would meet a need **or** some of the services specified in the application.

3.19 This was not done at all by the committee rather they recklessly refused the application on the basis that St Austell PNA does not contain a need or adequately identify any need without being satisfied that refusing the application will prevent significant detriment to those other pharmaceutical services in the area.

3.20 In addition, the committee having set out the services specified in the application which the Applicant aims to provide among other services addiction services with it long opening hours should have had regard to the factors set out in regulation 13 (2) and in particular 13(2g) to conduct a test as to whether it is satisfied that granting the application would result in an increase in the availability of essential services in the area given the committee notes at paragraph 10 of their decision letter.

3.21 The satisfactory test as provided in Section 129 (2A) mandates the NHS England to carry out satisfactory test having regard not only to PNA, but also other matters/factors as provided in the regulations. Unfortunately, there is nowhere in the body of the committee's decision letter any test, or any regard was given to the mandatory factors as set out in Regulation 13 (2) or 15(2).

3.22 The committee failed to consider the type of the application being made and in doing so failed to consider relevant mandatory legislative provisions.

3.23 The committee clearly set out in their decision letter the type of application being made – **routine application offering to secure unforeseen benefits** but at no where [sic] in their decision letter did they consider this application.

3.24 Regulation 18 headings states – **Unforeseen benefits applications: additional matters to which NHS England must have regard to**

3.25 Regulation 18(1) provides if [NHS England] receives a routine application and is required to determine whether it is satisfactory that granting the application or granting it in respect of some only of the services specified in it, would secure improvement, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB and

3.26 The improvement or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of the Schedule 1,

3.27 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) Relevant to this appeal as to those matters set out in paragraph 2 is paragraph 2(b) – *whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard to the desirability of –*

3.28 *There being a reasonable choice about obtaining pharmaceutical services in the area of the relevant HWB (taking into account also [NHS England] duties under section 131 and 13i and 13p of the 2006 act (duty as to patient choice and duty as respects variation in provision of health services*

3.29 *People who share a protected characteristics having access to services that meet specific needs for pharmaceutical services that in the area of the relevant HWB are difficult for them to access (taking into account also [NHS England's] duties under section 13g of the 2006 Act (duty as to reducing inequalities [or]*

3.30 *There being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also [NHS England] duties under section 13 K of the 2006 Act (duty to promote innovation*) Granting *the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published.*

3.31 This is the thrust of the applicant's application but sadly the committee wholly, failed to consider the applicant's application and failed woefully to conduct mandatory test on mandatory provisions. Notwithstanding that the committee had clearly set out in their decision letter of the type of application being made including setting out at paragraph 10 of their decision letter the proposed essential, advance and enhanced services yet nowhere in their decision letter did the committee determine or consider the provision of those services in accordance with the legislative requirements and test.

3.32 Secondly, the unforeseen application under reg 18 does not depend on whether the need was contained in PNA of the area rather depends on test and balancing of factors including the NHS England duties. It is submitted that the decision of the committee is very unfair, fundamentally flawed and punctured by recklessness that this appeal should be allowed.

3.33 The committee failed to consider the relevant evidence gathered, the wishes and needs of the stakeholders in the community including in particular the community's needs for more pharmaceutical services providers in the area as represented by the councillor Jeremy Preece and MP representing St Austell.

3.34 The Committee clearly acknowledged that there were public involvement and representations from the community's councillors , MP and other Local Council officers asking for more pharmaceutical service providers in the applicant's area and all these public representations expressly requesting for more pharmaceutical service providers, and despite all these representations and public involvement the committee refused the two applications from the area just simply on the ground that the PNA report of 2022 does not include a current need which satisfies the requirements of paragraph 2(a) of Schedule 1 thereby disregarding the provisions of Regulations 17, 18 , 21A and 15 of the 2013 Regulations.

3.35 The committee refusal of the application is a reckless act in that the NHS England has duties to ensure that health services provide patients with choice, duty to promote

innovation, duty to reducing inequalities as set out in Regulation 18 (2)(b). Further, the councillors, MP and Local Council officers are representative of the people and if they request for more pharmaceutical service providers, it is a public interest oriented that such requests should have been taken into consideration when carrying out satisfactory test. Unfortunately, the committee simply refused the application on ground of PNA report of 2022 without carrying any satisfactory test or balancing of interests.

3.36 It is therefore, submitted that the committee failed woefully to consider the application having regard to the mandatory factors required before reaching their conclusion. They also failed to consider other factors as set out by the secretary of state in the 2013 Regulations as mandated by section 129(2A) of the 2006 Act and in this respect the decision falls to be revoked and appeal allowed.

3.37 In this respect, I humbly and respectfully ask the appeal officer acting on behalf of the Secretary of state to allow my appeal and direct that my company be included in the list of pharmaceutical services providers in St Austell in that the application was necessary and publicly supported by both the MP, the Councillor and the local authority."

3.38 [A letter from the local MP in support of the application and a screenshot of a newspaper article were also enclosed – appendix A and B].

4 Summary of Representations

In the interests of transparency and fairness, NHS Resolution sought to rely on the discretion afforded in paragraph 7 of Schedule 3 of the Regulations to vary the normal procedures and to circulate, alongside a copy of the appeal, the Applicant's comments received in response to the representations made to the Commissioner on the application as these had not been seen by parties prior to the decision being made by the Commissioner [appendix C].

This is a summary of representations received.

4.1 Boots UK Limited

4.1.1 "Thank you for your letter dated 21st March 2025 informing us of the above appeal.

4.1.2 We have no comments to make in addition to those submitted to PCSE, a copy of which I have enclosed.

4.1.3 We would be grateful if you would inform us of the outcome of this appeal in due course."

Letter to the Commissioner dated 5 September 2024

4.1.4 "Thank you for your letter dated 5th August 2024 informing us of the above application.

4.1.5 The applicant has submitted an application under Regulation 13 of the NHS Pharmaceutical and Local Pharmaceutical Services regulations 2013 offering to meet an identified current need within the relevant pharmaceutical needs assessment (PNA).

4.1.6 There appears to be no reference in the PNA or any supplementary statements that references a gap in service provision for which a further pharmacy is necessary in this locality.

4.1.7 We would be grateful if you would inform us of the outcome of this application in due course."

4.2 Rushport Advisory LLP on behalf of Banns Pharmacy Limited

4.2.1 "I act for Banns Pharmacy Limited and have been instructed to submit these representations in response to the above appeal.

4.2.2 Whilst my client agrees that a new pharmacy is required in St Austell, the application from Arompi UK Limited does not meet the regulatory requirements in respect of a current identified need and must therefore be refused.

4.2.3 The Committee will note that a Supplementary Statement to the Cornwall PNA was published in August 2024 and is attached with this letter. The Applicant does not reference this statement however we feel it is correct to deal with it as part of this reply.

4.2.4 The statement contains the following wording,

4.2.4.1 It is the opinion of the Cornwall and Isles of Scilly Health and Wellbeing board that these changes to the pharmaceutical list create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services.

4.2.4.2 These changes to the availability of pharmaceutical services are relevant to the granting of applications referred to in the NHS Act 2006 and the Group is satisfied that a revised Pharmaceutical Needs Assessment would be an appropriate response and that a revised PNA will be prepared and submitted for approval of the Health and Wellbeing Board in 2025.

4.2.5 Whilst at first glance this appears to identify a need, it does not do so in accordance with the regulatory test which is set out in paragraph 2 of Schedule 1 and requires that, in order to be properly identified, the PNA must contain,

4.2.5.1 2. 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—

4.2.5.2 (a) need to be provided (whether or not they are located in the area of the HWB) in order to meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in its area;

4.2.5.3 (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.

4.2.6 The wording of the supplementary statement is simply too vague to meet the regulatory test. The statement does not state what type of services are required, where in the HWB they are required, when they are required or what the "current need" actually is. Instead, the statement refers to a "gap" and appears to have been used as a precursor to properly identifying a need in the next PNA. Indeed, the statement states that "a revised Pharmaceutical Needs Assessment would be an appropriate response and that a revised PNA will be

prepared and submitted for approval of the Health and Wellbeing Board in 2025."

4.2.7 On this basis the application from Arompi UK Ltd must be refused.

4.2.8 We look forward to hearing from you in due course."

4.2.9 [A copy of the Supplementary Statement dated August 2024 was enclosed].

4.3 The Commissioner

4.3.1 "Thank you for your letter, received 24 March 2025, addressed to Mr Speight at Primary Care Support England (PCSE) enclosing a copy of the appeal as detailed above. The South West Pharmaceutical Services Regulations Committee (SW Committee) wishes to make the following comments on the appeal.

4.3.2 The SW Committee assessed the application against the criteria for Regulation 13 applications and concluded that the PNA does not identify a current need which satisfies the requirements of paragraph 2(a) of Schedule 1. The SW Committee would respectfully point out that the application clearly states it is offering to meet an identified current need made under Regulation 13, meaning Regulations 15, 17 and 18 are not relevant to the determination of the application.

4.3.3 The SW Committee noted the 2022 PNA states data available at the time of publication, in relation to the current provision of pharmacies, suggests that a gap in pharmaceutical services is unlikely to exist during the lifetime of this PNA.

4.3.4 The SW Committee noted a supplementary statement was published in January 2024, following the Market Exit of the Boots pharmacy in St. Austell and does not indicate a gap was created. The August 2024 statement does signal that a review of the PNA is going to take place, as part of the 3-year PNA cycle.

4.3.5 The SW Committee concludes that the PNA does not adequately identify a current need, so the application is refused as the requirements of Regulation 13(1) are not met.

4.3.6 The SW Committee respectfully requests that the decision to refuse the application is upheld."

5 Observations

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

5.1 The Applicant

5.1.1 "If you read my appeal extensively, the issue of "current need" has been addressed extensively, this committee failed to carry out mandatory test as stated by law before refusing the application. The MP statement as also confirmed the need for a new pharmacy in St Austell.

5.1.2 It should be known that Slade Road vicinity in my application is North of St Austell, the end of Slade Road is the beginning of Carclaze area. The

population of this Carclaze area was served by the then Boots in Polkyth parade (closed) and Daylewis [sic] in Wheal Northey. That was basically the focused population in my application including the Poltair area served by Boots.

5.1.3 If Bann pharmacy is granted inclusion to the pharmaceutical list there will be no significant changes in benefit to the community as the opening hours proposed is not different or is shorter than the 4 pharmacy premises in the community. It should be noted that Daylewis [sic] in Wheal Northey which is trying hard to serve the area affecting Boots closure now goes on break between 1 to 2pm and Bann pharmacy tend to also close at that time where most people access pharmacy. Arompi pharmacy do intend to open for a longer hour to help more people to access to the pharmacy as Daylewis [sic] in town is now shot on Saturdays.

5.1.4 Daylewis [sic] Wheal Northey apparently installed a reboot [sic] to help patient collect medication, but only when the gate to the surgery is open could patients access this service.

5.1.5 In my application I stated, Par with only two pharmacies from July 2024 [sic], the mandatory test was not carried out to check the impact it will have on pharmacy services in the area but rather refusing my application based only on “current need”. The worst is only one of the two pharmacies in Par is now open on Saturday [sic] with shorter hours which significantly increases the service need in St Austell. It is a know [sic] fact that people who use distance pharmacy often come to pharmacy premises asking for emergency supply as they have not received medication from their distance pharmacy.

5.1.6 It will be unbeneficial to only consider “current need” without consideration on other factors that will benefit the increasing general population in St Austell with many new houses been built.

5.1.7 I hope the appeal team would positively re-consider that Arompi pharmacy proposed service plan is better to benefit patient access to pharmaceutical services.”

6 Consideration

6.1 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.

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

6.3 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

6.4 As a preliminary matter, the Committee noted that the Applicant states in its appeal that *“It is submitted that SW Committee decision is fundamentally flawed, recklessly reached in error in that they had failed to consider the mandatory factors as set out in regulations 13 , 15, 17 , 18 and 21A of the 2013 Regulations before reaching their conclusion”.* However the Committee noted that the Applicant had made an application under the provisions of Regulation 13 so the provisions of Regulation 15, 17 and 18 were not relevant. The Committee noted that the provisions of Regulation 21A would only be relevant if the Applicant met the Regulation 13(1) criteria. Therefore, the Committee limits its considerations to the provisions of Regulation 13.

6.5 The Committee noted that all parties had been made aware that it may consider this application together and in relation to another application which had been made under Regulation 18 (SHA/ 26534). On the basis of the information available, the Committee did not consider it necessary to consider the two applications together.

6.6 The Committee had before it a copy of the Cornwall and Isles of Scilly Pharmaceutical Needs Assessment ("PNA") dated 2022-2025 and prepared by Cornwall Health and Wellbeing Board, which had been provided by the Commissioner. The Committee noted that Supplementary Statements had been issued in January 2023, January 2024, April 2024 and August 2024.

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

6.8 The Committee dealt with the appeal by way of consideration of all the issues.

Regulation 31

6.9 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).

6.10 The Committee noted that the Applicant had not provided any information in the application form 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.

6.11 The Committee noted that the Commissioner had quoted the provisions of Regulation 31 in the decision report but did not appear to have made a finding however the Committee noted that the Commissioner had refused the application based on the provisions of Regulation 13 and not Regulation 31. The Committee further noted that no party had put forward the argument that the application should be refused as a result of Regulation 31 and that the map provided by the Commissioner did not indicate that there is an existing pharmacy within the Applicant's best estimate address.

6.12 The Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.

6.13 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 13

6.14 The application (which was to be determined in accordance with the procedures in Schedule 2) was submitted by the Applicant based on addressing current need for pharmaceutical services.

6.15 The Committee considered whether the need on which the Applicant based its application satisfied the elements of Regulation 13(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 current need for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and

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

6.16 Paragraph 2(a) of Schedule 1 reads as follows:

"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) need to be provided (whether or not they are located in the area of the HWB) in order to meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in its area"

6.17 The Committee noted that the local MP for the area had provided a letter in support of the application which the Applicant had also provided with its appeal as well as a screenshot of a newspaper article. The Committee also noted the Applicant's comment that *"The MP statement as also* [sic] *confirmed the need for a new pharmacy in St Austell".*

6.18 The Committee noted that the Applicant is proposing to meet a current need in the St Austell area of Cornwall.

6.19 The Committee noted that the Applicant's proposed best estimate address includes the location of a former Boots Pharmacy which closed in January 2024. The Committee noted the Applicant's comment that *"the five pharmacies in St Austell town one (Boots) has closed down while the second (ASDA) is closing down soon (July) so there is a current need for a new pharmacy".* The Committee was of the view that simply stating that there is a need for pharmaceutical services following a closure or purported closure is not the criteria for current need applications as such applications are based on the

findings of the PNA. The Committee therefore went on to consider any identified current need against the PNA.

6.20 In making its application, the Committee noted that the Applicant had referred to pages 44 to 45 of the PNA. The Committee was of the view that these pages refer to the age demographic in the Health and Wellbeing Board (HWB) area and the population of the Isles of Scilly, as opposed to a statement of the pharmaceutical services that the HWB has identified as services that are not provided in the area of the HWB but which the HWB is satisfied would, if they were provided, meet a current need for pharmaceutical services,.

6.21 The Applicant concludes, in its application, that it will meet the need *"By opening at the opening hours, doing the services needed in the area with the employment of staff and proper training".* However, the Committee noted that no further information had been provided by the Applicant as to why this constituted a "current need" for the purposes of Regulation 13.

6.22 The Committee had regard to section 13 of the PNA, 'Conclusions', which states:

6.22.1 *"The PNA concludes that, in respect of essential pharmaceutical services:*

6.22.2 *There is no current gap in services across Cornwall and the Isles of Scilly in any of the localities.*

6.22.3 *If current pharmacies remain open there are no future gaps in services across Cornwall and the Isles of Scilly in any of the localities however, given the housing developments in Newquay, Truro (Langarth) and St Austell (West Carclaze) there may be opportunities to consider relocation to enable better overall access for patients.*

6.22.4 *The PNA concludes that in respect of improvements and better access:*

6.22.5 *There is reasonable choice of pharmacy now and for the future.*

6.22.6 *Future improvements and better access appear on balance to be best managed through working with existing contractors rather than through the opening of additional pharmacies.*

6.22.7 *After considering all the elements of the PNA, Cornwall and the Isles of Scilly Health and Wellbeing Boards conclude that there is adequate provision of pharmaceutical services across Cornwall and the Isles of Scilly. Data available at the time of publication in relation to the current provision of pharmacies, suggests that a gap in pharmaceutical services is unlikely to exist during the lifetime of this PNA."*

6.23 The Committee noted that the Supplementary Statement dated January 2024 references the closure of the Boots pharmacy on Polkyth parade and changes to opening hours for Asda Pharmacy in St Austell and concludes that *"It is the opinion of the Cornwall and Isles of Scilly Health and Wellbeing board that these changes to the pharmaceutical list do not create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services".* The Committee noted that the Supplementary Statement does not outline services that are not provided in the area of the HWB but which the HWB is satisfied would, if they were provided, meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in St Austell, which the proposed pharmacy can meet.

6.24 The Committee noted that the Supplementary Statement dated August 2024 concludes that *"It is the opinion of the Cornwall and Isles of Scilly Health and Wellbeing board that these changes to the pharmaceutical list create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services".* The Committee had regard to the comments from the Commissioner and Rushport Advisory LLP on behalf of Banns Pharmacy on this point and considered that whilst the Supplementary Statement highlights a gap, it is not clear where that gap is and the need required. This was demonstrated by the fact that the changes listed were not in relation to the same area as the instant application. The Committee therefore concluded that the PNA does not indicate a current need that *"has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) of Schedule 1".*

6.25 The Committee noted the Applicant has provided information regarding the number of pharmacies in the area and neighbouring areas and information regarding access to some of those pharmacies as well as issues with waiting times and opening hours. The Applicant also highlights some of the services that it proposes to provide. However, the Committee was mindful that these are not relevant considerations for an application made in accordance with Regulation 13. The Committee noted that it is open to the Applicant to submit an application under an alternative Regulation.

6.26 The Committee was of the view that any purported "need" identified by the Applicant in its application, appeal and observations does not constitute a "current need" as that term is used in the Regulations and which is specifically set out in paragraph 2(a) of Schedule 1.

6.27 The Committee determined that the need in question was not included in the PNA dated 2022 in accordance with paragraph 2(a) of Schedule 1.

6.28 In this case, the provisions of Regulation 13(1) were not met. The Committee did therefore not need to have regard to the provisions of Regulation 13(2) nor 21A.

6.29 The Committee noted that the Applicant, in its appeal, has made a number of points in relation to the Commissioner's decision letter, which the Committee proceeded to consider these in turn.

6.30 The Applicant states that *"The committee had considered an application for inclusion in a pharmaceutical list in St Austell which is a routine application offering to secure unforeseen benefits. The Committee in reaching its decision considered the current needs criteria under regulation 13, the necessary services: gabs* [sic] *provision under Paragraph 2 of Schedule 1 of the 2013 Regulations and the 2022 PNA report relating to St Austell and concluded at paragraph 25 of their decision letter that in so far as the 2022 PNA report of St Austell does not include a current need or adequately identify a current need the application that aims to secure unforeseen benefits to the members of St Austell public should be refused".* However the Committee noted that this statement was not accurate. The Commissioner had considered two separate applications by different applicants in relation to the Regulations they were made under. The Commissioner had considered the Applicant's application against the provisions of Regulation 13 which was correct. The Committee noted that paragraph 25 of the decision letter states that *"The SW Committee is of the opinion that the PNA does NOT include a current need which satisfies the requirements of paragraph 2(a) of Schedule 1"* which does not reflect the statement made by the Applicant in its appeal.

6.31 The Committee noted the Applicant's comment that *"The Committee despite setting out the applicant's proposed current and enhanced needs services at paragraph 12 of their decision letter failed woefully to carry out the mandatory tests as required by the legislations before reaching its decision"*. However, the Committee noted that the

Commissioner had considered the provisions of Regulation 13 so it was unclear to the Committee what *"mandatory tests"* the Applicant expected the Commissioner to undertake beyond those under Regulation 13 which it was bound to consider.

6.32 The Applicant quotes Regulation 13(1) and states that *"The relevant maters* [sic] *as set out in paragraph 2 relating to this appeal are paragraphs 2 (d) and 2 (g). The Committee should have as a matter of mandatory requirement carried out a test with regards* [sic] *to paragraph 2(d) to consider whether it is satisfied that since the publication of the relevant pharmaceutical needs assessment [regarding St Austell in 2022] there has been changes to the needs for the 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.*

6.33 *This test is a mandatory requirement in that provision of pharmaceutical services are public interest oriented and the refusal of any application for such public interests must be outweighed by another public interest factor -which is prevention of significant detriment to the provision of pharmaceutical services. This implies that if it is satisfied that granting an application for inclusion in a list will not cause significant detriment that application should be granted. The committee failed to conduct this mandatory test before refusing the application".* The Committee considered that the Applicant's arguments were misconceived. The Committee noted that the provisions of Regulation 13(2) only apply if the provisions of Regulation 13(1) are met.

6.34 The Applicant goes on to state that *"The committee was completely wrong to refuse the application only on the basis that the PNA of St Austell does not include current need or identified adequate need and as such the application must be refused. They were completely wrong in that the mandatory test originated from National Health Act 2006. Section 129(2A) provides",* the Applicant quotes this Regulation and concludes that *"Given the provisions of section 129(2A), the committee is required not only to consider the PNA of the area but should conduct a test having regards to mandatory factors set out in the regulations to determine whether granting the application would meet a need or some of the services specified in the application.*

6.35 *This was not done at all by the committee rather they recklessly refused the application on the basis that St Austell PNA does not contain a need or adequately identify any need without being satisfied that refusing the application will prevent significant detriment to those other pharmaceutical services in the area".* However the Committee noted the provisions of this Regulation require a "need" to be identified by way of a "needs statement for the relevant area".

6.36 The Applicant states that *"The satisfactory test as provided in Section 129 (2A) mandates the NHS England to carry out satisfactory test having regard not only to PNA, but also other matters/factors as provided in the regulations. Unfortunately, there is nowhere in the body of the committee's decision letter any test, or any regard was given to the mandatory factors as set out in Regulation 13 (2) or 15(2)".* The Committee had already dealt with the provisions of Regulation 13(2) above and noted that Regulation 15(2) is in relation to a different application type to the one submitted by the Applicant.

6.37 The Applicant goes on to state that *"The committee clearly set out in their decision letter the type of application being made – routine application offering to secure unforeseen benefits but at no where* [sic] *in their decision letter did they consider this application".* It was unclear to the Committee how the Applicant had come to this conclusion as the Committee noted on page one of the decision report, it states *"Application type: Application for inclusion in a pharmaceutical list: routine application offering to meet a current need".* The Committee noted that the other applicant had made an application under Regulation 18 and the Commissioner had referenced Regulation 18 in relation to that application only. The Applicant then proceeds to make comments in relation to the provisions of Regulation 18 as well as Regulation 15, 17

and 21A and the fact that the Commissioner did not consider its application against them. However the Committee noted that the Applicant had not made an application under the provisions of Regulation 18, it had made an application under the provisions of Regulation 13, as the Commissioner had highlighted in its representations, so it was correct for the Commissioner to limit its consideration to the provisions of Regulation 13.

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

6.38.1 confirm the Commissioner's decision;

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

6.38.3 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.

6.39 Even though the Committee reached the same overall decision as the Commissioner, given that the Commissioner did not make a finding in respect of Regulation 31, the Committee determined that the decision of the Commissioner must be quashed.

6.40 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.

6.41 The Committee noted that representations on Regulation 13 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 13.

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

7 Decision

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

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 the application should be refused for the following reason:

7.3.1 The PNA has not identified a current need which this application could meet.

7.4 Accordingly, the application is refused.

Case Manager
Primary Care Appeals