

7 August 2025

REF: SHA/26607

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**APPEAL AGAINST NORTHAMPTONSHIRE ICB
DECISION TO REFUSE HEALTHPHARM GROUP LTD
APPLICATION FOR CHANGE OF OWNERSHIP FROM
HEALTHPHARM (LEICESTER) LTD t/a ALLISONS
CHEMIST IN RESPECT OF 56 KINGSLEY PARK
TERRACE, NORTHAMPTON, NN2 7HH**

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1 Outcome

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

A copy of this decision is being sent to:

Healthpharm Group Ltd
PCSE on behalf of Northamptonshire ICB

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Email: nhsr.appeals@nhs.net

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DECISION TO REFUSE HEALTHPHARM GROUP LTD
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1 The Application

By application dated 22 November 2024, Healthpharm Group Ltd (“the Applicant”) applied to Northamptonshire ICB (“the Commissioner”) for a change of ownership from Healthpharm (Leicester) Ltd t/a Allison’s Chemist in respect of 56 Kingsley Park Terrace, Northampton, NN2 7HH. In support of the application it was stated:

1.1 “Basis for the change of ownership

1.2 The Applicant confirmed that they were buying the pharmacy business on a non-debts and liabilities basis by ticking “Yes” on the application form and in response to “Debts and liabilities basis, with or without access to the existing bank account” the Applicant ticked “no”.

1.3 I/we proposed 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.

1.4 Opening hours

1.5 Core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9 – 5	9 – 5	9 – 5	9 – 5	9 – 5			40

1.6 Total opening hours

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

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

1.8 In response to “If you are undertaking to provide appliances, specify the appliances that you undertake to provide” the Applicant stated:

1.8.1 “All appliances listed in part IX of the Drug Tariff.”

- 1.9 The Applicant confirmed that the pharmacy premises will have a consultation room that meets the requirements of paragraph 28A, Schedule 4 of the Regulations.
- 1.10 In response to why this application should not be refused pursuant to Regulation 31 the Applicant stated "n/a".
- 1.11 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.
- 1.12 The Applicant confirmed by ticking "No" that there would not be any interruption to service provision
- 1.13 The Applicant confirmed by ticking "No" that they were not applying for a change of ownership in relation to distance selling premises."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 2 May 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."

Decision report

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

- 2.2 "Change of Ownership from Allison's Pharmacy to Healthpharm Group Ltd at 56, Kingsley Park Terrace, Northampton, NN2 7HH - (2013 Regulations – Regulation 26 (West Northamptonshire Health and Wellbeing Board)

- 2.3 CAS-341130-J6Q8W5

- 2.4 This application was made by Virtual decision on 17th April 2025.

Regulation 31 – refusal: same or adjacent premises

- 2.5 The committee noted that regulation 31(2)(a) applies as Allison's Pharmacy is currently included in the pharmaceutical list for the area of West Northamptonshire HWB in respect of the pharmacy premises at 56, Kingsley Park Terrace, Northampton, NN2 7HH and is providing pharmaceutical services from these premises.

- 2.6 The committee therefore went on to consider whether regulation 31(2)(b) also applies. It is 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.

- 2.7 The committee therefore refused the application by virtue of regulation 31.

Regulation 26 – Change of Ownership

Regulation 26(1)(a)

- 2.8 The committee noted that the applicant has undertaken to provide pharmaceutical services at 56, Kingsley Park Terrace, Northampton, NN2 7HH (the listed chemist premises) which are included in the pharmaceutical list for the area of West Northamptonshire HWB in respect of Allison's Pharmacy Ltd.

Regulations 26(1)(b)

- 2.9 The committee noted that the applicant is proposing to carry on at the listed chemist premises, in place of Allison's Pharmacy, the business in the course of which Allison's Pharmacy is providing pharmaceutical services at those premises.

Regulation 26(1)(c)

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

2.10.1 NHS Flu Vaccinations

2.10.2 NMS

2.10.3 Hypertension Case Finding Service

2.10.4 Pharmaceutical Contraception Services

2.10.5 Pharmacy First

- 2.11 These are the same services that Allison's Pharmacy provide.

Regulation 26(1)(d)

- 2.12 The committee noted that the provision of pharmaceutical services at the premises will not be interrupted.

Regulation 26(3)

- 2.13 The committee noted that this regulation is not applicable as the listed chemist premises are not distance selling premises.

- 2.14 Noting the above there were no grounds to refuse the application under regulation 26(1).

Regulation 66 – Conditions relating to Providing Directed Services

- 2.15 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.

- 2.16 The committee was of the opinion that if it is minded to grant the application then by virtue of regulation 66(5) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, the applicant would be required to provide the following directed services and not unreasonably withhold agreement to the service specifications for those services.

2.16.1 New Medicine Service

2.16.2 Seasonal Flu Vaccination

2.16.3 Pharmacy First

- 2.17 If the application were granted then the applicant would be required to register to provide the advanced services via the MYS portal and return the SLA for the Covid vaccination service to the ICB within eight weeks of its inclusion in the pharmaceutical list for the area of North Northamptonshire HWB in respect of the premises listed in the application.

Decision

- 2.18 The committee refused the application by virtue of regulation 31.
- 2.19 As the application was refused the applicant has a right of appeal."

3 The Appeal

In an email dated 2 May 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 appeal.
- 3.2 We have received the attached response from the ICB concerning the change of ownership at Allison's Chemist which is owned by HealthPharm (Leicester) Ltd. As part of our ongoing restructuring, we need to transfer the legal ownership of Alison's Chemist [sic] from HealthPharm (Leicester) Ltd to Healthpharm Group Ltd.
- 3.3 It is important to note that there will be no change in service provisions or ownership details and Regulation 31 is not fit for purpose in this case. We are simply changing the ownership. The current company Health Pharm (Leicester) Ltd is closing down.
- 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 06 May 2025, I am responding for the East Midlands Primary Care Team on behalf of Northamptonshire 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 Regulation 31 – refusal: same or adjacent premises. [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 4.1.4 The application for a change of ownership by HealthPharm Group Ltd was reviewed by the Pharmaceutical Services Regulations Committee virtually 24 April 2025. The decision of the Committee was to refuse the application

pursuant to Regulation 31 (2) (b), the reasons for the refusal were as follows:

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4.1.4.1 There is a degree of shared ownership or control of the applicant and the current contractor – the directors of both bodies' corporate are one and the same, the two bodies corporate have the same registered offices, are the same as identified within the application form and;

4.1.4.2 Under section 5 of the application form the applicant has not provided assurance or information as to why the application should not be refused by virtue of regulation 31.

4.1.5 I would like to take this opportunity to respond to any further representations provided by Healthpharm Leicester Ltd, T/A Allison Chemist, 56 Kingsley Park Terrace, Northampton, NN2 7HH."

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 "Thank you for your letter. I acknowledge your request and confirm that any final observations, limited to rebuttal of the information already provided, will be submitted within the specified 10-day timeframe.

5.1.2 To clarify, the application relates to a straightforward Change of Ownership from HealthPharm (LEICESTER) Ltd to Healthpharm Group Ltd. HealthPharm (LEICESTER) Ltd is due to be closed, and all ownership must therefore be transferred to Healthpharm Group Ltd. It is important to note that Regulation 31 does not apply in this context and is not fit for purpose in this instance.

5.1.3 While I recognise that no further clarification was formally submitted under Section 5, this matter was addressed in follow-up emails and messages. A brief communication from the Primary Care Team or the ICB at that stage would have been sufficient to resolve the issue, and could have prevented the current delays.

5.1.4 It is also important to emphasise that there will be no changes to service provision or operational arrangements — only the legal ownership is being updated. The closure of HealthPharm (LEICESTER) Ltd necessitates this transition to the new company, and there will be no impact on patients or the services delivered.

5.1.5 In light of the above, I find it difficult to understand the basis on which the ICB has rejected this application, particularly given that there is no effect on service delivery or the population served.

5.1.6 I would also like to highlight that the same applies to another pending application under reference: CAS-341134-G5Y1X0, which has also been refused. I have submitted an appeal regarding this case. I would be grateful if you and your team could give this application due attention as well, to help minimise further delays and operational disruption. We have been waiting since November 2024 for resolution, which represents an unreasonable and disproportionate delay for a matter of this nature."

Consideration

- 6.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution, had before it the papers considered by the Commissioner.
- 6.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.4 The Committee first considered Regulation 31 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), which states:
- (1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.*
- (2) This paragraph applies where -*
- (a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -*
- (i) the premises to which the application relates, or*
- (ii) adjacent premises; and*
- (b) NHS England is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).*
- 6.5 The Committee noted that in Part 5 of the application form, the Applicant had stated "N/a".
- 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 Healthpharm Group Ltd and Healthpharm (Leicester) Ltd have a shared ownership and that the directors and Superintendent Pharmacist of both companies are the same.
- 6.8 The Committee first considered Regulation 31(2)(a).
- 6.9 The Committee noted the Applicant's comment that *"It is important to note that Regulation 31 does not apply in this context and is not fit for purpose in this instance."*
- 6.10 The Committee noted the comments from the Commissioner that *"Under section 5 of the application form the applicant has not provided assurance or information as to why the application should not be refused by virtue of Regulation 31."*
- 6.11 In response to this, the Committee noted the comments from the Applicant in which they state *"While I recognise that no further clarification was formally submitted under Section 5 [of the application form], this matter was addressed in follow up emails and messages. A brief communication from the Primary Care Team or the ICB at that stage*

would have been sufficient to resolve the issue, and could have prevented the current delays.”

- 6.12 The Committee was mindful that it is the wording of the Regulations to which it must have regard, rather than that of the application form. It is not disputed that a person on the pharmaceutical list, Healthpharm (Leicester) Ltd, is providing pharmaceutical services from the premises to which the application relates. Consequently, the Committee considered that Regulation 31(2)(a) applied.

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

- 6.14 The Committee was mindful of the Judgement ‘R (Pharmacy Care Plus) v Family Health Services Appeals Unit [2013] EWHC 824 (Admin)’. The Committee considered that this case would likely provide a guide to interpreting Regulation 31(2)(b). Having regard to it the Committee noted the following wording:

“It will almost always be an extremely relevant consideration to know whether or not there is any connection in terms of ownership and control between the entities who carry on the existing business and who propose to carry on the proposed new business. So, for example, if an existing business was owned by Company A and the proposed business was owned by Company B, and there was absolutely no connection at all in terms of ownership and control between the two of them, it would be difficult to see how they could be regarded as providing the same service, even if the service which they were going to provide were complementary to each other. In contrast, if they were both to be provided by exactly the same company, then that would also be an extremely relevant consideration going the other way.”

- 6.15 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.

- 6.16 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.

- 6.17 The Committee was mindful that where a change of ownership was made under Regulation 26 the new owner will replace the original owner in the pharmaceutical list under Regulation 75(1). The Committee noted that Regulation 75(1) provides that:

75.–(1) If, as a consequence of a change of ownership application or a consolidation application, an NHS chemist (C) is no longer to be the person listed in a pharmaceutical list in relation to a particular pharmacy premises—

(a) if there are other chemist premises listed in the pharmaceutical list in relation to C, NHS England must remove the listing of the particular premises in relation to C from that list; or

(b) if there are no other chemist premises listed in that pharmaceutical list in relation to C, subject to regulation 76, NHS England must remove C from that pharmaceutical list.

- 6.18 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 entity. 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.
- 6.19 The Committee was mindful that NHS Resolution's guidance note states 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."*
- 6.20 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.
- 6.21 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 a commonality of 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.
- 6.22 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.
- 6.23 The Committee considered that it is not required to refuse the application pursuant to Regulation 31 as, due to the mandatory requirement to remove Healthpharm (Leicester) Ltd from the pharmaceutical list, it would not be reasonable to treat the services currently being provided by Healthpharm (Leicester) Ltd as part of the same services that would be provided by Healthpharm Group Ltd, under the application.

- 6.24 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.24.1 confirm the Commissioner's decision;
 - 6.24.2 quash the Commissioner's decision and redetermine the application;
 - 6.24.3 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.
- 6.25 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.
- 6.26 Given that the Committee had found that the application should not have been refused under Regulation 31, the Committee determined that the decision of the Commissioner must be quashed. The Committee noted that, although the Commissioner had refused the application under Regulation 31, it had gone on to consider Regulation 26(1) within its determination. The Committee therefore proceeded to consider Regulation 26(1).
- 6.27 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)."*
- 6.28 The Committee noted that the Regulations are specific in the conditions an applicant must satisfy, if its proposed change of ownership is to succeed.

- 6.29 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)

- 6.30 The Committee noted there is no dispute that the application is in respect of listed chemist premises at 56 Kingsley Park Terrace, Northampton, NN2 7HH 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)

- 6.31 The Committee noted the Applicant is proposing to carry on at the listed premises in place of Healthpharm (Leicester) Ltd, the business in the course of which Healthpharm (Leicester) Ltd is providing pharmaceutical services at those premises.

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

Regulation 26(1)(c)

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

Regulation 26(1)(d)

- 6.34 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)

- 6.35 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.

Case Manager
Primary Care Appeals