NHS Resolution

4 September 2025

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REF: SHA/26630

APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY ALNWICK HEALTHCARE LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 WITHIN THE NEWSHAM AREA, FROM PLESSEY ROAD TO NEWCASTLE ROAD, BLYTH, NORTHUMBERLAND (BEST ESTIMATE)

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:

Temple Bright LLP on behalf of Alnwick Healthcare Limited
Rushport Advisory LLP on behalf of Jiwa Pharm Limited
PCSE on behalf of North East and North Cumbria ICB

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1 The Application

By application dated 20 November 2023, Alnwick Healthcare Limited ("the Applicant") applied to North East and North Cumbria ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 within the Newsham area, from Plessey Road to Newcastle Road, Blyth, Northumberland. In support of the application it was stated:

In response to "In my/our view this application should not be refused pursuant to Regulation 31 for the following reasons:" the Applicant stated:

1.1 "There is currently a Boots branch located in the area but is scheduled to close in early 2024."

Information in support of the application

1.2 "A number of commercial decisions have resulted in either the closure or reduction in pharmacy services available to the population of Blyth. These changes have come about rapidly and in many cases at short notice and could not have been anticipated by the Northumberland Health and Well Being Board at the time the PNA was published in 2022.

1.3 The Boots branch in Newsham is scheduled to close in early 2024 and will mean that the patients who attend the Railway Surgery on Newcastle Road will be faced with a journey of approx 1.7 miles to the nearest pharmacy in Blyth centre. Additionally the general population of Newsham will lose access to pharmaceutical services at a time when movement of travel by the NHS is to encourage patients away from the GP services to other service providers which are more convenient, open longer hours and give greater patient choice.

1.4 Blyth is one of the most densely populated areas of Northumberland and demand for housing has resulted in extensive development on the outskirts of Newsham. This will be further enhanced by the opening of a new train/metro station and development of the sea front.

1.5 Changes in the pharmaceutical provision in neighbouring Cramlington with the closure of a 100 hour Pharmacy in Sainsbury's and the potential change of ownership/closure of the Lloyds at Brockwell centre located on the north east segment of Cramlington may encourage patients to seek alternate service providers.

1.6 Boots Newsham is listed as providing the new UTI service and the loss of this will not only be detrimental to the local population but will encourage patients to seek provision at either Primary Care services or the A&E located at Cramlington Emergency Hospital.

1.7 In addition to the provision of Essential Services the new Pharmacy would offer a wide range of advanced services. Extensive experience in owning and working in a number of Community Pharmacies and the operating of large COVID and Flu clinics would be utilised and aid the implementation of the many new services funded both nationally and locally."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 15 May 2025 states:

2.1 "North East and North Cumbria 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 North East and North Cumbria ICB's decision. Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

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

Decision report

2.3 "**Decision - CAS-261735-Z7L2D5**

2.4 **Alnwick Healthcare Ltd - Application for inclusion in a pharmaceutical list: routine application offering to secure unforeseen benefits in the Newsham area from Plessey Road to Newcastle Road**

2.5 Thank you for your market entry application. I can confirm North East and North Cumbria Integrated Care Board (NENC ICB) Pharmaceutical Services Regulations Committee (PSRC) met on 30th April 2025, to consider this application.

2.6 This application has been considered under Regulations 18 & 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 – unforeseen benefits: additional matters and consequences.

2.7 **Regulation 18(1)(a) was met –** PSRC considered the recent closure in Newsham and were satisfied that granting an application would secure better access to pharmaceutical services in this area.

2.8 **Regulation 18(1)(b) was not met –** There is no current identified need in the extant PNA for Northumberland 2022-2025, however PSRC gave due consideration to the supplementary statement dated 12th January 2024 which was explicit in stating that the closure of pharmacies has created a gap in essential pharmaceutical services Monday to Saturday. The PSRC determined that granting an application in the area of Newsham would meet an identified current need for essential pharmaceutical services for the population and therefore an unforeseen benefits application would not meet the requirements of regulation 18(1).

2.9 **Regulations 18(2)(a&b) was not met -** A routine application offering to secure a current need at best estimate address " Retail Units off Plessey Road, Newcastle Road and Elliott Street", was granted in April 2025. Approving this application may therefore cause significant detriment to the arrangements it currently has in place for the provision of pharmaceutical services in the area.

2.10 **Regulations 18 (2) (c-d) are applicable -** there were multiple applications submitted for the area of Newsham/Blyth and it was determined that it was desirable to consider, applications from other persons offering to meet the same need at the same time as this application. There were 4 unforeseen benefits applications considered together by PSRC at the meeting on 30th April 2025. There were also 2 current needs applications for the same area heard at the same panel.

2.11 **Regulations 18 (2) (e) is not applicable –** there are no appeals pending

2.12 **Regulation 18(2)(f) is not applicable** - the application does not need to be deferred or refused by virtue of any provision of Part 5 to 7.

2.13 **Regulation 18(3) is met –** PSRC are satisfied that the Application has been fully assessed in accordance with these regulatory clauses.

2.14 **Regulation 31 is not appliable** – Refusal same or adjacent premises: Regulation considered and there is no other pharmacy with an NHS contract at the proposed address or adjacent to them, therefore the application is not to be refused under this regulation.

2.15 **Regulation 32 is not appliable** - the proposed premises are not going to be in an such an LPS designated area.

2.16 **Regulations 40-44 are not appliable** – the proposed premises will not be situated in a controlled locality / reserved location.

2.17 **Regulation 50 is not applicable** – the proposed premises will not be in a reserved location.

2.18 **Regulations 65 is not applicable** – if the application was granted there would be no direction of hours.

2.19 **Regulation 66 is not applicable** - if the application was granted there would be no direction of services.

2.20 The PSRC **refused** the application on the basis that the criteria under the relevant Regulation for unforeseen benefits (18) have not all been met by the contractor (or are not applicable).

2.21 **Appeal Rights**

2.22 The applicant (**Alnwick Healthcare Ltd**) has appeal rights."

3 The Appeal

In a letter dated 5 June 2025, Temple Bright LLP on behalf of the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "I act for Alnwick Healthcare Limited. On behalf of my client I write to:

3.1.1 Appeal a decision of NHS England not to grant my client third party rights of appeal in relation to NHS England's decision to grant an application by Jiwa Pharm Limited.

3.1.2 Appeal a decision of NHS England to grant the application by Jiwa Pharm Limited and to refuse my client's application.

3.2 Taking each appeal in turn:

3.3 **Appeal against a decision of NHS England not to grant Alnwick Healthcare Limited third party rights of appeal**

3.4 By way of background, 6 applications were submitted to NHS England for inclusion in the pharmaceutical list for premises in Blyth, Northumberland. The application details (including NHS England references) are as follows:

3.4.1 Alnwick Healthcare Limited – Unforeseen Benefits – CAS-261735 – Z7L2D5

3.4.2 Seaton Healthcare Ltd – Unforeseen Benefit - CAS- 268309-V8M9P4

3.4.3 Medsynth Ltd - Unforeseen Benefits - CAS--266560-L5W6N3

3.4.4 Newline Pharmacy Ltd - Current Needs - CAS-269991-Q6T7P8

3.4.5 Jiwa Pharm Ltd - Current Needs - CAS-270593-V3G9B0

3.4.6 Mr Hassan Malik – Unforeseen Benefits – CAS-276279 – S7G6K9

3.5 In its letter to interested parties notifying them of the above applications (including in its letter to my client in respect of the application by Jiwa Pharm Limited), NHS England stated that it intended to consider the above applications "together and in relation to" each other in accordance with regulations 21(1)(a)(iii) and 22(3) of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

3.6 I attach to this letter of appeal a copy of the NHS England notification letter sent to my client in respect of the application by Jiwa Pharm Limited dated 22nd March 2024.

3.7 On 15th May 2025, my client received notification of a decision in respect of the above applications. The decisions indicated that:

3.7.1 The application by Jiwa Pharm Limited had been granted

3.7.2 My client's application (along with the other applications) had been refused.

3.8 A copy of the 15th May 2025 decision letter and decision report in respect of the Jiwa Pharm Ltd application is attached to this appeal.

3.9 As NHS Resolution will see from the attached decision letter and report, whilst my client was notified of the decision to grant the Jiwa Pharm Limited application, the decision letter does not provide that my client has been given third party rights of appeal; the decision report states that third party rights of appeal had only been granted to Medsynth Limited and Seaton Healthcare Limited.

3.10 It is to be assumed that my client was notified of NHS England's decision to grant the application by Jiwa Pharm Limited by reason of paragraph 28(5) of schedule 2 to the Regulations, which provides as follows:

3.11 "*Where NHS England has decided to consider 2 or more applications together pursuant to paragraph 22(3), it must give notice to each applicant of the decision taken with regard to each other application considered together with their application*."

3.12 Since NHS England had indicated that it intended to consider my client's application "together and in relation to" the application by Jiwa Pharma Limited and since my client was notified of the decision to grant the Jiwa Pharm Limited by reason of paragraph 28(5), NHS England was required to provide my client with third party rights of appeal against the Jiwa Pharm Limited grant by reason of paragraph 30(2)(b) of schedule 2 to the Regulations.

3.13 My client therefore asserts that NHS England's (apparent) decision not to afford my client third party rights of appeal was unlawful. In accordance with paragraph 30(6) of schedule 2 to the Regulations, my client therefore appeals the decision of NHS England not to grant my client third party rights of appeal.

3.14 **Appeal against the decision of NHS England to grant the application by Jiwa Pharm Limited and to refuse my client's application**

3.15 Assuming that NHS Resolution upholds the above appeal, my client appeals the substantive decisions of NHS England to refuse its application and to grant the application by Jiwa Pharm Limited.

3.16 By way of background, my client applied for inclusion in the pharmaceutical list for the best estimate location of Plessey Road to Newcastle Road, Newsham, Blyth, Northumberland by application dated 20th November 2023. My client's application was submitted pursuant to regulation 18 of the Regulations.

3.17 In support of its application, my client provided the following information:

3.18 "*A number of commercial decisions have resulted in either the closure or reduction in pharmacy services available to the population of Blyth. These changes have come about rapidly and in many cases at short notice and could not have been anticipated by the Northumberland Health and Well Being Board at the time the PNA was published in 2022.*

3.19 *The Boots branch in Newsham is scheduled to close in early 2024 and will mean that the patients who attend the Railway Surgery on Newcastle Road will be faced with a journey of approx 1.7 miles to the nearest pharmacy in Blyth centre. Additionally the general population of Newsham will lose access to pharmaceutical services at a time when movement of travel by the NHS is to encourage patients away from the GP services to other service providers which are more convenient, open longer hours and give greater patient choice.*

3.20 *Blyth is one of the most densely populated areas of Northumberland and demand for housing has resulted in extensive development on the outskirts of Newsham. This will be further enhanced by the opening of a new train/metro station and development of the sea front.*

3.21 *Changes in the pharmaceutical provision in neighbouring Cramlington with the closure of a 100 hour Pharmacy in Sainsbury's and the potential change of ownership/closure of the Lloyds at Brockwell centre located on the north east segment of Cramlington may encourage patients to seek alternate service providers.*

3.22 *Boots Newsham is listed as providing the new UTI service and the loss of this will not only be detrimental to the local population but will encourage patients to seek provision at either Primary Care services or the A&E located at Cramlington Emergency Hospital.*"

3.23 Two months after my client submitted its application offering unforeseen benefits, Northumberland Health and Wellbeing Board published a supplementary statement (on 12th January 2024) - Supplementary Statement 3.

3.24 The supplementary statement provided relevantly as follows:

3.25 "*Details of Change Boots pharmacy in the Community Hospital and Health Centre closed in October 2023. Boots pharmacy in Plessey Road closed in mid January 2024. Boots 100 hour pharmacy in Maddison Street reduced its hours to 75 hours per week in September 2023.*

3.26 *A gap in essential pharmaceutical services Monday to Saturday has been left following these closures. A gap in additional and advanced services, particularly the new medicines service clinical pharmacy consultation service and minor ailments services has also been created. A gap in the locally commissioned service for supervision of opiate consumption has also been created. Any replacement pharmacy should be located in the Newsham area to serve the population of Newsham, a deprived community on the southern edge of Blyth.*

3.27 *This supplementary statement to Northumberland's Pharmaceutical Needs Assessment is issued in accordance with paragraph 3D (3) in Part 1A of the NHS (Pharmaceutical Services) Regulations 2005.*"

3.28 In response, it would appear, to that supplementary statement, an application was submitted by Jiwa Pharm Limited pursuant to regulation 13 of the Regulations on 25th January 2024. The Jiwa Pharm Limited application references the supplementary statement and relied upon it in support of its application.

3.29 As stated above, the applications were all considered together and in relation to each other by NHS England. The Jiwa Pharm Limited application was granted by reason of the contents of the HWB's supplementary statement.

3.30 In granting the application, NHS England stated relevantly as follows:

3.31 **"*Regulation 13(1) is met –*** *There is no current identified need in the extant PNA for Northumberland 2022-2025, however PSRC gave due consideration to the supplementary statement dated 12th January 2024 which was explicit in stating that the closure of pharmacies has created a gap in essential pharmaceutical services Monday to Saturday. The PSRC determined that granting the application would meet the current need for essential pharmaceutical services for the population of Newsham.*"

3.32 In contrast, my client's application was refused for the following reasons set out in the decision report:

3.33 ***"Regulation 18(1)(b) was not met –*** *There is no current identified need in the extant PNA for Northumberland 2022-2025, however PSRC gave due consideration to the supplementary statement dated 12th January 2024 which was explicit in stating that the closure of pharmacies has created a gap in essential pharmaceutical services Monday to Saturday. The PSRC determined that granting an application in the area of Newsham would meet an identified current need for essential pharmaceutical services for the population and therefore an unforeseen benefits application would not meet the requirements of regulation 18(1).*

3.34 ***Regulations 18(2)(a&b) was not met -*** *A routine application offering to secure a current need at best estimate address " Retail Units off Plessey Road, Newcastle Road and Elliott Street", was granted in April 2025. Approving this application may therefore cause significant detriment to the arrangements it currently has in place for the provision of pharmaceutical services in the area."*

3.35 My clients grounds of appeal in relation to the above decisions are that:

3.35.1 NHS England was wrong, as a matter of law, to conclude that the contents of the relevant supplementary statement amounted to a "current need…included in the relevant pharmaceutical needs assessment" in accordance with regulation 13(1)(a)

3.35.2 In any event, my client's application was offering unforeseen benefits since the information provided by my client in support of its application extended beyond the contents of the supplementary statement.

3.35.3 In all the circumstances, my client's application should have been granted.

3.36 Taking each of these in turn, my client comments as follows.

3.37 **NHS England was wrong, as a matter of law, to conclude that the contents of the relevant supplementary statement amounted to a "current need…included in the relevant pharmaceutical needs assessment" in accordance with regulation 13(1)(a)**

3.38 It is submitted on behalf of my client that a supplementary statement cannot, as a matter of law, identify a current need for the provision of pharmaceutical services that may support the granting of an application for inclusion in the pharmaceutical list for the purposes of regulation 13(1)(a).

3.39 As NHS Resolution will be aware, the Regulations require each HWB to publish a PNA at least every 3 years (regulation 6(A3)(1) of the Regulations).

3.40 The purpose of the PNA is to make an assessment of the needs for pharmaceutical services pursuant to section 128A of the 2006 Act. PNAs are subject to statutory consultation (regulation 8) and are of primary importance, since all routine applications for inclusion in the pharmaceutical list in respect of new premises are assessed having regard to the contents of the PNA.

3.41 Each PNA must contain the information referred to in schedule 1 to the Regulations (regulation 4(1)), including a statement of:

3.41.1 Current provision

3.41.2 Gaps in provision

3.41.3 Other NHS services

3.41.4 How the assessment was carried out

3.42 Regulation 6(2) requires HWBs to publish a revised assessment where there have been relevant changes since the publication of the PNA which are "of a significant extent" unless publishing a revised assessment would be a disproportionate response to the changes. Regulation 6(3) provides that:

3.43 "*(3) Pending the publication of a statement of a revised assessment, a HWB may publish a supplementary statement explaining changes to the availability of pharmaceutical services since the publication of its or a Primary Care Trust's pharmaceutical needs assessment (and any such supplementary statement becomes part of that assessment), where—*

(a) the changes are relevant to the granting of applications referred to in section 129(2)(c)(i) or (ii) of the 2006 Act; and

(b) the HWB—

(i) is satisfied that making its first or a revised assessment would be a disproportionate response to those changes, or

(ii) is in the course of making its first or a revised assessment and is satisfied that immediate modification of its pharmaceutical needs assessment is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area.

3.44 It is noted that regulation 6(3) allows for a supplementary statement to "explain changes to pharmaceutical services" since the publication of the last PNA but does not state that a supplementary statement may be used to identify gaps in service provision that may have been caused by those changes which may result in a new pharmacy application being granted.

3.45 It is clear from a proper consideration of the above regulatory provisions that, as a matter of law, a supplementary statement cannot, therefore, be used to identify a change in service provision which has the effect of enabling the granting of an application.

3.46 Regulation 6(3) is clear that whilst a supplementary statement may "explain changes to the availability of pharmaceutical services" since the last PNA was published, the supplementary statement cannot identify gaps in service provision that may be met by the granting of a new application, since no such power is included in regulation 6(3).

3.47 Not only is the above correct on a proper reading of the regulatory provisions, but it also a matter of common sense, because the procedure for publishing a supplementary statement does not allow for a transparent and robust consultation with all affected parties.

3.48 Since the January 2024 supplementary statement could not, as a matter of law, support an application made pursuant to regulation 13 notwithstanding the contents of that supplementary statement, the application by Jiwa Pharm Limited should have been refused.

3.49 **My client's application was offering unforeseen benefits since the information provided by my client in support of its application extended beyond the contents of the supplementary statement.**

3.50 My client's application was refused on the basis that, in NHS England's view, the benefits offered by my client's application were not unforeseen in the context of the contents of the relevant PNA (including any supplementary statements).

3.51 Notwithstanding the above primary submission that reliance upon the contents of the supplementary statement as identifying an unmet need was wrong as a matter of law, NHS England was also wrong as a matter of fact since the benefits that my client's application offered went beyond the matters referred to in the supplementary statement.

3.52 Whilst my client's application included reference to the Boots Pharmacy closures, it also referenced other developments in the local area which are relevant to the provision of pharmaceutical services, but which were not referred to in the supplementary statement, including:

3.52.1 Local housing developments which are increasing demand for pharmaceutical services locally

3.52.2 The construction of a new train/metro station

3.52.3 The redevelopment of the sea front

3.52.4 Changes in the pharmaceutical provision in neighbouring Cramlington with the closure of a 100-hour Pharmacy in Sainsbury's

3.52.5 the potential change of ownership/closure of the Lloyds at Brockwell centre located on the northeast segment of Cramlington which may encourage patients to seek alternate service providers.

3.53 Since my client's application referenced several relevant matters which were not included in the supplementary statement, NHS England was wrong to conclude that the benefits that my client's application sought to meet were not unforeseen in the context of the current PNA (including, to the extent that it was relevant, the supplementary statement).

3.54 **In all the circumstances, my client's application should have been granted**

3.55 My client's application is made for premises in the Newsham area of Blyth. I have set out, below, a google maps satellite image which shows the local area.

3.56 Blyth is a port town located in the north east of England and is the largest town in Northumberland. In 2021, Blyth had a resident population of 39,731.

3.57 The town prospered through the industries of coal mining and ship building, but suffered when those industries went into decline in the latter half of the 20th century. In February 2023, the government described Blyth as the most deprived town in Northumberland with a high prevalence of medical conditions such as Type 2 Diabetes, Obesity and Hypertension.

3.58 Since the closure of the traditional industries, the town now serves as a dormitory town serving Newcastle Upon Tyne, although the port still remains a major industry in the area, particularly in respect of the importation of forest products (paper, pulp and timber) as well as other materials.

3.59 [Map provided]

3.60 Blyth is currently subject to extensive regeneration and house building. For example:

3.60.1 6,000 new homes are planned or under construction in Newsham

3.60.2 The Quayside area has been the subject of significant redevelopment in recent years

3.60.3 A new train station opened in Newsham on 17th March 2025

3.61 Blyth contains a large range of shops and other services.

3.62 In respect of the proposed location itself (which is in the Newsham area of Blyth), the commercial high street consists of express supermarket, large CO-OP with extended hours, hairdresser, takeaways, dance studio, golf course, schools, community centre, coffee shop. Newsham therefore has a range of services to meet daily local needs. Newsham also contains a GP surgery – Railway Medical Group.

3.63 It is against the above factual background that pharmaceutical needs must be assessed in order to apply the regulatory test contained within regulation 18. It is submitted that the current pharmacy network does not secure patient needs, such that

granting my client's application would secure improvements and better access to service provision.

3.64 In late 2023 and early 2024, two pharmacies in Blyth closed: a pharmacy at the health centre in Blyth and the pharmacy at Plessey Road in Newsham (my client's proposed location). These closures meant that around 20,000 prescription items per month had to be absorbed by the remaining pharmacies in town. In addition, Asda Pharmacy and the remaining Boots branch in Newsham both reduced their hours from 100 hours per week to 72 hours per week, reducing overall pharmaceutical services capacity yet further.

3.65 These closures have both reduced patient choice and created a physical gap in service provision.

3.66 In relation to a reduction in patient choice, the removal of two pharmacies in the town is against the background of an increase in population size for the town of 10.9% between 2011 and 2021, and further significant population increases anticipated in the short term as the new housing developments are completed. Where pharmaceutical service capacity should therefore be increasing to meet increased demand caused by a growing population (and, consequently, in order to secure a reasonable choice of service provision), it is actually shrinking resulting in the remaining pharmacies being overwhelmed with demand. For example, patients living in the Newsham area are currently waiting 7 days for a repeat prescription to be available due to existing services struggling to meet demand. This will only get worse as the population increases with proposed new builds.

3.67 The closures have also created a physical gap in service provision in the Newsham area of Blyth, since all of the remaining pharmacies are located to the north of the town (as shown in the map below). Following the closure of the Boots branch in Newsham, the nearest pharmacy is now around 2 miles away from Newsham, which clearly makes those pharmacies inaccessible by foot.

3.68 [Map provided]

3.69 These issues are summarised in the attached report from the HWB dated 11th January 2024 (which gave rise to the issuing of the supplementary statement).

3.70 Granting my client's application would secure improvements and better access to pharmaceutical services for the local population. In particular:

3.70.1 It would increase capacity in Blyth generally, thereby restoring a reasonable choice of service provision which was lost through the closure of two pharmacies.

3.70.2 It would overcome the current access difficulties, particularly for patients in Newsham who cannot walk to a pharmacy, and many of whom suffer from health inequalities, higher levels of deprivation, low car ownership and a range of long-term health conditions.

3.70.3 It would allow for the provision of a full range of pharmaceutical services for the local population. This includes advanced services such as Pharmacy First, which is a much-needed local service, particularly since the GP surgery in Newsham has expressed concerns about its capacity to cope with the increased patient numbers which will arise from the new housing developments.

3.71 In conclusion, my client asserts that its application meets the regulatory test contained within regulation 18 of the Regulations for the reasons given above. On behalf of my

client I invite NHS Resolution to uphold my clients appeals, to grant its application and to refuse the application by Jiwa Pharm Limited."

4 Summary of Representations

This is a summary of representations received on the appeal. A summary of those representations made to the Commissioner are only included insofar as they are relevant and add to those received on the appeal.

4.1 Rushport Advisory LLP on behalf of Jiwa Pharm Limited

4.1.1 "**RE: SHA/ 26629 - JIWA PHARM LIMITED - APPLICATION FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING TO MEET A CURRENT NEED AT RETAIL UNITS OFF PLESSEY ROAD, NEWCASTLE ROAD AND ELLIOTT STREET, NEWSHAM**

4.1.2 **And**

4.1.3 **SHA/26630 - ALNWICK HEALTHCARE LIMITED - APPLICATION FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS AT A PREMISES IN BLYTH, NORTHUMBERLAND**

4.1.4 I act for Jiwa Pharm Limited in the above applications and provide this response to the appeals submitted by Alnwick Healthcare Limited ("Alnwick").

4.1.5 **Preliminary Point**

4.1.6 I note that in your letter of 18 June 2025 you state *"Please note that the Committee may consider the applications together and in relation to each other (SHA/26629 & SHA/26630)"*.

4.1.7 As the Committee will note from the submissions below, it would not be appropriate to consider the applications together and in relation to one another. Whilst the outcome would be the same, I have explained below why the appeal against the approval of my client's application is not valid. The Committee should be able to determine this without delay and avoid making the people affected by the lack of a pharmacy in Newsham wait even longer to have pharmaceutical services restored.

4.1.8 I have nevertheless replied to both appeals together as that is the same manner in which the Appellant has presented the appeals.

4.1.9 **SHA/26630 Alnwick Healthcare Limited Appeal**

4.1.10 It is accepted that Alnwick would have rights of appeal in respect of its own application.

4.1.11 The Committee will therefore have to determine whether or not the Alnwick application meets the legal test under regulation 18.

4.1.12 If the Committee determines that the application to meet a current need from my client was properly granted by the ICB, then the application from Alnwick must fail as when considering regulation 18(1)(b), as the improvements or better access were included in the relevant pharmaceutical needs assessment.

4.1.13 We make no further comment on the merits of the Alnwick application as they will not be determinative in this case.

4.1.14 **SHA/ 26629 - JIWA PHARM LIMITED APPEAL**

4.1.15 The Committee has granted third party appeal rights against the approval of my client's application. I agree that this was the correct decision. However, the Committee was required to apply a two stage test when considering the Alnwick appeal.

4.1.16 Firstly, the Committee had to determine whether Alnwick had third part appeal right or not and that has been decided.

4.1.17 Secondly, the Committee ought to have then considered whether or not the Alnwick appeal against the approval of my client's application was valid. This second stage of the test appears not to have been undertaken. Had the committee applied the second stage of the test it would have determined that the appeal was not valid for the reasons set out below.

4.1.18 The appeal against the approval of my client's application is a challenge to the legality or reasonableness of the pharmaceutical needs assessment and to the fairness of the process by which the HWB undertook that assessment.

4.1.19 The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), and in particular paragraph 30(3)(c)(ii) states that an Appellant must;

4.1.19.1 *(ii) [have] grounds for opposing the application, which—*

4.1.19.2 *(aa) do not amount to a challenge to the legality or reasonableness of a pharmaceutical needs assessment, or to the fairness of the process by which a HWB or Primary Care Trust undertook that assessment,*

4.1.20 Therefore, whilst Alnwick has third party appeal rights as per the Committee's decision, any appeal must still meet the test set out above and it is clear that the Alnwick appeal fails this test. It further appears that the Committee has not considered this point prior to circulating this appeal.

4.1.21 Even if the Committee did not agree with my submission on this point, the Alnwick appeal against my client's approval must also fail for the reasons given below.

4.1.22 Temple Bright lists three grounds of appeal at page 4 of their letter of 5 June 2025 which are;

4.1.22.1 NHS England was wrong, as a matter of law, to conclude that the contents of the relevant Supplementary Statement amounted to a "current need…included in the relevant pharmaceutical needs assessment" in accordance with regulation 13(1)(a)

4.1.22.2 In any event, my client's application was offering unforeseen benefits since the information provided by my client in support of its application extended beyond the contents of the Supplementary Statement.

4.1.22.3 In all the circumstances, my client's application should have been granted.

4.1.23 Of these 3 "grounds" only ground 1 is an actual ground of appeal. Ground 2 relies on Ground 1 and Ground 3 is a statement of opinion that only provides information relevant to the Alnwick appeal and not to my client's appeal.

4.1.24 Dealing with the "grounds" in turn and the submissions made we reply as follows.

4.1.25 **GROUND 1 – "NHS England was wrong, as a matter of law, to conclude that the contents of the relevant Supplementary Statement amounted to a "current need…included in the relevant pharmaceutical needs assessment" in accordance with regulation 13(1)(a)"**

4.1.26 Temple Bright does not seek to argue that the wording of Supplementary Statement fails to identify a need for the pharmacy. It appears accepted that the Supplementary Statement does exactly that. Instead, Temple Bright's ground of appeal is that the Supplementary Statement and / or PNA is not lawful.

4.1.27 Temple Bright sets out the provisions of regulation 6 and it is worth noting some of those provisions in more detail. In particular:

4.1.28 *Regulation 6(3) provides that:*

4.1.29 *"(3) Pending the publication of a statement of a revised assessment, a HWB may publish a Supplementary Statement explaining changes to the availability of pharmaceutical services since the publication of its or a Primary Care Trust's pharmaceutical needs assessment (**and any such Supplementary Statement becomes part of that assessment**), where—*

4.1.30 *(a) **the changes are relevant to the granting of applications referred to in section 129(2)(c)(i) or (ii) of the 2006 Act**; and*

4.1.31 *(b) the HWB—*

4.1.31.1*(i) **is satisfied that making its first or a revised assessment would be a disproportionate response to those changes**, or*

4.1.31.2*(ii) is in the course of making its first or a revised assessment and **is satisfied that immediate modification of its pharmaceutical needs assessment is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area.***

[emphasis added]

4.1.32 Taking each emphasised point in turn

4.1.33 ***and any such Supplementary Statement becomes part of that assessment**)*

4.1.34 There can be no doubt that the Supplementary Statement in this case has become part of the overall Pharmaceutical Needs Assessment ("PNA") and that the original PNA and the Supplementary Statement are to be read as one. This is so irrespective of Temple bright's submissions.

4.1.35 ***the changes are relevant to the granting of applications referred to in section 129(2)(c)(i) or (ii) of the 2006 Act***

4.1.36 129(2)(c)(i) of the 2006 health Act states;

4.1.37 (2)The regulations must include provision—

4.1.37.1(c) that, except in prescribed cases (which may, in particular, include cases of applications for the provision only of services falling within subsection (7))—

4.1.37.1.1(i) an application for inclusion in a pharmaceutical list by a person not already included, and

4.1.38 Therefore the "changes" are relevant to the consideration of, and therefore approval of, an application for inclusion in the pharmaceutical list.

4.1.39 ***is satisfied that making its first or a revised assessment would be a disproportionate response to those changes***

4.1.40 The suggestion that a HWB should prepare an entirely new PNA and / or carry out a full consultation process with all relevant parties simply to identify a need in a single small area is clearly incorrect. No such requirement appears in the Regulations. Further, the HWB is not required to carry out a consultation process when preparing a Supplementary Statement. If there were such a requirement then it would be found in the Regulations and no such requirement can be found that relates to Supplementary Statements rather than a full PNA.

4.1.41 ***is satisfied that immediate modification of its pharmaceutical needs assessment is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area.***

4.1.42 This provision makes it clear that a Supplementary Statement may identify a need for services in order to prevent significant detriment to the provision of pharmaceutical services in its area. This implies a degree of urgency, ie that the need must be identified to prevent significant detriment from occurring or continuing if it has occurred. To suggest, as Temple Bright does, that there should be a consultation exercise over many months prior to identifying any need would rob the regulation of its proper meaning. No other sensible meaning can be imported. The Regulations are very clear that a consultation exercise must be carried out when a new PNA is being written, however that same requirement does not apply to the issuing of a Supplementary Statement. Temple Bright seeks to create a new regulatory requirement for a HWB to carry out a consultation exercise when publishing a Supplementary Statement.

4.1.43 It is not open to Primary Care Appeals to determine that a PNA is unlawful and no appeal can be accepted on that basis. If Alnwick wished to challenge the lawfulness of the PNA or any Supplementary Statement then it ought to have made an application for judicial review of the HWB's actions to the High Court. No such judicial review was commenced to the best of our knowledge. The lawfulness of the PNA cannot be challenged in this appeal process.

4.1.44 Addressing the other submissions in the appeal we reply as follows:

4.1.45 Temple Bright states;

4.1.46 *It is noted that regulation 6(3) allows for a Supplementary Statement to "explain changes to pharmaceutical services" since the publication of the last PNA but does not state that a Supplementary Statement may be used to identify gaps in service provision that may have been caused by those changes which may result in a new pharmacy application being granted.*

4.1.47 *It is clear from a proper consideration of the above regulatory provisions that, as a matter of law, a Supplementary Statement cannot, therefore, be used to*

identify a change in service provision which has the effect of enabling the granting of an application.

4.1.48 *Regulation 6(3) is clear that whilst a Supplementary Statement may "explain changes to the availability of pharmaceutical services" since the last PNA was published, the Supplementary Statement cannot identify gaps in service provision that may be met by the granting of a new application, since no such power is included in regulation 6(3).*

4.1.49 This is simply an incorrect interpretation of regulation 6(3). Whilst Temple Bright claims to be quoting from regulation 6(3) the quote is incorrect, as the correct quote should have been, "explaining changes to the availability of pharmaceutical services". The Supplementary Statement does exactly that. The word "explaining" is of importance as the HWB is required not only to state what the changes have occurred to the availability of pharmaceutical services are, but also "explain" those changes. It is not, as Temple Bright suggests, simply about listing what changes have occurred. The Supplementary Statement correct explains that 2 Boots pharmacy closed and another reduced its opening hours and explains that *"A gap in essential pharmaceutical services Monday to Saturday has been left following these closures."*

4.1.50 Further, referring back to regulation 6(3)(b)(ii), this states;

4.1.51 *(ii) is in the course of making its first or a revised assessment and* ***is satisfied that immediate modification of its pharmaceutical needs assessment is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area.***

4.1.52 If, as Temple Bright suggests, a Supplementary Statement was not permitted to identify a need for a new pharmacy, then this regulation would be robbed of any meaning as a Supplementary Statement that did not identify a need would not prevent the significant detriment from occurring.

4.1.53 Temple Bright also states;

4.1.54 *Not only is the above correct on a proper reading of the regulatory provisions, but it also a matter of common sense, because the procedure for publishing a Supplementary Statement does not allow for a transparent and robust consultation with all affected parties.*

4.1.55 Firstly, this is quite clearly a challenge to the fairness of the process by which the HWB undertook the assessment and is not permitted as part of any appeal.

4.1.56 Secondly, this misses the purpose of the Supplementary Statement and avoids all use of common sense as the statement seeks to "prevent significant detriment to the provision of pharmaceutical services". Whilst the Regulations specifically require consultation prior to the publishing of a new PNA, the same requirement does not exist for a Supplementary Statement.

4.1.57 **GROUND 2 -** *My client's application was offering unforeseen benefits since the information provided by my client in support of its application extended beyond the contents of the Supplementary Statement.*

4.1.58 In support of this Temple Bright states;

4.1.59 *Since my client's application referenced several relevant matters which were not included in the Supplementary Statement, NHS England was wrong to conclude that the benefits that my client's application sought to meet were not*

unforeseen in the context of the current PNA (including, to the extent that it was relevant, the Supplementary Statement).

4.1.60 Temple Bright is clearly conflating the evidence provided by its client with the need identified in the PNA and this ground of appeal is therefore without merit.

4.1.61 Regulation 18(1)(b) exists to prevent applications being made under "unforeseen benefits" when the need for a new pharmacy providing essential services has been included in the relevant PNA. If Temple Bright's submission were correct then an Applicant would simply have to mention some point that was not already included in the PNA in order for its application to be considered. Such a position is clearly hopeless.

4.1.62 **GROUND 3 - In all the circumstances, my client's application should have been granted.**

4.1.63 This is not a ground of appeal against the approval of my client's application. Instead, the entirety of the information provided to support this "ground" is instead only relevant to the Alnwick appeal against its own application. This purported ground has only been included in an attempt to dress up an obviously invalid appeal as valid and by doing so it is both vexatious and frivolous.

4.1.64 Given the above there is no doubt that the Supplementary Statement

4.1.64.1 properly identifies the need for pharmaceutical services in Newsham

4.1.64.2 forms part of the PNA and

4.1.64.3 Alnwick's challenge is to a challenge to the legality or reasonableness of the pharmaceutical needs assessment, and to the fairness of the process by which a HWB undertook that assessment.

4.1.65 In the event that the Committee does not agree with me on this and decided to consider the appeal then it has no option other than to accept that the Supplementary Statement, however written, forms part of the PNA as that requirement forms part of the Regulations (regulation 6(3)(3)).

4.1.66 The matters that the Committee would then consider are as follows.

4.1.67 In relation to Regulation 13, the matters to which consideration will be given are (as per your letter of 18 June 2025)

4.1.68 **Regulation 31**

4.1.69 It appears to be accepted that regulation 31 is not relevant in this case and my client has no interest or involvement in any pharmacy in Newsham.

4.1.70 ***(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 Health and Wellbeing Board that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in that area;***

4.1.71 There is no suggestion of any such changes having taken place, not have there been any changes that could lead to such a determination. The Supplementary

Statement is attached with this reply and clearly states the changes that have occurred to accessing pharmaceutical changes and explains those changes.

4.1.72 ***(e) it is satisfied that-***

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

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

4.1.75 Granting the application would meet the identified need in full.

4.1.76 ***(f) whether***

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

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

4.1.79 Granting the application would meet the identified need in full.

4.1.80 ***(g) it is satisfied that***

4.1.81 ***(i) the current need mentioned in paragraph (1) was for services other than essential services' and***

4.1.82 ***(ii) granting the application would result in an increase in the availability of essential services in the area of the relevant Health and Wellbeing Board;***

4.1.83 The identified need is not for services other than essential services as it specifically notes the need for essential services.

4.1.84 ***(h) it 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 Health and Wellbeing Board or in the area of another Health and Wellbeing Board, NHS services;***

4.1.85 The need has not been met or is due to be met by any other person.

4.1.86 In summary,

4.1.86.1 The appeal against the approval of the application from Jiwa Pharm Limited is not valid and therefore must fail.

4.1.86.2 The appeal against the refusal of the application from Alnwick Healthcare Limited must fail as the application fails the test under regulation 18(1)(b)."

5 Summary of Observations

This is summary of observations received.

5.1 Temple Bright LLP on behalf of the Applicant

5.1.1 “I continue to act for Alnwick Healthcare Limited. On behalf of my client I write further to your letter of 25th July 2025 and in order to respond to representations submitted by Rushport Advisory on behalf of Jiwa Pharm Limited.

5.1.2 As will no doubt be apparent to NHS Resolution, the representative for Jiwa Pharm Limited has misunderstood my client’s grounds of appeal. For the avoidance of doubt, my client’s appeal does not amount to “a challenge to the legality or reasonableness of [the HWB’s] pharmaceutical needs assessment…” which, it is accepted, is not permitted by reason of paragraph 2 of Schedule 3 to the Regulations. My client’s appeal is, in essence, simply stated as follows:

5.1.2.1 The application by Jiwa Pharm Limited is made pursuant to regulation 13 of the Regulations.

5.1.2.2 As such, it may only be granted where the relevant PNA identifies a current need for pharmaceutical service provision.

5.1.2.3 It is not in dispute that Northumberland HWB’s 2022 PNA does not identify a current need for pharmaceutical service provision in Blyth.

5.1.2.4 The application by Jiwa Pharm Limited is made based on a supplementary statement issued by the HWB on 17th [sic] January 2024, a copy of which is attached to the letter from Rushport dated 24th June 2025.

5.1.2.5 Notwithstanding the contents of the supplementary statement, as a matter of law, a supplementary statement cannot identify a current need for pharmaceutical service provision which would support the granting of an application pursuant to regulation 13. For the avoidance of doubt, my client does not assert, for the purposes of this appeal, that the supplementary statement is unlawful, merely that, notwithstanding the contents of the supplementary statement, it cannot, within the relevant regulatory framework, identify a need which would support a regulation 13 application.

5.1.2.6 Since the PNA, itself, does not identify a current need for pharmaceutical service provision and a supplementary statement cannot do so, the application by Jiwa Pharm Limited must fail.

5.1.2.7 My client’s application should be granted, since it would secure improvements and better access which were not contained within the relevant PNA.

5.1.3 My client’s letter of appeal sets out the legal framework in relation to the publication of PNAs and supplementary statements and I do not intend to repeat the contents of the appeal letter in this correspondence. However, to assist NHS Resolution in its consideration of these matters, I respond to the specific comments on the relevant regulatory provisions highlighted in bold by Rushport as follows.

5.1.4 Regulation 6(3)

5.1.5 “And any such Supplementary Statement becomes part of that assessment”

5.1.6 It is not disputed that the supplementary statement becomes part of the PNA to the extent that the purpose of a supplementary statement (as detailed in regulation 6(3)) is to "*explain changes to the availability of services since the publication of its…pharmaceutical needs assessment*". This wording is important because it defines the purpose of a supplementary statement – to "explain changes" not to, for example, "identify current needs" which weren't identified in the principal PNA.

5.1.7 "The changes are relevant to the granting of applications referred to in section 129(2)(c)(i) or (ii) of the 2006 Act"

5.1.8 Again this wording is not contentious and is simply a matter of common sense: there is no reason to publish a supplementary statement if the changes reported in it are irrelevant to the provision of pharmaceutical services in the HWB's area.

5.1.9 That does not, however, mean that the supplementary statement may be used to identify gaps in service provision that would support a new pharmacy application being granted.

5.1.10 "is satisfied that making its first or a revised assessment would be a disproportionate response to those changes".

5.1.11 Again, this is a matter of common sense and supports my client's assertion that supplementary statements are simply statements of fact. Many changes in pharmaceutical service provision may be reported in a supplementary statement for which it would be disproportionate to publish a revised assessment, for example in relation to changes to opening hours, relocations of pharmacies, consolidations of pharmacies, the opening of new pharmacies, etc.

5.1.12 However, contrary to the apparent assertion by the representative for Jiwa Pharm Limited, this does not mean that supplementary statements may be used to identify gaps in service provision which would lead to the granting of a new pharmacy application. In fact, publishing a new PNA would not be a disproportionate response to a change which was of such significance and of fundamental importance to the contents and conclusions of a PNA that it required the granting of a new pharmacy contract application.

5.1.13 "is satisfied that immediate modification of its pharmaceutical needs assessment is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area"

5.1.14 The submission by Rushport in relation to the above wording appears to conflate the concepts of significant detriment to pharmaceutical services with the concept of patient needs for pharmaceutical services.

5.1.15 Regulation 6(3)(b)(ii) refers to detriment to the provision of pharmaceutical services, not to the detriment of the users of those pharmaceutical services. The regulation does not support the position stated by Rushport that a supplementary statement may be used where a gap in service provision may cause detriment to patients if not met by a new contract application.

5.1.16 It is therefore submitted that the wording of the relevant regulatory provisions is clear, and is as set out in my client's letter of appeal and as summarised above: since a supplementary statement is simply a statement of fact, it cannot (no matter what its contents may imply) identify a need for a new pharmacy

contract in the context of the relevant PNA and, consequently, it cannot be used to support the application by Jiwa Pharm Limited.

5.1.17 Lest there be any doubt about the above, NHS Resolution is referred to the DHSC's "Information pack for local authority health and wellbeing boards" published in October 2021 which states (at Chapter 8, page 63) relevantly as follows:

5.1.18 "*Supplementary statements are statements of fact; they do not make any assessment of the impact the change may have on the need for pharmaceutical services. Effectively, they are an update of what the pharmaceutical needs assessment says about the availability of pharmaceutical services. They are not a vehicle for updating what the pharmaceutical needs assessment says about the need for pharmaceutical services.*"

5.1.19 In conclusion, my client asserts that, notwithstanding the contents of the January 2024 supplementary statement, the supplementary statement is merely a statement of fact and cannot be used to "make an assessment of the impact the change my have on the need for pharmaceutical services." The current PNA does not, therefore, identify any unmet need for pharmaceutical services in Blyth.

5.1.20 It follows, therefore, that the application by Jiwa Pharm must be refused, since it would not meet a current need for pharmaceutical services which is included in the relevant PNA.

5.1.21 My client's application is submitted pursuant to regulation 18. For the reasons given in my client's application and in my client's letter of appeal, granting its application would secure improvements and better access to pharmaceutical service provision which is not contained within the relevant PNA.

5.1.22 On behalf of my client, I therefore invite NHS Resolution to uphold this appeal, refuse the application by Jiwa Pharm Limited and grant my client's application."

6 Consideration

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

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

Regulation 31

6.5 The Committee first considered Regulation 31 of the Regulations which states:

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

6.6 In its application form, the Applicant stated "*there is currently a Boots branch located in the area but is scheduled to close in early 2024.*" The Committee noted the Commissioner in its decision letter concluded that "*there is no other pharmacy with an NHS contract at the proposed address or adjacent to them, therefore the application is not to be refused under this regulation.*"

6.7 Further, the Committee noted Supplementary Statement 3 confirmed the closure of Boots Pharmacy on Plessey Road in mid January 2024. Therefore based on the information provided, which is not disputed, the Committee determined that it was not required to refuse the application under the provisions of Regulation 31.

6.8 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 18

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

"(1) If—

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

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

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

(2) Those matters are—

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

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

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

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

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

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

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

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

(c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;

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

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

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

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

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

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

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

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

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

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

6.13 The Committee considered the PNA prepared by Northumberland HWB, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a supplementary statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 2022 and that four supplementary statements had been issued since its publication.

6.14 The Committee noted that the Commissioner had refused the application on the following basis:

6.15 ***"Regulation 18(1)(b) was not met*** *– There is no current identified need in the extant PNA for Northumberland 2022-2025, however PSRC gave due consideration to the supplementary statement dated 12th January 2024 which was explicit in stating that the closure of pharmacies has created a gap in essential pharmaceutical services Monday to Saturday. The PSRC determined that granting an application in the area of Newsham would meet an identified current need for essential pharmaceutical services for the population and therefore an unforeseen benefits application would not meet the requirements of regulation 18(1)."*

6.16 In its appeal, the Applicant contends that "*a supplementary statement, cannot, as a matter of law, identify a current need for the provision of pharmaceutical services that may support the granting of an application for inclusion in the pharmaceutical list for the purposes of regulation 13(1)(a)."*

6.17 The Committee therefore proceeded to consider this point first.

6.18 The Applicant states that the "*Regulations require each HWB to publish a PNA at least every 3 years (regulation 6(A3)(1) of the Regulations)"* and further that "*The purpose*

of the PNA is to make an assessment of the needs for pharmaceutical services…. PNAs are subject to statutory consultation (regulation 8) and are of primary importance, since all routine applications for inclusion in the pharmaceutical list in respect of new premises are assessed having regard to the contents of the PNA."

6.19 The Applicant continues that "*Regulation 6(2) requires HWBs to publish a revised assessment where there have been relevant changes since the publication of the PNA which are "of a significant extent" unless publishing a revised assessment would be a disproportionate response to the changes. Regulation 6(3) provides that:*

(3) Pending the publication of a statement of a revised assessment, a HWB may publish a supplementary statement explaining changes to the availability of pharmaceutical services since the publication of its or a Primary Care Trust's pharmaceutical needs assessment (and any such supplementary statement becomes part of that assessment), where—

(a) the changes are relevant to the granting of applications referred to in section 129(2)(c)(i) or (ii) of the 2006 Act; and

(b) the HWB—

(i) is satisfied that making its first or a revised assessment would be a disproportionate response to those changes, or

(ii) is in the course of making its first or a revised assessment and is satisfied that immediate modification of its pharmaceutical needs assessment is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area.

It is noted that regulation 6(3) allows for a supplementary statement to "explain changes to pharmaceutical services" since the publication of the last PNA but does not state that a supplementary statement may be used to identify gaps in service provision that may have been caused by those changes which may result in a new pharmacy application being granted."

6.20 The Applicant contends it is therefore clear that "*as a matter of law, a supplementary statement cannot, therefore, be used to identify a change in service provision which has the effect of enabling the granting of an application"* and further that "*it also a matter of common sense, because the procedure for publishing a supplementary statement does not allow for a transparent and robust consultation with all affected parties."*

6.21 The Committee noted in its observations, the Applicant references the DHSC's 'Information pack for local authority health and wellbeing boards' which was published in October 2021, in particular Chapter 8, page 63, which states:

"*Supplementary statements are statements of fact; they do not make any assessment of the impact the change may have on the need for pharmaceutical services. Effectively, they are an update of what the pharmaceutical needs assessment says about the availability of pharmaceutical services. They are not a vehicle for updating what the pharmaceutical needs assessment says about the need for pharmaceutical services.*"

6.22 In consequence of these statements the Committee proceeded to consider the wording of Regulation 6, and the DHSC PNA information pack referred to by the Applicant. The Committee noted that nowhere in Regulation 6 does it say that a supplementary statement cannot be issued where a gap is created. Having regard to the actual wording of Regulation 6(2) it states that the changes since the previous assessment must be "*of a significant extent*". The Applicant's suggestion that a supplementary

statement cannot be used to identify a change in service provision which has the effect of enabling the granting of an application, would thus create a situation where a change which was not of a significant extent, but nonetheless created a gap, then neither a supplementary statement nor a revised assessment could be issued. The Committee noted that it is not stated anywhere in the Regulations that a change that creates a gap is automatically considered a change of a significant extent (and so triggers the requirement to make a revised assessment in accordance with Regulation 6(2)). The Committee therefore considered that a change that creates a gap might not be of a significant extent, for example, because it is relevant only to a small proportion of the area of the HWB.

6.23 The Committee also noted that Regulation 6(3)(b) provides for a situation where a supplementary statement needs to be made while a PNA is pending due to it being "essential to prevent significant detriment to the provision of pharmaceutical services in its area." The Committee considered it would not make sense that a PNA would need to be issued, if this change had created a gap in services, since this would run counter to the necessity of a "immediate" modification clearly established in the Regulations.

6.24 As regards to the DHSC information pack, the Committee noted that the Applicant is indeed correct that it states, in relation to supplementary statements, "*They are not a vehicle for updating what the pharmaceutical needs assessment says about the need for pharmaceutical services*".

6.25 The Committee noted that examples are provided in the information pack to illustrate the use of supplementary statements. The Committee had regard to examples 4 and 5 of "Does a supplementary statement need to be published?". Paragraph 4 refers to the only pharmacy in a deprived part of a town closing. It indicates that the HWB should consider, if the pharmacy had not been there when the PNA was written, would it have been identified as a gap. Paragraph 5 then states:

"if the health and wellbeing board considers that if the pharmacy mentioned in paragraph 4 had not been open during the writing of the PNA that there would have been a gap in the provision of pharmaceutical services then it would need to publish a supplementary statement."

6.26 The Committee considered that the clear implication here is that the supplementary statement will contain a statement relating to the need for pharmaceutical services. As per paragraph 5, this is the only reason for publishing the supplementary statement. The Committee considered that this directly contradicts the earlier statement that the supplementary statement should not relate to needs for pharmaceutical services.

6.27 The Committee also noted Regulation 6(4) which requires a HWB, in the situation explained in Regulation 6(4), to publish a supplementary statement explaining that a gap is not created. The Committee noted that the Regulations clearly envisage here that a supplementary statement will contain a statement relevant to needs for pharmaceutical services that forms part of the PNA.

6.28 The Committee was mindful that the DHSC document is intended as guidance only and does not replace the statutory requirements set out in the Regulations.

6.29 The Committee consequently considered that a supplementary statement may refer only to the availability of pharmaceutical services but, if considered appropriate by the HWB, is also able to identify a gap. As noted above, a supplementary statement then forms part of the PNA.

6.30 The Committee therefore went on to consider the wording in Supplementary Statement 3 dated 12 January 2024.

6.31 Supplementary Statement 3 reads as follows:

6.32 "*Details of Change*

Boots pharmacy in the Community Hospital and Health Centre closed in October 2023. Boots pharmacy in Plessey Road closed in mid January 2024. Boots 100 hour pharmacy in Maddison street reduced its hours to 75 hours per week in September 2023.

A gap in essential pharmaceutical services Monday to Saturday has been left following these closures. A gap in additional and advanced services, particularly the new medicines service clinical pharmacy consultation service and minor ailments services has also been created. A gap in the locally commissioned service for supervision of opiate consumption has also been created. Any replacement pharmacy should be located in the Newsham area to serve the population of Newsham, a deprived community on the southern edge of Blyth."

6.33 The Committee noted that the wording is very specific, it says "*A gap in essential pharmaceutical services Monday to Saturday has been left*" following the closures referred to above. And further that "*Any replacement pharmacy should be located in the Newsham area to serve the population of Newsham".* The Committee considered that the word "has" provided absolute certainty that a gap has been created.

6.34 The Committee was mindful that the proposed best estimate address for the application was located in Newsham. The Applicant, however, contends that the "*application referenced several relevant matters which were not included in the supplementary statement"* and therefore the Commissioner *"was wrong to conclude that the benefits that my client's application sought to meet were not unforeseen in the context of the current PNA (including, to the extent that it was relevant, the supplementary statement).*" The Committee noted those matters set out at paragraph 3.52.1 – 3.52.5 above.

6.35 In response, Rushport Advisory on behalf of Jiwa Pharm Ltd argue that *"Regulation 18(1)(b) exists to prevent applications being made under "unforeseen benefits" when the need for a new pharmacy providing essential services has been included in the relevant PNA. If Temple Bright's submission were correct then an Applicant would simply have to mention some point that was not already included in the PNA in order for its application to be considered. Such a position is clearly hopeless."*

6.36 Whilst acknowledging the proposals in the application, the Committee was mindful of its considerations above, that a need has been identified in the PNA by way of Supplementary Statement 3 and that the 'extra' matters proposed were equally relevant to Newsham.

6.40 The Committee considered that, in this determination, it was required to determine if the improvements or better access were not or was not in the PNA. For the reasons given above, the Committee determined that the improvements or better access were or was included in the PNA (by way of Supplementary Statement 3) and the Committee therefore had to determine that Regulation 18(1)(b) was not satisfied.

Other considerations

6.41 Having determined that Regulation 18(1)(b) was not satisfied the Committee did not need to have regard to the matters in Regulation 18(2) in order to reach its determination of the appeal.

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

6.42.1 confirm the Commissioner's decision;

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

6.42.3 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.

6.43 Although the Committee has reached the same decision to that of the Commissioner, it noted the Commissioner had gone on to consider parts of Regulation 18(2) which were not relevant. Therefore the Committee determined that the decision of the Commissioner must be quashed.

6.44 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.

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

6.46 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 determined that the application should be refused.

Technical Case Manager
Primary Care Appeals