

18 September 2025

REF: SHA/26656

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**APPEAL AGAINST NHS LEICESTER, LEICESTERSHIRE
AND RUTLAND ICB DECISION TO REFUSE AN
APPLICATION BY WARWICK HEALTHCARE LTD FOR
INCLUSION IN THE PHARMACEUTICAL LIST AT 106
GRACE ROAD, LEICESTER, LE2 8AZ UNDER
REGULATION 25**

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and remits the matter to the Commissioner for it to redetermine subject to the directions set out in this determination.

A copy of this decision is being sent to:

Rushport Advisory LLP representing Warwick Healthcare Ltd (the Applicant)
PCSE on behalf of Leicester, Leicestershire and Rutland ICB

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1 The Application

By application dated 14 March 2025, Warwick Healthcare Ltd (“the Applicant”) applied to Leicester, Leicestershire and Rutland ICB (“the Commissioner”) for inclusion in the pharmaceutical list at 106 Grace Road, Leicester, LE2 8AZ under Regulation 25. In support of the application it was stated:

- 1.1 In response to “If you are undertaking to provide appliances, specify the appliances that you undertake to provide (or write ‘none’ if it is intended that the pharmacy will not provide appliances)” the Applicant stated:
- 1.2 “Drug Tariff part IX*
- 1.3 *EXCEPT items that require measuring or fitting.”
- 1.4 In response to why the application should not be refused pursuant to Regulation 31 the Applicant stated:
- 1.5 “Not applicable as no other pharmacy in same or adjacent premises.”
- 1.6 In response to why the application should not be refused pursuant to Regulation 25(2)(a) the Applicant stated:
- 1.7 “Application is not on the same site or in the same building as the premises of a provider of primary medical services with a patient list.”

Further Information in Relation to Provision of Essential Services in Accordance With the Regulatory Requirements for Distance Selling Pharmacies

- 1.8 Please find below information to explain how the pharmacy procedures used within the premises will secure:
 - (a) the uninterrupted provision of essential services during the opening hours of the premises, to persons anywhere in England who request those services, and
 - (b) the safe and effective provision of essential services without face to face contact between any person receiving the services, whether on their own or someone else's behalf, and the applicant or the applicant's staff.
- 1.9 “SEE ATTACHED INFORMATION” [This information was not provided by the Applicant. See paragraph 2.16 below].

2 The Decision

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

The Commissioner considered and decided to refuse the application. The decision letter dated 1 July 2025 states:

- 2.1 "Leicester, Leicestershire and Rutland 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 Leicester, Leicestershire and Rutland ICB's decision. Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:
- 2.3 Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU."

Decision Report

- 2.4 **"Warwick Healthcare Ltd, 106 Grace Road, Leicester, LE2 8AZ**
- 2.5 **Re: CAS-357850-M3J6L1**
- 2.6 **Fitness to practice**
- 2.7 Fitness was not applicable as the applicant is already included in respect of other premises within Leicester City Health and Wellbeing Board.
- 2.8 **Regulation 31 – refusal same or adjacent premises**
- 2.9 There is no person on the pharmaceutical list for the area of Leicester City Health and Wellbeing Board who is providing, or has undertaken to provide, pharmaceutical services from the premises to which the application relates or adjacent premises. There are therefore no grounds to refuse the application by virtue of this regulation.
- 2.10 **Regulation 25 – Distant Selling Premises Applications**
- 2.11 **Regulation 25 (1)**
- 2.12 The application is for distance selling premises and therefore section 129(2A) of the NHS Act 2006 doesn't apply.
- 2.13 **Regulation (25)(2)(a)**
- 2.14 The applicant's premises are not on the same site or in the same building as the premises of a provider of primary medical services with a patient list. There are therefore no grounds to refuse the application by virtue of this regulation.
- 2.15 **Regulation 25(2)(b)**
- 2.16 Though the application states that the applicant has provided additional information this has not been provided and therefore the committee cannot be assured that the pharmacy procedures for the proposed premises are likely to secure:

2.16.1 The uninterrupted provision of essential services, during the proposed opening hours, to persons anywhere in England who request those services, and

2.16.2 The safe and effective provision of essential services without face-to-face contact between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff.

2.17 Regulation 66 – conditions relating to providing directed services

2.18 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.

2.19 If the committee grants 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 these services.

2.19.1 New Medicine Service (NMS) advanced service

2.20 If the application is granted, then the applicant would be required to register to provide the above-listed advanced services via the MYS portal within eight weeks of its inclusion in the pharmaceutical list for the area of Leicester City in respect of the premises listed in the application.

2.21 If the application is granted and the applicant and their premises are included in the pharmaceutical list for the area of Leicester City Health and Wellbeing Board, due to amendments to regulation 64 that come into force on 1 October 2025, the applicant would not be able to offer to provide, or provide, the new medicine service to persons present at or in the vicinity of the proposed premises.

2.22 Granting the application will have no negative impact on those with protected characteristics or on NHS Leicester, Leicestershire and Rutland ICB's duty on health inequality.

2.23 Decision

2.24 The committee determined the application is to be refused.

2.25 Third party rights of appeal

2.26 Appeal right will only be given to the applicant."

3 The Appeal

In a letter dated 3 July 2025, Rushport Advisory LLP representing the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "I act for the Applicant in the above application and have been instructed to submit this appeal against the decision of the Commissioner to refuse my client's application under regulation 25.

- 3.2 The Commissioner refused the application due to the change in the regulatory test that occurred between my client's application being submitted and the Commissioner making its decision.
- 3.3 The Committee will be aware of the meaning of "pharmaceutical services" and in the context of my client's application has the meaning given in section 126(8) of the 2006 Health Act (arrangements for pharmaceutical services) which includes the provision of drugs and appliances as well as additional pharmaceutical services such as advanced or enhanced services. Not all pharmacies will provide all pharmaceutical services as many are subject to commissioning and in the context of appliances my client will only provide those that do not require measuring or fitting.
- 3.4 As a result of the changes made, the Committee will no longer consider only the safe and effective provision of essential services, and will instead consider the provision all NHS pharmaceutical services provided to patients.
- 3.5 In addition, the Committee will consider if the pharmaceutical services will be provided without face to face contact at the pharmacy premises between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff.
- 3.6 My client has updated their SOPs to reflect the new legal test. The updates make the following changes.
- 3.6.1 Clarify that no NHS pharmaceutical services will be provided to patients at the premises. See SOP 3 – Procedures For NHS Pharmaceutical Services.
- 3.6.2 Include SOPs for the **remote** provision of both NMS and Pharmacy First – See SOPs 7 and 8. **NOTE** Each service will only be provided where it is approved by the Commissioner. Where Pharmacy First has not been applied for it will not be provided, but the SOP is included for completeness in case the service is applied for at a later date.
- 3.6.3 Remove references to essential services and replace those with references to pharmaceutical services.
- 3.6.4 Other small minor and typographical changes.
- 3.7 In addition we ask the Committee to note that my client will operate this pharmacy from self-contained premises to which the public will not have access. A controlled entry system will be in operation. No services will be provided at the premises to any patient.
- 3.8 These changes ensure that my client's application meets the updated legal test and I look forward to hearing from you in due course."
- 3.9 [SOPs – Appendix A for Committee]

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 09 July 2025; the East Midlands Primary Care Team (EMPCT) on behalf of Leicester, Leicestershire and Rutland Integrated Care Board would like to make the following representations.

- 4.1.2 Relevant Regulations
- 4.1.3 Regulation 25 – distance selling premises The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 4.1.4 Regulation 31 – refusal: same or adjacent premises The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 4.1.5 [Regulation 66 – conditions relating to providing directed services.] The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 4.1.6 Warwick Healthcare Limited submitted an application to be included on the pharmaceutical list for the area of Leicester City HWB in respect of distance selling premises. The application was considered at the Pharmaceutical Services Regulations Committee meeting on 17 June 2025 and the committee's decision was to refuse the application by virtue of regulation 25(2)(b). The application was determined in line with Regulation 25 as drafted on 17 June 2025, and therefore before the amendments that came into force on 23 June 2025.
- 4.1.7 The appellant stated within their application that they had provided additional information which explained how the pharmacy procedures that would be used within the proposed premises would secure:
 - 4.1.7.1 (a) the uninterrupted provision of essential services during the opening hours of the premises, to persons anywhere in England who request those services, and
 - 4.1.7.2 (b) the safe and effective provision of essential services without face to face contact between any person receiving the services, whether on their own or someone else's behalf, and the applicant or the applicant's staff.
- 4.1.8 However, no such information was provided and therefore the committee was not satisfied on this point and by virtue of regulation 25(2)(b) refused the application.
- 4.1.9 The statement by the appellant's agent that the application was refused on the basis of amendments being made to regulation 25 is therefore incorrect.
- 4.1.10 It is noted that Warwick Healthcare Ltd has now, via its appeal, submitted standard operating procedures which it states have been updated "to reflect the new legal test". The ICB can confirm that any previous version of these standard operating procedures was not provided with the application and therefore has not been circulated to those persons listed in paragraph 19, Schedule 2 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended. In light of this, NHS Resolution may consider it appropriate to quash the decision and remit the matter to the ICB for it to redetermine the application with a direction that there should be a further notification under that paragraph.
- 4.1.11 If NHS Resolution is minded not to do this then the ICB would like to make the following representations on the standard operating procedures that have been provided as part of this appeal. The SOPs provided on appeal have been

reviewed and I can confirm that if they had been provided by the applicant as part of the application, it would have been granted by the PSRC.

4.1.12 It has been assumed that NHS Resolution will hear the application in line with regulation 25(2) as it is now written and therefore the ICB has considered the standard operating procedures with regard to the provision of all essential services and the only advanced service that the applicant undertakes to provide, the new medicine service. It is, however, noted that the standard operating procedures also include how Pharmacy First would be provided despite the applicant not having undertaken to provide that service in the application. As that service is not listed in the application the ICB has not reviewed that section of the standard operating procedures. Should NHS Resolution be of the opinion that the applicant has undertaken to provide Pharmacy First then the ICB reserves the right to make representations on that section of the standard operating procedures at a later date."

4.1.13 [Copy of links to Regulation 25, 31 and 66 in the NHS (Pharmaceutical Services) Regulations 2013, decision letter (at paragraph 2 above) and the application (paragraph 1 above)]

5 **Summary of Observations**

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

6 **Consideration**

6.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution, had before it the papers considered by the Commissioner.

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

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

6.4 The Committee 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 The Committee noted that in its application, the Applicant stated “*Not applicable as no other pharmacy in same or adjacent premises.*” In its decision, the Commissioner concluded “*There are therefore no grounds to refuse the application by virtue of this regulation.*” Based on the information provided, which has not been disputed by any party, the Committee was not required to refuse the application under the provisions of Regulation 31.

Regulation 25

- 6.7 The Committee had regard to Regulation 25 of the Regulations which reads as follows:

- (1) *Section 129(2A) and (2B) of the 2006 Act (regulations as to pharmaceutical services) does not apply to an application—*
- (a) *for inclusion in a pharmaceutical list by a person not already included; or*
 - (b) *by a person already included in a pharmaceutical list for inclusion in that list in respect of premises other than those already listed in relation to that person,*
- in respect of pharmacy premises that are distance selling premises.*
- (2) *NHS England must refuse an application to which paragraph (1) applies—*
- (a) *if the premises in respect of which the application is made are on the same site or in the same building as the premises of a provider of primary medical services with a patient list; and*
 - (b) *unless NHS England is satisfied that the pharmacy procedures for the pharmacy premises are likely to secure—*
 - (i) *the uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services, and*
 - (ii) *the safe and effective provision of pharmaceutical services without face to face contact at the pharmacy premises between any person receiving the services, whether on their own or on someone else’s behalf, and the applicant or the applicant’s staff.*

- 6.8 The Committee also had regard to the provisions of Schedule 2 to the Regulations shown below:

Additional information to be included with excepted applications

8. *If the applicant (A) is making an excepted application, A must include in that application details that explain—*
- (a) *A’s belief that the application satisfies the criteria included in one of the regulations in Part 4 which need to be satisfied if section 129(2A) and (2B) of the 2006 Act (regulations as to pharmaceutical services) are not to apply in relation to that application; and*

- (b) *if the regulation includes reasons for which the application must be refused, why the application should not be refused for those reasons.*

Nature of details to be supplied

10. *Where, pursuant to this Part, a person is required to provide details, that obligation is only discharged if the information or documentation provided is sufficient to satisfy NHS England in receipt of it, with good cause, that no relevant information or documentation is missing, having regard to the uses that NHS England may need to make of the information or documentation when carrying out its functions.*

Regulation 25(1)

- 6.9 In relation to Regulation 25(1), the Applicant is applying for inclusion in the relevant pharmaceutical list as a person already included in a pharmaceutical list for inclusion in that list in respect of premises other than those already listed in relation to that person, and paragraph (1)(b) therefore operates to disapply the specified provisions of section 129 of the National Health Service Act 2006, provided that paragraph (2) does not require the application to be refused.

Regulation 25(2)(a)

- 6.10 As far as Regulation 25(2)(a) is concerned, the Committee had regard to the application form in which the Applicant states the "*Application is not on the same site or in the same building as the premises of a provider of primary medical services with a patient list*". The Committee noted that this had not been disputed and that it had not been provided with any information to persuade it otherwise. The Committee was therefore satisfied that the proposed premises were not on the same site as, or in the same building as the premises of a provider of primary medical services with a patient list.

Regulation 25(2)(b)

- 6.11 As far as Regulation 25(2)(b) is concerned, the Committee considered the information which had been provided by the Applicant in relation to its procedures for the provision of essential services and pharmaceutical services, including its Standard Operating Procedures (SOPs) that it intends to use at the proposed pharmacy premises.
- 6.12 The Regulations require the Committee to be satisfied as to a number of matters, including that essential services will be provided on an uninterrupted basis, across England, and that pharmaceutical services will be provided in a safe and effective way without face to face contact.
- 6.13 Paragraph 8 of Schedule 2 requires an applicant to provide details in relation to an application, and paragraph 10 of Schedule 2 indicates that the obligation is only discharged if the information or documentation provided is sufficient to satisfy the Commissioner in receipt of it, with good cause, that no relevant information or documentation is missing, having regard to the uses that the Commissioner may need to make of the information or documentation when carrying out its functions.
- 6.14 The Committee has asked itself whether it has sufficient information and documentation which would address the criteria in Regulation 25(2)(b). If the Committee is to be satisfied of the matters in that paragraph, the Committee must be provided with evidence to demonstrate these matters. In this case, that evidence put forward has taken the form of the original application and the SOPs which the Applicant has prepared or commissioned which were provided with the appeal.

- 6.15 The Committee noted that in its decision, the Commissioner has stated that “*Though the application states that the applicant has provided additional information this has not been provided and therefore the committee cannot be assured that the pharmacy procedures for the proposed premises are likely to secure....*”. The Committee considered that the Commissioner could have sought the information as there had been a clear indication that it was intended to have been included but, due to oversight, had not been. The Commissioner, in its representations, stated “*The ICB can confirm that any previous version of these standard operating procedures was not provided with the application and therefore has not been circulated to those persons listed in paragraph 19, Schedule 2 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended. In light of this, NHS Resolution may consider it appropriate to quash the decision and remit the matter to the ICB for it to redetermine the application with a direction that there should be a further notification under that paragraph.*”
- 6.16 The Committee was mindful that statutory interested parties had been invited by the Commissioner to comment on the application within the 45 day consultation period, but had chosen not to. There could be many reasons why this was the case but the fact that there was no information to comment upon could have been influential. As a result, none of the statutory interested parties made comments on the application, and in accordance with Schedule 3, Part 2 of the Regulations (‘Notification of appeals’) no parties could be invited to comment upon the appeal. The Committee was of the view that as no information had been provided in the application, the parties had not commented and considered that it would not be appropriate to essentially now make a first-line determination on the basis of the information before it.
- 6.17 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.17.1 confirm the Commissioner’s decision;
 - 6.17.2 quash the Commissioner’s decision and redetermine the application;
 - 6.17.3 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.
- 6.18 In these exceptional circumstances, as the Committee considered that it would not be appropriate to essentially make a first-line determination, it determined that the decision of the Commissioner must be quashed.
- 6.19 The Committee considered 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 quash the original decision and remit the matter to the Commissioner) or whether it was preferable for the Committee to reconsider the application. The Committee was of the view that in these circumstances it would not be appropriate for the Committee to essentially make a first-line determination in relation to Regulation 25(2)(b). The Committee considered therefore that there should be a further notification under paragraph 19 of Schedule 2 to enable parties to make comments if they so wished.
- 6.20 The Committee therefore directs the Commissioner to:
- 6.20.1 Carry out a further notification under paragraph 19 of Schedule 2 of the Regulations, mindful of the test as at 23 June 2025, to enable parties to make comments on the application and information submitted on appeal in light of this determination and provide this determination to those parties; and

6.20.2 Re-determine the application taking into account the Committee's determination of Regulation 25(2)(b).

7 Decision

- 7.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution quashes the decision of the Commissioner and remits the matter to the Commissioner, for it to redetermine the application subject to the directions set out in this determination.

Case Manager
Primary Care Appeals