

29 October 2025

REF: SHA/26688

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

**APPEAL AGAINST HAMPSHIRE AND ISLE OF
WIGHT ICB DECISION TO REMOVE JHOOTS
PHARMACY LIMITED T/A JHOOTS PHARMACY
(FC669) FROM THE PHARMACEUTICAL LIST AT 1
ALBERT STREET, VENTNOR, ISLE OF WIGHT,
PO38 1EZ IN ACCORDANCE WITH REGULATION
73**

1 Outcome

- 1.1 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations, I substitute the decision of the Commissioner with the decision that the Appellant's premises are to be removed from the relevant pharmaceutical list for the reasons provided in this determination.

A copy of this decision is being sent to:

Temple Bright LLP on behalf of Jhoots Pharmacy Limited
Hampshire and Isle of Wight ICB

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APPEAL AGAINST HAMPSHIRE AND ISLE OF WIGHT ICB DECISION TO REMOVE JHOOTS PHARMACY LIMITED T/A JHOOTS PHARMACY (FC669) FROM THE PHARMACEUTICAL LIST AT 1 ALBERT STREET, VENTNOR, ISLE OF WIGHT, PO38 1EZ IN ACCORDANCE WITH REGULATION 73

1 The Decision Letter

A letter dated 18 July 2025 was sent from Hampshire and Isle of Wight ICB ("the Commissioner") to Jhoots Pharmacy Limited t/a Jhoots Pharmacy, 1 Albert Street, Ventnor, Isle Of Wight, PO38 1EZ ("the Appellant"). The letter stated:

- 1.1 "Further to my previous letters on this matter Hampshire & Isle of Wight ICB have considered all the evidence and have decided that the above premises are to be removed from the pharmaceutical list for the area of Hampshire Health and Wellbeing Board on Wednesday 20 August 2025.
- 1.2 A copy of the Hampshire and Isle of Wight ICB Pharmaceutical Services Regulations Committee decision report is included in Appendix A.
- 1.3 You have a right of appeal to the Secretary of State against this decision. Should you choose to appeal then you should 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:
 - 1.3.1 Primary Care Appeals NHS Resolution 8th Floor 10 South Colonnade Canary Wharf London E14 4PU"

Decision report

- 1.4 **"Appendix A - Hampshire and Isle of Wight ICB Pharmaceutical Services Regulations Committee decision report dated 15 July 2025**
- 1.5 **Jhoots Pharmacy Limited trading as Jhoots Pharmacy, 1 Albert Street, Ventnor, Isle of Wight, PO38 1EZ (FC669)**
- 1.6 The Committee had before it:
 - 1.6.1 Consideration to remove letter
 - 1.6.2 Representations from the LPC
 - 1.6.3 Background information

1.6.4 Jhoots Pharmacy Limited information submitted after the deadline

- 1.7 The Committee reminded itself of the decision taken on 28 May 2025 to consider the removal of Jhoots Pharmacy Limited trading as Jhoots Pharmacy, 1 Albert Street, Ventnor, Isle of Wight, PO38 1EZ from the pharmaceutical list for the area of Hampshire Health and Wellbeing Board on performance grounds, the reason being:
- 1.8 Since 14 March 2025 pharmaceutical services have been suspended at Jhoots Pharmacy, 1 Albert Street, Ventnor, Isle of Wight PO38 1EZ.
- 1.9 On 26 March 2025, the Pharmaceutical Services Regulations Committee for HIOW ICB determined that 9 breach notices should be issued for the days the pharmacy had been closed without good cause.
- 1.10 On 15 April 2025, the Committee determined that a further 13 breach notices should be issued for the days the pharmacy had been closed without good cause.
- 1.11 Since then, services have remained suspended, and notices of temporary suspension have not been submitted in a timely manner. Jhoots Pharmacy Limited has not been able to confirm when the pharmacy will re-open.
- 1.12 On 28 May 2025, the Committee determined that a breach notice should be issued for a further 29 days that the pharmacy has been closed because it was satisfied, from the evidence provided that the pharmacy had continued to breach Paragraph 23(7) Schedule 4.
- 1.13 **Consideration**
- 1.14 The Committee noted that the letter sent to Jhoots Pharmacy Limited on 11 June 2025 informing them that HIOW ICB was considering their removal from the pharmaceutical list, gave the opportunity for written representations and / or the intention to make oral representations to be submitted in accordance with Regulation 73 by 11 July 2025. No representations were submitted by this date, however, information was provided by email on 14 July 2025. Due to email delivery and read receipts the Committee was satisfied the letter had been received by Jhoots Pharmacy Limited in time for them to make representations within the 30-day period.
- 1.15 The Committee noted the requirement of Regulation 73(6)(c) to consult with the Local Pharmaceutical Committee and had regard to the representations provided by Community Pharmacy Hampshire & Isle of Wight, who state they *"understand the basis for the decision"*.
- 1.16 The Committee noted that 5 of the 27 pharmacies on the Isle of Wight are Jhoots pharmacies and these are located in Cowes, East Cowes, Sandown, Ryde and Ventnor.
- 1.17 The Committee noted there are currently performance issues with four of these pharmacies due to Jhoots being unable to source and employ pharmacists to staff the pharmacies, leading to frequent temporary suspensions of service. For

example, on Monday 14 July 2025 four of the five pharmacies were closed. The Committee noted that Jhoots have not provided assurance or confidence that they are able to maintain the expected level of service provision across these four pharmacies.

- 1.18 The Committee reminded itself that although there are performance issues with four of the Jhoots pharmacies on the Isle of Wight this decision was in relation to the Jhoots pharmacy at Ventnor.
- 1.19 The Committee considered the effect on patients and noted that currently patient experience is poor due to the uncertainty of whether the pharmacy will reopen or not. The pharmacy has been closed since March 2025 with the exception of 12 June 2025 when a pharmacist was present in the pharmacy for a few hours. The local surgery raised concerns about the risk because the pharmacy appeared to be dealing with a backlog of prescriptions from April which had been re-issued because the pharmacy was closed. The Committee also noted the inconvenience and disruption patients experience when they cannot obtain their medication from the pharmacy and the burden this places on the GP Practices when they are required to issue new prescriptions.
- 1.20 The Committee noted the impact and pressure the temporary closure places on the other pharmacies in the area and the difficulty they experience staffing their pharmacies to deal with the increased workload on a temporary basis.
- 1.21 The Committee considered the information provided by Jhoots Pharmacy Limited that a pharmacist had been appointed who was due to start work at the Ventnor pharmacy on 1 August 2025. The Committee noted that this was a date in the future and that currently the pharmacy remains closed and there was no indication that the pharmacy would reopen before 1 August 2025.
- 1.22 The Committee had regard to Regulation 73(1)(b)(ii) that states:

73.—(1) NHS England may remove an NHS chemist (C) from a pharmaceutical list, or remove the listing of particular listed chemist premises in relation to C, if C—

(b)has breached C's terms of service, and—

(ii)previously been issued with a remedial notice or breach notice in relation to the relevant term of service, and NHS England is satisfied that C is likely to persist in breaching the term of service without good cause

1.23 **Decision**

- 1.24 Having considered the facts of the position as set out in a letter to Jhoots Pharmacy Limited on 11 June 2025, and the representations made by the LPC, the Committee determined, that Jhoots Pharmacy Limited trading as Jhoots Pharmacy, 1 Albert Street, Ventnor, Isle of Wight, PO38 1EZ should be removed from the pharmaceutical list for the area of the Hampshire Health and Wellbeing Board.

- 1.25 The reason is:

- 1.25.1 Repeated breach notices have been issued in relation to Paragraph 23(7) Schedule 4 and the Committee is satisfied that Jhoots Pharmacy Limited trading as Jhoots Pharmacy, 1 Albert Street, Ventnor, Isle of Wight, PO38 1EZ is likely to persist in breaching that term of service.”

2 The Appeal

In a letter dated 15 August 2025 addressed to NHS Resolution, the Appellant through its representative Temple Bright LLP appealed against the Commissioner’s decision. The grounds of appeal are:

- 2.1 “I act for Jhoots Pharmacy Limited (“the Company”). On behalf of my client I write pursuant to regulation 77(1)(d) of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”) to appeal against a decision by NHS England (acting through the Hampshire and Isle of Wight Integrated Care Board) to remove the Company’s inclusion in the pharmaceutical list for premises at 1 Albert Street, Ventnor, Isle of Wight, PO38 1EZ (“the Pharmacy”) pursuant to regulation 73(1).
- 2.2 The decision to remove the Company from the relevant pharmaceutical list was notified to my client by letter dated 18th July 2025. A copy of that letter is attached to this appeal.
- 2.3 Factual background
- 2.4 By way of background, the Company is included in the pharmaceutical list for premises at Unit 1 Albert Street, Ventnor, Isle of Wight, PO38 1EZ.
- 2.5 The Pharmacy was purchased by the Company from Lloyds Pharmacy Limited in February 2018.
- 2.6 The Pharmacy provided NHS pharmaceutical services in accordance with its terms of service obligations until March 2025 when the Company encountered difficulty securing locum pharmacist cover, despite the best efforts of the Company. This meant that the Pharmacy was only able to open once (on 12th June) from the 14th March 2025 to the date of the PSRC’s meeting on 15th July 2025.
- 2.7 As a result of the accepted failure to open the Pharmacy, NHS England issued breach notices to the Company on 26th March 2025, 15th April 2025 and 28th May 2025. Throughout that time, the Company took active steps to re-open the Pharmacy, including seeking locum pharmacist cover (which is particularly difficult on the Isle of Wight) and looking to employ a permanent pharmacist.
- 2.8 On 11th June 2025, the ICB wrote to the Company indicating that it was considering removing the Pharmacy from the pharmaceutical list pursuant to regulation 73. The ICB invited the Company to submit any written representations by 11th July 2025 or to confirm, by the same date, that the Company wished to attend a hearing of the PSRC to make oral representations.

- 2.9 An email was sent to the ICB on 14th July 2025 by Mr [DL], Operations Manager stating as follows:
- 2.9.1 *“We have been able to secure regular pharmacist cover for Jhoots Pharmacy Ventnor from 01/08/2025, this will be an employed pharmacist who is relocating to the island. Arrangements have been made to ensure that there is adequate support staffing for when the store is re-opened.*
- 2.9.2 *We will liaise with the local service providers to notify them of the re-opening. All prescriptions on site will be returned to the spine and re-requested as patients attend to collect to ensure that no prescriptions that may have been cancelled are collected.”*
- 2.10 On 4th August 2025, a regular responsible pharmacist, [AA], began working at the Pharmacy as a full time employee and the Pharmacy reopened. I attach to this letter a copy of the Pharmacy’s Responsible Pharmacist log confirming the opening of the Pharmacy.
- 2.11 NHS England decision
- 2.12 As summarised in its decision letter of 18th July 2025, the ICB had three areas of concern in relation to the current provision of pharmaceutical services from the Pharmacy by the Company. These are as follows:
- 2.12.1 Closures of the Pharmacy from March 2025 to the date of the PSRC’s decision, save for opening one day on 12th June 2025
- 2.12.2 Performance issues with other pharmacies on the Isle of Wight owned by the Company
- 2.12.3 That there was no indication that the Pharmacy would reopen “before 1 August 2025”
- 2.13 As a result of these concerns, the ICB informed the Company that it was removing the Pharmacy from the pharmaceutical list by letter of 18th July 2025.
- 2.14 The PSRC determination refers to regulation 73(1), which relevantly states as follows:
- “73.—(1) NHS England may remove an NHS chemist (C) from a pharmaceutical list, or remove the listing of particular listed chemist premises in relation to C, if C— ...*
- (b)has breached C’s terms of service, and— ...*
- (ii)previously been issued with a remedial notice or breach notice in relation to the relevant term of service, and NHS England is satisfied that C is likely to persist in breaching the term of service without good cause*
- 2.15 Grounds of appeal

- 2.16 My client's grounds of appeal are that:
- 2.16.1 The ICB appears to have had regard to irrelevant matters when reaching its decision
 - 2.16.2 The ICB was wrong to conclude that the Company would not be in a position to recommence service provision at the Pharmacy
 - 2.16.3 The Pharmacy has, in fact, recommenced the provision of pharmaceutical services such that NHS Resolution cannot, now, be satisfied that the Company "is likely to persist in breaching the term of service"
 - 2.16.4 In all the circumstances, the ICB decision was neither justifiable nor proportionate
- 2.17 Taking each of these grounds of appeal in turn, my client comments further as follows.
- 2.18 **The ICB appears to have had regard to irrelevant matters when reaching its decision**
- 2.19 It appears from the PSRC's consideration of this matter that the PSRC placed considerable weight on "performance issues" in relation to other pharmacies owned by the Company. The PSRC meeting report states relevantly as follows:
- 2.20 *"The Committee noted that 5 of the 27 pharmacies on the Isle of Wight are Jhoots pharmacies and these are located in Cowes, East Cowes, Sandown, Ryde and Ventnor.*
- 2.21 *The Committee noted there are currently performance issues with four of these pharmacies due to Jhoots being unable to source and employ pharmacists to staff the pharmacies, leading to frequent temporary suspensions of service. For example, on Monday 14 July 2025 four of the five pharmacies were closed. The Committee noted that Jhoots have not provided assurance or confidence that they are able to maintain the expected level of service provision across these four pharmacies."*
- 2.22 Whilst the meeting report goes on to state *"the Committee reminded itself that although there are performance issues with four of the Jhoots pharmacies on the Isle of Wight this decision was in relation to the Jhoots pharmacy at Ventnor"*, it is clear that the unplanned closure of other pharmacies owned by the Company played a material part in the ICB's consideration of this matter.
- 2.23 To the extent that the PSRC's decision-making was influenced by "performance issues" at pharmacies other than the Pharmacy, the PSRC had regard to irrelevant matters when considering the removal of the Pharmacy from the pharmaceutical list. Consequently, the decision itself is flawed.
- 2.24 **The ICB was wrong to conclude that the Company would not be in a position to recommence service provision at the Pharmacy**

- 2.25 At the time of its decision (15th July 2025), the ICB had been given assurances that a permanent, employed pharmacist had been secured to work in the Pharmacy and, as a result, the Pharmacy would re-commence the provision of pharmaceutical services in accordance with the terms of service from 1st August 2025.
- 2.26 The ICB appears to have accepted the Company's position in relation to the reopening of the Pharmacy but, for reasons which are not clear in its decision, it decided to remove the Pharmacy because services would not be commenced before 1st August.
- 2.27 In light of the assurances given by the Company and the short period of time (approximately two weeks) between the PSRC's meeting and the reopening of the Pharmacy, it was unfair of the ICB to remove the Pharmacy from the pharmaceutical list because it was not able to reopen earlier than 1st August. For example, no reason is given by the ICB as to why it could not, or would not, wait until August to assess whether the Pharmacy was in a position to reopen.
- 2.28 As a result, the ICB was wrong to conclude that the Company would not be in a position to recommence service provision at the Pharmacy within a reasonable time scale.
- 2.29 **The Pharmacy has, in fact, recommenced the provision of pharmaceutical services such that NHS Resolution cannot, now, be satisfied that the Company "is likely to persist in breaching the term of service"**
- 2.30 Notwithstanding any historical, unplanned Pharmacy closures and the factual position at the time that the ICB determined to remove the Pharmacy from the pharmaceutical list, the Pharmacy has now reopened with a permanent, employed pharmacist.
- 2.31 As NHS Resolution will be aware, it is a requirement of regulation 73(1)(b)(ii) that, in order to remove a pharmacy from the relevant pharmaceutical list, NHS England (or NHS Resolution on appeal) must be satisfied that the pharmacy "is likely to persist in breaching the term of service".
- 2.32 In the circumstances of this appeal and in light of the fact that the Pharmacy has re-opened and has engaged a regular, employed, pharmacist, NHS Resolution cannot be satisfied that the Company "is likely to persist in breaching the term of service".
- 2.33 Importantly for the purposes of this appeal, it is clear from the wording of regulation 73(1)(b)(ii) that this is a forward-looking exercise, requiring NHS Resolution to consider whether the Company is likely to persist in breaching the term of service. For the purposes of regulation 73(1)(b)(ii), historic breaches (which are not "likely to persist" going forward) cannot give rise to removal of the Pharmacy from the pharmaceutical list.
- 2.34 **In all the circumstances, the ICB decision was neither justifiable nor proportionate**

- 2.35 Whilst it is correct that the Company had, until recently, experienced difficulties in relation to staffing of the Pharmacy which, unfortunately, resulted in the closure of the Pharmacy, the Company has taken active steps to resolve these. In summary, the Company wishes to remain on the pharmaceutical list for the area and is committed to providing pharmaceutical services for the people of Ventnor and has employed a pharmacist to work in the Pharmacy to overcome the historic staffing issues that have been experienced.
- 2.36 Having regard to the matters above, it is therefore submitted that the removal of the Pharmacy from the pharmaceutical list was neither justifiable nor proportionate.
- 2.37 Instead, it is submitted that the ICB should have accepted the information and assurances given by the Company and allowed the Company additional time to seek to resolve matters before taking any regulatory action. That is particularly the case since it would not be in the best interest of patients for the Pharmacy to be permanently closed.
- 2.38 Conclusion
- 2.39 In conclusion, for the reasons given above and on behalf of my client, it is submitted that the ICB's decision to remove the Company from the pharmaceutical list in respect of the Pharmacy was contrary to the relevant regulatory test. I therefore invite NHS Resolution to uphold this appeal."
- 2.40 [Enclosures provided]

3 Summary of Representations

This is a summary of representations received on the appeal.

3.1 The Commissioner

- 3.1.1 "Thank you for your letter of the 20 August 2025 advising us that an appeal has been lodged against the decision to remove Jhoots Pharmacy Limited t/a Jhoots Pharmacy, 1 Albert Street, Ventnor, Isle of Wight PO38 1EZ from the pharmaceutical list for the area of the Isle of Wight Health and Wellbeing Board.
- 3.1.2 A list of the relevant papers relating to the decision are included in Appendix A and attached in a zip folder with this letter.
- 3.1.3 The Pharmaceutical Services Regulations Committee (PSRC) for Hampshire and Isle of Wight (HIOW) ICB would like to make the following comments on the appeal which is based on four points.
- 3.1.4 **The ICB appears to have had regard to irrelevant matters when reaching its decision**
- 3.1.5 The PSRC acknowledged that matters relating to other pharmacies should not be relevant when considering the performance of an individual pharmacy. However, as part of the consideration about

whether the Jhoots Pharmacy Limited would continue to breach the relevant term of service, it was relevant to consider the broader picture which currently indicates that the Jhoots companies are not able to open their pharmacies consistently on the Isle of Wight.

3.1.6 The ICB was wrong to conclude that the Company would not be in a position to recommence service provision at the Pharmacy

3.1.7 At the time the decision was made, the Jhoots pharmacy in Ventnor had been closed since 14 March 2025. This was despite 3 sets of breach notices for ongoing closures – all of which stated that Jhoots Pharmacy Limited is required not to repeat the breach. Given the ongoing nature of the closures over a prolonged period, there was no confidence that the pharmacy would re-open.

3.1.8 The Pharmacy has, in fact, recommenced the provision of pharmaceutical services such that NHS Resolution cannot, now, be satisfied that the Company “is likely to persist in breaching the term of service”

3.1.9 The copy of the Responsible Pharmacist (RP) log included with the appeal indicates that the pharmacy opened on the 4 August 2025. It provides evidence that the pharmacy was open for 9 days. However, it also demonstrates that the pharmacy was not open in accordance with its contractual hours for all of those 9 days.

3.1.10 The opening hours for the pharmacy are: Monday to Friday 09:00 to 18:00.

3.1.11 On Tuesday 12 August 2025 the RP log indicates that the pharmacy was open from 09:58 to 17:05

3.1.12 On Wednesday 13 August 2025, the RP log indicates that the pharmacy was open from 09:12 to 16:02

3.1.13 Temporary suspension of service notices (in accordance with Paragraph 23(10)(a)) have not been submitted for the times the pharmacy was closed.

3.1.14 A separate report has been received that the pharmacy was closed on the 22 August 2025 and that there was a small sign hanging in the door that just said that they were closed. There was no signposting or help for patients. No temporary suspension of service notification (in accordance with Paragraph 23(10)(a)) has been submitted.

3.1.15 It was also reported that the pharmacy was closed on the 29 August 2025. A photograph of the notice in the window (which does not comply with the requirements set out in the approved particulars) is attached in Appendix B. No temporary suspension of service notification (in accordance with Paragraph 23(10)(a)) has been submitted.

- 3.1.16 Further reports indicate that the pharmacy was closed on 11 September 2025, and from 13:00 to 18:00 on Friday 12 September 2025, due to the regular locum pharmacist being unwell. The afternoon session on 12 September was covered by another Jhoots pharmacist, which resulted in the closure of a separate Jhoots pharmacy during those hours. No temporary suspension of service notifications (in accordance with Paragraph 23(10)(a)) has been submitted for either closure.
- 3.1.17 These matters have been followed up with Jhoots Pharmacy Limited for comment before any contractual action is considered but are included here to demonstrate that the breaches are likely to continue.
- 3.1.18 **In all the circumstances, the ICB decision was neither justifiable nor proportionate**
- 3.1.19 The pharmacy was closed for 4 months before the decision was made to remove it from the pharmaceutical list. This is a significant concern and the PSRC considers that the action taken was both justifiable and proportionate.
- 3.1.20 In addition to the matters relating to whether the pharmacy has been open since the decision was made to remove it from the list, in the context of proportionality, it is not irrelevant to consider the impact that the closures and subsequent re-opening has had on patients and local healthcare partners.
- 3.1.21 The Ventnor Medical Practice, situated next door to the pharmacy, has reported that the pharmacy has very little stock and that most prescriptions are being returned to the spine and in some cases need to be re-issued. They report that this lack of stock has created significant additional work for them since the pharmacy re-opened. They are also concerned about patient safety risks because they don't know whether patients will receive their medicines at all.
- 3.1.22 The other pharmacy in the locality has also been affected by the long-term closure and the impact of the nature of the service since the pharmacy has re-opened.
- 3.1.23 For context it should also be noted that whilst Jhoots have opened the pharmacy in Ventnor since 4 August 2025 (albeit not entirely in line with contractual hours), the four other Jhoots pharmacies on the Isle of Wight have either been closed or partially opened. Therefore, there is no confidence that the breaches will not continue if the pharmacy remains of [sic] the pharmaceutical list.
- 3.1.24 The PSRC for Hampshire and Isle of Wight IBC respectfully request that the decision to remove Jhoots Pharmacy Limited t/a Jhoots Pharmacy, 1 Albert Street, Ventnor, Isle of Wight PO38 1EZ from the pharmaceutical list for the area of the Isle of Wight Health and Wellbeing Board is confirmed."
- 3.1.25 [Enclosures provided]

Observations

4.1 Temple Bright LLP on behalf of the Appellant

- 4.1.1 “I write further to your letter of 24th September 2025 and to respond to representations made by the ICB in respect of my client’s appeal. Taking each heading in turn, my client comments as follows:
- 4.1.2 **The ICB appears to have had regard to irrelevant matters when reaching its decision**
- 4.1.3 For the reasons given in my client’s letter of appeal, my client does not agree that “it was relevant to consider the broader picture” when the ICB was applying regulation 73 to the Pharmacy. In fact, my client asserts that it was inappropriate for the ICB to do so.
- 4.1.4 **The ICB was wrong to conclude that the Company would not be in a position to recommence service provision at the Pharmacy**
- 4.1.5 Since the Pharmacy clearly has reopened, it is asserted by the Company that the ICB was evidently wrong to conclude that the pharmacy would not be in a position to recommence service provision at the Pharmacy as asserted in my client’s appeal.
- 4.1.6 **The Pharmacy has, in fact, recommenced the provision of pharmaceutical services such that NHS Resolution cannot, now, be satisfied that the Company “is likely to persist in breaching the term of service”**
- 4.1.7 For the sake of transparency, attached is the Pharmacy’s responsible pharmacist log for the period from 4th August 2025 to 1st October 2025.
- 4.1.8 The RP log clearly demonstrates that the Pharmacy is now consistently open and providing pharmaceutical services (for the avoidance of doubt, it is noted that where there is no log out time, that is because the RP has forgotten to log out at the end of the day, but it has been confirmed with the RP that the Pharmacy was open at least up until 6pm on each of those days. The same is true of the “missing” entry for 4th September).
- 4.1.9 In relation to the dates referred to by the ICB, it is correct that the RP has twice (over a 9- week period) signed out of the RP log slightly earlier than the contracted hours (at 17.05 on 12th August and 16.02 on 13th August). This does not, of course, automatically lead to a conclusion that the Pharmacy was closed but, in any event, it is submitted that it would be wholly disproportionate to remove the Pharmacy from the pharmaceutical list in respect of such minor matters.
- 4.1.10 It is not accepted that the pharmacy was closed throughout 22nd August as appears to be asserted by the ICB. It is noted that no evidence is provided of the “small sign” that was said to have been displayed, or the time of day that this was noted. The RP log shows that

the pharmacist logged in at 10.03am on that day (but then stayed at the Pharmacy for an extra hour). This was due to a road traffic accident that caused traffic delays that morning, so perhaps this is the closure that the ICB is referring to.

- 4.1.11 In relation to 29th August 2025, the Pharmacy was open and providing services throughout that day. It is of note that the photograph was taken at 12.53, and it may therefore be that the pharmacist had briefly left the Pharmacy in order to purchase lunch but no detail is provided by the ICB. Again it is submitted that it would be disproportionate to remove the Pharmacy from the pharmaceutical list in these circumstances.
- 4.1.12 In respect of the closures on 11th and 12th September, on the 11th September 2025 the regular pharmacist had a family emergency and had to return to the mainland. This was reported to Jhoots head office at 8:00am, so only one hour before opening. The Business Continuity Plan was put in place, a member of support staff was moved from the Company's Sandown store to ensure there was a member of staff on site and patients could be advised on when they could collect or have their prescription returned. Due to the difficulties in obtaining pharmacists on the Island, the Sandown pharmacist was shared between the two stores on the following date (12th September), covering the morning until 13:00 only. The local GP practices were notified of these closures on both days as per the business continuity plan. Regrettably the closures were not reported via MYS to NHS England at the time, however they have been subsequently updated.
- 4.1.13 In considering these matters, NHS Resolution is invited to take a proportionate view of the small number of Pharmacy closures detailed above against the background of the Pharmacy consistently providing pharmaceutical services since 4th August. NHS Resolution will be aware that removal of a Pharmacy from the pharmaceutical list must be "proportionate" in accordance with regulation 73, and removal in the circumstances described above would, it is asserted, be wholly disproportionate.
- 4.1.14 **In all the circumstances, the ICB decision was neither justifiable nor proportionate**
- 4.1.15 It is submitted on behalf of the Company that NHS Resolution must consider regulation 73 based on the facts as are presented to it at the time when the appeal is being determined. In particular, removal from the pharmaceutical list is not a "punishment" for previous failures to provide pharmaceutical services where those failures have been remedied (as is the case in respect of the Pharmacy).
- 4.1.16 As appears to be accepted by the ICB, the provision of pharmaceutical services by other Jhoots pharmacies on the Isle of Wight cannot be a matter that may reasonably be taken into account in determining this appeal. However, the ICB then continues to refer to other Jhoots pharmacies in its response, demonstrating that this is a matter which

clearly (and inappropriately) influenced its decision in respect of the Pharmacy (and continues to influence the ICB's approach to this appeal). If the ICB has concerns in relation to other pharmacies then it must address those concerns directly with those pharmacies in accordance with the Regulations.

4.1.17 Similarly, it would be wholly improper to remove the Pharmacy from the pharmaceutical list based on stock availability issues, where they are clearly matters which fall outside of the scope of the breach notices issued by the ICB (and about which no evidence is provided by the ICB). Again, to the extent that these are matters that were taken into account by the ICB in its decision to remove the Pharmacy from the pharmaceutical list, it was improper for the ICB to do so.

4.1.18 The Company does, of course, regret the Pharmacy's historic closures as detailed in previous correspondence and any inconvenience that this may have caused to patients or local prescribers. However, those are matters which have been remediated, with clear evidence of consistent service provision over recent weeks. The Company is working hard to ensure consistent service provision going forward.

4.1.19 In all the circumstances, and for the reasons given in my client's letter of appeal, I therefore invite NHS Resolution to uphold my client's appeal and to overturn the decision to remove the Company from the pharmaceutical list in respect of the Pharmacy."

4.1.20 [Enclosures provided]

5 Consideration

5.1 The Appellant seeks to appeal against the decision of the Commissioner to remove its premises from the pharmaceutical list under Regulation 73(1)(b)(ii) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

5.2 I note that neither party has disputed that the correct procedure was followed for doing so pursuant to Regulation 73(6). Therefore, I will proceed to consider the grounds of appeal raised by the Appellant. I note that these have been provided by the Appellant at paragraph 2.16 above. I have considered each of these in what I consider to be the most logical order, starting with the wording of Regulation 73(1)(b)(ii). This provides as follows:

(1) NHS England may remove an NHS chemist (C) from a pharmaceutical list, or remove the listing of particular listed chemist premises in relation to C, if C—

(a) [...] or

(b) has breached C's terms of service, and—

(i) [...]

- (ii) *previously been issued with a remedial notice or breach notice in relation to the relevant term of service, and NHS England is satisfied that C is likely to persist in breaching the term of service without good cause, [...]"*

5.3 I consider that Regulation 73(1)(b)(ii) operates where two elements are established: first, that there has been a previous breach of a term of service; and second, that the chemist is likely to persist in breaching that term without good cause. I note that both parties are in agreement that the first element has been met as there were 21 breach notices issued to the Appellant in relation to the relevant premises. This leads me to consider the second element.

5.4 I note that the Appellant has stated that since 4 August 2025 the premises in question has now been open, due to the employment of a permanent pharmacist. On this basis the Appellant suggests that the breach is no longer "*persisting*" and so Regulation 73(1)(b)(ii) cannot apply as the breaches are historic and not continuing. The Appellant goes so far as to state that "*NHS Resolution must consider regulation 73 based on the facts as are presented to it at the time when the appeal is being determined*".

5.5 Having reviewed Regulation 73(1)(b)(ii), I concur with the Appellant so far as that it is a forward-looking exercise. However, the statements of the Appellant raise a question as to the date at which I am required to carry out said exercise from, either the present or the time at which the Commissioner took its decision. I note that this appeal must be determined in accordance with Paragraph 9(5) of Schedule 3, which states:

"[...] On determining an appeal relating to a valid notice under regulation 77, the Secretary of State may—

(a) confirm the decision of NHS England; or

(b) substitute for that decision any decision that NHS England could have taken when it took that decision."

5.6 I note that I exercise these powers on behalf of the Secretary of State for Health and Social Care in this regard. I consider this specific wording to be significant because it ties this determination to the point in time when the Commissioner made its decision through the use of the wording "*could have taken when it took that decision*". On this basis, if I am minded to substitute the Commissioner's decision, I may only do so if it is something it could have done at that time. It does not allow me to create a new decision based on circumstances that arose later, so this appeal must be assessed against the factual situation as it truly existed when the original decision was taken.

5.7 I also note that elsewhere in Paragraph 9 of Schedule 3 of the Regulations the Secretary of State for Health and Social Care may redetermine a decision, without being restricted to what the Commissioner could have done at that time. Paragraph 9(5) however does not contain any reference to "redetermine". I

consider that the deliberate language of the Regulations in relation to these separate paragraphs indicate a considered and overt limitation on my ability to determine appeals of this nature. I do consider that I may take into account evidence which has come to light since the Commissioner's decision, however, only insofar as that illuminates the facts as they were at the time the original decision was taken.

- 5.8 Returning to the Appellant's statements, I do not consider that the question before me is if the Appellant will now persist in breaching the terms of service, instead it is whether the Appellant was going to persist in breaching the terms of service as at 18 July 2025. In consequence, I note that the fact that the Appellant remedied the situation on 4 August 2025 does not change the fact that, at the time of the Commissioner's decision, the breach existed. I consider this situation to be substantially different from how it has been articulated by the Appellant, which suggests I should have regard to the facts as they are at the date I make this determination rather than as they were when the original decision was taken.
- 5.9 Returning to Regulation 73(1)(b)(ii), I may take into account the fact that the pharmacy reopened on 4 August 2025, however, my decision must be made as if I were doing so on 18 July 2025. Following this logic, I now know that the pharmacy did persist in breaching its terms of service by not opening on any day from 18 July 2025 until 4 August 2025. This means that, factually, the breach did persist as at 18 July 2025. While the pharmacy is now open, and providing services, as the Appellant stated, I must look forward from the date the decision was taken. In doing so, from 18 July 2025, I can conclude with absolute certainty that the breach would persist, even if it was eventually remedied. I note that the evidential standard required by the Regulation was only that it was "likely", which these facts exceed.
- 5.10 I note that Regulation 73(1)(b)(ii) does not require persistence to be indefinite, nor does it prescribe a timescale by which the Commissioner must measure "persist". I consider that failing to provide services for a further 17 days is sufficient to meet the ordinary meaning of the word "persist" for these purposes.
- 5.11 Neither party has argued that there was a good reason for the breach occurring, therefore, I agree with the Commissioner that the requirements of Regulation 73(1)(b)(ii) were met on the facts relating to the Appellant's premises.
- 5.12 For the purposes of completeness, I note that the Commissioner relied on Regulation 73(1)(b)(ii) rather than 73(1)(b)(i), which would equally have applied here. Regulation 73(1)(b)(i) does not require that the breach would persist and only requires that the chemist has been repeatedly issued with breach notices. As agreed by both parties, 21 breach notices had been issued to the Appellant for closure without good cause prior to 18 July 2025. This would easily have met the criteria in Regulation 73(1)(b)(i) without needing to prove that the Appellant would persist in further breaches. I therefore consider that the Commissioner could have sought removal from the pharmaceutical list on these grounds, however, as it was not relied upon I provide no further comment.

- 5.13 Having established that the requisite facts for the application of Regulation 73(1)(b)(ii) existed and were applied correctly, I next considered Regulation 73(3)(a) which requires that any removal must be both justifiable and proportionate. I note the Appellant's statements that the Commissioner should have accepted that services would be recommenced on 1 August 2025, and that it was wrong to conclude that they would not be in a position to reopen. I consider that such a line of reasoning is best considered in relation to this requirement. This is because opening 17 days later would still be a persistent breach, and so can only reasonably impact on the consideration of the justifiable and proportionate aspect, not whether the elements of Regulation 73(1)(b)(ii) were met.
- 5.14 To that end, as I have established, I cannot make a decision that was not available to the Commissioner at the time it took its decision. Nevertheless, I can consider evidence that has subsequently been provided that was not available to it at the time. To that end, I can take into account that the pharmacy reopened on 4 August 2025, because this was a speculative fact at the time of the decision and has since been confirmed. This is different from changing the actual facts of the matter at the time, as it would only have informed the Commissioner's understanding of the situation.
- 5.15 That being said, I consider there to be two issues with this. Whilst the pharmacy did open, the Appellant has in actuality proven the Commissioner's doubts to be fully founded. I note that the statement made by the Appellant in the letter provided to the Commissioner on 14 July 2025, and repeated during this appeal, was that the pharmacy would be in a position to resume services on 1 August 2025. However, I note that, as agreed by both parties, the pharmacy was not in a position to open on 1 August 2025, as it actually opened on 4 August 2025. The assurances provided by the Appellant therefore were not reliable, as has now been proven beyond a doubt.
- 5.16 I consider that the language used by the Appellant in its submissions were that it had made "assurances" and that the Commissioner should have accepted these. I consider that an assurance of opening on 1 August 2025, in order to be reliable, must result in the premises opening on that day. It is unclear to me how the Appellant can suggest that the Commissioner was wrong to conclude that the pharmacy would not be in a position to open when the pharmacy was not open. I consider the decision to have been justified on the evidence available at the time, and indeed was borne out by actual events.
- 5.17 In relation to whether the Commissioner should have waited until August 2025 to see if the Appellant would open, there does not appear to have been any basis for it to do so. The pharmacy had already been closed for a significant length of time, and a further "two weeks", as per the Appellant's arguments, are not a short period of time for a pharmacy to be closed. I note that the Appellant was not offering to open any sooner, nor did it provide any interim solution to expedite the resolution or aid patients. Instead the Appellant has put forward the suggestion that the Commissioner should have simply accepted the continued breach, without specifying what provisions would require them to do so. I consider this was further supported by the fact that the pharmacy then did not open on the date they had specified.

- 5.18 Having reviewed the letter of 14 July 2025 provided to the Commissioner, no evidence was provided to support the Appellant's claims, there was no explanation as to why it would be reasonable to wait longer and there was no reasonable explanation for why the pharmacy should remain closed.
- 5.19 I further note that the Appellant has not proposed any alternative remedy that the Commissioner could have adopted, effectively asking for permission to breach the terms of service without consequence. I consider that the Commissioner could, in theory, have imposed a financial sanction by calculating a reasonable penalty for the period of closure and deducting this from the Appellant's earnings from other listed pharmacies. Such a measure would have introduced some consequence for the breach while allowing the listing to continue. However, I consider that this would not have addressed the underlying issue or assisted in reopening the pharmacy quicker, given the staffing difficulties faced by the Appellant. I further note that neither party has suggested this as an alternative or expressed any preference for it. In these circumstances, I determine that a financial sanction would not have represented a viable or proportionate substitute for removal.
- 5.20 As per both parties' comments, at the time of the Commissioner's decision the Appellant's pharmacy had only provided services on one day between 14 March 2025 and 4 August 2025. I consider this to be a significantly long period for a pharmacy to be closed and, as such, would require good reason why removal from the list in these circumstances would not be both proportionate and justified. I do not consider that such reasoning has been provided in this appeal. With the Appellant putting forward no other argument as to why the decision was not made in accordance with Regulation 73(3)(a), I consider the Commissioner's decision correct and that the removal was justified and proportionate.
- 5.21 Whilst not raised by either party, I note the effect of Regulation 73(5)(a), which prevents removal under Regulation 73 where a chemist has simply ceased to provide services at particular premises, directing such cases to the separate regime in Regulation 74. I have considered its application due to the significant length of the closure in question.
- 5.22 I note that "simply ceased" denotes a straightforward and continuing cessation. I consider that the pattern in this case being a closure, a single reopening then re-closure, and eventual reopening much later, does not easily reconcile itself with the phrase "simply ceased". In this case, I am mindful that the closure was prolonged and without any good reason, but the later reopening demonstrates that the cessation was not absolute or permanent in nature. I note also that Regulation 74 contains a clear six-month benchmark for mandatory removal in cases of continuous non-operation, which does not appear to have been intended to allow closures of less than six months, however intermittent, to be immunised from Regulation 73. I therefore determine that Regulation 73(5)(a) does not apply on these facts.
- 5.23 A further element raised by the Appellant was whether the Commissioner was correct to take into account issues occurring at the Appellant's other premises. The Appellant states that those matters should have been deemed irrelevant

and potentially jeopardised the Commissioner's decision. I note that Regulation 73 does focus on the premises under consideration. I consider that I can determine this appeal without relying on the wider context, as the evidence relating to this pharmacy alone is sufficient. I place no weight on any references to other premises and therefore determine to substitute my own decision for that of the Commissioner's, in order to ensure that no irrelevant factors have been taken into account.

5.24 I note that both parties have made statements regarding events which have occurred at the premises since its reopening on 4 August 2025. I do not consider these issues relevant to the decision taken on 18 July 2025, regarding the persistent closure, and so make no comment on them.

5.25 For the reasons above, I consider that, as at 18 July 2025, the statutory criteria in Regulation 73(1)(b)(ii) were satisfied and that removal is justified and proportionate under Regulation 73(3)(a).

6 Decision

6.1 I am of the view that under NHS Resolution's powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of the Commissioner or substitute for that decision any decision that the Commissioner could have taken when it took that decision.

6.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations, I substitute the decision of the Commissioner with the decision that the Appellant's premises are to be removed from the relevant pharmaceutical list for the reasons provided in this determination.

Head of Appeals
NHS Resolution