

19 November

**REF: SHA/26885**

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**APPEAL AGAINST HAMPSHIRE AND ISLE OF  
WIGHT ICB DECISION TO REMOVE MINIMAX  
PHARMACEUTICALS LTD FROM THE  
PHARMACEUTICAL LIST AT 6 CARISBROOKE  
CRESCENT, CHANDLERS FORD, EASTLEIGH,  
HAMPSHIRE, SO53 2LQ IN ACCORDANCE WITH  
REGULATION 73**

## **1 Outcome**

- 1.1 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations, I confirm the decision of the Commissioner to remove the Appellant's premises from the relevant pharmaceutical list.

A copy of this decision is being sent to:

Temple Bright on behalf of Minimax Pharmaceuticals Ltd t/a Minimax Pharmacy  
Hampshire and Isle of Wight ICB

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**APPEAL AGAINST HAMPSHIRE AND ISLE OF WIGHT ICB DECISION TO REMOVE MINIMAX PHARMACEUTICALS LTD FROM THE PHARMACEUTICAL LIST AT 6 CARISBROOKE CRESCENT, CHANDLERS FORD, EASTLEIGH, HAMPSHIRE, SO53 2LQ IN ACCORDANCE WITH REGULATION 73**

**1 The Decision Letter**

A letter dated 10 July 2025 was sent from Hampshire and Isle of Wight ICB (“the Commissioner”) to Minimax Pharmaceuticals Ltd (“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 13 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](mailto:nhsr.appeals@nhs.net) or: Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.”

The Hampshire and Isle of Wight ICB Pharmaceutical Services Regulations Committee decision report dated 8 July 2025 stated:

- 1.4 “Minimax Pharmaceuticals Ltd – performance related matters
- 1.5 Minimax Pharmaceuticals Ltd t/a Minimax Pharmacy (FHG15) 6 Carisbrooke Crescent, Chandlers Ford, Eastleigh, SO53 2LQ
- 1.6 The Committee had before it:
  - 1.6.1 Consideration to remove letter
  - 1.6.2 Representations from the LPC
  - 1.6.3 Summary of communications
- 1.7 The Committee reminded itself of the decision taken on 28 May 2025 to consider the removal of Minimax Pharmaceuticals Ltd from the pharmaceutical

list for the area of Hampshire Health and Wellbeing Board on performance grounds, the reason being:

- 1.8 Since 1 February 2024 conditions have been imposed on Minimax Pharmaceuticals Ltd T/A Minimax Pharmacy by the General Pharmaceutical Council (GPhC). The conditions include the following:
  - 1.8.1 The pharmacy must not sell or supply, including against an NHS prescription, any Schedule 1 to 5 controlled drug, (as defined in the Misuse of Drugs Regulations 2001, as amended).
  - 1.8.2 The pharmacy must not obtain, including patient returns, any Schedule 1 to 5 controlled drug, (as defined in the Misuse of Drugs Regulations 2001, as amended).
- 1.9 It appears that because of the conditions Minimax Pharmacy is not able to comply with [Schedule 4 Paragraph 5 of the NHS \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013 as amended](#). Minimax Pharmacy is not able to, *“with reasonable promptness, provide the drugs so ordered, and such of the appliances so ordered as P supplies in the normal course of business”*.
- 1.10 Seven breach notices were issued on 25 February 2025. Subsequent evidence confirms that Minimax Pharmaceuticals Ltd has continued to breach [Schedule 4 Paragraph 5](#). Further breach notices were issued on 3 June 2025.

#### Consideration

- 1.11 The Committee noted that the letter sent to Minimax Pharmaceuticals Ltd on 29 May 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 3 July 2025. No representations were submitted by this date. Due to email delivery and read receipts the Committee was satisfied the letter had been received by Minimax Pharmaceuticals Ltd.
- 1.12 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”*.
- 1.13 The Committee noted the conditions imposed by the GPhC were still in place and following an application from Mr [N] in June 2025 to have the conditions revoked, the GPhC determined that *“it remains necessary to retain the conditions in order to ensure the safe and effective practice of pharmacy at the premises”*. This determination was notified to Mr [N] on 18 June 2025.
- 1.14 The Committee considered the risk to patients of the pharmacy being unable to supply controlled drugs and patients having to get medications from different pharmacies.

- 1.15 The Committee had regard to the current situation being set against a background of repeated contractual issues over a period of over 2 years.
- 1.16 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*

#### Decision

- 1.17 Having considered the facts of the position as set out in a letter to Minimax Pharmaceuticals Ltd on 3 June 2025, and the representations made by the LPC, the Committee determined, that Minimax Pharmaceuticals Ltd should be removed from the pharmaceutical list for the area of the Hampshire Health and Wellbeing Board.
- 1.18 The reason is:
- 1.18.1 Repeated breach notices have been issued in relation to Schedule 4 Paragraph 5 and the Committee is satisfied the Minimax Pharmaceuticals Ltd is likely to persist in breaching that term of service.”

## 2 The Appeal

In a letter dated 5 August 2025 addressed to NHS Resolution, Temple Bright on behalf of the Appellant appealed against the Commissioner’s decision. The grounds of appeal are:

- 2.1 “I act for Minimax Pharmaceuticals Limited (“the Company”) which is included in the Hampshire HWB’s pharmaceutical list for premises at 6 Carisbrooke Crescent, Chandlers Ford, Eastleigh, Hampshire, SO53 2LQ (“the Pharmacy”).
- 2.2 On behalf of my client and pursuant to regulation 77 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, I write to appeal a decision of the Hampshire & Isle of Wight ICB to remove my client from the pharmaceutical list on performance grounds. The decision was notified to my client by letter dated 10<sup>th</sup> July 2025, a copy of which is **attached** to this appeal [see section 1 above].

#### Factual background

- 2.3 By way of background, on 1<sup>st</sup> February 2024 the General Pharmaceutical Council imposed the following conditions on the Pharmacy's premises registration:
- 2.3.1 *The pharmacy must not sell or supply, including against an NHS prescription, any Schedule 1 to 5 controlled drug, (as defined in the Misuse of Drugs Regulations 2001, as amended).*
  - 2.3.2 *The pharmacy must not obtain, including patient returns, any Schedule 1 to 5 controlled drug, (as defined in the Misuse of Drugs Regulations 2001, as amended).*
  - 2.3.3 *The pharmacy must not sell or supply, including against an NHS prescription any medicines containing promethazine as a single active ingredient.*
  - 2.3.4 *The pharmacy must not obtain, including patient returns, any medicines containing promethazine as a single active ingredient.*
- 2.4 It is of particular relevance in respect of this appeal that the above conditions were imposed following a joint GPhC and MHRA inspection of the Pharmacy in January 2024 which gave rise to concerns regarding the alleged diversion of controlled drugs and promethazine-containing products from the legitimate supply chain. Whilst the regulatory investigations are ongoing, no findings of wrongdoing have been made against either the Company or its officers/pharmacists.
- 2.5 By reason of regulation 11 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), the Company is required to provide essential pharmaceutical services in accordance with schedule 4 of the Regulations from the Pharmacy.
- 2.6 As stated in the attached PSRC report, paragraph 5 of schedule 4 to the Regulations requires that the Company "*must, with reasonable promptness, provide the drugs so ordered, and such of the appliances so ordered as P supplies in the normal course of business.*"
- 2.7 However, the conditions imposed upon the Pharmacy's premises registration by the Council mean that it would be unlawful for the Company to sell, or supply in circumstances corresponding to retail sale, schedule 1 to 5 controlled drugs or any medication containing promethazine from the Pharmacy, including any supply against an NHS prescription.
- 2.8 Since the premises conditions prevent the supply of the relevant medicinal products, my client has taken steps to ensure that where prescriptions are received which include an order for such items, those patients are signposted to other, suitable, pharmacies for the supply of their medication.
- 2.9 On 25<sup>th</sup> February 2025, the ICB issued 7 breach notices in respect of the Company's failure to supply controlled drugs against specific NHS prescriptions. Further breach notices were issued on 3<sup>rd</sup> June 2025.

- 2.10 On 16<sup>th</sup> April 2025, NHS England wrote to the Company requesting information in relation to the Company's failure to supply prescribed controlled drugs (**attached** provided at Appendix A). A response was submitted to that letter on 13<sup>th</sup> May 2025 (**attached** see Appendix A). It is not clear whether the PSRC had regard to the contents of the 13<sup>th</sup> May letter when it considered this matter, since it is not referred to in the PSRC report.
- 2.11 As stated in the 13<sup>th</sup> May 2025 letter, the Company made an application to the GPhC to revoke the premises conditions. That application was refused by a decision dated 18<sup>th</sup> June 2025 (**attached** see Appendix A).
- 2.12 It is therefore the current position that the Pharmacy is not permitted to supply schedule 1 to 5 controlled drugs or promethazine-containing products against NHS prescriptions by reason of conditions imposed by the GPhC on the Pharmacy's registration. The Company sought to remove those conditions, but the application was refused. However, as stated above, whilst the relevant regulatory investigations into the Company and Pharmacy are continuing, no findings of wrongdoing have been made against either the Company or its officers/pharmacists.

### Grounds of appeal

- 2.13 In relation to this appeal, it appears (although it is not explicitly stated in the ICB's letter or the PSRC decision report) that NHS England is seeking to remove the Company from the pharmaceutical list in respect of the Pharmacy pursuant to regulation 73(1)(b) of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 2.14 As NHS Resolution will be aware, regulation 73(1)(b) 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—*
- ...*
- (b) has breached C's terms of service, and—*
- (i) C has repeatedly been issued with remedial notices or breach notices (or both) in relation to the relevant term of service,*
- (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, or*
- (iii) C has repeatedly been issued with remedial notices or breach notices (or both) in relation to different terms of service, and NHS England is satisfied that C is likely to persist in breaching C's terms of service without good cause."*
- 2.15 In respect of the relevant statutory provisions, my client's grounds of appeal against the Company's removal from the pharmaceutical list are as follows

2.15.1 Since the Company cannot be compelled, by any terms of service provision, to carry out an act which would be unlawful, the Company is not in breach of the relevant terms of service provision.

2.15.2 Notwithstanding Ground 1, to the extent that the Company is in breach of the relevant terms of service provision, such breach is with “good cause” such that removal of the Company from the pharmaceutical list is contrary to the provisions contained within regulation 73(1)(b).

#### Ground 1

2.16 It is submitted that, as a matter of general legal principle, nothing in the Regulations (including the Terms of Service contained within paragraph 4 to the Regulations) may require the Company to carry out an activity which would be unlawful for it to carry out.

2.17 Given that no contractual provision (including any NHS Terms of Service) could require my client to carry out an unlawful act, it must be reasonably interpreted into the obligation contained within paragraph 5 of schedule 4 to the Regulations that my client is not required, by the Terms of Service, to supply medication which it would not be lawful for it to supply by reason of the GPhC premises conditions.

2.18 If any other interpretation were placed on the relevant regulatory provisions, the effect would be that GPhC premises conditions may effectively result in the closure of NHS pharmacies.

2.19 My client therefore asserts that it is not in breach of its Terms of Service obligations where the Company is not lawfully permitted to dispense certain NHS prescriptions due to GPhC-imposed premises conditions and where patients are appropriately sign-posted to alternative providers of NHS services. It therefore follows the regulation 73(1)(b) does not apply, since the starting point for consideration of removal from a pharmaceutical list is whether the Company is in breach of a term of service.

#### Ground 2

2.20 I have set out, above, the relevant regulatory test contained within regulation 73. In summary, the test requires NHS England to determine that:

2.20.1 There has been a breach of the terms of service by the Company

2.20.2 There has been a previous breach of the same term of service by the Company

2.20.3 The Company is likely to persist in breaching the term of service

2.20.4 Such breach is without “good cause”

2.21 Notwithstanding the Company’s primary submission in Ground 1, if NHS Resolution concludes that the Company is in breach of its terms of service

obligations, there is “good cause” for that breach, such that removal would be unlawful.

- 2.22 As a starting point, it does not appear that the PSRC considered whether there may be “good cause” for the Company’s failure to supply the relevant medicinal products from the Premises. Indeed, in the “Decision” section of the PSRC report, the PSRC appears to have failed to consider the question of “good cause” at all.
- 2.23 As summarised above, the Company is not permitted to dispense NHS prescriptions relating to schedule 1 to 5 controlled drugs or promethazine-containing medicinal products by reason of the GPhC premises conditions which have been imposed on the Pharmacy.
- 2.24 To the extent that such a failure amounts to a breach of its obligation to supply prescribed drugs with reasonable promptness in accordance with paragraph 5 of schedule 4 to the Regulations, such a breach is for “good cause” because the Company is not lawfully permitted to do so by reason of the GPhC premises conditions.
- 2.25 That is particularly the case in the circumstances which apply to the Company, where there have been no adverse findings of fact against the Company or its officers/pharmacists in respect of the matters that gave rise to the premises conditions being imposed and where the relevant regulatory investigations are ongoing. As such, in respect of the alleged matters which gave rise to the premises conditions being imposed on the Pharmacy, no wrongdoing (either regulatory or criminal) has been proved against the Company or its officers/pharmacists.
- 2.26 In short, the Company and its officers/pharmacists are entitled to be considered innocent until proven guilty. To the extent that any interim measures have been put in place by the Council whilst investigations are ongoing, it would be unfair for those interim measures to be used by the ICB to close the Pharmacy. Pending the outcome of any regulatory investigations, the failure by the Company to supply certain medicinal products by reason of the GPhC premises is, therefore, for “good cause”.
- 2.27 By reason of the above, regulation 73(1)(b) does not apply in the circumstances of this case.
- 2.28 On behalf of the Company, I therefore invite NHS Resolution to uphold this appeal and to overturn NHS England’s decision to remove the Company from the relevant pharmaceutical list in respect of the Pharmacy.”

### **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 7 August 2025 advising us that an appeal has been lodged against the decision to remove Minimax

Pharmaceuticals Ltd t/a Minimax Pharmacy 6 Carisbrooke Crescent, Chandlers Ford, Eastleigh, Hampshire SO53 2LQ from the pharmaceutical list for the area of the Hampshire 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. [enclosures provided]
- 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.
- 3.1.4 The appeal is based on two components – firstly that the Company cannot be compelled by any terms of service to carry out an act that would be unlawful and secondly that the breaches of paragraph 5 of schedule 4 are not valid because the breaches are considered by the appellant to be for good cause.
- 3.1.5 All pharmacies listed on a pharmaceutical list are required to comply with the Terms of Service set out in [Schedule 4 of the Regulations](#).
- 3.1.6 The GPhC concerns have been significant enough for conditions to be placed on the premises that prevent the pharmacy from supplying Schedule 1 to 5 controlled drugs.
- 3.1.7 This means that if a prescription is presented for any of these drugs, Minimax Pharmacy cannot comply with [paragraph 5 of schedule 4](#).
- 3.1.8 Prescriptions for these drugs are not uncommon and when prescribed need to be supplied with reasonable promptness as required by the terms of service. As noted in the report about the decision to remove the pharmacy from the pharmaceutical list, the PSRC was concerned about the risk to patients of not being able to supply controlled drugs.
- 3.1.9 It is true that the terms of service do not compel the pharmacy to carry out an act that would be unlawful. But the fact remains that the pharmacy is unable to comply fully with the terms of service.
- 3.1.10 We note that the letter (included as part of the appeal) from the GPhC to Minimax Pharmacy sets out the reasons the recent application for the conditions to be revoked has been refused:
  - 3.1.10.1 *The content of the application did not show evidence of what the pharmacy has implemented to prevent similar issues occurring again if the conditions were to be lifted.*
  - 3.1.10.2 *The application focussed more on the impact the conditions have had on the pharmacy as opposed to reflecting on the issues which caused the conditions and how these would be prevented in the future.*

3.1.10.3 *Overall, your application still does not provide me with adequate assurances that you have considered and mitigated all the risks associated with providing controlled drugs, and I have ongoing concerns about the pharmacy's ability to provide this service safely.*

3.1.11 This confirms the seriousness of the concerns and confirms that the breaches are likely to be repeated.

3.1.12 In relation to whether the breach notices issued were for good cause, we note that there was no appeal made to any of the breach notices issued about this matter.

3.1.13 The PSRC for Hampshire and Isle of Wight IBC respectfully request that the decision to remove Minimax Pharmaceuticals Ltd t/a Minimax Pharmacy 6 Carisbrooke Crescent, Chandlers Ford, Eastleigh, Hampshire SO53 2LQ from the pharmaceutical list for the area of the Hampshire Health and Wellbeing Board is confirmed."

#### 4 **Observations**

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

#### 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 2.15 above. I have considered both of these grounds, 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 7 breach notices issued to the Appellant in relation to the relevant premises in February 2025 with further breach notices being issued in June 2025.
- 5.4 The Appellant has sought to argue that it is not in breach of the Terms of Service as it is not able to supply any Schedule 1 to 5 controlled drug without breaching the General Pharmaceutical Council (“GPhC”) conditions. For the Appellant to dispense such drugs against an NHS prescription would require the Appellant to carry out an unlawful act. The Appellant has not done this and therefore the Appellant is of the view that it has not breached its Terms of Service.
- 5.5 The Commissioner asserts that the Appellant had not challenged any of the breach notices as issued however the Appellant refers to a letter of 13 May 2025 to the Commissioner setting out its position. The letter of 13 May 2025 confirms that the Appellant has made an application to the GPhC to have the conditions revoked.
- 5.6 In a letter dated 18 June 2025 the GPhC determined that *“it remains necessary to retain the condition in order to ensure the safe and effective practice of pharmacy at the premises.”*
- 5.7 The conditions placed upon the pharmacy premises by the GPhC with effect from 1 February 2024 are:

**“Conditions:**

1. *The pharmacy must not sell or supply, including against an NHS prescription, any Schedule 1 to 5 controlled drug, (as defined in the Misuse of Drugs Regulations 2001, as amended):*
  2. *The pharmacy must not obtain, including patient returns, any Schedule 1 to 5 controlled drug, (as defined in the Misuse of Drugs Regulations 2001, as amended)*
  3. *The pharmacy must not sell or supply, including against an NHS prescription, any medicines containing promethazine as a single active ingredient.*
  4. *The pharmacy must not obtain, including patient returns, any medicines containing promethazine as a single active ingredient.”*
- 5.8 The Commissioner remains of the view that as the Appellant still has conditions applied to the pharmacy it is unable to fulfil its Terms of Service and in particular paragraph 5 of Schedule 4 of the Regulations. The Commissioner states that the Appellant is not able to *“with reasonable promptness, provide the drugs so ordered, and such of the appliances so ordered as P supplies in the normal course of business”*.

- 5.9 The Commissioner further states that *“the risk to patients of the pharmacy being unable to supply controlled drugs and patients having to get medications from different pharmacies”* was also considered.
- 5.10 The Commissioner is therefore of the view that whilst the conditions remain in place the Appellant will continue to breach its terms of service without good cause, and this has resulted in the decision to remove the Appellant’s premises from the pharmaceutical list.
- 5.11 I am of the view that there are two issues that potentially need determining. The first is whether there has been a breach of the terms of service. If I determine that there has not been a breach of the terms of service, then the Commissioner cannot rely on Regulation 73(1)(b) to remove the Appellant from the pharmaceutical list. I would therefore need to substitute the decision of the Commissioner to remove the Appellant from the pharmaceutical list with a decision not to so remove.
- 5.12 If I determine that there has been a breach of the terms of service, then I need to consider the second issue. This is whether the Appellant will persist in breaching the terms of service with good cause. If I determine that there is good cause, then the Commissioner cannot rely on Regulation 73(1)(b) to remove the Appellant from the pharmaceutical list. I would therefore need to substitute the decision of the Commissioner to remove the Appellant from the pharmaceutical list with a decision not to so remove.
- 5.13 If I consider that there is no good cause, then the Commissioner can rely on Regulation 73(1)(b) to remove the Appellant from the pharmaceutical list. I would therefore need to confirm the decision of the Commissioner.
- 5.14 I therefore consider the first issue – whether there has been a breach of the terms of service. Firstly, I have considered the wording of Regulation 71 which introduces the concept of a breach notice. Regulation 71 refers to where an NHS chemist breaches a term of service. There is no wording that suggests that the breach has to be without good cause. I note that the commissioner is given discretion as to whether to issue a breach notice. It may be the case that a commissioner reasonably considers that it is not appropriate to issue a breach notice where there is good cause for the breach. However, this does not mean there has been no breach. If a contractor acts in a way that is contrary to the terms of service then it is in breach.
- 5.15 I do not therefore agree with the Appellant’s argument that where a contractor cannot be compelled by any terms of service to carry out an act which would be unlawful, the contractor is not in breach. This may amount to a breach with good cause but it does not change the factual position that there has been a breach.
- 5.16 I note that the Appellant did not appeal the issue of the breach notices in February 2025 or June 2025. It is not clear why, if the Appellant considered that it was not in breach, it did not seek to appeal the breach notices when they were issued.

5.17 I have considered the extent to which the Appellant has breached the terms of service.

5.18 I note that paragraph 5 of Schedule 4 (which is part of the terms of service) includes the wording below:

***“Dispensing of drugs and appliances***

*5.—(1) In this Part, “signed” includes signature with a prescriber’s advanced electronic signature.*

*(2) Subject to the following provisions of this Part, where—*

*(a) any person presents to an NHS Pharmacist (P) a non-electronic prescription form which contains—*

*(i) an order for drugs, not being Scheduled drugs, or for appliances, not being restricted availability appliances, signed by a prescriber,*

*(ii) an order for a drug specified in Schedule 2 to the Prescription of Drugs Regulations (drugs, medicines and other substances that may be ordered only in certain circumstances), signed by a prescriber and including the reference “SLS”, or*

*(iii) an order for a restricted availability appliance, signed by a prescriber and including the reference “SLS”;*

*(b) subject to sub-paragraph (4), P receives as a nominated dispensing contractor] from the Electronic Prescription Service an electronic prescription form which contains an order of a kind specified in paragraph (a)(i) to (iii) and—*

*(i) any person requests the provision of drugs or appliances in accordance with that prescription, or*

*(ii) P has previously arranged with the patient that P will dispense that prescription on receipt; or]*

*(c) any person—*

*(i) presents P with an EPS token that relates to an order of a kind specified in paragraph (a)(i) to (iii), and*

*(ii) requests the provision of drugs or appliances in accordance with the related electronic prescription form,*

*P must, with reasonable promptness, provide the drugs so ordered, and such of the appliances so ordered as P supplies in the normal course of business.”*

5.19 I note from “Appendix A” the letter from the Commissioner of 16 April 2025 which is headed “Prescriptions for controlled drugs returned to the spine by

*Minimax Pharmacy and dispensed at other pharmacies*". This document contains screenshots showing the date the "Prescription upload successful", "Nominated Release Request successful", "Dispense proposal return successful" and "Release Request successful".

- 5.20 I note that in all of the examples given, the Appellant (under ODS code FHG15) released the prescription back to the spine ("Dispense proposal return successful") the same day as it had initially downloaded the prescription from the spine ("Nominated Release Request Successful").
- 5.21 I consider that it is a reasonable assumption that the Appellant has been presented with a prescription form for the relevant drugs but has not with reasonable promptness, provided the drugs so ordered.
- 5.22 The Appellant has not argued that it has not been presented with such prescriptions. I am therefore satisfied that there is credible evidence that the Appellant has acted contrary to the terms of service and so has been in breach of the terms of service.
- 5.23 I move on to the second issue – whether persisting in breaching the terms of service is without cause.
- 5.24 The Appellant has sought to argue that *"there is 'good cause' for the breach, such that removal would be unlawful."*
- 5.25 There is no dispute between the parties with regard to the current position in that the pharmacy has conditions placed upon it by the GPhC and that it is not permitted to supply any Schedule 1 to 5 controlled drug, including against NHS prescriptions.
- 5.26 I note the comments from the Appellant that its inability to supply any Schedule 1 to 5 controlled drug is for *"... 'good cause' because the Company is not lawfully permitted to do so by reason of the GPhC premises conditions"*.
- 5.27 The Appellant argues that it cannot be expected to carry out something which is unlawful and therefore it is a result of the conditions which leads it to not being able to fulfil its terms of service. The Appellant further reiterates that *"there have been no adverse findings of fact against the Company or its officers/pharmacists in respect of the matters that gave rise to the premises conditions being imposed and where the relevant regulator investigations are ongoing."*
- 5.28 The Appellant concludes that *"in respect of the alleged matters which gave rise to the premises conditions being imposed on the Pharmacy, no wrongdoing (either regulatory or criminal) has been proved against the Company or its officers/pharmacists."*
- 5.29 I consider it important to acknowledge that no wrongdoing has been proved against the Appellant. I also note that there is no dispute between the parties that these conditions are being adhered to and that the pharmacy is not selling or supplying, including against an NHS prescription any Schedule 1 to 5

controlled drug and that the pharmacy is not obtaining, in any form, any Schedule 1 to 5 controlled drug.

- 5.30 I consider that there is an implication within the phrase “good cause” that there is a factor outside a person's control that has an impact. In the current matter, the imposition of the conditions by the GPhC is likely to be considered outside the control of the Appellant. The conditions appear to have been imposed to prevent a reoccurrence of the actions that led the GPhC to impose them such that it provides the GPhC with time to investigate whether there has been any wrongdoing by the Appellant.
- 5.31 At the time the conditions were imposed, I am satisfied that their imposition constituted good cause. I do however note the GPhC's 18 June 2025 letter, extracts of which the Commissioner has quoted. This letter was a refusal of an application to revoke the imposition of the conditions.
- 5.32 The letter refers to there being no “*evidence of what the pharmacy has implemented to prevent similar issues occurring again*”, that the application does not reflect “*on the issues which caused the conditions and how these would be prevented in the future*” and that the “*application still does not provide me with adequate assurances that you have considered and mitigated all the risks associated with providing controlled drugs*”.
- 5.33 I consider that the language used in the GPhC letter indicates that it was possible for the Appellant to have implemented measures to prevent a reoccurrence, that the Appellant could have set out how the occurrence would be prevented in future and so could have provided assurances that risks associated with providing controlled drugs were mitigated. It therefore appears to have been possible for the Appellant to have taken measures such as to provide assurances that the matter would have been prevented or would not have reoccurred.
- 5.34 It therefore appears to me that the continued imposition of the conditions is less of a matter that is outside the control of the Appellant. It is less of a good cause than it may have been when the conditions were imposed.
- 5.35 Given the conditions were imposed in February 2024, they have been in place for over 18 months and in that significant timescale the Appellant has not implemented such measures that satisfy the GPhC that risks associated with providing controlled drugs have been mitigated.
- 5.36 My view is that it has been within the control of the Appellant to take such measures. I therefore consider that the imposition of the conditions is now not a good cause for the continuing breach of the terms of service. In the language of the Regulations, I agree with the position of the Commissioner that it can be satisfied that the Appellant is likely to persist in breaching its terms of service without good cause.
- 5.37 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, 7 breach notices had been issued to the Appellant in February 2025, with further breach notices being issued in June 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.

## **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 confirm the decision of the Commissioner to remove the Appellant's premises from the relevant pharmaceutical list.

**Head of Appeals  
NHS Resolution**