

OFFICIAL: SENSITIVE

14 January 2026

REF: SHA/26715

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**APPEAL AGAINST NORTH EAST AND NORTH
CUMBRIA ICB DECISION TO REMOVE JHOOTS
HEALTHCARE LTD FROM THE
PHARMACEUTICAL LIST AT 1 EMBLETON
COURT, REDCAR, CLEVELAND, TS10 2RF IN
ACCORDANCE WITH REGULATION 73**

1 Outcome

- 1.1 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.
- 1.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I confirm the decision of the Commissioner.

A copy of this decision is being sent to:

Temple Bright on behalf of Jhoots Healthcare Limited
Ward Hadaway on behalf of North East and Cumbria ICB

REF: SHA/26715

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

APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REMOVE JHOOTS HEALTHCARE LTD FROM THE PHARMACEUTICAL LIST AT 1 EMBLETON COURT, REDCAR, CLEVELAND, TS10 2RF IN ACCORDANCE WITH REGULATION 73

1 The Decision Letter

A letter dated 13 August 2025 was sent from North East and Cumbria ICB ("the Commissioner") to Jhoots Healthcare Limited ("the Appellant"). The letter stated:

- 1.1 **"Re: Breach of Paragraph 23(1)(a), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the 2013 regulations) - a failure to ensure that pharmaceutical service are provided at 1 Embleton Court, Redcar, TS10 2RF for 40 hours each week"**
- 1.2 Further to my previous letters on this matter and the oral hearing on 7 August 2025 we have considered all the evidence and have decided that Jhoots Healthcare Ltd and the above premises are to be **removed** from the pharmaceutical list for the area of Redcar & Cleveland Health and Wellbeing Board (HWB).
- 1.3 On 28 January 2025 North East and North Cumbria ICB (NENC ICB) received an application from Jhoots Healthcare Ltd, requesting a Temporary Amendment to the Pharmaceutical List for Redcar & Cleveland HWB in respect of the premises at 1 Embleton Court, Redcar, TS10 2RF to move to (within Premier Store) 171-173 Redcar Lane, Redcar, Cleveland, TS10 2EJ.
- 1.4 In your application, you confirmed that Jhoots Healthcare Ltd would not have access to the premises at 1 Embleton Court, Redcar, TS10 2RF beyond 24 March 2025. The application was granted on 26 February 2025.
- 1.5 A notice of commencement was submitted on 18 March 2025, but it was not in the correct form as it did not include the information required under paragraph 29, Schedule 2 of the 2013 regulations – the registration number for the premises at 171-173 Redcar Lane was missing. To date, no valid notice of commencement in the correct form has been received.

- 1.6 NENC ICB wrote to Jhoots Healthcare Ltd at operations@jhootspharmacy.com and services@jhootspharmacy.com on 22 April 2025 requesting information following your application to amend the listing for your pharmacy.
- 1.7 NENC ICB did not receive a response to our request from 22 April 2025 until 3 June 2025 after several chase messages. In the response, [A], on behalf of services@jhootspharmacy.com confirmed Jhoots Healthcare Ltd handed over keys for 1 Embleton Court, Redcar, TS10 2RF on 7 March 2025, meaning that you are unable to ensure the provision of pharmaceutical services at those premises.
- 1.8 Jhoots Healthcare Ltd have been served with breach notices for breaching Paragraph 23(1)(a), Schedule 4 of the 2013 regulations - failing to ensure the provision of pharmaceutical services for 40 hours each week at 1 Embleton Court, Redcar, TS10 2RF on the following dates:
- 1.8.1 25th June 2025 for the period 7th March 2025 to 25th June 2025
- 1.8.2 1st July 2025 for the period 25th June 2025 to 30 June 2025
- 1.8.3 7th July 2025 for the period 1st July 2025 to 7th July 2025
- 1.8.4 30th July 2025 for the period 8th July 2025 to 23rd July 2025
- 1.9 On 7 July 2025 operations@jhootspharmacy.com were sent a letter as NENC ICB is considering removing you and the pharmacy premises at 1 Embleton Court, Redcar, TS10 2RF from the pharmaceutical list for Redcar & Cleveland HWB under regulation 73(b)(i) of the 2013 regulations due to the repeated issuing of breach notices in relation to the same term of service. Jhoots Healthcare Ltd were given 30 days in which to make representations on the matter in line with regulation 73(6).
- 1.10 On 23 July 2025, in response to a Consideration of Removal from the Pharmaceutical list letter [DL], on behalf of operations@jhootspharmacy.com, confirmed "The premises located at the premier stores was fitted out ready to be inspected by the GPhC, the inspection highlighted further buildings works that needed to be completed. It was at this stage that it became clear that planning permission would be required, assurances had been provided by the landlord at premier stores that this planning permission was already in place". Confirmation was received that you wished to make oral representations on the proposed removal.
- 1.11 On 5 August 2025, as part of the consultation process for an Oral Hearing, the Local Pharmaceutical Committee made the following representation: "The LPC are aware that the contractor has had difficulties with securing an appropriate premises to operate within and recommend that the ICB ensure that all necessary steps where permissible are taken to support the contractor.
- 1.12 The LPC also note that there has now been a considerable period of time since pharmaceutical services have been provided from 1 Embleton Court and that patients may now be accustomed to receiving pharmaceutical provision from other contractors".

- 1.13 On 7 August 2025 [DL], The Operational Manager for Jhoots Healthcare Ltd attended an oral hearing with North East and North Cumbria ICB Pharmaceutical Services Regulations Committee (PSRC).
- 1.14 The case was presented to the panel and attendees, giving an overview of the information contained in this letter above. The Operational Manager was asked if they had any comments to make on the content of the paper presented. The Operational Manager confirmed they had no comments to make and was comfortable that the information contained in the paper was accurate.
- 1.15 The Operational Manager was asked to provide any information relating to the lease of the premises at 1 Embleton Court, Redcar, TS10 2RF. The Operational Manager confirmed, they did not have all the finer detail, but explained, following discussions with the landlord, an extension to the current lease agreement could not be reached and the lease came to the end of its term. The premises were repossessed by the landlord. It is understood the premises are to become a childcare provider owned by the landlord.
- 1.16 The Chair of PSRC asked the Operational Manager if Jhoots Healthcare Ltd accepted they had been in breach of their terms of service since 7 March 2025. The Operational Manager agreed they had not been providing services at 1 Embleton Court, Redcar, TS10 2RF.
- 1.17 PSRC asked how Jhoots Healthcare Ltd could assure NENC ICB that they would no longer be in breach of their terms of service at 1 Embleton Court, Redcar, TS10 2RF. Jhoots Healthcare Ltd were unable to provide any assurances that services would resume at 1 Embleton Court, Redcar, TS10 2RF but have submitted a further Application under Regulation 29 to temporarily amend the pharmaceutical listing to 3 Embleton Court.
- 1.18 After considering the information provided, PSRC considered the regulations.
- 1.19 In response to Regulation 73(1)(b)(ii) - PSRC agreed the contractor had breached paragraph 23(1)(a), Schedule 4 of the 2013 regulations since 7 March 2025 and had repeatedly been issued with breach notices in relation to this term of service.
- 1.20 PSRC were satisfied that Jhoots Healthcare Ltd are no longer able to provide services at 1 Embleton Court, Redcar, TS10 2RF and is likely to persist in breaching the term of service without good cause.
- 1.21 PSRC considered whether the removal is justifiable and proportionate, having regard to the nature and seriousness of the breaches and the reasons for them. The closure of this pharmacy without notice had caused disruption to patients and other stakeholders who were accustomed to using the pharmaceutical services at this site. Patient Safety was paramount to the determination made by PSRC. In addition, it is clear that there is no possibility of Jhoots Healthcare Ltd being able to provide pharmaceutical services at 1 Embleton Court, Redcar, TS10 2RF at any point in the future due to the fact the premises are to become a childcare provider owned by the landlord. Members of the PSRC therefore unanimously agreed that the pharmacy and Jhoots Healthcare Ltd must be

removed from the pharmaceutical list by virtue of regulation 73(1)(b)(i) of the 2013 regulations.

- 1.22 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: Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.”

2 The Appeal

In a letter dated 12 September 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 **“Removal of Jhoots Healthcare Limited from the pharmaceutical list in respect of premises at 1 Embleton Court, Redcar, TS10 2RF**
- 2.2 We act for Jhoots Healthcare Limited (“the Company”), which is included in the pharmaceutical list for premises at 1 Embleton Court, Redcar, TS10 2RF (“the Pharmacy”). On behalf of our client, we write to appeal a decision of North East and North Cumbria ICB to remove the Company from the pharmaceutical list in respect of the Pharmacy. The decision was notified to the Company by letter dated 13th August 2025 (**attached**).
- 2.3 Our client’s grounds of appeal are that the ICB’s decision failed to properly apply the relevant regulatory test for the reasons given below.

Statutory background

- 2.4 As NHS Resolution will be aware, any person included in a relevant pharmaceutical list must provide NHS pharmaceutical services in accordance with schedule 4 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).
- 2.5 Paragraph 23 of schedule 4 to the Regulations provides that a person included in a pharmaceutical list (“an NHS pharmacist”) must provide pharmaceutical services during core and supplementary opening times as notified to, agreed with, or directed by NHS England. It is a breach of the NHS terms of service for a pharmacist to fail to provide pharmaceutical services during such hours save where paragraphs 23(10) and 23(11) apply. Paragraphs 23(10) and 23(11) state as follows:

(10) Where there is a temporary suspension in the provision of pharmaceutical services by P because of illness or another reason beyond the control of P, P is not in breach of sub-paragraphs (1) and (7), or of paragraph 23A(5)(a), provided that—

(a) P notifies NHS England of that suspension as soon as practicable, in the manner required by paragraph 29D(2)(a) and wherever possible before the start of the suspension;

(aa) P uses all reasonable endeavours to implement the business continuity plan that P is required to have by virtue of paragraph 29D; and

(b) P uses all reasonable endeavours to resume provision of pharmaceutical services as soon as is practicable.

(11) Planned refurbishment of pharmacy premises is not a “reason beyond the control of P” for the purposes of sub-paragraph (10).

2.6 Where an NHS pharmacist fails to provide pharmaceutical services in accordance with schedule 4 to the Regulations, NHS England may issue a breach notice in accordance with regulation 71.

2.7 Regulation 73 provides that NHS England may remove an NHS pharmacist from the pharmaceutical list where the conditions of regulation 73(1)(b) are met. 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.

2.8 Regulation 73(5) relevantly provides that:

(5) NHS England must not remove C, or chemist premises listed in relation to C, from a pharmaceutical list under paragraph (1) because—

(a) C has simply ceased to provide pharmaceutical services at particular listed chemist premises (regulation 74 applies in those circumstances)...

2.9 Finally, the Regulations allow for NHS England to make a temporary amendment to a pharmaceutical list. In effect, this allows an NHS pharmacist to temporarily provide pharmaceutical services from alternative premises. Regulation 29 relevantly provides as follows:

(1) Section 129(2A) of the 2006 Act (regulations as to pharmaceutical services) does not apply to an application for a temporary amendment to a pharmaceutical list in the following circumstances—

...

(b) there is a temporary suspension in the provision of pharmaceutical services at listed chemist premises (P1) for a reason (for example, fire or flooding) that is beyond the control of the NHS chemist (C) listed in relation to P1.

Factual background

- 2.10 By letter of 13th August 2025, the ICB notified the Company of the ICB's intention to remove the Company from the pharmaceutical list in respect of the Pharmacy on the grounds that the Company had not provided pharmaceutical services from the Pharmacy since 7th March 2025 *"and had repeatedly been issued with breach notices in relation to this term of service"*.
- 2.11 The ICB stated that it was intending to remove the Company from the pharmaceutical list in respect of the Pharmacy pursuant to regulation 73(1)(b)(i) of the Regulations.
- 2.12 For the avoidance of doubt, it is agreed between the parties that the Pharmacy has not provided any pharmaceutical services from the premises since 7th March 2025 (the Pharmacy closed shortly before the lease expired as the pharmacist – aware of the impending closure – left the business). The ICB was notified of this closure.
- 2.13 By way of background, the Company has been unable to provide NHS pharmaceutical services from the Pharmacy's premises for some months due to actions by the landlord of the premises. In short, as of 25th March 2025 the Company has been "locked out" of the Pharmacy premises, which have been let to a new tenant.
- 2.14 In relation to the background to the lease of the Pharmacy premises, on 25th March 2010 the premises were let to Pharmed2U Limited for a term of 15 years expiring on 25th March 2025. It is understood that sections 24-28 of the Landlord and Tenant Act 1954 were excluded so that the tenant had no security of tenure at the end of the term.
- 2.15 In due course Pharmed2U sub-let the property to the Company. This was with the landlord's consent. The sub-letting was for the remainder of the lease term and similarly excluded sections 24-28 of the 1954 Act.
- 2.16 The Company sought to negotiate a new lease with the landlord leading up to the end of the lease term, but the landlord withdrew from these negotiations at a late stage.
- 2.17 At the end of the term (i.e. on 25th March 2025), the Company was therefore required to vacate the Pharmacy premises and was unable to negotiate a

renewed lease. The landlord of the premises then entered into agreement for lease to let the property for use as a children's nursery.

- 2.18 There was, therefore, no opportunity for the Company to enter into a new lease of the property nor any ability for the Company to seek the grant of a renewal tenancy from the court given the exclusion of the LTA 1954 in relation to the sub-lease from Pharmed2U and the head-lease from the landlord.
- 2.19 Please find **attached** an email from the agent of the landlord of 1 Embleton Court which confirms the above factual background in respect of the premises.
- 2.20 In light of the actions of the landlord of the Pharmacy's premises, the Company sought to identify alternative premises nearby so that it could continue the provision of pharmaceutical services. This proved difficult due to the nature of the local area and the lack of available premises. However, in January 2025, the Company identified premises at 171-173 Redcar Lane, Redcar, TS10 2EJ as being suitable and submitted a temporary relocation application to those premises.
- 2.21 That application was granted by the ICB on 26th February 2025. It is submitted on behalf of the Company that since the ICB granted the temporary relocation application on 26th February 2025, at the time that the temporary relocation application was made by the Company:
 - 2.21.1 The ICB was aware that the Company would shortly be required to cease the provision of pharmaceutical services from the Pharmacy
 - 2.21.2 The ICB accepted that the suspension in the provision of pharmaceutical services by the Company from the Pharmacy was "for a reason...that is beyond the control" of the Company (as that was part of the regulatory test which applied to the granting of the temporary relocation application)
- 2.22 However, following the temporary relocation grant, it was unfortunately not possible to reach agreement to lease the premises at 171-173 Redcar Lane, meaning that the relocation could not go ahead as planned. The reason that the lease could not be agreed was because, despite assurances from the landlord to the contrary, the proposed pharmacy unit did not have the correct planning permission to be used as commercial premises. The landlord had stated that the proposed pharmacy unit was covered by a change of use planning consent that had been granted for the entire building (including the proposed pharmacy unit). However, this turned out not to be correct. It was clear that the change of use planning application for the proposed pharmacy unit would not be granted quickly enough to allow the pharmacy to relocate, particularly since further building work would probably have also been required to the unit to meet building regulations.
- 2.23 Since then, the Company has been actively seeking alternative premises to which it could relocate the Pharmacy. This has proved difficult since, of course, the premises had to be both near to the existing Pharmacy premises (so that a

permanent relocation application could be made and secured) and suitable to be converted into pharmacy usage without requiring significant works.

- 2.24 Since the Pharmacy had ceased to provide pharmaceutical services (even though the failure to provide services was for a reason beyond the control of the Company and had been notified to the ICB), the ICB has issued a number of breach notices in respect of the Company's failure to provide pharmaceutical services. Whilst the Company asserts that it could have appealed those breach notices (since the closure of the Pharmacy was for a reason beyond the control of the Company and was notified to the ICB), the Company did not submit any appeals.
- 2.25 In early July 2025, the Company finally identified suitable premises to which it may relocate the Pharmacy, being premises at 3 Embleton Court, Redcar, TS10 2RF. These premises have the benefit of being adjacent to the existing premises and require relatively little in the way of fit out works since they are already laid out in a way which would support the provision of pharmaceutical services (including having a consultation room).
- 2.26 On 23rd July 2025, the Company submitted a temporary relocation application. The Company was informed that that application would be considered at a meeting of the PSRC on, or around, 20th August 2025.
- 2.27 Despite the fact that the Company had ceased the provision of pharmaceutical services for reasons beyond its control and had indicated that it was clearly seeking to recommence service provision (having submitted a temporary relocation application), on 13th August 2025 the Company was served with a notification of a decision of the ICB to remove the Pharmacy from the pharmaceutical list.
- 2.28 In respect of the temporary relocation application that had been submitted on 23rd July 2025, on 20th August 2025 the Company received an email (**attached**) from the ICB which stated relevantly as follows:
- "Please be advised that this request to temporarily amend your pharmaceutical listing is on hold until the outcome of any appeal relating to the removal of Jhoots Healthcare Ltd at 1 Embleton Court, Redcar, TS10 2RF."*
- 2.29 We wrote to the ICB on 3rd September inviting the ICB to reconsider its purported decision to put its determination of the Company's temporary relocation application on hold. A copy of that letter is **attached**.
- 2.30 In essence, the letter asserted that the ICB has no power to put its determination of applications "on hold" and, furthermore, that the ICB's decision to refuse to determine the temporary relocation application was prejudicing the Company's position and, in essence, perpetuating the closure of the Pharmacy such that the ongoing failure of the Company to provide pharmaceutical services was now for reasons relating to the ICB's conduct.
- 2.31 We received an email from the ICB's solicitors in response to our letter on 11th September (**attached**). However, this simply requested the provision of documents and did not address the principal matter of concern raised in our

letter of 3rd September 2025. The Company has therefore been left with no choice but to appeal the ICB's decision to remove the Pharmacy from the pharmaceutical list.

Grounds of appeal

- 2.32 As stated above, it is accepted that the Company has not been able to provide pharmaceutical services from the Pharmacy since 25th March 2025 and, in fact, has not provided services since 7th March 2025. However, it is submitted on behalf of the Company that the Company's removal from the pharmaceutical list in respect of the Pharmacy is not in accordance with the regulations for the following reasons.

The closure of the Pharmacy is for a reason beyond the control of the Company

- 2.33 As summarised above, the Company has been unable to provide pharmaceutical services from the Pharmacy due to being evicted from the Pharmacy premises by the landlord.
- 2.34 The Company had no ability to extend the lease of the Pharmacy premises. It sought to relocate to alternative premises before being evicted from the Pharmacy premises but, as described above, it was unable to do so.
- 2.35 The closure of the Pharmacy from March 2025 was therefore for a reason beyond the control of the Company in accordance with paragraph 23(10). The closure had been notified to the ICB (including through the temporary relocation application submitted in January 2025).
- 2.36 It is submitted on behalf of the Company that the ICB has already accepted that the closure was for a reason beyond the control of the Company, because the ICB granted the Company's temporary relocation application in February 2025 and must have been satisfied, at that stage, that the temporary relocation was due to a "*a temporary suspension in the provision of pharmaceutical services...*" that was "*beyond the control of the [Company]*" in accordance with regulation 29.
- 2.37 Since it is submitted on behalf of the Company that the closure of the Pharmacy was for a reason beyond the control of the Company, it therefore follows that the Company is not in breach of the Terms of Service (since the closure falls within paragraph 23(10) of schedule 4 to the Regulations). As such, and notwithstanding that the ICB has issued breach notices, regulation 73(1)(b) does not apply. That is because, in order to remove the Company from the pharmaceutical list, the ICB has to be satisfied that the Company "has breached [the Company's] terms of service."

The Company's breach of the terms of service (if any) is for good cause

- 2.38 Even if, which is denied, the Company is in breach of the Terms of Service, the ICB may only remove the Company from the pharmaceutical list where the ICB "*is satisfied that [the Company] is likely to persist in breaching the term of service without good cause*".

- 2.39 It is submitted on behalf of the Company that any breach of the Terms of Service (which, for the reasons given above, is denied) is, in any event, for good cause for two reasons.
- 2.40 Firstly, the failure to provide pharmaceutical services is by reason of the actions of the landlord in evicting the Company from the Premises. The Company is actively seeking to recommence service provision from alternative premises.
- 2.41 Secondly, the Company has taken steps to recommence service provision from adjacent premises pursuant to a temporary relocation application which was submitted to the ICB in July 2025. Were it to be granted, that would allow the Company to recommence the provision of pharmaceutical services without delay. However, the ICB is (unlawfully) refusing to determine that temporary relocation application.
- 2.42 The Company's ongoing failure (if any) to provide NHS pharmaceutical services in accordance with the terms of service is therefore by reason of the ICB's failure to determine its temporary relocation application and, consequently, is for good cause on the part of the Company.

The removal is neither justifiable nor proportionate

- 2.43 It is a requirement of regulation 71(3) that the ICB's removal of the Company from the pharmaceutical list in respect of the Pharmacy must be both justifiable and proportionate.
- 2.44 In the circumstances described above, it is submitted on behalf of the Company that the removal is neither justifiable nor proportionate. That is by reason of the fact that, firstly, the closure of the Pharmacy was by reason of the landlord's actions and, secondly, that the Company is actively seeking to reopen the Pharmacy from alternative premises nearby.
- 2.45 A reasonable and proportionate approach by the ICB in these circumstances would have been to grant the temporary relocation application (which was submitted almost 3 weeks before the ICB decision to remove the Company from the pharmaceutical list) and to allow the Company a reasonable amount of time to recommence the provision of pharmaceutical services.
- 2.46 The ICB has given no reasons as to why it is unwilling to do so and, indeed, made no mention of the temporary relocation application in its reasoning to remove the Company from the pharmaceutical list in respect of the Pharmacy.
- 2.47 Regulation 73 prohibits the removal of the Company from the pharmaceutical list in any event. As detailed above, regulation 73(4) specifically provides that the ICB must not remove a pharmacy from the pharmaceutical list pursuant to regulation 73(1)(b) where the Company "has simply ceased to provide pharmaceutical services at particular chemist premises (regulation 74 applies in those circumstances)".
- 2.48 As such even if, which is denied, the ICB was correct to conclude that the Company had failed to provide NHS pharmaceutical services in accordance with the Terms of Service since 7th March 2025, regulation 73(4) prohibited the

ICB from using the mechanism contained within regulation 73(1)(b) to remove the Company from the pharmaceutical list. The ICB's actions in seeking to do so are, therefore, unlawful.

Conclusion

2.49 In conclusion, on behalf of the Company we invite NHS Resolution to conclude that:

2.49.1 The Company is not in breach of the terms of service since the ongoing closure of the Pharmacy is for a reason beyond the control of the Company, such that regulation 73(1)(b) does not apply; or

2.49.2 Even if, which is denied, the Company is in breach of the terms of service, any ongoing breach is for good cause such that regulation 73(1)(b) does not apply; or

2.49.3 In any event, regulation 73(4) prohibited the ICB from removing the Company from the pharmaceutical list in the circumstances which apply in this case.

2.50 On behalf of the Company, we therefore invite NHS Resolution to uphold our client's appeal and to rescind the removal of the Pharmacy from the pharmaceutical list."

3 **Summary of Representations**

This is a summary of representations received on the appeal.

WARD HADAWAY ON BEHALF OF THE COMMISSIONER

3.1 "Please find enclosed representations made in response to the above named appeal (the Appeal)".

3.2 They are made for and on behalf of the NHS North East and North Cumbria ICB ("the ICB").

3.3 The ICB writes to oppose the Appeal, which is brought in addition to a separate application under Regulation 29, and invites NHS Resolution ("NHSR") and the Primary Care Appeals team to dismiss the Appeal and/ or any application purporting to represent a valid appeal.

3.4 From the outset, all applicable and relevant processes and procedures were followed fully and fairly by the ICB. The relevant tests were applied consistently throughout.

3.5 The ICB was at all times entitled to exercise its discretion and to reach the decisions that it did. Indeed, on careful review and in light of all information available to it (including the Appeal and the grounds cited therein) the ICB maintains that the correct outcome was reached.

- 3.6 The Appeal comprises a 7 page letter from Temple Bright LLP dated 12 September 2025. It was served on NHSR and accompanied by various documentation which are listed (but not attached again) here :
 - 3.6.1 Notification of Decision – Removal dated 13 August 2025.
 - 3.6.2 Email from [JG], Land Agent, to Jhoots dated 27 August 2025.
 - 3.6.3 Email from Jhoots to Temple Bright dated 21 August 2025 (enclosing):-
 - 3.6.3.1 Email from [HS] of the ICB dated 20 August 2025.
 - 3.6.3.2 Email from Temple Bright to the ICB dated 3 September 2025.
 - 3.6.3.3 Email from Ward Hadaway to temple Bright dated 11 September 2025.
- 3.7 In addition the following documents are enclosed in an attached bundle:
 - 3.7.1 Email from Temple Bright to Ward Hadaway dated 11 September 2025.
 - 3.7.2 "WITHOUT PREJUDICE" Email from Ward Hadaway to Temple Bright dated 12 September 2025.
 - 3.7.3 The following statutory provisions are referred to:
 - 3.7.4 The National Health Service (Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2023 (S.I. 2023/479) ("the 2023 amendment Regulations")
- 3.8 A summary of the law to include the Current Requirements (since June 2023) under Regulation 29 is as follows:

"The primary aim of...the 2023 amendment Regulations... is to maintain the delivery of essential pharmaceutical services, which are increasingly critical for the resilience of the wider NHS system. It ensures that pharmacies are prepared for temporary closures and that patients can still access services and receive important information when a pharmacy temporarily suspends its operations."
- 3.9 The Regulations were amended by Regulations 2 and 13 of the 2023 amendment Regulations.
- 3.10 They read as follows:
- 3.11 **New paragraph 29D of Schedule 4**

13. In Schedule 4 (terms of service of NHS pharmacists), in Part 4 (other terms of service), after paragraph 29C (contact via NHS mail, pharmacy profiles and the Central Alerting System) insert—

Business continuity plans to deal with temporary suspensions

29D.—(1) An NHS Pharmacist (P) must have at all times an up to date business continuity plan for P's pharmacy premises, which is available at those premises, to deal with the temporary suspension because of illness or another reason beyond the control of P of the provision of pharmaceutical services at or from those premises that—

(a) is proportionate to the needs of the people who are anticipating or are accustomed to receiving pharmaceutical services from P; and

(b) includes the components set out in sub-paragraph (2).

(2) The components are—

(a) arrangements for notifying NHS England, in the approved manner—

(i) about the prospect of a temporary suspension, whenever such a suspension becomes likely, and

(ii) about a temporary suspension and its anticipated duration, wherever possible before the start of the temporary suspension; *ICB was not informed of how long the suspension would last or all of the reasons why. The only suggestion was that it would be less than 6 months. Indeed it was only after ICB wrote to the contractor that any temporary suspension notifications were submitted. Not all were reported but when some closures were notified they were always at least ten days after the date of closure. Some stated, incorrectly, that the reason for closures (some after the date now accepted to be when the premises keys were handed back) was the absence of a locum pharmacist. Notifications were submitted without any mention that the contractor had no premises and was not trading on any of those dates.*

(b) arrangements for updating the pharmacy profile mentioned in paragraph 29C(3) about the suspension, including in due course about the resumption of the provision of pharmaceutical services at the pharmacy premises;

(c) if P provides directed services that provide people with urgent care services, arrangements for ensuring, to the extent practicable, that people are not referred to P's pharmacy premises for those services during the temporary suspension;

(d) arrangements, where practicable and to an extent that is reasonable having regard to the needs of the people who are anticipating or are accustomed to receiving pharmaceutical services from P, for notifying other providers of pharmaceutical and local pharmaceutical services and providers of primary

medical services about the suspension and its anticipated duration;

(e) arrangements for displaying information about the suspension and its anticipated duration—

... (ii)... on a notice at P's pharmacy premises visible from outside the premises, which also provides information, where appropriate in the approved manner and to an extent that is reasonable having regard to the needs of the people who are anticipating or are accustomed to receiving pharmaceutical services from P, about the availability of pharmaceutical or local pharmaceutical services at or from other pharmacy premises nearby; and

(f) arrangements, where practicable, for the continuity of care for the people who are anticipating or are accustomed to receiving pharmaceutical services from P, including for any people who—

(i) have booked appointments, or

(ii) attend the pharmacy premises regularly for the supervised administration of medicines.

(3) For the purposes of sub-paragraph (2), "approved" means approved by NHS England.

(4) In the event of the temporary suspension, or the likely temporary suspension, of pharmaceutical services provision at or from P's pharmacy premises, P must use all reasonable endeavours to implement P's business continuity plan, and in the case of a likely temporary suspension, in a manner proportionate to that likelihood.

[Our emphasis added above].

3.12 Paragraph 29 C requires pharmacy contractors to make and have available a Business Continuity Plan ("PCP") to manage and address any temporary suspensions of services due to [the sort of event envisaged in Regulation 29 (1) (b), namely] unforeseen circumstances, such as fire or flooding. If a temporary suspension occurs, the contractor is required to make every reasonable effort to implement its BCP.

3.13 During any temporary suspension, a notice must be displayed in a location visible to patients outside the pharmacy. It must include:

3.13.1 A statement that services are suspended.

3.13.2 Information about how long the closure and suspension are expected to last.

- 3.13.3 Advice on where to collect prescriptions and seek medical help during the closure.
- 3.13.4 Details of nearby alternative pharmacies providing services.
- 3.14 The Appellant has not disclosed the existence or contents of the BCP which it is required to have by law. It would have had to create and implement one at the latest by 31 July 2023 when the new requirements came into force.
- 3.15 If it were to be accepted that a change in premises is one of the scenarios, envisaged by Regulation 29 (1) (b), to be caused by a reason outside of the control of the pharmacist then it is inconceivable that any or any adequate up to date BCP drafted by the Appellant in 2023 would not have contemplated the chemist's security of tenure at its existing premises. It should have fully assessed the impact of something so obviously fundamental as the forthcoming termination of the lease in early 2025 involving as it would, the inevitable cessation of the provision of service at its existing premises, namely 1 Embleton Court, Redcar.
- 3.16 Any quick and basic assessment and contingency plan addressed in the BCP would have enabled the timetable of at least twenty two months leading up to March 2025 to be properly planned. Arrangements for either the continuation or change of premises to continue the provision of services could and should have been made in ample time in advance and thus to be properly planned and managed accordingly.
- 3.17 The chemist is required by law to create contingencies even for unexpected issues such as floods and fire. Planning for any far more foreseeable and anticipated breaks in service, including the need to have premises from which to provide the services is very much within the control of the pharmacist. The more routine standard everyday arrangements relating to the renewal of a straightforward commercial lease of a pharmacy "shop" in the normal way should have been a basic consideration to any chemist, whether a sole trader or as here, part of a much bigger group of premises with a number of them located across the country. The chemist should have ensured that it knew whether or not it would be able to continue to trade at 1 Embleton Court in enough time to get prepared to find other new premises nearby and be ready for service in the event that it was unable to remain on site.
- 3.18 Instead it failed to do so, and obtained a regulation 29 temporary suspension based on the provision of an incomplete and mistaken assertion to the ICB that it would be ready to open and transfer service to a premises at Redcar Lane on the Monday morning after the expiry of its ten year lease. At that point the new premises had not been inspected by GPhC, the chemist had not verified whether or not the new premises had planning permission or allowed enough time in its own preparations to obtain such permission and/ or for any subsequent building or extension works to be completed. A week before its existing lease was to expire and having already handed back the keys three weeks earlier, it was asked to provide the details required for service to commence at the new premises. In reply it notified the ICB that the required

GPhC approval had not been obtained either. GPhC did not inspect until mid April.

- 3.19 In its Regulation 29 application dated 29 January 2025, for temporary suspension the chemist said this:

6.1

The landlord from the premises is seeking to take back the unit for their own use and therefore we have urgently had to seek alternative premises.

After some time, we have now been able to reach agreement to provide services a short distance along Redcar Lane...

The pharmacy will not be able to remain in its current location beyond the 24th March 2025;

6.2

The current amendment is necessary as the landlord has started the process to end the lease and we cannot renew...

- 3.20 In its covering email the chemist said "We have been trying to resolve, and find premises but only now have we been able to find a unit."
- 3.21 The statements are inconsistent and contradictory. The IBC [sic] was not told the dates when the chemist knew it could not remain in 1 Embleton Court, when it started to look for other nearby premises or when any agreement had been reached with the landlord at Redcar Lane. Either way, in spite of the implication that the premises at Redcar Lane could be used from 26 March, in fact the conditions had not been met and the details provided in 6.1 of the form created the impression that the nearby premises would be ready for occupation and to continue the provision of service without conditions.
- 3.22 Very detailed information had been provided elsewhere in that same form but no mention was made that the premises were not available, not currently ready and that relevant permissions and timescales had not been verified. A floor plan was requested and sent to the ICB and on that basis the application was approved for granting.
- 3.23 The ICB has not been provided with dates or correspondence relating to the ten year lease and whether in fact it benefitted from security of tenure or not. Even if it were accepted (which it is not) that the expiry of the lease and giving back possession of 1 Embleton Court was "beyond the control of" the chemist then the resulting absence of any premises to trade from, and sourcing a ready and available alternative, was certainly not.
- 3.24 It follows that any attempt by the Appellant to suggest that the original grant in some way estops the ICB or implies some acceptance that the grounds in Regulation 29 were made out are at best specious and/ or fail to address the obvious steps that the chemist could and should have taken to be ready for the time after leaving Embleton Court. The lack of regular prompt and accurate

information from the chemist meant that the decision to grant was founded solely in that which had been supplied.

- 3.25 As the grounds under Regulation 29 were not established, the Appellant remained in breach of its obligations from 7 March and it was not until after the oral hearing has been set and the Appellant notified that it indicated a possibility of a different unit becoming available within the Embleton Court shopping parade. No further details as to its suitability or state of readiness were provided.
- 3.26 With no or no adequate indications as to an alternative premises for provision of service, the ICB was entitled and required to serve breach notices and to de-register the now vacated premises and the chemist. It had little or no confidence as to when service might resume if ever, and the longer the process was delayed and local customers found alternative chemists, the less the need for this chemist to remain on the register.
- 3.27 In summary the ICB opposes the contractor's appeal for reasons including, but not limited to, the following:
- 3.27.1 If (which is not accepted by the ICB) the events which led to the provision of service being stopped, in circumstances where no or no adequate contingency plan had been identified or implemented were at any time "reasons beyond the control of P", then this ceased to be the case a long time before the expiry of the lease.
- 3.27.2 Further, even assuming the events were beyond the Appellant's control, that can only have arisen by reason of its own failure to plan and implement a BCP, which is in itself a separate breach of service terms.
- 3.27.3 The relevant documents and BCP have never been shared with the ICB or referred to nor the requisite notices to ICB and patients relating to the nature and duration of the anticipated break in service have never been communicated to either.
- 3.27.4 Without having secured a realistic prospect of new premises nearby, no anticipated duration could be given and no assurance that service could be provided within six months or longer.
- 3.27.5 It follows that such breaches would now fall to be considered in addition to those set out in the Notices and served following the closure of 1 Embleton Court.
- 3.28 The following comments are made with reference to those submissions set out in the Appeal:
- 3.29 **Page 1, para.4-** The ICB believed that the NHS terms of service were breached; service was not provided during core opening times or at all. This led to the service of four Breach Notices (see below) without any reply or contact from the Appellant. As above, the only qualifications to that principle would be if and where one of the "exemptions" applies.

- 3.30 The ICB invited the Appellant to attend a hearing where it would consider its removal from the pharmaceutical list. It heard from the appellant and exercised its discretion to remove the chemist and the premises at 1 Embleton Court following the service of the Breach notices.
- 3.31 The ICB carefully and closely considered all materials supplied to it and formed a clear view that those exemptions did not apply in this case.
- 3.32 Before NHSR considers the facts as submitted by the Appellant it is requested to note that Paragraph 23(10) applies [only] if a number of circumstances apply:
- 3.32.1 There is a "temporary suspension." The cessation of provision of service from 1 Embleton Court in this case was exactly that; the expiry of the lease and failure to renew it without substitute premises being available meant that service provision stopped permanently on or before 7 March 2025 when the keys were handed back. This meant that any resumption would not be possible. The ICB believes that the provision of service went beyond a mere "suspension" and cannot be characterised as such so as to bring the facts within the scenario envisaged in Paragraph 23(10).
- 3.32.2 As above. Any "temporary suspension" would also need to be "because of a reason beyond the control of" the Appellant. The facts as submitted by the Appellant fall far short of meeting this requirement. On its own evidence, when the lease commenced the Appellant can only have been advised, known and elected to disapply the usual security of tenure provisions and/ or allowed a lease to expire, having had ten years knowledge of the termination date. It attempts to suggest that its own failure to renew and find suitable and approved premises which were compliant with all relevant regulations months in advance of the closure of 1 Embleton Court were beyond its control. Waiting until a matter of weeks before the termination date and not appreciating some of the well-known and basic steps it would need to take before being approved and able to open ran the obvious risk of potential problems with the new premises at Redcar Lane. It would have been very much within the control of the Appellant to have verified the position on planning, building control and GPhC inspection for suitability rather than assuming that Redcar Lane would be ready to continue the provision of service from this contractor.
- 3.32.3 Further, the appellant would have to satisfy the ICB that it had met the requirements of Paragraph 23(10) (a),(aa) and (b). No such evidence has been provided to suggest that it can (as it has to) rely upon all three conditions in those limbs being met in relation to its application.
- 3.32.4 NHSR will know and appreciate that the decision under appeal, namely to de-register chemist and premises from the list, derives from the repeated breach notices under Regulation 73 (1) (b). That is not to be confused with the provision in Regulation 73(5) and accordingly the phrase "*relevantly provides*" in the Appellant's letter of 12 September is not thought to be helpful, accurate or applicable to these facts. The lack

of contact from the Appellant around that time and of any or any adequate progress or timescales from which services could be provided was not addressed in the submissions it made in its letter of appeal.

- 3.32.5 In July the appellant submitted a Regulation 29 Application in respect of another premises Unit at Embleton Court. By then service had not been provided in four months. When considering whether or not to deregister both chemist and premises the ICB was given insufficient certainty or detail as to the Appellant's intentions, how likely it could acquire those premises and how soon it could begin to trade from them. Against the backdrop of the Appellant's abortive attempts to move to Redcar Lane, and without an outline timetable the ICB had little confidence in the Appellant being able to deliver a plan to provide services from Embleton Court within an appropriate timeframe.
- 3.33 **Page 2, para.4** – In February 2025 the ICB allowed a temporary amendment to the pharmaceutical list on the basis of information provided. At that point the premises at Redcar Lane had been identified and the Appellant's application requested that those premises be listed on a temporary basis pending its move from 1 Embleton Court.
- 3.34 **Page 3, para. 1** – This comment is not correct. The date on which the provision of pharmaceutical services from 1 Embleton Court ceased is not known and therefore not "agreed" as the Appeal states. The ICB has not been asked to agree that date or requested to confirm it. As such Friday 7 March may be the likely *latest* date [only] on which the provision of services from the premises was physically feasible. The handing over of keys might not necessarily be equated with the date on which service provision stopped.
- 3.35 The Appellant has indicated that keys to the premises were handed over on 7 March but has not stated the date upon which the services were last provided. This might commonly be expected to be some time after the usual termination arrangements had already taken place such as removal of stock, fixtures, fittings and any schedule of dilapidations etc. were finalised in the usual way.
- 3.36 The Appellant is requested to confirm the last date on which pharmaceutical services were provided together with some evidence to this effect and/ or the date upon which the premises were vacant, irrespective of the date on which the keys were returned.
- 3.37 **Page 3, para. 2-** further clarification is sought. The comment seeks to link 25 March as the effective date of cessation of service. It is respectfully submitted that this adds little to the preceding paragraph; service provision stopped on or before 7 March 2025 (at the latest) with no prospect of resumption from that date or from the premises at Redcar Lane.
- 3.38 **Page 3, para.3-** The only relevance of 25 March is as to the expiry date of the ten year lease. A copy has been requested but not provided. Publicly available documents do not suggest that the standard roll-over/ renewal provisions of the Landlord and Tenant Act 1954 had in fact been excluded by both parties. In the

absence of a signed statutory declaration in the prescribed form, the law retains the default position namely that the lease would renew in the usual way.

- 3.39 It is respectfully submitted that to state merely "it is understood" without a more definitive statement of the true legal status of the lease is both unhelpful and inadequate. Further clarification of the true state of affairs is requested. The word of a land agent in a short email which stops short of confirming either the true legal position or the understanding which was held *by the Appellant* at the time is, respectfully, insufficient.
- 3.40 **Page 3, para.4** -The effect is that either the appellant was in fact legally able to insist on the continuation of the sub-lease after 25 March 2025 or, if there was no agreement to exclude with the landlord, to have appealed to the court for a renewal tenancy. Such an appeal would have meant the continuation of the appellant's security of tenure, at least while the matter was determined. Thus the provision of pharmaceutical services would have been within the control of the Appellant and could have continued at 1 Embleton Court.
- 3.41 The appellant is asked to clarify and confirm when it says "*similarly excluded*" that this is a reference merely to "the understanding" rather than to the verified legal position on the point.
- 3.42 **Page 3, paras.5 and 7-** It is unclear why a landlord would embark on renewal discussions if no such security of tenure existed but in any event, the Appellant has not informed the ICB when the two first made contact about renewal, termination and possible dates of vacant possession dates. The Appellant is asked to supply details of all negotiations and discussions whether abortive or otherwise relating to a renewal tenancy being granted.
- 3.43 **Page 3, para. 6-** As above, the Appellant is asked to provide those dates now, of when such negotiations started or finally floundered and ceased, leaving it on notice that provision of service could not continue at 1 Embleton Court beyond 25 March. The Appellant is asked to confirm when the owner and/ or the contractor's landlord began negotiations with the current nursery occupier and when it signed the agreement for lease.
- 3.44 **Page 3, para. 7-** Alternatively if in fact the parties had (ten or fifteen years ago) intended or properly agreed that the L&TA provisions were to be excluded, this can only be brought about by following a strict prescribed statutory declaration procedure first. That would mean that the appellant would have known for ten years that its lease was to expire in March 2025 and have had more than adequate time to plan and prepare how to ensure continuity of provision of service. A lead-in time of notifications and various dialogue and discussions with the Landlord would have ensued months before the expiry of the lease and the appellant would have been on notice for some time of the impending requirement to vacate.
- 3.45 On that basis it is thought unfair and inaccurate for NHSR to approach the matter as if the expiry of the lease came in any way as a surprise to the Appellant (as its correspondence implies), that it had insufficient notice and time to have renewed these premises or secured an alternative site.

- 3.46 **Page 3, para. 9-** Having been on notice of the expiry date of the lease for some time, on a date unknown, it must have then become clear to the Appellant that it could not agree a renewal tenancy with its landlord and was thus no longer going to be able to operate from 1 Embleton Court. On dates unknown (whether before or after the renewal negotiations concluded) a search for alternative premises began and which concluded on a date unknown in January 2025 in the identification of 171-173 Redcar Lane.
- 3.47 There then followed the first contact with ICB by way of a temporary amendment application, sent on 28 January.
- 3.48 **Page 3, para.10-**The Appellant applied for and was granted a Regulation 29 Application on 26 February.
- 3.49 The comments confuse the separate tests which apply under Regulation 29 with those grounds applicable and used by ICB in August to de-register the chemist from the list (namely, repeated breaches). As set out above, they are different applications and do not carry the same tests. Thus a grant of a Regulation 29 application does not imply (and cannot be used as evidence of) any acceptance, error in process or improper exercise of discretion by ICB. The two sections and processes are unrelated.
- 3.50 The ICB is surprised and quizzical to be told that the existence of a valid and applicable current planning permission had not been formally checked and verified before contact was made to it. An ordinary bystander might have thought that such confirmation would be one of the first and most obvious aspects to check on any standard pre-contract search before negotiations progressed, let alone before 1 Embleton Court was vacated and the temporary suspension application for Redcar Lane was submitted under Regulation 29.
- 3.51 The ICB based its decision on what it was told and the limb referring to a reason "beyond the control" is only one of the tests. The Contract performance matrix is created based on incorrect comments made by the Appellant to explain gaps in service. Not only are some dates unaccounted for, the explanations were provided late and suggest that a locum could not be sourced, for a premises which had long since already been vacated.
- 3.52 It was only on 18 March that the Appellant indicated its intention to start from Redcar Lane on 26 March, without any mention that the keys had already been handed back on 7 March. The Application had stated that access would be permanently unavailable beyond 25 March but no update was provided to update that the premises were about to be vacated earlier. The progress, problems with permissions, approvals and delays with Redcar Lane (and then the knowledge that it was unsuitable or unready) were not mentioned to ICB until after the event.
- 3.53 The Regulation 29 application was granted apparently before the Appellant had obtained the relevant approvals or even enquired about what would be necessary and when.

- 3.54 ICB made contact via telephone with the landlord who suggested that the Appellant had entered into renewal negotiations but was not prepared to pay an increased rent and could not agree terms on a new tenancy. The ICB is unaware when such negotiations would have taken place but would imagine some months before it was due to expire.
- 3.55 Since the ICB granted the Regulation 29 Application for Redcar Lane, in February, both the circumstances on the ground and the information which ICB had been provided by the contractor have changed. Additional details were only forwarded after the service of the removal notice.
- 3.56 Until 23 July 2020⁵ and the service of the "minded to" letter there was no report or update to ICB about any potential problem with Building regulations at Redcar Lane, that it had made deadlines were impossible to meet and that thus a break in service had already ensued with no prospect of any resumption in sight.
- 3.57 One might express a degree of surprise to hear that the planning consent and other approvals had not been identified far earlier, in the first most basic searches or pre- contract enquires by the Appellant as part of a group of pharmacy premises and why that finding would not have been many months before this. When problems first arose, no contact was made to the ICB to warn of potential problems ahead.
- 3.58 Following four breach notices, notice to attend and then the hearing itself on 7 August, little of what the ICB were told in this letter was mentioned throughout that process.
- 3.59 The Appellant has been notified of an offer from the ICB to arrange an oral hearing of the more recent Regulation 29 application.
- 3.60 The comments from the Appellant in its letter of appeal are to be read in the context of the offer of hearing referred to above.
- 3.61 The terminology is unfortunate. This is not "an eviction", the lease had expired. That phrase is a specific term of usage and not applicable to these facts- the Appellant says that they handed over the keys voluntarily
- 3.62 The ICB has satisfied itself of the grounds required- in essence the Appellant was not serving pharmaceuticals from Embleton Court and had no proprietary rights to any other premises.
- 3.63 Having no successor premises ready to provide service from the point that the first premises were unavailable is thought to have been within the control of the Appellant. Provision of service(s) was not possible from 1 Embleton Court or anywhere else.
- 3.64 Having received 3 and then a further breach notice and not responded to any of them, the Appellant applied under Regulation 29 for a further temporary suspension."

TEMPLE BRIGHT ON BEHALF OF THE APPELLANT

- 4.1 “I write on behalf of Jhoots Healthcare Limited and further to your letter of 20th October 2025.
- 4.2 On behalf of my client, I write to respond to representations made by the ICB in respect of my client’s appeal. My client comments as follows.
- 4.3 By way of summary, my client’s grounds of appeal are:
 - 4.3.1 The closure of the Pharmacy is for reasons beyond the control of the Company
 - 4.3.2 The Company’s breach of the terms of service (if any) is for good cause
 - 4.3.3 The removal is neither justifiable nor proportionate
 - 4.3.4 Regulation 73 prohibits the removal of the Company from the pharmaceutical list in the circumstances of this case in any event
- 4.4 Whilst the ICB’s legal representative has submitted lengthy correspondence, it has failed properly to address my client’s grounds of appeal, and, in any event, the ICB’s response (and stated position) is contrary to the clear facts in this case.
- 4.5 The ICB’s correspondence largely appears to focus on the circumstances surrounding the previous temporary relocation application. However, such a focus is of no assistance to NHS Resolution in its determination of this appeal because no matter what the ICB seeks to assert now (and retrospectively), the ICB did grant a temporary relocation application to Jhoots Healthcare Limited and must therefore have been satisfied that the temporary suspension of services by the Company from the Pharmacy premises was for reasons beyond the control of the Company. Having reached that conclusion in February 2025, the ICB’s subsequent actions are unlawful.
- 4.6 The Company submitted an application to the ICB for temporary relocation of the Pharmacy when it became clear to the Company that it was going to have to cease the provision of pharmaceutical services from the Pharmacy by, at the latest, 25th March 2025. For the avoidance of doubt, the Company did have in place a business continuity plan, a copy of which is attached.
- 4.7 The Company was, of course, aware that its lease of the Pharmacy premises was due to expire in March 2025. In early July 2024, Mr [SJ] (a director of the Company) contacted the landlord’s agent, Mr [JG], and asked about the possibility of renewing the lease. Mr [G] responded by email on 3rd July 2024 to state that as the Company was a sub-tenant, it was not able to renew the lease. Mr [J] asked about the possibility of buying the long term lease but was informed that this was not possible. There then followed further correspondence with the agent where it was confirmed – in clear terms - that

no further lease would be granted to the Company. I attach copies of the relevant email communication.

- 4.8 From July 2024, the Company therefore sought to secure alternative premises. However, despite exhaustive efforts, no alternative premises could be found (as there are very few retail units in the local area) until January 2025 when premises at 171-173 Redcar Lane were identified.
- 4.9 The Company submitted a temporary relocation application to the premises at 171-173 Redcar Lane on 28th January 2025. The application was granted by a decision dated 26th February 2025.
- 4.10 As NHS Resolution will be aware, in order for a temporary relocation application to be granted, NHS England must be satisfied (in accordance with regulation 29) that “there is a temporary suspension in the provision of pharmaceutical services at the listed chemist premises (P1) for a reason (for example, fire or flooding) that is beyond the control of the NHS chemist (C) listed in relation to P1”.
- 4.11 No matter what the ICB seeks to assert now, the ICB must have been satisfied that the temporary suspension of pharmaceutical services was “for a reason...that is beyond the control of” the Company in February 2025 when it granted the temporary relocation application. Any other assertion by the ICB would be irrational.
- 4.12 Having accepted, as the ICB must, that the suspension of services by the Company was for a reason beyond the control of the Company, much of the response from the ICB’s solicitors becomes irrelevant because it seeks to revisit a decision that the ICB made in February 2025 which, of course, the ICB is not able to do. That includes, for example, the lengthy comments made by the ICB’s solicitors in relation to the Company’s Business Continuity Plan, when the Company became aware of the impending termination of the lease, the actions that the Company took prior to submitting the temporary relocation application, etc. To the extent that these were relevant matters, they were relevant at the point when the ICB was considering the original temporary relocation application in February 2025. If the ICB had concerns about whether the temporary suspension of services was for a reason “beyond the control” of the Company, they were matters that should have been investigated prior to the February 2025 temporary relocation application decision being made.
- 4.13 Even if, which is denied, it is appropriate for NHS Resolution to consider the matters raised by the ICB in relation to the February 2025 decision, sufficient evidence has been provided by my client to support my client’s assertion that the termination of the lease, and consequent suspension of services by the Pharmacy, was for a reason beyond the control of the Company both in its letter of appeal and in this correspondence.
- 4.14 NHS Resolution will note that my client’s letter of appeal attaches an email from Mr [JG] (who is the landlord’s agent) who confirms the circumstances surrounding the termination of the lease of the Pharmacy premises. It is clear from that email that, in the words of Mr [G], “There was, thus, no opportunity

for [the Company] to enter into, or negotiate, a new lease of the property nor any liability for you to seek the grant of a renewal tenancy from the court given the exclusion of the LTA 1954 in relation to your sub-lease from Pharmed2U and the head-lease from my clients”.

- 4.15 The ICB’s solicitors state that the ICB “made contact via telephone with the landlord who suggested that the Appellant had entered into renewal negotiations but was not prepared to pay an increased rent and could not agree on a new tenancy”. The Company wholly disputes that this is an accurate representations of the situation (as evidenced by the email from the landlord’s agent and the emails attached to this letter). The ICB produces no evidence to support this assertion such as, for example, a contemporaneous telephone note or email.
- 4.16 Notwithstanding the clear position as set out in the email from Mr [G] that the LTA 1954 rights were excluded from the Company’s tenancy, the ICB (for reasons which are unclear and are unevidenced) appears to continue to dispute that the Company’s tenancy was so excluded from the LTA 1954. Since this appears to be a matter of factual dispute between the parties that NHS Resolution may be required to resolve, I am attaching a copy of the Company’s lease. NHS Resolution is referred to clause 23 at page 12 of the lease.
- 4.17 It is, of course, regrettable that the Company was not able to relocate pursuant to the temporary relocation application that was granted in February 2025. The letter from the ICB’s solicitors appears to criticise the Company in respect of the temporary relocation premises but, with respect to the ICB, these comments are made with the benefit of hindsight and ignoring the urgency of the situation and pressure upon the Company to find alternative premises once it became aware that the tenancy would not be renewed at the Pharmacy premises. It is submitted on behalf of the Company that the ICB’s retrospective criticisms of the Company in respect of the premises identified in the January 2025 temporary relocation application are of no assistance to NHS Resolution in its determination of this appeal.
- 4.18 The Company has set out, in the letter of appeal, the circumstances surrounding the difficulties with the premises that had been identified for temporary relocation. These were, of course, not matters that were known to the Company when it submitted the temporary relocation application. The Company spent a considerable amount of money fitting out the new premises to enable the relocation and would, of course, not have done so had it been aware that the new premises were not suitable.
- 4.19 After a considerable amount of searching, the Company has identified alternative suitable premises which are adjacent to the existing Pharmacy premises. The Company submitted a temporary relocation application to the ICB before it decided to remove the Company from the pharmaceutical list in respect of the Pharmacy.
- 4.20 The Company’s second temporary relocation was submitted on 23rd July 2025. The ICB determined to remove the Company from the pharmaceutical list on 13th August 2025. The ICB emailed the Company on 20th August 2025, stating

that “this request to temporarily amend your pharmaceutical listing is on hold until the outcome of any appeal relating to the removal of Jhoots Healthcare Ltd at 1 Embleton Court, Redcar, TS10 2RF”.

- 4.21 The ICB’s refusal to determine the Company’s temporary relocation application was, and continues to be, unlawful. There is no mechanism within the regulations for a regulation 29 application to be put “on hold”. If the ICB considered that it required further information from the Company in order to enable it to determine the temporary relocation application, it could, of course, have requested such information. No attempt was made by the ICB to resolve any factual concerns that it may have had before it decided (unlawfully) to put its determination of that application “on hold”.
- 4.22 Instead, the ICB’s refusal to determine the temporary relocation application appears to be designed solely to thwart the Company’s genuine attempts to recommence service provision, hence the ICB’s email stating the temporary relocation would not be considered “until the outcome of any appeal relate to removal” has been determined. In short, were the ICB to determine, and grant (consistent with its previous decision), the second temporary relocation application, the ICB knows that it would not be justified in removing the Company from the pharmaceutical list because service provision would be recommenced. This is, of course, an unlawful exercise of the regulatory provisions by the ICB and an abuse of the ICB’s powers.
- 4.23 Whilst we sought to resolve this matter with the ICB through correspondence before submitting the appeal, no resolution has been possible. The letter from the ICB’s solicitors in response to the appeal fails to address this important issue at all.
- 4.24 It is therefore asserted on behalf of the Company that the position as stated in my client’s letter of appeal is unchanged by the response from the ICB. The letter from the ICB’s solicitors appears simply to be an attempt to resile from the ICB’s previous determination in order to attempt to justify removal of the Company from the pharmaceutical list in circumstances where the Company would have been in a position to re-commence service provision had the ICB approached matters fairly and objectively.
- 4.25 In summary, the position is clearly stated as follows:
- 4.25.1 The Company had a tenancy at 1 Embleton Court which was excluded from protections under the Landlord and Tenant Act 1954, meaning that the Company had no right to renew the tenancy and was reliant upon the landlord agreeing a new tenancy. It is not clear why the ICB refuses to accept the position in relation to the tenancy as asserted by the Company but, for the avoidance of any doubt, a copy of the tenancy is provided with this letter.
- 4.25.2 The lease was due to expire on 25th March 2025.

- 4.25.3 The Company sought to renew the tenancy but was not able to agree a new tenancy with the landlord. It is understood that the landlord had already agreed to let the premises to a third party to open a nursery.
- 4.25.4 The position in relation to the tenancy is summarised in the emails from the landlord's agent which have been provided to NHS Resolution. The ICB appears to dispute the contents of this email, but this would require NHS Resolution to find either that the agent is lying or that the email has been falsified, and there is no justification for either such finding. The ICB refers to a "telephone call" with the landlord, but no evidence is provided of such a call, for example by way of a telephone attendance note or follow up email.
- 4.25.5 The Company asserts that the suspension of services at the Pharmacy was by reason of the termination of the Company's tenancy of the Pharmacy premises and was, consequently, for "good cause".
- 4.25.6 The ICB has previously accepted that the closure was for "good cause". That must be the position since it granted a temporary relocation application pursuant to regulation 29. That temporary relocation application was submitted on 28th January 2025, so some 2 months before the tenancy was due to expire. This is consistent with the Company's assertion that it sought to renew the tenancy with the landlord but was unable to do so and, consequently, sought alternative premises.
- 4.25.7 Unfortunately, the Company was not able to relocate pursuant to that temporary relocation application. The ICB criticises the "due diligence" checks that the Company made in respect of the proposed premises, but this criticism is, of course, with the benefit of hindsight and, in any event, has no relevance to the determination of this appeal. The position is simply put that once the Company became aware that it was not going to be able to renew the tenancy at 1 Embleton Court, it sought suitable alternative premises nearby. The Company believed that suitable premises had been identified and submitted a temporary relocation application to those premises. It was only after the premises had been fitted out that it became clear to the Company that those premises were not suitable. This is, of course, regrettable, not least for the Company itself which had gone to significant expense in securing and fitting out those premises.
- 4.25.8 The Company then sought alternative premises. There are a limited number of retail premises within relocation distance of 1 Embleton Court. When it finally identified suitable premises adjacent to the existing Pharmacy premises in July 2025, a further temporary relocation application was submitted to the ICB.
- 4.25.9 The ICB is refusing to determine the further temporary relocation application. That refusal is unlawful and appears to be an attempt by the ICB to thwart the Company's attempts to re-open the pharmacy.

4.25.10 The temporary relocation application was submitted before the ICB determined to remove the Company from the pharmaceutical list.

4.25.11 Had the relocation application been determined and granted (consistent with the previous grant and the relevant regulatory provisions), the Company would have recommenced service provision by now.

4.26 Returning to the Company's grounds of appeal, my client invites NHS Resolution to uphold the appeal for the following reasons.

The Company's breach of the terms of service (if any) is for good cause

4.27 Regulation 73(1)(b)(ii) requires the ICB (or NHS Resolution on appeal) to determine whether any breach of the terms of service is for "good cause".

4.28 Consistent with the ICB's decision in February 2025 (and as summarised above and in my client's letter of appeal), the suspension of services by the Company from the Pharmacy premises is for a reason beyond the control of the Company. It must therefore follow that the terms of service breaches (if any) are for "good cause".

The removal is neither justifiable nor proportionate

4.29 NHS Resolution will be mindful of the consequences of the removal of the Company from the pharmaceutical list in respect of the Pharmacy premises. There are, of course, consequences not only for the Company (the loss of a viable pharmacy business and the financial consequences that result) but also for patients (the closure of a local pharmacy).

4.30 However, in determining whether removal is "justifiable" and/or "proportionate", NHS Resolution is also invited to consider the conduct of the ICB in the circumstances of this case. In particular, as summarised above and in my client's letter of appeal, NHS Resolution is invited to consider the actions of the ICB in refusing to determine the second temporary relocation application.

4.31 It is asserted on behalf of the Company that the ICB's actions are unlawful and that, had the application been determined and granted (consistent with the previous decision), the Company would have been in a position to recommence services by now.

4.32 In those circumstances, it is asserted that the Company's removal is neither justifiable nor proportionate.

Conclusion

4.33 In conclusion, for the reasons given above and those given in my client's letter of appeal, on behalf of the Company I invite NHS Resolution to uphold this appeal and to overturn the ICB's decision."

5 Further observations

In response to the observations, Ward Hadaway on behalf of the Commissioner submitted further comments.

- 5.1 "Thank you for sending us a copy of the additional representations sent to NHSR by way of letter dated 30 October 2025 from Messrs Temple Bright LLP on behalf of the appellant, Jhoots Healthcare Limited.
- 5.2 We write, as we must, to clarify the legal and procedural position and to correct a number of observations made in that letter.
- 5.3 1. We attach relevant extracts from the NHSR Pharmacy Appeals Guidance which confirm that the format and procedure of the appeal is a complete re-hearing afresh and not simply a review of decisions as if that question were to be judged solely as if it had been made at the time those original decisions were made.
- 5.4 2. Were it otherwise, then the process would not permit any consideration of material submitted after the appeal as any such evidence would be irrelevant and potentially prejudicial.
- 5.5 3. It follows then that the appellant's repeated comments that observations made on behalf of the ICB in opposing the appeal, are "irrelevant", "with hindsight" and that its position is somehow fixed, or bound now by the principle of estoppel are both inaccurate and wholly without merit.
- 5.6 4. Any challenge by the appellant to what it alleges to be an unlawful decision would, as NHSR knows, be by way of an application for judicial review if there were some form of procedural unfairness or irregularity. In this case there is neither.
- 5.7 5. The appellant has now, in its reply to comments made in response to its own appeal, for the first time disclosed new material which has never been forthcoming to date. This new evidence has not been provided or mentioned previously. It reveals that the appellant's landlord had confirmed as early as July 2024 that the lease of 1 Embleton Court was indeed going to expire in the following March, at the end of its ten-year term.
- 5.8 6. In that respect the appellant's contention that:- "The Company submitted an application to the ICB for temporary relocation "when it became clear to the Company that it was going to have to cease the provision of pharmaceutical services from the Pharmacy by, at the latest, 25 March 2025" [our emphasis added] is patently incorrect.
- 5.9 7. The appellant made absolutely no contact of any kind with the ICB at any of the following stages and even now has provided the ICB and NHSR with no evidence whatsoever of the "exhaustive efforts..." it states that it has made "to secure alternative premises."
- 5.10 8. Instead, it was not until 29th January 2025 before it applied for the temporary amendment to the pharmaceutical list under Regulation 29. When doing so, it

made no mention and shared no documents relating to any efforts it had gone to between July 2024 and January 2025, or indeed of any other potential premises than the shop at Redcar Lane.

- 5.11 9. Even now, while continuing to maintain its argument that the closure of 1 Embleton Court [on or before 7 March 2025] was beyond the control of the company, the appellant has not provided any evidence of the "exhaustive steps" it refers to. Either to the ICB when it first learned that 1 Embleton Court would be closed from March, when it was told that its lease would not be renewed, when it was told that Redcar Lane was not suitable, at the time it made the Regulation 29 application, in its oral hearing of the appeal against deregistration or indeed even to date, in its reply to the ICB's comments to NHSR.
- 5.12 10. Instead it seeks merely to rely on comments from its lawyer and a gap in its own correspondence thread from October to January with no expansion on what if any steps it took to ensure a smooth and continuous handover to service from a new replacement premises.
- 5.13 11. In the absence of any such evidence, it is respectfully suggested that the mere assertion of any, or any adequate attempts to find alternative premises remains wholly unsupported by any admissible evidence. It follows logically that the NHSR has no evidence before it upon which it would be able or entitled to find as a fact that the closure was "for reasons beyond the appellant company's control", and less still, as its lawyer's letter asserts:
- 5.14 12. "The Company's breach of the terms of service (if any) " was for good cause. [our emphasis added].
- 5.15 13. The words in parenthesis appear even now to imply that there may be some doubt as to whether in fact terms of service were breached or that the appellant does not accept that to be the case.
- 5.16 14. The appellant is expressly asked to confirm whether the fact of breach is disputed, despite its previous admissions that it handed back the keys to 1 Embleton Court on 7 March 2025 and has never sought to appeal any of the various Breach Notices served upon it in respect of the pharmacy being closed , the expiry of the lease and thus, self – evidently its failure to supply services from those premises at any point thereafter.
- 5.17 15. The crux of the appellant's case appears to rest on its argument that because the ICB, based solely on the material that was presented to it by the appellant when it filed its Regulation 29 application, decided to grant the application in February 2025, it is somehow precluded from forming a different view at a later point.
- 5.18 16. As a matter of law that observation incorrectly states the position. NHSR will know that no public body can be estopped from taking a different view or adopting an alternative position, whether or not , as in this case, it becomes apprised of additional information after granting the application that would have

affected its decision had that evidence been supplied to the ICB at the time it determined the original Regulation 29 application.

- 5.19 17. The law on estoppel is clear; a public body is not "stuck with" a decision regardless of whether it was right or wrong and it is entitled to have regard to all and any new evidence provided, however late in the day. Any challenge to the ICB's conduct and its decision making would in any event have to proceed by way of a judicial review rather than as here, the basis of an appeal to NHSR.
- 5.20 18. The ICB's decision maker used her delegated authority to allow the application and would not have done so if the information which the appellant had in its possession, but which it has only now shared, with the ICB had been provided and available when she decided the application. With the benefit of the new information supplied on 30 October 2025, it is abundantly clear that the closure is because its lease was not, and was never going to be renewed. It is most unlikely that the application would have been granted without further query, or at all, if the reality of the situation had been disclosed to the ICB at that time.
- 5.21 19. To characterise the closure of 1 Embleton Court after March as being for reasons beyond the control of a company which knew of the impending expiry of its ten-year term, began the process leading up to closure at least eight months in advance and yet failed to disclose any of its efforts to source a suitable alternative, or to make any contact with the ICB before 29 January 2025 is a spurious attempt to deny the obvious.
- 5.22 20. This appellant operates a number of pharmacy premises in this ICB area and as part of a much wider national group. It is required to, and does, know very well how the regulatory process works. It failed to notify the ICB when the successor premises it identified were not suitable and lacked the requisite planning permission. It should have very well-established processes and procedures for the renewal of any of its existing premises and/or to ensure that replacement premises were ready in plenty of time to ensure continuity of service at the end of the ten year term at 1 Embleton Court.
- 5.23 21. A number of actions that could and would have allowed for provision of service to continue after the expiry of the lease were within the Company's control. Accordingly, it cannot now argue that its own repeated and substantial period of breach was for good cause. It stopped trading and seeks to bind the ICB to its original decision and yet criticises the ICB for then de-registering the appellant, on grounds of proportionality, at a time when the pharmacy had been closed for months without trading.
- 5.24 22. The application in January 2025 was accompanied by various details of the new premises at Redcar Lane with no mention that the whole relocation plan rested on verbal assurances as to their suitability and holding planning permission. Neither requirement had been verified by the Applicant and the "new" premises had not been inspected by the GPhC at the time of applying. The ICB decision maker took at face value that information with which she was provided and had no reason to suspect that the true position was in fact as set out in the subsequent information provided by the appellant far more recently.

- 5.25 23. There is no requirement on the ICB to second guess or dig beneath the surface or substance of what it is told by an applicant. It is entitled to, and can only, rely on sufficient accurate and candid information being provided. Without the newly disclosed supporting evidence the ICB would have no way of knowing that the appellant had in fact made little or no apparent effort to secure other premises and identified the Redcar Lane premises so late in the relocation timetable that any delays or difficulties would inevitably leave a long period where service could not be provided after 1 Embleton Court had been closed.”

6 Further comments

In the interests of transparency and fairness, the additional comments were circulated to Temple Bright on behalf of the Appellant who was provided with the opportunity to provide further observations.

- 6.1 “I write further to your letter of 21st November 2025 and in order to respond to further comments submitted by the ICB in respect of my client’s appeal.
- 6.2 As a preliminary matter, my client notes that the comments being made in respect of this appeal are becoming repetitive, and my client does not wish to repeat matters already raised in previous correspondence. My client will therefore seek to keep its response as brief as possible to avoid further repetition.
- 6.3 Taking the matters raised by the ICB in turn, my client comments as follows.
- Paragraphs 1 to 2
- 6.4 My client agrees that this is a reconsideration of matters by NHS Resolution, not a review of the ICB’s decision.
- Paragraph 3
- 6.5 As will be clear from a proper reading of my client’s previous appeal correspondence, reference to “irrelevance” is reference to the ICB’s attempt to “re-open” its decision, made in February 2025, to grant my client’s temporary relocation application. That temporary relocation application is not the subject of this appeal, so attempts by the ICB to re-visit that decision are clearly irrelevant.
- 6.6 What the ICB fails to address – properly or at all – is the simple fact that the ICB was satisfied, in February 2025, when it granted a temporary relocation application to my client that the temporary relocation request was for reasons beyond the control of my client.
- 6.7 The ICB is unlawfully refusing to determine a further temporary relocation application submitted by my client. But for that refusal, my client would be in a position to recommence services from new premises. The ongoing failure of my client to provide services is therefore for “good cause” because it is caused by the ICB’s failure (unlawfully) to consider my client’s temporary relocation application (and to grant it, consistent with its February 2025 decision).

Paragraph 4

- 6.8 As stated above, the relevance of the ICB's failure to determine my client's temporary relocation application is that the continued closure of the pharmacy is for "good cause". The ICB has still failed to explain why it is refusing to determine my client's temporary relocation application despite this having been raised several times with the ICB (including in correspondence submitted to the ICB before this appeal was brought).

Paragraph 5

- 6.9 These documents were provided at the request of the ICB. It is therefore somewhat surprising that the ICB appears to be critical of the provision of the documents at this stage.

Paragraph 6

- 6.10 The submission is not incorrect. As already stated, my client sought to identify alternative premises when it became clear that the lease would be renewed, but this took some time.

Paragraph 7

- 6.11 My client has no further comments to make in respect of this matter. The ICB was satisfied with the evidence provided in February 2025 and no reason is given as to why the ICB is now taking a different view.

Paragraphs 8 to 11

- 6.12 The ICB could have requested this information in January 2025 but did not. As previously asserted, the ICB cannot "reopen" its February 2025 decision, and should consider matters consistently.

Paragraphs 12 to 14

- 6.13 There is no breach of the terms of service where a failure to open is for reasons beyond the control of the pharmacist. In February 2025, the ICB determined that the temporary relocation was for "good cause" because the pharmacy's lease was coming to an end. On the basis of the February 2025 decision, it is logical to conclude that the ICB must also accept that any failure to open as a result of the coming to end of the lease is for reasons beyond the control of my client. It is for that reason that my letter states "The Company's breach of the terms of service (if any)...".

Paragraphs 15 to 20

- 6.14 My client does not assert that the ICB is estopped from reaching a different decision from that which was reached previously, but it must make consistent decisions.
- 6.15 The difficulty in this case is that the ICB is refusing to make any sort of decision whatsoever in respect of the new temporary relocation application. That refusal

is unlawful and is preventing my client's pharmacy from re-opening. The ICB gives no lawful justification for its failure to apply the regulations (and, of course, no such lawful justification could ever be given because there is no power, in the regulations, to defer consideration of a temporary relocation application).

Paragraphs 21 – 23

- 6.16 My client has already explained the background to the previous premises and does not intend to repeat those matters again
- 6.17 In conclusion, for the reasons given by my client, I invite NHS Resolution to uphold my client's appeal. It is respectfully submitted that the proper course of action in this case is for the appeal to be upheld and the matter remitted to the ICB to determine my client's temporary relocation application in accordance with the regulations."

7 Additional comments

In response to the further comments, Ward Hadaway on behalf of the Commissioner submitted additional final comments, which were sent to Temple Bright acting on behalf of the Appellant.

- 7.1 "Thank you for your email enclosing the additional comments from Messrs Temple Bright in support of the appeal by Jhoots Healthcare Limited.
- 7.2 I note that the matter will now be considered and appreciate that you may wish to invite any final comments from the appellant's lawyers but some of their comments do still need correcting briefly hence this short email for the consideration of the NHSR assessor.
- 7.3 I have attached below the remaining emails and replies in the thread following the email I sent which the appellant included as an attachment at the end of its original appeal.
- 7.4 This is only sent now in light of some of the recent comments from the appellant's lawyer and to correct any impression given that the ICB has in some way denied it the chance of being heard in respect of its temporary relocation application.
- 7.5 To confirm, the offer to hear this application at the earliest opportunity purely as a matter of pragmatism and expediency still stands although I and the ICB have heard nothing in reply from the appellant or its lawyer in respect of that offer. The first available hearing date would be 17 December.
- 7.6 Further, the items requested originally were not forthcoming and it is thought only right that the full response provided originally be in front of the NHSR to decide what weight and relevance to afford to the observations set out in the most recent correspondence from Temple Bright.
- 7.7 Should any further assistance or queries be needed, please do not hesitate to contact the author on the details set out below."

8 Consideration

- 8.1 The Appellant seeks to appeal against the decision of the Commissioner to remove its premises from the pharmaceutical list under Regulation 73 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 8.2 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 2.32 above (and elaborated on in observations and further comments). 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)(i). 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) C has repeatedly been issued with remedial notices or breach notices (or both) in relation to the relevant term of service*
- 8.3 I consider that Regulation 73(1)(b)(i) has three fairly straightforward elements, the first being that there has been a breach of a particular term of service, the second that a remedial or breach notice has been issued in relation to said term, and the third that this has happened repeatedly. In addition, there is the overriding premise of Regulation 73(1)(b), that C has breached the terms of service, which must occur to trigger removal.
- 8.4 I am mindful that the Appellant did not seek to appeal any of the breach notices which had been issued to it by the Commissioner. In addition, I note that the breach notices all referred to the same term of service. As such I am satisfied that the requirement for multiple breach notices, relating to the relevant term of service, has been met and that this is not in dispute between the parties.
- 8.5 However, I note that the Appellant has stated that it has not breached the terms of service, which would be necessary in order for the Commissioner to rely on Regulation 73(1)(b). I will, therefore, start by considering if any breach has occurred in the circumstances set out by the parties. I shall not repeat the entire background, as that has been well established, but the key elements are necessary for my consideration.
- 8.6 I note that on or before 7 March 2025 the Appellant ceased providing services. The Commissioner has stated that this date is when the keys for 1 Embleton Court (the "Previous Premises") were handed over, but that it is unclear if that is the date when services actually stopped. I note that the Appellant has not

responded to this issue. I agree with the Commissioner that it is unlikely that the pharmacy could have been vacated completely in one day, such that services were still being provided. However, in the absence of an explicit date on which services terminated, I shall treat 7 March 2025 as the relevant date.

- 8.7 With this in mind, I note that since that date no services have been provided by the Appellant at the Previous Premises, or any other location for that matter. I consider that this would, *prima facie*, indicate a breach of Paragraph 23(1)(a), Schedule 4 of the Regulations. That paragraph provides as follows:

23.—(1) Subject to paragraph 23A, an NHS pharmacist (P) must ensure that pharmaceutical services are provided at or from P's pharmacy premises—

(a) for 40 hours each week

- 8.8 I note, however, that the Appellant has stated that Paragraph 23(10) should apply on the facts. This provides for circumstances where failure to provide pharmaceutical services in accordance with Paragraph 23(1) does not constitute a breach:

(10) Where there is a temporary suspension in the provision of pharmaceutical services by P because of illness or another reason beyond the control of P, P is not in breach of sub-paragraphs (1) and (7), or of paragraph 23A(5)(a), provided that—

(a) P notifies NHS England of that suspension as soon as practicable, in the manner required by paragraph 29D(2)(a) and wherever possible before the start of the suspension;

(aa) P uses all reasonable endeavours to implement the business continuity plan that P is required to have by virtue of paragraph 29D; and

(b) P uses all reasonable endeavours to resume provision of pharmaceutical services as soon as is practicable.

- 8.9 The Appellant has stated that the lack of service provision was in circumstances which constitute a temporary suspension of services for reasons beyond its control. The reason for this being "*due to being evicted from the Pharmacy premises by the landlord*" and subsequently it being unable to find alternative premises from which to offer services from.

- 8.10 Having reviewed the entirety of the Appellant's representations I am mindful that there is an additional aspect of this, which I wish to consider first, before turning to the question of whether such events constitute reasons beyond the Appellant's control. This is that the Commissioner initially granted an application under Regulation 29 for a temporary amendment to the pharmaceutical list in order for the Appellant to provide services from 171-173 Redcar Lane ("Premises 2") due to it no longer being able to provide services

from the Previous Premises. The Appellant has highlighted that the application was granted on the basis of Regulation 29(1)(b) i.e.:

"there is a temporary suspension in the provision of pharmaceutical services at or from listed chemist premises (P1) for a reason (for example, fire or flooding) that is beyond the control of the NHS chemist (C) listed in relation to P1."

- 8.11 The Appellant therefore states that, since the application was accepted, then the Commissioner, at that time, must have been satisfied that the circumstances the Appellant faced constituted reasons beyond its control. The Appellant thus puts forward that, logically, the same circumstances which constitute reasons beyond its control for the purposes of Regulation 29, should also meet the requirements for Regulation 23(10). The Appellant concludes that it cannot be in breach of its terms of service if this is the case.
- 8.12 I note that this has been strongly objected to by the Commissioner. The first reason for this being that the information provided by the Appellant as part of its application under Regulation 29 was not complete. The Commissioner states that the decision was taken on the basis of the information available to it at the time. Having reviewed the application, I note the omission by the Appellant of the fact that it had in fact a year to arrange for relocation, and that this was not a sudden change in position. I also note the implication that Premises 2 were ready for service provision. The Commissioner has indicated that, in these circumstances, the information was "at best specious".
- 8.13 In particular, I wish to highlight the email of 29 January 2025, which enclosed the Regulation 29 application. In this email the Appellant describes the need for relocation as being "*due to unforeseen circumstances*". I find this description particularly odd given that the circumstances had been at least a year in the making, and, by the Appellant's own omission, known to it from the signing of the contract.
- 8.14 In consequence of these omissions, or ambiguities, the Commissioner has stated that the grounds under Regulation 29 were likely not established, and so the breach notices, and subsequent breach did in fact occur.
- 8.15 I am mindful that the Regulation 29 application is not under appeal as part of this determination and, as such, I take no decision as to whether or not it should have been granted. However, there are several aspects of this which require elucidation.
- 8.16 I note that there is nothing which bound the Commissioner, once it approved the Regulation 29 application, to be forever resigned to the fact that the circumstances were beyond the control of the Appellant. If facts later became available which reframed those circumstances, or cast such light on them as to allow them to be more thoroughly understood, I see no reason why, if the opportunity to again review the circumstances which occurred, it was somehow barred from making a different decision.
- 8.17 I note that the Appellant has not raised any principles of law which may impede the Commissioner from changing its mind, but rather principles of logic. I

consider the Appellant's reasoning amounts to the fact that not only did the Commissioner's decision in February 2025 amount to a grant of its application, but also a determination of the circumstances as being beyond its control. Whilst this is technically true, in the sense that such a decision was implicit in the grant, it is not a standalone determination under the Regulations such that it can never be revisited. I would expect that each time the Commissioner was required to consider if the circumstances were beyond the control of the Appellant, it would take that decision afresh. I consider the only heed paid to the previous decision would be to ensure that the decision making of the Commissioner was neither arbitrary nor conflicting.

- 8.18 To that end, I believe the core question to be if the Commissioner's change in stance that the circumstances were indeed beyond the control of the Appellant represents something irrational or unfair. However, I note that a clear explanation for the change has been given – further facts were made available which profoundly changed the Commissioner's understanding of the initial situation. I consider that it would be fundamentally irrational if the Commissioner was forced to decide the circumstances were outside of the Appellant's control only because it had once made that decision, in circumstances where it had become apparent that that was not the factual reality of the situation.
- 8.19 I consider that the Commissioner would be right to change its position where the factual basis for the earlier decision proved to be incomplete or false. I note the Appellant's statement that the Commissioner should have investigated these matters prior to February 2025. However, I consider the Commissioner was entitled to rely on the information provided by the Appellant as being both complete and accurate.
- 8.20 I also consider that this decision does not involve revisiting the decision of February 2025, but instead is its own decision in relation to Paragraph 23(10) of Schedule 4. Each time a breach notice was issued, this was a separate determination on the nature of the circumstances.
- 8.21 I also note that the Appellant only relies on the fact that the landlord refused to renew the lease, and its inability to find a suitable replacement, as being the circumstances in which it was unable to provide services. I consider that this is not the sole factor which lead to its being unable to provide services. I note that the Commissioner also identified this point.
- 8.22 Whilst the Appellant did cease to have access to the Previous Premises I note that its Regulation 29 application had been approved by the Commissioner. As such, it was not necessarily the case that come 7 March 2025 the Appellant had to cease providing services, as it could have been able to do so from Premises 2. However, as agreed by the parties, Premises 2 was, in fact, not suitable for providing pharmacy services, not least because it lacked GPhC registration.
- 8.23 I find the exact circumstances of the issue with Premises 2 to be somewhat confusing. I note that at paragraph 2.22 the Appellant describes the issue with the premises as being that it did not have the correct planning permission to be

used as a commercial premises. However, I also note that in its email of 23 July 2025 the issue was described as being that further works were needed on the premises in order to meet GPhC requirements and that planning permission would be required. What I conclude to be likely is that not only did the location lack commercial premises permission, further work was also required, which also needed planning permission. Therefore, there were two significant issues with Premises 2.

8.24 These revelations and the subsequent failure to provide a notice of commencement for Premises 2 all occur after the loss of the Previous Premises. I, therefore, consider that there are additional reasons why the Appellant was not providing services as required. Consequently, it also needs to be considered as part of the circumstances for the purposes of Paragraph 23 of Schedule 4.

8.25 To that end, I will now examine the question of whether the circumstances which the Appellant found itself in were sufficient to meet the requirements of Paragraph 23(10).

8.26 I reiterate the point that the decision of the Commissioner in February 2025 regarding the Regulation 29 application is not under consideration as part of this appeal. The decision in question is the removal from the list. However, the statements of the Appellant raise a question as to the parameters in which I am required to carry out said exercise from. 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."

8.27 I note that I exercise these powers on behalf of the Secretary of State in this regard. This specific wording I consider 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.

8.28 I also note that elsewhere in Paragraph 9 of Schedule 3 of the Regulations the Secretary of State may simply redetermine a decision, without being restricted to what the Commissioner could have done at that time. 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.

- 8.29 In these circumstances the Appellant has not put forward any reason of law which would have prevented the Commissioner from deciding that there had been a breach, even if that was different to the decision taken in relation to Regulation 29, other than it being inconsistent. Therefore, I have the ability to decide whether or not the circumstances were indeed beyond the control of the Appellant for the purposes of Paragraph 23, of Schedule 4.
- 8.30 I consider that, as a starting point, issues relating to the renting of premises would ordinarily be within the control of any appellant for the purpose of the Regulations. This position is based on the fact that the finding and establishing of premises is a commercial undertaking, involving the agreement and negotiation of contracts, the terms of which can be amended to suit the parties' needs. This ability to choose the location and the contract terms means that leases are inherently within an contractor's control. However, I am mindful that something unusual, extraordinary, unreasonable or otherwise unforeseeable could occur that changes this basic understanding. On this basis I will proceed to consider the facts.
- 8.31 As I have set out, there are two events which need examination, the actions of the landlord in relation to the Previous Premises, and the subsequent issues with Premises 2.
- 8.32 I note that a true and complete timeline of events which led to the handing over the keys to the Previous Premises by the Appellant is necessary, as the events are not plainly set out by either party. Firstly, the Appellant has made it clear that it was always aware that its lease of the Previous Premises was due to expire in March 2025. This was the starting position from the beginning of its subletting the property.
- 8.33 The reason I consider it necessary to mention this is that the Appellant has repeatedly described itself as having been "evicted" from the Previous Premises. The Commissioner states that this term is not applicable to these facts. I concur, the characterisation of the lease's expiry as an "eviction" is, at best, hyperbolic and, at worst, misleading. In its ordinary usage, eviction refers to the act of compelling a person to leave premises, typically through legal process or enforcement following breach of obligation. It carries the sense of forcible removal rather than voluntary departure. By contrast, the natural termination of a tenancy upon its agreed expiry date occurs by operation of contract, not by force or legal intervention. The tenant's right to occupy simply ceases because the term bargained for has elapsed. To describe this as an eviction therefore risks creating an impression of wrongful conduct by the landlord, where, as far as I have been made aware, none exists.
- 8.34 The next date that I have been provided is July of 2024, when the Appellant emailed the landlord regarding the renewing of the lease. I note that the Appellant subleased the Previous Premises, with the lease being held between a third party and the landlord. As per the emails, the Appellant was, in consequence, unable to renew the lease of the property. The next email in the

chain appears to suggest that the Appellant was attempting to buy the long term lease. The landlord refuses this initial offer.

- 8.35 There is, I note, an email of 16 August 2024 which appears to be related to the acceptance of the Appellant's notice to vacate. The next email with the landlord is in October 2024, which again refuses an extension of the lease. I note that the Commissioner has stated that it contacted the landlord who informed them that the issue was a refusal to agree to an increased rent. This would appear to be at odds with the email chain provided. However, I also note that in one of the emails from the landlord there is a reference to negotiating a new lease, as a possibility.
- 8.36 What I consider complex about these emails is there is not any negotiation between the parties, instead there is the offer to buy the long term lease and the email that this was not possible and then silence, before the Appellant again asks about renewing the lease, or subletting. None of these emails seem to spell out to the landlord a request for the Appellant to start a new lease, or begin to negotiate what that would be. I consider the evidence to be inconclusive as to the exact reason why the Appellant was unable to continue to lease the Previous Premises.
- 8.37 Nevertheless, what I have not been shown is any apparent unreasonableness on the behalf of the landlord, or anything particularly unusual about this scenario. I return to the fact that the contract, as agreed between the landlord and the Appellant was always set to expire in March 2025. Whilst notice was given to the Appellant a year prior that the lease was to come to an end, this could have been foreseen from the start, especially considering that the Appellant was only ever in the position of being a subletting, giving them even fewer rights over the headlease.
- 8.38 I also note that the Appellant handed back the keys several days prior to the expiry of the lease, providing voluntary possession to the landlord.
- 8.39 I note that Paragraph 23(10) of Schedule 4 provides that where there is a temporary suspension in the provision of pharmaceutical services "because of illness or another reason beyond the control of P", the contractor is not in breach of its obligations under sub-paragraphs (1) and (7), provided that it notifies the Commissioner and uses all reasonable endeavours to resume services as soon as practicable.
- 8.40 I note that the phrase "beyond the control of P" is not defined in the Regulations. I consider that its ordinary meaning must be applied, taking into account the purpose of the provision. The purpose is to excuse a breach where an external factor prevents service delivery in spite of any level of diligence undertaken, subject to obligations to notify and mitigate.
- 8.41 I note that the situation under review concerns a landlord taking back possession at the end of a lease. As I have noted, this is a contractual event which the Appellant clearly knew about from the outset, by its own admission. While the Appellant could not compel the landlord to renew, the expiry date was fixed and foreseeable, and the Appellant retained control over its business

planning and continuity arrangements. The ability to negotiate renewal or secure alternative premises clearly falls within the Appellant's sphere of responsibility.

- 8.42 Whilst I have been provided with limited email correspondence with the landlord, as pointed out by the Commissioner, there is no evidence of the Appellant attempting to locate and establish premises anywhere else, until Premises 2, in early 2025. I also note that in January 2025 the Appellant appeared to be still requesting to renew the lease of the Previous Premises. I am also mindful that for Paragraph 23(10) to operate the Appellant is required to use all reasonable endeavours to resume service.
- 8.43 I note that the phrase “beyond the control of P” must be construed in context. I consider that, although the landlord’s legal right to repossess cannot be overridden, the Appellant could have reasonably anticipated and mitigated the impact of lease expiry. This distinguishes the situation from illness, which usually occurs without warning and cannot be prevented by reasonable endeavours. The inclusion of “illness” as an example suggests that the provision is aimed at sudden, unavoidable events rather than predictable contractual milestones.
- 8.44 It is generally understood that commercial decision making is not beyond of the control of the Appellant. The Appellant agreed to the lease terms and this was very much within its control. In the absence of any unreasonable actions of the landlord, or any evidence of what happened for the year in which the Appellant knew of the impending lease end, I do not consider that these events can constitute reasons beyond the control of the Appellant.
- 8.45 I am also mindful of the fact that the Appellant was obliged to inform the Commissioner as soon as possible. It does not appear that there was any ongoing communication between the Appellant and the Commissioner to inform them of the issue, until such time as Premises 2 had been secured.
- 8.46 Regardless of this, as I have made reference to, the loss of the Previous Premises was not the sole reason why the Appellant was unable to provide services. I note that in January 2025 suitable premises (Premises 2) was supposedly located. However, there were issues with this premises which meant that services were never provided from that location.
- 8.47 I consider that this issue clearly directly contributed to the Appellant's inability to provide services. I consider that the ability to locate, inspect and then make a Regulation 29 application for premises sits squarely within its control. The Commissioner has stated that it would expect confirmation of planning permission was something so obvious that it should reasonably have been immediately checked. I note that the Appellant has not explained why it did not check these issues, or what aspects the GPhC identified as being needed to change that it had overlooked. The minutes of the removal hearing suggest it was related to the pharmacy's capacity.
- 8.48 I am mindful that the Appellant's own continuity plan indicates that GPhC registration may need to be considered. In these circumstances I would have

expected the new location to have been toughly vetted, especially if there was a risk of a gap in service provision if this had not been carried out, with a mind on GPhC requirements.

- 8.49 In addition, I note that the Appellant did not disclose the lack of GPhC registration as part of the Regulation 29 application, nor that any fit out might be required.
- 8.50 The Appellant has mainly focused on the fact that the Regulation 29 application established that the circumstances were beyond its control. The Appellant does not appear to have considered how its own actions impact those circumstances. I note that "circumstances" must include anything that materially impacts the facts. As such, I consider that this failure to provide services from Premises 2 actually put the circumstances further into the control of the Appellant. It is unclear if it may have been able to locate to different, more suitable premises, had proper due diligence been carried out, or if work could have been done to secure planning permission, had it been known about.
- 8.51 The Appellant had a year, at least, to secure new premises, and yet appears to have not done so and yet was able to secure two premises in the space of 7 months in 2025.
- 8.52 I, therefore, determine that the circumstances which the Appellant found themselves in, whilst involving other parties, were firmly within its control. It had a year to plan for the end of the lease, rather than merely hoping for renewal. I have not been provided evidence of any other locations which were contacted or negotiated with. I also note that Premises 2 was unsuitable for a pharmacy, and that the Appellant appears to have failed to discover this fact prior to making the Regulation 29 application, which was also squarely within its purview to do so.
- 8.53 As such, I consider that the Appellant was in breach of Paragraph 23(1) of Schedule 4 of the Regulations, as Paragraph 23(10) did not apply, based on the facts and evidence provided to me. In consequence, Regulation 73(1)(b)(i) did also apply, as a breach had occurred when the Appellant failed to provide services and, as I have already considered, the other requirements were met.
- 8.54 I note that the removal was also effected by Regulation 73(1)(b)(ii). This regulation provides the following:
- [...]
- (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, [...]"*
- 8.55 As I have established, the Appellant was in breach of its terms of service, and both parties agree that the circumstances are currently ongoing. However, the Appellant has stated that any such breach would be for good cause. There are two reasons for this, per the Appellant, the first being that the closure was "by

reason of the landlord's actions" and secondly that the Appellant is seeking to reopen from alternative premises.

- 8.56 I shall consider both of these points in turn. Firstly, having already set out all of the considerations above, I again disagree with the use of phrasing by the Appellant. It is neither wholly accurate nor correct to state that the closure resulted from the landlord's actions.
- 8.57 To explain, if the landlord had simply done nothing, then the contract would still have expired, bringing the lease to an end. The landlord was not obliged to renew the lease, as per the Appellant's explanation. Therefore, it would be equally fair, by the Appellant's reasoning, to blame any individual who had a suitable property in the surrounding radius for not giving up their property to the Appellant. It is unclear if any other action of the landlord is being relied upon as being a good reason.
- 8.58 As I have set out above, the Appellant had adequate time and opportunity to seek alternative premises. I have not been provided any evidence of what efforts the Appellant undertook to secure other premises, or the level of negotiation entered into with the existing landlord beyond the emails provided. As the circumstances were within the Appellant's control, were foreseeable, and potentially avoidable, I do not see how they could constitute good reason.
- 8.59 I next turn to the question of the possibility of the Appellant moving to a third premises. I note that on 23 July 2025 the Appellant applied for a temporary relocation, again under Regulation 29, to 3 Embleton Court ("Premises 3"). This application remains undecided by the Commissioner as it was awaiting the outcome of the removal decision before proceeding to make a determination.
- 8.60 I note that the Appellant has stated that not only did the Commissioner not have the power to put the temporary relocation decision on hold but, that in consequence of this, had made themselves the reason for the ongoing failure to provide services.
- 8.61 Having reviewed the comments from both parties I note that on 7 July 2025 notice was sent to the Appellant regarding the Commissioner's consideration of removal of premises from the relevant pharmaceutical list. The Appellant responded on 23 July 2025 confirming its wish to attend the oral hearing on 7 August 2025. I note that this email also confirmed that it had, on an undisclosed date, made arrangements to obtain Premises 3. As noted above, the temporary relocation application was submitted on the same day.
- 8.62 The oral hearing regarding the removal of the Appellant was held on 7 August 2025, with the Appellant being informed of the outcome on 13 August 2025.
- 8.63 I set out this timeline as the Appellant suggests that the putting on hold of the Regulation 29 application for temporary relocation prejudiced its position. I consider that the chronological history of events clearly demonstrates that only at the point where the removal from the pharmaceutical list was in progress was the application made. I note that the Regulations do not set out a timeframe for a response by the Commissioner. I am also aware that if I determine that

the removal from the list was appropriate, then the consideration of the 29 Regulation application becomes somewhat moot.

- 8.64 I consider the question here to be one of timing. I am mindful that the Commissioner is not obliged to take the decision immediately. In addition, I consider it sensible to avoid wasting time, and public money, on decision-making which appears to be pointless.
- 8.65 I do not consider it part of my role in determining this appeal to take any decision on what the outcome of the Regulation 29 application would have been. However, I note that the application was made in circumstances where the premises, again, lacked GPhC registration, and that some, unspecified fit out is required, but its progress has not been updated on.
- 8.66 At the time the removal decision was taken, 7 August 2025, the Appellant did not have premises from which to provide services from. It had a speculative Regulation 29 application in progress, however, neither party can speak to what the outcome of that application would have been. I cannot compel the Commissioner to take a decision on it.
- 8.67 I note that it makes the most sense that the actions taken by the Commissioner progressed in chronological order. Therefore, it was sensible to take the removal decision first, and then consider any other applications. As I have alluded to, work still needed to be completed on Premises 3, including GPhC registration. As such, even if it had been approved on the same day it was made, it was clear that services could not be delivered immediately.
- 8.68 Therefore, the Appellant was, even with approval in place, going to continue to be in breach of its terms of service. The lack of approval was, on 7 August 2025, not the cause of the breach but instead it continued to be the Appellant's lack of any suitable premises. I consider that the Commissioner's decision to wait to determine the Regulation 29 application did not prejudice the Appellant's position in terms of the removal decision. I make no determination as to the Commissioner's ability to put "on hold" the decision, as it is outside of the scope of this appeal.
- 8.69 This leads me to the final reason the Appellant has put forward as to why the removal should not take place, that it was neither justifiable nor proportionate. The Appellant states that the correct approach, that being the most proportional and reasonable, would have been for the Commissioner to approve the Regulation 29 application. However, I note that this implies that the Commissioner was required to approve the application.
- 8.70 Based on the level of consideration I have undertaken above, the question of whether the circumstances were beyond the Appellant's control was, at the very least arguable. The Commissioner at best may have considered the application, but an uncertain application cannot render the decision to terminate unjustifiable. It most certainly would have been the most favourable outcome to the Appellant, but that in itself does not impact on the decision in relation to its reasonableness or proportionality.

- 8.71 I also note that the temporary relocation was considered in relation to the reasoning to remove, by reference to the minutes of 7 August 2025 meeting of the Commissioner. Therefore, it was taken account of, contrary to statements made by the Appellant. However, on 7 August 2025 the Regulation 29 application was undetermined. Instead, what the Commissioner could rely on was that the location was not currently registered with the GPhC and needed further work. I note that the Appellant states that it should have been given a "reasonable" quantity of time to affect the changes, though it has not indicated why this should have been the case.
- 8.72 I am mindful that the Appellant had applied to open at a previous location, in similar circumstances, with similar levels of assurance provided, and nothing had come of it. In addition, this was now several months down the line from its cessation of services, which must be taken into consideration. For these reasons, and all the issues I have already considered, the removal was justified and proportionate.
- 8.73 Finally, I note that the Appellant has raised the issue of Regulation 73(5)(a). This states:
- "(5) NHS England must not remove C, or chemist premises listed in relation to C, from a pharmaceutical list under paragraph (1) because—
- (a) C has simply ceased to provide pharmaceutical services at or from particular listed chemist premises (regulation 74 applies in those circumstances)"
- 8.74 I note that "*simply ceased*" denotes a straightforward and continuing cessation. I highlight this phrase, because that is plainly not what has occurred here. The Appellant has not merely ceased to provide services from that particular location but has, in fact, lost all rights of ownership over the location and any ability to return to it. In addition, I note that it has attempted to resume services at other locations, and then failed to complete the process. I do not consider there to be anything simple about these facts, as should be implicit from the level of consideration which these facts have necessitated.
- 8.75 In addition to this, 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 closure of less than six months, especially those of a complex nature, to be immunised from Regulation 73. I therefore determine that Regulation 73(5)(a) does not apply on these facts.
- 8.76 I consider that the Appellant had indeed breached its terms of service, as the breach was not beyond its control. Following this, the Commissioner was entitled to remove the Appellant from the pharmaceutical list in accordance with Regulation 73(1)(b)(i). Furthermore, I do not consider there to be good reason for the breach, and as such the Commissioner could also rely on Regulation 73(1)(b)(ii). I also consider that the requirements of Regulation 73(3) were met, and that Regulation 73(5) does not apply.

9 Decision

- 9.1 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.
- 9.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I confirm the decision of the Commissioner.

Head of Appeals
NHS Resolution