

11 March 2026

REF: SHA/ 26936

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

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

**APPEAL AGAINST WEST YORKSHIRE ICB
DECISION NOT TO GIVE THIRD PARTY APPEAL
RIGHTS TO PHARMACY2U LTD IN RESPECT OF
THE DECISION TO GRANT AN APPLICATION BY
ADHERA LTD FOR INCLUSION IN THE
PHARMACEUTICAL LIST FOR A DISTANCE
SELLING PHARMACY AT UNIT 8, THE
COURTYARDS, VICTORIA ROAD, LEEDS, LS14
2LB**

1 Outcome

- 1.1 Pharmacy2U Ltd is a person with third party appeal rights against the decision of West Yorkshire ICB set out in its letter dated 30 January 2026.

A copy of this decision is being sent to:
Brabners LLP on behalf of Pharmacy2U Ltd
Healthcare Plus Consulting Ltd on behalf of Adhera Limited
PCSE on behalf of West Yorkshire ICB
Cohens Chemist
Community Pharmacy West Yorkshire

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1 The Application

By application dated 17 June 2025, Healthcare Plus Consulting Ltd on behalf of Adhera Limited (“the Applicant”) applied to the West Yorkshire ICB (“the Commissioner”) for inclusion in the pharmaceutical list for a distance selling pharmacy at Unit 8, The Courtyards, Victoria Road, Leeds LS14 2LB.

2 Process

The Commissioner gave notice of the notifiable application in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”) initially by cover letter dated 4 July 2025 and subsequently by cover letter dated 12 November 2025 following receipt of further information from the Applicant. This is a summary of representations made to the Commissioner by Brabners LLP on behalf of Pharmacy2U Ltd in a letter dated 13 August 2025 (i.e. within 45 days as set out in the Regulations):

2.1 “Written representations in opposition to an application for inclusion in a pharmaceutical list at Unit 8, The Courtyards, Victoria Road, Leeds LS14 2LB in respect of a distance selling premises pharmacy (“the Application”) by Adhera Limited (“the Applicant”)

2.2 Introduction

2.3 We act for Pharmacy2U Limited, the proprietor of a pharmacy, which is located at Unit 4B, Victoria Industrial Park, Victoria Road, Leeds LS14 2LA (“our client”).

2.4 Our client has been notified of the Applicant’s submission of the Application and wishes to make the following written representations in opposition to it.

2.5 Applicable legislation

- 2.6 We note that the Application has been made pursuant to regulation 25(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).
- 2.7 Regulation 25(1) of the Regulations was repealed on 22nd June 2025, and we note that the date on which the Applicant signed the Application was 17th June 2025. Notwithstanding the date on which the Applicant signed the Application, in order for the Application to be considered pursuant to applicable legislation that was in force prior to its revocation, as a primary point of consideration, NHS England needs to be satisfied that it received the Application before 23rd June 2025.
- 2.8 Regulation 25(2) states: *NHS England must refuse an application to which paragraph 25(1) applies—*
- 2.9 (a) *if the premises in respect of which the application is made are on the same site or in the same building as the premises of a provider of primary medical services with a patient list; and*
- 2.10 (b) *unless NHS England is satisfied that the pharmacy procedures for the pharmacy premises are likely to secure—*
- 2.10.1 (i) *the uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services, and*
- 2.10.2 (ii) *the safe and effective provision of essential services without face to face contact between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff.*
- 2.11 Regulation 64(3) is also relevant in NHS England's consideration of the Application in that it sets out a list of specific conditions to which a successful applicant (X) must adhere once an application for a distance selling premises pharmacy has been granted:
- 2.11.1 (a) *X must not offer to provide pharmaceutical services, other than directed services, to persons who are present at (which includes in the vicinity of) the listed chemist premises;*
- 2.11.2 (b) *the means by which X provides pharmaceutical services, other than directed services, must be such that any person receiving those services does so otherwise than at the listed chemist premises;*
- 2.11.3 (c) *the listed chemist premises must not be on the same site or in the same building as the premises of a provider of primary medical services with a patient list;*
- 2.11.4 (d) *in the case of pharmacy premises, the pharmacy procedures for the premises must be such as to secure—*

- 2.11.4.1 (i) *the uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services, and*
- 2.11.4.2 (ii) *the safe and effective provision of essential services without face to face contact between any person receiving the services, whether on their own or on someone else's behalf, and X or X's staff; and*
- 2.11.5 (e) *nothing in X's practice leaflet, in X's publicity material in respect of the listed chemist premises, in material published on behalf of X publicising services provided at or from the listed chemist premises or in any communication (written or oral) from X or X's staff to any person seeking the provision of essential services from X must represent, either expressly or impliedly, that—*
 - 2.11.5.1 (i) *the essential services provided at or from the premises are only available to persons in particular areas of England, or*
 - 2.11.5.2 (ii) *X is likely to refuse, for reasons other than those provided for in X's terms of service, to provide drugs or appliances ordered on prescription forms or repeatable prescription forms which are presented by particular categories of patients (for example, because the availability of essential services from X is limited to other categories of patients).*
- 2.12 Therefore, NHS England must refuse the Application if the Applicant fails to produce sufficient evidence within the Application to demonstrate to the reasonable satisfaction of NHS England that its pharmacy procedures for the proposed pharmacy premises are likely to secure: (i) the uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services; and (ii) the safe and effective provision of essential services without face to face contact between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff.
- 2.13 **Representations – summary of grounds for opposition**
- 2.14 For the reasons set out below, we submit that the Applicant has failed to produce satisfactory evidence in the Application to enable NHS England to reasonably conclude that the Applicant's pharmacy procedures for the proposed pharmacy premises are likely to secure the safe and effective provision of essential services without face to face contact between any person receiving the services, whether on their own or on someone else's behalf, and the Applicant or the Applicant's staff.
- 2.15 **Specific representations in respect of the Application and the further information which the Applicant has submitted in support of the Application (“Supporting Information”)**

- 2.16 **Missing relevant information.** At paragraph 1.1, we note that the Applicant has omitted its correspondence address.
- 2.17 At paragraph 4, we note that the Applicant has indicated that it does not intend to provide any advanced or enhanced services (as it has also confirmed in its response at paragraph 7.3 of the Application), which means that the Applicant will not provide the following services:
- 2.17.1 Appliance use reviews;
 - 2.17.2 Adult flu vaccination service; Childhood flu vaccination service; Hypertension case-finding; Lateral flow device service;
 - 2.17.3 New medicine service; Pharmacy contraception service; Pharmacy first service;
 - 2.17.4 Smoking cessation service;
 - 2.17.5 Stoma appliance customisation;
 - 2.17.6 Covid-19 vaccination service; and
 - 2.17.7 Respiratory syncytial virus (RSV) and pertussis vaccination service.
- 2.18 In light of the above and in anticipation of an impending legislative change which, when in force, will prevent distance selling premises pharmacies from undertaking advanced or enhanced pharmaceutical services on a face to face basis with the patient at the pharmacy premises, it is unclear why the Applicant has included a “Consult room” in its preliminary indicative floorplan of the proposed pharmacy premises.
- 2.19 With distance selling premises pharmacies being prevented, pursuant to Regulation 64(3), from providing essential pharmaceutical services to persons who are present at the pharmacy premises (and the means by which the pharmacy provides essential pharmaceutical services must be such that any person receiving those essential pharmaceutical services does so otherwise than at the pharmacy premises), and the Applicant asserting that it will not be providing any advanced or enhanced services, NHS England should satisfy itself as to the purpose for which the Applicant will be using such “Consult room” and that the Applicant will not be using it to provide essential services, whether in whole or in part, on a face to face between any person receiving those services, whether on their own or on someone else's behalf, and the Applicant or the Applicant's staff.
- 2.20 On such preliminary indicative floorplan of the proposed pharmacy premises, we note the presence of what the Applicant has described as three “controlled access entrances”. All these entrances, however, are internal entrances, not external entrances to the proposed pharmacy premises. We note that neither of the two external entrances to this ground floor premises which are marked on the plan are denoted as being subject to controlled access entry. We submit that the Applicant has therefore failed to demonstrate on the floorplan that its

external entrances will satisfactorily control patient access to the proposed pharmacy premises and prevent face to face contact between any person receiving essential NHS pharmaceutical services (whether in whole or in part), whether on their own or on someone else's behalf, and the Applicant or the Applicant's staff.

- 2.21 We note that the Applicant has answered N/A at paragraph 5, a section in which the Applicant is prompted to complete the section if the proposed premises are adjacent to, or in close proximity, another pharmacy or dispensing appliance contractor. We assert that our client's pharmacy is in fact in very near (being less than 50m away) proximity to the Applicant's proposed pharmacy premises. The Cambridge English Dictionary defines adjacent as "very near, next to, or touching".
- 2.22 Regulation 31(1) states: *(1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.*
- 2.23 Regulation 31(2) states: *This paragraph applies where—*
- 2.23.1 *(a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from—*
- 2.23.1.1 *(i) the premises to which the application relates, or*
- 2.23.1.2 *(ii) adjacent premises; and*
- 2.23.2 *(b) NHS England is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).*
- 2.24 We request that NHS England, in its determination of the Application, satisfies itself whether, on the facts and by reference to the location of our client's existing pharmacy, the Application must be refused by application of Regulation 31.
- 2.25 At paragraph 7.1 of the Application, the Applicant is required, pursuant to Regulation 25(2)(b)(i) and (ii) to explain how the pharmacy procedures used within the proposed distance selling pharmacy premises will secure:
- 2.25.1 *(i) the uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services, and*
- 2.25.2 *(ii) the safe and effective provision of essential services without face to face contact between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff.*

- 2.26 The Applicant asserts in the Supporting Information that, *“We have provided information throughout this document to demonstrate how the pharmacy procedures used within the premises will satisfy the requirements under Regulation 25, paragraph 2(b)”*. For the reasons stated below, we disagree with this assertion.
- 2.27 In order to meet the threshold of this legislative test, the Applicant is required to explain to NHS England in sufficient detail within the Application, how (i.e. the manner in which) its proposed pharmacy procedures will secure such outcomes, not merely to state that these are the intended outcomes of such proposed pharmacy procedures. The Applicant must do so in sufficient detail, and by demonstrating how its procedures will address the material requirements of the complete range of essential pharmaceutical services that are listed at Schedule 4 Part 2 (paragraphs 3 to 22 inclusive) of the Regulations in order to allow NHS England to reasonably satisfy itself that, based on the detailed explanations and supporting evidence provided by the Applicant, it can be confident that the aims of Regulation 25(2)(b)(i) and (ii) can be secured by the manner in which such pharmacy procedures have been explained and evidenced by the Applicant.
- 2.28 Having reviewed the Supporting Information provided by the Applicant, we consider that the Applicant has failed to provide sufficient detail, explanation or evidence in the Application in order to allow NHS England to reasonably satisfy itself that the aims of Regulation 25(2)(b)(i) and (ii) can be secured by the Applicant.
- 2.29 For example:
- 2.30 The Applicant asserts under the heading **NHS Essential Services for persons anywhere in England** that: *“We will ensure that all patients across England can request NHS Essential Services via remote means throughout the proposed opening hours without direct face-to-face contact. This will be clearly stated on the website. It will also be stated in the Practice leaflet, subject to contractual changes”*. It is unclear whether the Applicant is asserting that its practice leaflet statement on its commitment to ensuring the availability of its NHS essential services to persons anywhere in England via remote means throughout the proposed opening hours without direct face-to-face contact is conditional upon the occurrence of certain unspecified “contractual changes”. NHS England should satisfy itself whether such conditionality is compliant with the requirements of the Regulations.
- 2.31 The Applicant asserts under the heading **Dispensing Medicines** that: *“Prescriptions will not be accepted if delivered to the unit by the patient themselves, or any third party acting on behalf of a patient”*, but has neither explained the specific procedures and safeguards that it intends to put in place in order to prevent patients from delivering their prescriptions to the pharmacy premises in the first place nor the manner in which such requests will be refused.
- 2.32 The Applicant asserts under the heading **Dispensing Medicines** that: *“Dispensed prescriptions will be delivered by staff driver or courier. Appropriate*

procedures exist for cold-chain items and controlled drugs", but has failed to confirm that such dispensed prescriptions will be delivered to persons anywhere in England. The Applicant has also failed to provide an explanation in respect of what it has stated as "*appropriate procedures*" for "*cold-chain items and controlled drugs*". For example, it has failed to explain how its procedures would deal with unsuccessful deliveries of such items. Would such dispensed products be retained by the staff driver or courier in their delivery vehicles overnight on the understanding that it is likely to be impractical for the return of such dispensed medicines to the pharmacy? The Applicant has failed to explain how its procedures will ensure that cold-chain storage integrity (for thermolabile products, such as vaccines, insulin and other temperature-sensitive pharmaceutical products) and safe storage requirements (for controlled drugs) will at all times be maintained in such circumstances. The Applicant has also failed to explain how or if such deliveries for controlled drugs will be tracked and audited and how or if it will make appropriate CD register entries if such controlled drugs are provided to a courier for collection and delivery to the patient.

- 2.33 In respect of controlled drugs, the Applicant has failed to explain how its procedures will deal with a situation when it is not possible to deliver the prescribed controlled drugs to the patient within 28 days of its date of issue.
- 2.34 In respect of thermolabile products, the Applicant, by failing to elaborate on what it considers to be "*appropriate procedures*" has failed to explain the length of time for which its temperature assurance packaging solution will maintain cold-chain storage integrity nor given any apparent consideration to how its procedures will satisfactorily address the circumstances where successful delivery of the product cannot be made to the patient within such timescale or how the Applicant will then ensure that it supplies the prescription to the patient with reasonable promptness. The Applicant has also failed to explain how or if such deliveries for thermolabile products will be tracked and audited.
- 2.35 The Applicant has failed to explain how in respect of Dispensing Medicines, its pharmacy procedures will ensure the safe and effective provision of essential services without face to face contact between any person receiving the services and the Applicant or the Applicant's staff at the proposed pharmacy premises in the following circumstances:
 - 2.35.1 when a received prescription is not legally or clinically correct, complete, or appropriate;
 - 2.35.2 when a prescription cannot be fully dispensed, how or if it will notify the patient that it is unable to supply the prescription in full, how or if it will fulfil its duty to supply the prescription with reasonable promptness, and how or if its procedures would deal with a partially completed prescription when it is unable (for example due to stock unavailability) to deliver the balance to the patient; or
 - 2.35.3 how or in what circumstances the patient's identity will be verified by the delivering staff driver or courier, and whether such patient verification will be logged and audited.

- 2.36 The Applicant asserts under the heading **Repeat Dispensing** that: *“Repeat prescriptions, after the first time, will only be given if it's confirmed remotely that: The patient is taking the drug or appliance correctly and is likely to continue doing so”* but has failed to explain how its pharmacy procedures will, in the absence of face to face service provision at the proposed pharmacy premises, establish how the patient is taking the drug or [using] the appliance correctly.
- 2.37 The Applicant asserts under the heading **Discharge Medicine Service** that: *“Consultations will be carried out privately to ensure confidentiality when providing this service remotely”* though it is not clear from whom, other than the Applicant's staff at the proposed pharmacy premises, the Applicant is trying to ensure that the patient's privacy is maintained.
- 2.38 The Applicant asserts under the heading **Disposal of Unwanted Medicines** that: *“Appropriate procedures exist for the disposal of controlled drugs”* but has not explained the specific procedures and safeguards that it intends to put in place in order to ensure the safe and lawful disposal of patient returned unwanted medicines, including specifically controlled drugs.
- 2.39 The Applicant asserts under the heading **Urgent Supply without a Prescription** that: *“We understand that Urgent Supply/Emergency Supply is less likely to occur given the distance selling nature of the pharmacy”*. We consider that such an assertion is unfounded and indicates a diminished commitment on the Applicant's behalf to undertaking this NHS essential pharmaceutical service requirement. The Applicant also asserts that: *“We shall have appropriate mechanisms for the receipt verification and processing of requests for urgent supply”* but has not explained what these *“appropriate mechanisms”* are or how they might be considered appropriate in the context of remote service provision.
- 2.40 The Applicant asserts under the heading **Attempts to use the pharmacy face to face** that: *“In the event that a patient requests to access Essential Services at the premises, they will be informed that these services cannot be provided onsite by the pharmacy”* but has not explained the specific procedures and safeguards that it intends to put in place in order to prevent or diminish the likelihood of such patient request being made at the pharmacy premises.
- 2.41 The Applicant asserts under the heading **Suitable Containers for Posted Items** that: *“The packaging choice will depend on the nature of the items being delivered, and the appropriate level of protection will be used to ensure the items can withstand the delivery process”* but has not explained what it means by an *“appropriate level of protection”*. The Applicant has failed to explain for example if tamper-resistant or tamper-evident packaging will be used, how such packaging solutions will prevent leaks for liquid medicines and whether such packaging will be appropriately labelled to identify any specific risk of which the courier or staff delivery driver should be made aware when making such deliveries to the patient.
- 2.42 The Applicant asserts under the heading **Verification of Prescription Exemption Declarations and NHS Charges** that: *“Evidence for exemptions*

or remissions from NHS charges will be sought and verified prior to dispensing of any prescription” but has not explained the specific procedures that it intends to put in place in order that it might obtain such evidence or collect such NHS charges (only that in respect of the latter that they will be collected electronically via remote means) other than on a face to face basis at the proposed pharmacy premises.

- 2.43 The Applicant asserts under the heading **Promotion of Healthy Lifestyles** that: *“All patients, and particularly patients identified as at risk, shall be provided with advice with the aim of increasing their knowledge and understanding of the health issues which are relevant to their personal circumstances”* but has not explained how it will identify patients who are at risk other than on a face to face basis at the proposed pharmacy premises in order to enable it to effectively provide this essential NHS pharmaceutical service. The Applicant also asserts that *“Individuals can also access healthy living information via other [other than the Website] remote means”* but has failed to elaborate on what these other means are.
- 2.44 The Applicant asserts under the heading **Public Health Campaigns** that: *“The pharmacy website will feature a dedicated section on healthy lifestyles, public health campaigns, FAQs and self-care. The pharmacy will engage in national health campaigns to promote public health messages”* but has not explained how it will otherwise meet the requirements of this essential NHS pharmaceutical service, which requires the Applicant to participate in up to 6 campaigns in each financial year to promote health messages to users of the Applicant’s pharmacy and to make appropriate records when requested to do so by NHS England.
- 2.45 The Applicant asserts under the heading **Signposting** that: *“Patients will be signposted to appropriate health, social care, or support services as required. Should a patient require support that the pharmacy cannot provide, we will provide them with contact details of the appropriate provider and can refer them”* but has not explained how it will meet the requirements of this essential NHS pharmaceutical service other than on a face to face basis at the proposed pharmacy premises or the manner in which it will establish the location of where such further information can be obtained or how it will identify appropriate alternative providers.
- 2.46 The Applicant asserts under the heading **Support for Self-Care** that: *“If the pharmacist assesses that a person using the pharmacy would benefit from advice or support managing their condition, or the condition of someone in their care, then the appropriate advice will be provided via remote means of communication. People seeking advice on self-care will be provided advice by remote means”* but has not explained how it will meet the requirements of this essential NHS pharmaceutical service, specifically no mention is made of record keeping, auditing or how follow-up care will be facilitated.
- 2.47 The Applicant asserts under the heading **Appliances requiring fitting and measuring** that: *“As specified in the application form, appliances requiring fitting and measuring will not be provided. Patients seeking such appliances will be referred to an appropriate provider or provided the details of appropriate*

providers” but has not explained how it will meet the requirements of this essential NHS pharmaceutical service, specifically no mention is made of how it will identify and with reasonable promptness refer to an appropriate provider that is suitable for the locality of the patient for whom the fitting and measuring services are not being provided by the Applicant.

2.48 We also note that the Applicant has failed to provide any information in respect of how it intends to comply with the requirements of paragraph 17 (Prescription linked intervention) of Schedule 4 of the Regulations.

2.49 **Conclusion**

2.50 For the reasons stated above, we respectfully request that the Application is denied. If you require any further information in relation to this matter, please do not hesitate to contact Richard Hough at these offices.”

3 **The Decision**

The Commissioner considered and decided to grant the application. The decision letter dated 30 January 2026 did not give Pharmacy2U Ltd a right of appeal.

3.1 “West Yorkshire ICB has considered the above application and I am writing to confirm that it has been granted. Please see the enclosed report for the full reasoning.”

PSRC Report

3.2 **“Applicant: Adhera Limited - Distance Selling Premises (Excepted Application)”**

3.3 **Proposed Premises: Unit 8, The Courtyards, Victoria Rd, Leeds, LS14 2LB**

3.4 **Decision: GRANTED**

3.5 PSRC considered the application, by Adhera Ltd, for Inclusion in the Pharmaceutical List Under Part 3, Regulation 25 of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.6 The committee considered the application and representations submitted and noted that there are 7 existing providers of Pharmaceutical Services within 1.6 miles of the proposed site, the closest being 0.4 miles away from the proposed site, according to NHS.UK.

3.7 It was noted that Adhera Ltd submitted Fitness to Practice information in line with Schedule 2, Part 1 of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 which was approved 24/09/2025.

3.8 It was agreed that Regulation 31 does not apply as there is no pharmacy at the same or adjacent premises to the proposed site, nor is there any suggestion that any of the nearby pharmacies are in any way connected with this application.

- 3.9 Consideration was given to Regulation 25.
- 3.10 Regulation 25 (2) (a) – does not apply as no primary care provider with a patient list is present within the same premises as the proposed site.
- 3.11 Regulation 25(2)(b)(i) – is met as the applicant has detailed in the application and supporting information how services will be provided remotely, and without interruption throughout the given opening hours throughout England.
- 3.12 Regulation 25(2)(b)(ii) – is met as the applicant has demonstrated adequately how safe and effective services will be provided throughout the given opening hours. The applicant has provided adequate assurance within the Procedures and SOPs submitted to support their application.
- 3.13 As the application is in respect of distance selling premises, by virtue of Regulation 64(3) of the NHS
- 3.14 (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, if the applicant is subsequently included in the pharmaceutical list for the area of Leeds Health and Wellbeing board in respect of the premises included in the application, that inclusion will be subject to the following conditions:
- 3.14.1 The applicant must not offer to provide pharmaceutical services to persons who are present at (which includes in the vicinity of) the proposed premises.
- 3.14.2 The means by which the applicant provides pharmaceutical services must be such that any person receiving those services does so otherwise than at the proposed premises.
- 3.14.3 The proposed premises must not be on the same site or in the same building as the premises of a provider of primary medical services with a patient list.
- 3.14.4 The pharmacy procedures for the premises must be such as to secure:
- 3.14.4.1 the uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services, and
- 3.14.4.2 the safe and effective provision of pharmaceutical services without face-to-face contact at the proposed premises between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff; and
- 3.14.5 Nothing in the applicant's practice leaflet, in the applicant's publicity material in respect of the proposed premises, in material published on behalf of the applicant publicising services provided at or from the proposed premises or in any communication (written or oral) from the

applicant or the applicant's staff to any person seeking the provision of essential services from the applicant must represent, either expressly or impliedly, that:

3.14.5.1 the essential services provided at or from the premises are only available to persons in particular areas of England, or

3.14.5.2 the applicant is likely to refuse, for reasons other than those provided for in the applicant's terms of service, to provide drugs or appliances ordered on prescription forms or repeatable prescription forms which are presented by particular categories of patients (eg because the availability of essential services from the applicant is limited to other categories of patients).

- 3.15 The committee did have assurance that the applicant had met the above detailed conditions, as outlined in their application form, and supporting information.
- 3.16 The committee noted the representations received from Cohens Chemists, Community Pharmacy West Yorkshire (CPWY) and Pharmacy 2U Ltd.
- 3.17 Cohens Chemist requests that the panel considers all criteria relating to regulation 25 and the conditions set out in regulation 64 as part the Exemption for an Internet Pharmacy including
- 3.18 CPWY provided a standard response to be assured that regulations 25 (2)(a) and 25(2)(b) do not apply, that the contractor must provide pharmaceutical services throughout all their contracted hours and referred to previous appeals.
- 3.19 Pharmacy 2U Ltd made extensive representations asking the panel to be assured regarding Regulations 25(2)(b)(i), 25(2)(b)(ii) and 31.
- 3.20 All regulations were considered as detailed in the report to PSRC. It was recommended that the application be **granted** on the grounds that the applicant has demonstrated that they have fully complied with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and how they will comply with the specific conditions placed on distance selling premises as set out in Regulation 64.
- 3.21 **PSRC Decision:** Having considered all the information provided by the applicant, the Committee agreed that the application does meet all the relevant Regulations for a DSP. The PSRC **granted** this application.
- 3.22 **Right of Appeal:** No Right of Appeal."

4 The Appeal

In a letter dated 27 February 2026 and addressed to NHS Resolution, Brabners LLP on behalf of Pharmacy2U Ltd appealed against the decision of the Commissioner not to give them third party rights of appeal. The grounds of appeal are:

- 4.1 **“Appeal by Pharmacy2U Ltd (the "Appellant") against the grant of an application for inclusion in the pharmaceutical list at Unit 8, The Courtyards, Victoria Road, Leeds LS14 2LB in respect of a distance selling premises pharmacy by Adhera Limited ("the Applicant" and "the Application")**
- 4.2 We are instructed on behalf of the Appellant to submit an appeal in respect of the following decisions by the West Yorkshire ICB (the "**ICB**"):
- 4.2.1 to grant the Application (the "**Application Decision**"); and
- 4.2.2 not to grant appeal rights in respect of the Application Decision (the "**No Appeal Decision**"), which we consider have been incorrectly made.
- 4.3 **The Application**
- 4.4 The Application was made by the Applicant pursuant to Regulation 25 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the "Regulations").
- 4.5 The Application was submitted by the Applicant for consideration and determination on 17th June 2025, a copy of which is appended to this letter.
- 4.6 The Appellant was notified of the Application by the ICB market entry team on 4th July 2025, a copy of such notification is appended to this letter.
- 4.7 The Appellant submitted its written representations in opposition to the Application on 13th August 2025, a copy of which is appended to this letter.
- 4.8 The ICB circulated its decision to grant the Application on 30th January 2026 accompanied by its decision report, a copy of which is appended to this letter, and the final sentence of which states: "*Right of Appeal: No Right of Appeal*".
- 4.9 **Applicable Legislation**
- 4.10 *Regulation 25 of the Regulations states: **Distance selling premises applications***
- 4.10.1 *(1) Section 129(2A) of the 2006 Act¹ (regulations as to pharmaceutical services) does not apply to an application to relocate to different premises (a) (b) by a person already included in a pharmaceutical list for inclusion in that list in respect of premises other than those already listed in relation to that person, in respect of pharmacy premises that are distance selling premises.*
- 4.10.2 *(2) NHS England must refuse an application to which paragraph (1) applies-(a) if the premises in respect of which the application is made are on the same site or in the same building as the premises of a provider of primary medical services with a patient list; and (b) unless NHS England is satisfied that the pharmacy procedures for the pharmacy premises are likely to secure - (i) the uninterrupted provision*

of essential services, during the opening hours of the premises, to persons anywhere in England who request those services, and (ii) the safe and effective provision of pharmaceutical services without face to face contact at the pharmacy premises between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff.

- 4.11 Schedule 2 paragraph 18 of the Regulations states:
- 4.12 ***Applications requiring notifications*** *An application is a "notifiable application" for the purposes of this Schedule if-(a) it is a routine application; or (b) it is an excepted application pursuant to regulation 24, 25 or 26(2) or 26A, and NHS England has not decided to dispense with the notification pursuant to paragraphs 15 to 17.*
- 4.13 Schedule 2 paragraph 30 of the Regulations states:
- 4.14 ***Third party rights of appeal to the Secretary of State where an application is granted***
- 4.15 *(1) A person with third party rights (as provided for in this paragraph) may appeal to the Secretary of State against a decision of NHS England to grant a notifiable application, or an application to which regulation 26(1), 27 or 28 applies, provided that the person notifies the Secretary of State with a valid notice of appeal within 30 days of the date on which that person was notified of NHS England's decision under paragraph 28.*
- 4.16 *(2) For the purposes of this Schedule, a person (P1) is a person with third party rights if (a) P1 is a person to whom sub-paragraph (3) applies; or (b) P1 was entitled to receive notification of the decision to grant the application by virtue of paragraph 28(5).*
- 4.17 *(3)(b) P1 is a person to whom this sub-paragraph applies if- in the case of a notifiable application, P1 made representations in writing about the application under paragraph 19(4).*
- 4.18 *(4) If NHS England considers that a person notified under paragraph 28 is a person with third party appeal rights, it must notify that person of that fact when it notifies that person of the determination.*
- 4.19 *(5)*
- 4.20 *(6) A person to whom sub-paragraph (3)(a) and (b) applies (P2) who is not notified by NHS England that they are person with third party appeal rights may appeal to the Secretary of State against the determination (D1) by NHS England that it is not satisfied as mentioned in sub-paragraph (3)(c), provided that P2- (a) notifies the Secretary of State within 30 days of the date on which that person was notified of NHS England's decision under paragraph 28 (D2) that P2 wishes to appeal against D1 and D2; and (b) includes within that notification concise and reasoned statements of P2's grounds of appeal against*

both D1 and D2, and if the appeal against D1 is successful, P2 is a person with third party appeal rights in relation to D2 for the purposes of this Schedule.

4.21 The No Appeal Decision

4.22 For the following reasons, we assert that the ICB has erred as a matter of law in not granting the Appellant appeal rights in respect of the IC B's decision to grant the Application.

4.23 The Application is an excepted application, which was made pursuant to regulation 25 of the Regulations. By application of Schedule 2 paragraph 18(b) of the Regulations, we submit that the Application is a notifiable one. We note that, pursuant to the limited discretion afforded to it by paragraph 18, NHS England did not decide to dispense with the notification pursuant to paragraphs 15 to 17.

4.24 As stated above, the Appellant was notified of the Application and subsequently made written representations in opposition to it. By application of Schedule 2 paragraph 30(3)(b) of the Regulations, we submit that the Appellant is therefore a party which made written representations under paragraph 19(4) in respect of a notifiable application and, as such, is to be granted appeal rights.

4.25 By application of Schedule 2 paragraph 30(4) of the Regulations, we submit that NHSE has erred in law by its failure to notify the Appellant of its appeal rights.

4.26 By application of Schedule 2 paragraph 30(6) of the Regulations, we submit that the Appellant is a person to whom sub-paragraph (3)(b) applies who has not been notified by NHS England that they are person with third party appeal rights. As such, we request that this letter of appeal constitutes the Appellant's appeal to the Secretary of State against the No Appeal Decision and the Application Decision.

4.27 Having set out above a concise and reasoned statement as to why we consider the Appellant should have been granted third party appeal rights in respect of the Application Decision and the legal basis for such statement, we set out below in respect of the Application Decision a concise and reasoned statement of the Appellant's grounds of appeal against such decision.

4.28 Application Decision

4.29 It is evident from the ICB's decision report that it claims to have satisfied itself that:

4.29.1 *Regulation 25(2)(b)(ii) - is met as the applicant has demonstrated adequately how safe and effective services will be provided throughout the given opening hours. The applicant has provided adequate assurance within the Procedures and SOPs submitted to support their application; and*

4.29.2 *all regulations were considered as detailed in the report to PSRC. It was recommended that the application be granted on the grounds that the applicant has demonstrated that they have fully complied with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and how they will comply with the specific conditions placed on distance selling premises as set out in Regulation 64.*

- 4.30 We submit that, given the comprehensive representations that the Appellant made in opposition to the Application, which refer to numerous standards of regulatory compliance to which it, as a well-established distance selling premises pharmacy, has previously been, and is currently, held accountable by NHS England, the ICB has, when coming to its decision, failed to fully consider those representations by reference to its own standards, practice and guidance. We request that NHS Resolution reviews those representations as part of this appeal and asks itself, further to such review, if the ICB, when documenting its reasoning for granting the Application in the decision report, has acted reasonably, rationally, lawfully and/or fairly when giving consideration to them and reaching its decision.
- 4.31 Further, we submit that, when making the Application Decision, the ICB has erred in procedural compliance by referring to SOPs in its decision report which have been submitted by the Applicant in support of the Application. As the Application is a notifiable one, we assert that the ICB is under a statutory duty to provide the pharmacy contractors which the ICB is required to notify upon receipt of the Application, with all relevant information in support of it. We assert that the ICB did not circulate the Applicant's SOPs which it claims were submitted in support of the Application and upon which the Application Decision was granted. As such, we assert that the Appellant, and the other notified parties, were not provided with all the relevant information in support of the Application, but by reference to which the ICB made its decision.
- 4.32 Finally, we submit that the ICB has failed to act consistently by reference to standard practice and procedure when considering the Application and, by failing to do so, has reached a decision of granting the Application that no reasonable public decision-making body would otherwise make. The supporting information which was provided by the Applicant was undeniably sparse and lacking in detail. Since the advent of distance selling premises pharmacies, ICBs have sought numerous assurances from applicants in painstaking detail that will support the applicant's assertion that, if its application was granted, the pharmacy procedures for the pharmacy premises are likely to secure: (i) the uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services, and (ii) the safe and effective provision of pharmaceutical services without face to face contact at the pharmacy premises between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff.
- 4.33 We assert that ICBs have never accepted vague, general and unsupported assertions by the Applicant in support of such a claim, but inexplicably, and we assert unlawfully, the ICB appears to have done so on this occasion. Such

inconsistency of not acting in accordance with accepted standards of practice supports the assertion that the ICB has acted in a procedurally unfair manner when reaching the Application Decision.

4.34 Request to overturn the ICB's decision

4.35 For the reasons set out above, we respectfully request that NHS Resolution:

4.35.1 confirms that the ICB was wrong to make the No Appeal Decision and, as such, grants the Appellant appeal rights in respect of the Application Decision; and

4.35.2 to the extent that such appeal rights are granted, confirms that the ICB was wrong to make the Application Decision and overturns its decision to grant the Application.

4.36 Annex - relevant documentation

4.36.1 (1) The Application dated 17th June 2025.

4.36.2 (2) The IC B's notification of the Application to the appellant dated 4th July 2025.

4.36.3 (3) The Appellant's written representations in opposition to the Application dated 13th August 2025.

4.36.4 (4) The IC B's decision to grant the Application dated 30th January 2026 and decision report."

4.37 [Enclosures provided]

5 Consideration

5.1 The Secretary of State for Health and Social Care has directed NHS Resolution to exercise the function of determining whether certain persons have rights of appeal on their behalf. I, as an authorised officer of NHS Resolution, have determined this appeal.

5.2 I have had regard to the Regulations, and in particular paragraphs 30(3) and (6) of Schedule 2 which state (so far as is relevant):

(3) P1 is a person to whom this sub-paragraph applies if—

(a) P1 was a person whom NHS England was required to notify about the decision on the application by virtue of P1 being a person whose interests might, in the opinion of NHS England, be significantly affected by the decision, and also being—

(i) included in a pharmaceutical list ...

(b) in the case of a notifiable application, P1 made representations in writing about the application under paragraph 19(4); and

- (c) *in the case of a notifiable application but subject to sub-paragraph (6), NHS England is satisfied, having regard to those representations in writing and any oral representations made in accordance with paragraph 25, that P1—*
 - (i) *made a reasonable attempt to express P1's grounds for opposing the application adequately in P1's representations, and*
 - (ii) *has grounds for opposing the application, which—*
 - (aa) *do not amount to a challenge to the legality or reasonableness of a pharmaceutical needs assessment, or to the fairness of the process by which a HWB or Primary Care Trust undertook that assessment, and*
 - (bb) *are not vexatious or frivolous.*
- (6) *A person to whom sub-paragraph (3)(a) and (b) applies (P2) who is not notified by NHS England that they are person with third party appeal rights may appeal to the Secretary of State against the determination (D1) by NHS England that it is not satisfied as mentioned in sub-paragraph (3)(c), provided that P2—*
 - (a) *notifies the Secretary of State within 30 days of the date on which that person was notified of NHS England's decision under paragraph 28 (D2) that P2 wishes to appeal against D1 and D2; and*
 - (b) *includes within that notification concise and reasoned statements of P2's grounds of appeal against both D1 and D2,*

and if the appeal against D1 is successful, P2 is a person with third party appeal rights in relation to D2 for the purposes of this Schedule."

- 5.3 I first considered whether Pharmacy2U Ltd was a person to whom sub-paragraph 30(3)(a) applied.
- 5.4 I note that it is not disputed that Pharmacy2U Ltd is included on the pharmaceutical list for premises at Unit 4b Victoria Industrial Park, Victoria Road, Leeds LS14 2LA and I have not been provided with any information to the contrary. I am, therefore, of the view that Pharmacy2U Ltd has met the requirements of sub-paragraph 30(3)(a).
- 5.5 I note that the original application is a notifiable application under the provisions of paragraph 18 of Schedule 2 and that the Commissioner initially gave notice of the application to Pharmacy2U Ltd on 4 July 2025. Following receipt of further information from the Applicant, the Commissioner re-circulated the application on 12 November 2025. Further, I note the comments from Pharmacy2U Ltd that they made representations to the Commissioner in a

letter dated 13 August 2025 in accordance with paragraph 19(4) of Schedule 2.

- 5.6 I therefore am of the view that Pharmacy2U Ltd is a person to whom sub-paragraphs 30(3)(a) and (b) apply.
- 5.7 The Commissioner, in its decision letter dated 30 January 2026 did not give third party rights of appeal to Pharmacy2U Ltd.
- 5.8 I note that at 30(3)(c)(i) the regulations state that a party should have “made a reasonable attempt to express P1’s grounds for opposing the application adequately...” I am of the view that:
 - 5.8.1 Pharmacy2U Ltd made a reasonable attempt to express their grounds for opposing the application, and
 - 5.8.2 that these grounds
 - 5.8.2.1 did not amount to a challenge to the legality or reasonableness of the a PNA nor to the fairness of the process by with a HWB or PCT undertook the assessment, and
 - 5.8.2.2 are not vexatious or frivolous.
- 5.9 I am of the view that Pharmacy2U Ltd is a person to whom sub-paragraph 30(3) (a), (b) and (c) applies and that it should have been given third party rights of appeal in accordance with the Regulations.
- 5.10 I note the wording of paragraph 30(6) and that, to exercise those rights properly, the appeal should include a concise and reasoned statement of the grounds of appeal against both the decision not to be given third party rights of appeal and against the substantive decision of the Commissioner to grant the application. I am of the view that Pharmacy2U Ltd has complied with both of the above.

6 Decision

- 6.1 Pharmacy2U Ltd is a person with third party appeal rights against the decision of the Commissioner set out in its letter dated 30 January 2026.
- 6.2 The appeal will proceed in accordance with the provisions of Part 2 of Schedule 3 to the Regulations.

Head of Appeals NHS Resolution