NHS Resolution

17 June 2026

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REF: SHA/26873

APPEAL AGAINST CORNWALL AND ISLES OF SCILLY ICB DECISION TO REFUSE AN APPLICATION BY BANNS PHARMACY LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING IDENTIFIED IMPROVEMENTS OR BETTER ACCESS UNDER REGULATION 17 AT THE AREA OF ST MARY'S ROAD, ROCK LANE, QUEENS CRESCENT AND TRELAWNEY ROAD (BEST ESTIMATE)

1 Outcome

1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the application.

1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:

Rushport Advisory LLP on behalf of Banns Pharmacy Limited
PCSE on behalf of Cornwall and Isles of Scilly ICB
Pharmacy Sales & Consultancy on behalf of Day Lewis PLC

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1 The Application

By application dated 14 May 2025, Banns Pharmacy Limited ("the Applicant") applied to Cornwall and Isles of Scilly ICB ("the Commissioner") for inclusion in the pharmaceutical list offering identified improvements or better access under Regulation 17 at the area of St Mary's Road, Rock Lane, Queens Crescent and Trelawney Road (best estimate). In support of the application it was stated:

1.1 In response to "In my/our view this application should not be refused pursuant to Regulation 31 for the following reasons" the Applicant stated:

1.2 "NO OTHER PHARMACY AT SAME OR ADJACENT PREMISES"

1.3 In making this application the Applicant is seeking to secure the improvements or better access identified on "THE AUGUST 2024 SUPPLEMENTARY STATEMENT……5" of the HWB's pharmaceutical needs assessment.

1.4 "[Supplementary Statement lists closures of pharmacies including Bodmin and then states] **It is the opinion of the Cornwall and Isles of Scilly Health and Wellbeing board that these changes to the pharmaceutical list create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services.** [Applicant's emphasis]

1.5 As the Committee will be aware, on 10 April 2025 it issued a decision in CAS 340290-Q0R3S9 for Unforeseen Benefits with a best estimate address in the area around St Marys Road in Bodmin that had been submitted by Banns Pharmacy Limited.

1.6 The Committee decided that the need for a new pharmacy had been identified within the PNA and it was therefore required to refuse this application. As the Committee has determined already that the need for a new pharmacy has already been identified it should therefore recognise its previous decision and approve this application.

1.7 The Committee has already found that, "Focusing on the exit in Bodmin, as the statement is not specific to a geography, the SW Committee was of the

view that it **had to accept that the HWB had concluded both the detailed exits had created a gap**. [Applicant's emphasis] It was noted that NHS Resolution has in the past accepted that supplementary statements stating gaps have been created, have effectively added a conclusion to the PNA."

1.8 The same should apply in this case."

1.9 In response to "In the box below please explain how you intend to secure the identified improvements or better access either in whole or in part" the Applicant stated:

1.10 "The proposed pharmacy will open within the area identified in the best estimate address and provide all services specified in this application to secure improvements and better access to pharmacy services as well as additional services."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 7 January 2026 states:

2.1 "Cornwall and Isles of Scilly ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning."

Extract from PSRC decision report

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

2.2 "The SW Committee noted:

2.3 The SW Committee had before it 6 applications for the Bodmin area to consider together and in relation to each other: one Regulation 20 application, two Regulation 17 applications, one Regulation 13 application and two Regulation 18 applications. It was noted there are three applicants, Bosvena Health CP Ltd has submitted one application, Banns Pharmacy Ltd has submitted two applications and Naimans UK Ltd has submitted three applications. It was confirmed the applicants are aware these applications will be considered together. The SW Committee agreed it would consider the applications to determine if one or more of the applications can/should be granted. If the SW Committee determines only one can/should be granted, it noted it will need to consider which one.

2.4 …

2.5 Regulation 31 (same or adjacent premises) [quoted]

2.6 It was noted there are no other contractors currently providing pharmaceutical services at or adjacent to the proposed locations. The nearest pharmacy is approximately 1 - 1.5 miles away – Day Lewis and Boots. ***The SW Committee was satisfied it is not required to refuse any of the applications by virtue of Regulation 31.***

2.7 The applications do not relate to a controlled locality, but the area is within

1.6km of a controlled locality.

2.8 ***The SW Committee agreed that it is not necessary to hold an oral hearing to determine any of the applications.***

2.9 ***…***

2.10 **Summary of application 2 – Banns Pharmacy Ltd - identified improvements or better access - Reg 17**

2.11 Applicant 2 is proposing 40 Core Hours covering Monday to Friday 9am – 5pm. Closed Saturday and Sunday. The hours proposed are shown below from section 3 of the application form:

Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9am to 5pm	9am to 5pm	9am to 5pm	9am to 5pm	9am to 5pm			40

Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9am to 5pm	9am to 5pm	9am to 5pm	9am to 5pm	9am to 5pm			40

2.12 The applicant proposes to provide Essential services, certain appliances, advanced services and enhanced services at section 4 of the application form.

2.13 The applicant states a floor plan will be provided once the premises are secured.

2.14 At section 6 of the application form the applicant provides information in support of the application.

2.15 The applicant has highlighted the part of the PNA where the improvement or better access is identified:

2.16 [See paragraphs 1.3 – 1.8 above]

2.17 **PUBLIC INVOLVEMENT / REPRESENTATIONS**

2.18 Full details of the applicant's proposals were notified to various parties in accordance with the Regulations. Representations have been received from:

2.19 Bodmin Town Council state:

2.20 In response to your request for representations, I am writing to formally confirm that Bodmin Town Council has reviewed the license application by Bann's Pharmacy (referenced CAS-365601-C5G2Z3) and voted to continue its support.

2.21 The Council remains fully supportive of this application, recognizing the benefits it will bring to the local community. We appreciate the opportunity to reiterate our endorsement and look forward to a positive determination.

2.22 Day Lewis state:

2.23 On behalf of Day Lewis PLC, who provide pharmaceutical services from premises at 17 Dennison Road, Bodmin, PL31 2LL, I wish to object to this application for the following reasons.

2.24 This Application has been made in response to the previous refusal by NHS England of an application at the same location by the same applicant.

2.25 As this applicant has set out, the key reason provided by NHS England for that refusal was that, in its opinion, the benefits claimed by the applicant were not 'unforeseen' in the context of Regulation 18(1)(b). The reason provided was the subsequent publication of a supplementary statement by the Health and Wellbeing Board in August 2024.

2.26 This supplementary statement referred to four closures that had taken place across the county. One of these was the closure of the Asda Pharmacy in Bodmin. It does not mention Boots in Bodmin; that was dealt with in a previous statement.

2.27 The supplementary statement also listed a significant number of pharmacies that had changed ownership and three others that had changed their opening hours since the previous statement was issued.

2.28 In total the supplementary statement lists **15** changes that have taken place since the PNA was published. These cover a large part of the country.

2.29 In our opinion it cannot possibly have been the intention of the HWB that every single one of these changes has created a gap. If it had been, then they would have referred to multiple gaps. In their decision report the ICB accepted that the statement was somewhat ambiguous but they went on to conclude that "*it had to accept that the HWB had concluded both the detailed exits had created a gap*". We respectfully disagree with the ICB on this matter.

2.30 The ICB will also be aware that this applicant has also appealed against the previous refusal of its unforeseen benefits application (SHA/26621) and makes the case within its appeal that the supplementary statement does not constitute an identified need in the context of Regulation 17. It is clear that this new application is submitted without any conviction on the part of the applicant.

2.31 In conclusion, this application fails to meet the requirements of Regulation 17,

so should be refused.

2.32 Kernow LMC state:

2.33 As the recognised representative body for general practitioners across the county of Cornwall and IoS, we write pursuant to our statutory functions in opposing this application and in support of the impacted practices in the area identified.

2.34 In our submission, we speak to the business impact as it is our duty to focus upon the resilience and sustainability of general practice, but also recognised that this is inextricably linked to the benefit for the patients within this community, to have a thriving surgery that can continue to meet their health needs.

2.35 We cite the following reasons for opposing this application:-

2.35.1 Due to the chronic erosion of core GMS funding for general practice, dispensing income is an essential component in the viability of general practice. By granting this application there will be income erosion for the impacted Practice, Bosvena Health;

2.35.2 The approval of this application represents a high risk to the viability of the proposed new Primary Care Centre at Beacon Technology Park and may result in project failure;

2.35.3 The approval of this application represents a high risk of consequential jeopardy for the future of the Practice, particularly impacting the patient population who live in a challenged part of the county and who rely on the primary medical services provided by this surgery – which is the only general practice provision within the town.

2.36 There were no further comments received after the 14 day period.

2.37 …

2.38 Applications 2 and 3 are routine applications to secure identified improvements or better access under Regulation 17 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

2.39 Regulation 17 [quoted]

2.40 Regulation 19 [quoted]

2.41 Regulation 17 concerns 'Improvements or better access to the current service' applications, which are applications where the improvements or better access that would be secured have or has been included in the relevant PNA.

2.42 There is a 2025 draft PNA for Cornwall & Isles of Scilly that has been consulted on but is not yet published. The draft Cornwall PNA (2025-2028) can be found at: Cornwall and Isles of Scilly Pharmaceutical Needs Assessment 2025-28 | Let's Talk Cornwall. SW Committee noted the Pharmacy Manual states decisions are not to be made against draft versions

of a PNA; only against final, published versions of PNA's.

2.43 The current Cornwall PNA (2022-2025) can be found at Pharmaceutical Needs Assessment (PNA) - Cornwall Council Bodmin is included in the Three Harbours and Bosvena Health PCN and the conclusion for the area states:

2.44 The SW Committee, noting the final 2025-2028 PNA was not published at the time of the meeting, agreed the current PNA (2022-2025) will be used for the consideration of the application.

2.45 The SW Committee had copies of the Supplementary Statements from April and August 2024.

2.46 The applicants state the identified improvements or better access is included in the August 2024 Supplementary Statement.

2.47 The SW Committee noted the objections to the application are based around the fact the current PNA does not include the need the applicant seeks to meet. It was noted Kernow LMC comment on the effect to medical services should a pharmacy open and the SW Committee was mindful the Regulations are not designed to support financial viability for medical services through pharmaceutical services.

2.48 The SW Committee, mindful of NHS Resolution's comments in SHA/26621 regarding the August 2024 supplementary statement for Cornwall, concluded that the PNA fails to clearly identify which gap its authors believe might exist as a result of the multiple updates set out in the statement. The SW Committee could not, therefore, be certain that the 'gap' referred to is one that will be met by this application for inclusion in the pharmaceutical list.

2.49 **Decision**

2.50 The SW Committee determined that the PNA does NOT include identified improvements or better access which satisfies the requirements of paragraph 4(b) of Schedule 1, therefore, applications 2 and 3 are refused as the requirements of regulation 17(1) are not met."

3 The Appeal

In a letter dated 26 January 2026 addressed to NHS Resolution, the Applicant through its representative Rushport Advisory LLP, appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "I act for Banns Pharmacy Ltd and am instructed by my client to submit this appeal against the decision of the Commissioner to refuse the above listed application.

3.2 The Committee may wish to familiarise itself with the significant number of applications relating to premises within Bodmin made under regulation 18, regulation 13 and regulation 17.

3.3 As it stands, the Commissioner has approved the historic regulation 18 application made by my client and which was subject to the decision in SHA/26621 remitting the application back to the ICB.

3.4 At the same time as Primary Care Appeals was considering its decision in SHA/26621, other applications were submitted by various parties. As we are not currently aware of which of these applications will be subject to appeal, if any, we make no further comment on the issue of competing applications at this time but may do so should the position change.

3.5 My client's position with regard to this appeal is that, in the event that the Commissioner's decision to approve my client's application under regulation 18 is either:

3.5.1 Not subject to appeal or

3.5.2 Is subject to appeal but those appeals are dismissed

3.6 Then there is no need to approve any other applications in the Bodmin area.

3.7 However, in the event that my client's regulation 18 application is appealed and any appeal is upheld then my client asks that the Committee prefers its application that is the subject of this appeal as it offers a significant geographical advantage compared to any other Applicant and would best serve patients in Bodmin."

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 RUSHPORT ADVISORY LLP ON BEHALF OF THE APPLICANT

4.1.1 "I act for Banns Pharmacy Ltd and am instructed by my client to submit this response in relation to the three appeals listed above [SHA/26873, SHA/26888 AND SHA/26889]. We believe that it is appropriate to consider these applications together and in relation to one another and therefore reply on that basis.

4.1.2 **Background**

4.1.3 The Committee may be aware that each and every Appellant to SHA/26888 has also submitted their own application to open a pharmacy within Bodmin, although some of these applications are at earlier stages in the process and will not be considered alongside the appeals listed above. We highlight this point as there appears to be no doubt that there is a requirement for an additional pharmacy in Bodmin. This view is shared by the ICB (that approved by client's application) and also the HWB (that has now included a specific requirement for a pharmacy within Bodmin in its 2025 PNA).

4.1.4 The Committee will be aware that my client first submitted its regulation 18 application in November 2024. This is well before any other Applicant applied. My client's application was subject to appeal (ref SHA/26621) in which the Committee remitted the application to the Commissioner for reconsideration as the Commissioner had failed to consider regulation 18.

4.1.5 This current appeal is a result of this reconsideration.

4.1.6 **The Relevant PNA**

4.1.7 The Committee has requested comments on which PNA should be considered as the relevant PNA for the purposes of determining these applications.

4.1.8 Regulation 22 states that the relevant Pharmaceutical Needs Assessment ("PNA") for the purpose of determining a pharmacy application is the PNA that is current at the time [NHS Resolution] makes [its] determination unless in [NHS Resolution's] opinion the only way to determine the application justly is with regard to an earlier PNA.

4.1.9 The Regulations require consideration of what is "just". In a legal context, "just" describes actions, decisions, or laws that are fair, impartial, reasonable, and in conformity with the law. It implies a standard of correctness or moral righteousness, ensuring that rights are respected, and results are deserved or equitable.

4.1.10 The decision in SHA/26621 referenced above made it clear that the 2024 Supplementary Statement (Appendix 1) relied on by Applicants in order to submit applications under identified current need or identified improvements was insufficiently clear and could not be relied upon. This is the same argument that we made in the appeal on behalf of our client.

4.1.11 In SHA/26621 the Committee stated;

4.1.12 7.24 The Committee noted that whilst the wording in the Supplementary Statement is specific that the changes identified "create a gap in pharmaceutical services provision", the subsequent wording is very broad, referring to "a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services" with no reference to specific services or the location(s) where they are required. The Committee considered that this created a significant level of ambiguity about any gap that could potentially be filled.

4.1.13 7.25 The Committee was of the view that in order to properly identify a gap in pharmaceutical provision, a PNA or supplementary statement would need to identify a site (or area) at which the provision of pharmaceutical services would meet a current or future need for pharmaceutical services, or secure improvements or better access to pharmaceutical services. In this case, as argued by parties, the Supplementary Statement appears to indicate that an application anywhere in Cornwall could be approved in response to the changes identified. The Committee was not persuaded that this is the intention of the Regulations nor of the HWB had erred in not providing sufficient clarity in the Supplementary Statement. The Committee considered that the level of ambiguity was such as to enable it to determine that the improvements or better access that the Applicant is seeking to secure were not or was not included in the PNA.

4.1.14 There is therefore no doubt that any application made in reliance on

the 2024 Supplementary Statement would now be refused. However, in the current appeals, a new PNA has been published since the decision in SHA/26621 and since the decisions reached by the ICB. As a result, Naimans UK Ltd seeks to have its application considered with reference to the 2025 PNA rather than the 2022 PNA. This is similar to the position where an Applicant relies on a draft PNA when submitting its application. Having had it confirmed that the Supplementary Statement it had relied on was not sufficient to require the approval of its application, Naimans UK Ltd now seeks to have its application considered against an entirely new PNA that had not been published when its application was submitted or considered by the ICB, effectively jumping the queue. Naimans UK Ltd is effectively asking the Committee to consider its old application that would have been refused, as a new application based on the 2025 PNA.

4.1.15 **Guidance**

4.1.16 The Appellants all fail to address the guidance issued on the Primary Care Appeals website which deals with the question of which PNA should be considered in circumstances such as these. Whilst the Guidance Note refers to a draft PNA the position here is similar. The Guidance Note (See Appendix 2) states;

4.1.17 *3.2 The Committee was concerned that the applicant had based their application on a draft PNA. The Committee considered that it would not be just or fair to allow an applicant to make an application on the basis of a draft PNA that had only been made public for the purposes of consultation. The Committee considered that such an applicant is attempting to "jump the queue" by making an application before the revised PNA is finalised whilst other potential applicants may be waiting until a final version has been made public before submitting applications.*

4.1.18 *3.3 The Committee considered that draft PNAs, by their very nature, are subject to amendment. This was supported by the fact that in this specific case NHS England, in determining the application, identified different or additional wording that had been included in the final PNA but not in the draft PNA.*

4.1.19 *3.4 The Committee also noted that the applicant had indicated in its appeal letter that as the revised PNA had been published by the time of the appeal, there were certain different page numbers that it considered were relevant to its application and which it relied on in its appeal. The Committee noted that while the applicant's original application referred to pages 9, 127, 131 and 143 of the draft PNA, in its appeal it was relying on pages 9, 128, 132 and 144.*

4.1.20 *3.5 The Committee considered that if numerous parties made applications on the basis of a draft PNA which was later amended on appeal, as had clearly happened in this case, this would lead to a large amount of wasted public resources in assessing applications that are not well made.*

4.1.21 *3.6 The Committee considered that judging the application against the*

2018 PNA and allowing the Applicant, for the purpose of a redetermination of the application on appeal, to rely on different and additional provisions of the published 2018 PNA, could allow the Applicant to have a "head start" against other applicants. This could give the Applicant an unfair advantage as it would allow its application to be considered before others, potentially leading to the Applicant's application being granted either by NHS England or, if refused by NHS England, by the Committee on appeal, instead of other applicants who had submitted an application on the basis of the final published PNA.

4.1.22 *3.7 The Committee therefore determined that, in its opinion, the only way to determine the application justly was with regard to the 2015 PNA.*

4.1.23 With reference to SHA/26873 my client submitted this application on 15 May 2025 only because the ICB had refused their regulation 18 application on 14 May 2025 and due to the fact that the Commissioner had claimed that the Supplementary Statement to the 2024 PNA (which Naimans Ltd also relies on) was sufficient to show that a requirement for a new pharmacy had been identified within the PNA. However, subsequent to this, in December 2025 Primary Care Appeals in SHA/26621 (which remitted my client's regulation 18 application back to the ICB for reconsideration) was clear that this finding was incorrect.

4.1.24 **When was the 2025 PNA Published?**

4.1.25 Contrary to the submission from the Appellants in this case that all claim the 2025 PNA was published on 9 October 2025, the PNA was in fact published on 5 December 2025, which is the day after the ICB approved my client's application under regulation 18. The relevant date is the date of publication rather than any other date.

4.1.26 We know the date of publication to be 5 December 2025 as we had been in regular contact with the HWB on this point.

4.1.27 At 10.44am on 5 December 2025, BS of Cornwall Council confirmed that the HWB had published the PNA following it receiving the approvals required. The link to the website where the PNA is published is https://www.cornwall.gov.uk/health-and-socialcare/public-health/joint-strategic-needs-assessment/pharmaceutical-needs-assessment/

4.1.28 [BS email trail provided]

4.1.29 The page (at the time of writing) shows the "last updated" date as 5 December 2025.

4.1.30 [Screenshot provided]

4.1.31 On 20 November 2025 (see same email trail) Ms S confirmed that the PNA was still in draft form as it required discussion at the Scilly Health and Wellbeing Board on 2 December 2025 and was still therefore in draft form.

4.1.32 It is debatable how important the timing is given that it is undisputed that the 2025 PNA has now been published. The Committee should however note that the relevant date in respect of the Regulations is the date that the PNA was published and not the date that is [sic] was approved. The correct date is therefore 5 December 2025.

4.1.33 In relation to SHA/26888 - Banns Pharmacy - Application in Bodmin under regulation 18, it is submitted that this application should also be considered in relation to the 2022 PNA. This is due to the fact that my client originally submitted this application in November 2024. The application was originally subject to appeal (SHA 26621) which was decided in September 2025 in which the Committee remitted the application back to the ICB for reconsideration as it had failed to consider the application properly against regulation 18 and stated;

4.1.34 *7.25 The Committee was of the view that in order to properly identify a gap in pharmaceutical provision, a PNA or supplementary statement would need to identify a site (or area) at which the provision of pharmaceutical services would meet a current or future need for pharmaceutical services, or secure improvements or better access to pharmaceutical services. In this case, as argued by parties, the Supplementary Statement appears to indicate that an application anywhere in Cornwall could be approved in response to the changes identified. The Committee was not persuaded that this is the intention of the Regulations nor of the HWB had erred in not providing sufficient clarity in the Supplementary Statement. The Committee considered that the level of ambiguity was such as to enable it to determine that the improvements or better access that the Applicant is seeking to secure were not or was not included in the PNA.*

4.1.35 *7.26 The Committee noted the conclusion of the Commissioner in relation to Regulation 18(1)(b) that "The SW Committee assessed the application against the criteria for Regulation 18 and determined, as the August 2024 supplementary statement does identify a gap and the application is, at least in part, predicated on the reduction in availability of pharmaceutical services subsequent to the market exits, therefore the application is REFUSED as the requirements of Regulation 18(1)(b) are not met" and that the Commissioner had not proceeded to consider the provisions of Regulation 18(2).*

4.1.36 *7.30 The Committee therefore directs the Commissioner to:*

4.1.36.1*7.30.1 Carry out a further notification under paragraph 19 of Schedule 2 of the Regulations to enable parties to make comments on the application in light of this determination and provide this determination to those parties; and*

4.1.36.2*7.30.2 Re-determine the application taking into account the Committee's determination of Regulation 18(1)(b).*

4.1.37 Given that my client properly applied under regulation 18 in November 2024 and through no fault of its own failed to receive a proper determination of that application until the decision from the ICB to approve my client's regulation 18 application on 20 January 2026, it is

just and fair to consider the 2022 PNA when considering my client's regulation 18 application.

4.1.38 We note that all parties to this appeal, including the HWB and the ICB now agree that a pharmacy is required in Bodmin.

4.1.39 In summary, all applications should be considered with regard to the 2022 PNA as it is the only way to justly consider the applications given the circumstances described above. I attach my client's original appeal report (Appendix 4) that shows why my client's application under regulation 18 should be approved.

4.1.40 **The Alternative Case if Primary Care Appeals Determines that the 2025 PNA Should Apply**

4.1.41 In the event that the Committee disagrees with the submissions above and determines that the 2025 PNA is the relevant PNA then my client's regulation 18 application will be refused.

4.1.42 This will leave the Committee to decide between;

4.1.43 SHA/26889 NAIMANS UK Ltd - APPLICATION FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING TO MEET AN IDENTIFIED CURRENT NEED AT BODMIN CORNWALL, PL31

4.1.44 And

4.1.45 SHA/26873 BANNS PHARMACY LIMITED - APPLICATION FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING TO SECURE IDENTIFIED IMPROVEMENTS OR BETTER ACCESS AT THE AREA OF ST MARY'S ROAD, ROCK LANE, QUEENS CRESCENT AND TRELAWNEY ROAD

4.1.46 We submit that in these circumstances the application from Banns Pharmacy should be preferred.

4.1.47 Whilst the application from Naimans UK Ltd offers an additional 15 minutes of opening time from 5pm to 5.15pm Monday to Friday, we submit that this should not be determinative in this case due to the significantly better location proposed by Banns Pharmacy Limited and the significant benefit of this location to the local community and users of pharmaceutical services.

4.1.48 My client offers a clear advantage in relation to the location of the proposed pharmacy. We should point out at this stage that the maps provided by the Commissioner is response to these appeals **do not correctly identify the location of my client's application**.

4.1.49 When the Commissioner approved my client's regulation 18 application (which was made for the same site as their identified improvements of better access application) it stated;

4.1.50 *112. The SW Committee also considered the proposed locations. The Naimans location was nearer to the existing pharmacies and the town centre than the Banns application. The Banns proposed premises*

being further out to the West. The SW Committee took the view that the location out to the West would improve access for patients to the West of Bodmin particularly and this was a clear benefit compared to the Naiman's location.

4.1.51 This finding remains correct for my client's regulation 18 application.

4.1.52 The map below shows the locations relevant for these appeals.

4.1.53 [Map provided]

4.1.54 Naimans UK Ltd has applied to open within Bodmin town centre. This is the same location as the existing Boots and Day Lewis pharmacies. Opening an additional pharmacy in the same location that has significant access issues gives no real benefit to patients other than adding an extra pharmacy at essentially the same location as existing pharmacy provision. In contrast, Banns Pharmacy Ltd has applied to the west of Bodmin in a growing area and close to where the new medical centre is to be built. Preliminary site works have already commenced on the new medical centre as confirmed by Bosvena Health on their website which states; https://www.bosvenahealth.co.uk/important-notice-preliminary-site-worksbosvena-medical-centre/

4.1.55 [Copy flyer provided]

4.1.56 Further, one of the pharmacy closures highlighted in the Supplementary Statement dated August 2024 referred to the closure of the ASDA pharmacy to the east of Bodmin. This pharmacy was the only option for those who did not wish to access the town centre and that option no longer exists. Approving the Banns Pharmacy Ltd application will restore the option of accessing pharmaceutical services away from the town centre.

4.1.57 Irrespective of the new medical centre, the location chosen by Banns Pharmacy Ltd provides a significant improvement in the distribution of pharmacies within Bodmin as compared to Naimans UK Ltd's application which would simply replicate existing town centre services.

4.1.58 **Type of Application**

4.1.59 Naimans UK Ltd has applied under regulation 13 "identified current need" whereas Banns Pharmacy Ltd has applied under regulation 17 "identified improvements of better access".

4.1.60 The 2025 PNA states at page 77

4.1.60.1 Access to NHS Pharmaceutical Services in the Three Harbours and Bosvena PCN is INADEQUATE at this time.

4.1.60.2 Based on all information available at the time of writing, there is a gap in provision for a new pharmacy in Bodmin. Opening hours post-6pm Monday to Friday and weekend opening is desirable. The pharmacy should be willing to provide all necessary services and consider provision of services to

people receiving drug and alcohol treatment.

4.1.61 The PNA is clear that the gap relates to “access” and uses the words “*Access to NHS Pharmaceutical Services in the Three Harbours and Bosvena PCN is INADEQUATE at this time*”.

4.1.62 For this reason the application from Banns Pharmacy is correctly made under regulation 17. Whilst the PNA mentions opening hours on weekdays after 6pm and weekend opening, this is described as “desirable” only, ie not specifically part of the requirement for an application to be successful.

4.1.63 The Committee may determine that an application under either regulation 13 or regulation 17 could be approved, but the comments from Naimans UK Ltd’s representative that their client is the only one to have applied under the correct regulation are clearly incorrect.

4.1.64 My client’s application therefore meets the requirements of regulation 17 and if the 2025 PNA is considered to be the relevant PNA then my client’s application should be approved due to its superior location and benefits for the local community and users of pharmaceutical services and the application from Naimans UK Ltd refused.”

4.1.65 [Enclosures provided]

4.2 PHARMACY SALES & CONSULTANCY ON BEHALF OF DAY LEWIS PLC

4.2.1 “We continue to act for Day Lewis PLC and have provided a letter of authorisation to Primary Care Appeals previously.

4.2.2 On behalf of our client, who continues to object to this application, we wish to comment on this appeal as follows.

4.2.3 The appellant begins by referencing its previously approved application for Unforeseen Benefits at the same location. It notes that there have also been several other applications submitted in Bodmin and, at the time of preparing this appeal the appellant was unaware which, if any, of these applications would also be subject to appeal.

4.2.4 As the Primary Care Appeals Committee (“The Committee") is aware, our client has appealed against the approval of the Banns unforeseen benefits application (SHA/26888), and contends, for the reasons set out in that appeal, that the unforeseen benefits application should be refused. That being the case, it is our client’s position that one of the other applications submitted within Bodmin should be approved, as the need discussed within the current Cornwall PNA will not be met by the Banns unforeseen benefits application.

4.2.5 The appellant goes on to make the following statement:

4.2.6 “*However, in the event that my client’s regulation 18 application is appealed and any appeal is upheld then my client asks that the Committee prefers its application that is the subject of this appeal as it offers a significant geographical advantage compared to any other*

Applicant and would best serve patients in Bodmin".

4.2.7 In our client's opinion this statement is flawed for two reasons.

4.2.8 Firstly, we say that the requirements for an application submitted under regulation 17 have not been met in this case.

4.2.9 Regulation 17 begins: [quoted]

4.2.10 The matter of Pharmaceutical Needs Assessments is dealt with in Schedule 1 of the regulations (Information to be contained in pharmaceutical needs assessments).

4.2.11 Paragraphs 2 to 4 of Schedule 1 are reproduced below: [quoted]

4.2.12 It is noteworthy that the Regulations make a clear distinction between applications for Current Needs and those for Improvements or Better Access.

4.2.13 The wording provided in the current Cornwall PNA, on page 76, is as follows:

4.2.14 ***Current geographical gaps and opening hours****: Provision within the PCN and in neighbouring PCNs means there is not a necessary level of service to secure adequate access to pharmacy provision:*

4.2.15 *Since the last PNA, the PCN has lost two pharmacies. A PNA Supplementary Statement issued in August 2024 noted 'changes to the pharmaceutical list create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services.'*

4.2.16 *Travel times to existing pharmacies are adequate with the majority of the population within a 20-minute drive time. Sparsely population areas on the edge of Bodmin Moor lie outside of a 20-minute drive.*

4.2.17 *Within Bodmin, as the two pharmacies are in close proximity to each other, the large proportion of the eastern part of the town is outside a 15-minute walk.*

4.2.18 *It is noted that the community in Polruan face infrastructure challenges in accessing pharmaceutical services in neighbouring Fowey due to need for boat services. Maintenance of the existing dispensing GP practice in Polruan in the future is beneficial for access.*

4.2.19 *There is no post-6pm and Sunday opening in the PCN. Neighbouring PCNs have post-6pm and Sunday provision, but this is more than a 20-minute drive and are not accessible for those without a car.*

4.2.20 *Based on all information available at the time of writing, there is a gap in provision for a new pharmacy in Bodmin. Opening hours post-6pm Monday to Friday and weekend opening is desirable. The pharmacy should be willing to provide all necessary services and consider*

provision of services to people receiving drug and alcohol treatment.

4.2.21 It is very clear from this wording that the gap identified in Bodmin is considered to be a **Current Need.**

4.2.22 The only reference to **Improvements or Better Access**, for the Three Harbours and Bosvena PCN is provided on page 77 of the PNA which states:

4.2.23 "*Improvements and Better Access **at existing pharmaceutical service providers** could be secured through provision of smoking cessation services to meet the health needs of the population".*

4.2.24 As the applicant is not an 'existing provider' in Three Harbours and Bosvena PCN it cannot secure the improvements or better access discussed in the PNA.

4.2.25 In short, the applicant has applied under Regulation 17 to provide Improvements or Better Access, instead of Regulation 13, to meet Current Needs. As there are no relevant 'improvements or better access' discussed in the PNA, this application fails to meet the requirements of Regulation 17, so should be refused.

4.2.26 Secondly, the appellant's statement that its application offers "*a significant geographical advantage compared to any other Applicant and would best serve patients in Bodmin*" is without merit.

4.2.27 Other applications have been submitted in Bodmin, not least by our client, for the same area proposed by the appellant. There is therefore no reason to prefer the Banns application ahead of other applications simply on the grounds of geography.

4.2.28 In summary, this application does not meet the requirements of regulation 17 and we therefore urge the Committee to refuse it accordingly."

5 Summary of Observations

5.1 RUSHPORT ADVISORY LLP ON BEHALF OF THE APPLICANT

5.1.1 "Rather than replying to individual parties points we address the points that have been made instead.

5.1.2 **Relevant PNA**

5.1.3 Interested Parties appear to have been unaware of the date of publication of the Cornwall PNA and we rely on our previous comments in respect of this point.

5.1.4 **Type of Application**

5.1.5 Interested Parties seek to argue that the only type of application that the Committee may approve is an application made under regulation 13 and that an application made under regulation 17 (as my client has

submitted) must be refused. We say this is plainly wrong.

5.1.6 The Committee will note that the Naimans application was submitted when the 2025 PNA was not yet published. Naimans can have had no regard to the wording of the PNA yet now seek to highlight specific parts of the PNA and claim that their application is the only one that is correctly submitted.

5.1.7 In contrast, my client specifically considered the language used in the 2025 PNA and we determined that an application under regulation 17 was more appropriate.

5.1.8 Regulation 17 is referred to as an "identified improvements of better access" application.

5.1.9 The 2025 PNA states at page 77

5.1.9.1 **Access** to NHS Pharmaceutical Services in the Three Harbours and Bosvena PCN is INADEQUATE at this time.

5.1.9.2 Based on all information available at the time of writing, there is a **gap in provision** for a new pharmacy in Bodmin. Opening hours post-6pm Monday to Friday and weekend opening is desirable. The pharmacy should be willing to provide all necessary services and consider provision of services to people receiving drug and alcohol treatment.

5.1.10 The PNA is clear that the gap relates to "access" and uses the words "***Access** to NHS Pharmaceutical Services in the Three Harbours and Bosvena PCN is INADEQUATE at this time*". The PNA also states there is a "**gap** in provision".

5.1.11 For this reason the application from Banns Pharmacy is correctly made under regulation 17 as the requirement is referred to in relation to "access" and a "gap".

5.1.12 The Committee will note that the word "need" does not appear anywhere in the PNA in relation to the requirement for a new pharmacy in Bodmin, whereas the word "access" does. Neither Naiman's representative or Day Lewis' representative has identified any use of the word "need" in their submissions.

5.1.13 In other PNA's that identify a requirement for a new pharmacy it is common to see a statement such as, "*Based on the information there is a need for a pharmacy…".* No such wording is seen in the Cornwall 2025 PNA and instead the PNA refers to access and gaps.

5.1.14 PSC on behalf of Day Lewis seeks to have all applications deferred in order to allow its client to "catch up" with the current appeals. We say this would be quite wrong for a number of reasons.

5.1.15 The wording in relation to opening after 6pm Monday to Friday does not form part of the requirement identified in the PNA and is referred to simply as "desirable". My client has therefore included supplementary rather than core hours from 6pm to 7pm weekdays so

that the requirement for these hours can be properly assessed.

5.1.16 The Day Lewis application under regulation 13 is incorrectly made as the application should have been made under regulation 17.

5.1.17 There is no reason to further delay the provision of pharmaceutical services in Bodmin that have been identified as required by all parties.

5.1.18 Both of the applications submitted under regulation 13 by Day Lewis plc are dated October 2025. This means both were made on the basis of a DRAFT PNA seeking to secure an advantage over other Applicants by applying before the PNA was published. Primary Care Appeals Guidance Note (that we have previously provided) is perfectly clear that such applications should not be approved and it would not be just to do so. Day Lewis' intention in both applications is clear as they specifically refer to the draft PNA and state,

5.1.19 *"*We refer to the draft PNA published by Cornwall & Isles of Scilly HWB due to come into force from October 2025. We believe that the final version of the PNA will include the same information in terms of 'current needs' and this PNA will be in force at the point NHS England considers this application."*

5.1.20 My client's application therefore meets the requirements of regulation 17 and if the 2025 PNA is considered to be the relevant PNA then my client's application should be approved due to its superior location and benefits for the local community and users of pharmaceutical services and the application from Naimans UK Ltd refused."

5.2 HEALTHCARE PLUS CONSULTING LTD ON BEHALF OF NAIMANS UK LIMITED

5.2.1 "Thank you for your letter dated 13th April 2026. We respond to comments received from interested parties below.

5.2.2 Banns Pharmacy Ltd

5.2.3 *The 2025 PNA is the relevant PNA, and the unforeseen benefits application rejected*

5.2.4 There remains some uncertainty as to the date on which the Cornwall and Isles of Scilly PNA 2025 was published. For reasons previously presented, it appears to us that the PNA was publicly published and accepted as PUBLIC and FINAL in October, in line with the regulatory deadline. However, in any case, it is now agreed that the PNA is published with all parties agreeing it has been published for at least 5 months.

5.2.5 It also appears to be agreed that the applications should be heard under the new PNA and that the unforeseen benefits application (SHA/26888) by Banns should be rejected.

5.2.6 Banns' representations suggest that the Appeals Committee should use Regulation 22 to hear all appeals under the previous PNA. The reason given is that assessing the application under the new PNA

would create an unfairness or injustice for Banns.

5.2.7 We note that the starting point of Regulation 22 is clearly that the newest PNA should be used.

5.2.8 Given there has now been 5 months and Banns offer extensive comments on the new PNA, there is no procedural unfairness in the use of the new PNA. We submit that this procedural unfairness is the mischief to which Regulation 22 is addressed. The broad idea of unfairness and injustice suggested by Banns seems to be too broad and out of place in technical regulations such as the 2013 Regulations.

5.2.9 Furthermore, given that Banns have had the time to create an additional application, which in their submission it states that their other application should succeed under the new PNA, we find Banns' case that they have suffered substantive unfairness or injustice quite untenable.

5.2.10 We also note that it has been the practice of the Committee to use the new PNA in cases where, since the ICB decision, the PNA has been published but parties have had time to make comments on the new PNA (See SHA/26617, 26711, 26667). This has provided applicants with a great deal of certainty as to how applications will be handled and allowed for swift consideration of applications. We submit that the present case, where the PNA was at the latest published during the afternoon of the ICB decision, does not present any reason to move from this position.

5.2.11 We note that the guidance issued by the NHS Resolution does not seem to be relevant to the present applications. We note that our client made their application originally due to reliance on the ambiguous supplementary statement to the previous PNA. The mischief of 'jumping the gun' is therefore not at issue in this case as reliance was not placed on the Draft PNA.

5.2.12 In these circumstances it is clear that the Cornwall and Isles of Scilly PNA 2025 should be utilised for all applications. As a result of this the unforeseen benefits application must be rejected.

5.2.13 *The PNA identifies a current need, and the Identified Improvements or Better Access Application should be rejected*

5.2.14 Below we include a screenshots [sic] of the full context of the identified need in Bodmin.

> SUMMARY
>
> Access to NHS Pharmaceutical Services in the Three Harbours and Bosvena PCN is INADEQUATE at this time.
>
> Based on all information available at the time of writing, there is a gap in provision for a new pharmacy in Bodmin. Opening hours post-6pm Monday to Friday and weekend opening is desirable. The pharmacy should be willing to provide all

necessary services and consider provision of services to people receiving drug and alcohol treatment.

Improvements and Better Access at existing pharmaceutical service providers could be secured through provision of smoking cessation services to meet the health needs of the population.

5.2.15 *Figure 1: Screenshot of the Cornwall and Isles of Scilly PNA 2025, pages 77, showing the current need identified in Bodmin*

5.2.16 An identical statement is made on further down on page 77. Furthermore, below is a restatement of the same language later in the PNA on pages 85-6

Current gaps in provision (geographic need)

Based on the information available at the time of developing this PNA:

Based on all information available at the time of writing, there is a gap in provision for a new pharmacy in Bodmin. Opening hours post-6pm Monday to Friday and weekend opening is desirable. The pharmacy should be willing to provide all necessary services and consider provision of services to people receiving drug and alcohol treatment.

There are no geographic gaps requiring additional pharmaceutical providers in any other location in CIOS at the time of writing.

5.2.17 *Figure 2: Screenshot of the Cornwall and Isles of Scilly PNA 2025, pages 85, showing the current need identified in Bodmin. The gap is listed under the heading "Current gaps in provision (geographic need)"*

5.2.18 We submit that, when looking at the full context of the PNA, it is clear that the PNA has identified a current need. There are a number of reasons for this:

5.2.18.1 The identification of the gap on pages 85 clearly lists the gap under the heading of "Current gaps in provision (geographic **need**)." It is therefore apparent that the PNA identified a 'need'

5.2.18.2 not improvements or better access

5.2.18.3 The identification noted that the current situation was 'inadequate.' We submit that inadequacy means that the current provision falls below the necessary level.

5.2.18.4 The identification notes that certain matters are desirable. This implies that the remainder is necessary; that is to say needed.

5.2.18.5 The third bullet point on page 77 clearly uses the language of 'Improvements or Better Access' in respect of smoking

cessation. If the PNA had intended the previous bullet point – that identifying a gap in Bodmin – to be Improvements or Better Access it would use the same language.

5.2.19 We note that Banns present the mere use for the word 'access' in the first bullet point on page 77 which does not even identify the gap to show that the PNA identified improvements or better access. We do not believe this is a sound interpretation of the identification, in the whole context of the PNA.

5.2.20 We reiterate that on pages 85 the need is identified under "Current gaps in provision (geographic **need**)." We submit that it is unambiguous that the PNA identified a need and therefore the only application submitted under the correct application is our client's.

5.2.21 We submit therefore that Bann's Identified Improvements or Better Access application must be rejected.

5.2.22 **Day Lewis**

5.2.23 In regard to our client's application, Day Lewis references post-6 pm and weekend opening. However, these were said only to be 'desirable' and are therefore not part of the identified need. This is therefore not a matter relevant to Regulation 13.

5.2.24 Day Lewis also questions the location of the pharmacy. We note that the geography of the need identified by the PNA was 'in Bodmin'. The further speculations of Day Lewis as to the best location are not relevant to the need and Regulation 13.

5.2.25 In regard to the location, we note that our client's proposed pharmacy would be Bodmin as is demanded by the PNA and in a location likely to be used by residents, including those of West Bodmin. It is situated near to many amenities that residents of the whole town are likely to utilise, including:

5.2.25.1Sainsbury's

5.2.25.2Bosvena Health - Carnewater Building

5.2.25.3The Old Library Bodmin

5.2.25.4Discovering42 Science Museum

5.2.25.5St Mary's Catholic Primary School

5.2.25.6North Cornwall Academy

5.2.26 Day Lewis also accept that *"Should the Naimans UK Limited application be approved, the current need identified in the PNA will be deemed to have been met."* We submit therefore that there is no dispute that the need would be met in full by this application for the purposes of 13(2)(e)-(f).

5.2.27 We note that regulation 13(2)(h) makes it clear that only where the

need is already met or due to be met (by way of an applicant entitled to issue a Notice of Commencement) can the committee consider other applications. Other applications, not before the committee, should not affect the consideration of the present applications.

5.2.28 It is therefore clear that our client's application meets all the criteria of Regulation 13, and is the only application which does so.

5.2.29 We have no comments on the representations received from the ICB and Boots.

5.2.30 **Conclusion**

5.2.31 We therefore submit that there is no reason to consider the present applications under the previous PNA when it is undisputed that the relevant PNA is the Cornwall and Isles of Scilly PNA 2025 and all parties have made full representations on the relevant PNA.

5.2.32 We also note that our client's application is the only one under the correct regulation and there is not disputable that the identified *need* will be met in full by our client's application.

5.2.33 We submit that our client's application should be granted."

6 Consideration

6.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

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

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

6.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

6.5 The Committee first considered Regulation 31 of the Regulations which states:

(1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.

(2) This paragraph applies where -

(a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") at or from -

(i) the premises to which the application relates, or

(ii) adjacent premises; and

(b) NHS England is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).

6.6 In its application, the Applicant stated "*NO OTHER PHARMACY AT SAME OR ADJACENT PREMISES*" in response to the question regarding Regulation 31. Further in its decision, the Commissioner concluded that it "*was satisfied it is not required to refuse any of the applications by virtue of Regulation 31".*

6.7 Based on the information before it, which had not been disputed by any party, the Committee was not required to refuse the application under the provisions of Regulation 31.

6.8 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 17

6.9 The application (which was to be determined in accordance with the procedures in Schedule 2 to the Regulations) was submitted by the Applicant based on providing improvements, or better access, identified in the pharmaceutical needs assessment (pursuant to Regulation 17).

6.10 The Committee considered whether purported improvements or better access, on which the Applicant based its application, satisfied the elements of Regulation 17(1) which reads as follows:

"(1) If -

(a) NHS England receives a routine application and is required to determine whether granting it, or granting it in respect of some only of the services specified in it, would secure improvements, or better access to pharmaceutical services of a specified type, in the area of the relevant HWB: and

(b) the improvements or better access that would be secured have or has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 4(a) of Schedule 1,

in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), NHS England must have regard to the matters set out in paragraph (2).

6.11 Paragraph 4(a) of Schedule 1, reads as follows:

"A statement of the pharmaceutical services that the HWB has identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied—

(a) would, if they were provided (whether or not they were located in the area of the HWB), secure improvements to, or better access to, pharmaceutical services, or pharmaceutical services of a specified type, in its area.

6.12 The Committee first considered the chronology of events leading up to the current position:

6.12.1 The Applicant submitted its application on 14 May 2025. In making its application, the Applicant sought to secure the improvements or better access identified in the supplementary statement dated August 2024 by Cornwall Health & Wellbeing Board.

6.12.2 On 7 January 2026, the Commissioner refused the application. The Committee noted the decision report is dated 4 December 2025, and further that the Commissioner considered the application under the 2022-2025 PNA.

6.12.3 The Commissioner sought to rely on the previous decision SHA/26621 whereby the Committee determined that the wording in the August 2024 supplementary statement was "*broad*" and given there was "*no reference to specific services or the location(s) where they are required*" "*the Committee considered that this created a significant level of ambiguity about any gap that could potentially be filled*.

The Committee was of the view that in order to properly identify a gap in pharmaceutical provision, a PNA or supplementary statement would need to identify a site (or area) at which the provision of pharmaceutical services would meet a current or future need for pharmaceutical services, or secure improvements or better access to pharmaceutical services. In this case, as argued by parties, the Supplementary Statement appears to indicate that an application anywhere in Cornwall could be approved in response to the changes identified. The Committee was not persuaded that this is the intention of the Regulations nor of the HWB had erred in not providing sufficient clarity in the Supplementary Statement. The Committee considered that the level of ambiguity was such as to enable it to determine that the improvements or better access that the Applicant is seeking to secure were not or was not included in the PNA."

6.12.4 The Committee noted the 2025-2028 PNA is now published and is dated 9 October 2025, although the Committee noted the Commissioner's contention that the 2025-2028 PNA was not published prior to it determining this application. Further, a supplementary statement to the 2025-2028 PNA was published on 4 December 2025.

6.12.5 In its appeal, dated 26 January 2026, the Applicant does not dispute

the Commissioner considering its application under the 2022-2025 PNA, instead the Applicant mentions its current application under Regulation 18 (our reference SHA/26888). It goes on to state that if that application is appealed and the appeal upheld, that the Committee prefer [its Regulation 17 application] "*as it offers a significant geographical advantage compared to any other Applicant.*"

6.12.6 Further, in its observations dated 13 April 2026, the Applicant refers to the findings in the 2025-2028 PNA to support its application.

6.13 The Committee had regard to Regulation 22 which states:

"(1) If the NHSCB receives a routine application to which regulation 19(6) does not apply, the NHSCB must refuse it unless granting it, or granting it in respect of some only of the services specified in it, would—

(a) meet a current or future need for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB that has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2 of Schedule 1; or

(b) secure (including in the future) improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB that have or has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.

(2) For the purposes of paragraph (1), the relevant pharmaceutical needs assessment is—

(a) the pharmaceutical needs assessment of the relevant HWB that is current at the time that the NHSCB takes its decision to grant or refuse the application, unless in the opinion of the NHSCB (or on appeal the Secretary of State) the only way to determine the application justly is with regard to an earlier pharmaceutical needs assessment, in which case the relevant pharmaceutical needs assessment is that earlier assessment; or

(b) if the relevant HWB has not published a pharmaceutical needs assessment, the pharmaceutical needs assessment of a Primary Care Trust (as extended by regulation 7(1)) that relates to the locality in which the location or premises to which the application relates is or are situated."

6.14 The Committee was of the view that irrespective of the date on which the 2025-2028 PNA was published, Regulation 22 required it to specifically consider whether the only way to determine the application justly is to have regard to an earlier PNA, i.e. the 2022-2025 PNA.

6.15 The Applicant applied to secure improvements or better access identified in the 2022-2025 PNA, specifically the Supplementary Statement dated August 2024. Therefore, as the date of the application was at the time that the 2022-2025 PNA was still live, the Applicant cannot now rely on the findings in the 2025-2028 PNA.

6.16 The Committee was of the view that the Applicant cannot use the process to their advantage. The Committee considered that this is similar to an applicant basing their application on a draft PNA. The Committee considered that such an applicant is attempting to "jump the queue" by now relying on the 2025-2028 PNA, during this appeal, whilst other potential applicants have likely waited until the final version was made public before submitting applications.

6.17 The Committee considered that judging the application against the 2025-2028 PNA and allowing the Applicant, for the purpose of a redetermination of the application on appeal, to rely on different and additional provisions of the published 2025-2028 PNA, could allow the Applicant to have a "head start" against other applicants.

6.18 The Committee therefore determined that, in its opinion, the only way to determine the application justly was with regard to the 2022-2025 PNA.

6.19 The Committee noted that the Supplementary Statement dated August 2024 lists the following changes to the pharmaceutical list:

6.19.1 the closure of four pharmacies, including Asda Pharmacy, Launceston Road, Bodmin, PL31 2AR;

6.19.2 a change in ownership of eight pharmacies; and

6.19.3 a change in opening hours of three pharmacies.

6.20 The Supplementary Statement then goes on to state:

6.20.1 "*It is the opinion of the Cornwall and Isles of Scilly Health and Wellbeing board that these changes to the pharmaceutical list create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services.*

6.20.2 ***These changes to the availability of pharmaceutical services are relevant to the granting of applications referred to in the NHS Act 2006 and the Group is satisfied that a revised Pharmaceutical Needs Assessment would be an appropriate response and that a revised PNA will be prepared and submitted for approval of the Health and Wellbeing Board in 2025.***"

6.21 In SHA/26621, which had not been disputed by parties, the Committee noted "*that whilst the wording in the Supplementary Statement is specific that the changes identified "create a gap in pharmaceutical services provision", the subsequent wording is very broad, referring to "a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services" with no reference to specific services or the location(s) where they are required. The Committee considered that this created a significant level of ambiguity about any gap that could potentially be filled.*

6.22 *The Committee was of the view that in order to properly identify a gap in pharmaceutical provision, a PNA or supplementary statement would need to identify a site (or area) at which the provision of pharmaceutical services*

would meet a current or future need for pharmaceutical services, or secure improvements or better access to pharmaceutical services. In this case, as argued by parties, the Supplementary Statement appears to indicate that an application anywhere in Cornwall could be approved in response to the changes identified. The Committee was not persuaded that this is the intention of the Regulations nor of the HWB had erred in not providing sufficient clarity in the Supplementary Statement. The Committee considered that the level of ambiguity was such as to enable it to determine that the improvements or better access that the Applicant is seeking to secure were not or was not included in the PNA."

6.23 The Committee had no reason to defer from its previous findings.

6.24 Based on the information provided, the Committee found no reference in the PNA to services which would fall within the description set out in paragraph 4(a) of Schedule 1 to the Regulations.

6.25 The Committee determined that, in the absence of specified circumstances in which the provision of services would secure improvements, or better access to, pharmaceutical services, the provisions of Regulation 17(1) were not met.

6.26 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:

6.26.1 confirm the Commissioner's decision;

6.26.2 quash the Commissioner's decision and redetermine the application;

6.26.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.

6.27 Although the Committee has reached the same conclusion to that of the Commissioner, the Committee has considered Regulation 22 in its determination. The Committee therefore determined that the decision of the Commissioner must be quashed.

6.28 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.

6.29 The Committee noted that representations on Regulation 17 had already been made by parties to the Commissioner, and these had been circulated and seen by all parties who made representations on the application, as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 17.

6.30 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 Decision

7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.

7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.

7.3 The Committee has determined that the application should be refused as the PNA does not specify any circumstances in which the provision of specified services will secure improvements to, or better access to, pharmaceutical services in Bodmin.

7.4 Accordingly, the application is refused.

Technical Case Manager
Primary Care Appeals