NHS Resolution

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17 June 2026

REF: SHA/26888

APPEAL AGAINST CORNWALL AND ISLES OF SCILLY ICB DECISION TO GRANT AN APPLICATION BY BANNS PHARMACY LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT QUEENS CRESCENT TO ST PIRAN'S CLOSE, 73 ST MARY'S ROAD TO 28 ST MARY'S ROAD, 22 TRELAWNEY ROAD TO ST MARY'S ROAD, 32 ROCK LANE TO ST MARY'S ROAD, BODMIN (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
Healthcare Plus Consulting Ltd on behalf of Naimans UK Ltd
Pharmacy Sales & Consultancy on behalf of Day Lewis PLC
Bosvena Health

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1 The Application

By application dated 20 November 2024, Banns Pharmacy Limited ("the Applicant") applied to Cornwall and Isles of Scilly ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Queens Crescent to St Piran's Close, 73 St Mary's Road to 28 St Mary's Road, 22 Trelawney Road to St Mary's Road, 32 Rock Lane to St Mary's Road, Bodmin (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 EITHER THE SAME OR ADJACENT PROPOSED PREMISES"

1.3 Information in support of the application

1.4 "In recent times Bodmin has experienced a significant decline in the availability of pharmaceutical services. Boots Pharmacy at Unit 5 Bell Lane and also ASDA at Launceston Road (a 100 hour pharmacy) have both closed during 2024.

1.5 When the PNA was written these closures were not known about. Indeed, the PNA considered pharmacies located within Bodmin as helping to serve the East Cornwall PCN (page 65).

1.6 Primary Care services in Bodmin have become clustered in the central area, with Boots Pharmacy, Day Lewis Pharmacy, Carnewater Practice and Stillmoor House Medical Practice all located within a small circle of less than 200 metres radius.

1.7 Bodmin is effectively made up of 3 distinct areas. The east of Bodmin (where ASDA used to be located) which contains housing but is largely commercial in nature, central Bodmin, which again has significant amounts of housing but also contains many smaller shops and services and finally West Bodmin which is largely residential, but with its own range of services including larger buildings such as the hospital and library and a significant amount of larger

commercial offerings such as Home Bargains and Howdens to the northern edge.

1.8 The area to the west of Bodmin contains a wide range of services and facilities and is also seeing population increases due to ongoing housing development. The area also contains the Bodmin Community Hospital, community hub, Morrison Daily, Spar etc.

1.9 New housing is being built of Westheath Avenue (Laveddon Way) and to the north of the Community Hospital.

1.10 Access to the town centre facilities can be particularly challenging. It is well known that access to services can become severely limited during summer months due to the massive influx of tourists and vehicles. Boots and Day Lewis pharmacies in Bodmin are located over a mile's walk for those who live around the best estimate area proposed in this application.

1.11 Whilst there is a bus service along St Mary's Road to the town centre, (number 96), this only operates once every 2 hours and is not a viable alternative for most people as whilst a journey in one direction may be planned to hopefully coincide with the bus leaving, it is much more difficult to know exactly when one might be leaving a doctor's surgery, or pharmacy for the return journey. A return journey to access a pharmacy by bus could end up taking 2 to 3 hours, which means that walking would be a better option for those who can. Buses along the A389 take a circuitous route across the south eastern edges of Bodmin rather than travelling ot [sic] the town centre directly and also require patients to walk further to access the bus stops and services compared to the 96 bus.

1.12 Typically car ownership in Cornwall is high, with a car being seen as a necessity rather than a luxury. However, looking at the Bodmin St Mary's & St Leonard Ward it can be seen that almost 25% of households have no access to a car, compared to 15% for Cornwall. There are also significantly higher levels of poor health in the ward compared to both the Cornwall and English average as well as significantly higher levels of disability.

1.13 In areas such as this, with higher than average health needs and poor access to services, the role of community pharmacy is particularly important and this is especially true of services such as Pharmacy First and vaccinations, where uptake of the services will be much higher when they are placed in areas with high health needs and poor access to alternate providers.

1.14 Granting this application would secure improvements and better access to pharmacy services and the application should therefore be approved."

2 The Decision

The Commissioner considered and decided to grant the application. The decision letter dated 20 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 granted. Please see the enclosed report for the full reasoning."

Extract from PSRC decision report dated 4 December 2025

[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 In April 2025 the SW PSRC considered the application from Banns Pharmacy Ltd (application 5 listed above) and refused the application. The decision was appealed and NHSR remitted the application back to the SW Committee as not all regulatory matters had been properly considered. The SW Committee had a copy of the April 25 meeting decision report and the NHSR appeal decision report. It was confirmed the application was recirculated to interested parties and is now included for consideration as part of this group of applications.

2.5 …

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

2.7 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.***

2.8 The applications do not relate to a controlled locality, but the area is within 1.6km of a controlled locality.

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

2.10 …

2.11 **Summary of application 5 – Banns Pharmacy Ltd - Application offering unforeseen benefits – Reg 18**

2.12 The SW Committee noted this is a reconsideration of the application. It was first considered by the SW Committee in April 2025 and was refused. On appeal, NHSR remitted the application back to the SW Committee on the matter of Regulation 18(1)(b) for further notification and redetermination.

2.13 Applicant 5 is proposing to open from 9am – 1pm and 2pm – 5.30pm Monday to Friday and 9am – 12pm on Saturday for 40.5 Core hours. Closed Sunday. The hours proposed are indicated below from section 3.1 and 3.2 of the application form:

Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9am to 1pm and 2pm to 5.30pm	9am to 1pm and 2pm to 5.30pm	9am to 1pm and 2pm to 5.30pm	9am to 1pm and 2pm to 5.30pm	9am to 1pm and 2pm to 5.30pm	9am to 12pm		40.5

Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9am to 1pm and 2pm to 5.30pm	9am to 1pm and 2pm to 5.30pm	9am to 1pm and 2pm to 5.30pm	9am to 1pm and 2pm to 5.30pm	9am to 1pm and 2pm to 5.30pm	9am to 12pm		40.5

2.14 At section 4 of the application form the applicant proposes to provide essential services, advanced services, enhanced services and appliances listed in Part IX of the Drug Tariff.

2.15 The applicant states the premises have not yet been secured so a floor plan has not been provided.

2.16 At section 6 of the application form the applicant describes the unforeseen benefit they are offering to secure, concluding:

2.17 Granting this application would secure improvements and better access to pharmacy services and the application should therefore be granted.

2.18 **PUBLIC INVOLVEMENT / REPRESENTATIONS**

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

2.20 Bodmin Town Council confirmed the Town Councils Planning Committee supports the idea of a pharmacy in the area of Bodmin.

2.21 Boots UK Ltd state:

2.22 As the ICB will be aware, supplementary statements are published if there are any changes to pharmaceutical provision since the PNA was published. In this

case, the statements published do not identify a gap which an unforeseen benefits application would fulfil.

2.23 We do not believe that the applicant has provided any evidence of patients having difficulty accessing pharmaceutical provision in this locality. We do not have any further comments to make, but would be grateful if you would keep us informed of the progress of this application.

2.24 Bosvena Health state:

2.25 We would like to appeal against the Pharmacy list application submitted by [Mr SS] on behalf of Bann's Pharmacy in relation to offering unforeseen benefits. We are a local GP Practice with a dispensing site, and currently provide pharmacy dispensing services to our registered patients within this catchment area.

2.26 We understand that this licence is made on the basis of their being no pharmacy near any of the listed estimated sites, but we would like to highlight that our practice has a confirmed planning application for a new Primary Care Centre at Beacon Technology Park - PA23/06567 | Erection of a new primary health care centre without compliance with condition 2 of decision notice PA22/01950 dated 22/08/2022 | Land West Of Chy Trevail Beacon Technology Park Bodmin PL31 2FR - and contained in this approved development is a pharmacy to serve our practice population. We have not to date submitted an application with regard to a pharmacy licence for this site, as final legal transactions for leases are being completed, however any adverse effect on the ability of the practice to secure a pharmacy licence for these premises would ultimately significantly impact the business case for these premises and therefore significantly risk this 'flagship' Integrated Care Board, supported development for Bodmin. The land included in the Best Estimate from Bann's is within 1 mile of the new Primary Centre.

2.27 We understand that the application confirms that the new Pharmacy will increase provision of NMS, hypertension case finding, stop smoking, pharmacy first, EHC, and Flu vaccinations however we would question the volume and capacity for these services without a fuller understanding of the likely premises or availability of pharmacists to carry out these services.

2.28 From our perspective we currently offer patient choice of GP provider for those patients living in that area through provision of our General Medical Services contract, and our dispensary income in relation to our rural patients helps to support primary care provision to those registered patients. From a viability point of view, the addition of another pharmacy within our catchment area to the West of Bodmin town centre would further erode our dispensing patient numbers removing eligibility for patients who fall within that catchment area. The loss of dispensing patients would significantly impact the already impaired financial status of our dispensary and potentially make this service economically unviable.

2.29 This would have repercussions specifically for our patients that live in our most rural and deprived areas across Bodmin moor and would ultimately then endanger the future of our branch surgery at Polyphant of over 1,100 patients registered to receive medication from this site.

2.30 Day Lewis state:

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

2.32 Addressing some of the matters raised by the applicant within its application:

2.32.1 The applicant makes reference to "a significant decline in the availability of pharmaceutical services" in Bodmin. Whilst it is the case that the number of pharmacies has reduced, it does not necessarily follow that residents have difficulty accessing pharmaceutical services. The existing pharmacies are able to meet the needs of residents, and the applicant has provided no evidence to show otherwise.

2.32.2 The applicant makes specific reference to the fact the Asda pharmacy that closed was a '100 hour' pharmacy, but notably does not offer any extended opening hours within its application. It does not appear to believe that this extended hours opening was important.

2.32.3 Whilst it is correct that primary care services are centrally located within Bodmin, that is to be expected because this is where the vast majority of the town's amenities are situated. Local residents, as well as visitors, access the vast majority of their daily needs from the town centre where the existing pharmacies are located.

2.32.4 Whilst it is true that there are some amenities, such as the hospital and the library, located to the west of the town these are clearly facilities that serve the whole town, as well as the wider area. They are not local amenities serving the needs of a discreet residential population

2.32.5 This is simply evidence that people living in Bodmin travel freely around the town to access a range of facilities.

2.32.6 The new housing referred to by the applicant is minimal and no evidence has been provided that suggests the residents who will live here will have any difficulties accessing pharmaceutical services. Car ownership tends to be higher in new residential developments.

2.32.7 In terms of access to services in the summer months, whilst there is clearly tourism in this part of Cornwall, Bodmin is not inundated by tourists in the same way that the seaside towns and villages are. The applicant has provided no evidence to support its assertion that people have difficulty accessing the town centre in the summer months.

2.32.8 In terms of bus travel, whilst the applicant focuses on bus route 96 (because it suits its argument to do so), it also briefly mentions buses travelling along the A389. This route is only a very short walk away from the applicant's best estimate area and buses run along this road to the town centre on average every 15 minutes. The journey time to the town centre is no more than 10 minutes.

2.32.9 The applicant cites the level of car ownership in Bodmin compared to the rest of Cornwall but in fact car ownership in this ward is broadly in

line with the national average. 24.4% of households had no car at the time of the 2021 census compared to the national average of 23.5%. Car ownership is not notably low.

2.33 Finally, it is well known to the ICB that the pharmacy closures seen over recent years have resulted from significant shortfalls in pharmacy funding against the backdrop of large increases in costs for pharmacy operators.

2.34 It is important that those contractors who remain are given every opportunity to ensure the financial stability of their businesses so the pharmaceutical services that exist in Cornwall at present can be maintained. Granting applications for new pharmacies in the county will simply result in further instability for the sector.

2.35 The burden of proof rests with the applicant when making an application for inclusion in the pharmaceutical list but the applicant has actually provided very little relevant information.

2.36 In conclusion, this application falls a long way short of providing any evidence that might lead the ICB to conclude that granting it would secure improvements or better access to the provision of pharmaceutical services in the area. For that reason, the application should be refused.

2.37 Kernow LMC state:

2.38 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.

2.39 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.

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

2.40.1 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 Helath [sic];

2.40.2 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;

2.40.3 The approval of this application represents a high risk of consequential jeopardy for the future of the current branch surgery in Polyphant, particularly impacting the patient population which is served by that branch and who live in a challenged, exceptionally rural part of the Practice's boundary and who rely on this branch in order to access their medications.

2.41 The applicant responded to the first circulation of the interested parties' responses, addressing some of the views stated within the responses and request the ICB to consider the opinions of patients when considering the application. They provide copies of reviews of patient experience of accessing pharmaceutical services in Bodmin. The applicant did not respond to the interested party responses following the second circulation of the application.

2.42 When comments are circulated to the applicant and interest parties the covering letter states:

2.43 *Please note that any new information that you submit at this stage will have little or no weight placed upon it unless it can be demonstrated that you are presenting it in response to representations submitted by another party that you believe are not true or are incorrect.*

2.44 ….

2.45 **UNFORESEEN BENEFITS**

2.46 Reg 18(1)(b) – Improvements or better access not included in the Pharmaceutical Needs Assessment

2.47 Regulation 18 concerns 'Unforeseen Benefits' applications (applications 5 and 6), which are applications where the improvements or better access that would be secured were or was not included in the relevant PNA. The current Cornwall PNA can be found here: Pharmaceutical Needs Assessment (PNA) - Cornwall Council . The SW Committee noted Bodmin is included in the Three Harbours and Bosvena Health PCN: a profile for the PCN can be found here: Community and health based profiles - Cornwall Council

2.48 The overall conclusion at the time the PNA was written was:

2.48.1 The PNA concludes that, in respect of essential pharmaceutical services:

2.48.1.1 There is no current gap in services across Cornwall and the Isles of Scilly in any of the localities

2.48.1.2 If current pharmacies remain open there are no future gaps in services across Cornwall and the Isles of Scilly in any of the localities however, given the housing developments in Newquay, Truro (Langarth) and St Austell (West Carclaze) there may be opportunities to consider relocation to enable better overall access for patients.

2.48.2 The PNA concludes that in respect of improvements and better access:

2.48.2.1 There is reasonable choice of pharmacy now and for the future

2.48.2.2 Future improvements and better access appear on balance to be best managed through working with existing contractors rather than through the opening of additional pharmacies

2.48.3 After considering all the elements of the PNA, Cornwall and the Isles of Scilly Health and Wellbeing Boards conclude that there is adequate provision of pharmaceutical services across Cornwall and the Isles of Scilly. Data available at the time of publication in relation to the current provision of pharmacies, suggests that a gap in pharmaceutical services is unlikely to exist during the lifetime of this PNA.

2.48.4 The growing and ageing population across Cornwall and the Isles of Scilly mean that the overall demand for health and social care services is likely to increase, particularly in terms of managing long-term conditions. However, pharmacies across Cornwall and the Isles of Scilly are well placed to deliver healthcare services to their local communities and it is anticipated that the role they play will continue to evolve over the coming years, particularly with changes to future pharmacy and primary care provision. Whilst the core activity of community pharmacies is commissioned by NHSEI, they continue to provide a key partner for Cornwall Council and the Cornwall and Isles of Scilly Integrated Care Board, particularly in relation to improving the public's health and wellbeing and addressing health inequalities.

2.49 Supplementary statements to the PNA were issued when the Boots and Asda pharmacies in Bodmin closed. The SW Committee had copies of the April and August 2024 supplementary statements. The August 2024 statement concludes:

2.49.1 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.

2.49.2 **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.**

2.50 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.

2.51 ***The SW Committee was satisfied that as the improvements or better access which the applicants are proposing to secure were not identified in the PNA, an 'unforeseen benefits' application is the correct type of application.***

2.52 Reg 18(2)(a) – Would granting the application cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services in this area

2.53 The ICB has no particular plans regarding pharmaceutical services in the area, so there can no detriment to such plans. There has not been any suggestion in the interested party response to indicated there would be significant detriment to the arrangements already in place.

2.54 ***The SW Committee was satisfied that granting the application would not cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services.***

2.55 Regulation 18(2)(g) – Whether the application presupposes that a gap in pharmaceutical services provision has been or is to be created as a result of a consolidation application

2.56 As no consolidation applications have been made relating to this part of Cornwall **the SW Committee is not required to refuse the application under regulation 18(2)(g)**.

2.57 Reg 18(2)(b)(i) – Significant benefit: Reasonable choice with regard to obtaining pharmaceutical services

2.58 The SW Committee had a map showing the proposed locations of existing pharmacies in the area and showing where the former Boots and Asda pharmacies that closed were located. The former Asda pharmacy was located to the east of Bodmin town, and the former Boots was located near the existing pharmacies.

2.59 The SW Committee had a list of the existing pharmacies in Bodmin, showing their opening hours and noted the next nearest pharmacy open on Saturday and Sunday is in Wadebridge (8 miles) and the nearest pharmacy open during the evenings Monday to Saturday is in St Austell (13 miles).

2.60 The Asda Pharmacy that exited in July 2024 (100-hour) dispensed around 6,500 items per month according to the 2023-24 data. The Boots Pharmacy that exited in March 2024 dispensed around 8,500 items per month according to the 2023-24 data.

2.61 The SW Committee had confirmation of the activity for March 25, showing the majority of patients from Bosvena Health Centre in Bodmin use the two existing pharmacies in Bodmin, the dispensing practice (Bosvena Health) and two distance selling providers.

2.62 The Banns application:

2.62.1 Suggest a decline in availability of pharmaceutical services in recent time due to the closure of two pharmacies and note the closures were not known about when the PNA was written.

2.62.2 Suggest Primary Care Services in Bodmin have become clustered in the central area all located within a circle of 200 metres radius.

2.62.3 Suggest the area to the west of Bodmin contains a wide range of services and is seeing a population increase due to ongoing housing development and new housing is being built.

2.62.4 Suggest access to the town centre can be challenging and limited during the summer months.

2.62.5 Suggest the area has higher than average health needs and poor access to existing services, suggesting bus trips are lengthy and car ownership is low

2.63 The Naimans application:

2.64 …

2.65 Those opposing the application:

2.65.1 Suggest the existing pharmacies are able to meet the needs of residents and the application does not show otherwise.

2.65.2 Suggest the vast majority of Bodmin services are centrally located along with primary care services.

2.65.3 Suggest the remaining contractors need financial stability for their businesses and a further pharmacy will result in further instability for the sector.

2.65.4 Suggest the approval of an application represents a high risk to the viability of the proposed new PCC at Beacon Technology Park.

2.65.5 There will be income erosion for the impacted GP surgery.

2.66 The SW Committee noted the application from Banns Pharmacy Ltd offers 40.5 Core Hours with a short half day on Saturday morning and the expected usual services. It was noted the Naimans UK Ltd application offers no weekend opening hours and also the expected usual services.

2.67 Naimans UK Ltd mention that the current Boots Pharmacy is not coping with demand, however, this is an assertion. It was noted the location proposed by Naimans UK Ltd is near to the town and the existing providers.

2.68 The SW Committee noted that NHS resolution had previously indicated that greater attention should be paid to patient comments on their experience of accessing pharmaceutical services in an area. The SW Committee considered Google reviews for the Bodmin area and noted Day Lewis have recently responded to negative comments confirming they have adapted and made changes since the closure of other pharmacies to account for the additional workload. It was noted the patient experience is varied and the Boots Pharmacy recently received a 5 star review but also some negative feedback which they have committed to investigate and address. The SW Committee noted patients will have different experiences and contractors will always get some positive and some negative feedback but was reassured the current contractors are responding to feedback.

2.69 The SW Committee noted there are regular bus services available in and out of the area and considered if another pharmacy would provide better choice and accessibility. It was noted there are currently no medical services available to the west of Bodmin, therefore, access to community pharmacy clinical

services would benefit patients. It was noted that a provider of pharmaceutical services in the area could be useful, particularly for those with mobility issues, who are unable to drive or use public transport, as the walk to the nearest pharmacy was not insignificant. The SW Committee was of the view that it would provide access to healthcare in the area as well as improving access and choice of pharmaceutical services to patients in Bodmin.

2.70 The SW Committee took the view that, while the closure of a pharmacy does not automatically mean a new pharmacy application must be granted, there had been a significant reduction in the availability of pharmaceutical services in the area and there was evidence of patients having difficulty accessing services. While some disruption immediately after a change in the availability of services is unsurprising, as it takes time for the remaining providers to adjust, there was patient feedback that suggested that delays and queuing had continued some time after the original exits.

2.71 Taking account of the fact the remaining providers have made efforts to improve capacity the SW Committee was not, however, persuaded that the granting of more than one application was necessary.

2.72 The SW Committee agreed neither applicant had provided much information on protected characteristics and there is no suggestion of innovation from either.

2.73 ***The SW Committee was of the view that because of the accessibility and proximity of the existing pharmacies by car or by bus that granting an application would confer a significant benefit by way of access to, or choice of, pharmaceutical services.***

2.74 Reg 18(2)(b)(ii) – Significant Benefit: Patients with a protected characteristic

2.75 Little information has been provided by any party on this matter.

2.76 ***The SW Committee was satisfied that granting the application would not confer significant benefits on people sharing a protected characteristic.***

2.77 Reg 18(2)(b)(iii) – Significant Benefit: Innovative approaches to delivery of pharmaceutical services

2.78 No information has been provided by any either Applicant on this matter.

2.79 ***The SW Committee was satisfied that granting the application would not lead to significant benefits by virtue of innovation.***

2.80 **DECISION**

2.81 ***The SW Committee was satisfied that one application SHOULD be GRANTED as conferring a significant benefit.***

2.82 There is little difference between the opening hours being offered, other than Banns Pharmacy Ltd are offering Core opening hours on Saturdays 9am – 12pm and a closing time of 5.30pm on weekdays. Banns Pharmacy Ltd propose to close for one hour at lunchtime weekdays. Neither of the applications provide any evidence of any need for specific services at particular

times. The SW Committee was mindful that many pharmacies had been reducing weekend opening hours and so was of the view the Banns application with some hours on a Saturday was a factor in favour of the Banns application.

2.83 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.

2.84 Both applicants offer to provide the standard Advanced Services, and Naimans UK Ltd offer to provide services not commissioned by the ICB and any service commissioned either locally or nationally.

2.85 ***The SW Committee agreed the Banns Pharmacy Ltd is the preferred application due to the opening hours proposed and the proposed location, which provides access to those furthest away from current provision, and is near to the proposed new health centre which the SW Committee considered will be a benefit to patients. The application from Banns Pharmacy Ltd is approved. The application from Naimans UK Ltd is refused.***

2.86 Regulation 65 – conditions relating to opening hours

2.87 Some of the applications propose core hours above 40, so the hours above 40 will be Directed under this Regulation if an application is granted when the pharmacy opens. The SW Committee was clear the hours under the Direction will be hours on Saturday.

2.88 Regulation 66 – conditions relating to providing directed services

2.89 The applicants have given an undertaking to provide a number of directed services. Therefore, it should be a condition of the granting of the application that the contractor(s) must provide those services if commissioned and not withhold agreement to a service specification for those services unreasonably.

2.90 The proposed pharmacy would be located within a non-controlled locality, however, they are within 1.6Km of a controlled locality so the impact on any dispensing patients in the controlled locality area must be considered.

2.91 …

2.92 **Chapter 32 of the Manual states:**

2.93 *Periods of gradualisation should generally be no shorter than one month and, other than in exceptional circumstances, should last no longer than three months. Exceptional circumstances may include:*

2.94 *the loss by a dispensing practice of all its dispensing patients,*

2.95 *where the reduction in the number of dispensing patients would lead to staff changes or redundancies, or*

2.96 *where there is only one pharmacy within a 1.6km of the practice premises and that is the pharmacy that is opening and its ability to absorb former dispensing patients effectively needs to be staged over time*.

2.97 No party has made any representations on the matter of gradualisation.

2.98 ***The SW Committee agreed on a 3 month gradualisation period for Bosvena Health and one month for the other practices affected when the pharmacy opens.****"*

3 The Appeals

In a letter dated 3 February 2026 addressed to NHS Resolution, Day Lewis PLC through its representative Pharmacy Sales & Consultancy appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "We act for Day Lewis PLC and have attached a letter of authorisation from our client according.

3.2 Our client has been notified by NHS England, in a letter dated 20th January 2026, that the above application has been approved. A copy of their letter and decision report is attached with this appeal letter.

3.3 Our client wishes to appeal against the decision of the Cornwall ICB to approve this application as it believes their reasons for approval are flawed.

3.4 **Grounds for appeal**

3.5 Our client's key ground for appeal is that the need identified by the applicant is not *unforeseen* in the context of Regulation 18, as it **is** included in the current Cornwall Pharmaceutical Needs Assessment. For that reason the fundamental requirements of Regulation 18 have not been met.

3.6 **Regulatory test**

3.7 The wording of the first part of Regulation 18 is provided below:

3.8 ***18.—(1) If—***

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

3.10 ***(b)the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,***

3.11 *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).*

3.12 The first consideration for the decision maker, therefore, before considering the remainder of Regulation 18, is whether the need the applicant proposes to meet was included in the 'relevant pharmaceutical needs assessment ("PNA")'. If it was then the application fails without the need for the decision-maker to consider Regulation 18 any further.

3.13 **PNA**

3.14 The Primary Care Appeals committee ("The Committee") is required first to consider which is the *relevant* PNA for the purposes of determining this application. This will usually be the PNA that is in place at the date the application is determined unless there is good cause to refer to a previous PNA.

3.15 In this case our client's position is that the relevant PNA is the 2025-2028 Cornwall PNA, dated 9th October 2025.

3.16 In its decision report, the ICB referred to the previous (2022-2025) PNA and supplementary statements published in respect of that PNA, despite the fact that the ICB determined this application on 4th December, after the date the 2025 PNA came into effect. We have some sympathy with the ICB, as the Cornwall PNA was shown to be in draft form on the HWB website for a long-time before the final version was published. However, it is clear that, at the date of preparing this appeal, the current PNA is the 2025-2028 document.

3.17 Within the current PNA, Bodmin is referenced several times, including on page 85 under the heading "Necessary Services: Gaps in Current Provision" as follows:

3.18 *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.*

3.19 It is unequivocal, therefore, that the PNA **has** identified the need for a new pharmacy in Bodmin.

3.20 This being the case, the requirements of Regulation 18(1) are not met and the Committee may therefore refuse this application without the need to consider it any further."

In a letter dated 4 February 2026 addressed to NHS Resolution, Naimans UK Ltd through its representative Healthcare Plus Consulting Ltd appealed against the Commissioner's decision. The grounds of appeal are:

3.21 "Naimans UK Ltd have instructed us, Healthcare Plus Consulting Ltd, to act on their behalf for this appeal, please find an authorisation letter attached.

3.22 We would like to appeal the rejection of our client's Current Need application (CAS-372032-F5R0F5) and the granting of the Unforeseen Benefits application (CAS-340290-Q0R3S9).

3.23 **Cornwall and Isles of Scilly PNA (2025-2028)**

3.24 We note that the decision was made based on the Cornwall and Isles of Scilly 2022-2025 PNA, and thus consideration was only given to the applications offering unforeseen benefits. However, we wish to highlight that, at the time of the SW Committee's decision on 4th December 2025, the relevant PNA should have been the 2025-2028 Cornwall and Isles of Scilly PNA, which we believe was published on 9th October. We invite the Committee to view page 1 of the attached PNA which confirms this date, also describing this version as 'PUBLIC' and 'FINAL'. Thus, we believe that the SW Committee's statement that *"the final 2025-2028 PNA was not published at the time of the meeting"* is incorrect.

3.25 Additionally, the Committee in Common, comprising of both the Cornwall Health and Wellbeing Board and the Cornwall and Isles of Scilly Integrated Care Partnership, released the Final PNA document into publication on the 18*th* of November through its minutes (Agenda for Committee in Common between Cornwall Health and Wellbeing Board and the Cornwall and Isles of Scilly Integrated Care Partnership on Tuesday, 18th November, 2025, 10.00 am - Cornwall Council). We reiterate that this document is marked "PUBLIC" and "FINAL" demonstrating it was the final published version and that the relevant committee included the HWB. This document is identical to the one that is on the HWB webpage.

3.26 We also remind the committee that the PNA is legally required to be published within three years of the previous PNA.

3.27 There is also a supplementary statement released on the 4th of December, we submit that since supplementary statements follow the release of the PNA, the final PNA must have been published prior to this data.

3.28 We submit that, based on the facts above, the relevant PNA at the time of the decision should have been the Cornwall and Isles of Scilly 2025-2028 PNA, and therefore the decision ultimately relied on the incorrect PNA and, subsequently, the incorrect regulatory test.

3.29 In any case the latest date at which the PNA could have been published was the 4th of December, the day of the supplementary statement. It is therefore undisputable that the Cornwall and Isles of Scilly 2025 PNA is now published and is the relevant PNA. We see no reason that the present application should not be considered under the current PNA.

3.30 The Cornwall and Isles of Scilly 2025 PNA declares a Current Need for pharmaceutical provision in the Bodmin, Three Harbours and Bosvena PCN. Under the section titled:

3.31 "*Current gaps in provision (geographic **need**)*" (emphasis added)

3.32 (Cornwall and Isles of Scilly PNA, 2025-2028, pg. 85

3.33 the PNA states

3.34 *"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" (emphasis added) (Cornwall and Isles of Scilly PNA, 2025-2028, pg. 85).

3.35 Note the present tense of "…there ***is*** *a gap*…".

3.36 It is therefore clear that that the PNA identified a current need identified in Bodmin.

3.37 We note that our client's Current Need application was therefore the only application submitted under the correct regulation, that is, Regulation 13. Our client's application meets all criteria set out in the PNA and therefore should be granted. We reiterate that the granted Unforeseen Benefits application by Banns Pharmacy Ltd was not determined under the correct regulation and therefore this decision should be overturned.

3.38 We understand that the Appeals Committee will hear this case afresh, it is therefore indisputable that the relevant PNA at the time of the decision is the Cornwall and Isles of Scilly PNA 2025-2028.

3.39 We submit that only our client's application addresses the Current Need identified within the PNA in full and believe the only viable option is for our application to be granted and the Unforeseen Benefits application to be rejected.

3.40 **Conclusion**

3.41 We disagree with the Committee's reasoning for refusing our client's application and granting the Unforeseen Benefits application by Banns Pharmacy Ltd.

3.42 In particular, the Committee based its decision upon the Cornwall and Isles of Scilly PNA 2022-2025, and therefore the incorrect PNA and regulatory test were applied. We reiterate that the Cornwall and Isles of Scilly PNA 2025-2028 is clearly the relevant PNA, and trust that the Appeals Committee will consider this in their decision. Thus, the identification of a Current Need within the Bodmin, Three Harbours and Bosvena PCN in the Final Cornwall and Isles of Scilly PNA (2025-2028) clearly indicates that our client's Current Need application satisfies the relevant regulatory test and meets the criteria stated within the relevant PNA.

3.43 For the reasons outlined above, we submit that Regulation 13 has been met and that our client's application should be granted."

In a letter dated 10 February 2026 (received 16 February 2026) addressed to NHS Resolution, Bosvena Health appealed against the Commissioner's decision. The grounds of appeal are:

3.44 "We have been informed by NHS England that this application for a new pharmacy in Bodmin has been approved.

3.45 On behalf of Bosvena Health CP Limited, we wish to lodge an appeal against that approval on the basis the decision is flawed.

3.46 For the committee's information, we are an interested party in this matter by virtue of having submitted our own applications for inclusion in the pharmaceutical list in Bodmin and having submitted an objection to NHS England when the application was first circulated.

3.47 The basis our appeal is that there has been a significant change in circumstances since the application was submitted that was not taken into account by NHS England when they made their decision to approve the application. This change is the publication of a new Cornwall PNA effective from 9th October 2025, a number of weeks before the decision was made to approve the application.

3.48 Background

3.49 This application for Unforeseen Benefits was submitted when the 2022 Cornwall PNA was in place. At the date the application was submitted, the PNA had not identified any gaps in pharmacy provision within Bodmin so an application for unforeseen benefits was the correct type.

3.50 Shortly after the application had been submitted, a supplementary statement to the PNA was published which stated that a gap in pharmacy provision had arisen in Cornwall due to the closure of two pharmacies.

3.51 NHS England considered the application and decided to refuse it on the basis the need that had been identified by the applicant was no longer unforeseen because it had been discussed in the supplementary statement. The applicant then lodged an appeal against that decision. In due course Primary Care Appeals remitted the matter back to NHS England because they did not believe the wording of the supplementary statement was sufficiently clear.

3.52 Having considered the matter again (in conjunction with several other applications), NHS England decided to approve the Unforeseen Benefits application by Bans Pharmacy Limited at its meeting in December 2025.

3.53 2025 Cornwall PNA

3.54 The timing is critical in this case because prior to the decision being made by NHS England, a new 2025 Cornwall PNA was in place. This new PNA clearly states that there *is* a gap in pharmacy provision within Bodmin and, unlike the previous supplementary statement the need is very clearly identified.

3.55 The relevant statement is found on page 85 of the 2025 PNA as follows:

3.56 **"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."**

3.57 Unforeseen Benefits Test

3.58 Regulation 18 allows applications to be submitted for inclusion in the pharmaceutical list where there has been no need identified within the current PNA. Where there has been a need identified in the PNA, an application should

be made to meet a current need (or future need) rather than for Unforeseen Benefits.

3.59 In fact, Regulation 18 *cannot* apply where need has been identified, so an application submitted under this test must be automatically refused in these circumstances.

3.60 In this case, as the current PNA (published in 2025) did identify a current need, Primary Care Appeals Is required to refuse the application because this core requirement of regulation 18 has not been met. We therefore request that Primary Care Appeals overturns the decision of NHS England to grant this application."

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 my 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 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 THE COMMISSIONER

4.2.1 "The SW Committee notes there are three appellants against the decision to approve the application, and they comment on the version of the PNA used by the SW Committee when they met to consider the application on 4th December 2025. At the time of the meeting the final agreed version of the 2025-2028 PNA had not been published. The SW Committee had the following confirmation from Cornwall Council:

4.2.2 *There is a newly established Isles of Scilly Health and Wellbeing Board where the CIOS PNA is being presented on Thursday 4th December. We are hopeful the PNA will be published after this meeting (Thursday afternoon).*

4.2.3 The 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. At the time of the decision the 2022-2025 PNA was the current version of the PNA, so was used in the consideration of the application.

4.2.4 The SW Committee noted the supplementary statements to the PNA had not clearly indicated which change had resulted in a gap being created: the statements incorporated multiple changes across the Cornwall area. Therefore, the SW Committee was satisfied the Unforeseen Benefits application was the correct type of application.

4.2.5 The SW Committee took the view that there had been a significant reduction in the availability of pharmaceutical services in the area and there was evidence of patients having difficulty accessing services. While some disruption immediately after a change in the availability of services is unsurprising, as it takes time for the remaining providers to adjust, there was patient feedback that suggested delays and queuing had continued sometime after the original exits.

4.2.6 The SW Committee was of the view that because of the accessibility and proximity of the existing pharmacies by car or by bus that granting an application would confer a significant benefit by way of access to, or choice of, pharmaceutical services."

4.3 HEALTHCARE PLUS CONSULTING LTD ON BEHALF OF NAIMANS UK LTD

4.3.1 "Thank you for the letters dated 6th March 2026 and for the opportunity to make further comments on the newly circulated documentation. We note that the Bodmin Town Council supported all applications, however, we submit that our client's application is the only application that satisfies the correct regulatory test and meets the criteria stated within the relevant PNA, as a Current Need application.

4.3.2 It is stated within the letter that the appeals committee are required to have regard to the PNA that is current at the time they make their decision. The Cornwall and Isles of Scilly 2025-28 PNA is clearly the current PNA.

4.3.3 We submit that this is the correct approach.

4.3.4 For the ease of the committee, we have included below our previous comments on the PNAs wording surrounding Bodmin:

4.3.5 The Cornwall and Isles of Scilly 2025 PNA declares a Current Need for pharmaceutical provision in the Bodmin, Three Harbours and Bosvena PCN. Under the section titled:

4.3.6 "*Current gaps in provision (geographic **need**)*" (emphasis added) (Cornwall and Isles of Scilly PNA, 2025-2028, pg. 85

4.3.7 the PNA states:

4.3.8 *"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"* (emphasis added) (Cornwall and Isles of Scilly PNA, 2025-2028, pg. 85).

4.3.9 Note the present tense of "…there ***is** a gap*…".

4.3.10 It is therefore clear that that the PNA identified a current need in Bodmin.

4.3.11 We note that our client's Current Need application was therefore the only application submitted under the correct regulation, that is, Regulation 13. Our client's application meets all criteria set out in the PNA and therefore should be granted. We reiterate that the granted Unforeseen Benefits application by Banns Pharmacy Ltd was not determined under the correct regulation and therefore this decision should be overturned.

4.3.12 It is not disputed that the gap remains and that our client's application would fulfil the need in full.

4.3.13 We understand that the Appeals Committee will hear this case afresh, it is therefore indisputable that the relevant PNA at the time of the

decision is the Cornwall and Isles of Scilly PNA 2025-2028. We submit that only our client's application addresses the Current Need identified within the PNA in full and believe the only viable option is for our application to be granted and the Unforeseen Benefits application to be rejected."

5 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 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:

5.2.25.1 Sainsbury's

5.2.25.2 Bosvena Health - Carnewater Building

5.2.25.3 The Old Library Bodmin

5.2.25.4 Discovering42 Science Museum

5.2.25.5 St Mary's Catholic Primary School

5.2.25.6 North 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 ("the 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 EITHER THE SAME OR ADJACENT PROPOSED PREMISES*". 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 provided, which had not been disputed, 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 18

6.9 The Committee noted that this was an application for "unforeseen benefits" and fell to be considered under the provisions of Regulation 18 which states:

"(1) If—

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

(b) the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 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).

(2) Those matters are—

(a) whether it is satisfied that granting the application would cause significant detriment to—

(i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or

(ii) the arrangements NHS England has in place for the provision of pharmaceutical services in that area;

(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account

also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;

(c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;

(d) whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;

(e) whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;

(f) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.

(g) whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—

(i) by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and

(ii) since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.

(3) NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."

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

6.10.1 The Applicant initially submitted its application on 20 November 2024.

6.10.2 On 14 May 2025, the Commissioner refused the application under Regulation 18(1)(b) as it was of the view that the supplementary statement to the PNA, dated August 2024 "*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*".

6.10.3 That decision was appealed against, and on 4 September 2025, the Committee quashed the decision of the Commissioner and remitted the matter back to the Commissioner for it to redetermine the application. The Committee had reached a different conclusion in relation to Regulation 18(1)(b), as it considered the wording in the August 2024 supplementary statement to be "*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."

6.10.4 On 20 January 2026, after redetermining the application as directed, the Commissioner granted the application for the reasons given above. The Committee noted the decision report is dated 4 December 2025, and further that the Commissioner considered the application under the 2022-2025 PNA.

6.10.5 The Committee noted the Applicant and Appellants cannot agree on the date the 2025-2028 PNA was published, however the published version, is dated 9 October 2025. Further, a supplementary statement to the 2025-2028 PNA was published on 4 December 2025.

6.11 The Committee considered the parties' submissions in relation to the relevant date of the PNA. It did not consider that the month printed on the face of the document was determinative of when a PNA became effective for the purposes of the Regulations. Regulation 3(1) describes a PNA as the statement of the HWB's assessment which it is required to publish, and Regulation 6 similarly refers to the publication of first and revised assessments. The Committee therefore considered that the relevant date would be the date on which the final assessment was published as the HWB's PNA, rather than an earlier date appearing on the document or any earlier date on which the document may have been considered, discussed, or made available in another form.

6.12 Nevertheless, the Committee was mindful of 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."

6.13 The Committee was of the view that the starting point as set out in Regulation 22 was that the relevant PNA was the PNA of the relevant HWB that is current at the time that the decision is taken. Irrespective of the publication date, there is no dispute that the 2025-2028 PNA is now the current PNA. As such, the Committee did not consider any further the issue of the exact date and potential time that the 2025-2028 PNA had been published. However, the Committee was mindful that Regulation 22 goes on to say that if, in the opinion of the decision maker the only way to determine the application justly is with regard to an earlier PNA, then the relevant PNA is the earlier PNA.

6.14 The Committee considered whether in this case it should have regard to an earlier PNA.

6.15 The Committee noted the reasons provided by the Applicant as to why it was just to consider the 2022-2025 PNA as the relevant PNA. These reasons are:

6.15.1 *"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."

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

6.15.3 *"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."*

6.16 The Committee recognises that the Applicant had no control over the timings of its redetermined application, bearing in mind it submitted its initial application under the 2022-2025 PNA. The Committee noted the response from Naimans UK Ltd, which states:

6.16.1 "*The broad idea of unfairness and injustice suggested by [the Applicant] seems to be too broad and out of place in technical regulations such as the 2013 Regulations*

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"

6.17 The Committee noted that the parties had referred to the NHS Resolution guidance note on Pharmaceutical Needs Assessments. The Committee had regard to that guidance, which records previous approaches taken by the Committee where a revised PNA has been published during the life of an application or appeal.

6.18 The Committee noted that the guidance does not create a separate test from Regulation 22(2). It identifies previous decisions which turned on their own facts, including cases where the Committee considered it appropriate to seek representations on Regulation 22 and the contents of a revised PNA before determining which PNA should apply. In this appeal, the Committee was satisfied that the parties had had sight of the current PNA and had been given the opportunity to make submissions on it and on the application of Regulation 22. The Committee therefore considered that it was able to determine which PNA should apply on the material before it.

6.19 The Committee considered that the statutory test was not met merely because it might be said to be fairer, more reasonable, or more favourable to the Applicant for the application to be determined by reference to the earlier PNA. The use of the word 'only' required more than a preference for the earlier PNA, or a general complaint that the current PNA made the application harder to succeed. The Committee considered that the Applicant needed to identify a specific unfairness, procedural disadvantage, or other consequence which meant that the appeal could not properly be determined by reference to the current PNA.

6.20 The Committee noted the matters relied upon by the Applicant and accepted that those matters were relevant to its assessment. However, the Committee did not consider that they identified any such specific unfairness or procedural

disadvantage. At most, they showed that the current PNA was less favourable to the Applicant's position, but not that reliance on it would prevent the Committee from determining the appeal justly.

6.21 The Committee was mindful that the guidance refers to previous cases in which the Committee treated the current PNA as the starting point, while recognising that an earlier PNA may be used in the exceptional circumstances described in Regulation 22(2). The Committee considered that the guidance did not support an approach under which an earlier PNA would apply simply because the application had originally been made by reference to it.

6.22 The Committee was also mindful that, if the fact that an application had originally been made by reference to an earlier PNA were sufficient, an earlier PNA would apply in many cases where a PNA changed during the life of an application or appeal. The Committee did not consider that to be consistent with the wording of Regulation 22(2). The wording of that provision requires something more than ordinary disadvantage arising from a change in the PNA. It requires a reason why reliance on the current PNA would materially affect whether the application could be determined justly.

6.23 The Committee considered this to be particularly relevant where the application was made under Regulation 18. The question under that regulation included whether the relevant improvements or better access were included in the relevant PNA. If a newer PNA addressed matters which had not been included in the earlier PNA, that might make the application more difficult for the Applicant. However, the Committee did not consider that this was, of itself, an unjust consequence, as it reflected the role of the PNA as the current assessment of pharmaceutical needs in the HWB area.

6.24 The Committee therefore considered that the Applicant needed to identify why reliance on the newer PNA would prevent a just determination of the application. The Committee was not satisfied that the Applicant had done so.

6.25 The Committee also had regard to the submissions made by the Appellants in response. The Committee considered that those submissions identified that the Applicant's case relied principally on general fairness considerations, rather than any specific consequence which meant that the appeal could not be determined justly by reference to the newer PNA.

6.26 Therefore, the Committee was of the view that it would not be appropriate to rely upon a document that was now out of date in order to decide whether or not there are gaps in the existing pharmaceutical services. The Committee concluded that greater weight should be placed on an up to date document which had considered the present existing situation in order to determine if there were improvements or better access identified in the PNA.

6.27 The Committee also considered that it would not accord with the role of the PNA to ignore the most recent assessment of need, which specifically took into account the closure of the pharmacies in Bodmin. That assessment of need was set out in the current 2025-2028 PNA.

6.28 The Committee was mindful of the delays in processing this application but considered that the Regulations are clear in setting out how applications are to

be determined on appeal. The Committee was therefore required to apply those provisions in order to reach a fair and just determination.

6.29 Having determined the relevant PNA by reference to which the application should be assessed, the Committee considered the application in light of the wording of Regulation 18.

6.30 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

6.31 The Committee considered whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the PNA in accordance with paragraph 4 of Schedule 1 of the Regulations.

6.32 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had 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….secure improvements or better access, to pharmaceutical services… (b)* ***would*** *if in specified future circumstances they were provided…secure future improvements or better access to pharmaceutical services…"* (emphasis added).

6.33 The Committee considered the PNA prepared by the Cornwall Health and Wellbeing Board and the Isles of Scilly HWB, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee noted that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable, after identifying changes that have occurred that are relevant to the granting of applications, unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a supplementary statement under Regulation 6(3). As noted above, such a statement then forms part of the PNA. Following its consideration of Regulation 22, the Committee reviewed the PNA dated October 2025 as updated by the Supplementary Statement issued in December 2025.

6.34 The Committee noted on page 5, under the heading 'Executive summary', the PNA states:

6.35 *"Based on all available information at the time of writing, there is a current geographical gap in provision for a pharmacy in Bodmin, Three Harbours and Bosvena PCN due to pharmacy closures, considering health needs of the population. A new pharmacy should have core opening hours provision on all weekdays. Opening hours post-6pm, Saturdays and Sundays would be desirable. The pharmacy should be willing to provide all necessary services and consider provision of services to people receiving drug and alcohol treatment."*

6.36 On page 77, under the heading 'Three Harbours and Bosvena' the PNA states:

6.37 *"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."

6.38 And again on page 85, the PNA states:

6.39 *"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."*

6.40 The Committee noted that the wording is very specific; there is a gap in provision for a new pharmacy in Bodmin.

6.41 Therefore, the Committee determined that the improvements or better access that the Applicant was claiming would be secured by its application were or was included in the PNA and the Committee therefore had to determine that Regulation 18(1)(b) was not satisfied.

Other considerations

6.42 Having determined that Regulation 18(1)(b) was not satisfied the Committee did not need to have regard to the matters in Regulation 18(2) in order to reach its determination of the appeal.

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

6.43.1 confirm the Commissioner's decision;

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

6.43.3 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.

6.44 In those circumstances, the Committee determined that the decision of the Commissioner must be quashed.

6.45 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.

6.46 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties 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 18, Regulation 22 and the new PNA.

6.47 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 determined that the application should be refused.

Technical Case Manager
Primary Care Appeals