8 June 2026

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REF: SHA/26906

APPEAL AGAINST NORTHAMPTONSHIRE ICB DECISION TO GRANT AN APPLICATION BY MEDSYNTH LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING IDENTIFIED IMPROVEMENTS OR BETTER ACCESS UNDER REGULATION 17 AT RUSHDEN, NORTH NORTHAMPTONSHIRE, NN10 (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 granted.

1.3 The Committee noted that the Commissioner would now need to consider the issuing of a direction in relation to the opening hours above 40.

A copy of this decision is being sent to:

Healthcare Plus Consulting Ltd representing Medsynth Ltd (the Applicant)
PCSE on behalf of Northampton ICB
Rowlands Pharmacy (Appellant)
Cherry Pharmacy (Appellant)
Boots (Appellant)
Community Pharmacy BLMK & Northants

NHS Resolution

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1 The Application

By application dated 12 July 2025, Medsynth Ltd ("the Applicant") applied to Northamptonshire ICB ("the Commissioner") for inclusion in the pharmaceutical list offering identified improvements or better access under Regulation 17 at Rushden, North Northamptonshire, NN10 (Best Estimate). In support of the application it was stated:

1.1 "Please provide the address or best estimate of the proposed premises

1.2 Rushden, North Northamptonshire, NN10

1.3 Best estimate sites included either side of the red line on the map below. [Appendix A for Committee]

1.4 End Point Addresses for red line on map:

1.4.1 22 High Street South, Rushden, NN10 0RA

1.4.2 181 Wellingborough Road, Rushden, NN10 9SZ

1.4.3 138 High Street, Rushden, NN10 0PD

1.4.4 61 Newton Road, Rushden, NN10 0HF

1.5 Best estimate specifically excludes:

1.5.1 27,29,31,33 High Street, Rushden, NN10 0QE

1.5.2 83,85,87,89 High Street, Rushden, NN10 0NZ

1.6 In my/our view this application should not be refused pursuant to Regulation 31 for the following reasons:

1.7 N/A – No pharmacy at / adjacent to proposed sites.

1.8 Information in support of the application

1.9 In making this application we are seeking to secure the improvements or better access identified on the HWB's pharmaceutical needs assessment.

1.10 In making this application the Applicant is seeking to meet the better access identified in the Pharmaceutical Needs Assessment by North Northamptonshire Health & Wellbeing Board for necessary services on a Sunday.

1.11 Additional Services have also been provided as per above.

1.12 In the box below please explain how you intend to secure the identified improvements or better access either in whole or in part.

1.13 Need will be met in full by opening a pharmacy within the best estimate location providing all required services and providing them when they are needed."

2 Comments to the Commissioner

On reviewing the paperwork provided by PCSE, it was noted that the comments made by the Applicant to the representations on the application, had not been circulated or seen by parties.

In the interests of transparency and fairness, NHS Resolution sought to rely on the discretion afforded in paragraph 7 of Schedule 3 of the Regulations to vary the normal procedures and circulate these comments to parties for them to make observations on them if they so wished.

2.1 "The North Northamptonshire 2025-2028 PNA clearly states the following regarding the identified better access in Sunday provision in the locality:

2.2 *"The Health and Wellbeing Board is satisfied that better access to necessary services would be secured by their provision in East Northamptonshire on a Sunday" (North Northamptonshire PNA 2025, pg.6).*

2.3 *"When reviewing supplementary hours, each locality has community pharmacy provision that is open during the weekday evenings and on a Saturday. Most localities also have pharmacy provision on a Sunday; however* ***East Northamptonshire does not have community pharmacy provision on a Sunday****. The locality of East Northamptonshire also has a lower level of pharmacy provision available on weekday evenings, compared to the other locality areas. The public engagement indicated equal demand for pharmacy provision on a Sunday, with feedback that current hours made access difficult for those of working age.*

2.4 *These responses did not provide detail on the location, services or times required. It is noted that East Northamptonshire is a mostly rural locality, with some areas over 20- minute drive to other large towns.*

2.5 *Taking into account the above information, the Health and Wellbeing Board is satisfied that* ***better access to necessary services would be secured by their provision in East Northamptonshire on a Sunday****."* (North Northamptonshire PNA 2025, pg.74).

2.6 It is clear that the PNA has identified the better access to services in East Northamptonshire on a Sunday; this is undisputed by all parties. It is also undisputed that the best estimate is within East Northamptonshire locality. Notably, the best estimate is within Rushden which can be described as very much the major hub within East Northamptonshire and where Sunday **core** hours would be the most beneficial.

2.7 We also note that the nearest Sunday hour provision to Rushden is over 4 miles away by the most practicable route. Considering the urban nature of Rushden, it is reasonable to assume that **core** Sunday provision should be available in the locality and that a journey in excess of 4 miles is not considered suitable. Therefore, this application aims to meet this gap in provision identified within the PNA. We also highlight that the LPC has explicitly acknowledged the "*lack of pharmacy opening on a Sunday in Rushden*".

2.8 We note that it is not for any body to question the reasonableness and legality of the PNA. The ICB will be aware that the PNA is a legal document, and any identified needs have been declared utilising the legal tests to assess pharmaceutical provision within the North Northamptonshire Health and Wellbeing Board (HWB). Therefore, any comments questioning the identified need should be dismissed as they directly challenge the reasonableness and legality of the PNA.

2.9 **Comments**

2.10 **Cherry Pharmacy**

2.11 It is stated by Cherry Pharmacy that "*existing pharmacies that currently open on Sundays already provide adequate and accessible coverage for residents of East Northamptonshire*". We reiterate that the North Northamptonshire PNA is a legal document and that it is not for any body to question the reasonableness of the PNA. It is clearly stated within the PNA that "*East Northamptonshire does not have community pharmacy provision on a Sunday*" (North Northamptonshire PNA, pg.74), therefore comments around there being existing suitable coverage are not correct.

2.12 Cherry Pharmacy also seems to deny that better access to Sunday provision has been identified despite the PNA stating in no uncertain terms:

2.13 *"The Health and Wellbeing Board is satisfied that better access to necessary services would be secured by their provision in East Northamptonshire on a Sunday"* (North Northamptonshire PNA 2025, pg.6).

2.14 Cherry Pharmacy bemoan the sustainability of an additional pharmacy within Rushden, however this is clearly not the case. There are presently 6 pharmacies across Rushden, when taking the average number of items across these 6 pharmacies it equates to approximately 12,775 items per month.

2.15 This is almost 50% higher than the national average of 8,667 items. This is a high volume of items and represents a large demand for pharmaceutical provision across Rushden. Inherently, the addition of another pharmacy will not significantly impact existing contractors and will likely aid a pharmacy network currently struggling for capacity.

2.16 **Conclusion**

2.17 In light of the above, it is clear that the North Northamptonshire HWB explicitly identified better access on a Sunday within East Northamptonshire within the North Northamptonshire 2025-2028 PNA. Our client's application aims to fill this gap by providing core hours on Sunday within Rushden in East Northamptonshire.

2.18 We reiterate that our client's application fulfils the requirements of regulation 17 securing identified improvements and better access and should therefore be granted."

3 The Decision

The Commissioner considered and decided to grant the application. The decision letter dated 4 February 2026 states:

3.1 "Northamptonshire 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.

3.2 The applicant is required to notify the address of the premises from which they will provide pharmaceutical services to us within six months of the date of this letter or six months from the date of determination of any appeal to the Secretary of State.

3.3 You have a right of appeal to the Secretary of State against Northamptonshire ICB's decision. Should you choose to appeal then either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

3.4 Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU"

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

Decision Report

3.5 **"Application for inclusion in a pharmaceutical list: routine application offering to secure improvements or better access - Medsynth Ltd, Rushden, North Northamptonshire, NN10 (North Northamptonshire Health and Wellbeing Board)**

3.6 **Re: CAS-373696-J3Y0K1**

3.7 Fitness to practice [sic] was required for this application and approved.

3.8 **Relevant regulations**

3.8.1 Regulation 17 – Improvements or better access to the current service. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

3.8.2 Regulation 19 – Applications to which regulation 17 or 18 applies: consequences of additional matters. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

3.8.3 Regulation 31 – Refusal: same or adjacent premises. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

3.8.4 Regulation 32 –Deferrals arising out of LPS designations. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

3.8.5 Paragraph 31, schedule 2 - Conditional grant of applications where the address of the premises is unknown. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

3.8.6 Regulation 40, 44 and 50 are not applicable to this application as the proposed premises are not in a controlled locality.

3.8.7 Regulation 65 – Core opening hours conditions. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

3.8.8 Regulation 66 is not relevant to this application.

3.9 **Regulation 17 – Improvements or better access to the current service**

3.10 The committee is required to determine whether the need on which the applicant has based their application satisfies the requirements of Regulation 17(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.11 Regulation 17(1) provides that, where the commissioner receives a routine application, it must determine whether granting the application, or granting it in respect of some only of the services specified in it, would secure improvements or better access:

3.11.1 (a) to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant Health and Wellbeing Board; and

3.11.2 (b) which have been included in the relevant Pharmaceutical Needs Assessment in accordance with paragraph 4(a) of Schedule 1.

3.12 **Identified improvement or better access within the PNA**

3.13 The North Northamptonshire Pharmaceutical Needs Assessment 2025–2028 identifies that better access to pharmaceutical services would be secured by the provision of services within the East Northamptonshire locality on Sundays.

The PNA does not identify a specific town, settlement or neighbourhood within the locality where this better access is required; rather, the need is expressed at locality level.

3.14 The applicant's proposal to provide pharmaceutical services on Sundays from premises within the East Northamptonshire locality is therefore aligned with the improvement or better access identified within the PNA for the purposes of Regulation 17(1)(b).

3.15 The East Northamptonshire locality covers a wide geographical area, extending from the northern part of the former East Northamptonshire district to Rushden in the south. Rushden lies at the southern edge of the locality but is nonetheless situated within it.

3.16 The premises from which the applicant proposes to operate are located within Rushden and therefore fall within the East Northamptonshire locality as defined for the purposes of the PNA. On that basis, the application relates to premises within the locality in which the PNA has identified the need for better access.

3.17 **Matters to be considered under Regulation 17(2)**

3.18 In determining whether granting the application would secure the identified better access, the committee must have regard to the matters set out in Regulation 17(2).

3.19 **Changes to pharmaceutical provision since publication of the PNA**

3.20 A review of the most recent PNA and current pharmaceutical provision indicates that there have been no material changes to the profile of pharmaceutical services within the North Northamptonshire Health and Wellbeing Board area since the PNA was published that would undermine or negate the identified need for better access on Sundays within the East Northamptonshire locality.

3.21 **Likelihood of the identified better access arising**

3.22 There is no evidence to suggest that the future circumstances described in the PNA, namely the lack of Sunday pharmaceutical provision within East Northamptonshire, will not arise or are unlikely to arise. The PNA remains current for the purposes of this determination.

3.23 **Existing pharmacies and DACs and the services they provide**

3.24 There are a number of community pharmacies operating within the East Northamptonshire locality and within close proximity to the applicant's proposed premises. These pharmacies provide comprehensive weekday pharmaceutical services and, in some cases, Saturday opening. However, none of the pharmacies within the immediate vicinity provide pharmaceutical services on Sundays.

3.25 **Whether the better access has already been secured**

3.26 There is no evidence that the better access identified in the PNA, namely the provision of pharmaceutical services on Sundays within the East Northamptonshire locality, has already been secured by another contractor.

3.27 **Whether the better access is due to be secured by another provider**

3.28 There is no evidence that another person has undertaken to provide Sunday pharmaceutical services within the East Northamptonshire locality, whether through a granted application awaiting commencement or through an LPS arrangement not yet in operation.

3.29 **Assessment of whether the application would secure the better access**

3.30 The applicant proposes to provide pharmaceutical services on Sundays from premises located within the East Northamptonshire locality. Given that the PNA identifies a lack of Sunday provision within that locality, granting the application would be capable of securing the identified better access.

3.31 While the locality is geographically extensive and the proposed premises are situated at its southern end, the PNA does not specify where within the locality the better access is required. In the absence of such geographical specificity, the committee is required to assess the application by reference to the locality-wide need identified in the PNA.

3.32 **Advanced and Enhanced Services provision**

3.33 Of the 62 community pharmacies operating across North Northamptonshire

3.33.1 61 Pharmacies (98.4%) are providing New Medicine Service

3.33.2 55 Pharmacies (88.7%) are providing Hypertension Case-Finding Service

3.33.3 52 Pharmacies (83.9%) are providing Flue Vaccination Service

3.33.4 59 Pharmacies (95.2%) are providing Pharmacy First Service

3.33.5 34 Pharmacies (54.8%) are providing Pharmacy Contraception Service

3.33.6 51 Pharmacies (82.3%) are providing Lateral Flow Device Service

3.34 There are also local pharmaceutical services that have been locally commissioned to meet health needs within North Northamptonshire. These services include:

3.34.1 Emergency Hormonal Contraception

3.34.2 Supervised Consumption Programme

3.34.3 Needle Exchange

3.34.4 NHS Health Checks

3.34.5 Emergency Infant Feeding Pathway

3.34.6 Covid-19 Medicines Delivery Unit Triage and Treatment Service

3.34.7 Palliative Care End of Life – Emergency Stock Service

3.35 **Pharmacy Provision within 2 miles of the central postcode of the best estimate**

3.36 A review of pharmacy provision within a two-mile radius of the proposed best estimate location shows a well-established network of providers offering comprehensive core opening hours across the week. All pharmacies listed operate at least the required 40 core hours per week, with collective core opening times spanning from 08:00 through to 18:00. Several pharmacies also provide extended Saturday opening, with hours ranging between 09:00 and 17:30, ensuring weekend access for patients.

3.37 Although none of the nearby pharmacies open on a Sunday, the density of weekday provision is high: six pharmacies lie within 1 mile, with the closest two located just 0.1 miles from the identified postcode. This concentration of providers, combined with their broad weekday operating hours, indicates that the local population has ready access to pharmaceutical services throughout the working week.

3.38 In relation to Regulation 17, the Pharmaceutical Needs Assessment for North Northamptonshire identifies a need for improved access to pharmaceutical services within the East Northamptonshire locality, specifically in relation to the provision of services on Sundays. The applicant proposes to address this identified need by providing pharmaceutical services on Sundays from premises located within that locality.

3.39 **Regulation 19 – Applications to which regulation 17 or 18 applies: consequences of additional matters**

3.40 In accordance with Regulation 19, the committee must consider the following additional matters when determining an application made under Regulation 17. Even where an application may appear capable of securing improvements or better access, Regulation 19 requires the committee to consider whether it would be appropriate to:

3.40.1 Defer determination of the application in order to assess whether other providers may be willing or able to secure the same improvement or better access.

3.40.2 Invite competing applications from other persons who may wish to offer to secure the same improvement or better access identified in the PNA; and

3.40.3 Determine any such competing applications alongside the present application, noting that any deferral must not exceed six months.

3.41 These considerations ensure that any potential improvement or better access is secured in a fair, transparent and proportionate manner, and that the

committee is satisfied that granting this application, rather than granting an alternative application or taking no action, is the option that most appropriately meets the needs identified in the PNA.

3.42 **Regulation 31 - refusal: same or adjacent premises**

3.43 The application cannot be refused with regard to Regulation 31, as no persons on the pharmaceutical list are providing, or have undertaken to provide, pharmaceutical services from the premises to which the application relates, or from adjacent premises. The Integrated Care Board is also satisfied that it is reasonable to treat the services that the applicant proposes to provide as distinct from the services currently provided by existing listed pharmacies.

3.44 **Paragraph 31, schedule 2 - Conditional grant of applications where the address of the premises is unknown**

3.45 The applicant has met all the criteria of this regulation.

3.46 **Regulation 32 –Deferrals arising out of LPS designations**

3.47 The application does not need to be deferred pursuant to regulation 32 as the points detailed are not applicable for this application The application cannot be refused with regard to Regulation 31, as no persons on the pharmaceutical list are providing, or have undertaken to provide, pharmaceutical services from the premises to which the application relates, or from adjacent premises. The Integrated Care Board is also satisfied that it is reasonable to treat the services that the applicant proposes to provide as distinct from the services currently provided by existing listed pharmacies.

3.48 In relation to Regulation 17, the Pharmaceutical Needs Assessment for North Northamptonshire identifies a need for improved access to pharmaceutical services within the East Northamptonshire locality, specifically in relation to the provision of services on Sundays. The applicant proposes to address this identified need by providing pharmaceutical services on Sundays from premises located within that locality.

3.49 Although the existing network of pharmacies in and around Rushden provides comprehensive access to pharmaceutical services from Monday to Saturday, none of the pharmacies within the immediate area currently provide services on Sundays. The applicant's proposal would therefore secure the specific type of better access identified in the PNA.

3.50 **Decision**

3.51 In the absence of any evidence that the identified better access has already been secured, or is due to be secured, by another provider within the locality, the requirements of Regulation 17 are met. In accordance with Regulation 18, where those requirements are satisfied, the application must be granted.

3.52 The Committee therefore determined to **grant** the application.

3.53 **Third Party appeal rights are given to:-**

3.53.1 Boots Pharmacy, 29 High Street, Rushden, Northamptonshire, NN10 9TR

3.53.2 Rowlands Pharmacy, Parklands, Wymington Road, Rushden, Northamptonshire, NN10 9EB

3.53.3 Cherry Pharmacy, 85-97 High Street, Rushden, Northamptonshire, NN10 0NZ."

4 The Appeals

In a letter dated 23 February 2026 addressed to NHS Resolution Rowlands Pharmacy appealed against the Commissioner's decision. The grounds of appeal are:

4.1 "We write to formally appeal the decision to grant the above Identified Need application under Regulation 17 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations. After reviewing the published reasoning dated 4th February 2026, we submit that the statutory tests for granting a new contract were not properly satisfied, that the evidence does not demonstrate an unmet need requiring a new pharmacy, and that mandatory steps under Regulation 19 were not carried out. If the NHSR decide to convene an oral hearing, we are willing to attend under the provisions of Paragraph 8 of schedule 3 of the regulations.

4.2 This appeal sets out the material grounds on which the granting of the application should be reconsidered.

4.3 Grounds for Appeal

4.3.1 Misapplication of Regulation 17 – Lack of Evidence That a New Pharmacy Is Necessary

4.4 The determination acknowledges:

4.4.1 No material changes to service provision have occurred since publication of the PNA.

4.4.2 The existing network provides comprehensive weekday services and some Saturday opening.

4.4.3 There are six pharmacies within one mile, including two within 0.1 miles.

4.5 Despite this, the decision concludes that Sunday opening alone creates a need for a *new* NHS pharmacy contract. Regulation 17 requires the committee to consider whether granting the application would secure necessary and proportionate better access—not merely that an applicant proposes Sunday hours.

4.6 The evidence presented does not show:

4.6.1 Any unmet clinical need on Sundays

4.6.2 Any patient harm or service deficit

4.6.3 Any requirement to introduce a new permanent contractor

4.6.4 Any consideration of whether existing pharmacies could provide Sunday access

4.7 Therefore, the decision incorrectly equates “absence of Sunday opening” with “need for a new contract,” which is not the intention of Regulation 17.

4.7.1 Existing Provision Already Ensures Adequate Access

4.8 The determination states:

4.9 “The density of weekday provision is high… This concentration of providers… indicates that the local population has ready access throughout the working week.”

4.10 This finding undermines the justification for commissioning a new pharmacy. The PNA identifies an opportunity, not a requirement, for optional extended hours. The conclusion that a new contract is necessary is therefore not supported by the committee’s own findings.

4.10.1 Regulation 19 Was Not Properly Followed

4.10.2 Regulation 19 requires the committee to consider:

4.10.3 Deferring the application

4.10.4 Inviting competing applications

4.10.5 Assessing whether existing contractors could provide the same improvement

4.11 The determination lists these duties but provides no evidence they were actually carried out. There is no indication that the ICB:

4.11.1 Contacted existing pharmacies

4.11.2 Invited expressions of interest

4.11.3 Considered alternative mechanisms for securing Sunday access

4.11.4 Explored supplementary hours arrangements

4.12 Failing to follow Regulation 19 makes the approval procedurally flawed.

4.12.1 The Identified Need Can Be Met Without Granting a New Contract

4.13 Nothing in the evidence indicates that a new contractor is the *only* way to secure Sunday access. The committee did not consider:

4.13.1 Supplementary hours from existing providers

4.13.2 Local commissioning options

4.13.3 Flexible arrangements under NHS contractual mechanisms

4.14 A proportionate response would have been to explore these options before granting a permanent contract.

4.14.1 The applicant's compliance was judged against outdated SOPs.

4.14.2 Existing contractors were denied the opportunity to compete or apply under the **current** SOPs, particularly as the window for these applications has now closed.

4.15 This creates an imbalance and procedural unfairness, reinforcing the need for reconsideration.

4.15.1 Inconsistent Application of Regulation 18

4.16 Regulation 18 requires the committee to grant an application only if Regulation 17 is *clearly* satisfied. However, as outlined above:

4.16.1 No evidence of unmet clinical need exists

4.16.2 No proportionality analysis was undertaken

4.16.3 No exploration of alternatives occurred

4.16.4 No Regulation 19 steps were completed

4.17 Therefore, the automatic "must grant" conclusion quoted in the decision is not justified, as the underlying Regulation 17 threshold has not been met.

4.18 Requested Outcome

4.19 For the reasons set out in this appeal, we respectfully request that:

4.19.1 The approval of the Identified Need application is overturned, and the application is refused; or, at minimum:

4.19.1.1 The matter is remitted back to the committee to properly consider the requirements of Regulation 19, including contacting existing contractors and reviewing alternative mechanisms for securing Sunday access.

4.20 Conclusion

4.21 The committee's determination does not demonstrate that granting a new NHS pharmacy contract is necessary, proportionate or compliant with Regulations 17, 18 or 19. The decision relies on the existence of Sunday closure alone, without evidence of unmet need or proper procedural steps. As such, the approval should be reconsidered.

4.22 We look forward to confirmation of the next steps."

In a letter received on 27 February 2026 addressed to NHS Resolution Cherry Pharmacy appealed against the Commissioner's decision. The grounds of appeal are:

4.23 "I am a listed pharmacy contractor trading as Cherry Pharmacy, 85–87 High Street, Rushden, and therefore an interested party with third-party appeal rights. I write to formally appeal the decision of Northamptonshire ICB to grant the above routine application.

4.24 This appeal is made on the grounds that the decision-maker erred in law and/or misapplied the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, in particular Regulations 17, 17(2), 19 and 21A.

4.25 **Ground 1 – Misapplication of Regulation 17**

4.26 Regulation 17 requires the decision-maker to determine whether granting the application would secure the identified improvement or better access included within the Pharmaceutical Needs Assessment (PNA).

4.27 The PNA identifies a locality-wide need for Sunday provision within East Northamptonshire. However, it does not identify Rushden specifically, nor does it identify the southern part of the locality as the area where unmet need is most acute.

4.28 East Northamptonshire is geographically broad and includes both densely populated urban settlements and sparsely populated rural communities. The decision appears to treat the locality boundary as determinative, concluding that because the premises are within the locality, the improvement is secured.

4.29 That approach is legally flawed. A locality-wide statement of need does not mean that any site within that boundary automatically secures the identified improvement. The Committee was required to assess whether this specific location meaningfully addresses access challenges across the locality as a whole. No such structured assessment is evident.

4.30 **Ground 2 - Insufficient evidence that the application improves access across the locality and failure to Properly apply Regulation 17(2).**

4.31 Regulation 17(2) requires consideration of existing pharmaceutical provision and whether the identified better access has already been secured.

4.32 The decision acknowledges:

4.32.1 A dense concentration of six pharmacies within one mile of the proposed premises;

4.32.2 Comprehensive weekday and Saturday provision;

4.32.3 The absence of Sunday opening locally.

4.33 However, there is no substantive analysis of:

4.33.1 Patient travel patterns to Sunday provision in neighbouring localities;

4.33.2 Whether unmet demand exists specifically within Rushden;

4.33.3 Whether the proposal would deliver meaningful additional access rather than redistribute existing activity within an already well-served town centre.

4.34 Available activity indicators show that demand for pharmaceutical services is materially lower on Sundays compared to weekdays and Saturdays. There is no evidence before the Committee of sustained unmet patient demand within Rushden itself, nor evidence of service backlogs, safety concerns or capacity pressures.

4.35 Patients in Rushden are not without Sunday access. Corby, which hosts an NHS walk-in centre, has three pharmacies open on Sundays and is accessible via established transport links. The decision does not demonstrate that Sunday access is geographically prohibitive.

4.36 It is further material that the ICB has an express statutory mechanism to address gaps in Sunday provision through the issuing of a direction requiring specified opening by existing contractors, with appropriate remuneration, where unmet need is demonstrated. That mechanism is specifically designed to secure targeted improvements in access without distorting the market or introducing unnecessary additional contracts. In circumstances where the only identified deficiency relates to Sunday opening, the Committee was required to consider whether that deficiency could be remedied through directed or commissioned additional hours under the existing contractual framework, rather than through the grant of a permanent new contract in an already densely served urban centre. The decision does not demonstrate that this regulatory alternative was properly evaluated. The failure to consider whether the identified improvement could be secured through a less intrusive and more proportionate statutory mechanism constitutes a material misdirection in the application of Regulation 17 and a failure to properly exercise discretion under Regulation 19.

4.37 In these circumstances, granting an additional contract in Rushden is likely to redistribute activity between providers rather than secure genuine additional access within the meaning of Regulation 17.

4.38 **Population distribution and locality context**

4.39 It is material to consider population distribution within the locality. Rushden represents the principal urban centre and has a population density exceeding 2,000 persons per square kilometre, with individual wards exceeding that figure. By contrast, northern and rural parts of the locality comprise dispersed parishes with substantially lower population densities and, in many cases, total parish populations below 1,000 residents.

4.40 **Appendix 1** illustrates this disparity. [Appendix B for Committee]

4.41 The PNA identifies a locality-wide need but does not demonstrate that Rushden is the area of greatest access challenge. In circumstances where the locality includes both dense urban provision and sparsely populated rural communities, the Committee was required to assess whether locating additional provision in

the most densely served settlement meaningfully addresses the locality-wide need. The decision does not demonstrate that such comparative analysis was undertaken.

4.42 **Ground 3 – Failure to Properly Exercise Discretion under Regulation 19.**

4.43 Regulation 19 requires active and reasoned consideration of whether it would be appropriate to defer determination and invite competing applications to secure the identified improvement.

4.44 Although Regulation 19 is cited within the report, there is no substantive reasoning explaining why deferral was not appropriate, nor why existing contractors were not afforded the opportunity to offer Sunday opening.

4.45 The absence of recorded reasoning suggests that the discretion under Regulation 19 was not properly exercised. This is a significant procedural flaw. Had Regulation 19 been lawfully considered, the Committee could reasonably have concluded that alternative provision may have secured the identified improvement in a more proportionate or geographically appropriate manner, rather than granting a new application.

4.46 **Ground 4 – Failure to Independently Apply Regulation 21A (Undesirable Overprovision)**

4.47 Regulation 21A imposes a mandatory statutory duty on the decision-maker to consider whether granting the application would result in an undesirable increase in the availability of essential pharmaceutical services in the area.

4.48 The decision contains no structured assessment under Regulation 21A and no reasoning addressing whether the addition of a further contractor in an already densely served town would constitute undesirable overprovision.

4.49 Rushden already benefits from a high concentration of pharmacies within a compact geographic area. The Committee was required to undertake a reasoned assessment of whether introducing further provision into the most densely served settlement within the locality would risk undesirable overprovision. No such assessment is evident.

4.50 The Committee appears to have treated satisfaction of Regulation 17 as determinative, concluding that the application “must be granted” once better access was identified. That constitutes a misdirection in law. Regulation 21A is a separate and mandatory statutory consideration and must be applied independently.

4.51 The failure to properly address Regulation 21A is a material error.

4.52 **Materiality**

4.53 The failures identified above are material. Had Regulations 19 and 21A been lawfully and independently considered, the Committee could reasonably have:

4.53.1 Deferred determination;

4.53.2 Invited competing applications;

4.53.3 Directed additional hours;

4.53.4 Concluded that further clustering in Rushden constitutes undesirable overprovision;

4.53.5 Determined that the proposal does not meaningfully secure locality-wide improvement.

4.54 **Conclusion**

4.55 For the reasons set out above, the decision fails to demonstrate lawful and proper application of Regulations 17, 17(2), 19 and 21A. The evidence does not demonstrate that granting this application secures genuine or additional improvements in access for the population of East Northamptonshire as a whole. Rather, it risks fragmenting activity within an area that is already comparatively well served without clear evidence of unmet need in the proposed location.

4.56 I respectfully request that the Secretary of State allow this appeal and overturn the decision to grant the application.

4.57 Should an oral hearing be convened, I would wish to attend and make further representations.

4.58 The table below illustrates the marked disparity in population density and settlement pattern between Rushden and the more rural northern areas of the East Northamptonshire locality. Rushden is demonstrably the most densely populated and most intensively served settlement within the locality. The decision does not demonstrate why locating additional provision in the most densely served urban centre, rather than in more geographically dispersed rural areas, meaningfully secures the locality-wide improvement identified in the PNA." [Appendix B for Committee].

In a letter dated 5 March 2026 addressed to NHS Resolution, Boots appealed against the Commissioner's decision. The grounds of appeal are

4.59 "We would like to appeal the ICB decision on the above application – CAS-373696-J3Y0K1.

4.60 We believe that the NHSICB deciding committee hasn't properly considered the application and all the regulatory criteria set out in order to determine the application.

4.61 The 2025-2028 North Northamptonshire Pharmaceutical Needs Assessment highlights a gap in the East of North Northamptonshire. It does not, in anywhere in the document specifically highlight a gap in Rushden itself.

4.62 The PNA conclusion states:

4.63 *This PNA has not identified a current or future gap in the provision of necessary pharmaceutical services. However, it has identified that better access could be*

achieved through the provision of services on Sundays in East Northamptonshire.

4.64 The applicants best estimate of sites for the proposed premises specifically centres on addresses in and around Rushden town centre where there are already contractors. The ICB decision report documents that:

4.65 *"There are a number of community pharmacies operating within the East Northamptonshire locality and* ***within close proximity to the applicant's proposed premises. These pharmacies provide comprehensive weekday pharmaceutical services*** *and, in some cases Saturday opening. However, none of the pharmacies within the immediate vicinity provide pharmaceutical services on Sundays".*

4.66 It appears from the decision report that the Committee has not exercised its right under Regulation 19 to defer the application or invite competing applications from other persons. Had they done so, the applications may have been in a better geographic position to address the gap on Sundays.

4.67 Although no contractors are currently open Sundays in Rushden itself, if there was a need here, we would have expected the PNA to highlight a specific gap here. Existing contractors could have had the opportunity to work with the ICB to find a solution. This may be by supporting a pharmacy to extend it hours or by the introduction of a rota for existing contractors had the need been specifically identified here.

4.68 Footfall on Sundays around the High Street in Rushden is very low. We are not aware of any complaints from our patients at our pharmacy that we are closed on Sundays, nor are we aware of any complaints to the ICB about it.

4.69 We understand that the applicant has now secured premises on the High Street in the centre of Rushden between our pharmacy at 29 High Street and Cherry Pharmacy at 85-87 High Street. As the ICB have already documented in the decision report that there is comprehensive weekday access, we would suggest that an additional contractor in the same location and/or in the areas highlighted as best estimate by the applicant, would result in an undesirable increase in availability of essential services in this locality. There is no mention in the ICB decision report that Regulation 21A has been considered.

4.70 There is also no mention in the decision report that interested party comments have been considered.

4.71 For the reasons stated above, we believe that the criteria set out in Regulation 17 have not fully been considered and satisfied, and therefore respectfully request that this appeal be upheld.

4.72 Please be aware that should an oral hearing be held in connection with this appeal, we may wish to attend."

5 Summary of Representations

This is a summary of representations received on the appeal.

5.1 HEALTHCARE PLUS CONSULTING LTD REPRESENTING THE APPLICANT

5.1.1 “Thank you for your letter dated 11th March 2026. Medsynth Ltd have instructed us, Healthcare Plus Consulting Ltd, to act on their behalf for this appeal. A letter of authorisation has previously been submitted.

5.1.2 **Northamptonshire ICB Grant**

5.1.3 We note that the Northamptonshire ICB granted our client’s application by letter dated 4th February 2026. We trust that NHS Resolution will place weight on the ICB’s decision.

5.1.4 We are pleased that the ICB accept our client’s application to propose pharmaceutical services on Sundays from premises located in Rushden, which resides within the East Northamptonshire locality.

5.1.5 We are pleased that the ICB accept that no other pharmacies in the immediate vicinity of our client’s proposed site provide pharmaceutical services on Sundays.

5.1.6 **Regulation 17**

5.1.7 As per the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, we cite the relevant regulation when considering this application, that is, Regulation 17;

5.1.8 **17.**— (1) If—

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

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

5.1.11 It is undisputed that the improvements or better access that would be secured by the present application is included within the relevant North Northamptonshire PNA (2025-2028).

5.1.12 The regulations take as given the information in the PNA, its reasonableness and its legality cannot be challenged within the regulatory decision-making process. If the PNA is erroneous the proper avenue to challenge this would be during the consultation process or through judicial review for irrationality or illegality in the High Court.

5.1.13 It is for this reason that the regulations summarily dismiss any appeal which:

5.1.14 *“amounts to a challenge to the legality or reasonableness of a HWB's or Primary Care Trust's pharmaceutical needs assessment, or to the*

fairness of the process by which the HWB or a Primary Care Trust undertook that assessment" (see Schedule 3, Paragraph 2)

5.1.15 **North Northamptonshire PNA (2025-2028)**

5.1.16 We note that the relevant PNA clearly identifies how improvements and better access would be secured in the area of the Health and Wellbeing Board.

5.1.17 *"The Health and Wellbeing Board is satisfied that better access to necessary services would be secured by their provision in East Northamptonshire on a Sunday."*

5.1.18 (North Northamptonshire PNA 2025-2028, 6.3 Improvements and better access: gaps in current provision, pg. 74)

5.1.19 It is therefore clear that the PNA identified that a pharmacy in East Northamptonshire offering provision on Sundays would secure better access. There is no ambiguity on this matter.

5.1.20 It is agreed that the proposed pharmacy is located in East Northamptonshire and that the proposed pharmacy offers all necessary services. It is also undisputed amongst all parties that Rushden serves as a major urban centre within East Northamptonshire, and therefore residents from across East Northamptonshire are likely to access services in the city centre.

5.1.21 **Rowlands Pharmacy**

5.1.22 Rowlands' grounds for appeal are stated to be that the ICB misapplied Regulation 17, they add *"Lack of Evidence That a New Pharmacy Is Necessary"*.

5.1.23 As mentioned above, we note that there is not a requirement for evidence to be presented that a new pharmacy is necessary. Rather, it is only required that the improvements or better access are included within the relevant PNA. Therefore, we believe that Rowlands' grounds for appeal are simply inconsistent with the regulatory test and thus should be dismissed. As previously detailed in the response to comments provided by way of letter dated 18th November 2025, the improvements and better access have clearly been identified within the PNA. This is corroborated by the ICB decision report and subsequent grant of this application.

5.1.24 Rowlands also appear to claim that a *'proportionality'* test sits within Regulation 17. As the committee will be aware; this is simply untrue and not a consideration of Regulation 17.

5.1.25 We note that Rowlands interpretation of Regulation 19 is also incorrect.

5.1.26 In regard to Regulation 19(1), we infer that the ICB was not satisfied in respect of Regulation 17(2)(a) and so Regulation 19(1) is not relevant or determined not to use the powers outlined in Regulation 19(1).

5.1.27 In any event, we note that Regulation 19(1) states;

5.1.28 ***19.***—*(1) If* ***[****NHS England****]*** *is satisfied as mentioned in regulation 17(2)(a), it* ***may***— …. *(emphasis added)*

5.1.29 We note that the language of Regulation 19(1) only states NHS 'may' have regard to the conditions in Regulation 19- not 'must'. It is clear that the additional considerations of Regulation 19 are a discretionary power for the ICB. We submit that the ICB have ultimately exercised this discretion and decided not to pursue any of the matters listed in Regulation 19.

5.1.30 Thus, even if Regulation 17(2)(a) is considered to be satisfied, NHS England is not required to act on these matters within Regulation 19, and they explicitly have decided not to as per their discretionary authority.

5.1.31 **Cherry Pharmacy**

5.1.32 As noted, the present application secures better access in precisely the manner proposed by the relevant PNA, namely through providing Sunday provision in East Northamptonshire. Cherry Pharmacies comments also reiterate how Rushden is the urban centre for East Northamptonshire.

5.1.33 We note that while Regulation 17(2) does allow for consideration of whether a need has already been met since the publication of the PNA, it does not allow for determination that a gap does not exist or that the PNA was wrong to identify a gap. Cherry Pharmacy suggests that the existing services are sufficient, but these are the same services determined by the PNA to result in a gap.

5.1.34 We do not believe that the regulation invites the ICB to consider as part of the present application whether they could take action to increase the hours of other pharmacies. Rather, consideration is only if the improvements or better access has already been met since the PNA was published. That is not the case in the present application.

5.1.35 As noted, Regulation 19(1) is only to be used where satisfied in regard to Regulation 17(2)(a). There were no reasons for the ICB to be so satisfied. In any case, Regulation 19 is also discretionary.

5.1.36 We do not believe that any party has presented evidence that any undesirable or detrimental results will arise from the new pharmacy.

5.1.37 As outlined in our client's response to comments, there are currently six pharmacies operating in Rushden which, on average, dispense a significantly higher volume of items compared to the national average. This remains the case, with the average number of items dispensed across all six pharmacies equating to c. 12,000 (Pharmdata, 3-month average) - significantly above the national average of 8,667 items.

5.1.38 Thus, it is evident that granting this application would not adversely impact existing contractors, and is, in fact likely to have the opposite effect by supporting Rushen's community and pharmaceutical network.

5.1.39 **Boots**

5.1.40 We have addressed comments raised by Boots above and have nothing further to add.

5.1.41 **Conclusion**

5.1.42 We agree with the Northamptonshire ICB's decision to grant this application.

5.1.43 We believe that our client's application secures the identified improvements and better access in the North Northamptonshire PNA and thus the grant of this application should be upheld under Regulation 17."

5.1.44 [Enclosure copy of 14 day comments to the Commissioner – see paragraph 2 above.]

5.2 THE COMMISSIONER

5.2.1 "Thank you for your letter dated 11th March 2026. The East Midlands Primary Care Team on behalf of Northamptonshire Integrated Care Board would like to make the following representations.

5.2.2 **Relevant regulations**

5.2.2.1 Regulation 17 – Improvements or better access to the current service. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

5.2.2.2 Regulation 19 – Applications to which regulation 17 or 18 applies: consequences of additional matters. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

5.2.2.3 Regulation 31 – Refusal: same or adjacent premises. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

5.2.2.4 Regulation 32 –Deferrals arising out of LPS designations. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

5.2.2.5 Paragraph 31, schedule 2 - Conditional grant of applications where the address of the premises is unknown. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

5.2.2.6 Regulation 65 – Core opening hours conditions. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

5.2.3 Medsynth Ltd submitted an application to be included on the pharmaceutical list offering to secure identified improvements or better access. This was reviewed at the Pharmaceutical Services Regulations Committee on 20th January 2026. The committee's decision was to grant the application.

5.2.4 **Regulation 17**

5.2.5 Regulation 17(1) asks the decision-maker to consider whether approving an application would lead to improvements in, or better access to, the pharmaceutical services identified as needed in the relevant Pharmaceutical Needs Assessment (PNA).

5.2.6 In this case, the North Northamptonshire PNA 2025–2028 contains a clear and express statement that better access to necessary services would be secured by the provision of pharmaceutical services on a Sunday within the East Northamptonshire locality. The wording adopted by the Health and Wellbeing Board is unambiguous and reflects a considered assessment of access across the locality, informed by both service mapping and public engagement.

5.2.7 Some appellants have argued that the PNA does not highlight Rushden itself as an area where access is lacking. However, the PNA does not break need down to the level of individual towns. Instead, it looks at each locality as a whole. This approach is consistent with the statutory framework, which allows Health and Wellbeing Boards to assess need across wider geographic areas rather than pinpointing specific sites.

5.2.8 The application in question includes the provision of pharmaceutical services on Sundays from premises within the East Northamptonshire locality. On that basis, the Committee considered that the proposal aligns directly with the improvement the PNA identifies. The Committee therefore focused on whether the application met that locality-wide need, rather than revisiting where within the locality the need might be greatest.

5.2.9 Taking all of this into account, the Committee was satisfied that granting the application would deliver the improved access highlighted in the PNA. For that reason, the requirements of Regulation 17(1) were considered to be met.

5.2.10 In reaching its decision, the Committee considered the matters listed in Regulation 17(2).

5.2.11 First, the Committee looked at whether anything had changed since the PNA was published that might affect the need identified in it. No such changes were found. In particular, the lack of Sunday pharmacy provision in the East Northamptonshire locality remains the same.

5.2.12 The Committee also considered whether the improvement identified in the PNA had already been delivered, or was about to be delivered, by another provider. At the time of the decision, there was no evidence that any pharmacy in the locality was offering Sunday opening, and no provider had indicated that they intended to introduce it.

5.2.13 The Committee then looked at whether the improvement was likely to happen without this application. Although some appellants suggested that existing pharmacies *could* extend their hours or that other arrangements *might* be put in place, no concrete plans or commitments were presented. The Committee therefore focused on what was in place or firmly planned, rather than on speculative possibilities.

5.2.14 Finally, in considering whether the application would secure the improvement identified in the PNA, the Committee noted that it would introduce Sunday pharmaceutical services into a locality where none currently exist. Given the PNA's clear conclusion that Sunday provision would improve access, the Committee was satisfied that the application would achieve the improvement described.

5.2.15 **Regulation 19**

5.2.16 The appellants have argued that the Committee should have either deferred the application or invited competing applications under Regulation 19, and that not doing so amounted to a procedural flaw.

5.2.17 The Committee did consider Regulation 19. These provisions require the Committee to think about whether deferring an application or seeking competing applications would be appropriate, but they do not make either step mandatory. The Committee therefore understood that it had discretion in how to apply them.

5.2.18 In this case, the Committee looked at the nature of the need identified in the PNA, namely, the lack of Sunday provision in the locality. The application in front of the Committee directly addressed that need and offered a clear and immediate way of delivering Sunday services. At the time of the decision, there were no alternative proposals or indications from any other provider that they wished to offer such provision.

5.2.19 On that basis, the Committee concluded that it was appropriate to determine the application without deferring it or inviting competing applications, and it was satisfied that approving the application would secure the improved access identified in the PNA.

5.2.20 **Regulation 21A**

5.2.21 Some appellants have referenced Regulation 21A in relation to potential duplication or overprovision of services. The Committee considered this carefully. While the locality benefits from strong weekday and Saturday pharmaceutical provision, there is currently no access on Sundays within East Northamptonshire. The application therefore does not duplicate existing services but introduces provision at a time when none is available, directly addressing a gap identified in

the PNA. As such, the improvement relates to filling an unmet need rather than increasing provision where it is already adequate. In these circumstances, it would be difficult to characterise the application as resulting in overprovision, and the Committee was satisfied that it aligns with the PNA's assessment of local access needs.

5.2.22 **Regulation 31**

5.2.23 The Committee also considered Regulation 31, which requires an application to be refused in certain circumstances where the proposed premises are the same as, or adjacent to, premises from which pharmaceutical services are already provided, and where the proposed services would properly be regarded as part of the same service.

5.2.24 In this case, the application was submitted on a best estimate basis. The Committee therefore considered whether, taking that estimate into account, the proposed premises would fall within or adjacent to any existing listed chemist premises, or whether the services proposed could reasonably be regarded as forming part of the same service as that provided by an existing contractor.

5.2.25 Having reviewed the evidence relating to the location and surrounding provision, the Committee was satisfied that the proposed premises would not be the same as, nor adjacent to, any existing premises for the purposes of Regulation 31. Furthermore, there was no basis on which the proposed services could reasonably be regarded as forming part of the same service as any existing pharmacy.

5.2.26 Accordingly, the Committee was satisfied that there were no grounds to refuse the application under Regulation 31.

5.2.27 **Regulation 32**

5.2.28 The Committee also had regard to Regulation 32, which concerns circumstances in which an application must or may be deferred due to the designation of Local Pharmaceutical Services (LPS) arrangements.

5.2.29 There was no evidence before the Committee to indicate that the proposed location, or the relevant locality, was subject to any LPS designation that would require or justify deferral under this provision. Nor were any such matters raised within the representations received.

5.2.30 On that basis, the Committee was satisfied that Regulation 32 was not engaged in this case.

5.2.31 **Paragraph 31 - Schedule 2**

5.2.32 As the application was made on a best estimate basis rather than with a fixed address, the Committee considered Paragraph 31 of Schedule 2, which permits the conditional grant of applications where the precise location of the premises is not yet known.

5.2.33 The Committee was satisfied that the best estimate provided by the applicant represented the most accurate location reasonably available at the time of application, and that it was sufficiently precise to enable a proper assessment of pharmaceutical provision within the surrounding area.

5.2.34 The Committee further considered whether the outcome of the application would be materially affected by the precise siting of the premises within that defined area. Having reviewed the distribution of existing pharmacies and the nature of the locality, the Committee was satisfied that the identified better access would be secured regardless of the exact premises ultimately selected within the best estimate area.

5.2.35 Accordingly, the Committee was satisfied that it was appropriate to grant the application in accordance with Paragraph 31 of Schedule 2.

5.2.36 **Regulation 65**

5.2.37 The Committee also considered Regulation 65, which governs the approval of core opening hours.

5.2.38 The applicant proposed core opening hours totalling 50 hours per week, including Sunday opening between 10:00 and 15:00. The Committee noted that these hours exceed the standard 40-hour minimum and that, where additional hours are offered as core hours, they must be approved as part of the application.

5.2.39 In this case, the proposed Sunday hours form a central component of the application and are directly aligned with the identified better access within the PNA. The Committee was satisfied that the proposed core hours were reasonable, clearly specified, and capable of delivering the intended improvement in access.

5.2.40 The Committee therefore approved the proposed core hours in accordance with Regulation 65.

5.2.41 **Existing Provision and Access Considerations**

5.2.42 The Committee also gave detailed consideration to the existing pattern of pharmaceutical provision within Rushden and the wider East Northamptonshire locality.

5.2.43 It was acknowledged that the locality benefits from a relatively dense network of pharmacies providing comprehensive pharmaceutical services throughout the week. The evidence before the Committee demonstrated that there are multiple contractors operating within close proximity to the proposed site, with a concentration of provision within a short distance of Rushden town centre. These pharmacies collectively provide access to essential and advanced services during weekday hours and, in some cases, on Saturdays.

5.2.44 The Committee recognised that this level of provision supports a strong degree of accessibility for patients during the working week and on

Saturdays. This was reflected in the Committee's findings regarding the adequacy of weekday provision.

5.2.45 However, the Committee also noted that this pattern of provision does not extend to Sundays. The absence of Sunday opening across the locality, including Rushden which is the main population centre in East Northamptonshire, represents a clear and consistent feature of the existing network. Introducing a Sunday service in Rushden is therefore likely to maximise take-up and make access easier not only for residents of the town but also for people travelling in from more rural areas of the locality. This reflects the wider gap identified in the PNA, rather than providing additional provision solely in one town.

5.2.46 Several appellants have emphasised that residents are able to access pharmaceutical services on Sundays by travelling to neighbouring areas, and that such journeys may be achievable within a reasonable time. The Committee considered these points carefully, including the evidence relating to travel distances, transport links, and car ownership. However, these considerations were part of the evidence base available to the Health and Wellbeing Board when preparing the PNA. The PNA explicitly recognises factors such as rurality, travel times, and public feedback, including responses indicating that existing opening hours can make access difficult, particularly for those of working age.

5.2.47 Notwithstanding the availability of services outside the locality, the PNA reaches the conclusion that access within East Northamptonshire would be improved by the provision of Sunday services within the locality itself. The Committee therefore considered that the existence of provision in neighbouring areas does not displace or negate the identified improvement but rather forms part of the context in which the PNA's conclusions were reached.

5.2.48 The Committee also noted that reliance on provision outside the locality may not provide the same level of accessibility or convenience as services located within the locality, particularly for certain patient groups or for those seeking timely access to advice and treatment. Considering these factors, the Committee concluded that the introduction of Sunday provision in Rushden would represent a meaningful enhancement to the existing pattern of access, complementing the strong weekday provision while addressing a clearly identified gap.

5.2.49 **Conclusions**

5.2.50 Having regard to the statutory framework and the evidence before it, the Committee concluded that the application met the requirements of Regulation 17.

5.2.51 The PNA identifies that better access to pharmaceutical services would be secured by the provision of services on a Sunday within the East Northamptonshire locality. There is currently no such provision within that locality, and no alternative arrangements have been secured to address this position. The application proposes to provide Sunday

services from premises within the locality and is therefore capable of securing the identified improvement.

5.2.52 The matters raised within the appeals have been carefully considered. These include the interpretation of the PNA, the role of Regulation 19, the availability of services outside the locality, and the potential for existing contractors to respond to the identified need. Having considered these points, the ICB remains satisfied that the decision taken was consistent with the requirements of the Regulations and the findings of the PNA.

5.2.53 I would like to take this opportunity to respond to any further representations."

6 Summary of Observations

6.1 BOOTS UK LTD

6.1.1 "Thank you for your correspondence dated 13th April 2026 enclosing representations in response to the above appeal.

6.1.2 We believe that the letter from East Midlands Primary Care Team is new information. The detail contained within their report dated 25th March has not previously been made available to interested parties.

6.1.3 We disagree with the ICB's statement that the wording adopted by the Health & Wellbeing Board is unambiguous. We believe that the Health & Wellbeing Boards (HWBs) wording is absolutely ambiguous, particularly in terms of where exactly a gap on Sundays exists. The HWB could have been more specific where a gap on Sundays exists. East Northamptonshire is a large area and the wording used in the PNA leaves the decision of where the gap exists wide open to interpretation. Many other HWBs do not, they identify where they believe the gap exists – Cornwall PNA for an example.

6.1.4 Patients in Rushden town centre already have a choice of pharmaceutical provision and there is no evidence that provision here is not meeting the needs of patients. The ICB has not provided any evidence that there is demand in Rushden town centre on Sundays. It would not be viable for any business to open on Sundays with no evidence of demand. The ICB could of course, set up a rota system for existing providers if demand existed.

6.1.5 We believe that the gap in provision on Sundays referred to in the PNA, could have been met in another location in East Northamptonshire, where less or no provision is currently available to patients.

6.1.6 We believe that the appeal should be upheld. Please be aware that should an oral hearing be held in connection with this appeal, we may wish to attend."

6.2 CHERRY PHARMACY

6.2.1 “**IN THE MATTER OF AN APPEAL TO THE SECRETARY OF STATE**

6.2.2 **Under Regulation 75 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013**

6.2.3 **Appellant: Cherry Pharma Ltd**

6.2.4 **Address: 85–87 High Street, Rushden, Northamptonshire, NN10 0NZ**

6.2.5 **Our Ref: CAS-373696-J3Y0K1**

6.2.6 **Decision: Grant of pharmaceutical list inclusion to Medsynth Ltd, Rushden, North Northamptonshire NN10, dated 4 February 2026**

6.2.7 **Appellant’s status: Third party with appeal rights as notified by Northamptonshire ICB**

6.2.8 **Existing Sunday Provision in Proximity to the Locality**

6.2.9 The Appellant notes that there is existing Sunday pharmaceutical provision in the area. In particular, pharmacies in Wellingborough — which borders Rushden - East Northamptonshire locality — already providing Sunday services that are accessible to residents of Rushden and the immediately surrounding area within or close to 10-minute by car or public transport standard. The ICB’s decision report does not address the extent to which this existing provision reduces the practical gap in Sunday access for residents of the southern tip of the locality. The Appellant does not suggest that this provision eliminates the identified need; however, it is relevant to the assessment of where within the locality the need is most acute and therefore where provision would most effectively address the PNA gap.

6.2.10 **Regulation 17**

6.2.11 The Committee’s conclusion that the proposed location in Rushden would “maximise take-up” and improve access across the East Northamptonshire locality is irrational, inadequately reasoned, and unsupported by the evidence. Rushden is situated at the southern tip of the locality. It is not geographically central and does not provide a balanced and fair point of access for the wider and rural population. A service located at the periphery of the locality cannot reasonably be said to deliver equitable or effective access for residents in the northern and more rural parts, who would be required to undertake materially longer and less convenient journeys.

6.2.12 The Committee’s assertion that such a location would improve access “for people travelling in from more rural areas” is speculative and evidentially unsupported. No analysis has been provided of travel times, transport links, or population distribution to substantiate this claim. In the absence of such evidence, this amounts to an unreasoned assumption rather than a lawful basis for decision-making.

6.2.13 Further, the Committee has failed to engage with the fundamental question required under Regulation 17: whether the application would *secure* the improvement identified in the PNA. The identified need is **locality-wide** access. A single service located at the southern edge of that locality cannot, without proper analysis, be assumed to meet that need in a meaningful or comprehensive way.

6.2.14 ***"It is noted that East Northamptonshire is a mostly rural locality, with some areas over 20-minute drive to other large towns." (PNA 2025-2028)***

6.2.15 In failing to properly consider geographic distribution, accessibility for outlying rural populations, and the practical realities of travel, the Committee has reached a conclusion that is inadequately reasoned and therefore unsustainable. The decision does not demonstrate, by reference to evidence, that the proposed Rushden location – a densely urban population with enhanced public transport links to other urban areas would in fact secure the improvement in access identified in the PNA, as required by Regulation 17.

6.2.16 A service located at the southern tip of the locality cannot be assumed to deliver equitable access across the rural population. A more **centrally** located provision would be inherently more capable of serving the entirety of the rural locality in a fair, balanced, and accessible manner.

6.2.17 **Regulation 17(2)**

6.2.18 The Committee has failed to undertake the necessary inquiry required by Regulation 17(2) as to whether the identified improvement could be secured without granting the application.

6.2.19 There is no evidence that the Integrated Care Board made any attempt to engage with existing contractors within this town or even more centrally based contractors to determine whether they would be willing or able to provide Sunday services. No invitations for expressions of interest were issued, and no structured or proactive assessment of existing capacity was undertaken.

6.2.20 Existing contractors, including the Appellant and associated providers, were both willing and able to extend core/supplementary opening hours to meet the need identified in the PNA. However, no opportunity was afforded to engage with the ICB or to put forward proposals to address that need. The absence of **"concrete plans or commitments"** is therefore a direct consequence of the ICB's failure to seek them, rather than evidence that such provision would not have been forthcoming.

6.2.21 The Committee's reliance on that absence is fundamentally flawed. In circumstances where no attempt has been made to test the position with existing providers, it is irrational to treat the lack of evidence as determinative. This amounts to a failure to make reasonable inquiries into a plainly relevant and material consideration.

6.2.22 While it is accepted that the power to defer or invite competing applications is discretionary, that discretion must be exercised rationally and in accordance with the statutory purpose. In a case such as this—where the identified need relates solely to extended opening hours, and where there is an established and capable network of existing contractors—it was incumbent on the Committee to properly consider whether those contractors could meet the need if given the opportunity.

6.2.23 The failure to engage existing providers, or to utilise the available mechanisms under Regulation 19, renders the decision premature and procedurally unfair. The Committee has not properly tested whether the identified improvement could be secured through less intrusive and more proportionate means.

6.2.24 The requirements of Regulation 17(2) have therefore not been met, and the decision is unsound.

6.2.25 **Dispensing volume**

6.2.26 Healthcare Plus's reliance on above-average dispensing volumes to argue that a seventh pharmacy will not harm existing contractors is, on examination, self-defeating. If the six existing Rushden pharmacies are already dispensing at nearly fifty percent above the national average for the last decade, the obvious inference is that local demand is being met, and met robustly, by the current network. That is not evidence of unmet need crying out for a new entrant — it is evidence of a well-functioning market. The suggestion that a Sunday-only pharmacy will somehow relieve weekday capacity pressures is fanciful and unsupported by any evidence. Perhaps most troublingly, neither Healthcare Plus nor the ICB have grappled at all with the question of whether a pharmacy operating exclusively on Sundays, in a market already served by six established contractors, is financially viable. If it is not, the promised improvement in access evaporates entirely, existing contractors will have been damaged for nothing, and patients will be no better off. The Panel should demand proper answers to these questions before allowing this grant to stand.

6.2.27 **Conclusion**

6.2.28 The Decision under appeal rests upon an inadequate evidential foundation and a failure to engage lawfully with the requirements of Regulation 19. The ICB accepted, without proper scrutiny, that an application made without identified premises, by a new entrant with no established presence in the locality, would in fact deliver the locality-wide Sunday access improvement identified in the PNA. It did so without inviting competing applications, without engaging existing contractors both locally and centrally, and without offering any reasoned justification for proceeding directly to grant. Those failures are individually and collectively material.

6.2.29 The Appellant does not suggest that the Sunday access gap in East Northamptonshire is unimportant, nor that it should not be addressed, however a centrally located contract would benefit rural areas where

public transport to larger urban towns is limited. The Appellant submits that the proper response to the identified gap is a properly conducted and competitive process, not the unconditional endorsement of a prematurely granted and evidentially deficient application. The Panel is respectfully invited to overturn the Decision accordingly."

6.3 COMMUNITY PHARMACY BLMK & NORTHANTS

6.3.1 "Thank you for your email in respect of Medynth Ltd application. There are no further comments at this stage from the LPC."

7 Consideration

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

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

7.3 The Committee had before it a copy of the Northamptonshire Pharmaceutical Needs Assessment ("PNA") dated 2025 - 2028 and prepared by Northamptonshire Health and Wellbeing Board ("HWB"), which had been provided by the Commissioner.

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

7.5 The Committee dealt with the appeal by way of reconsideration of the application.

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

Regulation 31

7.7 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).

7.8 The Applicant, in its application, stated "N/A – No pharmacy at / adjacent to proposed sites" with regard to Regulation 31. The Commissioner was satisfied that Regulation 31 did not apply, as no listed pharmacy was providing, or had undertaken to provide, pharmaceutical services from the proposed or adjacent premises, and the proposed services could reasonably be treated as distinct. As the Commissioner's finding on Regulation 31 was not disputed by any party, the Committee determined that it was not required to refuse the application under Regulation 31

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

Regulation 17

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

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

"(1) If -

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

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

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

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

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

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

7.13 The Committee noted that the Applicant, in its application, is proposing to meet an identified improvement or better access to pharmaceutical services on a Sunday.

7.14 The Committee noted that the Applicant has focused on page 74 of the PNA, where the improvements or better access which the Applicant seeks to address, have been identified.

7.15 The Applicant quotes the following from the PNA:

7.15.1 "*The Health and Wellbeing Board is satisfied that better access to necessary services would be secured by their provision in East Northamptonshire on a Sunday."*

7.16 The Committee noted that preceding the Applicant's quote, the PNA, on page 74 also states:

7.16.1 " …. *East Northamptonshire does not have community pharmacy provision on a Sunday. The locality of East Northamptonshire also has a lover level of pharmacy provision available on weekday evenings, compared to the other locality areas. The public engagement indicated equal demand for pharmacy provision on a Sunday, ……. These responses did not provide detail on the location, services or times required. It is noted that East Northamptonshire is a mostly rural locality, with some areas over 20-minute drive to other large towns*."

7.17 The Committee also noted the PNA's conclusion on page 77 states:

7.17.1 "…. *However, it has identified that better access could be achieved through the provision of services in East Northamptonshire on Sundays*. …"

7.18 The Committee had regard to the Department of Health and Social Care Guidance on Regulation 17 applications which states (at paragraph 2):

7.18.1 "*Within its PNA, the HWB may have identified pharmaceutical services that are not provided in the relevant HWB area but which would, if provided, secure improvements, or better access, to pharmaceutical services (paragraph 4 of Schedule 1), for example a PNA identifies that better access could be achieved by extending opening hours in the evenings or weekends*"

7.19 The Committee noted that the PNA expressly identifies a lack of Sunday provision across the locality of East Northamptonshire and concludes that

better access could be achieved through the provision of pharmaceutical services on a Sunday.

7.20 The Committee noted that the PNA does not prescribe specific locations, services or opening hours, but identifies the improvement at locality level, reflecting the rural nature of East Northamptonshire and the travel distances to alternative provision. In applying the improvement identified in the PNA, the Committee did not treat the locality boundary as determinative, but assessed whether provision at the proposed location would give effect to the locality-wide improvement expressly identified by the HWB. Taking this and the DHSC Guidance into account, the Committee was therefore satisfied that the Applicant's proposal to provide pharmaceutical services on a Sunday within East Northamptonshire accorded with, and gave effect to, the improvement or better access envisaged by the PNA.

7.21 The Committee was mindful that it was possible that by indicating in the PNA that "*provision of services in East Northamptonshire on Sundays*", the HWB had envisaged that either existing pharmacies would seek to increase their hours, or the Commissioner would direct pharmacies to provide services in those hours. The Committee noted, however, that since the PNA had been published, this did not appear to have occurred.

7.22 The Committee considered that, in the absence of a pharmacy extending its hours or the Commissioner directing a pharmacy to provide extended hours, it was reasonable to consider an application that aimed to provide services in those hours (whether in whole or in part) and that therefore the wording of the PNA did fall within the requirements set out in paragraph 4(a) of Schedule 1 to the Regulations. This was supported by the fact that the Regulations contain a type of application (made pursuant to Regulation 17) to do just that.

7.23 The Committee considered that for the reasons above, the paragraph under the heading "Improvements and Better Access: gaps in current provision" on page 74 of the PNA falls within the requirements set out in paragraph 4(a) of Schedule 1 to the Regulations and therefore constitutes improvements or better access as envisaged in Regulation 17(1).

7.24 Having concluded that better access had been identified, as considered above, the Committee went on to consider the matters set out in Regulation 17(2) which are:

"(a) 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 mentioned in paragraph (1) that the applicant is offering to secure;

(b) whether it is satisfied that another application offering to secure the improvements or better access mentioned in paragraph (1) has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;

(c) whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access mentioned in paragraph (1) is

pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;

(d) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the profile of pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in that area;

(e) whether it is satisfied that,

(i) granting the application would only secure the improvements or better access mentioned in paragraph (1) in part, and

(ii) if the application were granted, it would be unlikely, in the reasonably foreseeable future, that the remainder of those improvements or that better access would be secured;

(f) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the improvements or better access mentioned in paragraph (1) have or has been secured by another person who is providing, or is due to be secured by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB;

(g) whether it is satisfied that-

(i) the improvements or better access mentioned in paragraph (1) were or was in respect of services other than essential services, and

(ii) granting the application would result in an undesirable increase in the availability of essential services in the area of the relevant HWB;

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

Regulation 17(2)(a) and (b)

7.25 The Committee had not been provided with any information to indicate that there are other applications to consider at the same time as this application and was therefore satisfied for the purposes of Regulations 17(2)(a) and (b) that there were not.

Regulation 17(2)(c)

7.26 The Committee was not aware of any pending appeal and was therefore satisfied that no such appeal needs to be taken into consideration under the provisions of Regulation 17(2)(c).

Regulation 17(2)(d)

7.27 The Committee next considered Regulation 17(2)(d), namely whether, since publication of the PNA, there had been changes to the profile of pharmaceutical services in the area of the North Northamptonshire HWB such that refusal of

the application was essential in order to prevent significant detriment to the provision of pharmaceutical services in that area.

7.28 The Committee noted the Commissioner's statement that *"a review of the most recent PNA and current pharmaceutical provision indicates that there have been no material changes to the profile of pharmaceutical services within the North Northamptonshire Health and Wellbeing Board area since the PNA was published that would undermine or negate the identified need for better access on Sundays within the East Northamptonshire locality."* The Committee agreed with the Commissioner's assessment and was satisfied that no post-PNA changes had been identified which would require refusal of the application in order to prevent significant detriment to pharmaceutical services.

7.29 The Committee considered the submissions made by Rowlands Pharmacy that *"existing provision already ensures adequate access"* and that the *"density of weekday provision is high."* The Committee was satisfied that these submissions related to the level of existing provision rather than to changes to the profile of pharmaceutical services since publication of the PNA and did not demonstrate that refusal of the application was essential to prevent significant detriment. The Committee also considered the submissions from Cherry Pharmacy that demand for pharmaceutical services is materially lower on Sundays, that patients are able to access Sunday provision elsewhere, and that alternative statutory mechanisms exist to address gaps in Sunday opening. The Committee was satisfied that these matters did not constitute evidence of post-PNA changes to the profile of pharmaceutical services such that refusal was required under Regulation 17(2)(d). The Committee further considered the submissions from Boots that the PNA identified better access at a locality level rather than specifically in Rushden, and that other approaches could have been explored. The Committee was satisfied that these submissions did not establish changes to the profile of pharmaceutical services since publication of the PNA requiring refusal in order to prevent significant detriment.

7.30 Having considered all the representations received, the Committee was not satisfied that Regulation 17(2)(d) applied so as to require refusal of the application.

<u>Regulation 17(2)(e)</u>

7.31 The Committee next considered Regulation 17(2)(e), namely whether it was satisfied that (i) granting the application would only secure the improvements or better access identified in the PNA in part, and (ii) if the application were granted, it would be unlikely, in the reasonably foreseeable future, that the remainder of those improvements or that better access would be secured.

7.32 The Applicant is proposing core hours as follows:

7.32.1 Monday to Friday: 9am to 6pm

7.32.2 Saturday: Closed

7.32.3 Sunday 10am to 3pm

7.33 The Committee noted the Commissioner's submissions that the PNA identifies a locality-wide lack of Sunday provision within East Northamptonshire and does not specify where within the locality the better access is required, such that granting the application would be capable of securing the identified better access. In those circumstances, the Committee was not satisfied that granting the application would only secure the identified better access in part.

7.34 The Committee considered submissions from interested parties that the identified improvement could be addressed through alternative statutory mechanisms or by provision elsewhere within the locality. The Committee was also mindful that it was not disputed that there was no Sunday hours in the locality, so the Applicant is proposing hours where no other pharmacy nearby is open. The Committee was satisfied that these submissions did not establish that, if the application were granted, it would be unlikely in the reasonably foreseeable future that any remainder of the identified better access would be secured.

7.35 Accordingly, the Committee was not satisfied that Regulation 17(2)(e) applied so as to require refusal of the application.

Regulation 17(2)(f)

7.36 The Committee was satisfied that, since the publication of the PNA, the improvements or better access that the Applicant was proposing to secure have not been secured by another person and therefore was not required to refuse the application by virtue of Regulation 17(2)(f).

Regulation 17(2)(g)

7.37 The Committee considered whether the better access relied upon related to services other than essential services and whether granting the application would result in an undesirable increase in the availability of essential services.

7.38 The Committee noted that essential pharmaceutical services are already readily available within the locality during weekdays and, to a lesser extent, Saturdays. However, it was satisfied that there is no provision of pharmaceutical services within the immediate locality on Sundays and that the application would secure access during a period when no local provision currently exists. The Committee was therefore satisfied that the improvement relied upon was not a duplication of existing essential services, but the provision of services at a materially different time.

7.39 The Committee further distinguished between an undesirable increase in provision during periods already well served and the introduction of provision to address a temporal gap in access. It was satisfied that granting the application would not result in an undesirable increase in the availability of essential services, but would instead secure access at a time when services are otherwise unavailable locally. The Committee did not consider that reliance on provision outside the locality adequately addressed this absence.

7.40 On the information provided with reference to 17(2)(g), the Committee was satisfied that if this application was granted then there would not be an undesirable increase in the availability of essential services.

Regulation 17(2)(h)

7.41 The Committee considered whether the application was required to be deferred or refused by virtue of any provision of Parts 5 to 7 of the Regulations, including Regulation 19.

7.42 The Committee noted the discretion available under Regulation 19 to defer an application or invite competing applications where it considers it appropriate to do so to secure the identified improvement or better access. The Committee was satisfied that it had properly considered that discretion in the circumstances of this case. The Committee was mindful that Regulation 19 does not impose any obligation to contact existing contractors or to invite expressions of interest, and the absence of such steps does not indicate that the discretion was not exercised.

7.43 The Committee was satisfied that the application, as submitted, clearly identified the improvement relied upon, namely the provision of pharmaceutical services on Sundays within the locality, and that granting the application would itself secure that improvement. The Committee did not consider that deferral or the invitation of competing applications was necessary in order to clarify the nature of the improvement or to secure better access, nor did it consider that doing so would materially enhance its decision-making.

7.44 The Committee further noted that Regulation 19 does not impose a requirement to defer or to invite competing applications in every case, nor does it require the Committee to exhaust or prefer alternative contractual or commissioning mechanisms where it is otherwise satisfied that the grant of the application would secure the identified improvement and that the regulatory criteria in Regulation 17 are met.

7.45 The Committee was satisfied that there was no provision within Parts 5 to 7 of the Regulations which required or compelled refusal or deferral of the application in the circumstances of this case. Accordingly, the Committee concluded that Regulation 17(2)(h) was met.

Regulation 21(A)

7.46 The Committee noted that Regulation 21A of the Regulations has been in effect since 1 January 2022. Regulation 21A states:

> *(1) Paragraph (2) applies where NHS England receives a routine application which is in respect of premises not already listed, where—*
>
> (a) *the applicant's stated intention (in accordance with paragraph 7(1)(a) of Schedule is to meet a need, or secure improvements or better access, identified in the relevant pharmaceutical needs assessment (whether current or future gaps in provision); and*
>
> (b) *the need is, or the improvements are or the better access is, in respect of the days on which or the times at which essential services are provided in the area of the relevant HWB.*

(2) *In determining whether or not it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), NHS England must have regard to whether granting the application would result in an undesirable increase in the availability of essential services in the area of the relevant HWB.*

(3) *If NHS England is satisfied that granting the application would result in the undesirable increase in availability mentioned in paragraph (2), it must refuse the application.*

7.47 The Committee was satisfied that Regulation 21A(1)(a) applied, as the Applicant's stated intention was to secure an improvement or better access identified in the PNA. The Committee further considered Regulation 21A(1)(b) and was satisfied that the identified improvement related to the days on which essential pharmaceutical services are provided, namely the absence of provision within the locality on Sundays.

7.48 The Committee therefore proceeded to consider Regulation 21A(2), which requires consideration of whether granting the application would result in an undesirable increase in the availability of essential services in the area of the relevant HWB.

7.49 In undertaking this assessment, the Committee recognised that Rushden benefits from a concentration of pharmaceutical provision during weekdays and some Saturdays. However, the Committee distinguished between the density of provision during periods already well served and the availability of services at a time when no local provision exists. The Committee was satisfied that the application would introduce pharmaceutical services during a period of complete local absence, rather than increase or duplicate provision during periods of existing saturation.

7.50 The Committee did not consider that the addition of provision restricted to Sunday opening amounted to undesirable overprovision. Rather, it was satisfied that the effect of the grant would be to address a gap in access, not to create an excessive or distortive concentration of essential services. The Committee further did not consider reliance on provision outside the locality to amount to adequate access for the purposes of Regulation 21A.

7.51 The Committee was satisfied that Regulation 21A imposes a duty to have regard to the risk of undesirable overprovision, but does not require refusal where better access is secured at times when services are otherwise unavailable locally and where no undesirable increase is identified. The Committee therefore concluded that Regulation 21A(3) was not engaged.

7.52 Accordingly, the Committee was satisfied that Regulation 21A did not require refusal of the application.

7.53 The Committee also had regard to Schedule 4, Part 3 of the Regulations which states:

Pharmacy opening hours: general

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

(a) for 40 hours each week; …

(d) if a Primary Care Trust, or on appeal the Secretary of State, has (under previous Regulations) directed that pharmaceutical services are to be provided at the premises for more than 40 hours per week, and at set times and on set days, at the times and on the days so set, subject to any variation in respect of a rest break in accordance with sub-paragraph (7)(bd); …

7.54 The Committee noted the Applicant is offering 50 core hours between Monday and Sunday. The Committee noted that, if the application was to be granted, a direction would need to be issued for the "additional" hours which were being offered by the Applicant.

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

7.55.1 confirm the Commissioner's decision;

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

7.55.3 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.

7.56 As the Commissioner had not considered Regulation 21(A) in its report the Committee determined that the decision of the Commissioner must be quashed.

7.57 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.

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

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

8 Decision

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

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

8.3 The Committee has determined that the application should be granted for the following reasons:

8.3.1 The PNA does specify circumstances in which the provision of specified services will secure improvements to, or better access to, pharmaceutical services in East Northamptonshire.

8.4 The Committee noted that the Commissioner would now need to consider the issuing of a direction in relation to the opening hours above 40.

Case Manager
Primary Care Appeals