

26 June 2026

**REF: SHA/27039**

8<sup>th</sup> Floor  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

Tel: 020 3928 2000  
Email: [nhsr.appeals@nhs.net](mailto:nhsr.appeals@nhs.net)

**APPEAL AGAINST KENT AND MEDWAY ICB  
DECISION TO REFUSE AN APPLICATION BY OH  
PHARMA LIMITED FOR INCLUSION IN THE  
PHARMACEUTICAL LIST AT UNIT 39, DOCKSIDE,  
OUTLET CENTRE, CHATHAM, KENT, ME4 3ED  
WITH REGARD TO CURRENT NEED UNDER  
REGULATION 13**

## 1 Outcome

- 1.1 In accordance with paragraph 2 of Schedule 3 the Committee dismisses the appeal as it is of the view that it contains no reasonable grounds of appeal.

A copy of this decision is being sent to:

OH Pharma Ltd  
PCSE on behalf of Kent and Medway ICB

**REF: SHA/27039****APPEAL AGAINST KENT AND MEDWAY ICB  
DECISION TO REFUSE AN APPLICATION BY OH  
PHARMA LIMITED FOR INCLUSION IN THE  
PHARMACEUTICAL LIST AT UNIT 39, DOCKSIDE,  
OUTLET CENTRE, CHATHAM, KENT, ME4 3ED  
WITH REGARD TO CURRENT NEED UNDER  
REGULATION 13****1 The Decision**

Kent and Medway ICB ("the Commissioner") considered and decided to refuse the application. The decision letter dated 26 May 2026 stated:

- 1.1 "Kent & Medway ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning."

Extract from the 'Pharmaceutical Services Regulations Committees meeting in common of: NHS Kent & Medway ICB, NHS Surrey & Sussex ICB' minutes

- 1.2 "OH Pharma Limited – Current Need
- 1.3 CAS no: CAS-402078-C9T6W4
- 1.4 Address: Unit 39, Dockside, Outlet Centre, Chatham, Kent, ME4 3ED
- 1.5 HWB: Medway
- 1.6 ICB: Kent & Medway
- Introduction and background
- 1.7 A current need application had been received from OH Pharma Limited, on 8 January 2026 for premises at Unit 39, Dockside, Outlet Centre, Chatham, Kent, ME4 3ED.
- 1.8 The Committee was now required to consider the application in accordance with Regulations 13 and 14 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
- 1.9 Full details of the Applicant's proposal had been notified to the various interested parties in accordance with the regulations. Comments had been received from the following parties – Brompton Pharmacy, Boots the Chemist, Pharmacy 1st, Kent & Medway HWB and the Applicant. There were also follow

up comments from the Applicant. Unsolicited comments were also received from Councillor Habib Tejan and 29 members of the public.

Consideration by the Committee

1.10 The Committee had before it:

1.10.1 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

1.10.2 Department of Health guidance on Market Entry by means of pharmaceutical needs assessment – Chapter 5 – Current needs

1.10.3 The Report and annexes prepared by Primary Care Support England (PCSE) and NHS England:

1.10.4 The application form provided by the Applicant.

1.11 In relation to the application, the Committee noted the following:

1.11.1 The Applicant's fitness to practise was approved on 6 February 2026.

1.11.2 The Committee noted that the Applicant was proposing to provide essential, enhanced and advanced services, if commissioned.

1.11.3 The Applicant also proposed core opening of 61 hours per week and total proposed opening of 76 hours per week.

1.12 The Applicant had also confirmed which hours they proposed the 40 core hours to be and which hours were proposed as additional core hours (the additional core hours/directed hours were 18:00-20:00 Monday to Friday, 14:00-19:00 on Saturdays and 11:00-17:00 on Sundays).

1.13 The Committee considered the Applicant's statement as to the current need it is offering to meet. The Applicant stated that

*"This application relates to the findings and data presented on pages 92-95 of the Medway Pharmaceutical Needs Assessment 2025, specifically Section 6.2.1 concerning the Chatham locality and the community pharmacy provision on St Mary's Island.*

*The Medway PNA 2025 formally concludes on page 95 that 'no gaps have been identified in either the necessary services or any other relevant services' for Chatham. However, this conclusion is explicitly predicated on critical assumptions and limitations acknowledged within the PNA itself. On page 93, the assessment states that adequacy of current provision is 'based not only on physical access but also on the expectation that pharmacy contractors will scale and flex their capacity in response to local needs' and notes that 'with projected increases in population and corresponding demand, pharmacies, particularly those operating as sole providers, may experience increased footfall and service pressures.*

*The PNA data on page 93 reveals that Chatham locality currently has only five community pharmacies serving a population of 32,280, with one pharmacy*

*(Island Pharmacy, ODS Code FL840) serving St Mary's Island as the sole provider. The assessment projects population growth of 998 additional dwellings by 2030, representing a 0.33% increase, with St Mary's Island identified as a continuing major residential development area. Critically, the PNA acknowledges on page 93 that there are no 72-hour pharmacies in Chatham, zero pharmacies open on Sundays (0%), and only two pharmacies open on Saturdays (40%) or after 6pm on weekdays (40%)."*

- 1.14 The Applicant also stated *"In summary, this application responds to the service pattern data and population projections presented on pages 92-95 of the Medway PNA 2025, particularly the acknowledgement that Chatham has no Sunday provision, limited Saturday and evening provision, and faces population growth of 998 dwellings by 2030. Whilst the PNA formally concludes these circumstances do not constitute 'gaps,' the application demonstrates that additional provision is necessary to meet the temporal access needs of the population without placing unsustainable demands on the sole existing provider to dramatically extend its operating hours. The proposed pharmacy addresses the service limitations revealed in the PNA data whilst complementing rather than duplicating the existing weekday-focused provision documented in the assessment."*
- 1.15 All additional information, including location, opening times and distances of surrounding pharmacies and GP Surgeries were noted and considered by the Committee.
- 1.16 The Committee considered information from a virtual site visit of the Chatham area that had been undertaken by a Pharmacy Commissioning Hub representative.
- 1.17 The proposed location is within a retail park, inside a retail centre, in Chatham. The unit is located on the ground floor of the centre. The retail park is located by Vanguard Way for access to Rochester, and Strood, and Dock Road for access to central Chatham. The retail park is 4 miles/ 10 minute's drive from the M2 for access to London and Dover.
- 1.18 The proposed location is within a retail park, which contains a wide variety of food outlets, leisure facilities, and varying retail stores.
- 1.19 The roads surrounding the retail park are made up of dual and single carriageways which are limited to 30mph. Pavements around the retail park are of standard width and feature a barrier made up of either bushes or a fence to separate the pavement from the road.
- 1.20 The Committee considered the representations made by Brompton Pharmacy, Boots the Chemist, Pharmacy 1st, Kent & Medway HWB and the Applicant – and noted the comments made by the interested parties. The Committee noted that Brompton Pharmacy, Boots the Chemist, Pharmacy 1st and Kent & Medway HWB opposed the application.
- 1.21 The Applicant's response to the representations received during the consultation period was also considered.

- 1.22 The Committee also considered and noted the unsolicited comments received from Councillor Habib Tejan and 29 members of the public. The Committee noted that the unsolicited comments received were opposed to the application.

Regulation 31 – Refusal: same or adjacent premises

- 1.23 The Committee first considered Regulation 31(2)(a)(i) and was of the view that Regulation 31(2)(a)(i) is not met as there is currently no person on the pharmaceutical list at the premises to which the application relates.
- 1.24 The Committee went on to consider paragraph (a)(ii) of Regulation 31(2); whether there is a person on the pharmaceutical list providing pharmaceutical services from adjacent premises.
- 1.25 The Committee was satisfied that there is no pharmacy providing pharmaceutical services at the same or adjacent premises. The application did not therefore need to be refused in accordance with Regulation 31.

Regulations 40,41 and 44

- 1.26 The Committee noted that the proposed pharmacy location was not in a controlled locality, and therefore Part 7 of the Regulations (in particular Regulations 40, 41 and 44) did not have to be considered.

Oral Hearing

- 1.27 The Committee decided that it was not necessary to hold an oral hearing before determining the application.

Regulation 13 – Current need

- 1.28 The application (which was to be determined in accordance with the procedures in Schedule 2) was submitted by the Applicant based on addressing current need for pharmaceutical services.
- 1.29 The Committee considered whether the need on which the Applicant based its application satisfied elements of Regulation 13(1) which reads as follows:

*13(1) If the NHSCB 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 meet a current need—*

*(a) for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*

*(b) that has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) of Schedule 1,*

*in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act(1) (regulations as to pharmaceutical services), the NHSCB must have regard to the matters set out in paragraph (2).*

- 1.30 Paragraph 2(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) need to be provided (whether or not they are located in the area of the HWB) in order to meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in its area;”*

1.31 The Committee noted that the Applicant is offering to meet a current need in Chatham, Kent.

1.32 The Committee had regard to the Kent PNA 2025 (issue date 1 October 2025) (the ‘PNA’) and noted that supplementary statements had not been issued.

1.33 The Committee noted that under ‘Conclusions’ in the Executive Summary the PNA states:

*“As part of this assessment, no gaps have been identified in provision either now or in the next three years for pharmaceutical services deemed necessary by the Medway HWB. [Page 13, Medway PNA, 2025].*

1.34 The Committee noted that under ‘Necessary Services: gaps in provision’ the PNA states:

*“No gaps in the provision of Necessary Services have been identified for Chatham.”*

*“No gaps in the provision of other relevant services have been identified for Chatham.” [Page 94, Medway PNA, 2025].*

*“No gaps have been identified in either the necessary services or any other relevant services that if provided either now or in the future (next three years) would secure improvements or better access to the essential or specified advanced and enhanced services across Chatham.” [Page 95, Medway PNA, 2025].*

1.35 The Committee noted that under ‘Current provision of Necessary Services’ the PNA states:

*“There is no gap in the provision of Necessary Services during normal working hours across Medway to meet the needs of the population.”*

*“There are no gaps in the provision of Necessary Services outside normal working hours across Medway to meet the needs of the population.”*

*“No gaps have been identified in the need for pharmaceutical services in specified future circumstances in the next three years across Medway.”*

*“There are no gaps in the provision of Advanced Services at present or in the future (next three years) that would secure improvements or better access to services in Medway.” [Page 122, Medway PNA, 2025].*

1.36 The Committee also noted the PNA goes on to state:

*“No gaps have been identified that if provided either now or in the future (next three years) would secure improvements or better access to Enhanced Services across Medway.” [Page 123, Medway PNA, 2025].*

- 1.37 The Applicant had stated that *“The Medway PNA 2025 formally concludes on page 95 that ‘no gaps have been identified in either the necessary services or any other relevant services’ for Chatham. However, this conclusion is explicitly predicated on critical assumptions and limitations acknowledged within the PNA itself. On page 93, the assessment states that adequacy of current provision is ‘based not only on physical access but also on the expectation that pharmacy contractors will scale and flex their capacity in response to local needs’ and notes that ‘with projected increases in population and corresponding demand, pharmacies, particularly those operating as sole providers, may experience increased footfall and service pressures.’”*
- 1.38 The Committee was minded of the explicit wording of the regulations and further noted that the PNA does not identify a current need for pharmaceutical services in Chatham.
- 1.39 The Committee determined that the Applicant had not indicated an identified current need in the Medway PNA which this application would meet in accordance with paragraph 2(a) of Schedule 1. The Committee agreed that in this case, the provisions of Regulation 13(1) were not met.
- 1.40 The Committee therefore did not proceed to consider the application further having regard to those matters set out at 13(2).

#### Decision

- 1.41 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 1.42 The Committee determined that the application should be Refused on the following basis:
- 1.43 The PNA has not identified a current need which this application could meet.

#### Rights of appeal

- 1.44 The application is refused so the Applicant has the right to appeal.”

## 2 The Appeal

In an email dated 5 June 2026 addressed to NHS Resolution, the Applicant appealed against the decision of the Commissioner. The grounds of appeal are:

- 2.1 “I write to submit a formal appeal against the decision of Kent & Medway ICB dated 26 May 2026 to refuse the above application for inclusion in the pharmaceutical list.
- 2.2 Please find attached the following documents:
- 2.2.1 Signed appeal form — OH Pharma Limited — CAS-402078-C9T6W4



- 2.2.2 Appeal bundle (numbered) — NHS-CAS-402078-APPEAL-Bundle-Numbered.pdf
- 2.2.3 Exhibit A — Island Pharmacy Google reviews (35 reviews, 3.3/5, extracted 3 April 2026)
- 2.2.4 Exhibit B — Dockside Chatham Healthcare Opportunity Assessment / CACI demand analysis (WDC Ltd)
- 2.3 The grounds of appeal are set out in full in the signed appeal form. In summary, the application was advanced under Regulation 18(4)(b) and Regulation 18(4)(c) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 throughout the application process. The decision determined the application under Regulation 13(1)(b) alone. Regulation 18 was not considered. The Appellant invites NHS Resolution to apply the correct statutory test to the evidence in the bundle and to grant the application.”

The online form for pharmacy application appeals, dated 5 June 2026, states:

“Grounds of Appeal — OH Pharma Limited — CAS-402078-C9T6W4

- 2.4 Primary Ground — Wrong regulation applied
- 2.5 The application was advanced under Regulation 18(4)(b) and Regulation 18(4)(c) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The Regulation 18 basis was present from the point of application. The proximity report (Bundle pp.162 -169) submitted with the application on 5 January 2026 (Bundle pp. 141 - 153) identifies the access gaps in the Medway PNA 2025, demonstrates complementary provision serving a distinct catchment, and quantifies 41.5 hours per week of non-overlapping service — substantively addressing the improvements and better access test under Regulation 18(4)(b). The legal basis was then set out in formal structured terms in the Post-Consultation Response to the Medway 2025 PNA dated 11 March 2026 (Bundle pp. 92) which expressly identified Regulation 18(4)(b) and Regulation 18(4)(c) as the applicable provisions with separate numbered sections under each limb. The same basis was restated in the 14-Day Response dated 21 March 2026 (Bundle pp. 55 - 63) and the Response to Circulated Representations dated 14 April 2026 (Bundle pp. 15 - 27).
- 2.6 PCSE described the application throughout as an application offering to meet an identified current need. The decision determined the application under Regulation 13(1)(b) alone. Regulation 18 was not considered. (Bundle pp. 5 - 10).
- 2.7 NHS Resolution's function on appeal is to determine the application de novo by reference to the correct statutory test. The Appellant invites NHS Resolution to apply Regulation 18(4)(b) and Regulation 18(4)(c) to the application and to grant it on the evidence in the bundle.
- 2.8 Secondary Ground — Response documents



- 2.9 The Appellant respectfully draws NHS Resolution's attention to three response documents in the bundle which contain the evidence and submissions that directly support the Regulation 18 analysis set out below.
- 2.10 The Counter-Representations and PNA Response dated 11 March 2026 (Bundle pp. 52 - 112) sets out the Regulation 18 legal basis in full and provides the post-consultation PNA analysis.
- 2.11 The 14-Day Response dated 21 March 2026 (Bundle pp. 55 - 58.) provides the definitive confirmed opening hours, the premises heads of terms, and the overlap analysis demonstrating that 72% of proposed operating hours fall outside existing pharmacy provision.
- 2.12 The Response to Circulated Representations dated 14 April 2026 (Bundle pp. 15 - 27) addresses each representation in turn with photographic evidence, a parking comparison, a population analysis, a demand assessment, and the SHA/25770 precedent.
- 2.13 The Appellant invites NHS Resolution to consider these documents as part of its de novo determination.
- 2.14 Analysis — Why the application satisfies Regulation 18
- 2.15 The Appellant sets out below how the application satisfies the relevant provisions of Regulation 18, with reference to the Committee's own findings in the decision and the evidence in the bundle.
- 2.16 Regulation 18(1)(a) — Would granting the application secure improvements or better access
- 2.17 The Committee found at paragraph 3.3 of the decision report that "there is no pharmacy providing pharmaceutical services at the same or adjacent premises" (Bundle pp.7).
- 2.18 The proposed location at Unit 39, Chatham Dockside currently has no pharmaceutical provision. Granting the application places pharmaceutical provision at a location that currently has none.
- 2.19 The Committee's own virtual site visit at paragraph 2.4 described the proposed location as a retail park containing a wide variety of food outlets, leisure facilities and varying retail stores, serving access routes to Rochester, Strood and central Chatham. The landlord's independent commercial assessment (Exhibit B attachment) confirms annual footfall of 1.8 million visitors, a drive-time catchment of approximately 300,000 within 30 minutes, and approximately 12,000 students across the University of Greenwich Medway, University of Kent Medway and Kent and Medway Medical School. This is a highfootfall location serving a wide and varied catchment that currently has no pharmaceutical provision.
- 2.20 The Committee found at paragraph 2.2.1.1 that the Applicant proposed to provide essential, enhanced and advanced services (Bundle pp.6). The service model includes five dedicated clinical consultation rooms confirmed in the floor plan (Bundle pp.63), an employed independent prescribing doctor as Clinical

Lead, and a Superintendent Pharmacist holding an Independent Prescriber accreditation. No existing Chatham pharmacy offers this capability. The proposed pharmacy improves both the range and quality of pharmaceutical services available to the catchment population.

- 2.21 Regulation 18(1)(b) — Were the improvements or better access not included in the relevant PNA
- 2.22 The Medway PNA 2025 does not include the improvements the Applicant is offering to secure. The Committee confirmed at paragraph 6.5 that no supplementary statements had been issued. The Committee noted at paragraph 6.7 that the PNA's own conclusion on page 95 is framed in the language of improvements and better access — the precise language of Regulation 18. The application responds to that language directly.
- 2.23 Regulation 18(2)(a) — Would granting the application cause significant detriment
- 2.24 The Committee found at paragraph 4.1 that the location is not in a controlled locality. No Part 7 considerations apply. No party advanced a case of significant detriment to proper planning or existing arrangements. The Committee's own decision contains no finding of detriment.
- 2.25 Regulation 18(2)(b)(i) — Reasonable choice
- 2.26 The application originally estimated 76 hours of opening per week, subsequently confirmed at 74 hours in the 14-Day Response dated 21 March 2026 (Bundle pp.55 - 72). The confirmed hours are Monday to Friday 09:00–20:00, Saturday 09:00–20:00, Sunday 10:00–18:00.
- 2.27 The Committee recorded at paragraph 2.2.3 (Bundle pp.6), without contradiction, that the PNA itself acknowledges zero pharmacies open on Sundays in Chatham, only two open on Saturdays, and only two open after 6pm on weekdays. The NHS.uk profile for the nearest pharmacy (Bundle pp.60 - 61) records Saturday: Closed and Sunday: Closed.
- 2.28 Of the confirmed 74 hours, 51.5 hours — 72% of proposed operation — fall outside existing pharmacy opening times in Chatham. The proposed pharmacy would be the only pharmacy in the locality open on Sundays. All five existing Chatham pharmacies close by 18:30 on weekdays. The nearest pharmacies are closed on Saturdays.
- 2.29 The proposed pharmacy provides a choice of pharmaceutical services on Sundays, Saturday afternoons, and weekday evenings at a location confirmed by the Committee at paragraph 3.3 as having no existing pharmaceutical provision.
- 2.30 Regulation 18(2)(b)(ii) — People sharing a protected characteristic
- 2.31 The access gap identified under paragraph 21 falls disproportionately on those for whom alternatives are least accessible. The Response to Circulated Representations (Bundle pp.15 -27), demonstrate that the proposed pharmacy's primary catchment includes people without access to private

transport present at Chatham Dockside during evenings and weekends — the elderly, those with mobility difficulties, young families, and students without GP registration. These are groups who share protected characteristics under the Equality Act 2010 and for whom existing provision is inaccessible at the times they need it.

- 2.32 The nearest pharmacy's own Bank Holiday notice (Bundle pp.16 - 17), confirms that on Good Friday it opens for two hours only and on Easter Monday does not open at all, directing patients to a pharmacy in Strood — 3.8 miles and one hour twenty-four minutes on foot. OH Pharma would be open on all Bank Holidays from 10:00 to 17:00 at a location 0.6 miles from the nearest pharmacy.
- 2.33 The parking evidence (Bundle pp.19 - 20), shows that access to existing provision involves privately enforced ANPR parking carrying a £100 penalty charge from which Blue badge holders are not exempt.
- 2.34 Chatham Dockside operates a transparent tariff with the first hour free, no ANPR enforcement, and validated parking for pharmacy patients confirmed in the lease heads of terms (Bundle pp.62).
- 2.35 Regulation 18(2)(b) — Significant benefit: general
- 2.36 The findings at analysis section above are cumulative. Together they demonstrate that the proposed pharmacy would provide Sunday access in a locality with none, Saturday and weekday evening access beyond existing provision, Bank Holiday cover where none currently exists within the locality, and materially better physical access for those without private transport.
- 2.37 The SHA/25770 precedent (Bundle pp.20-21), is directly applicable. In that case the nearest existing pharmacy was 0.6 miles from the proposed site — the same walking distance as between the nearest pharmacy and Chatham Dockside. The Committee found that granting the application would increase capacity, improve geographical spread and improve choice, quashed the refusal and granted the application. The present application is materially stronger than the facts in SHA/25770.
- 2.38 Conclusion
- 2.39 The application was advanced under Regulation 18(4)(b) and (c). The applicable test was not applied at first instance. The application satisfies each provision of Regulation 18 on the evidence in the bundle before NHS Resolution. The SHA/25770 precedent at identical distance under the same regulation supports grant.
- 2.40 The Appellant respectfully invites NHS Resolution to quash the refusal and grant the application.
- 2.41 Enclosed:
  - 2.41.1 Complete Bundle (in addition with the following):

2.41.2 Exhibit A — Island Pharmacy Google reviews (35 reviews, 3.3/5, extracted 3 April 2026) — attached to covering email. Not physically present in this bundle. To be added.

2.41.3 Exhibit B — Dockside Chatham Healthcare Opportunity assessment / CACI demand analysis (WDC Ltd) — attached to covering email.”

In a subsequent email of 5 June 2026 the Applicant provided further information in support of the appeal and stated:

2.42 “Thank you for your letter dated 5 June 2026 acknowledging receipt of our appeal in the above matter.

2.43 We write to clarify the primary ground of our appeal for the record.

2.44 The Commissioner refused our application under Regulation 13 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 on the basis of current need. Our primary ground of appeal is that the Commissioner applied the wrong regulation. Our application was advanced under Regulation 18(4)(b) and 18(4)(c) as an excepted application. If Regulation 18 applies, as we submit it does, the Regulation 13 current need test is not the applicable framework for determining this application.

2.45 We respectfully invite NHS Resolution to have regard to this primary ground when circulating the appeal and when seeking representations from interested parties. The question of whether Regulation 13 or Regulation 18 governs this application is the central issue in this appeal.”

### 3 Consideration

3.1 The Pharmacy Appeals Committee (“Committee”) appointed by NHS Resolution had regard to Regulation 13 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

3.2 The application (which was to be determined in accordance with the procedures in Schedule 2) was submitted by the Applicant based on addressing a current need for pharmaceutical services.

3.3 Regulation 13 states:

“(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 meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*

(b) *the current need has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(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). "*

3.4 Paragraph 2(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) need to be provided (whether or not they are located in the area of the HWB) in order to meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in its area"*

3.5 The Committee noted that the application had been made under Regulation 13 and therefore it was a notifiable application in accordance with the Regulations. The Committee noted that the decision had been notified to parties under paragraph 28(1) and a right of appeal was given to the Applicant under paragraph 36 of Schedule 2.

3.6 The Committee noted Schedule 3, Part 1 paragraph 2 states:

*Misconceived Appeals*

*2. If the Secretary of State, after considering a valid notice of appeal under regulation 45, 63 or 77 or paragraph 30, 32(5) of 36 of Schedule 2 against a decision, is of the opinion that the notice –*

*a) contains no valid grounds of appeal (for example, because it amounts to a challenge to the legality or reasonableness of a HWB's or PCT's pharmaceutical needs assessment, or to the fairness of the process by which the HWB or a PCT undertook that assessment); or*

*(b) contains no reasonable grounds of appeal (for example, where it is vexatious or frivolous),*

*the Secretary of State may determine the appeal by dismissing it (without proceeding to notify the appeal under Part 2).*

3.7 The Committee considered the appeal in accordance with paragraph 2 of Schedule 3, misconceived appeals, as quoted above.

3.8 The Committee noted that Regulation 13 is specific in the criteria an Applicant must satisfy, if the current need application is to succeed.

3.9 The Committee noted, from the papers provided that the Applicant had completed an application form headed "Chapter 12, Annex A, Application form – Application offering to meet an identified current need". The Committee noted the standard application form states:

*"Application for inclusion in the pharmaceutical list for the area of*

*Medway Health and Wellbeing Board*

*This is an application to meet an identified current need and as such is a routine application under Regulation 13 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the Regulations)."*

- 3.10 The Committee noted the Commissioner's decision letter indicates that it had considered the application in accordance with Regulation 13. The Commissioner determined to refuse the application as there is no current need identified in the Kent PNA 2025 (issue date 1 October 2025).
- 3.11 The Committee noted the primary ground of appeal from the Applicant was "wrong regulation applied". The Committee took this to mean that the Commissioner applied the wrong statutory test when it considered the application. The Committee was of the view, from the information before it, that the application was not advanced under Regulation 18 as the Applicant claims but was made under the provisions of Regulation 13, as per the application form completed and signed by the Applicant.
- 3.12 The Committee noted that the Applicant further states "*the application was advanced under Regulation 18(4)(b) and Regulation 18(4)(c) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013*". The Committee was mindful that there is no Regulation 18(4) in the relevant Regulations.
- 3.13 The Committee further noted, in subsequent correspondence, the Applicant reiterates that "*Our primary ground of appeal is that the Commissioner applied the wrong regulation. Our application was advanced under Regulation 18(4)(b) and 18(4)(c) as an excepted application*". The Committee noted that the Applicant goes on to state "*If Regulation 18 applies, as we submit it does, the Regulation 13 current need test is not the applicable framework for determining this application.*"
- 3.14 The Committee was of the view that a Regulation 18 application is not an excepted application and is, in fact, a routine application as set out in the Regulations. The Committee was again mindful of what application type had been applied for by the Applicant and given that the application was submitted as "*an application to meet an identified current need and as such is a routine application under Regulation 13...*" it was of the view that the application has to be considered under the provisions for a Regulation 13 as set out in the Regulations.
- 3.15 The Committee noted the Applicant has not sought to challenge the Commissioner's decision that its application should be refused on the basis that there are no current needs identified in the PNA. The Committee noted that on appeal, the Applicant was effectively seeking that the application be considered under the provisions of Regulation 18, an entirely different test from that originally applied for and considered by the Commissioner.
- 3.16 From the information before it, the Committee concluded that the Applicant has not provided grounds of appeal sufficient as to challenge the view that the application should be granted under the provisions of Regulation 13.

## **4 Decision**

- 4.1 In accordance with paragraph 2 of Schedule 3 the Committee dismisses the appeal as it is of the view that it contains no reasonable grounds of appeal.

**Case Manager**  
**Primary Care Appeals**