

R (Community Pharmacies (UK) Limited) v the National Health Service Litigation Authority [2016] EWHC 1595 (QB)

On 1 July 2016, Mr Justice Langstaff handed down judgment in the above case, finding that the NHSLA had acted entirely lawfully in its decision making. The case, which was heard in the Administrative Court in London on 4 May 2016, was a challenge to the NHSLA's decision on appeal not to grant an application by Community Pharmacies to relocate a pharmacy in Derby from a Superdrug store in the Intu shopping centre to a GPs' practice outside the city centre. A Committee of the FHSU was unable to be satisfied that patient groups who were accustomed to accessing services at the Superdrug site, such as young women accessing emergency contraception, would not find the new site significantly less accessible, which is one of the legal tests under Regulation 24 of the National Health Service (Pharmaceutical and Local Pharmaceutical) Regulations 2013 where an applicant wants move a pharmacy without going through the more onerous routine applications process. Community Pharmacies had provided limited information about who used pharmaceutical services at the current location, which made assessing the accessibility of the new premises especially difficult for the Committee.

In the Court case, Community Pharmacies argued that the FHSU Committee had acted unlawfully because: (1) it had not defined "patient groups" appropriately; (2) it had not considered all patient groups in the round when assessing accessibility; (3) it had taken young women accessing emergency contraception into account when this was not an NHS service; and (4) it had not considered whether the new site would be significantly less accessible.

The judge found in favour of the NHSLA on all four points - on patient groups ((1)), he considered the NHSLA's guidance – which suggests that patient groups raised might be identified in relation to (a) local GP practices; (b) methods of travel (on foot, by car or public transport); (c) types of pharmaceutical services assessed (dispensing/collection and delivery); (d) the geographic location of the patient group's starting point of the journey to the pharmacy; (e) demography; (f) care homes and/or (g) areas of deprivation - was helpful, and accorded with the correct approach in law. On point (2), he did not accept Community Pharmacies' argument that patient groups should be considered in the round, as he thought material minority groups might be significantly affected by a relocation, and should be taken into account individually. In response to (3), he decided the Committee was aware that emergency contraception was not dispensed to young women as an NHS service. Nonetheless, the Committee had been entitled to regard women accessing advice (such as signposting, which is an NHS service) about emergency contraception as a relevant patient group. On (4), the judge found clear evidence in the wording of the Committee's determination to indicate it had not simply assumed that any loss of accessibility would be significant.

The NHSLA is very pleased that its policy and decision making have been validated by the Court. The full judgment can be read here:

<http://www.bailii.org/ew/cases/EWHC/QB/2016/1595.html>

Document Control - Change Record

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