

11 June 2021

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**APPEAL AGAINST NHS COMMISSIONING BOARD, NHS ENGLAND & NHS IMPROVEMENT MIDLANDS, (“NHSE&I”) DECISION TO REMOVE THE PILLBOX AND CASE CO. LIMITED T/A MR. PICKFORD’S INTERNET PHARMACY LISTING FROM THE PHARMACEUTICAL LIST AT PICKFORD HOUSE, 16/18 HIGH VIEW CLOSE, VANTAGE PARK, HAMILTON, LEICESTER LE4 9LJ IN ACCORDANCE WITH REGULATION 74**

## 1 Outcome

- 1.1 I am of the view that under NHS Resolution’s powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of NHSE&I or substitute for that decision any decision that NHSE&I could have taken when it took that decision.
- 1.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations and for the reasons given in this determination, I substitute the decision of NHSE&I with the decision that the Appellant’s premises are not to be removed from the relevant pharmaceutical list.

A copy of this decision is being sent to:

The Appellant  
NHS England

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**1 The Decision Letter**

A letter dated 1 February 2021 was sent from NHSE&I to The Pillbox and Case Co. Limited, t/a Mr Pickford’s Internet Pharmacy, Pickford House, 16/18 High View Close, Vantage Park, Hamilton, Leicester LE4 9LJ. The decision letter states:

- 1.1 Further to NHSE&I’s letter dated 8 December 2020, NHSE&I is writing again regarding the status of The Pillbox and Case Co. Limited, t/a Mr Pickford’s Pharmacy, inclusion in the Leicestershire Health and Wellbeing Board (HWB) pharmaceutical list.
- 1.2 NHSE&I’s Pharmaceutical Services Regulations Committee (PSRC) reviewed The Pillbox and Case Co. Limited, t/a Mr Pickford’s Pharmacy, representations in response to the proposed removal at its Committee meeting held on Friday 15 January 2021.
- 1.3 The Committee determined that The Pillbox and Case Co. Limited, t/a Mr Pickford’s Pharmacy, should in accordance with The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 Part 10, 74(3)(b) be removed from the pharmaceutical list for the following reason:
  - 1.3.1 Failure to provide pharmaceutical services in the preceding 6 months.
- 1.4 Removal from the pharmaceutical list will take place 30 days from the date of this letter.
- 1.5 The Pillbox and Case Co. Limited, t/a Mr Pickford’s Pharmacy, has a right of appeal to the Secretary of State against this decision. Should it choose to appeal then it should send a concise and reasoned statement of the grounds for appeal within 30 days of this letter, by one of the following means:
  - 1.5.1 By online form; via the NHS Resolution website
  - 1.5.2 By email; [appeals@resolution.nhs.uk](mailto:appeals@resolution.nhs.uk)
  - 1.5.3 By post; Primary Care Appeals, 4th Floor, Merrion Way, Leeds, LS2 8PA.
- 1.6 NHSE&I had provided a copy of a letter from The Pillbox & Case Co. Ltd t/a Mr Pickford’s Internet Pharmacy to NHSE&I dated 29 December 2020. This provided written representations in response to NHSE&I’s letter of 8 December 2020.
- 1.7 NHSE&I had provided a copy letter from NHSE&I to The Pillbox & Case Co. Ltd t/a Mr Pickford’s Internet Pharmacy dated 8 December 2020. NHSE&I’s letter informed the Appellant that where a contractor has not provided pharmaceutical services for 6 months, NHSE&I has the right to remove them from the pharmaceutical list. NHSE&I

were therefore advising The Pillbox and Case Co. Limited, t/a Mr Pickford's Internet Pharmacy, under The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 Part 10, 74(3)(b) that it was minded to remove The Pillbox and Case Co. Limited t/a Mr. Pickford's Internet Pharmacy from the Leicestershire HWB pharmaceutical list.

## 2 The Appeal

In an email dated 4 February 2021 and addressed to NHS Resolution's Primary Care Appeals Service, The Pillbox & Case Co. Ltd t/a Mr Pickford's Internet Pharmacy ("the Appellant") appealed against NHSE&I's decision. The grounds of appeal are as follows:

- 2.1 This is an appeal against the decision to remove the Appellant's internet pharmacy licence it has at its central pharmacy hub. The appeal is on two grounds – firstly that the Appellant should be allowed to continue like other operators, and secondly that if the Appellant were still not allowed to operate that it needs sufficient notice to inform patients and manage the large change of closing down a central pharmacy hub.
- 2.2 Please see the emails the Appellant has sent to NHSE&I outlining its case – as a minimum to be able to extend the time it has the internet pharmacy, but hopefully to have this decision overturned. The Appellant need a response a.s.a.p. please (ideally latest by February 10 so it can manage patient impact as best it can).
- 2.3 The Appellant can send pictures, the original letters or anything else NHS Resolution may need to reconsider this decision.
- 2.4 The Appellant is a group of 6 pharmacies totally committed to working with the NHS and its patients. The Appellant has been a champion of NHS services (2nd largest in the UK per pharmacy on flu, top 10 on NMS, it is running two Covid Vaccination centres, and many other NHS services). The Appellant also strongly believes in very high service levels, clinical excellence, and diversity. The Appellant achieves all this by centrally collating its prescriptions in a hub with an internet pharmacy. The Appellant would like to think it is doing all the NHS wants from pharmacy by managing its pharmacies in this way and allowing its pharmacists and other team members more time to engage with patients.
- 2.5 The Appellant provided copies of the following:
  - 2.5.1 Appellant's email to NHSE&I dated 4 February 2021;
  - 2.5.2 NHSE&I's email to the Appellant dated 4 February 2021;
  - 2.5.3 Appellant's email to NHSE&I dated 4 February 2021;
  - 2.5.4 Appellant's email to NHSE&I dated 3 February 2021;
  - 2.5.5 Letter from Pharmacy FPW72 to the Appellant dated 2 February 2021; and
  - 2.5.6 Letter from NHSE&I to Pharmacy FPW72 dated 1 February 2021.

## 3 Summary of Representations

This is a summary of representations received on the appeal. A summary of those representations made to NHSE&I are only included insofar as they are relevant and add to those received on the appeal.

### NHSE&I

- 3.1 Please find listed below several attachments that are enclosed with this letter, as requested;
  - 3.1.1 Email correspondence from NHS Business Services Authority (NHS BSA) advising that no prescription items had been submitted for over two years;
  - 3.1.2 DHSCs Market Exit guidance (refer to pages 41 and 42);
  - 3.1.3 NHSE&I's letter notifying the contractor of its intention to remove them from the pharmaceutical list Leicestershire's Health and Wellbeing Board and requesting their representation;
  - 3.1.4 The representations received in response from The Pillbox and Case Limited;
  - 3.1.5 Extracts from the minutes of PSRC meetings held on 15 January 2021 and 19 February 2021;
  - 3.1.6 NHSE&I's final decision letter.
- 3.2 In response to the two grounds of appeal cited by the Appellant;
  - 3.2.1 The Pillbox and Case Limited has failed to provide any evidence that they have provided pharmaceutical services at the above-mentioned premises in the last six months or indeed since the premises was included in the relevant pharmaceutical list. They have stated that the company has operated a dispensing hub at the premises for the company's six other pharmacies since August 2018 but have provided no evidence to support this statement. They admit that they have not been operating the pharmacy in line with the terms of service set out in Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, but intend to start doing so at some point in 2021 onwards.
  - 3.2.2 Based on the information provided by NHS BSA NHSE&I is satisfied that the Appellant has submitted no prescriptions in relation to this pharmacy and has not claimed for any advanced services since it was included in the relevant pharmaceutical list in August 2018. NHSE&I therefore has no evidence that pharmaceutical services have been provided from the premises.
  - 3.2.3 Based on the information provided to by NHS BSA and The Pillbox and Case Limited, NHSE&I has determined that no pharmaceutical services have been provided at the premises in the last six months, and in fact since August 2018, and is therefore directed by regulation 74(3) to remove the contractor in respect of these premises from the relevant pharmaceutical list following the process set out in regulation 74(5).
  - 3.2.4 NHSE&I has considered the matters set out in regulation 74(4) and has determined that none of them are applicable to this case and is of the opinion that there is no need to exclude any part of the last six months from its determination under regulation 74(3).
  - 3.2.5 As can be seen from NHSE&I's letter dated 8 December 2020, NHSE&I advised The Pillbox and Case Limited of the action it was considering and gave it 30 days to make written representations on the matter or to notify of the wish to make oral representations. The Pillbox and Case Limited chose to make written representations on the matter on 29 December 2020.
  - 3.2.6 Should NHS Resolution be of the opinion that the contractor should not be removed in respect of these premises under regulation 74(3), an opinion that NHSE&I does not share, then it will consider what further action to take in

relation to the contractor's confirmation that they have not been operating the pharmacy in line with the terms of service.

#### 4 Observations

##### Appellant

- 4.1 No evidence the local NHS team informed or discussed or consulted with the local LPC. LPC CEO knew how the Appellant operated and could have put across its case. Evidence of this is required as the LPC must be consulted. The current chairman has confirmed no correspondence or discussions were had over this matter. The procedure states the LPC must be informed as part of the process (point 27). Therefore need clear evidence who was informed in the LPC and any feedback that was given as the LPC are stating they were not aware.
- 4.2 The minutes also state that MB would seek advice from PCC before a decision was made yet there is no evidence of this advice or discussion in the submission provided.
- 4.3 Initial letter from the local NHS was sent to the wrong SIP (someone who had left the business over 1 year before) hence why the Appellant did not initially pick up. Same mistake was made with the decision letter despite the Appellant informing the local area team – which did lead to a delay on December 29 as the Appellant was not aware. This was the error of the local NHS team, not the Appellant.
- 4.4 Reasons given for terminating the internet licence ignored the Appellant's evidence of what it is using the internet pharmacy for (the same as many other operators in the UK). No reference was made to the Appellant's reasons in the minutes and therefore the committee would be unable to make a sound decision (please see the Appellant's letter from its COO/SIP that was sent 29 December clearly outlining what it does attached).
- 4.5 The Appellant attempted several times to discuss ahead of the decision and sadly these were ignored. NHSE&I only finally engaged after it was made aware the Appellant had appealed the decision – saying it was not allowed to discuss – until then no response (the Appellant can evidence emails and communication sent).
- 4.6 The extract from the PSRC minutes demonstrates the Appellant's reasons were not discussed and ignored – and therefore a proper discussion did not take place as it appears the committee was only given one side of the debate and the decision was preordained. Nowhere in the minutes does it refer to the Appellant's letter and its reasons.
- 4.7 The decision is based off old rules before hub and spoke came into operation. The rules around that were not aired or debated by the committee making the decision. Please refer to the GPhC guidance April 2019 that clearly states on page 5 point 7 – that a hub pharmacy is a valid reason for having an internet pharmacy and proves the Appellant was carrying out a valid pharmacy service as it evidenced for the committee to consider –
- 4.8 Extract
  - 4.8.1 *Examples of the pharmacy services covered by this guidance include: 1. a pharmacy service where prescriptions are not handed in by people using pharmacy services but are collected by pharmacy staff, or received by post or electronically 2. a delivery service from the registered pharmacy to people in their own home, a care home or a nursing home 3. a collection and delivery service 4. a 'click and collect' service 5. a mail-order service from a registered pharmacy 6. an internet pharmacy service, including one linked to an online prescribing service, whether or not the prescribing service is owned and operated by you or by a third[1]party business 7. a 'hub and spoke' pharmacy*

***service – where medicines are prepared, assembled, dispensed and labelled for April 2019 6 Guidance for registered pharmacies providing pharmacy services at a distance, including on the internet individuals against prescriptions at a central ‘hub’ registered pharmacy***

- 4.9 The decision is unfair and incorrect as many other operators operate hubs in the same way – several hundred at least have the same type of internet pharmacies including pharmacy groups, clinical homecare companies and central dental pharmacies. Will all of these groups also now be given 30 days’ notice?
- 4.10 The notice the Appellant was given on February 1 was only 30 days – which demonstrates the Appellant’s evidence was ignored as the Appellant did have pharmacy services and took no account that it has a robot in situ that needs to be moved and many patients could be impacted.
- 4.11 The Appellant has offered for a visit or a virtual visit to demonstrate how well its robotic hub works. The hub is there and the Appellant stated this clearly in its letter! The Appellant has no idea why NHSE&I refused to believe the Appellant which is disappointing behaviour – in essence they are accusing the Appellant of lying! The Appellant has added a picture of the robot output from February 2021 (these are trays). The Appellant was very open and transparent saying this operation started in September 2020 (which the Appellant can fully evidence) and that it intends to start a true internet pharmacy later year (around June/July time).
- 4.12 On point 6 from the NHS letter 4 March – the Appellant has never confirmed it has not been operating in line with the terms of service – so that statement is incorrect.
- 4.13 The Appellant is one of the leaders in the country on flu (1,800 per pharmacy), NMS, MURs and other services as well as running two Covid Centres. A lot of this good work to support the NHS is driven by the Appellant having a hub and practising in the way the NHS want pharmacy of the future to act. The Appellant would therefore have hoped for understanding, engagement and support rather than the draconian non-communitive way the local team have behaved over this matter.
- 4.14 If the Appellant has done anything wrong – it would like to be clearly told what it has done wrong and given a chance to remedy it whilst not impacting patients – rather than just being given 30 days’ notice out of the blue.
- 4.15 The Appellant provided a copy letter from itself to NHSE&I dated 29 December 2020 (as already noted above). The Appellant also provided a copy report entitled ‘VBM machine production’.

## **5 Further Comments**

### **NHSE&I**

- 5.1 NHSEI would like to provide the following information below and attached:

#### **THE PILLBOX AND CASE CO. LIMITED (FPW72)**

- 5.1.1 08/12/2020 – Letter was sent to LPC (LPC acknowledged 15/12/2020) (provided);
- 5.1.2 08/12/2020 – Letter was sent to pharmacy and SI – Mr # - provided;
- 5.1.3 29/12/2020 – letter dated 29 Dec received from # – (signed as Chief Operating Officer) – (provided);
- 5.1.4 01/02/2021– Letter was sent to pharmacy and SI – # (provided)

- 5.1.5 03/02/2021 – The Appellant responded to the email above, he also states that # is SI and has been for past 12 months (provided);
- 5.1.6 04/02/2021 - LG responded to the Appellant's email and stated to him that NHSE&I have no record that the pharmacy has applied to change its Superintendent Pharmacist, and it should be noted that the website still shows # listed as SI; In the representations submitted on 29 December 2020, # has signed off the letter as Chief Operating Officer and not Superintendent Pharmacist.
- 5.1.7 04/02/2021 – the Appellant responded to LG and says that NHSE&I had been informed of the COSI – *he did say he would confirm this but he hasn't sent in any confirmation and there is nothing in our files*
- 5.1.8 09/04/2021 – A review of this branch's webpage shows Mr # as Superintendent.

**Appellant**

- 5.2 Thanks for this - that explains a lot. The LPC CEO left before the email was sent to the LPC. So good that the local team sent the letter/email but no-one read it and informed the Appellant and supported as a go between. Maybe they received an out of office?

**6 Consideration**

- 6.1 Under Regulation 74 "Removal of listings: cases relating to death, incapacity or cessation of service" of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the "Regulations"), it states:

*"74.(3) If the NHSCB determines that C has not, during the preceding 6 months, provided pharmaceutical services at chemist premises ("the particular premises") listed in a particular pharmaceutical list—*

*(a) if there are other chemist premises listed in that pharmaceutical list in relation to C, the NHSCB must remove the listing of the particular premises from that list; or*

*(b) if there are no other chemist premises listed in that pharmaceutical list in relation to C, the NHSCB must remove C from that list."*

- 6.2 NHSE&I indicated to the Appellant by letter dated 1 February 2021 that its Pharmaceutical Services Regulations Committee (PSRC) had determined that the Appellant be removed from the pharmaceutical list for failure to provide pharmaceutical services in the preceding six months.
- 6.3 In its representations on this appeal, NHSE&I states that, based on the information provided by the NHS BSA and the Appellant, it was satisfied that the Appellant had submitted no prescriptions in relation to this pharmacy and has not claimed for any advanced services since it was included in the relevant pharmaceutical list in August 2018.
- 6.4 NHSE&I provided an email from NHS BSA to NHSE&I which states that in relation to the Appellant's "account", there had not been any pricing for more than two years. No other correspondence from NHS BSA beyond this very brief message has been provided to me.
- 6.5 I consider it reasonable to consider that, on the basis of the NHS BSA information, which is not disputed by the Appellant, no payments have been made to the Appellant in respect of the relevant premises for more than two years. I query however if this

automatically means that the Appellant has not provided any pharmaceutical services from the premises. I return to this later in this determination.

- 6.6 In its letter to the Appellant dated 8 December 2020, NHSE&I indicated that it was minded to remove the Appellant from the relevant pharmaceutical list and that, in accordance with the Regulations, the Appellant had the right to make written representations (or oral representations) to NHSE&I regarding this proposed action. The Appellant made written representations to NHSE&I by letter dated 29 December 2020. The Appellant made a number of points which are summarised below:
- 6.6.1 The Appellant has been operating as a dispensing hub for the group of six Mr Pickford's pharmacies since August 2018;
- 6.6.2 The Appellant's pharmacies (located over four counties) are dispensing over and above the number of prescription items of an average pharmacy;
- 6.6.3 The decision to operate the internet pharmacy as a dispensing hub, was to create capacity at the pharmacies;
- 6.6.4 The extra capacity and the Appellant's investment in skills development, would then allow its pharmacy teams to provide more patient centred services and be ready to deliver the future vision for community pharmacy as set out in the NHS Long Term Plan;
- 6.6.5 As a result of this extra capacity, the Appellant has seen more patients access advanced services and enhanced services with very positive health outcomes. The Appellant has also seen better and regular collaboration with colleagues within primary care;
- 6.6.6 Now that the dispensing hub is well established, the Appellant's intention is to focus its efforts on using the license to offer patients a distant selling pharmacy proposition, as an alternative to its bricks and mortar pharmacies. As such, the Appellant will be providing pharmaceutical services from this premises as well as operating the dispensing hub, in 2021 and onwards.
- 6.7 It appears that the Appellant was using the relevant premises as a "hub". It is not clearly set out what activity was being provided at the hub but the Appellant's written representations above suggest the hub was carrying out certain dispensing activities for NHS prescriptions collected by the six pharmacies in the Appellant's group. I will return to the issue of provision of pharmaceutical services later in this determination but first I will comment on certain other matters raised by the Appellant.
- 6.8 In its appeal, the Appellant states that "*The Applicant should be allowed to continue like other operators*". I consider that the current appeal relates to NHSE&I's decision specifically in respect of the Appellant's inclusion in the pharmaceutical list. It is not relevant to my consideration of the current appeal whether NHSE&I has or has not taken any action against any other pharmacy contractor in respect of any similar or other activity.
- 6.9 The Appellant states that if it is not allowed to operate, it will need sufficient notice to inform patients and manage the large change of closing down a central pharmacy hub. I note that the Regulations do not specify a timescale in respect of the date of actual removal from the pharmaceutical list after NHSE&I has made such a decision. NHSE&I's decision letter indicated that removal would happen 30 days from 1 February 2021. As the Regulations do not specify a date, it would appear to be within NHSE&I's discretion to determine any notice period prior to removal.
- 6.10 The Appellant also refers to having a group of six pharmacies, being a champion of NHS services, achieving a high service level by collating its prescriptions in a hub and enabling pharmacists and team members more time to engage with patients.

- 6.11 I consider that these points are relevant but only insofar as they reiterate the indication noted above that the Appellant is using the relevant premises as a hub which carries out certain dispensing activities for prescriptions collected by the six pharmacies.
- 6.12 The Appellant also provided a chain of emails between itself and NHSE&I that are dated from 2 February 2021 to 4 February 2021 (i.e. after the decision to remove had been notified to the Appellant) and refer to the Appellant's surprise at NHSE&I's decision to remove it from the pharmaceutical list, the consequences of NHSE&I's decision for patients and the short period of notice given to the Appellant. The Appellant points out to NHSE&I that it is a working pharmacy hub and expressly states "*so there are no services*". This reiterates the point noted above that the Appellant has indicated that the relevant premises are being used to carry out certain elements of the dispensing process. I return to the Appellant's comment that there are no services later in this determination.
- 6.13 In the Appellant's observations on the appeal, it raised a number of points not previously made. NHS Resolution's "Guidance Note for Parties Involved in Pharmacy Appeals" states in relation to observations "*For the appellant, who should have provided all supporting information with the appeal and is not entitled to make representations, anything new raised at this stage will have little or no weight placed upon it unless it can be demonstrated that it is adduced by way of rebuttal of the representations received from parties.*" I have therefore given little weight to most of these points but for completeness I list them below with comments.
- 6.14 The first point raised by the Appellant is that there is no evidence that NHSE&I "*informed, discussed or consulted*" with the local LPC. I note that the Regulations require NHSE&I to "consult" with the LPC. In response, NHSE&I provided its letter dated 8 December 2020 that was sent to the LPC indicating it was minded to remove the pharmacy and the LPC's acknowledgement. It is clear NHSE&I informed the local LPC. NHSE&I's letter to the LPC includes reference to the Appellant being allowed to make representations on the intention to remove it from the pharmaceutical list and also that the LPC would be consulted over the matter. That letter was acknowledged in the LPC's email to NHSE&I of 15 December 2020 which included the wording "*We will keep a copy of the correspondence on file, and would be grateful if you could keep us informed of any updates as they happen.*" I consider that the LPC may not have appreciated that it was being given the opportunity to reply to the 8 December 2020 letter from NHSE&I. In my view, it is possible that this led to there being no proper discussion with the LPC before NHSE&I's issue of its final decision letter to the Appellant and therefore it is possible that there was not compliance with the statutory requirement for NHSE&I to consult with the LPC prior to making its decision.
- 6.15 The Appellant refers to the minutes of the NHSE&I meeting which indicate that NHSE&I would seek advice from "PCC" before a decision was made but there is no evidence of this advice or discussion. I have not seen any evidence of advice from "PCC" but there is no statutory requirement to do so and so in my view, if NHSE&I did not seek this advice, it would not invalidate NHSE&I's subsequent decision.
- 6.16 The Appellant also refers to a lack of evidence that NHSE&I had regard to the Appellant's written representations or discussions as there is no reference to the Appellant's reasons in the explanation of NHSE&I's decision letter. As the Appellant's written representations indicate that the Appellant is providing certain dispensing services from the premises, I consider this links to the issue about whether this amounts to pharmaceutical service provision. As such, I return to this point later in this determination. I do note however that there is some inconsistency in respect of how and when NHSE&I made its decision to remove the relevant premises from the pharmaceutical list. The decision letter dated 1 February 2021 informing the Appellant that the decision had been made suggests that this was done on 15 January 2021 at the PSRC meeting. The letter expressly states that the Appellant's representations

were reviewed at this meeting. It then states that the PSRC determined that the Appellant should be removed.

6.17 NHSE&I has provided an extract of the minutes of the meeting of the PSRC on 15 January 2021. The extract states:

6.17.1 *“The Committee were advised that MB would seek advice from PCC before a decision is made to remove the pharmacy from the pharmaceutical list. It was agreed that the pharmacy had not met the terms of their contract.*

*MB to seek advice from PCC and circulate any advice received to Committee members before a decision to remove the pharmacy from the pharmaceutical list is determined.”*

6.18 My concern here is that the minutes clearly indicate that a decision had not yet been made by the PSRC on removal of the Appellant from the pharmaceutical list at the meeting on 15 January 2021. There were clearly other actions intended to occur prior to the decision being made. Yet the 1 February 2021 letter implies that the PSRC made its decision on removal at that meeting.

6.19 The inconsistencies are that:

6.19.1 the letter dated 1 February 2021 states the Appellant’s written representations were reviewed by the PSRC at the meeting on 15 January 2021 but there is no comment on those representations (and in particular nothing is said by NHSE&I on the point made by the Appellant in those representations that it was operating a hub at the premises) or in the minutes of the meeting and there is also no reference to the Appellant’s written representations at all in the extract of the meeting minutes; and

6.19.2 the letter dated 1 February 2021 implies that the decision to remove was made by the PSRC at its 15 January 2021 meeting but the extract of the minutes of the meeting clearly indicate that a decision had not yet been made.

6.20 The inconsistencies create doubt in my mind as to the robustness of NHSE&I’s decision-making in respect of the removal.

6.21 The Appellant states that the decision by NHSE&I is based upon old rules before hub and spoke came into operation. I consider that it is clear that NHSE&I based its purported decision on the current Regulations as they are currently worded. I have not been provided with any reference to hub arrangements in the Regulations. However, it is clear to me that regardless of whether in practice hubs are operating, it is for NHSE&I to apply the Regulations as they are currently worded.

6.22 The Appellant refers to “GPhC guidance April 2019” which the Appellant states indicates that a hub pharmacy is a valid reason for having an internet pharmacy and proves the Appellant was carrying out a valid pharmacy service. It has not been explained to me why this should affect a decision by NHSE&I to remove a pharmacy from the pharmaceutical list if no pharmaceutical services have been provided from the premises for more than 6 months. The GPhC may have a view on hub pharmacies but there is no reference in the Regulations that a view of the GPhC is a reason not to apply the clearly worded Regulation on removal of a pharmacy from the pharmaceutical list. It may be that the Appellant is indicating that a hub pharmacy is providing pharmaceutical services and therefore should not be removed for non-provision of pharmaceutical services. I return to this issue below but it is clear to me that guidance from the GPhC cannot take precedence over the wording of the Regulations.

6.23 Returning to the point made earlier in this determination, my main concern with this matter is that NHSE&I has made a purported decision that pharmaceutical services have not been provided from the relevant premises for at least 6 months and that it

appears NHSE&I has reached this decision on the basis that NHS BSA has indicated it has not paid any money to the Appellant in relation to these premises for at least 6 months (in fact for approx. 2 years). I therefore need to consider if non-payment automatically means non-provision of pharmaceutical services.

- 6.24 The Appellant has indicated that activity in the form of certain dispensing actions of NHS prescriptions from six pharmacies has been carried out at the premises.
- 6.25 The exact arrangements have not been made clear but I assume that the six pharmacies that are sending their prescriptions to the hub pharmacy are claiming for payments for the dispensing of those prescriptions from those six premises. This would explain why there are no claims relating to those prescriptions from the hub pharmacy premises. So the issue is whether premises that are carrying out activity that is part of the dispensing of an NHS prescription (where the claims for those prescriptions relates to separate premises) can be considered to be providing pharmaceutical services in the context of a decision to remove those premises from the pharmaceutical list.
- 6.26 I have first considered the definition of “pharmaceutical services” in the Regulations. This indicates that the definition of pharmaceutical services in section 126(8) of the NHS Act 2006 applies. This states:
- 6.26.1 *“The services provided under this section are, together with additional pharmaceutical services provided in accordance with a direction under section 127, referred to in this Act as “pharmaceutical services”.*
- 6.27 Considering what services are listed in section 126, I note that section 126(3) states:
- 6.27.1 *“The arrangements are arrangements for the provision to persons who are in England of–*
- (a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service...”*
- 6.28 This looks to include the provision of medicines as a result of a person presenting an NHS prescription. The term “pharmaceutical services”, for the purposes of the provision in the Regulations relating to removal from the pharmaceutical list, must therefore include the provision of medicines as a result of a person presenting an NHS prescription.
- 6.29 In the present case, the Appellant is stating that it provides certain elements of the dispensing of NHS prescriptions from the relevant premises. It is not clear from the information provided to me in the course of this appeal if NHSE&I considers that:
- 6.29.1 this does not amount to pharmaceutical services; or
- 6.29.2 it does amount to pharmaceutical services but NHSE&I considers that the Appellant has not provided any elements of the dispensing of NHS prescriptions from the premises within the last six months.
- 6.30 I consider that this is unclear because NHSE&I, in its representations on this appeal, states:
- 6.30.1 *“[the Appellant] have stated that the company has operated a dispensing hub at the premises for the company’s six other pharmacies since August 2018 but have provided no evidence to support this statement.”*
- 6.31 This implies that if the Appellant had provided evidence that it had operated a dispensing hub at the premises, then NHSE&I would not determine that no pharmaceutical services had been provided.

- 6.32 NHSE&I however do not expressly state this and it seems that NHSE&I considers that if the NHS BSA has not made any payments in respect of the relevant premises then no pharmaceutical services have been provided. Support for this is in NHSE&I's letter to the Appellant dated 8 December 2020 which expressly states that NHSE&I has been "*informed by NHSBSA that The Pillbox and Case Co. Limited t/a Mr. Pickford's Internet Pharmacy has not provided any pharmaceutical services since August 2018 from the above premises*". I consider that this is not factually correct - the NHS BSA merely said that there has been no payment in respect of the relevant premises for two years. It is NHSE&I that has then come to the conclusion that this means no provision of pharmaceutical services.
- 6.33 If NHSE&I considered that a dispensing hub does provide pharmaceutical services but that the Appellant has not provided evidence of this happening at the premises (as suggested by the wording of NHSE&I's representations on this appeal extracted above) then I would query the fairness of that decision. The Appellant clearly stated in its written representations to NHSE&I before the decision was made that such activity was taking place. The Appellant was not told beforehand that failure to evidence that provision would result in NHSE&I determining that no activity took place and removal would follow. I cannot see anything in the Appellant's written representations to NHSE&I that would cause NHSE&I to dispute the Appellant's assertions. In addition, NHSE&I do not present any reasoning as to why it disputes the Appellant's assertions. The Appellant indicated in its emails dated 2-4 February 2021 that it can evidence the activity being undertaken by pictures.
- 6.34 If NHSE&I is of the view that the activities of the hub do not amount to the provision of pharmaceutical services, then I would query if this means any hub premises has to be on the pharmaceutical list and whether in fact (and in law under the Regulations) the Appellant could actually continue to operate its hub notwithstanding that the premises have been removed from the pharmaceutical list. Again, this point has not been considered on the basis of the information provided to me and there is no comment on this from NHSE&I. It is clear that the Appellant considers (and, indeed, considered at the point at which it sent NHSE&I its written representations) it will have to close the hub if it is removed from the list.
- 6.35 I need to be clear here - the issue of whether a dispensing hub, carrying out certain actions that are part of the dispensing of an NHS prescription, needs to be listed on the pharmaceutical list is outside the scope of this appeal. Similarly, whether a pharmacy on the pharmaceutical list can claim for payments for the dispensing of a prescription when certain elements of the dispensing process related to that prescription are carried out otherwise than at the premises of that pharmacy is also outside the scope of this appeal.
- 6.36 The issue at the heart of this appeal is linked to both those points but is from a different perspective – whether premises that are carrying out activity that is part of the dispensing of an NHS prescription (where the claims for those prescriptions relates to separate premises) can be considered to be providing pharmaceutical services in the context of a decision to remove those premises from the pharmaceutical list.
- 6.37 Usually it will be clear if specific premises are not providing this pharmaceutical service because the dispensing of NHS prescriptions will be carried out at those premises such that if no payments are being made for those premises, it can usually be inferred that no claims for payments are being made for dispensed prescriptions and this is because (subject to any information to the contrary) that no dispensing (or other activities which would result in a claim) are being provided. But the position in the current case is muddled by the fact that the Appellant claims that the relevant premises are used to carry out activities linked to the dispensing of NHS prescriptions.
- 6.38 I noted earlier that the Appellant had indicated that it provides no services but I consider the Appellant was responding to NHSE&I's position that no payment means no service

provision. I consider that the Appellant was agreeing that it did not make any claims for services provided at the dispensing hub. I do not consider that the Appellant was indicating that no activity at all was being carried out at the dispensing hub. I consider the Appellant was saying the opposite – that dispensing activity was being undertaken at the relevant premises.

- 6.39 Returning to the main point, I have not been provided with any comments from NHSE&I on the Appellant's consistently stated position that it uses the relevant premises as a dispensing hub. I have not been provided with any information (and none of the letters to the Appellant from NHSE&I nor the minutes of the meeting at which the purported decision to remove was made refer to this) as to why NHSE&I considers that the activity the Appellant is saying occurs at the dispensing hub should not be considered to be pharmaceutical services (if indeed this is NHSE&I's position). I have not been provided with any comments on why NHSE&I disputes that dispensing activity is being carried out by the Appellant at the relevant premises (if indeed NHSE&I is disputing this).
- 6.40 I must point out that this determination should not be read as stating that it is my opinion that premises that are carrying out activity that is part of the dispensing of an NHS prescription (where the claims for those prescriptions relates to separate premises) must be considered to be providing pharmaceutical services in the context of a decision to remove those premises from the pharmaceutical list. This determination is not intended to make a positive finding on this point.
- 6.41 Instead, it is my opinion that, where NHSE&I take a decision to remove premises from the pharmaceutical list on the basis that no pharmaceutical services have been provided for six months, the burden is on NHSE&I to be reasonably satisfied that, in fact, no pharmaceutical services have been provided. If it is clear, as here, that the pharmacy is stating that activity has been taking place, and that activity is linked to or is part of the provision of pharmaceutical services, then NHSE&I must, in my mind, evidence that it has considered this and provide reasoning as to why it considers that this does not amount to the provision of pharmaceutical services. In my opinion, NHSE&I has not evidenced its consideration of this and has not provided any such reasoning. In the circumstances of the current case and on the basis of the information provided, NHSE&I has not satisfied me that the Appellant has not provided pharmaceutical services from the relevant premises for at least a six month period.
- 6.42 I would add that nothing in this determination prevents NHSE&I from considering the removal of the Appellant's premises again. If it does consider this again, I would expect NHSE&I to take note of the comments I have made in this determination about the central issue as well as the comments on evidencing consideration of any written representations, consultation with the LPC, proper reasoning in its decision letter and consistency between the decision letter and the minutes of the meeting at which the decision is made.

## 7 Decision

- 7.1 I am of the view that under NHS Resolution's powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of NHSE&I or substitute for that decision any decision that NHSE&I could have taken when it took that decision.
- 7.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations and for the reasons given in this determination, I substitute the decision of NHSE&I with the decision that the Appellant's premises are not to be removed from the relevant pharmaceutical list.

## Head of Operations, Primary Care Appeals