

11 May 2022

REF: SHA/24685

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APPEAL AGAINST NORTH EAST AND YORKSHIRE AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO GRANT AN APPLICATION BY ISAA HEALTHCARE LTD T/A ELLAND PHARMACY FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM 18 HUDDERSFIELD ROAD, ELLAND HX5 9DW TO 15 HUDDERSFIELD ROAD, ELLAND HX5 9BA

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of NHS England and redetermines the application.
- 1.2 The Committee determined that the application should be granted.

A copy of this decision is being sent to:

Rushport Advisory, on behalf of ISAA Healthcare Ltd
SKF Lo (Chemists) Ltd
Primary Care Support England, on behalf of NHS England
Community Pharmacy West Yorkshire

Advise / Resolve / Learn

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1 The Application

By application dated 24 September 2021, ISAA Healthcare Ltd t/a Elland Pharmacy ("the Applicant") applied to NHS Commissioning Board ("NHS England") for a relocation that does not result in a significant change to pharmaceutical services provision under Regulation 24 from 18 Huddersfield Road, Elland HX5 9DW to 15 Huddersfield Road, Elland HX5 9BA. In support of the application it was stated:

- 1.1 In response to why the application should not be refused pursuant to Regulation 31 the Applicant stated:
- 1.2 Not applicable. Also due to the very minimum change in distance to the proposed location there is no impact on any other more distant contractors.
- 1.3 In response to section 8 Information in support of all no significant change applications the Applicant stated:
- 1.4 **The latest available figures show that the pharmacy is dispensing 3706 prescription items per month with the following surgeries providing at least 100 items per month (as a de Minimis level). Around 25% of these are delivered to patients at their home address. For the number of patients who access the pharmacy in person the Applicant has provided evidence to show that for these patients, however they are defined as "patient groups" the new location would not be significantly less accessible.**

SURGERY	TOTAL MONTHLY ITEMS	% OF TOTAL
Bankfield Surgery	3372	91%
Stainland Road Medical Centre	222	6%

- 1.5 Other surgeries combined provide 3% or less of total items and/or are too far away to be of relevance in this application.
- 1.6 The matters to be considered under Regulation 24 are as follows:
- 1.7 **For the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible.**

- 1.8 The relevant patient groups for the purpose of this application can be defined into two categories:
- 1.8.1 Patients accessing pharmaceutical services at the same time as accessing GP services.
 - 1.8.2 Patients accessing pharmaceutical services other than after a visit to the GP surgery.
- 1.9 These categories can be further subdivided below to form additional patient groups.
- 1.10 In order to consider whether a relocated pharmacy will be "significantly less accessible" or not for any patient group it is necessary to compare access arrangements to those that would exist after the proposed move.
- 1.11 **PATIENTS ACCESSING PHARMACEUTICAL SERVICES AT THE SAME TIME AS ACCESSING GP SERVICES**
- 1.12 **Patient Group 1 - Bankfield Surgery**
- 1.13 The largest patient group to receive pharmaceutical services. The surgery is located approximately 50 metres from the current premises, and the proposed premises is located within the surgery. Access therefore would be improved for those who access the pharmacy after visiting their GP irrespective of the method of transport used.
- 1.14 **Patient Group 2 - Stainland Road Medical Centre**
- 1.15 This practice is located 1.2 miles from the current site. Due to the distance involved the Applicant does not see patients who walk to the pharmacy from this practice but for those who do, this relocation would approximately increase distance by 50 metres between the old and new locations. The journey via walking would increase by @1 minute. For the vast majority who attend the current location do so by travelling in cars and the difference in journey time would be the same however patients would benefit from improved access due to the better availability of parking in the proposed location larger car park. Patients attending via public transport would use the same bus routes however the walk would be slightly quicker taking 2 minutes to the new location as opposed 3 minutes to the current location. Given these distances such changes are insignificant.
- 1.16 **PATIENTS WHO ACCESS PHARMACEUTICAL SERVICES OTHER THAN AFTER A VISIT TO THE GP SURGERY**
- 1.17 **PATIENTS LIVING IN THE AREA AND AROUND EXISTING PHARMACY**
- 1.18 **A. WALKING**
- 1.19 The proposed site is approximately 50 metres from the current pharmacy and takes around 1 minute to walk to. The route is straight forward, along normal pavements with dropped curbs, street lighting and a zebra crossing serving access on the road which separates the two locations from one another. There is nothing about the walk that would make the proposed premises significantly less accessible. A patient would turn right leaving the current site 15 Huddersfield Road and walk along the road on the pavements which have ample room for pedestrians, cross the zebra crossing and very shortly (<1 minute) reach the location of the proposed premises at 18 Huddersfield Road.
- 1.20 The general nature of the area in the proposed premises is the same as the current premises, with a social club, residential properties on the main road and the GP surgery. The side roads leading off the main road are predominantly residential areas.

- 1.21 Permeability from all residential areas around Huddersfield Road from the current and proposed premises are virtually no different. This would therefore make no difference to any patient (let alone patient group) this is due to the short distance involved for the proposed relocation from current to proposed site.
- 1.22 **B. BUS**
- 1.23 For those who use the bus, the majority will be required to alight at the same stops. Both current and proposed sites are serviced by the same bus routes.
- 1.24 **C. DRIVING**
- 1.25 For those who drive, the journey would take <15 seconds from the current site. Parking provisions at the proposed site compared to the current site improve with a larger car parking facility. This will undoubtedly benefit patients particularly those with mobility and disability issues as there is also designated disabled parking on the proposed site which the current site does have.
- 1.26 **General Points**
- 1.27 It is important to note that the patient journey is no different whether a patient is bringing in a prescription, purchasing medication, receiving advice, or using any other pharmaceutical services and the routes/journeys apply to all types of pharmaceutical services and for all patients.
- 1.28 As mentioned above, patients who may be mobility impaired or elderly (or sharing any type of protected characteristic) the proposed site will be easier to access as it has much improved parking meaning a shorter journey on foot or using a mobility aid. For those who already travel on foot the distance between the two sites and journey type does not make the proposed location significantly less accessible.
- 1.29 The committee will of course be aware that there is significant overlap between patient groups as a patient may use their own transport to access the pharmacy on one occasion, but then access the pharmacy directly after a visit to the surgery on another occasion. In this particular case it is likely we are considering a single patient in any given patient group (which by definition will then struggle to be a "group").
- 1.30 The above demonstrates that no patient group would find the new premises significantly less accessible.
- 1.31 **There is no evidence that granting the application would result in a significant change to the arrangements that are in place for the provision of pharmaceutical services. The same services will be provided from both sites.**
- 1.32 **The Applicant is not aware of any plans in respect of the provision of pharmaceutical services to which significant detriment would be caused should its application be granted.**
- 1.33 The Applicant confirmed that the services to be provided at the new premises are the same as those that have been provided at the current premises and that there will not be any interruption to service provision.
- 1.34 The Applicant further stated at section 9.3 of the form:
- 1.35 (a) There will be uninterrupted provision of all essential services: Dispensing Medicines; Dispensing Appliances; Repeat Dispensing; Disposal of Unwanted Medicines; Public Health (promotion of health lifestyles); Clinical Governance; Signposting and the Support for Self-Care during the entirety of the opening hours of the premises, to any persons anywhere in England who request those services. This will be secured through the appropriate standard operating procedures (SOPs) for all

aspects of the above essential services. As well as through delivery of these services in accordance with: The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013; The NHS Act 2006; The Human Medicines Regulations 2012; GPhC Professional Standards and Guidance on Pharmacies and current Relevant Data Protection laws all ensuring the safe, effective, and uninterrupted delivery of these services. Appropriate levels of staff mix will be in place including dispensers, pharmacy assistants and healthcare assistants and regular audits done to ensure the staffing level remains appropriate and during all opening hours there will always be a responsible pharmacist on the premises. Prescriptions will be received by patients or their representatives presenting face to face, via the Electronic Prescription Service (EPS), post, and fax or where practicable, with the patient's informed consent, collected from a surgery.

1.36 (b) As mentioned in (a) by following the SOPs and all services delivered in accordance with: The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013; The NHS Act 2006; The Human Medicines Regulations 2012; GPhC Professional Standards and Guidance on Pharmacies and current Relevant Data Protection laws will ensure that the Applicant provides a safe, effective and uninterrupted provision of all essential services to persons anywhere in England who request those services during the opening hours of the premises. Essential Services will not only be provided through face-to-face contact but also via the telephone and EPS between anyone receiving the services, whether on their own or someone else's behalf, and the Pharmacist and other qualified, knowledgeable, and experienced support staff on duty throughout the opening hours of the pharmacy premises.

1.37 When patients present in the pharmacy and ask for one or more essential services they will be met by the pharmacist or a suitably qualified, knowledgeable staff member who will interact with the patient building rapport and following the SOPs for all stages of patient encounters. Patients will always be asked to provide informed consent for any pharmacy services that the pharmacy provides to them. Patient consent forms for services will be stored as part of the PMR record created for all patients that use the pharmacy services. All the Essential Services as outlined in the NHS contractual framework will be provided and all NHS services will be delivered free of charge in accordance with the NHS Act 2006. Patients will always be given advice, appropriate information in the way of patient information leaflets, leaflets and sign posted when appropriate. Patients will have access to the publicly displayed pharmacy practice leaflet containing the required information requested by NHS England.

2 The Decision

NHS England considered and decided to grant the application. The decision letter dated 28 January 2022 states:

2.1 NHS England has considered the above application and [is] writing to confirm that it has been granted. Please see the enclosed report for the full reasoning:

Decision report

2.2 **ISAA Healthcare Ltd – Application to relocate with no significant change, from: 18 Huddersfield Road, Elland HX5 9DW to 15 Huddersfield Road, Elland HX5 9DW (sic)**

2.3 The Pharmaceutical Services Regulations Committee (PSRC) **granted** the application based on the following regulations and considerations.

2.4 **Regulation 31** The Committee noted that Regulation 31 does not apply as there are no other pharmacies at the same or adjacent premises.

2.5 **Regulation 24(1)(a)** is met as the Applicant identified its patient groups and has considered the impact the relocation would have upon them and have concluded that,

due to the distance involved (approx. 90 yards) the patient groups would find that the new location will not be significantly less accessible.

- 2.6 **Regulation 24(1)(b)** is satisfied. The Applicant has confirmed that they will provide the same opening hours and services at the proposed new premises as are provided at the existing premises and has confirmed that there will be no interruption to service provision. The distance between current and the proposed site is approx. 90 yards.
- 2.7 **Regulation 24(1)(c)** is satisfied. Granting the application would not cause a significant detriment to the proper planning of services.
- 2.8 **Regulations 24(1)(d&e)** are met as the same services will be provided and there will be no interruption to services during the relocation.
- 2.9 **Regulation 24(2)** is not applicable. The pharmacy is not proposing to relocate outside the area of the HWB.
- 2.10 **Regulations 24(3a&b)** are not applicable. The individual criteria do not apply to this pharmacy as the Applicant does not intend to relocate outside a retail area or outside a primary care centre.
- 2.11 **Regulation 24(3c)** is not applicable to the application as the pharmacy has not relocated in the last 12 months.
- 2.12 **Regulations 36 and 37** are not applicable as the premises are not within a controlled locality or within 1.6km of one.
- 2.13 **Regulation 65** is not applicable as NHS England will not be directing the pharmacy's opening hours.
- 2.14 **Regulation 66** is not applicable as NHS England does not intend to direct further services to be provided.
- 2.15 **Decision:** PSRC granted the application having determined that the Applicant met all the requirements of Regulation 24 and Regulation 36, 37 & 65 as set out in the NHS Pharmaceutical (and Local Pharmaceutical) Services Regulations 2013.
- 2.16 **Appeal rights:** SKF Lo (Chemists) Ltd

3 The Appeal

In a letter dated 18 February 2022 addressed to NHS Resolution, SKF Lo (Chemists) Ltd "the Appellant" appealed against NHS England's decision. The grounds of appeal are:

- 3.1 The Appellant wishes to appeal against the decision made by NHS England to grant the above pharmacy relocation on the basis that it has erred in determining the application by failing to give full consideration to the relevant facts. By letter dated 18 October 2021, the Appellant objected to the application in some detail, but NHS England has failed to address the Appellant's concerns in either its decision letter or report of its consideration and it has failed to provide adequate reasons for the decision.
- 3.2 The Appellant contends that ISAA Healthcare Ltd, trading as Elland Pharmacy has failed to satisfy Regulation 24(1)(a) and (b) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 3.3 In recognition of the fact that an appeal is a rehearing of the application, the Appellant lists its objections below: -

- 3.4 **Regulation 24(1)(a) for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible.**
- 3.5 **Patient Groups:**
- 3.6 The Appellant says that the Applicant has failed to identify all of the appropriate patient groups as required by NHS and judicial guidance. NHS England simply recorded that *“the applicant identified its’ patient groups”* and failed to provide further consideration to the matter even though the Appellant had suggested other patient groups in its response to the application. Whilst appreciating that there is inevitably some degree of overlap when defining patient groups, the Appellant suggests that, as a minimum, for this application, the following patient groups should be considered in addition to those identified by the Applicant.
- 3.7 **1. Vulnerable patients** as defined within the Equality Act 2010. Some basic reference has been made to such groups by the Applicant, but the Appellant suggests that specific consideration should be given to the elderly, young children and the disabled all of whom have mobility issues which deserves due consideration.
- 3.8 **2. Patients availing themselves of pharmaceutical services in the extended hours period** also form a distinct patient group and so need to be specifically considered. ISAA Healthcare Ltd (trading as Elland Pharmacy) currently occupies a prominent position on the main Huddersfield Road. It is a 100-hour contract pharmacy and so caters for the needs of patients during the extended hours period during which it is contractually obliged to be open. If the relocation is granted, the prominence of the pharmacy will be far less obvious than it is at present especially for patients who are not registered with the Bankfield practice.
- 3.9 **3. All patients registered with practices other than Bankfield Surgery and Stainland Road Medical Centre.** The Applicant identifies just 2 patient groups as being patients registered with specific doctors’ surgeries and seems to imply that the remainder are not relevant. However, an analysis of the Applicant’s dispensing for the most recent month available on the BSA website indicates that the Applicant’s pharmacy dispenses prescriptions for patients registered with over 30 additional practices and although the numbers of items for each may be relatively low, collectively they are worthy of being recognised as a patient group in their own right. It should be noted that with 100-hour pharmacies, especially those occupying such a high-profile location and having their own car park, patients travel from a wide area to access their services and this is often at times when other pharmacies are closed.
- 3.10 **4. Substance Misuse Patients.** These are referred to by the Applicant as a group availing themselves of its services and so this patient group should also be considered.
- 3.11 **Reduced Accessibility:**
- 3.12 For patients accessing the pharmacy on foot:
- 3.13 In considering the impact that the relocation would have on accessibility to the pharmacy at the proposed site, NHS England simply said that: -
- 3.14 *“.....due to the distance involved (approx. 90 yards) the patient groups would find that the new location will not be significantly less accessible”.*
- 3.15 Physical distance is not in itself a determinant of continued accessibility. All patients walking to the pharmacy and living to the south or west of Huddersfield Road would have to negotiate crossing that road to access the proposed location. Huddersfield Road is a busy main road and the main entrance to Bankfield Surgery is just off a substantial roundabout. The Applicant correctly claims that the distance is short and there is a crossing point but, based on the Appellant’s local knowledge, it maintains

that inherent dangers in crossing this road still remain and so Huddersfield Road constitutes a significant barrier to access especially for vulnerable patients whose dexterity is often impaired. This includes the disabled, the elderly and young children as referred to in group 1 above.

- 3.16 For patients accessing the pharmacy by car:
- 3.17 The Applicant understandably points out that the current site benefits from its own dedicated car park and then claims that a car park is also available at the proposed site. However, the Applicant fails to acknowledge that it was designed for patients attending the surgery that the Applicant is seeking to move into. The addition of patients attending the pharmacy who are not attending the surgery and also those who are attending the surgery but need to remain there longer for pharmaceutical services, would add to the congestion within the surgery car park to the detriment of surgery and pharmacy patients.
- 3.18 It is not surprising that the Calderdale PNA 2018 in a general conclusion said, "*There were some issues identified around lack of disabled parking, which pharmacies should consider*". Although this was a generalised comment, it is indicative of the importance that must be given to accessibility by car especially for, but not limited to, vulnerable patient groups and the Appellant trusts that [NHS Resolution] will give full consideration to the matter.
- 3.19 The plan provided with the application fails to indicate exactly how the relocated pharmacy will be incorporated into the existing surgery. It seems to imply that the pharmacy will be located within the existing building, presumably occupying space currently used to deliver medical services. However, if it is intended to occupy a purpose-built extension, consideration must be given as to whether that would decrease the existing parking area provided for the benefit of current patients and surgery staff.
- 3.20 Physical, mental and social barriers:
- 3.21 Simply restricting this part of the regulatory test to a physical measure of distance is not acceptable as confirmed in the high court by Mr Justice Langstaff in the case of Community Pharmacies (UK) Limited v The National Health Service Litigation Authority [2016] EWHC 1595 (QB) when he said: -
- 3.22 "*If, then, in context, the purpose of grouping is to facilitate a decision as to the accessibility of the new premises, the starting point is considering what makes a relocated pharmacy less easy to go to physically, mentally or socially, and "groups" must have their identities determined with that in mind*".
- 3.23 The mental and social aspects of this proposed relocation are profound and significant. The current location has a very high visual profile and, in the eyes of the public, it was totally independent of the surgery. It is located on the side of the main road and has a large sign painted on the end of the building advertising the car park to the rear of the property. If the relocation is permitted, the visual impact to patients who are not registered with Bankfield Surgery will be reduced, which will impede access. This will apply to all of the patient groups listed above and constitutes a socio-physical barrier.
- 3.24 It is well established within the pharmaceutical profession that when a pharmacy (with the possible exception of major multiples) is located inside surgery premises, patients often find it intimidating to enter surgery premises that they are not registered with, while others believe that the pharmacy is part of the GP practice and restricted to patients registered there. Patients in Elland will certainly consider that to be so in this case because the Appellant is aware from Companies House records that some of the GPs are shareholders and Directors of ISAA Healthcare Ltd and that the practice personnel are already referring to the pharmacy as being their 'own' pharmacy. The Appellant contends that the co-location of the pharmacy within the surgery complex

coupled with comments about it being owned by the practice will establish a significant mental and social barrier to access for patients who are not registered with Bankfield Surgery.

- 3.25 In the Appellant’s experience, substance misuse patients receiving supervised consumption services welcome being able to do so via the discretion afforded by community pharmacy premises. Those patients often regard pharmacies located within surgery buildings as being intimidating and this is another example of the mental barrier that would be established.
- 3.26 It is probable that when Bankfield Surgery is closed, patients needing to access the pharmacy in the extended hours period will presume that it is also closed and that will be another mental barrier to access. This could affect all patient groups including those from Bankfield Surgery who may otherwise have accessed the pharmacy in its current location where the separation of premises would not have implied mutual working hours. This point is especially pertinent for patient groups seeking support with self-care etc.
- 3.27 To summarise, this application is far from straight forward due to both physical, social and mental barriers which make the proposed site significantly less accessible than the current site. The Appellant is therefore of the opinion that the application fails Regulation 24 (1) (a).
- 3.28 **Regulation 24 (1) (b) in the opinion of the NHSCB, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list—**
- 3.29 **(i) in any part of the area of HWB1**
- 3.30 **Change to the arrangements in place for the delivery of pharmaceutical services:**
- 3.31 As explained above, relocating the Applicant’s pharmacy from an independent high-profile position on Huddersfield Road to a location inside Bankfield Surgery coupled with the fact that practice doctors are Directors of the pharmacy, will result in patients perceiving that the pharmacy is ‘owned’ by Bankfield Surgery (which practice staff are already actively telling patients). The relocation would result in patients thinking that they are obliged to use what they perceive as the practice’s own pharmacy and will destroy patient choice, constituting a significant change to the arrangements that are in place for the delivery of pharmaceutical services.
- 3.32 Now that it has become common knowledge that doctors from Bankfield Surgery enjoy ownership of the Applicant’s pharmacy, its relocation into the surgery premises, will result in patients not registered there perceiving that it is only for patients of that practice. That will effectively destroy the choice that was once available to them and therefore constitute a significant change to the arrangements that are in place for the delivery of pharmaceutical services.
- 3.33 Analysis of the dispensing data on the official NHS Business Services Agency website verifies that the Appellant is overwhelmingly reliant on patients who are registered with Bankfield Surgery to such an extent that they account for almost 89% of the items that the Appellant dispensed over the last 12 months (Fig 1).
- 3.34 **Origin of dispensed items Dec 2020 to Nov 2021**

Pharmacy Dispensing by: -	Prescribed by Bankfield Surgery	Prescribed by Non-Bankfield Prescribers
SKF Lo Ltd	88.73%	11.27%

ISAA Healthcare Ltd (Elland Pharm)	83.80%	16.20%
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Fig 1.

- 3.35 The proportion of the Applicant's dispensing from Bankfield Surgery is a little lower with the corresponding prescribing from all other prescribers being higher, which is probably due to their current high-profile location and extended opening hours. This supports the Appellant's suggestion that patients obtaining pharmaceutical services during the extended hours, constitute a specific patient group.
- 3.36 **Items prescribed by Bankfield Surgery expressed as a percentage of total dispensing by pharmacies for each of the last four quarters** (*Calculated using NHS Business Services Authority 'Practice Prescribing Dispensing Data'*)

Quarter Period	SKF Lo Ltd	ISAA Healthcare Ltd
Q1 (Dec 20 - Feb 2021)	39.12%	10.86%
Q2 (Mar 21 - May 21)	36.58%	13.58%
Q3 (Jun 21 - Aug 21)	36.50%	14.32%
Q4 (Sep 21 - Nov 21)	35.46%	15.00%
Change Q1 to Q4	Minus 3.66% % points	Plus 4.14 % points
“ “ “ “ in real terms	9.36% reduction	38.11% increase

Fig 2.

- 3.37 Fig 2 above has been extrapolated from NHS BSA Practice Prescribing Dispensing data and shows where prescriptions written by Bankfield Surgery (the proposed site) are dispensed. For simplicity, only the Applicant's and Appellant's pharmacies are shown with the Bankfield Surgery prescribed prescriptions shown as a percentage of the total practice prescribing. This clearly demonstrates that there has been a significant and sustained reduction (-9.3%) in the proportion dispensed by the Appellant and a corresponding increase (38%) for the Applicant. This will be discussed further later.
- 3.38 It is common practice for pharmacies located within GP premises to dispense between 65% and 90% of the items generated by that practice. Using a conservative figure of 70% and deducting say 15% as currently dispensed by the Applicant, the Appellant stands to lose 55 percentage points (70% less 15% = 55%) which equates to a loss of approximately half of the Appellant's dispensing turnover. The Appellant accepts that a small amount of this may be compensated for by the patient groups, who would no longer be able to access the new site as referred to above, but the point remains that a loss of this magnitude would render the Appellant's pharmacy totally unviable by a large margin.
- 3.39 Although the Appellant is a town centre pharmacy, counter takings make an increasingly small contribution to its gross margin and the opportunity to make economies by reducing overheads associated with the central retail location is minimal. [NHS Resolution] will no doubt be aware of the Government's five-year plan for pharmacy and the lack of appropriate funding for it, which is having an adverse effect on pharmacy viability, causing the ongoing decline in numbers.
- 3.40 The Appellant wishes to stress that the above calculation does not include losses incurred by its pharmacy due to direction of prescriptions by Bankfield Surgery even though it is aware that this started to happen when the doctors acquired a financial interest in the applicant pharmacy. Several of the Appellant's regular patients have reported to it that Bankfield Surgery have told them that their repeat prescription will be available for them to collect from 'their' pharmacy which the Appellant had cause to

complain to the practice about both verbally and in writing. Furthermore, quite recently and well after the Appellant's complaints, a patient who had just registered with Bankfield Surgery reported to the Appellant that he had been told that his pharmacy would now be Elland Pharmacy which he felt was unfair directing.

- 3.41 Evidence of this activity is provided in the table at Fig 2 above which demonstrates that the proportion of items prescribed by Bankfield Surgery and dispensed by the Appellant decreased for each of the 4 successive quarters during the last 12 months, during which time, there was a corresponding increase each quarter in the proportion being dispensed by the Applicant. The difference between the first and last quarter was dramatic with a reduction (-9%) in the proportion dispensed by the Appellant and an increase for the Applicant of 38.11%.
- 3.42 The dispensing trend seen with Bankfield Surgery written prescriptions is not seen with other prescribers. Using BSA Pharmacy Contract Dispensing data, Table 3 (below) was compiled by identifying the total number of items dispensed for each pharmacy and deducting the number of items prescribed by Bankfield Surgery as identified to compile the table in Fig. 2 above. The resulting non-Bankfield Surgery prescribed items were then expressed as a percentage of the total pharmacy dispensing.
- 3.43 **Non-Bankfield Surgery prescriptions as a percentage of total items per pharmacy.** (Calculated using NHS Business Services Authority 'Pharmacy Contractor Dispensing Data')

Quarter Period	SKF Lo Ltd	ISAA Healthcare Ltd
Q1 (Dec 20 - Feb 2021)	11.27%	16.20%
Q2 (Mar 21 - May 21)	11.54%	16.48%
Q3 (Jun 21 - Aug 21)	11.87%	16.58%
Q4 (Sep 21 - Nov 21)	11.91%	17.12%
Percentage increase Q1 to Q4	5.64%	5.67%

Fig 3.

- 3.44 This clearly shows that for the same 4 quarters used in Fig. 2, the difference between Q1 and Q4, shows an almost identical trend for both the Appellant and the Applicant.
- 3.45 As can be seen from this evidence, for items prescribed by Bankfield Surgery, there is a steady, sustained attrition of items from the Appellant's pharmacy which appear to be transferred to the Applicant's pharmacy, but the Appellant does not see the same trend for prescribing from other surgeries and it wishes to stress that this is still happening after its verbal and written representations. The Appellant fears that following relocation the situation would escalate and threaten its survival even more.
- 3.46 The closure of the Appellant's pharmacy would deprive patients in Elland of its readily accessible, independent community pharmacy located in the heart of the retailing area. The only other pharmacy (Ryburn Pharmacy) is a small pharmacy located out of town in a largely residential area involving an uphill walk. Again, the closure of the Appellant's pharmacy would deprive patients of an adequate choice of pharmaceutical services and constitute a significant change in the arrangements that are currently in place for the delivery of pharmaceutical services.
- 3.47 The Appellant therefore feels that Regulation 24 (1) (b) is also not met and ask that the application is refused.
- 3.48 Summary:

- 3.49 In determining this appeal, the Appellant respectfully asks that the words of Mr Justice Langstaff are not ignored and that proper consideration is given to the physical, mental and social consequences of the relocation that he refers to. It is not appropriate to simply reflect on the short distance of the relocation.
- 3.50 The unique circumstances of this application, including, but not limited to, the joint ownership of the Applicant and the tactics that have already been deployed, need to be fully considered as part of the assessment of the mental and social barriers that will prevent access to the pharmacy at the proposed site for all of the patient groups now identified.
- 3.51 There can be no doubt that the Appellant's pharmacy located in the retailing centre would close with or without further direction of prescriptions, the consequence of which will be the removal of an effective choice of pharmacies for patients in the centre of Elland. That would significantly affect the arrangements that are currently in place for the delivery of pharmaceutical services.
- 3.52 The Appellant contends that for this relocation, the Applicant has failed to prove, as the Applicant is required to do, that the location of the new premises is not significantly less accessible or that granting the application would not result in a significant change to the arrangements that are in place for the provision of pharmaceutical services.

4 **Summary of Representations**

This is a summary of representations received on the appeal.

RUSHPORT ADVISORY LLP, ON BEHALF OF THE APPLICANT

- 4.1 The Appellant states on page 4 of their letter of appeal that;
- 4.1.1 *"To summarise, this application is far from straight forward due to both physical, social and mental barriers which make the proposed site significantly less accessible than the current site."*
- 4.2 Respectfully, Rushport Advisory do not agree. The relocation is over a short distance of less than 50 metres (which is accepted by the Appellant) with no barriers to movement, whether mental, social, geographical or physical. Rushport Advisory trust that this response will demonstrate both the errors in the appeal and that the Applicant's application meets the legal test.
- 4.3 The Applicant has already secured the new premises within the medical centre. The premises occupy space at the front left side of the entrance and front onto the main road and car park and are visible from the main road. The premises have already been fitted out, inspected and approved by the GPhC. Rushport Advisory are informed that the GPhC inspector commented that the new premises were a "vast improvement" on the old premises and "would be much better for patients".
- 4.4 **Patient Groups**
- 4.5 The Applicant has properly identified the relevant patient groups and considered any changes in access that may arise due to the proposed move. In all cases the change is so minor that it is fanciful to suggest that any patient, let alone a patient group, would find the relocated pharmacy to be significantly less accessible.
- 4.6 Dealing in turn with the suggestions made by the Appellant.
- 4.7 **Vulnerable Patients** – contrary to the Appellant's claim, the Equality Act 2010 does not define "vulnerable patients". In fact, the word "vulnerable" does not appear in the Act on a single occasion, not does the word "patient", or "patients".

- 4.8 The key test is one of accessibility. The Applicant has considered accessibility for the elderly, young children and the disabled. In each and every case the Applicant confirms that they are, after investigation and discussion with pharmacy staff, unaware of a single patient within such categories that would find the journey to the proposed site to be even slightly more difficult than it is to the current site.
- 4.9 As the Committee will be aware, it is important to consider the starting point of a patient journey and compare the journey to the proposed site with the journey to the current site.
- 4.10 Both the current and proposed premises are on the same road (Huddersfield Road) and almost across the road from one another. It may assist to the Committee to consider the attached Google image that shows the current premises, proposed premises and the zebra crossing between them.
- 4.11 Further, the **current** premises would be considered difficult to access for anyone with mobility problems. There is a steep ramped entrance (see picture [provided]) which inhibits access for those who are not able bodied. It is difficult to understand why the Appellant would suggest that the proposed premises, which have flat and easy access, could be considered less accessible for the groups that they have identified than premises with a steep ramp outside them. The Applicant rejects and denies the Appellant's claims and trusts that the Committee will see them for what they really are.
- 4.12 **Patients availing themselves of pharmaceutical services in the extended hours period** – Whilst it is correct that the Applicant operates as a 100 hour pharmacy they do so because they are contractually obliged to rather than to meet any significant out of hours demand. The pharmacy is extremely quiet outside surgery opening times. In total the pharmacy dispenses on average only 3,891 items per month. On some evenings and weekends there are no patients at all for any type of service. Patients who do use the extended hours of opening are either those who already use the pharmacy and are aware of its long opening hours or those who search online for pharmacies open out of hours. Neither of these types of patients would be in any way affected by the proposed move. Notwithstanding this, the Appellant's comments are also factually incorrect. The Applicant will have signage located externally that will highlight the presence of the pharmacy. There will be a prominent large lighted Pharmacy sign over the new premises windows which will be visible from the main/side roads, highlighting the new pharmacy premises. In addition, there will be signage on the fence around the surgery again highlighting the location of the pharmacy and this will be easily visible to both walking and driving patients. Finally, the legal test is not one of "prominence" as suggested by the Appellant, but one of accessibility.
- 4.13 **All patients registered with practices other than Bankfield Surgery and Stainland Road Medical Centre.** The Applicant was correct to apply a de minimus rule when defining its patient groups. Even basic analysis of the Appellant's argument shows that the Applicant was correct. The "30 additional practices" (in fact for the most recent month of available data it is 17 rather than 30) are located a significant distance from my client's pharmacy. The largest by way of dispensing volume is Longroyde Surgery in Brighouse which is over 2 miles away and this is also the closest additional surgery by way of distance.
- 4.14 In each and every case a patient would not walk to the pharmacy after visiting any of these surgeries. All of these patients are therefore covered by the Applicant's analysis of those who either drive or use public transport to access the current pharmacy premises. As stated by the Applicant in their original application, bus users would use the same bus stops to access the current or proposed premises and car users will benefit from improved parking.
- 4.15 A move of 50 metres has no appreciable effect on any of the patients highlighted by the Appellant, nor can the Appellant identify any difficulty that those patients would face.

- 4.16 **Substance Misuse Patients** – the number of patients using supervised consumption services varies depending on the month as patients tend to move around, however currently it is 5 patients. None of these patients has expressed any concern about the proposed relocation. Substance Misuse Patients collect their own prescriptions from the specialist clinic which is based in Halifax, approximately 4 miles from the pharmacy. A move of circa 50 metres will not affect accessibility for these patients.
- 4.17 The Appellant then makes a number of other points which are dealt with in turn below.
- 4.18 **Reduced Accessibility:**
- 4.19 For patients accessing the pharmacy on foot:
- 4.20 The Appellant's arguments are fanciful. No evidence is provided to support their assertion of difficulty crossing Huddersfield Road via the zebra crossing point as none exists.
- 4.21 For patients accessing the pharmacy by car:
- 4.22 Patients using the pharmacy will benefit from a larger car park with disabled parking available. In fact, congestion will be reduced by co-locating with the surgery as patients currently leave their cars in the doctor's car park and then walk across to the pharmacy and back again. The relocation will remove the need for the small amount of time taken to walk to and from the pharmacy and free up spaces more quickly.
- 4.23 The main surgery car park is directly in front of the main surgery entrance giving very easy access for all patients and is closer in walking distance when compared to the current pharmacy car park for patients arriving by car. This main car park has two dedicated disabled bays and a further 9 car park bays. A further convenient car park also exists at the side of the surgery premises which is a similar walking distance away when compared to parking at the current pharmacy car park which only accommodates 4 vehicles and is located at the rear of the existing pharmacy.
- 4.24 There is one main entrance doorway into the surgery building which leads into a vestibule area leading to two separate internal entrance doors. One door provides access to the GP Surgery and one to the new Pharmacy giving easy access throughout the opening times of the pharmacy for all arriving patients.
- 4.25 **Physical, mental and social barriers**
- 4.26 Under this heading the Appellant starts by repeating arguments relating to the prominence of the pharmacy which Rushport have already dealt with above and do not repeat.
- 4.27 The Appellant then makes the quite astonishing and unevicenced claim that;
- 4.27.1 *"It is well established within the pharmaceutical profession that when a pharmacy (with the possible exception of major multiples) is located inside surgery premises, patients often find it intimidating to enter surgery premises that they are not registered with, while others believe that the pharmacy is part of the GP practice and restricted to patients registered there. Patients in Elland will certainly consider that to be so in this case because we are aware from Companies House records that some of the GPs are shareholders and Directors of ISAA Healthcare Ltd and that the practice personnel are already referring to the pharmacy as being their 'own' pharmacy. We contend that the co-location of the pharmacy within the surgery complex coupled with comments about it being owned by the practice will establish a significant mental and social barrier to access for patients who are not registered with Bankfield Surgery."*

- 4.28 It is certainly not “well established” that patients find it “intimidating” to enter surgery premises that they are not registered with. Medical centre based pharmacies can and do dispense prescriptions from a variety of different surgeries. The claims made by the Appellant are also contradictory. On one hand they express concern about damage to their business, whilst also suggesting that patients would be intimidated and not enter the pharmacy.
- 4.29 The Appellant (SKF Lo Limited) operates 25 community pharmacies. A brief look at their website shows that some of those pharmacies operate from within medical centres. The first of those listed as a medical centre pharmacy is in the Medical Centre at Pontefract Road in Lunwood and in the last month for which data is available (Nov 21) it dispensed prescriptions from 20 different GP practices with approximately 18% of all the prescription items coming from surgeries that they are not co-located with. These patients are clearly not “intimidated” by the Appellant’s location. The Appellant must be aware from their own knowledge and business that the statements they are making in writing to the Committee are factually incorrect.
- 4.30 It is also notable that the Appellant’s pharmacy mentioned above also provides supervised consumption services to patients (according to the lospharmacy.co.uk website).
- 4.31 Despite this, the Appellant then claims;
- 4.31.1 *“In our experience, substance misuse patients receiving supervised consumption services welcome being able to do so via the discretion afforded by community pharmacy premises. Those patients often regard pharmacies located within surgery buildings as being intimidating and this is another example of the mental barrier that would be established.”*
- 4.32 No evidence is provided to support this claim. In reality, many medical centre based pharmacies provide supervised consumption to patients (as the Appellant does). The Appellant is invited to explain how their comments can be taken seriously when this fact is considered. Further, the Applicant has discussed their plans to relocate with patients, including those receiving supervised consumption and all patients have been supportive of the move. No patient has expressed any concern about access (or “intimidation”) and the only comments have been that it will be good to have better premises and not have a ramp outside.
- 4.33 The Appellant then makes comments suggesting that patients will not use the pharmacy if the surgery is closed. No evidence is provided to support the assumptions which are denied and also not relevant to the legal test. The pharmacy will remain open and accessible during all normal opening hours.
- 4.34 **Change to the arrangements in place for the delivery of pharmaceutical services**
- 4.35 The Appellant’s arguments in this section are a re-hash of the arguments they have already made and which are dealt with above. None of the arguments made are in fact relevant to the legal test under regulation 24(1)(b) and are instead an argument suggesting that the Appellant will lose some of their business.
- 4.36 As the Committee will be aware, regulation 24(1)(b) is not intended to protect the financial interests of pharmacy contractors. Nor is it appropriate for the Appellant to make disparaging accusations against the doctors of Bankfield Medical Practice in this appeal.
- 4.37 Whilst the Appellant’s arguments are not relevant to the legal test, for the sake of completeness the Applicant wishes to be clear that the allegations made are denied. Further, the Appellant must be well aware that the figures they have provided to the Committee are both wrong and an attempt to mislead.

- 4.38 Suggesting that a “conservative” figure for dispensing from medical centre based pharmacy premises should be 70% is simply wrong. Such a figure would be high even before electronic prescriptions came into existence and before the change of habits caused by the current pandemic. The Appellant is of course well aware of this but chooses to present these misleading figures to the Committee. Using the same example of the Appellant’s own pharmacy that is noted above (Medical Centre at Pontefract Road, Lunwood), they dispense 43% of one of their co-located practices prescriptions and 32% of the other co-located practices prescriptions. In other words approximately half of what the Appellant’s own claims say are “conservative”.
- 4.39 Further, for the Appellant’s figures to be correct then 100% of any additional items dispensed by the Applicant would have to come from their pharmacy alone. The Appellant does not try to explain why it would only be their pharmacy that would lose business and every other pharmacy would not be impacted in any way.
- 4.40 Rushport Advisory accept of course that none of this will be relevant to the Committee’s decision, but simply wish to correct some of the statements, errors and falsehoods contained within the appeal and which should not have been contained in the appeal.
- 4.41 **Access Generally**
- 4.42 The Applicant provided evidence about accessibility in their original application documents. For every patient group the only change will be;
- 4.42.1 50 metres more (via a zebra crossing) or less on relatively flat pavements which are in good condition with adequate street lighting. OR
- 4.42.2 Improved access to parking in a car park directly outside the proposed new pharmacy premises OR
- 4.42.3 Using the same bus stops as are currently used with less than 50 metres more or less to walk.
- 4.43 None of these can be properly considered to make the proposed location significantly less accessible for any patient, let alone a defined patient group.
- 4.44 **Summary**
- 4.45 The Appellant finished with a plea that the Committee does not ignore the words of Mr Justice Langstaff when considering this appeal. The Applicant agrees with the Appellant on this point.
- 4.46 As Mr Justice Langstaff said;
- 4.46.1 *“So long as the NHSCB, or on appeal the NHAU, bears in mind that the purpose of identifying the groups is to make a broad assessment of the question of accessibility, and that therefore to identify too many groups which are too small in number to assist with that process would risk over-focussing and losing sight of the whole broad picture, and provided the Board or Committee takes a practical and pragmatic view of the groupings that might assist it to a conclusion, by reference to which it may analyse the available evidence, it will not go far wrong.”*

COMMUNITY PHARMACY WEST YORKSHIRE (“CPWY”)

- 4.47 CPWY members still feel that their comments made in their letter to [NHS England] on 17 November 2021 are valid. These were as follows.
- 4.48 *“CPWY members would like to make the following observations:*

- 4.48.1 *Paragraph 1 of Schedule 2 has been met.*
- 4.48.2 *This application does not appear to breach regulation 31.*
- 4.49 *With regards Regulation 24:*
- 4.50 *The proposed relocation will result in the pharmacy moving approx. 100 metres (Googlemaps) from the current location (despite change in postcode area).*
- 4.51 *The journey between the current and proposed site is along a lit and paved route. The journey involves crossing Huddersfield Road, a fairly busy road in Elland but for which there is a zebra crossing. The journey route has a slight incline.*
- 4.52 *The proposed services and hours are the same as those provided at the current premises.*
- 4.53 *Noting that the proposed site for the pharmacy is within the GP practice building, CPWY ask that assurance is sought that patients can access the pharmacy throughout all the pharmacy opening hours (given the extended opening hours of the pharmacy and that these exceed the operating hours of the GP practice).*
- 4.54 *Members noted the new relocated pharmacy would likely to be serving the same patient groups. The applicant has identified a broad range of patient groups and considered the impact the relocation would have on them.*
- 4.55 *Members noted that Companies House lists some directors of the pharmacy are also GP partners at Bankfield Medical Practice, the GP practice to which the pharmacy is relocating.*
- 4.56 *The members concluded that the relocated pharmacy would serve the same population, same GP practices and same community and that the proposed site of the pharmacy within the GP practice would provide direct access to the GP practice car park.*
- 4.57 *Given that some GP partners are also officers of the pharmacy, CPWY requests that NHSE&I seeks ongoing assurances that this relocation of the pharmacy into the GP practice is not used to influence patient choice in where patients choose to access pharmaceutical services.*
- 4.58 *Members felt that it was unlikely that granting this application would cause significant detriment to the proper planning of the provision of pharmaceutical services.*
- 4.59 *Members felt that for patients that were accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises would not be significantly less accessible.*
- 4.60 *Members supported the granting of this application."*

NHS ENGLAND

- 4.61 NHS England granted the application from ISAA Healthcare Ltd for a No Significant Change Relocation from 18 Huddersfield Road, Elland, HX5 9DW to 15 Huddersfield Road, Elland, HX5 9BA, on the grounds that the applicant had demonstrated that they would comply with all the requirements of Regulation 24, Regulation 31 and Regulation 36, 37 & 65 as set out in the NHS Pharmaceutical (and Local Pharmaceutical) Services Regulations 2013.
- 4.62 The Pharmaceutical Service Regulations Committee (PSRC) did acknowledge that the proposed premises are co-located with Bankfield GP practice and noted the link between the directors at the surgery and pharmacy.

- 4.63 The appellant asks that consideration be given to the physical, mental and social consequences of the relocation, it must be noted that the PSRC did have a number of queries on the application. Specifically, if there would be a separate entrance for the pharmacy with easy access direct from the car park for people arriving by car or on foot and PSRC noted that, if patients were approaching the new site from the current site location that the new site location was obscured by trees and away from the roadside. PSRC wanted to know if the applicant had any plans for signage on the main road making the pharmacy more visible to those seeking access to the pharmacy in the evenings and weekends and those not familiar with Bankfield surgery.
- 4.64 NHS England contacted the applicant asking for a response to the queries above raised by PSRC. In response the applicant confirmed that there is one main entrance doorway into the building which leads into a vestibule area leading to two separate internal entrance doors. One into the GP Surgery and one into the Pharmacy premises giving easy access throughout the opening times of the pharmacy for all arriving patients.
- 4.65 According to the applicant the main car park is directly in front of the main entrance giving easy access for all patients and is closer in walking distance when compared to the current pharmacy car park for patients arriving by car. The main car park has two dedicated disability car park bays and a further nine car park bays. Another convenient car park also exists at the side of the premises which is a similar walking distance away when compared to when parking in the current pharmacy car park which only accommodates four vehicles and is located at the rear of the existing pharmacy.
- 4.66 In relation to signage the applicant confirmed that there will be a prominent large lighted Pharmacy sign over the new premises windows which will be visible from the main/side roads, roundabout and buildings around the vicinity, highlighting the new pharmacy premises. Also, there are plans to have signage on the fence surrounding the new premises again highlighting and directing patients to the new pharmacy location, easily visible to both walking and driving patients passing the immediate areas.
- 4.67 NHS England acknowledged the additional information provided by the applicant and based on the original application and information provided at the time NHS England is satisfied that the correct decision was reached in relation to this application and would therefore ask that the appeal be dismissed.

5 Observations on representations

5.1 THE APPELLANT

- 5.1.1 The Appellant feels that it is necessary to respond to some of the issues raised in the representations, but will try to be brief.
- 5.1.2 The fact that the Applicant has secured premises that have been fitted out and inspected by the GPhC adds little to the consideration of Regulation 24. The Appellant is grateful for the clarification that there is only one main entrance doorway into the building. Above the entrance there is a sign saying "Bankfield SURGERY" as can be seen in the image [provided].
- 5.1.3 The Appellant acknowledges that this door then leads into a "vestibule area" with internal entrances to the proposed pharmacy and the GP practice. The Appellant still therefore maintains that patients will perceive the relocated pharmacy as being for patients of Bankfield Surgery and the ownership of ISAA Healthcare Ltd along with the activities of surgery personnel (including reference to "their pharmacy" and the direction of prescriptions referred to in previous correspondence) reinforces that position.

- 5.1.4 No information provided by the Applicant persuades the Appellant that their own assessment of patient groups is adequate.
- 5.1.5 The Appellant notes their comments about a patient group composed of vulnerable patients and agree that to strictly comply with the Equality Act, they should be described as being patients with Protected Characteristics. The fact remains that this patient group includes the elderly, patients with a disability, and young children, especially where their condition affects their ability to negotiate road crossings and so this group does deserve due consideration. Notwithstanding the presence of a pedestrian crossing, those living to the west of Huddersfield Road would in future need to cross it and their impaired mobility should be recognised.
- 5.1.6 The Appellant thanks the Applicant for providing the images and for completeness, include 2 more taken from Google Maps which it hopes will provide further clarification to assist NHS Resolution in its consideration. The first image shows Huddersfield Road and the Applicant's pharmacy at the current location with the car park at the rear. It can be seen that the ramp which the applicant says "inhibits access to those who are not able bodied" is to some extent, compensated for by the decline in Huddersfield Road.
- 5.1.7 The high-profile nature of the current location is immediately apparent to anyone travelling along Huddersfield Road, especially due to the signage on the approaching end of the building, which is not shown on the front elevation image provided by the applicant.
- 5.1.8 Huddersfield Road showing ISAA Healthcare Ltd (Elland Pharmacy) [Image provided]
- 5.1.9 The second image shows Bankfield Surgery with the trees and shrubs referred to by NHS England and a slight reduction in elevation from Huddersfield Road. From the outset, the Appellant has not suggested that the distance is anything other than short or that the general terrain would be a problem to able bodied patients. The objection, in consideration of the physical aspects, was restricted to patients with impaired mobility for whom, the Appellant believes crossing Huddersfield Road would be a greater problem.
- 5.1.10 Bankfield Surgery from Huddersfield Road [Image provided]
- 5.1.11 This Applicant has a contractual obligation to provide pharmaceutical services for 100 hours per week and inevitably a not inconsiderable of that is in the extended hours period. Patients availing themselves of services at those times should certainly constitute a patient group and consideration of that group cannot be overlooked.
- 5.1.12 The Applicant says that the legal test is one of accessibility rather than prominence which the Appellant agrees with. However, the Appellant contends that a reduction in visual prominence would lead to a decrease in awareness of the existence of the pharmacy, especially in the out of hours period, and a lack of awareness that the pharmacy exists is itself a barrier to access. This would be the case if the pharmacy moves from its high-profile roadside location to a position set back from the highway, which is also partly obscured by trees and hedging etc. The Appellant recognises that this is a subjective matter on which NHS Resolution will need to make a determination and respectfully suggest that all of the images now provided from respective parties will assist them in doing so.
- 5.1.13 In relation to car parking facilities, the Applicant has now confirmed that there are 2 disabled spaces and 9 other spaces plus an additional car park to the side of the surgery premises, although no details are provided of that. The

Appellant recognises that it will be necessary to determine whether this is adequate for a GP practice with over 10,000 registered patients plus the practice staff and whether patients travelling by car who are not registered with Bankfield Surgery but wish to access the pharmacy at the proposed site, will have difficulty in doing so.

- 5.1.14 The Applicant's representative attempts to dispel the Appellant's concerns about intimidation and mental barriers to access, largely by reference to the Appellant's pharmacy at Lundwood. This is a totally inappropriate approach which is apparently also made in ignorance of the prevailing circumstances affecting that pharmacy and so should be completely rejected.
- 5.1.15 Firstly, Lundwood Medical Centre houses only one GP practice and that practice has two branch surgeries from where prescriptions are also issued, in locations immediately served by community pharmacies. For statistical purposes, all of the prescriptions generated by this practice are recorded as being from Lundwood, but in reality, they are not all issued there and that has a profound effect on the capture figures that are misleadingly provided by the Applicant. By contrast, Bankfield Surgery has no comparable branch network and so their prescriptions are not issued from other surgery sites.
- 5.1.16 There are many reasons for statistical information of this type being unreliable. For example, the number of practices from which prescriptions are derived from may be increased by the number of care home patients and historical relocations from other sites where a few loyal clients may be retained as is the case in Lundwood.
- 5.1.17 Secondly, the Applicant's representative claims that there are two practices at Lundwood Medical Centre, but that is not so. There is another smaller practice (BHF Lundwood) which operates from a site at Priory Campus which, on maps, appears to be adjacent to the medical centre. However, there is no physical connection with Lundwood Medical Centre and the only access involves a journey of 0.2 miles (quoted from Google) via the main road. It is therefore hardly surprising that prescription capture is not greater than that quoted.
- 5.1.18 Google map describing the required walking routed between BHF Lundwood and Lo's Pharmacy, Lundwood [Image provided]
- 5.1.19 The Appellant denies that the figure it has provided for anticipated prescription capture following relocation was an attempt to mislead, but clearly the Applicant's representative's information about the Appellant's Lundwood pharmacy is wrong. It appears to the Appellant it was just an elaborate filibuster to distract from the real issues and trust that NHS Resolution will totally reject it.
- 5.1.20 The writer has many years of experience in the practice and management of community pharmacies from employment as a Superintendent and currently acting Managing Director and also from intensive involvement as an LPC member. In view of this, the Appellant maintains that the data it has provided reflects the true situation and the anticipated level of prescription capture by the Applicant from the co-owned doctors practice is realistic. The Appellant's research into why patients do or don't patronise a particular pharmacy indicates that mental barriers and intimidation are significant factors which should not be underestimated or overlooked.
- 5.1.21 For clarification, the Appellant would like to point out that it is not claiming that all of the dispensing transferred to the Applicant at the proposed location would be at the expense of the Appellant's pharmacy alone, but that because it is so reliant on dispensing prescriptions generated by Bankfield Surgery it would be severely and disproportionately affected. The closure of the Appellant's

pharmacy would leave the town centre retail area of Elland without a pharmacy.

5.1.22 Most of the other points raised by the Applicant have been addressed by the information provided above and so to avoid unnecessary repetition, will not be repeated. The same applies to the responses from NHS Primary Care and the LPC.

5.1.23 The Appellant trusts that NHS Resolution will deliberate on these matters and pay particular attention to the mental barriers to access in accordance with Mr Justice Langstaff's comments.

6 Consideration

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

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

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

6.4 The Committee noted that an incorrect postcode for the proposed premises had been quoted in the decision report, however NHS England had confirmed that the correct postcode (HX5 9BA) had been used on the covering decision letter. The Committee noted that an amended copy of the decision report with the correct postcode for the proposed premises had been circulated to parties on 23 February 2022.

6.5 The Committee noted that there are two surgeries on the map referred to as Bankfield Surgery. Bankfield Surgery at which the proposed premises is located is at point A on the map, and there is also a "Bankfield Surgery at Rosemount House" which is at point B on the map. The Committee agreed that when referring to Bankfield Surgery for the remainder of this determination it would in regard to the surgery at the proposed premises, at point A on the map.

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

6.7 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") from -

(i) the premises to which the application relates, or

(ii) adjacent premises; and

(b) the NHSCB is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).

- 6.8 The Committee noted that NHS England had stated that “Regulation 31 does not apply as there are no other pharmacies at the same or adjacent premises” and that this had not been disputed by other parties. On the information available, the Committee was satisfied that it was not required to refuse the application under the provisions of Regulation 31.
- 6.9 The Committee had regard to Regulation 24(1) which requires the following five conditions to be met:
- (a) *for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible;*
 - (b) *in the opinion of the NHSCB, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list—*
 - (i) *in any part of the area of HWB1, or*
 - (ii) *in a controlled locality of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate;*
 - (c) *the NHSCB is not of the opinion that granting the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB1;*
 - (d) *the services the applicant undertakes to provide at the new premises are the same as the services the applicant has been providing at the existing premises (whether or not, in the case of enhanced services, the NHSCB chooses to commission them); and*
 - (e) *the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow).*
- 6.10 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.10.1 confirm NHS England's decision;
 - 6.10.2 quash NHS England's decision and redetermine the application;
 - 6.10.3 quash NHS England's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.
- 6.11 The Committee considered the position in relation to each condition.
- 6.12 In relation to condition (a), the Committee considered the map submitted by NHS England which clearly show the locations of the existing pharmacies as well as the proposed site and medical practices within the area.
- 6.13 The Committee considered the information before it with regard to the patient groups who are accustomed to accessing pharmaceutical services at the existing premises. The Committee considers that it must seek to identify the patient groups who would potentially be affected by the relocation based upon the information provided by the parties. This information is most commonly going to be provided by the Applicant but others may also be able to contribute to the information on which the Committee will proceed to determination.

- 6.14 In this case, the Applicant has identified the patient groups as:
- 6.14.1 Patients accessing pharmaceutical services at the same time as accessing GP services
 - 6.14.1.1 Bankfield Surgery
 - 6.14.1.2 Stainland Road Medical Centre
 - 6.14.2 Patients who access pharmaceutical services other than after a visit to the GP surgery
 - 6.14.2.1 Patients living in the area and around existing pharmacy
- 6.15 The Committee noted that the Appellant is of the view that the Applicant has failed to identify all the relevant patient groups and suggests several more that it believes should be considered:
- 6.15.1 Vulnerable patients;
 - 6.15.2 Patients using pharmaceutical services in the extended hours period;
 - 6.15.3 Patients registered with other practices; and
 - 6.15.4 Substance misuse patients.
- 6.16 The Committee considered whether the information provided showed that there were patients accustomed to accessing pharmaceutical services at the existing premises for whom the new premises would be less accessible because of reasons related to a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation). The Committee identified that the relocation may impact patients with protected characteristics accustomed to accessing pharmaceutical services at the existing premises. Therefore in considering condition (a), the Committee took into account these patients and had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristic(s).
- 6.17 The Committee noted the Appellant's view that those patients accessing pharmaceutical services in the "extended hours" period should be a patient group in its own right as currently the pharmacy occupies a prominent position on the main Huddersfield Road, whereas if the relocation is granted, the prominence of the pharmacy will be far less obvious, particularly for those not registered with Bankfield Surgery. The Committee had regard to the Applicant's response that the pharmacy is extremely quiet outside surgery opening times. Further, that the presence of the pharmacy if the relocation is granted would be highlighted by external signage both on the premises and on the fence around the surgery to make it easily visible. The Committee was not persuaded that those accessing pharmaceutical services in the extended hours period constitutes a distinct patient group, rather it considered that those patients accessing the pharmacy outside the usual surgery opening times would be included in the group of patients who access pharmaceutical services other than after a visit to the GP surgery, living in the area and around the existing pharmacy.
- 6.18 The Committee noted the Appellant's view that although the Applicant dispenses a relatively low number of items from practices other than Bankfield Surgery and Stainland Road Medical Centre, collectively they should be recognised as a patient group in their own right. The Committee had regard to the Applicant's response that the largest of these other surgeries by way of dispensing volume is over 2 miles away and is also the nearest additional surgery in terms of distance. The Applicant further comments that no patient would walk to the pharmacy after attending one of these

surgeries. The Committee considered that patients of practices other than Bankfield Surgery and Stainland Road Medical Centre could reasonably be included in the group of patients who access pharmaceutical services other than after a visit to the GP surgery, living in the area and around the existing pharmacy.

- 6.19 The Committee concludes that the patient groups who are accustomed to accessing pharmaceutical services from the existing premises are those set-out below.

Patients accessing pharmaceutical services at the same time as accessing GP services from Bankfield Surgery

- 6.20 The Committee noted that the Applicant is proposing to move to premises located within Bankfield Surgery and patients would be accessing pharmaceutical services at the same time as accessing services from the surgery, as the proposed premises are within the same building as the surgery.

Patients accessing pharmaceutical services at the same time as accessing GP services from Stainland Road Medical Centre

- 6.21 The Committee noted from the map provided that Stainland Road Medical Centre is located to the west of Elland and is 1.2 miles from the current site according to the Applicant.

- 6.22 The Committee considered that this patient group will access the new premises on foot, by car or by public transport and it was necessary to consider the accessibility of the new premises in light of each method of transport for this patient group.

- 6.23 The Committee noted the Applicant's comment that it does not see patients who walk to the pharmacy from this practice, however a relocation would increase the journey time for a patient who chose to walk by 50 metres, approximately 1 minute. The Committee noted the Applicant's description of the route on foot from the existing to proposed premises (which would form the additional journey for this patient group) as straightforward, along pavements with dropped curbs, street lighting and a zebra crossing to aid crossing to the proposed premises. The Committee noted the Appellant's comments that Huddersfield Road is a busy main road and that there are dangers in crossing the road despite the existence of a crossing point, so that it constitutes a barrier to access in particular for those with a disability, the elderly and young children. The Committee noted that there was no further reasoning as to why patients, including those with a protected characteristic, would not be able to use the zebra crossing in order to cross the road.

- 6.24 For those accustomed to using public transport, the Committee noted the Applicant's comment that patients could use the same bus route, with the walk being slightly quicker at 2 minutes to the proposed premises as opposed to 3 minutes to the existing premises. The Committee noted that this has not been disputed.

- 6.25 For those who choose to travel by car, the Committee noted the Applicant states that the journey time would increase by less than 15 seconds and there would be improved access due to a larger car park located at the front of the proposed premises. The Committee noted the Appellant's view that the car park at the proposed premises was designed for patients attending the surgery and that the addition of patients accessing pharmaceutical services would add to the congestion in the car park. In response the Applicant comments that the current premises has a car park for 4 vehicles, whilst at the proposed premises there are 2 disabled spaces and a further 9 spaces available, albeit these are shared with patients of the surgery. The Committee was mindful that many of those parking there would be doing so for the purpose of accessing both the surgery and the pharmacy. The Committee also noted the Applicant refers to a further car park at the side of the surgery.

- 6.26 For all patients in this group, whether travelling on foot or by public or private transport, the Committee noted the Applicant's comment that whilst there is a steep ramped entrance to the existing premises, the proposed premises has flat and easy access. The Committee noted that this had not been disputed by the Appellant, other than to comment that the ramp to the existing premises is, to some extent, compensated for by the decline in Huddersfield Road.
- 6.27 The Committee noted that the Appellant had raised the matter of physical, mental and social barriers. The Applicant states that "*The current location has a very high visual profile and, in the eyes of the public, it was totally independent of the surgery. It is located on the side of the main road and has a large sign painted on the end of the building advertising the car park to the rear of the property. If the relocation is permitted, the visual impact to patients who are not registered with Bankfield Surgery will be reduced, which will impede access. This will apply to all of the patient groups listed above and constitutes a socio-physical barrier.*" The Committee noted the Applicant's comments that there would be a prominent large lighted pharmacy sign over the windows of the proposed premises which would be visible from the main/side roads. They state further that there would also be signage on the fence around the surgery to highlight the presence of the pharmacy, which would be easily visible to both walking and driving patients. The Committee also noted the Applicant's comment that there is one main entrance doorway into the surgery building which leads into a vestibule leading to two separate internal entrance doors, one to the proposed premises and one to the surgery.
- 6.28 The Committee noted the Appellant further states that "*It is well established within the pharmaceutical profession that when a pharmacy (with the possible exception of major multiples) is located inside surgery premises, patients often find it intimidating to enter surgery premises that they are not registered with, while others believe that the pharmacy is part of the GP practice and restricted to patients registered there. Patients in Elland will certainly consider that to be so in this case because the Appellant is aware from Companies House records that some of the GPs are shareholders and Directors of ISAA Healthcare Ltd and that the practice personnel are already referring to the pharmacy as being their 'own' pharmacy. The Appellant contends that the co-location of the pharmacy within the surgery complex coupled with comments about it being owned by the practice will establish a significant mental and social barrier to access for patients who are not registered with Bankfield Surgery.*"
- 6.29 Whilst the Committee accepted that there may be reluctance on the part of some patients to enter a pharmacy based within a surgery premises of which they are not a patient, it also accepted the Applicant's view that such pharmacies "*can and do dispense prescriptions from a variety of different surgeries*". In view of the intended signage for the proposed premises and the separate internal entrance as described by the Applicant, the Committee was of the view that the potential "physical, mental and social barriers" identified by the Appellant would not render the proposed premises significantly less accessible.

Patients who access pharmaceutical services other than after a visit to the above GP surgeries (living in the area and around existing pharmacy and including those who access pharmaceutical services in the extended hours period and after visiting other GP practices)

- 6.30 The Committee considered this patient group consisting of those living in the area, visiting the area to access amenities or work etc., accessing pharmaceutical services in the extended hours period and after visiting GP surgeries further afield. The Committee noted that patients in this group would be accessing the pharmacy from a variety of locations, both nearby and further afield.
- 6.31 For those who access pharmaceutical services on foot, the Committee noted that the maximum increase in the distance would be 50 metres, approximately 1 minute. The Committee had regard to its considerations regarding the potential additional journey for those on foot at 6.23 above.

- 6.32 For those who choose to travel by public transport, the Committee noted the Applicant's comment that the majority of patients would be able to alight at the same stops as both the current and proposed premises are served by the same bus routes.
- 6.33 For those travelling by private transport, the Committee had regard to its considerations at 6.25 above.
- 6.34 The Committee also had regard to its considerations at 6.27 to 6.29 above regarding "physical, mental and social barriers".

Substance misuse patients

- 6.35 The Committee noted that according to the Applicant the number of patients using the supervised consumption service varies, but currently it is five patients. The Applicant further states that substance misuse patients collect their prescriptions from a specialist clinic in Halifax, approximately 4 miles from the pharmacy.
- 6.36 The Committee had regard to its consideration of access by public and private transport at 6.24 and 6.25 above.

Overall assessment

- 6.37 The Committee took into account all of the above patient groups in reaching its decision in respect of condition (a).
- 6.38 In the circumstances, the Committee was satisfied that, for patient groups who are accustomed to accessing the present site, the proposed site is not significantly less accessible.
- 6.39 The Committee was therefore of the view that condition (a) is met.

Regulation 24(1)(b)

- 6.40 The Committee noted the decision of NHS England that "Regulation 24(1)(b) is satisfied". The Committee noted that this had been disputed by the Appellant, who has raised concerns that the relocation would constitute a significant change to the arrangements in place. The Appellant is of the view that the relocation of the Applicant's pharmacy to premises inside Bankfield Surgery, together with the fact that the doctors at the practice are directors of the Applicant's pharmacy, would result in patients thinking that they are obliged to use what they may perceive as the practice's own pharmacy and in turn this would "destroy patient choice". The Committee had regard to the dispensing figures provided by the Appellant at paragraphs 3.34, 3.36 and 3.43 and noted the Appellant's comment that the figures indicate that there has already been a reduction in the proportion of Bankfield Surgery items dispensed by itself and a corresponding increase for the Applicant. The Committee noted that the Appellant considers that following relocation the reduction in dispensing originating from Bankfield Surgery would continue to an extent that its pharmacy would become unviable and lead to its closure, depriving patients of a pharmacy located in the town centre.
- 6.41 The Committee accepted that a relocation of a pharmacy to a site co-located with a GP practice has the potential to affect the number of prescriptions prescribed by that GP practice that are received by pharmacies other than the co-located pharmacy. However, it had to consider whether the resulting change to the arrangements that are in place would be significant. The Committee noted that within the Regulations there was no definition of what "significant" meant in terms of the arrangements that are in place. The Committee had regard to the dispensing data and noted the Appellant's estimate of its potential loss of dispensing income. However the Committee was not persuaded that the figures provided supported the Appellant's forecasts to the extent

that it could be satisfied that granting the application would result in the Appellant's pharmacy becoming unviable.

- 6.42 On the information provided the Committee was of the opinion that the granting of the application would not result in a significant change to the arrangements in place for the provision of local pharmaceutical services or of pharmaceutical services in any part of the area of HWB1 or in a controlled locality of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate. The Committee concluded that condition (b) is met.

Regulation 24(1)(c)

- 6.43 The Committee noted the decision of NHS England in respect of condition (c) that the granting of the relocation would not lead to significant detriment to proper planning in respect of the pharmaceutical services in the area. The Committee noted that this had not been disputed by any party either on appeal or in subsequent representations. On the information provided the Committee was of the opinion that the granting of the application would not cause a significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of HWB1 and therefore concluded that condition (c) is met.

Regulation 24(1)(d)

- 6.44 The Committee noted that the applicant had given an undertaking, in their original application form, that the same services will be provided at the proposed site. On the information provided, the Committee determined that condition (d) is met.

Regulation 24(1)(e)

- 6.45 In relation to condition (e), the Committee noted the Applicant had confirmed in their application, and subsequent representations, that there will be no interruption to service provision. On the information provided the Committee determined that condition (e) is met.

Overall

- 6.46 Given the lack of reasoning within the decision letter, in particular with regard to Regulation 24(1)(a), the Committee determined that the decision of NHS England must be quashed.
- 6.47 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 NHS England) or whether it was preferable for the Committee to redetermine the application.
- 6.48 The Committee noted that representations on Regulation 24 had already been made by parties to NHS England, 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 NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 24.
- 6.49 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 Decision

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

- 7.2 The Committee quashes the decision of NHS England and redetermines the application.
- 7.3 The Committee has determined that conditions (a), (b), (c), (d) and (e) are satisfied.
- 7.4 The application is granted.

Case Manager
Primary Care Appeals