

National Appeal Panel

Constituted under

THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL SERVICES)
(SCOTLAND) REGULATIONS 2009 (AS AMENDED)
("THE REGULATIONS")

DECISION

of the

CHAIR

of

THE NATIONAL APPEAL PANEL

In the application relating to

7A Prestonhall Road,

Rosewall. EH24 9BE

Applicant: M Ameen ("the Applicant")

Appellants: 1. Roslin Healthcare Ltd; 2. L Rowland & Co (Retail) Ltd; 3. Bonnyrigg Healthcare Ltd; 4. M&D Green Group for D Shannan Stewart Ltd; and 5. Cromarty Healthcare Ltd. ("the Appellants")

Health Board: NHS Lothian ("the Board")

PPC Decision Issued: 21 October 2025

Panel case number: NAP 105 (2026)

Decision of the Chair of The National Appeal Panel

1. Background

- 1.1. This is an appeal against the decision of the Pharmacy Practices Committee (“the PPC”) of the Board dated 28 October 2025 in relation to the application of M Ameen (“the Applicant”).
- 1.2. The application was originally made on 21 February 2025. The application was considered at a meeting of the PPC on 28 October 2025. At that meeting the application was granted. That decision was communicated to the interested parties on 14 November 2025.
- 1.3. Five of out of the six interested parties lodged Appeals against the decision of the PPC on or before 5 December 2025.

2. Grounds of Appeal

- 2.1. Although each party has lodged different appeals with different grounds there is one ground that is common amongst them all (now Ground 1). Because that ground is determinative in this appeal I have decided to consider that ground in the first instance in terms of expediency. That said, I will note all the grounds advanced and comment on two of them for completeness.
- 2.2. Ground of Appeal 1. This ground relates to whether there has been a procedural defect in the way in which the PPC considered the application; in particular, the requirement in the Regulations for the applicant to demonstrate that the premises to which the application relates can be used as a pharmacy.
- 2.3. Ground of Appeal 2. This ground relates to whether an error of law occurred as a result of failing to properly apply the legal test of adequacy – including viability.

- 2.4. Ground of Appeal 3. This ground relates to whether there has been a failure by the Board to narrate facts or reasons for its decision and a failure to explain the application by the Board of these Regulations to those facts.
- 2.5. Ground of Appeal 4. This ground relates to whether there has been a failure by the Board to properly consider and define the neighbourhood to which the application relates.
- 2.6. Ground of Appeal 5. This ground relates to whether the PPC was quorate when it considered the application.

3. Legislative framework

Appeals

- 3.1. The Regulations provide, at paragraphs 5 (2A) & (2B) of Schedule 3, a limited right of appeal against a decision of the Board in the following circumstances:
 - 3.1.1. An error of Law by the Board in its application of the provisions of the Regulations;
 - 3.1.2. A procedural defect in the way the application has been considered by the Board;
 - 3.1.3. A failure by the Board to properly narrate the facts and reasons upon which their determination of the application was based; or
 - 3.1.4. A failure to explain the application by the Board of the provisions of these Regulations to those facts.

Consideration by the Chair

- 3.2. The Regulations provide, at paragraph 5 of Schedule 3, that as Chair I am required to consider the notice of appeal and:

- 3.2.1. To dismiss the appeal if I consider that they disclose no reasonable grounds or are otherwise frivolous or vexatious; or
- 3.2.2. Remit the decision back to the Board for reconsideration if I consider that any of the circumstances set out in points 3.1.2 to 3.1.4 have occurred or;
- 3.2.3. In any other case (point 3.1.1.), convene the National Appeal Panel to determine the appeal.

PPC: Legal test and determination of applications

- 3.3. The Regulations provide, at Regulation 5(10), the relevant test to be applied by the Board when considering an application to be on the Pharmaceutical list. That test, which has in its previous comparable iteration been the subject of judicial treatment is, put simply, whether the present services are inadequate and, if so, whether the application is necessary or desirable in order to secure adequate provision. If the answer is yes to both of these questions, the Board is to grant the application.
- 3.4. The Regulations provide, at paragraph 3(1) of Schedule 3, those matters that the Board shall have regard to in considering an application. These matters include current service provision, representations received by the Board, the Consultation Analysis Report (the “CAR”), the pharmaceutical care services plan (prepared by the Board for its area annually), the likely long term sustainability of the services to be provided by the applicant and any other relevant information available to the Board.

4. Consideration

- 4.1. Ground of Appeal 1. This ground relates to whether there has been a procedural defect in the way in which the PPC considered the application; in particular, the requirement in the Regulations for the applicant to demonstrate that the premises to which the application relates can be used as a pharmacy.

4.2. Regulation 5(2C)(a) provides the following in relation to the information to be included within the prescribed application form, Form A:

“(2C) An applicant's assessment in terms of Form A must include—

(a) a written statement from the person who may grant possession of the premises that (without prejudice to any negotiation in relation to any such grant) the premises may be used for the provision of pharmaceutical services.”

4.3. Form A makes provision in this regard by asking several tick box questions including: are the premises already constructed, already in possession (lease or ownership), failing which – written consent is to be provided by the person who may grant permission.

4.4. The purpose of this requirement is to establish from the outset that the property to which the application relates is capable of being used for the provision of pharmaceutical services. Paragraph (2C) goes on to provide for a number of other requirements for inclusion in Form A, all of which help to ensure that the application is not speculative in any way. Form A is signed by the applicant.

4.5. Paragraph (2B) provides that, subject to Paragraph (2E), an application is to be summarily refused by the Board unless the conditions mentioned above and provided for in paragraph (2C) are met. Paragraph (2E) allows an applicant a further 5 days to provide sufficient information if they had not already done so.

4.6. The position of all of the Appellants is, put one way or another, that the Applicant did not discharge this duty, that the condition was not met and the application should have been summarily refused. The Appellants say this for a number of reasons.

4.7. The documents in the pre-application and joint consultation phase referred to premises at 7 Prestonhall Road. This then changed to 7A Prestonhall Road by the time the application came to be considered by the Board. The former was already constructed, the latter not. The completed Form A stated however that the premises were constructed and the Applicant was in possession.

4.8. These ambiguities were raised during the meeting of the PPC. At paragraph 41.3.15 of the Minutes of the Meeting of the PPC dated 28 October 2025 the following is recorded:

“Land Purchase and Planning Permission

It was noted that the Applicant was unable to provide any evidence, other than verbal assurance, that the sale of the plot of land to him was assured, nor the planning permission would be certain.”

4.9. It follows that the relevant entries (premises being constructed and in possession of the applicant) on Form A were made in error. It is also the case that written consent by the person who may grant permission was not provided. As a result of this, the conditions mentioned in paragraph (2C) were not met. Paragraph (2E) was not relevant.

4.10. Some of appellants consider the Applicant has been disingenuous in this regard. I do not make any comment on that other than to say it would be a matter of serious concern if a regulated healthcare professional such as a pharmacist had indeed acted in such a manner.

4.11. This represents a procedural defect in terms of the Regulations at paragraph 5(2B)(a) of Schedule 3. Accordingly, as one of the circumstances mentioned in sub-paragraph (2B) have, in my opinion, occurred, I will remit this application back to the Board for reconsideration.

4.12. Remaining Grounds of Appeal. Given what is said in the foregoing paragraphs and Paragraph 5 (disposal) it is not necessary to address those other grounds of appeal being advanced. That being said, in relation to Grounds of Appeal 4 and 5 I think it helpful to make the following points.

4.13. In relation to Ground of Appeal 4, several of the Appellants have identified that there exists differing views on what “a neighbourhood for all purposes” means. This

question arises when the PPC considers an application and whether it agrees with the applicant's description of the Neighbourhood at hand. Although this is not a specific thing asked of the PCC it is inherent for it to reach a view as to what the neighbourhood is before applying the legal test as to adequacy in that neighbourhood (*Lloyds Pharmacy Ltd v NAP* 2004 SC 73).

- 4.14. The term "a neighbourhood for all purposes" arose in the case of *Boots the Chemist for Judicial Review of a decision of the National Appeal Panel* [1999] CSOH 231:

"I heard extensive submissions, particularly on behalf of Boots, about the meaning of the word "neighbourhood". This is not defined in the Regulations and must therefore be given the meaning which would normally be attributed to it as an ordinary word of the English language. As the word is ordinarily understood, it has connotations of vicinity or nearness. I was referred to a number of decisions of the English and Northern Irish courts relating to the corresponding provisions of the regulations in force in those jurisdictions..... These decisions appear to me to give support to the view that the word "neighbourhood" in regulation 5(10) of the 1995 Regulations means an area which is relatively near to the premises in question, which need not have any residents, and which can be regarded as a neighbourhood for all purposes. On this approach, a retail park may properly be regarded as a neighbourhood. "

- 4.15. My view on the language discussed is that a "neighbourhood for all purposes" does not mean a neighbourhood that provides access to the majority of one's daily needs or services. Rather it means in every relevant context considered, or for all purposes asked, it would be considered to be a neighbourhood. I say this because it ("for all purposes") is a commonly encountered legal phrase or term of art.

- 4.16. This view stands apart from what the PPC discussed when they said the following at paragraph 41.2.2. of the Minutes:

"The Committee acknowledged that Rosewell was not a neighbourhood for all purposes, as residents would regularly need to leave the village for many other services including

GPs and other healthcare services, supermarkets, gyms, secondary schools, and a post office.”.

- 4.17. With this in mind I would encourage all PPCs to take care or seek legal advice if minded to approach the consideration of the neighbourhood proposed in an application on this basis.
- 4.18. Ground of Appeal 5. This ground relates to whether the PPC was quorate when it considered the application. Paragraph 5 of Schedule 4 (quorum) provides that there must be a chairing member, a pharmacist from the pharmaceutical list, and one not from that list, and two lay members present. Failure to adhere to these requirements constitute a procedural defect in terms of paragraph 5(2B)(a) of Schedule 3. 5 members in total.
- 4.19. When considering the application it is clear from the Minutes of the Meeting of the PPC dated 28 October 2025 that the PPC was quorate. However, one can see how confusion might arise in this regard when one looks at paragraph 3 of Schedule 4 (membership) which provides that the PPC shall consist of 7 members.

5. Disposal

- 5.1. For the reasons set out above, I shall remit the decision back to the Board for reconsideration in respect of Ground of Appeal 1 (procedural defect).
- 5.2. I have not been required, therefore, to reach a view on those remaining grounds of appeal (2,3,4 and 5) but I have provided some comments on grounds 4 and 5.
- 5.3. When I remit an application back for reconsideration I am to give to the Board such advice as appears to me to be desirable with a view to remedying the defect or failure that has led to the decision to remit.

5.4. In these circumstances, given the defect is that application should have been summarily refused by the Board, it follows that their reconsideration and my advice in that regard is that this is what should now happen.

(sgd)

C W Nicholson WS

Chair

National Appeal Panel

12 February 2026