

# 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

1 SALTIRE SQUARE, EDINBURGH. EH5 1PR

**Applicant & Appellant:** Tick Pharmacy ("the Appellant")

**Health Board:** NHS Lothian ("the Board")

**PPC Decision Issued:** 6 May 2024

**Panel case number:** NAP 127 (2024)

## **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 which was issued on 6 May 2024 in relation to the application of Tick Pharmacy (“the Appellant”).
- 1.2. The application was originally made on 2 September 2022. The application was first considered at a meeting of the PPC on 23 February 2023. The PPC issued its decision to refuse the application on 10 March 2023.
- 1.3. An appeal was lodged against the decision of the PPC by the Appellant on 17 March 2023. I issued my decision allowing the Appeal, in part, on 16 April 2024 (NAP 114 (2023)).
- 1.4. The PPC reconsidered the application on 6 May 2024 and issued its decision thereafter. The Appellant has now appealed that second decision of the PPC and did so on 3 June 2024.

### **2. Grounds of Appeal**

- 2.1. I remitted the application back to the PPC for reconsideration in relation to what was then Ground of Appeal 3 and on the basis that, having reviewed the papers that were provided to me in relation to the appeal, it appeared that the Pharmaceutical Care Services Plan was not considered by the PPC. The PPC is required to have regard to that plan, and failure to do so constituted a procedural defect and a ground of appeal under and in terms of the Regulations.
- 2.2. The Appellant now advances two grounds of appeal in relation to the reconsideration decision.

- 2.3. Ground of Appeal 1. That the composition of the PPC was inquorate, as no pharmacy members were present. The requirements relating to the quorum of the PPC are set out in paragraph 5 of Schedule 4. Failure to adhere to these requirements would constitute a procedural defect in terms of paragraph 5(2B)(a) of Schedule 3 and I have approached this ground of appeal on this basis.
- 2.4. Ground of Appeal 2. That the PPC have not provided a reasoned decision as to why the Pharmaceutical Care Services Plan “did not point to any issues of inadequacy in the proposed neighbourhood”. Failure to provide reasons would constitute a procedural defect in terms of paragraph 5(2B)(b) of Schedule 3 and I have approached this ground of appeal on this basis.

### **3. Legislative framework**

#### *Appeals*

- 3.1. The Regulations provide, at paragraph 5(2B) of Schedule 3, a limited right of appeal against a decision of the Board. These are errors in law in terms of the application of the Regulations and are as follows:
- 3.1.1. A procedural defect in the way the application has been considered by the Board;
- 3.1.2. A failure by the Board to properly narrate the facts and reasons upon which their determination of the application was based; or
- 3.1.3. 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 is 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 3.1.1 to 3.1.3 have occurred or;

3.2.3. In any other case, 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 (“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 relates to whether the PPC was quorate in terms of paragraph 5 of Schedule 4 when reconsidering the application.

4.2. It is clear from the Minutes of the Meeting of the PPC dated 6 May 2024 that it was not. This is on the basis that no pharmacist members were present. At least two are required to be present to be quorate, one from a pharmaceutical list and one not.

Failure to adhere to these requirements constitute a procedural defect in terms of paragraph 5(2B)(a) of Schedule 3 and I will therefore uphold this ground of appeal.

- 4.3. Ground of Appeal 2. This relates to whether the PPC have provided a reasoned decision as to why the Pharmaceutical Care Services Plan “did not point to any issues of inadequacy in the proposed neighbourhood”.
- 4.4. As mentioned above, failure to provide reasons would constitute a procedural defect in terms of paragraph 5(2B)(b) of Schedule 3. This requirement is, however, in relation to the overall determination of an application and not the consideration of each item of evidence or information before the PPC. As a specialist tribunal the PPC is best placed to determine the appropriate standard or weight to be applied to the evidence and information that is before it and reach its own conclusions, as it did so here.
- 4.5. It is also important to note that the application was remitted to the PPC to reconsider by expressly taking into account the Pharmaceutical Care Services Plan. The Minutes of the Meeting of the PPC dated 6 May 2024 clearly record that this took place and that the PPC concluded that if the plan had been discussed at the original meeting it would not have changed the decision of the Panel. Accordingly, I consider that the PPC has addressed this matter sufficiently at reconsideration.

## 5. Disposal

- 5.1. For the reasons set out above I consider that the appeal is successful in relation to Ground of Appeal 1 and I will, therefore, remit the application back to the Board for reconsideration on that basis, that is to say with a quorate PPC.

(sgd)

C W Nicholson WS

Chair

National Appeal Panel

26 June 2024