

# National Appeal Panel

Constituted under

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL SERVICES)  
(SCOTLAND) REGULATIONS 2009 (AS AMENDED)  
(the “Regulations”)**

**DECISION of the**

**CHAIR**

**THE NATIONAL APPEAL PANEL**

**In the application relating to**

**PITCAIRN PRACTICE 1, PITCAIRN DRIVE, BALMULLO KY16 0DZ**

**Applicant and 1<sup>st</sup> named Appellant : Mr Raymond Kelly**

**2<sup>nd</sup> named Appellant : Balmullo Community Council**

**Health Board : NHS Fife “ the Board”**

**PPC Decision issued : 12<sup>th</sup> July 2016**

**Panel case number : 60 (2016)**

## **Decision of the Chair of The National Appeal Panel**

### **1. Background**

- 1.1 Mr Raymond Kelly of 48 Church Street Ladybank ,Fife ( “ the Applicant “ or” first named Appellant” ) submitted an application to the Board to be included in the pharmaceutical list of the Board to provide pharmaceutical services from and in respect of premises at 1 Pitcairn Drive Balmullo KY16 0DZ (“the Premises” ) . The application was dated 29th January 2016.
- 1.2 The application was considered by the Board at a hearing of its Pharmacy Practices Committee ( “the PPC “) on 30<sup>th</sup> June 2016 and at which it was decided that as the current provision of services in the neighbourhood defined by the PPC were adequate it was neither necessary nor desirable for any further provision and accordingly rejected the application.

### **2 Grounds of Appeal**

2.1 The first named appellants grounds may be summarised as follows :

- 2.1.1 That the primary objector to the application , a Mr Timlin of Leuchars Pharmacy failed to attend the hearing as he was declared to be on holiday and in his stead was represented by a Mr Semple. He regarded this as a procedural defect.
- 2.1.2 That the Chair of the PPC refused to allow one member of Balmullo Community Council to address the PPC.
- 2.1.3 He was asked to provide a written copy of his presentation 24 hours prior to the hearing for circulation “to everyone” . He reluctantly did so but discovered that Mr Semple had not done so . He considered this to be an exercise in double standards by the Board.

2.2The grounds of appeal by the second named appellants may be summarised as follows:-

- 2.2.1 That the PPC was in procedural breach of the Regulations , specifically Schedule 3 paragraph 3 (3)(d) wherein it is stated that “ .....the Board must.....confirm that any person assisting or any person making representations at the hearing is not appearing in the capacity of counsel , solicitor or paid advocate”.
- 2.2.2 The remaining aspects of the second named appellants grounds were not relevant and were not otherwise germane to the issue narrated in 2.2.1.

### **3. Decision**

- 3.1 It is not minuted that the Chair of the PPC refused to allow one member of Balmullo Community Council to address the PPC . Even had he done so , the Community Council were in any event represented by Mr Andrew Falconer who was declared to be assisted by a Dr Peter Lomas . Mr Falconer did make representations . It would have been improper in terms of the Regulations to have another member of the Community Council address the PPC.

3.2 The provision of a written representation is not a requirement although certainly is helpful in these circumstances . Practically, I see no exception to written representations being provided to the Board on condition that all other parties do likewise . It is not clear from the first named appellants grounds whether members of the PPC only had sight of his representations or whether these were provided to Mr Semple also

3.3 The principal ground of appeal referred to by both parties was what they regard as a procedural defect in the Board's failure to observe the terms of paragraph 3(3) (d) of Schedule 3 of the Regulations . I agree with them . The Regulation is clear and prescriptive in that the Board **must** (my emphasis) confirm that any person representing an objector at the hearing is not a paid advocate . An 'advocate ' for the purposes of these Regulations is , in my view , one who pleads the case for another. It is a generic term as 'counsel' and 'solicitor' have already been excluded in sub paragraph (3) (d) . It was a matter for the Chair of the PPC to determine whether or not Mr Semple was a paid advocate but on the basis of the minutes which require to be regarded as a true record of the proceedings ,he has failed to do so .

3.4 As there has been a procedural defect as referred to I require to remit the matter back to the Board in terms of paragraph 5 (2B) (a) and instruct that it will require to constitute a fresh hearing without any members of the PPC who attended the hearing under appeal.

(sgd. JMD Graham)

JMD Graham

Interim Chair

7<sup>th</sup> November 2016