

**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**  
**41B Millgate Road, Hamilton ML3 8JU**

**Applicant and Appellant:** Messrs D Dryden and M Balmer

**Health Board:** NHS Lanarkshire

**Panel Case Number:** NAP64 (2016)

## **Decision of the Chairman of the National Appeal Panel**

### **1. Background**

- 1.1 This is an appeal against the decision of the Pharmacy Practices Committee (“the PPC”) of NHS Lanarkshire (“the Board”) which decision followed upon a hearing of the PPC held on 10 October 2016.
- 1.2 Messrs David Dryden and Michael Balmer (“the Applicants” or “the Appellants”) made application for inclusion in the pharmaceutical list of the Board to provide pharmaceutical services in respect of the premises at 41B Millgate Road, Hamilton, ML3 8JU (“the Premises”) said application dated 31 August 2016.
- 1.3 The PPC, under delegated powers of the Board, held the hearing referred to taking evidence from the Applicants and interested parties and considered supporting documentation, and following upon which it determined that the existing level of service provided by other contractors in the neighbourhood was adequate and that accordingly the application was rejected as being neither necessary nor desirable in order to secure adequate provision of pharmaceutical services within the neighbourhood in which the Premises were located.

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

- 2.1 The Appellants submitted a Letter of Appeal to the Board dated 15 November 2016 against the PPC’s determination on grounds which may be summarised as follows:
  - 2.1.1 That there had been a failure by the Board to properly narrate the facts or reasons upon which their determination of the application was based.
  - 2.1.2 That the Board had erred in law in its decision in that there was no evidence that the Board gave notice to the nominated community representative.
  - 2.1.3 That the Board had failed to notify the terms of the application to its Area Pharmaceutical and Medical Committees .
  - 2.1.4 There was no evidence that the above issues were covered and that the Regulations were accordingly not followed and as such constituted an error in law.
  - 2.1.5 The Regulations required the Board to publish a Pharmaceutical Care Services Plan (‘PCP’) and update it on an annual basis. The Board had not updated the PCP since 2011 and that accordingly their failure to do so was an error in law and that in the circumstances the PPC should not have been convened in the absence of such .

### **3. Discussion and Reasons for Decision**

- 3.1 In view of the comparatively narrow grounds of appeal it is unnecessary to rehearse the evidence of the parties. The Appellants have argued that there had been a failure by the Board to properly narrate the facts or reasons upon which they determined the application was based and pled in aid terms of Schedule 3, Paragraph 5 (2B). In addition they argued that there had been an error of law under the provisions of the Regulations (Paragraph 5(2A) The Appellants have also referred to Paragraph 5(6) where the National Appeal Panel shall be convened to consider matters in “any other case”. It is not certain what these words mean if not already encompassed in the Regulations referred to above whether in errors of procedure or law and no assistance or arguments have been offered in relation thereto by the Appellants.

- 3.2 In terms of the National Health Service (Scotland) Act 1978 and the Regulations, an application for inclusion in the pharmaceutical list to provide pharmaceutical services in respect of premises shall be granted by the Board after procedures set out in Schedule 3 of the Regulations are followed if the Board is satisfied that it is necessary or desirable to grant an application in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included on the list of the services specified in the application. The Board has to be satisfied that such provision is necessary or desirable in order to secure adequate provision in the neighbourhood (Regulation 5(10)). In this connection, the Board must have regard to the pharmaceutical services already provided in the neighbourhood and any information available to the PPC which in its opinion is relevant to the consideration of the application, the Consultation Analysis Report, the PCP and the likely long-term sustainability of the services to be provided.
- 3.3 As detailed above the grounds of appeal are limited to areas where the PPC has erred in law in its application of the provisions of the Regulations, if there has been a procedural defect in the way it has been considered, that there has been a failure by the PPC to narrate the facts or reasons from which their determination on the application has been based or that there has been a failure to explain the application by the PPC of the provisions for Regulations to those facts. Has the PPC exercised its judgement fairly and has it given adequate reasons for it? Is the decision intelligible and is it adequate? Is there any doubt as to why it has come to that particular decision? Has it erred in law or procedure ? The latter points are the areas which require attention in this appeal .
- 3.4 In terms of Schedule 3, Paragraph 1(1) there is an obligation upon the Board that upon receipt of any application to which Regulation 5(10) applies it shall give written notice of the application to *inter alia* the Area Pharmaceutical Committee, the Area Medical Committee and any nominated community representative that covers the neighbourhood within which the Applicant intends to provide pharmaceutical services, or any part of it. In terms of Schedule 3, Paragraph 3(1)(f) it is provided that in considering the application the Board shall have regard to *inter alia* the PCP.
- 3.5 In turning to the issues raised by the Appellants and in particular their averments that the Board has breached paragraph 5(2A) and 5(2B) and, presumably, sub paragraph 5(6) of Schedule 3 referred to they have argued that the Board has failed to give written notice of the application within ten working days of it being made to any nominated community representative that covers the neighbourhood within which the Applicant intends to provide pharmaceutical services and that any person so notified may within 30 days from the date upon which the notification was sent make written representations about the application to the Board. The Appellants argued that there was no evidence that the Board gave notice to a nominated community representative informing them that they could make written representations. With respect, that averment would appear to be incorrect standing the terms of the letter issued by the Health Board dated 1 September 2016 to Mr James Young, secretary of Hillhouse Community Council and which appears on page 154 of the appeal papers.
- 3.6 The Board are noted to have written to each of the Area Pharmaceutical Committee and the Area Medical Committee, both dated 1 September 2016) and reference is made to Page 151 of the file referred to. There is no obligation upon the Board to do anything other than give written notice of the application to these committees and that the Regulations do not require them to secure a response from them were they able to do so.
- 3.7 In terms of Regulation 15 the Board shall make available for inspection in its offices copies of its PCP and there is a requirement on the Board through its PPC to have regard to it in considering the application (Schedule 3, Paragraph 3(f)). Insofar as the PPC is concerned it can only have regard to the existing PCP. That this plan has not been updated since 2011 is irrelevant for the purposes of the application; it is a public document and the PPC could give such weight to it as it considered appropriate standing the date of its publication. The PPC had sufficient evidence including it and otherwise to discharge its duties in determining the application under Regulation 5(10).
- 3.8 All other arguments advanced by the Appellants lack sufficient specification upon which any

conclusion may be found in their favour

**4. Conclusion**

- 4.1 For the reasons set out above I conclude that the Letter of Appeal submitted by the Appellants disclose no reasonable grounds and accordingly dismiss the Appeal in terms of Paragraph 5(5)(a)(i) of Schedule 3 of the Regulations. In the circumstances, Paragraphs 5(2A) , 5(2B) and 5(6) are not engaged.

(Sgd. J M D Graham)

**J Michael D Graham**  
**Interim Chairman**  
**National Appeal Panel**  
**20 February 2017**