

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
Unit 1A, Moray Way North, Dalgety Bay KY11 9NH

Applicants and Appellants:	Dalgety Healthcare Limited
Health Board:	NHS Fife
PPC Decision Issued:	25 January 2017
Panel Case Number:	NAP67 (2017)

Decision of the Chair of the National Appeal Panel

1. Background

- 1.1 Dalgety Healthcare Limited c/o 23 Crow Road, Glasgow G11 7RT (“the Applicants” or “the Appellants”) submitted an application to NHS Fife (“the Board”) to be included in the Pharmaceutical List of the Board to provide pharmaceutical services from and in respect of the premises at Unit 1A, Moray Way North, Dalgety Bay, KY11 9MH (“the Premises”). The application was dated 1 August 2016.
- 1.2 The application was considered by the Board at a hearing of its Pharmacy Practices Committee (“the PPC”) on 16 January 2017 at the conclusion of which it was decided that as the current provision of services in the neighbourhood defined by the PPC was adequate it was neither necessary nor desirable for any further provision and accordingly rejected the application.

2. Grounds of Appeal

- 2.1 The Appellants’ grounds of appeal may be summarised as follows:-

- 2.1.1 One of the members of the Fife Area Pharmacy Pharmaceutical Committee (‘the APC’) ,when it held its meeting on 29th August 2016, was a Mrs C Berrtolaccini representing Well Pharmacy in Dunfermline. Well had subsequently submitted a note of objection to the Applicants’ application by letter to the Board on 9 September 2016. The Chair of the APC had sought an assurance from those attending the meeting whether they had any declarations of interest to declare. Whilst some members had and left the meeting Mrs Berrtolaccini did not. The Appellants’ aver that her remaining at meeting was an obvious and undeniable conflict of interest when the APC considered the application.

- 2.1.2 That whilst the Board may appoint a contractor and non contractor pharmacist from its area list there is a conflict of interest in the appointment of a contractor pharmacist where there may be a potential financial impact on that pharmacist dependent upon the outcome. In particular, the Appellants’ aver that Mr Brian Timlinin representing the APC as contractor pharmacist he ought to have been considered an interested party and left the room at the same time as the Applicant and other interested parties. His contribution to the PPC’s discussions was, according to the Appellants, prejudicial to the application. **[The Appellants subsequently withdrew this ground of appeal by communication dated 9th May 2017 addressed to the Board]**

3. Discussion and Reasons for Decision

At the date of the APC meeting of 29th August Well Pharmacy had not lodged any objection to the application and , accordingly , there was no breach of any protocol in its representative absencing herself from discussions . Be that as it may ,generally, on the question of bias and conflict of interest, the leading authority of *Porter v MacGill* and *Another* [2002] 2 AC 357 states that the standard of bias is to be assessed against the fair minded and informed observer. The test is whether there is a *real possibility* of bias. This is has been refined in subsequent decisions. Bias tends to occur when a person exercising a judicial function has a particular interest in the outcome of the proceedings. A PPC may be regarded as exercising a quasi-judicial function. This does not apply, however, to the APC which is not exercising any judicial function. The minutes of the APC meeting are one of many adminicles of evidence to be considered by the PPC. It is not unusual, in my experience that the APC generally opposes a new application. Accordingly, this ground of appeal falls.

4. Conclusion

- 4.1 For the reasons set out above I conclude that the ground of appeal as contained in the Appellants' letter dated 8 February 2017 discloses no reasonable grounds and accordingly dismiss the Appeal in terms of 5(5)(a)(i) of Schedule 3 of the Regulations. In the circumstances, Paragraphs 5(2A) and 5(2B) are not engaged.

(Sgd. J M D Graham)

J Michael D Graham
Interim Chair
National Appeal Panel
10 May 2017