

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

25 Main Street, Mid Calder, Livingston
West Lothian, EH53 0AS

Applicant:	David Stevenson
Appellants:	The Red Band Chemical Company Ltd t/a Lindsay & Gilmore Pharmacy
Health Board:	NHS Lothian
Date of Hearing	15 th May 2018
PPC Decision Issued:	30 th August 2018
Panel Case Number:	NAP80 (2018)

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 NHS Lothian (“the Board”) which was issued 30th August 2018.
- 1.2. David Stevenson (the “Applicant”) made application for inclusion in the Pharmaceutical List of the Board to provide pharmaceutical services in respect of the premises at 25 Main Street, Mid Calder, EH53 0AS (“the Premises”); said application was dated 31st March 2016.
- 1.3. The PPC under delegated powers of the Board held a hearing on 17th October 2017 determining that the Application for the provision of pharmaceutical services at the Premises was desirable and, accordingly, granted the Application.
- 1.4. The Red Band Chemical Company Limited t/a Lindsay & Gilmore (“the Appellants”) had submitted a Letter of Appeal against the PPC’s decision dated 10th November 2017.
- 1.5. Following upon that Letter of Appeal, I issued a Decision dated 13th February 2018 instructing that the PPC reconvene and consider both the PCP and Consultation Analysis Report (“CAR”) and other issues referred to in my Decision. Specifically, I instructed the PPC to take note of my comments at paragraph 4.7 of my Decision and to set out a summary of the CAR and how it was taken into account in arriving at its decision after which they would be required to issue the amended Decision to all parties.
- 1.6. Following upon my Decision, the PPC reconvened on 15th May 2018 and thereafter reissued its (unsigned) “Note of Discussion” incorporating its amended Decision on 30th August 2018.

2. SUMMARY OF GROUNDS OF APPEAL

- 2.1. The Appellants have taken issue with the amended Decision of the PPC, averring that it fails to fulfil the requirements of the Regulations, in that the PPC have failed to produce a summary of the CAR.

3. DISCUSSION

- 3.1. Schedule 3, paragraph 3(1) of the Regulations states that the Board shall have regard to various matters itemised including the Consultation Analysis Report submitted in accordance with the Regulations. Schedule 3, paragraph 3(6)(a) and (b) states that the PPC’s determination *must* include a *summary of the CAR* and an *explanation of how the Consultation Analysis Report was taken into account in arriving at the decision with regard to the tests under Regulation 5(10)* (my emphases). Regulation 5(10) states that an Application shall be granted by the Board only if it is satisfied that the provision of pharmaceutical services at the premises named in the Application is necessary or desirable in order to secure adequate provision of pharmaceutical services in the Neighbourhood.
- 3.2. The PPC’s decision is incorporated in 6 lines of its Note of Discussion and Decision. The PPC is noted as having reviewed the CAR and noted the evidence of the Community Councillor of how well received the Consultation had been and had referred to the response rate of 1.5% based on a population of 19,941 and concluded that it indicated that the public were in favour of the pharmacy. Regrettably, this does not accord with the requirements of Schedule 3, paragraph 3(6). As stated the PPC is required to “*set out a summary of the Consultation Analysis Report*”.

What has been provided is by no means a summary. The PPC is also required to explain as to how the CAR was taken into account at arriving at the decision. What has been provided is an insufficient explanation. The CAR is by no means determinative . It is only one adminicle of evidence amongst the many which were presented at the original hearing.

- 3.3. For guidance, it is suggested that the PPC refer to a number of aspects of the CAR and whyit found these to be persuasive in arriving at its decision, and set out such conclusions as can be drawn from the CAR and what weight, if any, they attached to it, and the reasons why it did or did not attach any weight to it. For example it states that the response of the public contained in the CAR was such that it indicated that the public were in favour of the grant of the application . Could this be developed further given the comparatively small percentage response rate ? Were there responses in the CAR that the PPC found persuasive ? If so , these should be articulated to underscore why the PPC took these into account in arriving at its Decision.
- 3.4. There are aspects to this Appeal which I consider to be disturbing. The original application was submitted in March 2016. I issued my original Decision in February 2018. The reconvened Hearing did not take place until May 2018 and the decision was not issued until 30th August 2018. These delays are regrettably inexplicable.

4. DECISION

- 4.1. In all the circumstances, the Board is requested to empanel the PPC as urgently as possible in order to address the issue of the CAR referred to above and to issue a further amended Decision

(sgd) J Michael D Graham
Interim Chair
29 November 2018