

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 3, 30 Wisley Place, Countesswells.

Aberdeen. AB15 8NF

Applicant: J Fowlie, JMF Healthcare ("the Applicant")

Appellants: 1. KDP (Aberdeen) Ltd for Dickies Pharmacy, Kingswells; 2. Rowlands Pharmacy ("the Appellants")

Health Board: NHS Grampian ("the Board")

PPC Decision Issued: 15 July 2026

Panel case number: NAP 114 (2026)

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 dated 15 July 2026 in relation to the application of J Fowlie, JMF Healthcare (“the Applicant”).
- 1.2. The application was originally made on 22 May 2026. The application was considered at a meeting of the PPC on 29 June 2026. At that meeting the application was granted. That decision was finalised and communicated to the interested parties on 15 July 2026.
- 1.3. The Appellants each lodged an Appeal against the decision of the PPC on or before 3 August 2026.

2. Grounds of Appeal

- 2.1. The First Appellant, KDP (Aberdeen) Ltd for Dickies Pharmacy, Kingswells, has submitted an Appeal which contains 8 Grounds of Appeal. I have reviewed each ground to assess whether it is a Ground of Appeal permitted in terms of the Regulations. The grounds being advanced are as follows:
 - 2.1.1. The Decision is based on a Fatal Error of Fact and is Un-Executable.
 - 2.1.2. Direct Breach of Statutory Notice Regulations Prejudicing the Entire Panel.
 - 2.1.3. Error in Law Regarding the Evaluation of Absent Parties.
 - 2.1.4. Severe Procedural Irregularity, Pre and Post-Hearing Vetting, and Complete Omission of Distributed Evidence from the Final Written Report Record (Ultra Vires), Interference during the appeal period.
 - 2.1.5. Fatal Error in Law: Omission of the Pharmaceutical Needs Assessment (PNA) and Contradiction of Recorded Demographics.

2.1.6. Procedural Misdirection on Evidence, Secondary Suppression of Data, and GphC/MEP Constraints.

2.1.7. Intentional Erasure of Material Evidence and Admissions from the Official Record.

2.1.8. Severe Institutional Bias, Regulatory Capture, and Selective Transcription.

2.2. These Grounds of Appeal are remarkable for a number of reasons. They are not, for the most part, advanced with reference to those Grounds of Appeal permitted in terms of the Regulations and the language used suggests that the Meeting of the PPC which took place on 29 June 2026 was itself remarkable for all the wrong reasons.

2.3. The Grounds also have the following introduction: “This appeal is submitted on the grounds of systematic statutory breaches, severe administrative irregularities, erasure of material planning evidence from the official report record, discriminatory handling of presentation facilities, active procedural misdirection by a Board official, complete failure to assess the statutory baseline data against the committee’s own recorded demographics, asymmetric disclosure of documents, institutional conflict of interest, market manipulation, and a profound violation of natural justice.”

2.4. This proposition is difficult to reconcile when one reads the Minutes of the Meeting of the PPC dated 29 June 2026 (“the Minutes”), the nature of proceeding being civil throughout, and the following text which followed the “summing up” part of proceedings:

“The Chair thanks everyone for their inputs today and asks the applicant and interested parties in attendance if they had received a full and fair hearing. They all agreed verbally that they had.”

2.5. In reviewing these Grounds and with reference to the “Remedy Sought” part of the First Appellant’s Notice of Appeal (those remedies sought being incompetent for me to grant) several more identifiable complaints emerge. These are as follows:

- 2.5.1. The First Appellant's belief that the premises to be used is actually Unit 2 and not Unit 3.
- 2.5.2. The First Appellant's view that the statutory notice periods provided for in the Regulation were not adhered to.
- 2.5.3. Procedural irregularities relating to the way in which the PPC was supported by the Clerk.
- 2.5.4. Procedural irregularities relating to matters of fairness.
- 2.6. I have decided to consider the complaints on this basis: that is to say that they can, in part, be read as Grounds of Appeal permitted in terms of the Regulations. That being said, given the manner in which the appeal has been advanced, it was also open to me to dismiss the First Appellant's Appeal in its entirety as frivolous or vexatious; but I have chosen not to do so for completeness.
- 2.7. The Second Appellant's Notice of Appeal refers to each of those grounds permitted in terms of the Regulations. The first relates to the duty to give reasons, the second to the factual basis on which the decision has been reached (and whether this has properly been expressed), the third to whether there has been a procedural defect or defects in the way the application has been considered by the Board, and the fourth to whether the legal test has been properly applied.
- 2.8. The second ground has a number of limbs including whether there was excessive reliance placed upon the Consultation Analysis Report ("the CAR"), inadequate consideration of existing pharmaceutical services and, with reference to a previous decision, what material changes have occurred since that application was refused. This links to the fourth ground (legal test) – and whether inadequacy has been established or simply that a new pharmacy would represent an improvement in terms of convenience.
- 2.9. The Second Appellant's second Ground of Appeal includes some of the procedural irregularities advanced by the First Appellant, so I have decided to consider these together in the interest of expediency. The Second Appellant's third Ground of Appeal

includes procedural matters of fairness advanced by the First Appellant so I have decided to consider these together in the interest of expediency.

- 2.10. In the papers provided to me there was an additional note which responds to the notices of appeal. The note is entitled “Appeal Response Notes”. It is not uncommon in a judicial process for the judge or body being appealed to prepare a note for the tier above them considering any appeal by way of assistance. The note is helpful and I simply mention its existence for completeness as something that was before me.

3. Legislative framework

Appeals

- 3.1. The Regulations provide, at paragraphs 5 (2A) & (2B) of Schedule 3, a limited right of appeal against a decision of the Board in the following circumstances:

3.1.1. An error of Law by the Board in its application of the provisions of the Regulations;

3.1.2. A procedural defect in the way the application has been considered by the Board;

3.1.3. A failure by the Board to properly narrate the facts and reasons upon which their determination of the application was based; or

3.1.4. 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 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 3.1.2 to 3.1.4 have occurred or;

3.2.3. In any other case (point 3.1.1.), 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 (the “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 the First Appellant’s belief that the premises to be used is actually Unit 2 and not Unit 3.

4.2. The premises to which the application relates are clearly Unit 3. This is also the premises referred to in the CAR and in the documents provided to me there is a copy

of the relevant lease. It is clear therefore that the requirements in the Regulations relating to the premises - namely that they are properly identified and available for use as a pharmacy should the application be granted - have been adhered to. Beyond that the First Appellant's beliefs to the contrary do not constitute a permitted ground and are not, in my view, supported by any sort of evidence. This ground of appeal is therefore dismissed on the basis that it is frivolous or vexatious.

- 4.3. Ground of Appeal 2. This relates to the First Appellant's view that the notice requirements in the Regulations were not adhered to.
- 4.4. The First Appellant submits that they were only notified of the date of the hearing (29 June 2026) on 23 June 2026. However, in the papers provided to me and the Minutes , it is confirmed that the date of the hearing was provided to all interested parties on 25 May 2026. This ground of appeal is therefore dismissed on the basis that it is frivolous or vexatious.
- 4.5. Ground of Appeal 3. This relates to numerous complaints advanced by the First Appellant with reference to the way in which the PPC was supported by the Clerk.
- 4.6. The First Appellant is critical of the Clerk. This includes numerous claims regarding what information was considered by the PPC and how that was recorded in the Minutes . These are all serious claims to make generally and to be levelled at one NHS official in particular.
- 4.7. Having reviewed the Minutes and papers provided to me, two things are clear. The first is that the First Appellant is mistaken as to the role of the Clerk. It is for the PPC, under the leadership of the Chair, to consider the information provided to it and then to determine the appropriate standard or weight to be applied to that information. The Clerk facilitates this process, but does not control it or the resulting reasoned decision which is, again, for the PPC, under the leadership of the Chair, to arrive at. The second is that the Minutes demonstrate that the Chair facilitated the application to be made and those interested parties had, quite properly and fairly, a right to reply.

- 4.8. This ground of appeal is therefore dismissed on the basis that it is frivolous or vexatious. I also take this opportunity to say, in my view, that it was regrettable that the First Appellant advanced these grounds with particular reference to the performance of the Clerk and another application the same Clerk was involved in (*Berryden*), which the First Appellant describes as “landmark” and “precedent” notwithstanding that it is an unreported case.
- 4.9. I will address the issue of bias in the next ground and the remaining matters of fairness in Ground of Appeal 7.
- 4.10. Ground of Appeal 4. This relates to the complaint advanced by the First Appellant regarding the Applicant having extensively served on PPCs in NHS Grampian and therefore knowing the committee members and staff – the result being apparent bias as to the outcome of the application.
- 4.11. Failure to follow the Regulations in terms of those provisions that safeguard against apparent bias or conflict of interest would represent a procedural defect in terms of the Regulations (paragraph 5 (2B) (a) of Schedule 3). I have therefore approached this ground of appeal on that basis.
- 4.12. The Regulations make provision for the avoidance of conflict of interests and apparent bias in two key places. The first is in relation to the PPC hearing itself, namely, that those participating declare any interests at the outset (paragraph 4 of Schedule 4). The second is in relation to those PPC members who are entitled to vote and those that are not (paragraph 6 of Schedule 4).
- 4.13. The first safeguard is self-explanatory and the second safeguard recognises or distinguishes between those providing professional assessments or technical input to a decision maker but who are not involved in taking the decision itself. In these proceedings such provision is made in recognition that members of the pharmaceutical community in Scotland will come into contact with one another from time to time in terms of competition and their regulation.

- 4.14. In this situation, the Applicant is said to be a regular pharmacy member on PPCs in NHS Grampian as described above. This is, in my view, a step removed from the second safeguard mentioned above as any previous processes are squarely separate from this one. Indeed, the suggestion that a PPC avails itself of the expertise of a pharmacist within the relevant health board area - as envisaged by the Regulations - but said same pharmacist is then prohibited from being an applicant in a separate process is, in my view, not sustainable.
- 4.15. I do not agree with the suggestion that an independent bystander “would immediately find a real possibility of pre-determination and apparent bias”. A familiarity with people, forums and processes does not make one an “institutional insider.” Rather, it is consistent with the reason or reasons for that person being there – just like a part-time judicial office holder sitting in a Court of Tribunal with which they are familiar.
- 4.16. In my view this Ground of Appeal is not a reasonable Ground of Appeal in terms of the Regulations and is therefore dismissed.
- 4.17. Ground of Appeal 5. This ground relates to whether there has been a failure by the Board to narrate facts or reasons for its decision. Failure by the Board to properly narrate the facts and reasons upon which their determination of the application was based is a ground of appeal – paragraph 3(6)(c) read with paragraph 5(2B)(b) of Schedule 3.
- 4.18. Whether there has been a failure to provide sufficient reasons is usually considered with reference to the test set out in *Wordie Property Co Ltd v Secretary of State for Scotland* [1984] SLT 345, that test being whether an informed reader and the court is in no real and substantial doubt as to what the reasons for the decision were and what the material considerations which were taken into account in reaching it.
- 4.19. Another iteration of that test was discussed in *South Bucks District Council v Porter* (No.2) [2004] UKHL 33, in particular that “the reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand

why the matter was decided as it was and what conclusions were reached on the principal important controversial issues”.

- 4.20. The reasons for granting the application are contained in summary on the first pages of the Minutes, as well as at the end of the Minutes. Unfortunately, the Minutes are not in numbered paragraphs. The PPC concluded that the pharmaceutical services were inadequate due to barriers residents faced in accessing services – with those services being outside the neighbourhood at hand, including reduced public transport and relying on car ownership, the support expressed in the CAR, and that, generally, these went beyond issues of convenience.
- 4.21. Looking at the reasons given they are repetitive in places and one might, like the Second Appellant, be left wondering as to what material change has taken place since the last comparable application was refused. However, before the “Decision” part, which contains the summary repeated at the beginning of the Minutes, there is a discussion of reasons for the decision and this includes monthly prescription data which indicated only a small percentage of prescriptions originated from the neighbourhood, suggesting limited reliance on nearby local services. The PPC considered, in summary, that the interested parties’ assertions as to their performance were not particular to the neighbourhood and that transport problems had endured, and not improved, since the previous application. In my opinion, whilst the summary of reasons could have been more helpful, the reasons are sufficient overall.
- 4.22. This Ground of Appeal is not a reasonable Ground of Appeal in terms of the Regulations and is therefore dismissed.
- 4.23. Ground of Appeal 6. This ground relates to the factual basis on which the decision has been reached (and whether this has been expressed properly).
- 4.24. Whether there has been a failure to explain the application by the Board of the provision of these Regulations to those facts [the facts upon which the determination of the application was based] is a ground of appeal permitted in terms of paragraph 5 (2B) (c) of Schedule 3 of the Regulations.

- 4.25. The first issue advanced by the Appellants under this Ground of Appeal relates to the CAR and whether the PPC was entitled to rely upon that to the extent that it did.
- 4.26. The CAR is an important document in these proceedings, and failure to properly consider the CAR, as a matter of procedure is a ground of appeal in terms of the Regulations. This is because the reasons given must set out a summary of the CAR and how it was taken into account by the Board in arriving at its decision. In these proceedings a summary is provided and, crucially, why the CAR was accepted by the PPC.
- 4.27. In these circumstances I cannot see anything that would suggest there has been an error in fact, that is to say whether a fact or facts were arrived at in error and then relied upon when reaching a decision. The PPC is a specialist tribunal and as such is best placed to determine the appropriate standard or weight to be applied to the information and evidence that is before it in reaching a reasoned decision. In this situation they “attached significant weight” to the CAR and were entitled to do so.
- 4.28. The second issue being advanced under this Ground of Appeal relates to whether the existing ways in which residents access pharmaceutical services was properly taken into account. As mentioned above in relation to Ground of Appeal 5, the PPC considered that although these neighbouring pharmacies worked well, the data suggested they did not work well for the residents of the proposed neighbourhood. This was part of the basis on which inadequacy was thought to exist.
- 4.29. On this basis this Ground of Appeal is not a reasonable Ground of Appeal in terms of the Regulations and is therefore dismissed.
- 4.30. Ground of Appeal 7. This ground relates to whether there has been a procedural defect in relation to a number of matters. A procedural defect in the way the application has been considered by the Board is a ground of appeal permitted in terms paragraph 5 (2B)(a) of Schedule 3 of the Regulations.

- 4.31. This ground of appeal is advanced with reference to additional papers being allowed with only two working days' notice before the hearing, and the way in which the written representations received by non-attending interested parties were considered.
- 4.32. No provision is made in the Regulations regarding these sort of issues and whether, if evidenced, they could in turn support a permitted ground of appeal. That being said, issues regarding fairness generally are capable of being procedural defects in the way in which the application has been considered by the Board in terms of the Regulations (paragraph 5(2B)(a) of Schedule 3). Outwith specific procedural requirements as to how an application is to be determined in the Regulations, the conduct and overall fairness of the meeting falls to the Chair to regulate and safeguard.
- 4.33. Having reviewed the Minutes I cannot see that the matters advanced by the Appellants had a detrimental effect on the conduct of the meeting and its outcomes. It is matter for the Chair to consider documents being allowed or circulated late. Although not an optimal situation, I do not consider 48 hours' notice to be insufficient. Not allowing additional information or rescheduling the hearing on the other hand would not have been the preferred outcome.
- 4.34. In relation to the written representations of non-attending interested parties being read out to the PPC, I do not consider it to be inherently unfair that the Applicant was offered the opportunity to respond to what was said. Rather, the PPC were very clear that the information be considered as relevant but that it could be not clarified or tested through questioning – and the same went for the points raised by the Applicant in response. That is inherently a limitation to written evidence when compared to oral evidence and it stands, properly, to be considered as such – as was the case here. This would have been known by interested parties when doing so.
- 4.35. In my view this Ground of Appeal is not a reasonable Ground of Appeal in terms of the Regulations and is therefore dismissed.

- 4.36. Ground of Appeal 8. This ground relates to whether an error of law occurred as a result of failing to properly apply the adequacy (legal) test.
- 4.37. The legal test, as mentioned above, 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.
- 4.38. The relevant case law (*Lloyds Pharmacy Ltd v NAP* 2004 SC 73) has made it clear that the decision maker should view adequacy as a binary test. Either the pharmaceutical services available in a neighbourhood are adequate at the time of considering the application or they are not. The decision maker should not view adequacy as a matter of degree or on a spectrum. The ability to make improvements to, or some other possible configuration of, pharmaceutical services would feature on such a spectrum but neither automatically means that existing services are inadequate. Matters of convenience feature on this spectrum.
- 4.39. In these circumstances the PPC have concluded that the application should be granted and the reasons given are, in my view, sufficient. Those reasons disclose that the legal test was properly identified and applied in terms of a finding of inadequacy and then necessity in terms of granting the application. The PPC took care not to over rely on issues of convenience or improvements generally. This Ground of Appeal is not therefore a reasonable Ground of Appeal in terms of the Regulations and is therefore dismissed.

5. Disposal

- 5.1. For the reasons set out above I will dismiss the appeals as I consider that they disclose no reasonable grounds or are otherwise frivolous or vexatious.

(sgd)

C W Nicholson WS

Chair

National Appeal Panel

1 October 2026