

# **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**

**1-3 East King Street**

**Helensburgh. G84 7QQ**

**Applicant and Appellant:** M Jamil and D Frame ("the Appellants")

**Health Board:** NHS Highland ("the Board")

**PPC Decision Issued:** 16 April 2026

**Panel case number:** NAP 101 (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 31 March 2026 and issued on 16 April 2026 in relation to the application of M Jamil and D Frame (“the Appellants”).
- 1.2 The application was initiated in October 2024. The application was first considered at a meeting of the first PPC on 3 September 2025. That PPC issued its decision to refuse the application on 19 September 2025. An Appeal was lodged against the decision of the PPC by the Appellants on 8 October 2025.
- 1.3 In a decision dated 26 November 2025 I remitted the application back to the PPC for reconsideration. This was on the basis that grounds 2 and 3 disclosed a procedural defect in the way the application had been considered by the Board (PPC composition – procedural defect). Grounds of Appeal 1 and 4 were dismissed because I found that they disclosed no reasonable grounds of appeal.
- 1.4 When I remit an application back for reconsideration I am to give to the Board such advice as appears to me to be desirable with a view to remedying the defect or failure that has led to the decision to remit. In the circumstances I suggested reconsidering the application with a new and properly constituted PPC to that which considered the application originally.
- 1.5 The application was reconsidered by a new PPC over two days (open sessions on 26 February 2026 and 27 March 2026) with the decision being reached at the final (closed session) meeting on 31 March 2026. The PPC issued its decision to refuse the application on 16 April 2026. The Appellants now appeal that decision.

## **2. Grounds of Appeal**

- 2.1 The Appellants have lodged 10 grounds of appeal across four headings. Some of these grounds are advanced with reference to those Grounds of Appeal permitted in terms of the Regulations and some are not. I have, therefore, attempted to summarise the arguments being made, and consider whether they relate to any of the permitted grounds of appeal (see paragraph 3.1 below). These are then addressed at paragraph 4 (consideration) below.
- 2.2 The concluding summary of the notice of appeal provides the following: “the decision was reached following a procedurally defective process; the composition of the decision-making body changed during the course of the proceedings; and the board erred in law in its application of the Regulations. Taken together, these matters demonstrate that the decision was not the result of a process that satisfies the minimum standards of fairness and lawful decision-making”.
- 2.3 In the papers provided to me there was an additional note which responds to the notice of appeal. The note has been prepared on behalf of the Board, it carries the application name and is entitled “Context”. The note goes on to say “this document provides some contextual information that would be helpful to understand from the Board’s point of view.”. 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 paragraph 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.

3.3 Where the Chair remits an application back to the Board for reconsideration, the Chair shall give to the Board such advice as appears to the Chair to be desirable with a view to remedying the defect or failure that has led to the decision to remit.

*PPC: Legal test and determination of applications*

3.4 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.

3.5 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. The Appellant advances this ground under the heading “Improper decision making process (procedural defect; error in law)”.

4.2 The Appellant refers to paragraph 5(2B)(a) of Schedule which provides a right of appeal where there has been a procedural defect in the way the application has been considered by the Board.

4.3 The ground of appeal is concerned with one of the lay members being present for part of the meeting, missing a latter part and then not returning for the voting part. The Appellant recognises that this situation is not catered for in the Regulations but advances the ground on the basis that “the Board remains bound by the fundamental principles of fairness and natural justice”.

4.4 In the Board’s context note (“the Board’s note”) this difficulty is narrated and this includes the Board’s consideration of the issue, including taking legal advice, and the decision arrived at by the Chair. Put simply, it was open to the Board on the basis of the advice it received (which I agree with) that it could either have the member “catch up” through viewing the recordings of proceedings and asking any questions before voting or proceeding without that lay member any further.

- 4.5 The Chair decided to proceed with the latter. This outcome and the reasons for it are recorded at paragraphs 40.2 and 40.3 of the Minutes of the Meeting of the PPC (“the Minutes of the Meeting”). Those paragraphs note that the lay member had to leave towards the end of the second day and did not therefore hear from all the interested parties or their summing up. On this basis it was decided that the lay member would not return for the “closed” voting session. It was noted, correctly, that the PCC remained quorate despite this.
- 4.6 Taking this all into account the decision taken by the PPC was one that was open to them and, in my view, the correct one. These sort of circumstances are exactly why composition requirements and quorum rules exist and differ. The Regulations were adhered to and on that basis I cannot agree with the Appellants’ view that the fundamental principles of fairness or natural justice were interfered with. It follows that this ground of appeal is dismissed as it discloses no reasonable grounds in terms of the Regulations.
- 4.7 Ground of Appeal 2. This ground is headed “Failure of the Chair to ensure fair conduct of the proceedings (procedural defect; error in law)”.
- 4.8 The Appellants refer to the Minutes of the Meeting and note, correctly, that responsibility for the overall fairness of the hearing rests with the Chair. This is on the basis that the Regulations do not prescribe in detail how a hearing is to be managed. The Appellants consider that this did not occur. They say this for several reasons.
- 4.9 The Appellants consider that the interested parties were permitted to make extended and repetitive submissions, questioning was not appropriately managed or curtailed and the hearing extended significantly beyond its scheduled timeframe. This latter point gives rise to the issue mentioned in relation to Ground of Appeal 1. Overall this lack of control or failure to regulate proceedings gives rise to a procedural defect and an error in law. The Board’s note does not engage with this Ground of Appeal.

- 4.10 As the Appellants note, outwith any specific procedural requirements in the Regulations as to how an application is to be determined, the conduct and overall fairness of the meeting falls to the Chair to regulate and safeguard; and it follows that any issues regarding fairness generally, or natural justice, are capable of being an error of law in the application of the provisions of the Regulations by the Board (paragraph 5 (2A) of Schedule 3 of the Regulations).
- 4.11 The arguments put forward by the Appellants in relation to this ground of appeal are subjective and general. They lack any sort of specification – that is to say a reference to a particular exchange or exchanges in the Minutes of the Meeting that illustrate that the Chair had failed to conduct the meeting appropriately. Rather, what I take from the Minutes of the Meeting is that the application was contested, clearly, as those involved had a lot to say about it. As a result of this the meeting took over two sessions to complete and the Minutes of the Meeting reflect this as they are extensive. They run to over 220 pages of mostly verbatim notes. In those notes no objections were raised by the Appellants at any time as to the conduct of the hearing generally. However, what the Minutes do record, at paragraph 36.6.33, is that one of the Appellants (Mr Jamil) when summing up said the following: he “noted the very long PPC and thanked the Panel for their time and attention”.
- 4.12 As a generality the interests of justice are met when cases are dealt with expeditiously, without undue expense, and without undue demands on the resources of the relevant decision making body. In these circumstances although the meeting was lengthy in comparison to other meetings of a PPC, which generally take one day, it would be wrong to criticise the Chair or the PPC solely, as the then applicants and interested parties also had a role to play. The Chair allowed those parties to contribute fully and although the extent to which this occurred may be characterised as generous it did not, in my view, give rise to a procedural defect or error of law. Sometimes a hearing will, simply put, take as long as it takes. An attempt to curtail a hearing overzealously would no doubt have given rise to criticism as well.

- 4.13 This ground of appeal is therefore dismissed as it discloses no reasonable grounds in terms of the Regulations.
- 4.14 Ground of Appeal 2.1. The Appellant advances this ground under the heading “Procedural imbalance arising from adjournment and sequencing of submissions”).
- 4.15 In relation to this ground of appeal the Appellant considers that because they had presented their full submissions and responded to questions on day 1, when it came to day 2 the interested parties had an advantage as they were able to “tailor or refine their submissions with the benefit of having the Applicant’s evidence and arguments in full”.
- 4.16 This is clearly not a procedural defect in terms of the Regulations. The burden will always rest with the Applicant, whether in writing or at a hearing, to make their case first. Those with an interest will then have an opportunity to respond to that application. Most interested parties in these proceedings are contradictors. They will therefore have the advantage of hearing the applicant first just like they would by seeing a written application lodged first and responding to that. It is often the case that a hearing will have breaks for adjournments, lunch or over separate days but that chronology is not inherently unfair - it is the nature of hearings. Tellingly no alternative is being suggested by the Appellant in this regard – just that the PPC got it wrong. Fairness is achieved by everyone with a right to be heard being heard fully. In my view this occurred and notably to the extent complained about in relation to Ground of Appeal 1.
- 4.17 This ground of appeal is therefore dismissed as it discloses no reasonable grounds in terms of the Regulations.
- 4.18 Ground of Appeal 3. Inconsistent and inadequately explained approach to changes in representation (procedural defect; error in law).
- 4.19 In relation to this ground of appeal the Appellant takes issue with the change in representation by multiple interested parties between hearing dates. The Appellant

considers that the Board's approach to this was inconsistent, inadequately explained and lacking in procedural structure. The Appellant considers that the discretion to permit changes of representation was exercised without a clear evidential basis.

- 4.20 The Board's note discloses that they properly took advice on this matter. That advice and the resulting position of the Board is, in summary, as follows: the Regulations make provision, broadly speaking (paragraph 3(3) of Schedule 3), that one person (non-legally qualified) can speak for each party; the intended (or desired) approach is that the same individual should speak throughout – though substitutions may be appropriate particularly over part-heard hearings. No particular provision for this is made in the Regulations so where a substitution is sought an application will be made to the Board, and other parties notified of that event and the eventual decision.
- 4.21 The PPC adopted, correctly in my view, this approach, and the Chair considered the applications for substitution of representation. The consideration of those 3 applications and the reasons for them all being granted are set out at paragraph 9.6 of the Minutes of the Meeting. With that being the case, in my view the Regulations have been complied with (no procedural defect) and the Chair's discretion exercised lawfully (no error of law).
- 4.22 This ground of appeal is therefore dismissed as it discloses no reasonable grounds in terms of the Regulations.
- 4.23 Ground of Appeal 4. This is headed "Error in law – misstatement of material facts and irrational conclusions". This ground of appeal is advanced under the following terms.
- 4.24 The header to Ground of Appeal 4 states: "Regulation 5(10) requires the Board to determine whether existing services are inadequate and, if so, whether the application is necessary or desirable to secure adequate provision. This requires a proper and rational assessment of the evidence before the Board. The Board has erred in law by relying on material misstatement of facts and reaching conclusions that are not supported by the evidence". There are 5 limbs to this Ground of Appeal thereafter:

#### 4.1. Misstatement of material facts

- 4.2. Irrational assessment of evidence
- 4.3 Failure to properly consider relevant evidence
- 4.4 Unreasonably restrictive approach to relevant evidence
- 4.5 Failure to take account of material current development

4.25 As mentioned above, rights of appeal are limited to those provided for in the Regulations. These are:

- An error of Law by the Board in its application of the provisions of the Regulations;
- A procedural defect in the way the application has been considered by the Board;
- A failure by the Board to properly narrate the facts and reasons upon which their determination of the application was based; or
- A failure to explain the application by the Board of the provisions of these Regulations to those facts.

4.26 When considering what a “point of law” might be in a Tribunal appeal setting, this was discussed by the Inner House in *Advocate General v Murray Group Holdings* 2016 SC 201. The Inner House determined that an appeal on a point of law includes at least the following categories:

- The content of rules and the interpretation of statutory and other provisions;
- The application of law to the facts as found by the FTT;
- A finding, where there was no evidence, or was inconsistent with the evidence;
- An error of approach by the FTT “such as asking the wrong question, or by taking account of manifestly irrelevant considerations or by arriving at a decision that no reasonable tax tribunal could properly reach”.

4.27 I mention these “points of law” as when they represent a failure by a decision maker they become an error of law (as per Lady Poole in *SSS v CB* 2025 UT 63) . With that in mind one can then go on to distinguish what of the above-mentioned arguments are permitted Grounds of Appeal in terms of the Regulations that I can consider at this stage as Chair and remit, and what are Grounds of Appeal (errors of law) that would fall to the National Appeal Panel to determine. This is to venture the formulation

mentioned in *Murray Holdings* is not dissimilar to that in Regulations save for the specific duty to give reasons, that some errors of fact are framed in terms of an explanation as to how they have been applied and who may then determine a particular Ground of Appeal.

- 4.28 In my view, Limbs 4.1 to 4.2 relate to errors of fact which are more readily recognised in the *Murray Holding* formulation. Limb 4.3 relates to the application of the facts to the Regulations and Limb 4.4 more readily to issues of fairness. Limb 4.5 relates to the legal test insofar as the relevant case law on that legal test (*Lloyds Pharmacy Ltd v NAP* 2004 SC 73) established that the PPC must have some regard to probable developments. Whether or not the PPC has properly applied the legal test as a matter of law or with reference to the facts of the case, would be a ground of appeal in terms of paragraph 5(2A) (error of law) or 5(2B) (c) (error of fact) of Schedule 3 respectively
- 4.29 In relation to the first limb; this is concerned with “misstatement of material facts;” in particular, that the population is misquoted several times and the Appellants disagreeing with the conclusion of the PPC as to why there has been stock shortages.
- 4.30 In relation to the second limb; this is concerned with the “irrational assessment of evidence;” in particular, the characterisation of the consultation responses and complaints as low.
- 4.31 In relation to the third limb; this is concerned with the “failure to properly consider relevant evidence;” in particular, a failure of the PPC to properly engage with material and recent evidence before it.
- 4.32 It is clear the Appellant disagrees with the approach of the PPC to the evidence and, as it follows its reasoning. However, as is well rehearsed, simply disagreeing with the conclusions of the PPC is not a valid ground of appeal. 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.

- 4.33 In relation to the first three limbs, with the exception of the population being misquoted – evidence of which I have not been directed to, I can find no error of fact or law present. The conclusions the PPC reached were conclusions they were entitled to reach on the basis of evidence and information before them. The Minutes of the Meeting record the lengthy discussions over that evidence and information, and the additional information considered is listed at paragraph 38. It is not that the PPC did not engage with this evidence and information but that it preferred, as it is entitled to and must do to reach a decision, some materials over others. The reasoning of the PPC from paragraph 40.7 onwards demonstrates that it has engaged with evidence and information before it, analysed it and reached a conclusion. That conclusion was, in summary, that services could be improved upon, that those improvements were understood to be in process and that overall the threshold of inadequacy had not been reached.
- 4.34 In relation to the fourth limb, this is concerned with those decisions of the Chair not to permit further evidence to be introduced. This was discussed in my previous decision on this application (NAP 103(2025) and what was, at that time, Ground of Appeal 1.
- 4.35 In summary the procedure in the Regulations is clear as to what information is lodged, in what format it is lodged and when this occurs. Any further submissions or changes to those submissions are, as was the case here, at the discretion of the Chair. If any further submissions or changes are permitted other participants will normally have the opportunity to respond, or at the very least have notice of them, but this back and forth does not and cannot continue in perpetuity. As was the case previously, the Board had to effectively “draw the line” to additional information. The particular issue here was the Chair not allowing photographs which didn’t have any sort of date and time stamp on them.
- 4.36 Although this is advanced as an error of law in relation to the PPC’s approach to the facts it is, as was explained previously, more accurate to describe and advance this ground in relation to fairness. I say this because any issues regarding the exercise of discretion will relate to fairness and as an error of law in the application of the

provisions of the Regulations by the Board (paragraph 5 (2A) of Schedule 3 of the Regulations). In any event, the decision made by the Chair not to allow the photographs to be accepted was one that was open to him and, in my view, the correct one.

4.37 In relation to the fifth limb, it is clear that the PPC considered future developments as it may do and this is recorded at paragraph 40.21 but the PPC concluded that the future developments and plans were at an early stage and were not therefore to be taken into account. This is often described, with reference to the legal test, in terms of probable versus speculative developments. There was therefore no error of fact or law here.

4.38 Ground of Appeal 4 is, therefore, dismissed as it discloses no reasonable grounds in terms of the Regulations.

## **5. Disposal**

5.1 For the reasons set out above I conclude that the appeal is dismissed in its entirety as it discloses no reasonable grounds in terms of the Regulations.

(sgd)

C W Nicholson WS

Chair

National Appeal Panel

25 June 2026