

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

5 Soroba Road Oban,

PA34 AJA

Applicant: S Kazam and I Khan for Zakpharma Ltd ("the Applicants")

Appellant: M&D Green Group ("the Appellant")

Health Board: NHS Highland ("the Board")

PPC Decision Issued: 17 April 2026

Panel case number: NAP 102 (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 1 April 2026 in relation to the application of S Kazam and I Khan for Zakpharma Ltd (“the Applicants”).
- 1.2. The application was originally made on 17 June 2025. The application was considered at a meeting of the PPC on 22 October 2025. At that meeting the application was granted. That decision was communicated to the interested parties on 6 November 2025.
- 1.3. The then first and second Appellants each lodged an Appeal against the decision of the PPC on or before 1 December 2025. In a decision dated 4 February 2026 I remitted the decision back to the Board for reconsideration in respect of Ground of Appeal 1 (procedural defect) and Ground of Appeal 3 (first limb: duty to provide sufficient reasons).
- 1.4. In that decision, I explained that I was unable to reach a view in relation to Ground of Appeal 2 (error of law - failure to properly apply the legal test) or the second limb of Ground of Appeal 3 (failure to explain the application by the Board of the provisions of these Regulations to those facts) given the issues around the sufficiency of the reasons given. I went on to say it may be the case that, if that Ground of Appeal is reconsidered properly then sufficient clarity might be arrived at. If that is not the case, the Appellants remained able to advance them again if need be.
- 1.5. The PPC met again on 1 April 2026 to reconsider their earlier decision. That redeliberation noted the following: “the deliberation was based on the evidence that was available at the time of the original hearing on 21 October 2025, including written submissions provided prior to the hearing and oral evidence provided on the day of the hearing. No new evidence was considered. It was the Committee’s job to ensure

that its decision was clearly explained, properly reasoned and supported by the evidence.”

- 1.6. When a decision is remitted back to the PPC for reconsideration this is primarily with a view to remedying the defect or failure that led to the decision to remit in the first place. This does not automatically entitle a party to a full reconsideration of the application or for new evidence or information to be advanced but it is the case that the reconsideration must be meaningful, rather than simply reaffirming an earlier decision, and must occur to the extent mentioned above. (As per Lord Lake’s Opinion in the *Petition of Abbey Chemists for Judicial Review* [2025] CSOH 21).
- 1.7. As mentioned above however, this does not preclude an Appellant advancing a repeated ground of review, a new ground of appeal, or an outstanding ground so to speak. That is the case here as the application was granted at the Meeting of the PPC on 1 April (issued on 17 April 2026) and the remaining Appellant, previously the second Appellant, M&D Green Group, has appealed that decision on the following grounds.

2. Grounds of Appeal

- 2.1. The first ground of appeal is whether there has been a failure by the Board to narrate the facts or reasons for its decision and whether there has been a failure by the Board to explain the application by the Board of these Regulations to those facts. The second ground of appeal relates to whether an error of law occurred as a result of a failure to properly assess adequacy and apply the legal test.
- 2.2. In the papers provided to me there was an additional note (the “Board’s note”) which responds to the notice of appeal. The note is entitled “Supporting Documentation for Oban Appeal from the Board”. 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 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. This ground also relates to whether there has been a failure by the Board to explain the application by the Board of the provisions of these Regulations to those facts (paragraph 5(2B)(c) of Schedule 3).
- 4.2. 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 it (the decision) were and what were the material considerations which were taken into account in reaching it.

- 4.3. 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”.
- 4.4. When I remitted the decision previously my advice in relation to the duty to give reasons was as follows: “My advice in this regard is to clearly state the legal test being applied, the information or evidence that has been taken into account, what information has been preferred over another and why, and taking all of that into account what the outcome is and why”.
- 4.5. The Appellant considers this has not occurred.
- 4.6. The Appellant is correct to say that the PPC has not narrated its reasons in the way suggested fully by me. However, I do now consider that the reasons provided are sufficient. I say this for the following reasons.
- 4.7. To be proper and adequate, reasons do not have to involve consideration of every issue raised by the parties, or deal with every piece of material in evidence. But they should deal with the substantial questions in issue in an intelligible way (as per Lady Poole in *SSS v CB* 2025 UT 63 – at paragraph 7). The decision of a Tribunal must be read in its context (see for example the discussion in *Jacobs Tribunal Practice and Procedure* para 4.456 (*Bassano v Battista* [2007] EWCA Civ 370) and 4.464 (*Crake v Supplementary Benefits Commission* [1982] 1 All ER 498) (as per Lord Ericht in *SSS v SC* 2025 UT 57 – at paragraph 7)).
- 4.8. With that in mind, one can see from the Minutes of the Reconsideration Meeting that great care was taken to provide sufficient reasons. This was explained at the outset (see paragraph 1.5 above) and in the Board’s note. The test was clearly identified as was all the information before the PPC and this referred properly to the previous consideration. That was not a wasted exercise.

- 4.9. The reasons included the support for the application in the CAR, in correspondence and from the APC. The PPC considered demands on pharmacies outwith prescriptions and the reasons for the previous pharmacy closing. The PPC referred to errors in prescriptions, queuing and the need to reattend (stock). This was all taken into account to arrive at a finding of inadequacy (first part of the test). Inherent to such a finding is that certain information has been preferred over another but this need not be listed in detail as discussed above. The PPC did not consider the improvements being made by the Appellant were sufficient to alleviate inadequacy, rather, granting the application was the necessary step to addressing it (second part of the test).
- 4.10. In relation to whether there has been a failure by the Board to explain the application by the Board of the provisions of these Regulations to those facts (paragraph 5(2B)(c) of Schedule 3, I do not consider this to have occurred. The factual situation arrived at by the PPC and applied to the Regulations is clearly explained as part of the reasons given at large.
- 4.11. This Ground of Appeal is therefore dismissed as it discloses no reasonable grounds in terms of the Regulations.
- 4.12. Ground of Appeal 2. This ground relates to whether an error of law occurred as a result of a failure to properly assess adequacy and apply the legal test.
- 4.13. The legal test, as mentioned above and in my previous decision, 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.
- 4.14. This ground is advanced with reference to the issue of whether the PPC was properly able to assess adequacy and then apply the legal test if, at the date of the reconsideration decision, the information before the PPC (mentioned above at paragraph 3.4) has been superseded by events. In this case this related to the recent acquisition of one of the existing pharmacies in the neighbourhood by M & D Green and planned improvements. This was the case when the application was first

considered, as was this ground of appeal being advanced with reference to the PPC's reasoning as well as the legal test.

- 4.15. Adequacy stands to be considered at a specific point in time – this being the time of the decision - and this is with a view to the PPC basing its decision on current and relevant information. This is usually at the time the application is made (with reference to the supporting evidence of the application) and considered at the time the (first) decision of the PPC is taken; the latter being within 6 weeks of receipt of the CAR.
- 4.16. This exercise becomes more difficult where cases have been delayed for whatever reason, as was noted in the *Petition of LP North Sixteen Ltd t/a Dears Pharmacy for Judicial Review* [2025] CSOH 91; 2025 S.L.T. 1182. It is unsatisfactory for an application to be considered on an assessment of adequacy made some time ago.
- 4.17. In this case it is clear the passage of time is not over a period of years. Rather the changes that have taken place are contemporaneous with the preparation of the CAR and, a while later, this appeal. Whilst it may be the case that any positive effects expected from the change of operator and planned improvements were yet to be realised, it was also the case that this is something that the PPC was mindful of at its meeting to reconsider the application (emphasis added and referenced at paragraph 5.11 at the Minutes of the Meeting).
- 4.18. As mentioned above (paragraph 1.6) reconsideration is not a full hearing with new or updated evidence. Although the Appellant may feel aggrieved by this limitation it nevertheless is provided for in the Regulations. In this situation the PPC did what was asked of them in terms of reconsideration and the sufficiency of reasons now provided also illustrates that the legal test was properly applied.
- 4.19. This Ground of Appeal 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