

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: 19 September 2025

Panel case number: NAP 103 (2025)

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 19 September 2025 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 considered at a meeting of the PPC on 3 September 2025. The PPC issued its decision to refuse the application on 19 September 2025.
- 1.3. An Appeal was lodged against the decision of the PPC by the Appellants on 8 October 2025.

2. Grounds of Appeal

- 2.1. The Appellant has lodged 4 grounds of appeal. 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.

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. This ground is headed “Refusal to accept and permit presentation of evidence (procedural defect; breach of natural justice)”.

4.2. The Appellants had submitted written supporting evidence in advance of the hearing/meeting of the PPC held on 3 September 2025. This evidence was in addition to that required by the Regulations. In that regard it is helpful to note the following from the outset.

4.3. The applicant is required to lodge the application in Form A. In accordance with Regulation 5, this contains 9 heads of required information. A number of interested parties then have the opportunity to respond. The Board is required to determine the application as submitted and this includes having regard to representations received.

4.4. 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.

4.5. In these circumstances the Board had to effectively “draw the line” to additional information 2 days prior of the hearing as the papers had already been issued to members. The Chair asked for this additional information to be “limited” but that it could be presented by way of a PowerPoint presentation during the meeting. At the

meeting of the PPC the PowerPoint presentation did not take place due to the objection of an interested party.

- 4.6. A visual representation of the layout of the proposed pharmacy, which was part of the package submitted 2 days prior to the meeting, was eventually used but this led to further rounds of questioning which the Appellants consider to be unfair. Overall, the limits to the additional information, the inability to refer to their PowerPoint presentation and the subsequent questioning, resulted in, the Appellants say, a procedural defect and a breach of natural justice.
- 4.7. In relation to whether these events amount to a procedural defect in terms of the Regulations (paragraph 5 (2B) (a) of Schedule 3) no provision is made in the rules regarding these sort of issues specifically. Outwith any 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.
- 4.8. It follows that any issues regarding fairness generally (or natural justice as the Appellants advance) 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).
- 4.9. That being said, I can find no evidence in the Minutes of the Meeting of the PPC dated 3 September 2025 ("the Minutes") that suggest the matters raised by the Appellants had an adverse effect on them presenting their application and supporting evidence. What I can see, however, is that the Chair, towards the end of the meeting (part 9 – page 89) asked parties to confirm that they were satisfied with the fairness of proceedings that they had just participated in. All confirmed this to be the case.
- 4.10. It appears to me, therefore, that the proceedings were conducted fairly. No evidence has been presented that would suggest that the contrary is true. This ground of appeal is therefore dismissed as it discloses no reasonable grounds in terms of the Regulations.

4.11. Ground of Appeal 2. The Appellant advances this ground under the heading “Improper constitution of the PPC (procedural defect, error of law)”.

4.12. In relation to this ground of appeal the Appellant refers to the Regulations at paragraph 3(1) of Schedule 4 which provide the following:

Membership

The Pharmacy Practices Committee shall consist of seven members of whom–

- (1) one shall be the chair appointed as such by the Board; the chair shall be a member of the Board but shall not be an officer of the Board nor shall the chair be, nor previously have been, a doctor, dentist, ophthalmic optician or pharmacist or the employee of a person who is a doctor, dentist, ophthalmic optician or pharmacist;
- (2) three shall be pharmacists of whom –
 - (a) one shall be a pharmacist whose name is not included in any pharmaceutical list and who is not the employee of a person whose name is so listed; and such pharmacist shall be appointed by the Board from persons nominated by the Area Pharmaceutical Committee; and
 - (b) two shall be pharmacists each of whom is included in a pharmaceutical list or is an employee of a person whose name is so listed; and each shall be appointed by the Board from persons nominated by the Area Pharmaceutical Committee; and
- (3) three shall be persons appointed by the Board otherwise than from the members of the Board but none shall be nor previously have been a doctor, dentist, ophthalmic optician or a pharmacist, or an employee of a person who is a doctor, dentist, ophthalmic optician or pharmacist.

4.13. With this in mind the Appellant is correct to note that at the hearing there were two “non-list” pharmacists and two listed pharmacists. It follows that this represents a procedural defect in terms of the Regulations at paragraph 5(2B)(a) of Schedule 3. There should only have been one “non-list” pharmacist present.

- 4.14. Accordingly, as one of the circumstances mentioned in sub-paragraph (2B) have occurred I will remit this application back to the Board for reconsideration.
- 4.15. Ground of Appeal 3. Failure to maintain the required balance of lay and pharmacist members at commencement (procedural defect).
- 4.16. In relation to this ground of appeal the Appellant makes reference to an NHS Circular (PCA (P) 7 (2011)). The content of that circular makes clear the issues mentioned above in terms of the proper composition of a PPC, namely that it should have a chair, three pharmacists and three lay members.
- 4.17. The terms of the Circular are superfluous to the Regulations insofar as they narrate the proper composition of the PPC. It follows, therefore, that this ground of appeal is remitted back to the PPC for reconsideration for the same reasons given in relation to ground of appeal 2.
- 4.18. Ground of Appeal 4. This is headed "Breach of natural justice (cumulative)" . This ground of appeal is concerned with the cumulative effect of the issues mentioned in grounds of appeal 1 to 3. This ground of appeal is dismissed insofar as that it discloses no reasonable grounds further to those mentioned at ground 2 and it follows 3; those having been remitted back to the Board for reconsideration. For completeness, I have already dismissed ground of appeal 1 as it disclosed no reasonable grounds of appeal.

5. Disposal

- 5.1. For the reasons set out above I conclude that the application be remitted back to the Board for reconsideration in respect of grounds of appeal 2 and 3 (PPC composition – procedural defects). Grounds of Appeal 1 and 4 are dismissed because I have found that they disclose no reasonable grounds of appeal.
- 5.2. 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.

5.3. In these circumstances reconsidering the application with a properly constituted PPC is the desirable approach to cure the (procedural) defect. The best way to conduct that reconsideration is, in my view, a new hearing with a differently constituted PPC to that which considered the application originally.

(sgd)

C W Nicholson WS

Chair

National Appeal Panel

26 November 2025