

IN CONFIDENCE – FOR MEMBERS' INFORMATION ONLY

MINUTE: PPC/06/162

Minute of Meeting of the Pharmacy Practices Committee held on Tuesday 29th August 2006 in Committee Room 1, Lanarkshire Primary Care Division Headquarters, Strathclyde Hospital, Airbles Road, Motherwell.

Chairman: Mr B Sutherland

Present: Lay Members Appointed by the Board

Mr E McIlwain
Mrs L Wilson

Pharmacist Appointed by The Royal Pharmaceutical Society of Great Britain

Mr I Calder

Pharmacist Nominated by Area Pharmaceutical Committee

Mrs J Park
Mr D Sinclair

Attending: Officers from NHS Lanarkshire - Primary Care

Mr G Lindsay, Chief Pharmacist
Mrs G Forsyth, Administration Manager
Ms A Harrison, Administration Team Leader

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APPLICATION BY BOOTS CHEMIST LTD, UNIT 1, PALACE TOWERS RETAIL PARK, HAMILTON, ML3 6AD

(a) There was submitted application by Boots Chemist Ltd, received 27th April 2006, for inclusion in NHS Lanarkshire's Pharmaceutical List

(b) **Submissions of Interested Parties**

The undernoted documents were submitted:

Letter received 9th May 2006 from Alliance Pharmacy
Letter received 11th May 2006 from Area Pharmaceutical Committee
Letter received 22nd May 2006 from I J Allan Pharmacy
E-mail received 23rd May 2006 from Lanarkshire Local Medical Committee
Fax received 23rd May 2006 from Lloydspharmacy

(c) **Procedure**

Prior to arrival of parties the Chairman asked Members to confirm that they had both received and considered the papers relevant to the meeting. The Chairman also asked Members to confirm that they had received the additional letters and copy correspondence forwarded by Mrs G Forsyth, Administration Manager – Primary Care, from Ms A M Irving, Alliance Pharmacy, withdrawing her objection to the application, and letter to Mr C Tait, BTC Regional Contracts from Mr H McQuillan, National Pharmacy Advisor – NHS 24. Having ascertained that no Members had any personal interest in the application the Chairman confirmed that the Oral Hearing would be conducted in accordance with the guidance notes contained within the papers.

(d) **Attendance of Parties**

The applicant and interested parties entered the meeting.

The Chairman introduced himself and the Members, as well as the officers in attendance from NHS Lanarkshire - Primary Care, and asked that attendees confirm that they had received all papers relevant to the application and hearing.

The Chairman explained that the meeting was being convened to determine the application submitted by Boots Chemist Ltd in respect of Unit 1, Palace Towers Retail Park, Hamilton, ML3 6AD, according to the Statutory Test set out in Regulation 5(10) of The National Health Service (Pharmaceutical Services)(Scotland) Regulations, as amended (the Regulations)

The Chairman then continued to explain the procedures to be followed and ascertained that no member of the Committee had any interest in the application. The applicant Boots Chemist Ltd was represented by Mr D Greer. From the interested parties who were entitled to attend the hearing, Lloyds Pharmacy Ltd was represented by Mr D Smith ("Interested Party")

(e) **Evidence Led**

The Chairman invited Mr D Greer to speak first on behalf of the application

Neighbourhood

Mr Greer thanked the Committee for the opportunity to attend to present the case on behalf of Boots Chemist Ltd and gave the following overview in support of the application:

We would contend that the neighbourhood in which our pharmacy is sited is of Hamilton Town Centre, but we would further contend that the nature of this application is such that proposed pharmacy will offer a differential pharmaceutical service to the largest part of South Lanarkshire.

Proposal

We propose to open this pharmacy from 9.00am until 12.00 midnight on weekdays, 9.00am until 7.00pm on Saturdays and 11.00am until 6.00pm on Sundays. This will greatly enhance access to pharmaceutical services by the people of South Lanarkshire, in particular, during the time that would normally be considered as out of hours.

If granted the Pharmacy will offer:

- A Full Addiction Service including Methadone Supervision and Needle Exchange.
- Oxygen
- Extra Hormonal Contraception
- Palliative Care Access
- Emergency Supply under the National PGD

The abovementioned would be provided along with the core elements of the new pharmacy contract, in particular, ease of access to the Minor Ailments Scheme at a time when it is currently unavailable.

This is not just an application dependant upon the generation of prescriptions from GP's it is instead, an application based on the delivery of pharmaceutical services fully as envisaged under the Right Medicine and now being applied under the New Pharmacy Contract. We would provide these services on all bar two days of the year - Christmas day and New Years day.

There is a belief that Addiction Services, Out of Hours Oxygen Supply and access to Pharmaceutical Care under the Minor Ailments Scheme and National PGD are indeed less than adequate over the period we are willing to open.

While these inadequacies are recognised, they were considered insoluble; this application seeks to resolve those inadequacies in a novel and innovative fashion not previously considered, with a commitment from Boots The Chemist to deliver it.

The test for this application under Regulation 5(10) is whether this application is necessary or desirable to secure pharmaceutical provision in the neighbourhood. We believe there is evidence of inadequacy in Pharmaceutical services over time and that under this application we offer to secure pharmaceutical service provision that will render adequate. The current guidance for resolving given by Lord Drummond Young in the case of Lloyds vs The National Appeal Panel asks that you consider known changes affecting the delivery of pharmaceutical service provision. Such known change is the introduction of the new Pharmacy Care Services Contract as enacted in the Smoking Health and Social Services (Scotland) Act 2005 Part 3 Pharmaceutical Care Services, passed by the Scottish Parliament last year, which enables the new pharmacy contract in Scotland.

This act requires every Health Board to plan and meet the pharmaceutical care service need in their jurisdiction, including under section 2CB. *"whether as respects their area there is convenient access (as regards location and opening hours) to pharmaceutical care services"*. We believe that this application is fully in the spirit of the new pharmaceutical care services contract, and the act that enables it, and that the Act being known to you should form part of your deliberations today. We also believe that both provision over time, and with regard to ease of access via locations, are greatly enhanced for the people of Lanarkshire in particular over the additional hours of opening.

It may be doubted whether we will maintain the service provision that we offer here today and questioned as to whether we could legally be held to this service provision under the current interim contract arrangements as is suggested by the APC in its response to this application. The current contract has no contractual basis in writing, but rather is a verbal or gentleman's agreement to provide services; that will change under the new contract. We believe that such a verbal or non written agreement is binding as this is the case in Scottish Law, forming a full and binding agreement to fulfil our contract, if granted, without the express agreement from our contract partners NHS Lanarkshire, and I can commit at this time that there is no intention from Boots The Chemist not to deliver the service provision on offer for the entire foreseeable future.

The Chairman then invited questions from Interested Party to Mr Greer.

Mr Smith enquired as to whether or not Boots Chemist Ltd had any evidence to suggest that services within the neighbourhood were inadequate, and what additional services they could provide given that some Pharmacies currently opened until 9:00pm? Mr Greer replied that they had no evidence. Mr Smith highlighted that the application stated that supervised dispensing of methadone would stop at 9:00pm and that this service was already available until this time. Mr Greer stated that they could consider extending this service until midnight.

The Chairman then invited questions from Members of the Committee to Mr Greer.

Mrs Park asked Mr Greer what services they would provide that were currently unavailable within the area, and why they opted to state in their application that they would close at 7:00pm on Saturdays and only open from 11:00am to 6:00pm on Sundays when it could be argued that there could be a greater need for pharmaceutical provision during the weekend? Mr Greer stated that this time suits the need from their experiences of other stores opened in the country. Mr Sinclair questioned as to whether Boots Chemist Ltd thought that because some of their other stores opened until midnight that this demonstrated demand for services? Mr Greer replied that demand between their 14 stores varies on an area to area basis.

The Chairman, having ascertained that there were no further questions to Mr Greer, invited Mr D Smith, Lloyds pharmacy, to state his representation.

Mr Smith took the opportunity to thank the Committee for inviting him to make oral representation, prior to beginning the following presentation to outline Lloyds Pharmacy Limited objection to the application:

It is our submission that the existing provision of pharmaceutical services is adequate and we have not seen any evidence to justify otherwise.

I would consider the neighbourhood to be the whole of the town of Hamilton such is the pulling power of the anchor store, namely the 24 hour Asda. I do not believe you can place the proposed site in a separate neighbourhood for this reason.

In their application Boots the Chemist (BTC) have not supplied any real evidence of inadequacy in the existing pharmacies. The application is based solely around their desire to open until midnight. Where is the identified need for this? It is interesting to note that the proposal will not provide methadone after 21.00 for security reasons. As the provision of addiction services is a major part of their application why do they want to open for a further 3 hours; given that Asda is open 24 hours why bother closing at midnight?

If BTC are so concerned about the availability of services why do they not extend the hours of their existing pharmacies. There are 7 Boots/Alliance branches in Hamilton one of which is already open till 21.00 and provides a methadone service. There is also a Boots/Alliance branch in Motherwell which opens till 21.00 and provides a methadone service.

I am pleased to note my Alliance colleague also thinks that the proposal is neither necessary nor desirable.

Do BTC have any reason to believe that the existing pharmacies are failing to offer an adequate service to their patients? I am not aware of any complaints of lack of services or a need for extended opening hours at any of the LLP pharmacies in the town?

I was interested to note that a similar application by BTC in Blackburn was rejected for 2 reasons:

- 1) The use of a hatch system did not fulfil the essence for delivery of essential services as detailed in the new pharmacy contract.
- 2) The panel expressed concern that the intention to use a hatch system had not been clearly noted in the original application form.

I believe that there is already a comprehensive range of hours and services available that meet the needs of most patients and therefore I conclude that this proposal is neither necessary nor desirable.

No questions were posed to Mr Smith by the Applicant, and given that there were no other Interested Parties in attendance, the Chairman invited questions from Members of the Committee to Mr Smith.

Mrs Wilson remarked that she was interested in hearing more about the hatch system to which Mr Smith referred in his submission. Mr Smith replied that Boots Chemist Ltd did not

offer access to the main store during extended hours and that services were provided via a hatch externally. The Chairman asked Mr Greer whether he wished to add anything to this explanation and Mr Greer replied that the hatch system was a pilot which they ran to see if it had any affect on security, however that they were now moving away from that and fully opening their stores. Mrs Wilson asked if this required more staff and was advised by Mr Greer that it did, namely security staff near the dispensary area. The Chairman asked if this would apply to the Hamilton store and Mr Greer replied that it was their intention to have the full store open with this application. Mr Calder asked Mr Smith if he thought that the neighbourhood was the town of Hamilton or wider Lanarkshire? Mr Smith stated that he believed the neighbourhood would be town centre locality during the day, however that the Pharmacy would serve a wider area after 6:00pm. Mr Calder then questioned what services Mr Smith thought that this application could bring during the extended hours being proposed? Mr Smith stated that the area already had two Pharmacies with extend hours of service and that he did not believe that the application would bring any benefit if granted. The Chairman asked Mr Greer why Boots Chemist Ltd had chosen to make an application for the Palace Grounds Retail Park site rather than further extend the late night hours of service provided within the existing Alliance Pharmacies at 82 Portland Place, Hamilton and Merry Street, Motherwell? Mr Greer advised that whilst the parent companies had merged, the operating firms were currently working in isolation so he could only represent Boots Chemist Ltd, not Alliance. Mr Greer went on to explain that the existing Boots Pharmacy in Hamilton had no opportunity to expand given it was located within a shopping centre, and that they believed the Palace Grounds site to be a better proposition given its edge of town location with adequate parking, disabled facilities, and road network. Mr Sutherland asked whether Boots Chemist Ltd had given consideration to extending the services provided from their Motherwell store, and was advised by Mr Greer that they had chosen Hamilton location for the foregoing reasons. The Chairman asked if Mr Greer was wanting the application to be considered solely on the nature of the site rather than the services, which perhaps could be provided from other stores. Mr Greer replied that they were a commercial organisation and that decisions were based on commercial returns as well as provision of Pharmaceutical services.

Having ascertained that there were no further questions, the chairman then invited Mr Smith, Lloydspharmacy to sum up his representation.

Mr Smith stated that he did not believe there was a need for extended hours of service or a new contract in Hamilton town centre. He was of the opinion that the services provided were more than adequate, and that he was not aware of any requests for more. Furthermore he did not believe that Boots Chemist Ltd had presented any evidence to support an additional Pharmacy, and thus the application should be rejected on the grounds that it is neither necessary nor desirable.

Mr Greer was then invited to sum up in relation to the application.

There are countless applications for pharmacies in Scotland at this time, based on the current regulations; this application truly has a basis in the current regulations while fully embracing the spirit and Law of the new contract.

It is an application passed on the principles of the Right Medicine and the New Contract to carry Pharmaceutical Care Services to a new level, this is supported in the letter from NHS24 in terms of the Minor Ailment Scheme and use of emergency Supply under the National PGD. But this committee cannot fail to see the benefit to other sections of the community with direct access to Oxygen through pharmacy in emergency cases until late at night. Access to palliative care over the same period and a major lifestyle improvement for those requiring drug addiction services, no longer requiring to disrupt their working lives to access help.

I would therefore ask this committee to grant this application as being necessary and desirable to secure pharmaceutical service provision in the neighbourhood.

(f) **Retiral of Parties**

The Chairman then invited the Applicant and Interest Party to confirm that they had received a fair hearing, and that there was nothing further they wished to add.

Having been advised that both parties were satisfied, the Chairman then informed the Applicant and Interested Party that the Committee would consider the application and their representations and make a determination, and that a written decision with reasons would be prepared, and a copy sent to them as soon as possible. Parties were also advised that anyone wishing to appeal against the decision of the Committee would

be informed in the letter as to how to do so and the time limits involved.

At the Chairman's request the Applicant and Interested Party withdrew from the meeting

(g) **Supplementary Submissions**

Following consideration of the oral evidence

THE COMMITTEE

noted:

- (i) that members of the Committee had elected to undertake visits to the proposed site and surrounding areas independently at a time most convenient for them
- (ii) the location of the Doctors' surgeries in relation to existing Pharmacies in Motherwell and Hamilton, and the site of the proposed pharmacy
- (iii) prescribing statistics of the Doctors within Motherwell and Hamilton during quarter ended 30th June 2005
- (iv) the dispensing statistics of the existing Pharmacies in Motherwell and Hamilton for the quarter ended 30th June 2005
- (v) demographic information on Motherwell and Hamilton taken from the 2001 Census
- (vi) Comments received from Interested Parties including existing Pharmaceutical Contractors in Motherwell and Hamilton
- (vii) Information containing the range of Pharmaceutical Services provided by existing contractors within Motherwell and Hamilton

(h) **Decision**

THE COMMITTEE

then discussed at length the oral representations of both the Applicant and the Interested Party, and the content of the supplementary submissions received, prior to considering the following factors in the order of the Statutory Test contained

within Regulation 5(10) of The National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995, as amended

(i) Neighbourhood

THE COMMITTEE

defined the neighbourhood to be the town centre of Hamilton. In reaching this decision Members paid due regard to the fact that both the applicant and interested parties accepted this concept within their correspondence and statements, and no attempts were made to define specific boundaries.

(ii) Existing Services

THE COMMITTEE

noted that there were existing Pharmaceutical services within the neighbourhood, serving a limited residential population. Members also noted that a significant aspect of the rationale for seeking a new contract was the additional access to be available through extended opening hours. Indeed the Applicant, Interested Party and Committee all agreed that patients both resident within the neighbourhood of the proposed pharmacy and outwith that neighbourhood, would be prepared to travel a reasonable distance should they need an extended opening pharmacy. Being mindful of that concept, Members took consideration of the opening times and services provided from all pharmacies in the Hamilton and Motherwell townships because all were considered to be within a reasonable travel distance for patients who may want to access services outwith conventional opening times.

(iii) Adequacy

THE COMMITTEE

in considering adequacy paid due regard to the fact that there had been no objections or complaints received by NHS Lanarkshire concerning the lack of provision of Pharmaceutical Services by residents of the neighbourhood or the townships of Hamilton and Motherwell. Furthermore, that there had been no objective evidence provided by the applicant to suggest that services were inadequate. Indeed, from the information provided for the meeting it was noted that residents in Hamilton, Motherwell and their surrounds, enjoyed access to a full range of services consistent with the breadth and standards of service delivery which can reasonably be expected in 2006,

including two Pharmacies open until 9pm at night. Availability of such services until 9pm was considered to be a suitable standard for service adequacy. Accordingly, the Committee deemed services available to patients within the neighbourhood could be considered adequate.

(iv) Necessity

in discussing the necessity for an additional Pharmaceutical Contract:

THE COMMITTEE

reviewed the existing, comprehensive Pharmaceutical Provision and standards against the criteria for adequacy, and was of the opinion that it was not necessary to provide a new contract in order to provide an adequate Pharmaceutical service.

(v) Desirability

In considering the factor of desirability for an additional Pharmaceutical Contract:

THE COMMITTEE

were conscious that services were deemed adequate and accessible, and acknowledged that the applicant had not produced any documented evidence to suggest otherwise. Members were also mindful to ensure that they differentiated between the concept of desirability for adequacy, not convenience, and that existing Pharmaceutical provision could be judged adequate.

Following the withdrawal of Mrs J Park and Mr D Sinclair, in accordance with the procedure on applications contained within Paragraph 6, Schedule 4 of the National Health Service (Pharmaceutical Services)(Scotland) Regulations 1995, as amended.

THE COMMITTEE

agreed unanimously that an additional contract was neither necessary nor desirable to secure adequate Pharmaceutical Services within the neighbourhood, and agreed to reject the application subject to the right of appeal as specified in Paragraph 4.1, Schedule 3 of the National Health Service

(Pharmaceutical Services)(Scotland) Regulations 1995, as amended.

Mrs Park and Mr Sinclair returned to the meeting