

## MINUTE: PPC/2010/09

Minute of Meeting of the Pharmacy Practices Committee held on 1<sup>st</sup> November 2010 in Meeting Room 1, Law House, Airdrie Road, Carluke, ML8 5ER.

Chair: Mr Bill Sutherland

Present: Lay Members Appointed by NHS Lanarkshire Board

Mrs Margaret Carahar  
Mr Charles Sargent  
Mr John Woods

Pharmacist Appointed by The Royal Pharmaceutical Society of Great Britain

Mr Edward J H Mallinson

Pharmacist Nominated by Area Pharmaceutical Committee

Mrs Janet Park

In Attendance: Officers from NHS Lanarkshire - Primary Care

Mr George Lindsay, Chief Pharmacist – Primary Care  
Mrs Gillian Forsyth, Administration Manager – Primary Care  
Miss Catherine Oates, Administration Team Leader – Primary Care

### **09**                    **APPLICATION BY MR HABIB KHAN, PNC PHARMA LTD, 73a LANARK ROAD, CARSTAIRS, LANARK, ML11 8QL**

#### **Application**

There was submitted application by Mr Habib Khan, PNC Pharma Ltd, received 4<sup>th</sup> March 2010, for inclusion in the Pharmaceutical List of Lanarkshire Health Board in respect of a new pharmacy at 73a Lanark Road, Carstairs, Lanark, ML11 8QL (“the premises”).

#### **Submissions of Interested Parties**

The following documents were received during the period of consultation and submitted:

- (i) Letter received on 12<sup>th</sup> March 2010 from Boots UK Ltd
- (ii) Letter received on 24<sup>th</sup> March 2010 from Lloydspharmacy
- (iii) Letter received via email on 31<sup>st</sup> March 2010 from Area Pharmaceutical Committee of Lanarkshire Health Board
- (iv) Letter received by email on 1<sup>st</sup> April 2010 from Area Medical Advisory Committee of Lanarkshire Health Board
- (v) Letter received by email on 1<sup>st</sup> April 2010 from D J Coleman Ltd

## **Procedure**

At 10:00 hours on Monday, 1<sup>st</sup> November 2010, the Pharmacy Practices Committee (“the Committee”) convened to hear application by Mr H Khan, PNC Pharma Ltd (“the applicant”). The hearing was convened under Paragraph 2 of Schedule 3 of The National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009, (S.S.I. 2009 No.183) (“the Regulations”). In terms of paragraph 2(2) of Schedule 4 of the Regulations, the Committee, exercising the function on behalf of the Board, shall “determine any application in such manner as it thinks fit”. In terms of Regulation 5(10) of the Regulations, the question for the Committee is whether “the provision of pharmaceutical services at the premises named in the application is necessary or desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood in which the premises are located by persons whose names are included in the Pharmaceutical List”.

It was noted that Members of the Committee had previously undertaken a site visit of Carstairs and surrounds independently in order to gain a flavour of the natural patterns of travel of residents and visitors during various times of the day and week. All confirmed that in so doing each had noted the location of the premises, pharmacies, general medical practices and other amenities in the area.

Prior to the arrival of parties the Chair asked Members to confirm that they had received and considered the papers relevant to the meeting, and that they had no personal interest in the application nor association.

The Chair then instructed Miss Oates to invite the applicant and interested parties in attendance to enter the hearing.

## **Attendance of Parties**

The applicant Mr Habib Khan attended and was unaccompanied. From the interested parties eligible to attend the hearing two had accepted the invitation. The first interested party, D J Coleman Ltd of 121 Main Street, Carnwath, ML11 8H, was represented by Mrs Margaret Melvin who was assisted by Mrs Marie Tiley. The second interested party was Lanarkshire Area Medical Committee care of 14 Beckford Street, Hamilton, ML3 0TA, which was represented by Dr Vijay Sonthalia who was assisted by Dr Scott Goudie (“the interested parties”).

The Chair introduced himself, the Members and the officers in attendance from NHS Lanarkshire - Primary Care, prior to asking the parties to confirm that they had received all papers relevant to the application and hearing.

The Chair then explained that the meeting was being convened to determine the application submitted by Mr Habib Khan, PNC Pharma Ltd, for inclusion in the Pharmaceutical List of Lanarkshire Health Board in respect of a new pharmacy at 73a Lanark Road, Carstairs, Lanark, ML11 8QL, according to the Statutory Test set out in Regulation 5(10) of the Regulations.

The Chair continued to explain the procedures to be followed as outlined within the guidance notes circulated with the papers for the meeting, and confirmed that all Members of the

Committee had conducted a site visit, and that no members of the Committee or officers in attendance, had any interest in the application.

### **Evidence Led**

The Chair invited Mr Habib Khan to speak first in support of the application. Mr Khan thanked the Committee for the opportunity to attend to represent his case before reading the following pre-prepared statement:

“Before I start to work my way through the legal test I think it is important to address the huge number of objections received as part of the public consultation process.

GP’s have, do & will continue to provide an invaluable service to the communities they serve. The role they play is key within the healthcare team. The sheer volume of response from the public shows the high regard the public have for their local doctors & I don’t, even for a minute, dispute the quality of their work. It is out of this respect and admiration that I have maintained a professional silence throughout the consultation process.

However, with the upmost respect for the respondents I think they have been wilfully misinformed by the Doctors practice & other activists. I am appalled that vulnerable patients have been placed in a state of fear, especially when these fears are based on nonsense. I hope to provide the panel with evidence to dismiss these fears.

I would like to draw the panel’s attention to a beautifully written poem “A Plea for Carstairs” which was submitted as part of the public consultation.

*The weather it was so foul, on the night of the meeting, we were forced cheek to jowl,  
there was not enough seating.*

116 people including Karen Gillon, MSP attended a meeting which was organised by the GP’s. This was after they had distributed to the people of Carstairs and everybody on their practice list. This letter, which I have a copy of, placed fear into the patient’s hearts by suggesting the practice was under threat.

*On a night such as that, so many patients have turned out, all to show our support,  
and to hope we have clout.*

The community has been asked to stick together; all make their opinions known...one voice! It is no surprise that the majority of the correspondence was received immediately after the town hall meeting.

*We need to stick together, to survive it would seem.*

They were told that the threat of closure looms!!

*Surgery needs dispensary, of that there’s no doubt.*

88% of Scotland’s surgeries have seemed to manage without the need for a dispensary.

*Receptionists and manager, dispensers, nurse & G.P's*

What about the role of the other member of the healthcare team? The Pharmacist?!

Also there have been articles in the local newspaper The Lanark Gazette:

*'It might be assumed that folk in Carstairs would have welcomed a new pharmacy in the village. Instead the proposal is meeting downright hostility from many local people who feel it would spell the end of the village's existing pharmacy...or even threaten the village's valued GP practice, which runs it'*

I would like to draw attention to a letter sent by Drs Goudie & Robertson of Carstairs Surgery. They point to services they provide:

1. AMS (dispensing)
2. MAS
3. CMS
4. PHS

Please do not be fooled. These are GMS's for which they are reimbursed generously. GPs provide services similar to AMS, MAS and PHD, but they cannot provide CMS because they are not trained as pharmacists – and neither are their staff.

I quote from their letter 'loss of dispensing income would account for a loss to the practice of 65% of its total income'

With information like this being fed to the public it is no wonder the public are up in arms!

You cannot compare a 'service led business' with a 'retail business' ...it's like comparing apples and pears.

A service led business which does not buy goods to sell will have a high gross profit margin from which overheads are deducted. In the case of a Doctors surgery, even some of these overheads like rent are paid by the NHS on their behalf.

A retail business such as a pharmacy has to buy goods (medicines) to sell on to the public and create a profit. From these profits all overheads are taken off.

The 65% loss is a red herring and in no way should compromise GMS services.

In September 2009, Nicola Sturgeon, the cabinet secretary, made this clear in response to a question in the Scottish parliament.

*"...as a rule, the income from dispensing should be used to cover dispensing and not to cross subsidise other parts of a G.P's service."*

The public consultation has been hijacked by GPs to protect their interests. I think NHS Lanarkshire has a responsibility to educate the public so that they know the benefits a

pharmacy can bring to them. Also more clarity is required during a public consultation process so that respondents can make a more informed choice. Indeed in the response to the review of control of entry requirements the Scottish Government will explore ways in which to ensure accurate and timely information is made available to the public in such cases”

When the doomsday scenario doesn't transpire, if the contract is granted, the public will quickly forget their opposition and begin to enjoy the benefits that a local pharmacy brings, as is currently the rest of Scotland.

## **THE LEGAL TEST**

### **Neighbourhood**

The neighbourhood, I think, is one of two options, either:

Carstairs Village, or;  
Carstairs Village + Carstairs Junction

I have opted for the latter option as the two share a name and certain amenities. The boundaries would be as follows:

North: Lanark Road

East: railway line east of Carstairs junction at Lampits Road

West: Lanark road where the railway lines meet at Ravenstruther

South: Pettinain Road where it meets the River Clyde

The population within this neighbourhood is 1632 people

Carstairs Village: 918 (678 + 240 (80 new homes\*3people))

Carstairs Junction: 714

It's also important to note the difference of neighbourhood vs. catchment area.

A neighbourhood has clear boundaries and is for all purposes but the catchment area extends out to cover many dwellings and hamlets certainly covering Ravenstruther & Pettinain. This is supported in a letter by Carstairs Surgery itself which states it has a practice population of 2200.

### **Existing services**

There are no existing services within the neighbourhood however there is a dispensary service. A dispensing doctor' is not a pharmaceutical service.

Scottish Government has clarified this matter in its consultation document 'Review of Control of Entry requirements' and also in its response to this document which was published just days ago.

*“In terms of the 1978 Act, the fact that there is a dispensing GP in the area is not a factor which a PPC can consider” “Scottish Government remains clear that everybody should have access to the full range of NHS pharmaceutical services”*

In September 2009, Nicola Sturgeon, the cabinet secretary, made this clear in response to a question in the Scottish parliament.

*“...as a general rule, the Scottish Government sees it desirable that, where possible, patients should have access to the wider range of pharmaceutical services that can be delivered through a community pharmacy. Where that is not possible, NHS boards can require G.P practices to dispense.”*

I am pleased to say that despite a huge amount of lobbying by the BMA, the Dispensing Doctors Association and various other parties, the Scottish Government has seen through their financial self interest!

So the main points to take from this is that if a pharmacy is viable in a neighbourhood then SG policy is that patients should access to pharmaceutical services from an NHS community pharmacy.

The nearest pharmacy to the proposed location is 3.2 miles to the west at Lanark (Lloyds) and 3.3 miles to the east (D.J Coleman) at Carnwath.

There is public transport, a bus service that runs every hour or so Mon-Sat and a reduced service on Sundays with no service on bank holidays. But the distance and/or method of transport isn't hugely important because NHS Lanarkshire have already decided that patients in Carstairs have 'serious difficulty' in obtaining their medication in other words the nearest pharmacies cannot provide a full pharmaceutical service to the said neighbourhood because they have requested the G.P's to dispense.

Ladies and Gents you can't have it both ways, you can't say there is adequate pharmaceutical cover for Carstairs and continue to have the GPs dispense. And if the service is inadequate then this panel must grant this application.

### **Adequacy of existing services**

The key question is: Do the pharmacies in Carnwath and Lanark provide an adequate pharmaceutical service within the defined neighbourhood?

They cannot! It's impossible! You cannot provide a full pharmaceutical service unless you get the patient's prescription. The dispensing of prescriptions is the foundation upon which a full pharmaceutical service is built and that full service can only be provided by a pharmacist at a registered pharmacy.

Services in the area are currently de facto inadequate because a dispensing service is not a full pharmaceutical service.

### **Viability**

This application, should it be granted, would secure pharmaceutical services for the neighbourhood. Through the Freedom of Information Act, I have obtained information on payments made to Carstairs Surgery. The dispensary turnover was in excess of £550k. I was shocked to read this. I run three pharmacies and know the level of dispensing needed to reach this turnover. My immediate concern was the need for a 2<sup>nd</sup> clinical check by a pharmacist. This interaction is a vital safety net & relies on a pharmacist's unique knowledge & skill set.

I am 100% confident that a pharmacy is viable. In fact a drop in turnover to say £300k would still be enough for a pharmacy to operate without any difficulty.

### **Services that we would offer**

Before I conclude, I want to outline the sort of service I intend to provide.

I currently run 3 pharmacies. I work on a full time basis to ensure that my patients receive a full personal pharmaceutical service. We work closely with health professionals and social work to provide seamless healthcare. At every branch we provide a free collection & delivery service. The closest to this location is at Cumbernauld Village. We took over a year ago and from the very beginning I have worked closely with Anne Buchanan of NHS Lanarkshire to implement locally negotiated services.

Karen Gillon, MSP in a letter to this panel states that she has never received advice & input from a pharmacist at any of the pharmacies she has visited. Frankly, I find this hard to believe and am confident she would change her mind if she visited one of my branches. The service at Carstairs would be no different. I intend to offer the same range of services and any extra that NHS Lanarkshire would require us to do. Rather than discuss each and every service I am happy to take any questions at the end that the panel may have.

## **Conclusion**

- The public consultation has been hijacked; the fears of the patients are unfounded.
- The neighbourhood has a population of around 1600 but the practice list points to a catchment area of 2200.
- There are no existing pharmaceutical services in the neighbourhood.
- Scottish Government policy is that, where possible, patients should have access to a full pharmaceutical service through a community pharmacy.
- The current services are de facto inadequate. NHS Lanarkshire has already decided this by asking the doctors to dispense.
- I am 100% confident that a pharmacy is viable in Carstairs and I can have the premises ready and open for trading to the public within 4 months.

This application sails through the legal test. I thank you for your time and would like to take any questions.”

**Noting that this concluded Mr Khan’s representation, the Chair then invited questions from Mrs Margaret Melvin, DJ Coleman Ltd to Mr Khan.**

Mrs Melvin asked Mr Khan which services he planned to provide, and was advised that he would provide all core services associated with the contract and any others requested by the Board, as well as a free collection and delivery service. She then enquired if he was aware that they work closely with Carstairs Surgery and provide patients with any pharmaceutical services or equipment e.g. Oxygen, unavailable from the practice. Mr Khan remarked that he was now aware of this arrangement. Mrs Melvin then turned her attention to the list size of the practice asking Mr Khan if his views on the viability of the pharmacy would change if he took into account that the registration figures were inflated by patients who reside in towns and villages outwith Carstairs and therefore access pharmaceutical services closer to home. Mr Khan replied that despite where the patients lived there was still a considerable amount of scripts generated by the practice which could sustain a pharmacy catering for around 1630 patients within his defined neighbourhood – more if you considered the possible catchment area.

**Having ascertained that Mrs Melvin had no further questions, the Chair then invited questions from Dr Vijay Sonthalia, Lanarkshire Area Medical Committee to Mr Khan.**

Dr Sonthalia advised that he had three comments to make in response to the information contained within Mr Khan’s presentation. It was at this point the Chair interjected to confirm that in accordance with the guidance notes at this point in the hearing the interested parties should seek to ask questions of Mr Khan, as they would have the opportunity to state their observations during their representations later in the proceedings.

Dr Sonthalia thanked the Chair and asked Mr Khan if he would accept that patients were not told during the public meeting that the practice would close if a pharmacy opened. Mr Khan advised that this certainly was not the case as he had been provided with a part recording of the discussions and was able to quote the exact wording used. Dr Sonthalia then asked Mr



Khan what services he could provide to Carstairs patients over and above those alluded to by Mrs Melvin and provided by the practice during the hours of 07:30 until after 18:00. Mr Khan replied that this was easily answered by stating that he would provide a full pharmaceutical service as currently there was only a dispensing GP service run by a dispenser not a fully qualified pharmacist, who therefore could not provide additional services such as CMS, supervised dispensing of methadone, or any other locally negotiated services at the request of the Board. Dr Sonthalia asked if Mr Khan was aware that CMS was currently only a pilot scheme with limited uptake in Lanarkshire, and was advised that he knew the plans for the rollout of the first phase by December.

Dr Sothalia's attention then turned to the viability of a pharmacy within the village and referred to a feasibility study which had been commissioned suggesting that there would be insufficient income generated within the village to sustain a pharmacy once factors such as the inflated list size and numbers of repeat prescriptions were taken into account, and asked Mr Khan if he had considered this within his business model. Mr Khan replied that whilst he had no solid figures to present at the hearing he had experience of running several pharmacies and was confident that residents and patients of Carstairs surgery would use the pharmacy when it opened "and everything calmed down" making it viable. Dr Sonthalia's last question was to ask if Mr Khan was aware of the financial difficulties businesses within the village were experiencing and was advised that he did.

**Having established that there were no further questions from the interested parties in attendance, the Chair then invited questions from Members of the Committee in turn to Mr Khan.**

Mrs Caraher was first invited to ask questions from Mr Khan seeking an overview of the proposed premises. He advised that it was located beside a car wash and had previously been used as a cafe, the unit was empty and was approximately 800 square foot for which he had preliminary plans to modify and incorporate a dispensary, consultation room and quiet area, and be fully DDA compliant. She then enquired if he had considered the amount of cars waiting to use the valet service next door and if he would intend to address this as not only was it a hazard it appeared to block the side access to the rear of the building which she anticipated would be used for additional parking. Mr Khan confirmed that he had discussed this with the current landlord and that they anticipated reviewing the carwash exit and entry points when the long term usage of the vacant unit was established.

Mr Woods followed asking Mr Khan to talk him through his argument with regards to adequacy. He replied that this was easily answered by reference to the medical regulations which required health boards to direct GPs to dispense to patients who would have serious difficulty accessing pharmaceutical services in an area, and that given that Carstairs surgery was a dispensing medical practice this confirmed the inadequacy of pharmaceutical services within his neighbourhood. This response led Mr Woods to enquire if he had taken into account the services provided to patients within the immediate and surrounding area from existing pharmacies located outwith. Mr Khan advised that his experience showed that regardless of where a pharmacy was located there would always be patients who chose to access services outwith, and that his argument was centred around an adequate pharmaceutical service to his neighbourhood.

Mr Woods then asked if Mr Khan had undertaken a survey of patient need within the village including those areas which he anticipated providing a collection and delivery service. Mr

Khan intimated that he had visited the village prior to submitting his application and found everyone he spoke to pleasant and full of encouragement for a pharmacy to move into the area and help with the regeneration programme, and that with regards to his proposed collection and delivery service the actual boundary for this would be led by patient demand not him as they deliver as a general rule to any area requested by a patient. Mr Woods's final question was to ask how Mr Khan measured if he was providing an adequate service within any of his existing pharmacies, and was advised that they conduct annual anonymous patient surveys by placing questionnaires and reply boxes beside their dispensary areas, in addition to having monthly meetings with each pharmacy manager to talk through any patient feedback, complaints or suggestions.

At this point the Chair asked Mr Khan if he had conducted his sounding board within Carstairs Village alone or included Carstairs Junction, and was advised both areas. He then asked him where he had drawn his figures regarding the estimated population he would serve and if he had factored in patient habit with regards to repeat prescriptions and dispensing requirements closer to home and place of work, alongside patterns of travel outwith the village to access services associated with daily living. Mr Khan advised that he estimated that 80% of residents within Carstairs Village and Junction would access services from the pharmacy.

The Chair then invited Mr Charles Sargent to ask questions of Mr Khan. Mr Sargent requested further information on the proposed premises asking Mr Khan if he had an exact floorplan available as it appeared to him during his site visit that the unit looked to have a difficult and awkwardly shaped internal layout. With the agreement of those present Mr Khan tabled a copy of plans. This led to Mr Sargent asking if any planning consent was required and if Mr Khan was confident he could open within six months should the contract be granted taking additional factors such as rear access and the condition of the premises into account. He was advised that the pharmacy could open within four months as no planning permission was required and that Mr Khan had already secured 85% of his estimated start up costs, furthermore that he had inspected the unit with a representative of the planning department who had not identified any immediate concerns.

Mrs Janet Park followed Mr Sargent, and took the opportunity to ask Mr Khan if he felt that the references to public resistance and hostility to the notion of a pharmacy would impact upon its viability, in addition to the estimated drop in population to around 1462 residents once certain correction factors were applied. Mr Khan confirmed that he was of the view that a pharmacy would certainly be viable especially given that it would serve a wider catchment area than that defined as his neighbourhood, and that due to the timing of his application he would still be eligible to apply for financial assistance under the Essential Small Pharmacy Scheme should it be required.

Mrs Park's final questions continued to explore the notion of viability asking Mr Khan if he accepted that patients and residents require to travel outwith the immediate and surrounding areas to access more fulsome daily and weekly amenities and facilities within towns such as Carlisle and Lanark both of which had a number of existing pharmacies, and that services such as CMS required co-operation with the patients' medical practitioners. Mr Khan stated that there were many services hosted between the village and Carstairs junction such as the medical practice, a cafe, a primary school, community centre, hairdressers and post office. Furthermore, he looked to "build bridges" with the Doctors from Carstairs Surgery, and forge

a rapport with patients and residents in order that they access a range of pharmaceutical services from a qualified pharmacist based within the village.

Mr Edward Mallinson was the last member of the Committee invited to ask questions of Mr Khan asking for detail around his proposed staffing levels. Mr Khan intimated that for the first six months he would anticipate employing one full time pharmacist and one counter assistant, with a view to employing a dispenser when business was more established. This led Mr Mallinson to ask him if he was aware of his responsibilities under TUPE with regards to existing “pharmacy” staff employed by Carstairs Surgery. This was new to Mr Khan however he confirmed that he saw this as beneficial to him given that they would know the patients and local area, and that once he had ascertained their capabilities he would have no hesitation in continuing their employment.

Mr Mallinson then returned to the issue of viability, asking Mr Khan how much the financial information made available to him through his FOI request had prompted him to apply for a pharmaceutical contract rather than personal research. Mr Khan said that he was unsure how to answer this other than to confirm that he had required to take into account the practice turnover from dispensing services in order to inform his business case. Mr Mallinson’s final question was to ask Mr Khan if he had factored a drop in prescription volume within his financial model should the prescribing patterns of the local Doctors change, and was advised that he had.

Prior to asking Mrs Melvin to make her representation the Chair took the opportunity to ask further questions of Mr Khan enquiring if he had any experience of taking over the ownership of an established pharmacy including existing staff, and leading on from Mr Mallinson’s questions what had prompted him to choose Carstairs. Mr Khan reported that he had previously purchased a pharmacy in Red Road, Glasgow and that the retention and familiarity of staff had helped reduce any uncertainties over the new owners that the patients and local residents may have had. With regards to what led him to Carstairs he remarked that it had been a bit of a “fluke” as a previous experience with researching and submitting an application with resulting PPC and NAP hearings had put him off looking to establish new Pharmacies, however that “a friend of a friend” spent a lot of time in Carstairs and a chance visit to the village led him to enquire further and resulted in this application being made as the area and residents had made a favourable impression on him. The Chair’s last question was to ask if Mr Khan had ever purchased a pharmacy and later had to close it down or sell it on. Mr Khan confirmed that this had never happened.

**Having ascertained that there were no further questions for Mr Khan the Chair then asked Mrs Margaret Melvin, DJ Coleman Ltd to state her representation.**

Mrs Melvin intimated that DJ Coleman Ltd had stated all of their comments and objections within the letter submitted during the consultation period. However from the experience of attending the hearing and listening to Mr Khan’s presentation and lines of questioning she wished to confirm that she was not aware of any patients saying that the current service provision or arrangements were inadequate and that they have always had close links with Carstairs Surgery. She then advised that some patients registered with Carstairs Surgery actually live within Carnwath so access services from their pharmacy, and that they also provide a collection and delivery service to outlying areas such as Woolfords, Pettinain, and Thankerton etc. Referring to the breadth of services provided by DJ Coleman Ltd, she highlighted that they employ one full time dispenser qualified to NVQ III level, one part time

NVQII assistant, and three full time counter staff. In addition she is a qualified Independent Prescribing Pharmacist and runs COPD and asthma clinics, with plans to start a pain management clinic. Furthermore that their pharmacy has a consultation room and has fully DDA compliant access, with two designated disabled parking bays outside their premises and that they were also within close proximity to a bus stop. She contended that community pharmacies rely on dispensing as there is little demand for over the counter sales within the area, and to that end she doubts that Mr Khan's pharmacy could be viable especially given the fact that many patients registered with Carstairs Surgery access pharmaceutical services within their home towns or villages, and that the 80 new homes being built as referred to by Mr Khan only replaces some of the older housing stock demolished in the past.

**The Chair then invited Dr Vijay Sonthalia, Lanarkshire Area Medical Committee to state his representation.**

Dr Sonthalia thanked the Chairman for the opportunity to attend the hearing and make representation on behalf of the Area Medical Committee by referring to the following prepared statement:

The Lanarkshire Area Medical Committee's view is that a Pharmacy in Carstairs village which according to National census has a population of 690 is neither necessary nor desirable and further more in the current financial climate when businesses are folding up and down the country not a clever business idea. The Area Medical Committee has grave concerns that if such application is granted it would seriously compromise patient care and their wellbeing in the area.

Drs Goudie and Partner from Carstairs Practice based in The School House. Carstairs Surgery, are at present providing an excellent, holistic, patient centred care which conforms to national bench mark quality standards. In their dispensing role the practice provides full range of pharmaceutical services that are on offer under the New Pharmacy Contract, which include:

- Acute Medication Service,
- Minor Ailment Service,
- Chronic Medication Service,
- Contraceptive Services
- Health Promotion advice.
- Smoking Cessation service
- Looking at options for home delivery service for appropriate group of patients.

The practice offers an excellent access and is extremely well supported by the local population. Public consultation report as you have all seen clearly highlights:

- 864 patients have signed petition supporting the practice
- 656 patients have already written letters of objection against this application.
- A public consultation meeting held in the Community Hall on 31<sup>st</sup> March 2010 was attended by 116 members of the public who overwhelmingly expressed their anger against this application and offered unanimous support for the practice.

- Karen Gillon- Local MSP for almost 11 years conducted a survey of 375 households in the village which generated 70% response with 100% of those who returned opposed the Pharmacy.
- Local Pharmacies Boots and Lloyds have both objected to this application.

In the current financial climate where NHS is under pressure to make savings, NIC per item for Pharmacy is £13.11 where as from Dispensing practice is lower at £11.83. It makes sense to contain costs and reject this application. Furthermore we have serious concerns that a pharmacy service in such a small rural setting is not viable financially and is likely to fold within few months and the Health Board will be left to pick up the pieces.

Loss of dispensing income will seriously compromise sustainability of the local practice with loss of jobs, and will have serious impact on health care provision of the locality.

In the opinion of Lanarkshire Area Medical Committee, a new pharmacy in such a small rural population will seriously destabilise the local primary care services, it will put at risk patient care, and it is neither necessary nor desirable. It is not a viable option it has not been thought through properly as a sound sustainable business proposition and it is a gamble with the health care of local population and could cost lives.

We strongly urge you reject this application in the interest of continuance of health care, in line with the wishes of the local population.

**Following Dr Sonthalia's representation, the Chair then invited Mr Khan to ask questions of the interested parties in attendance.**

Mr Khan asked Mrs Melvin whether patients parking within the disabled bays outside their premises required to cross the road in order to access the pharmacy and was advised this was the case. He then asked how long they had been providing a collection and delivery service. Mrs Melvin replied that whilst they had been thinking about it for a number of years it had been introduced four months ago.

Mr Khan had no questions to pose to Dr Sonthalia.

**Having ascertained that Mr Khan had no further questions, the Chair then invited the interested parties to ask questions of each other**

Dr Sonthalia asked Mrs Melvin if patients within Carstairs Village or Carstairs Junction would have any difficulty accessing pharmaceutical services from D J Coleman Ltd. Mrs Melvin confirmed that this was not an issue as they current provide a collection and delivery service for patients residing within both areas.

Mrs Melvin had no questions to pose to Dr Sonthalia.

**Having ascertained that the interested parties had no further questions, the Chair then invited questions from Members of the Committee to the interested parties in turn.**

Keeping to the previous order Mrs Caraher was first invited to speak and asked Mrs Melvin if their collection and delivery service covered the same area that Mr Khan anticipated

covering. Mrs Melvin replied that their service covers a large area as wide afield as Tarbrax which borders a neighbouring Health Board area. Mrs Caraher then asked if she was able to give an estimate of the number of prescriptions generated from residents within Carstairs Village and Junction that they dispense. Mrs Melvin was uncertain as to the exact amount however estimated around 20-30% of scripts however that these were not necessarily from patients registered with Carstairs Surgery.

Mrs Caraher then referred to Dr Sothalia's comments regarding the closure of local businesses and asked him how long he felt that Carstairs Surgery could continue to have the same commitment level of Doctors. Dr Sonthalia referred to the average list size of 1800 patients per Doctor within NHS Lanarkshire and stated that a practice with two full time GPs and only 2200 patients could not continue to provide the same level of staffing or access to services unless their current income levels were maintained, and that failure to do this would require the practice set up to be restructured and put an end to their plans to develop their existing premises.

Next was Mr Woods asking Mrs Melvin to explain what had led their collection and delivery service to expand so substantially from that outlined within their letter submitted as part of the consultation exercise. Mrs Melvin explained the historic arrangements and service provided by a former dispensing doctor who retired from the Carnwath practice, and that the service continues to grow almost daily as more patients get to hear about it. She also advised that she was aware that the Lanark pharmacies also provide collection and delivery services to the local area. Mr Woods asked if they had considered ceasing their early closing on Wednesday afternoons and was advised that they would do so if patient demand was made known to themselves or the Health Board.

Mr Woods then remarked to Dr Sonthalia that he was struggling to understand why the profits from dispensing service would be used to employ other staff not associated with the provision of this service. Dr Sonthalia advised that general practice is run like a business therefore the overall practice income is used to support the practice as a whole e.g. the employment of non dispensing staff, supporting the complement of GPs, as well as the purchasing of drugs. Mr Woods advised that this was in contrast to his understanding of the funding arrangements for dispensing services.

Mr Sargent enquired of Dr Sonthalia that given his understanding of how businesses were suffering within the area could he not see the benefits of attracting new services into the village. Dr Sonthalia replied that he would have no objection to any sound business proposition moving into the area, however in this respect their feasibility study and evidence provided during the hearing demonstrates that a pharmacy is not a sound proposition and could not survive, furthermore that its establishment would destabilise the staffing and services of the medical practice to then close down later on.

Mrs Park moved the notion of viability to DJ Coleman Ltd, asking Mrs Melvin if she could estimate the impact upon them if the pharmacy opened. Mrs Melvin replied that she was unsure if it would have a big impact upon them as the majority of their Carstairs patients are registered with medical practices outwith the village. Mrs Park then asked about the demand for supply of supervised dispensing of Methadone and needle exchange, and was advised that they currently have a small number of patients attending for Methadone, and that they had a high level of demand for needle exchange service as they were the closest pharmacy in the locality providing this service.

Mr Mallinson was last invited to ask questions and sought clarification from Dr Sonthalia as to whether he was aware that the practice should only dispense to patients who would be posed with significant difficulties accessing pharmaceutical services elsewhere, and what his views on the outcome of any investigation into this by the Board given the agreement that residents of Carstairs Village and Junction regularly travel outwith the area to access services and amenities associated with daily living within Carluke and Lanark which both have a number of existing pharmacies. Dr Sonthalia advised that he was uncertain as to what the Board's findings would be. Mr Mallinson's final question was to ask Dr Sonthalia if he or the Area Medical Committee were aware of any dispensing doctors having to close their practices resulting from a pharmacy being established and was advised that whilst he was not they were aware that a medical practice in Churnside had to remodel their service provision and reduce staffing levels as a result of a new pharmacy opening recently.

The Chair then took the opportunity to ask Dr Sonthalia if he wished to comment upon the figure of £550k per annum paid to the practice as quoted by Mr Khan. Dr Sonthalia and Dr Goudie stated that this amounted to 65% of the practice's net profit and began to refer to a letter provided by the practice's accountant. It was at this point that Mr Khan interjected to highlight that no questions were being asked and that they had departed from the procedure outlined within the guidance notes for the hearing. The Chair accepted this and asked Dr Sonthalia to provide background on the source of information and methodology used to compile the feasibility study they had commissioned. Dr Sonthalia advised that it was from an independent business adviser and involved access to patient registration figures and practice accounts. When the Chair asked if this involved breaking down the list size in address area he was advised that it did.

Prior to moving the proceedings on to the final stage the Chair advised that he would depart from the guidance notes and procedure as he felt it was fair that Mr Khan be given the opportunity to ask questions on the methodology or content of the feasibility study. He advised that he had no need to examine the findings as he was confident of his business model and financial planning.

**Having ascertained that there were no further questions to either the applicant or interested parties, the Chairman then invited the interested parties to sum up their representations, keeping to the previous order. Accordingly, Mrs Melvin, DJ Coleman Ltd was first to speak.**

She stated that she feels that there is no need for a further pharmacy in the area as demand for pharmaceutical services is adequately covered by our pharmacy, the GP practice, and pharmacies located in the wider surrounds, including Lanark. Furthermore another pharmacy would not be viable.

**The Chair then invited Dr Sonthalia, Lanarkshire Area Medical Committee to sum up his representation.**

Dr Sonthalia concluded by confirming that the AMC believes current pharmaceutical services provided by existing pharmacies within and outwith Carstairs are more than adequate and these are supported by the additional services offered by the dispensing doctors. Mr Khan has failed to demonstrate a sound business plan and that the AMC has serious concerns over

the destabilising effect on primary care services the introduction of a non viable pharmacy would have.

**The Chair then invited Mr Khan to sum up in relation to his application.**

Mr Khan concluded by giving an overview of what he considered the main points raised during the hearing to support the granting of his application:

- No medical practice has ever closed due to a pharmacy contract being granted. The Churnside practice referred to involved their branch surgery which merged with another practice and as a result now has more patient appointment times available.
- There would be no deterioration in care if the pharmacy opened.
- The Dispensing Income for the practice is a considerable cost - £568,593.46
- Despite lodging objections Boots and Lloyds haven't bothered turning up
- The public consultation was hijacked and that this pharmacy will not run at a loss
- Mrs Melvin has confirmed that a pharmacy contract being granted would not affect the viability of the pharmacy in Carnwath
- I could be in a position to open the pharmacy within four months of the contract being granted.

Ladies and gentleman of the Committee this application sails through the legal test. It is a brave decision that you have to make, however the evidence is clear, and the precedence is set it is Scottish Government policy. I implore you to make the correct choice. If the panel were to refuse the application I am confident that the National Appeal Panel would uphold my appeal.

**Retiral of Parties**

The Chair then invited the Applicant and Interested Parties to confirm whether or not they considered that they had received a fair hearing, and that there was nothing further they wished to add.

Having being advised that all parties in attendance were satisfied, the Chair then informed them that the Committee would consider the application and representations prior to making 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 Chair's request Mr Khan, Mrs Melvin, Mrs Tiley, Dr Sonthalia, and Dr Goudie withdrew from the meeting.

**Supplementary Submissions**

Following consideration of the oral evidence

**THE COMMITTEE**



noted:

- i. that they had each independently undertaken a site visit of Carstairs to note the location of the proposed premises, and also visited the surrounding townships and villages noting the location of the existing pharmacies, general medical practices, and facilities and amenities available
- ii. map showing the location of Carstairs Surgery and site of the proposed pharmacy, as well as the Doctors' surgeries and existing Pharmacies within the townships and villages of Carnwath, Forth, Lanark and Carluke.
- iii. prescribing statistics of the Doctors within the townships and villages of Carstairs, Carnwath, Forth, Lanark and Carluke, during the period April to June 2010
- iv. dispensing statistics of the Doctors within Carstairs Surgery, and Pharmacies within the townships and villages of Carnwath, Forth, Lanark and Carluke, during the period April to June 2010
- v. demographic information on the townships and villages of Carstairs, Carnwath, Forth, Lanark and Carluke taken from the 2001 Census
- vi. comments received from the interested parties including existing Pharmaceutical Contractors in accordance with the rules of procedure contained within Schedule 3 to the regulations
- vii. report on Pharmaceutical Services provided by existing pharmaceutical contractors within the townships and villages of Carstairs, Carnwath, Forth, Lanark and Carluke.
- viii. communications received from patients of Carstairs Surgery as well as residents of Carstairs and surrounding townships and villages, and elected representatives, as a result of the public consultation exercise undertaken upon receipt of the application, as directed within Schedule 3 to the regulations.

## **Decision**

### **THE COMMITTEE**

then discussed the oral representation of the Applicant and the Interested Parties in attendance, 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 2009 (S.S.I. 2009 No. 183 ), as amended.

- (i) Neighbourhood

### **THE COMMITTEE**

in considering the evidence submitted during the period of consultation and presented during the hearing, and recalling observations from their site visits, accepted the neighbourhood as

defined by the applicant; being the area bounded by Lanark Road to the North, to the East the railway line East of Carstairs Junction at Lampits Road, to the West along Lanark Road where the railway lines meet at Ravenstruther, with the Southern boundary being Pettinain Road at the point in which it meets the River Clyde. In agreeing with this definition the Committee noted that it encompassed both Carstairs Village and Carstairs Junction, and that the decision was in keeping with the general agreement of the interested parties in attendance.

(ii) Existing Services

**THE COMMITTEE**

prior to considering existing services within the neighbourhood paid due regard to the requirements of the statutory test which specifies that the granting of applications should be made only when it can be satisfied that the provision of pharmaceutical services at the premises is necessary or desirable in order to secure adequate provision of those services by “persons whose names are included in the Pharmaceutical List” which thus excludes the dispensing services provided by Drs Goudie and Robertson, Carstairs Surgery.

**THE COMMITTEE**

therefore noted that that there were no existing Pharmaceutical contractors in the neighbourhood, however there was one located approximately 3.5 miles away in the village of Carnwath, and three within the town of Lanark, also approximately 3.5 miles away. It was also noted that DJ Coleman Pharmacy, Carnwath provide a collection and delivery service and that not all residents of Carstairs or Carstairs Junction are registered with the Carstairs Surgery and that such patients therefore access pharmaceutical services outwith the neighbourhood.

(iii) Adequacy

**THE COMMITTEE**

discussed the test of adequacy and noted that there had been no objections or complaints received by Lanarkshire NHS Board concerning the lack of provision of Pharmaceutical services, or access to, by residents of the neighbourhood.

**THE COMMITTEE**

also noted comments received as a result of the public consultation exercise including correspondence from Karen Gillon, MSP complimenting the dispensing services provided from the GP surgery and the desire that they continue. However, the Committee was mindful that it was bound by the statutory test which excludes contribution of the services

provided by dispensing doctors as they are not included in the Pharmaceutical List. Furthermore;

### **THE COMMITTEE**

also paid due regard to Mr Khan's argument regarding Regulation 44 of The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004, as amended, which require the provision of a dispensing service by a General Medical Practice only when persons "will have serious difficulty in obtaining from a pharmacist any drugs, medicines or appliances, other than scheduled drugs, required for that person's treatment" and the implication that residents of Carstairs have serious difficulty in accessing Pharmaceutical Services. Accordingly;

### **THE COMMITTEE**

taking all of the above factors into account agreed that existing pharmaceutical services provided by persons on the pharmaceutical list could not be considered adequate.

### **THE COMMITTEE**

recalling representations during the hearing then turned attention towards consideration of whether or not Mr Khan's application would secure an adequate pharmaceutical service. During deliberations, issues such as:

- the population within the neighbourhood,
- the proportion of that population which would likely frequent Mr Khan's proposed pharmacy and the proportion who would likely frequent other pharmacies,
- the list size of the GP surgery and the information provided by Dr Sonthalia about the postal addresses of patients and hence the pharmacies they are likely to frequent
- Mr Khan's experience of running community pharmacies and plans for this pharmacy

were all taken into account and debated by The Committee before voting on the statutory test.

Accordingly, following the withdrawal of Mrs Janet Park, in accordance with the procedure on applications contained within Paragraph 6, Schedule 4 of the National Health Service (Pharmaceutical Services)(Scotland) Regulations 2009, as amended, the decision of the Committee was three votes to one that the provision of pharmaceutical services at the Premises was necessary in order to secure adequate provision of Pharmaceutical Services within the neighbourhood in which the Premises were located by persons whose names are included in the Pharmaceutical List and that, accordingly, the application was granted subject to the right of appeal as specified in Paragraph 5.1, Schedule 3 of The National Health Service (Pharmaceutical Services)(Scotland) Regulations 2009, as amended.

**Mrs Park was then requested to return to the meeting, and was advised of the decision of the Committee.**