

7 January 2010

REF: SHA/15363

**APPEAL AGAINST BATH & NORTH EAST SOMERSET PCT
DECISION IN ACCORDANCE WITH REGULATION 39(8) IN RESPECT
OF A SADIQ'S APPLICATION FOR INCLUSION IN THE
PHARMACEUTICAL LIST UNDER REGULATION 13(1)(b) (PREMISES
WHICH THE APPLICANT IS WILLING TO KEEP OPEN FOR AT
LEAST 100 HOURS PER WEEK FOR THE PROVISION OF
PHARMACEUTICAL SERVICES)**

1 Background

- 1.1 By application dated 28 January 2009, A Sadiq ("the Applicant") applied to Bath & North Somerset Primary Care Trust ("the PCT") for inclusion in the pharmaceutical list at The Beehive Surgery, Mount Road, Southdown, Bath BA2 1NH, under Regulation 13(1)(b) (premises which the applicant is willing to keep open for at least 100 hours per week for the provision of pharmaceutical services).
- 1.2 The letter from Avon Primary Care Support Agency (on behalf of the PCT) dated 19 August 2009, informed the applicant that their application had been finally granted (no appeal), and that they had 6 months from 19 August to commence the provision of pharmaceutical services.
- 1.3 On 28 August 2009, Avon Primary Care Support Service, wrote again to the applicant (see below) accepting a revised address for the proposed pharmacy location in accordance with Regulation 39(8).

2 The PCT Decision

Avon Primary Care Support Agency's letter dated 28 August 2009 stated:

- 2.1 Further to the APCSA's letter dated 6 April 2009, notifying parties of the application received from the applicant to open a 100 hours pharmacy in the vicinity of Beehive Surgery, Mount Road, Southdown, Bath.
- 2.2 APCSA is writing to parties now to inform them that the applicant has notified the PCT of a change in the proposed location of this pharmacy. Please note that the new address for the proposed 100 hours pharmacy is:

106-107 High Street, Twerton, Bath, BA2 1DB.
- 2.3 Bath & North Somerset PCT have agreed to accept this change of proposed address as it is near the vicinity of the original stated address and as it is an application considered under National Health Service (Pharmaceutical Services) Regulations 2005, Regulation 5(1).

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 11 September 2009, Boots UK Ltd appealed against the PCT's decision. The grounds of appeal are:

- 3.1 The applicant originally applied under regulation 13 for full consent for inclusion in the pharmaceutical list at The Beehive Surgery, Mount Road, Southdown, Bath, BA1 1DB.
- 3.2 The PCT have since written to interested parties notifying them of a change to the address of the proposed pharmacy. The proposed new address of the 100-hour pharmacy is now 106-107 High Street, Twerton, Bath. The PCT have agreed to accept this change of proposed address, as it is the near vicinity of the original stated address.
- 3.3 The distance between the two locations by road is almost a mile. The appellant considers this distance to be significant and not in close proximity to the site of the original application.
- 3.4 Given that the application was for full consent, the appellant believes the PCT should have treated the request as a minor relocation or requested that the applicant submit an application for the new site.

4 **Summary of Representations**

This is a summary of representations received on the appeal.

Bath & North East Somerset Primary Care Trust

- 4.1 The key issues which were taken into account by NHS Bath and North East Somerset when agreeing to proposed change of address are as follows:
 - 4.1.1 This is an application for a 100 hour pharmacy contract. This is an exempt application and therefore regardless of whether the application is withdrawn and re-submitted or any other scenario as suggested by the Appellant, the reality is that as long as the regulations are met, which they are, this application will be granted.
 - 4.1.2 All relevant parties who were notified on the original application are the same relevant parties for the new address. The comments made in the initial application are not specific to the address but are standard comments sent in by the bodies corporate when a 100 hour contract application is made and are equally relevant to both addresses.
 - 4.1.3 A 100 hour pharmacy contract serving the South West of the city (Twerton and South Down) will be a positive development for the city serving an area of high health need.
- 4.2 NHS Bath and North East Somerset believe that the Boots appeal is inappropriate and will make no difference to the final outcome of this process so therefore should be dismissed.

A Sadiq (Applicant)

- 4.3 The applicant originally applied under Regulation 13 for full consent for inclusion in the pharmaceutical list at The Beehive Surgery, Mount Road, Southdown, Bath BA1 1DB. The applicant had plans to set up a temporary pharmacy until planning was granted and building work finished to move into the extension at The Beehive, which could have taken anywhere between six to twelve months.
- 4.4 A ready-build, more suitable location had become available on the Twerton High Street, which is 482 meters from the Beehive Surgery a two minute drive, or 387 meters with a 10 minute brisk walk. As the applicant had not yet commenced

providing pharmaceutical services they felt it would be appropriate to change the plans for the pharmacy to the more suitable location.

- 4.5 The new proposed location is larger and allows easier access and better parking for patients and customers. Thus it is better suited to serve as a late night pharmacy. It is in reach of the local community with a nearby cafe, convenience store, a charity shop, a learning centre, and a Post office and building society. There is a football ground and recreation centre to the rear, where a weekly market is held, and is close to the village hall and youth hostel.
- 4.6 The applicant sincerely believes that this location will benefit the local community much better, as many members of the public and both local surgeries have agreed. The applicant feels that the much needed services they hope to provide will be beneficial to the whole community.

5 Consideration

- 5.1 The Pharmacy Appeals Committee appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority, ("the Committee") had before it the papers considered by the PCT. It also had before it the responses to the Authority's own statutory consultations.

- 5.2 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

- 5.3 The Committee noted Regulation 39(8) states:

'Where, at any time after making the application, but before—

- (a) the expiry of the six months referred to in paragraph (2), or of any further period allowed by the Primary Care Trust or, on appeal, by the Secretary of State, in accordance with that paragraph; or
- (b) the date specified by the Primary Care Trust in its notice under paragraph (3),

the applicant notifies the Primary Care Trust that he intends to change within the neighbourhood the premises from which he intends to provide pharmaceutical services, being the same services as those named in the application, and the Primary Care Trust is satisfied that the change is a minor relocation, it may, subject to regulations 25 and 26, amend the premises named in the original application.'

- 5.4 The Committee noted Regulation 29(2) states:

'Where a Primary Care Trust—

- (a) has determined an application to which regulation 6(3), 7(3), 8, 9 and 10 applied; or
- (b) made a decision whether or not to amend the premises named in the original application as mentioned in regulation 39(8),

the applicant and any person who has been notified of the decision under regulation 27(1)(a)(ii) or (iii) or regulation 27(3)(c) or (d) may appeal to the Secretary of State.'

- 5.5 The Committee noted the application was originally made under Regulation 13(1)(b). As such, Regulation 12(1) did not apply. The application under Regulation 13(1)(b) is automatically granted by the PCT, as long as the premises to which the application

relates are not in a neighbourhood in which LPS are or are to be provided, and subject to Regulations 13(2) and (3).

- 5.6 The Committee noted that the PCT, in accordance with Regulation 39(8), must be satisfied that the proposed change of premises is a minor relocation. It may then amend the premises named in the application. The Committee noted the reference made by the appellant to the distance to the proposed site but noted that no other information had been provided to demonstrate why this distance should not be considered minor in the context of this neighbourhood. No information was provided to support the claim that this is not a minor relocation.

6 **Decision**

The Committee dismisses the appeal.

Ray Bushell
Appeal Officer

A copy of this decision is being sent to:

A Sadiq – Applicant
Ms J Watson, Boots UK Ltd – Appellant
Mr J Hirst – Bath & North East Somerset PCT