

7 January 2010

REF: SHA/15389

APPEAL AGAINST KIRKLEES PCT DECISION REGARDING MEASURES TO REDUCE ADVERSE CONSEQUENCES FOLLOWING THE GRANT OF MR A M KHAN'S APPLICATION FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST AT NEW MILL ROAD, NEW MILL, HOLMFIRTH, HUDDERSFIELD

1 Background

By application dated 21 October 2008, Mr A M Khan applied to Kirklees Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at New Mill Road, New Mill, Holmfirth, Huddersfield.

2 The PCT Decision

The PCT considered and decided to grant the application. The decision letter issued on 16 September 2009 included the following:

2.1 In granting the application in New Mill, the Pharmacy Panel were mindful of the effect granting this application would have on Oaklands dispensing practice, and the patients who would be affected if/when the pharmacy in New Mill opened (i.e. those whom the practice would no longer be permitted to dispense to). Information received from the Health Informatics Service had indicated that # dispensing patients at Oaklands Health Centre would effectively lose their dispensing rights if a pharmacy were to open in New Mill.

2.2 Following discussion, it was agreed that a period of gradualisation would need to be agreed from the point at which a pharmacy opened in New Mill. The gradualisation period was agreed at 6 months. This will only become effective upon commencement of pharmaceutical services by Mr Khan as a sole trader in New Mill.

3 The Appeal

By letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit") dated 25 September 2009, Dr Y Shamsee, Oaklands Health Centre, Huddersfield Road, Holmfirth, appealed against the PCT's decision. Whilst Dr Shamsee sought to appeal the PCT's decision on several grounds which included clinical governance issues, quality of service provision, the 'prejudice to proper provision' and 'necessary or desirable' tests, 'gradualisation', the appellant only had a right of appeal in respect of gradualisation:

3.1 The potential opening of a pharmacy in New Mill would effectively remove dispensing rights from # patients. Those patients are currently eligible to receive DRUMs and would lose a clinical service as it is highly unlikely that a sole trader in New Mill would be able to offer MURs on a consistent basis to that population. The patients themselves would have reduced opening hours in the proposed New Mill pharmacy as compared to those offered by Oaklands Health Centre. The loss of # patients would also constitute a considerable loss of income for the practice which would undoubtedly have a knock-on effect both in terms of redundancies to dispensary staff but also the potential loss of clinical services which could have a negative effect on the # registered patients to the practice not directly affected by the change in dispensing status.

- 3.2 Dr Shamsee would also point out that the PCT's consideration of a six month gradualisation period is too short, particularly when one bears in mind that the practice were granted a six month gradualisation when they lost some # dispensing patients after the NHS appeal authority determination regarding rurality in 2008. The impact of losing # patients is clearly 50% more in terms of work load and income loss and Dr Shamsee feels should be accompanied by a significantly longer gradualisation period so that the practice can avoid the unpleasant task of having to cut services to their registered patients, whilst dealing sensitively with any redundancies.

4 **Summary of Representations**

This is a summary of representations received on the appeal.

Mr A M Khan (Applicant)

Dr Shamsee outlines the impact of a pharmacy in New Mill but fails to appreciate the impact on Medicare Chemists of a Pharmacy only 100metres away at Oaklands. He also raises the issue of MUR's but fails to demonstrate why New Mill Pharmacy will not be able to provide this service. This loss of services was exactly the argument put forward in 2008 when the NHS Appeals panel took a decision on the rurality of the Holmfirth area. It would be interesting to see how much services and staff was lost from the practice following the change in status of Holmfirth.

Kirklees PCT

In relation to SHA/15389, gradualisation in respect to Oaklands Dispensing practice, the PCT is of the opinion that a 6 month gradualisation period is more than adequate to allow the practice to make adjustments to their dispensing arrangements for dispensing patients.

Dr Y Shamsee (Oaklands Health Centre)

- 4.1 The Kirklees Primary Care Trust decision to grant Mr Khan an application to open a pharmacy at New Mill Road, New Mill will result in a significant number of patients losing the right to access dispensing services. Given that the proposed opening hours of the New Mill pharmacy do not meet the needs of commuting patients and parking is at a premium anyway in New Mill, it is highly likely that those patients will be seriously inconvenienced by the proposed change. Similarly, the proposed hours do not meet those of the local GP surgeries and are disconcertingly similar to those of Medicare. The surgery, as a dispensing practice, also currently offers MURs to dispensing patients and there is no guarantee that this valuable clinical service will be provided by the proposed pharmacy for those patients who will lose their dispensing rights.
- 4.2 As the doctors will be unable to dispense to patients living within a one mile radius of the new pharmacy, they are led to believe that up to # dispensing patients will therefore be affected. This represents more than 50 per cent of Oaklands Health Centre's current dispensing population and the practice will have to spend a great deal of time:
- 4.2.1 Communicating the change to patients a Winding down the supply of medicines to these patients.
 - 4.2.2 Reducing stock levels from the dispensary.
 - 4.2.3 Consulting with the staff regarding likely redundancies in work force as a consequence of such a huge change.

- 4.3 It is also likely that such a loss of dispensing income will impact on other areas of the practice. It is widely acknowledged that many dispensing practices use their dispensing income to subsidise other clinical services and indeed this is true in the current case. It is therefore likely that the practice will have to consult with their clinical staff and potentially make a Nurse Practitioner or Salaried GP redundant. This will have a considerable impact on the clinical services the practice can currently provide and consequently the practice feel that a six month gradualisation period is far too short for us to accommodate all the necessary changes required.
- 4.4 Kirklees PCT have previously determined the gradualisation period which affected their practice following the NHS Appeals Authority ruling on the rurality of Holmfirth. On that occasion, the practice were granted a 6 month gradualisation period when they were affected by the loss of # dispensing patients. Clearly the potential loss of dispensing patients as a consequence of the opening of a pharmacy in New Mill is far more significant than the previous gradualisation and consequently the practice genuinely feel 6 months is too short a time scale. The practice would therefore request a 12 month gradualisation period in this instance.

5 Consideration

- 5.1 The Pharmacy Appeals Committee of the FHS Appeal Unit ("the Committee") had before it the papers considered by the PCT and the results of its own statutory consultations. On the basis of this information the Committee considered it was not necessary to hold an oral hearing.
- 5.2 The Committee had regard to regulation 20(2) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) which provide where the PCT considers that the provision of primary medical services by any provider of such services (other than itself) or pharmaceutical services by any chemist, or local pharmaceutical services by any LPS chemist is likely to be adversely affected in consequence of a grant under paragraph 20(1), it may impose conditions to postpone, for such periods as it thinks fit, the making or termination of arrangements under Regulation 60 (or equivalent provision under the GMS Regulations or PMS Regulations) for the provision by a doctor or a GMS contractor or PMS contractor of pharmaceutical services or dispensing services to patients on the relevant patient list.
- 5.3 The Committee reminded itself of relevant Department of Health guidance.
- 5.4 The Committee noted the PCT had determined there should be a period of 6 months from the opening of the applicant's pharmacy before affected patients are transferred from doctors dispensing to their prescribing lists. In his appeal, Dr Shamsee suggested there should be a longer period of gradualisation.
- 5.5 The Committee noted the appellant's arguments as to why a gradualisation period of longer than 6 months was required including that they had previously, been afforded a longer period of gradualisation where loss of a lesser number of patients was concerned. No information had been provided by the applicant to indicate that the PCT's gradualisation decision was unreasonable. The Committee did not regard the arrangements described by the appellant as extraordinary. Balancing the needs of both medical and pharmaceutical contractors, and having noted the appellant has already had some time to begin planning for the possible reduction in dispensing activity, the Committee regarded a period of 6 months as being sufficient to reduce any adverse consequences on the practice.

6 Decision

Accordingly the Committee has determined there should be a period of 6 months following the opening of the pharmacy, before dispensing patients are required to be transferred to their doctors prescribing list. The Committee dismisses the appeal.

Ray Bushell
Appeal Officer

A copy of this decision is being sent to:

Mr A M Khan – Applicant
Dr Y Shamsee – Oaklands Health Centre – Appellant
Mr N McDonald – Kirklees PCT