



OUTER HOUSE, COURT OF SESSION

[2025] CSOH 91

P1028/24

OPINION OF LORD LAKE

in Petition of

LP NORTH SIXTEEN LTD t/a DEARS PHARMACY

Petitioner

for

Judicial Review

Petitioner: Crawford KC, McGowan; Morton Fraser MacRoberts LLP solicitors

Second Respondent: James; NHS Scotland Central Legal Office solicitors

Third Respondent: MacGregor KC; Blackadders LLP solicitors

26 September 2025

[1] A party who wishes to be in a position to provide NHS pharmacy services must be included on a Health Board's list of pharmaceutical practices. TPB Partnership LLP sought admission to the pharmaceutical list for Lothian. The petitioners own a practice providing pharmacy services that is already on the list and they oppose TPB's application. They seek review of a decision of the Chair of the National Appeals Panel ("NAP") dated 25 September 2024 refusing their appeal against a decision of the Pharmaceutical Practice Committee ("PPC") of NHS Lothian Health Board dated 20 August 2024 granting TPB's application for admission to the pharmaceutical list. The NAP are the first respondent but, as is customary,

did not appear. NHS Lothian Health Board are the second respondents and TPB are the third respondents.

Legal background

[2] Although it has been set out previously in other cases, it may be convenient if I summarise at the outset the procedures relating to applications for admission to the Health Board's list.

- (a) The procedures and criteria for inclusion within the pharmaceutical list are specified in the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009.
- (b) A party who wishes to be included on the list and thereby to be in a position to provide pharmacy services requires to apply to the Health Board. The application is considered by the Board's PPC.
- (c) In terms of the Regulation 5(10), an application such as that made in this case may only be granted if the PPC:

“is satisfied that 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.”
- (d) There are various pieces of information which must be submitted by an applicant. One of these is a Consultation Assessment Report (“CAR”) (Regulation 5A). As the name suggests, this sets out the results of a consultation exercise with potential users of the pharmaceutical services and may be used as part of the assessment of adequacy.

- (e) Notification of an application must be made to the persons named in paragraph 1 of the Schedule. These include various committees and a nominated community representative but, for the present dispute, the category of person that is relevant is in paragraph 1(1)(b)(iii) – any person whose name is included in the pharmaceutical list or the provisional pharmaceutical list and whose interests may, in the opinion of the Board, be significantly affected if the application were granted
- (f) Paragraph 5 of Schedule 3 of the Regulations regulates appeals against decisions of the PPC. An appeal may be taken from the decision of the PPC to the National Appeal Panel in circumstances including those specified in paragraph 5(2B). That states:

“The circumstances are—

- (a) there has been a procedural defect in the way the application has been considered by the Board;
 - (b) there has been a failure by the Board to properly narrate the facts or reasons upon which their determination of the application was based; or
 - (c) there has been a failure to explain the application by the Board of the provisions of these Regulations to those facts.”
- (g) The issue of who may appeal is regulated by sub-paragraphs (1) and (2) of paragraph 5.
- (1) Subject to sub-paragraph (2) the applicant or any person mentioned in paragraph 1 may appeal against the decision of the Board on the application, and must give notice of any such appeal to the Board within 21 days from the date on which notification of the Board’s decision was sent to the applicant or person mentioned in paragraph 1.
 - (2) Any person mentioned in paragraph 1 who was notified of an application under that paragraph but made no written representations to the Board

about it shall not be entitled to appeal against a decision of the Board in relation to that application.

(h) As to disposal of an appeal, paragraphs 5(5) and (7) state the following:

“(5) The Chair, after considering the notice of appeal and the decision of the Board, shall—

(b) remit the decision back to the Board for reconsideration if the Chair is of the opinion that any of the circumstances in sub-paragraph (2B) have occurred”

“(7) Where the Chair remits an application back to the Board for reconsideration—

(a) the Chair shall give to the Board such advice as appears to the Chair to be desirable with a view to remedying the defect or failure that has led to the decision to remit;

(b) the Chair shall send a copy of the remitted application and the advice issued to the Scottish Ministers; and

(c) the Board shall reconsider the application.”

History

[3] The Application has had a protracted history. It was made on 11 April 2023. On three occasions, the application has been granted by the PPC. On the first two occasions, there was a successful appeal to the NAP. On the third occasion, the appeal to the NAP was refused. It is that refusal which gives rise to the present petition.

[4] The first appeal was allowed by the NAP on the basis that insufficient reasons had been given by the PPC in relation to their conclusions as to the availability of and uptake of a service known as Pharmacy First. While the merits of that are not relevant to the present proceedings, the first respondent allowed the appeal and referred the matter back to the PPC for reconsideration. The decision letter stated

“In doing so I would urge the Board to reconvene as a matter of urgency to reconsider this application. In particular, to provide sufficient reasons as to their decision making regarding the Pharmacy First issue raised by the First Appellant.”

Notably, a second argument made by the petitioners that their takeover of the Lloyds pharmacy meant that there was adequate provision in future was not upheld.

[5] The second appeal to the NAP was allowed on the basis that when the PPC had reconvened following the first appeal to reconsider the position as directed, they were inquorate as no pharmacist members were present. A further ground of appeal that there were again insufficient reasons for their decision as it related to the low uptake of the Pharmacy First Service was rejected. The petitioners had also advanced an argument that the decision should be remitted to a new PPC and that they should be permitted to address the new panel on the up to date factual position. This was rejected by the first respondent who stressed that when a case was remitted for reconsideration, it is only in relation to the grounds on which the appeal has succeeded and that it does not automatically lead to a full reconsideration or for new evidence to be admitted.

[6] In the third appeal, the petitioners argued that they ought to have been able to have new evidence heard by the PPC about the state of provision of pharmacy services in the relevant locality. It was submitted that the PPC has been “wrong” to make their decision as to adequacy on the basis of “historic evidence”. This was rejected. In the decision on the third appeal, the first respondent repeated comments from the second appeal decision and said,

“when cases are remitted to the PPC for reconsideration this will be on those grounds of appeal that have been successful - and only those grounds. Succeeding at appeal on a particular point does not automatically entitle a party to a full reconsideration of the application or for new evidence or information to be advanced.”

The decision noted that in considering adequacy of provision, the PPC was required to consider the current provision or the provision already in place. This meant it was to be considered at the time the application was made. The unlawfulness of the decision was said

by the petitioners to lie in holding that the PPC could not hear new evidence and was constrained to the facts before it for initial determination. It was submitted that this limits the ability of the PPC to consider the existing adequacy of provision.

Preliminary matters

[7] Before turning to the substance of the challenge to the decision of the NAP, it is useful to consider some other issues that have been raised. The first two concern whether the petitioner is a party with standing to challenge the NAP decision.

[8] As noted above, the 2009 Regulations state that an appeal to the NAP may be made by “any person mentioned in paragraph 1”- in this instance a person included on the pharmaceutical list. The issue that arose concerns the point in time at which the person in question must be on the list in order to qualify. The petitioners were not so entered at the time the application was initially made. At that time, the entry in respect of the premises from which they now operate was in the name of Lloyds Pharmacy Limited. On 29 August 2023, a little over 5 months after the application was made, the petitioner was added to the list in place of Lloyds pharmacy.

[9] TPB contend that the petitioners were not on the list at the date of the application, did not receive notification of the application and were not the company that made representations to the PPC in respect of the application. On that basis it is said they have no standing to appeal to the NAP. The petitioners argue that their application to be on the list was made in terms of regulation 5(3) and that this enables someone to be put on the list “in place” of a current entry. They note that in relation to such an application, there is no discretion on the part of the PPC as to whether or not to grant it. They submitted that they stood in the shoes of the previous party – Lloyds – and that the PPC had recognised this.

They noted that TPB did not challenge the petitioner's standing before the PPC in relation to making representations and the initial decision stage. They submitted that the intention of the 2009 Regulations is that persons who are affected by an application should have some say in whether or not it is granted. To take the approach that it is only the person that is named at the time of the application would produce the double anomaly that a party who had been on the list at the time but had since left would be able to make representations and that a party who now had an interest but was not on the list at the time would not.

[10] In this respect, I agree with the petitioners. The issue is the proper interpretation of paragraph 1(1)(b)(iii) when it says, "any person whose name is included in the pharmaceutical list". As noted above, this paragraph applies in two situations; (i) to identify to whom notification of the application must be made by the Health Board and who may therefore make representations and (ii) to identify who the party is that must be notified of the decision and who may appeal against a decision of the PPC. I consider that it need not be the same party on both occasions. This arises both as a result of the wording of Schedule 3 and the purpose of paragraph 5. I consider it relevant that paragraphs 4(1) and 5(1) say "any person mentioned in paragraph 1" and not any person to whom notification of the application was given or any party who has made representations. It would have been easier to state that had it been what was meant. When stipulating when an appeal may *not* be made, it is notable that paragraph 5(2) includes the wording, "who was notified of an application" in addition to "a person mentioned in paragraph 1". The omission of this wording from paragraph 5(1) suggests that it is the fact that they are on the list and not the fact that they received notification as a person in the list at the time of the application that matters. In paragraph 1(1) the person in question must be notified to enable them to make representations. A party already on the list at that time will have the interest to do so. In

relation to making appeals and the requirements of paragraphs 4(1) and 5(1), it is a person who is on the list at the time the appeal is competent that will have the relevant interest.

[11] The second preliminary issue concerns whether or not the petitioner in fact raised an appeal in relation to the decision of the PPC dated 20 August 2024. On 6 September 2024 a letter of appeal was submitted with a letter heading of “Barry Dear Limited” and a company number SC424013. That is a different company from the petitioner. TPB submitted that as the appeal had not been made by one of the parties identified in paragraph 5(1), it was incompetent. In connection with this, it was submitted that the petitioner was barred from seeking to invoke the supervisory jurisdiction of the court as it had failed to take advantage of the statutory right of appeal. In response, the petitioner submits that if regard is had to the whole circumstances, it cannot be said in any practical or real sense that the appeal was by any person other than them. They note that the petitioner was on the list, the petitioner had made representations to the PPC, the petitioner had twice appealed previous PPC decisions, the Health Board had intimated all decisions of the PPC to the petitioner, the letter of appeal refers to the Board's intimation of the PPC decision, the petitioner trades as Dear’s Pharmacy as was known to the first and second respondents and that on 26 September 2024 the Board intimated the decision to the petitioner.

[12] I consider the last of the points made by the petitioner particularly relevant. It indicates that, notwithstanding the erroneous name on the letter, the NAP and the Board/PPC had understood that the appeal was made by the petitioner. In my view, it is more important to look at the substance and form. It has been understood since the decision in *Investors Compensation Scheme Limited v West Bromwich Building Society* [1998] 1 WLR 896 that in both contracts and notices, people do not always accurately express themselves and that it is necessary to consider how the communication would reasonably be understood by

the recipient. Here, as it has in fact been understood as a reference the petitioner, I consider that the appeal was made by them and that they have standing to bring this petition and have exhausted their statutory rights of appeal.

[13] The third preliminary matter raised concerns the timing of the present petition. TPB contended that the decision by the first respondent that there is no requirement to consider new evidence was taken prior to the last of the PPC decisions which was appealed. Advice to this effect was given on 18 July 2024 in the second appeal decision. It was submitted that the 3 month time limit for submitting a challenge ran from that date and the present challenge was too late. This point was not taken at the permission stage and I do not consider it is appropriate to take it at the substantive hearing. In addition, as it was not the operative part of the second appeal decision, it is not clear that it could have been the subject of review when the appeal was otherwise successful.

[14] For completeness I would add that in its submission on the merits, the petitioner advanced an argument that the NAP had wrongly fettered the discretion as to what evidence it could hear. If the discretion of the PPC was to be fettered by a decision of the NAP, that decision would have to have been made before the PPC's last decision on 20 August 2024. The decision taken by the NAP on the third appeal on 25 September 2024 cannot be one that could have affected the discretion of the PPC as there has been no decision of the PPC since that date. This argument as to fettering discretion raises the possibility that it was the earlier decision of the NAP on 18 July 2024 that was being challenged. Had the petition sought review of that decision, it would have to have been brought by 18 October 2024. By the time the present petition was raised it was too late. By that time the petitioner had elected to participate in the further decision process before the PPC and to appeal the matter to the NAP. That being so, it would not be appropriate to

extend the time bar. It would amount to enabling the petitioner to “bank” the challenge for later while still contesting the application and giving them another bite of the cherry.

However, the terms of the petition are clear that the decision of the first respondent being challenged is that dated 25 September 2024 and on that basis, I consider that no issue of fettering arises.

The substantive challenge

Submissions for the petitioner

[15] It was submitted that PPC required to address adequacy of provision at a specific time and that the time in question was that of their decision. The test for admission to the list is couched in terms of making adequate provision of pharmaceutical services.

Information is required to make an assessment of this. The information comes from the CAR. The fact that the CAR must be produced a short time before the application and that there is a tight timescale for the PPC consideration and an appeal indicates that the information relied on should be up to date. For a decision to be made on information which is so out of date would be contrary to the intention of the Regulations. This was supported by the decision in *Lloyds Pharmacy Limited v National Appeals Panel* 2004 SC 703, paragraph 10. In making the decision, regard could be had to likely future events but the decision must nonetheless be taken at a particular time. In relation to the present case, the critical date was when the matter was sent back to PPC for reconsideration following the second appeal. The adequacy of provision had to be determined at that date. This meant it was appropriate to hear additional evidence as by that time the information contained in the CAR was out of date.

[16] Although in the original decision, the PPC had taken account of the fact that the petitioner was taking over the Lloyds Pharmacy premises, it was assessed only as a matter of probability and the issue of adequacy having regard to that was found to be finely balanced. With the passage of time, a more definitive decision could now be made. When reconsidering the matter following the second appeal, the PPC had not allowed additional evidence and the refusal of the appeal on this basis by the first respondent was an error of law. It was submitted that it meant that the PPC was not able properly to consider the existing adequacy or provision. It is accepted that a remit back to the PPC by the first respondent does not necessarily entail a rehearing of evidence, but it was submitted that it is a possibility and whether to allow it is a matter for the discretionary judgement of the first respondent depending on the facts and circumstances of the application and appeal.

Although in many cases there might not be a basis to hear new evidence, this does not mean it is an absolute prohibition on hearing new evidence. If time has passed since the original CAR and there has been change in the provision of pharmaceutical services in the locality, both those factors indicate that more up-to-date evidence is required. It was submitted that in the present case both those factors exist and it should have been allowed. It was submitted that the support for the discretionary power can be found in the decision of *Abbey Chemists Limited v National Appeal Panel* [2025] CSOH 21. In this case, when making the third decision and in determining the third appeal, the first respondent and NAP had erred in refusing to consider any further evidence.

[17] I was referred to *Mukarkar v Secretary of State for the Home Department* [2006] EWCA Civ 1045. It was submitted that it was not analogous and did not deal directly with the present facts. Here, the defect that arises is that the PPC no longer had a proper basis on which to assess adequacy as it did not have the up to date information. In this situation, to

use the expression from *Mukarkar*, the “entire edifice of reasoning” does need to be dismantled.

[18] I was referred also to *DK (Serbia) v Secretary of State for the Home Department* [2008] 1 WLR 1246 and *R (Perrett) v Secretary of State for Communities and Local Government* [2009] EWCA Civ 1365 in relation to what is required when something is remitted for ‘reconsideration’. As the latter case quotes the relevant parts of the former, it is easiest to deal with it. It concerned an appeal against a planning enforcement notice. An appeal to the High Court had been successful and the matter had been remitted back to the Secretary of State for “rehearing and determination”. Following a further decision, the matter was again appealed to the court. The appellants argued that the Secretary of State had been obliged to rehear and determine the whole of the enforcement notice appeal from scratch and could not confine attention merely to the grounds that had been the subject of the earlier appeal. The Court of Appeal rejected that argument. The court first concluded that the use of the word “rehearing” did not mean that the appeal required to be heard de novo and a fresh decision reached (paragraph 24) and then went on to consider what was meant by “reconsider its decision”. Reference was made to the passage in *DK* in which Latham LJ had said that a party asked to reconsider a decision will approach the task on the basis that any factual findings and conclusions or judgments arising from those findings which are unaffected by the error of law identified in the appeal need not be revisited. The consequence of this was that if there were to be any challenges to the factual findings unaffected by the error or law which had led to the appeal being granted, it would in general be on the basis of new evidence or new material and that the usual principles for the reception of such evidence would apply (*DK*, paragraph 23).

[19] It was submitted that on the present facts, the PPC would have been justified in reopening the matter of adequacy of provision. It was submitted that it would be absurd for the PPC to address matters of adequacy on the basis of historical facts which may no longer hold true. The petitioners emphasised that they were not inviting the decision-maker to take a different view of the facts but to look at new facts and come to an expert conclusion on those.

[20] Although reference was made to *Chowdhury v General Medical Council* [2023] CSIH 13, it was submitted that it was of little assistance. That case was concerned with *res noviter* (newly discovered information that had existed before) which was not the position here. However, it was of assistance in so far as it determined that in order for additional evidence to be allowed, there would have to be an acceptable explanation as to why it was not lead earlier, the information would have to be relevant and admissible and there would have to be reasonable prospects that it would make a difference. It was submitted that all three requirements were satisfied in this case. On that basis the evidence could be heard and, on the approach in *DK*, new findings in fact might be made.

Submissions for the Third Respondents - TPB

[21] The third respondent submitted that it was an issue of statutory construction as to what was meant by 'reconsideration' used in paragraph 5(5) of Schedule 3 of the Regulations. It was of note that the decision taken by the PPC was not quashed or reduced by the first respondent. By reference to *Mukarkar* it was noted that the only issue remitted back following the first successful appeal to the first respondent was that concerning Pharmacy First and the adequacy of the reasons given by the PPC. It was relevant to have regard to paragraph 44 of the decision of Sedley LJ in that case in which he said,

“reopening a concluded decision by definition deprives a party of a favourable judgment and renders uncertain something which was certain. If a discrete element of the first determination is faulty, it is that alone which needs to be reconsidered. It seems to me wrong in principle for an entire edifice of reasoning to be dismantled if the defect in it can be remedied by limited intervention”

I was referred also to the decision in *DK* to the effect that the only matters which had to be considered when a decision was remitted back for reconsideration were those that were ‘infected’ by the error. The decision in *Chowdhury* noted that finality is an important consideration when considering the interests of justice (paragraph 28). The original appeal decision here concerned only the reasoning in relation to Pharmacy First. That is why it was sent back with a direction to enable the PPC to give more reasons on that matter. It was not a decision to quash the decision and to require the PPC to start again.

[22] That decision in *Chowdhury* also said that the court would have to be satisfied that there is a reasonable prospect that the additional evidence would make a material difference. Looking at the whole circumstances of this case, it was not apparent that this was the case. It was significant that in taking its original decision, the PPC had considered capacity not just at the date of their decision but had taken account of probable future developments. This was apparent from paragraph 29.21 of the minute of the decision. They had examined a scenario in which a new owner of the Lloyds Pharmacy moved swiftly to deliver improved levels of service. In paragraph 29.26, the conclusion was that even in this situation, the pharmacy services in the neighbourhood would be inadequate. This approach was consistent with the decision in *Lloyds Pharmacy Limited* where it was noted that although the requirement was to determine existing provision and that this meant as at the time of their decision, it was proper to have regard to probable future developments (para [10]). As the PPC had already made their decision as to the future taking account of the petitioner taking over the Lloyds premises, it was contended that there was nothing before the court to

indicate that the additional submissions or additional evidence that the petitioner desires would make any difference.

Submissions for the second respondent - the Health Board

[23] Although the health board were a respondent to the petition and lodged answers and participated in the hearing, they did not make submissions with a view to having the decision made one way or the other. Rather, they sought that guidance be given in the event that a determination is made that taking further evidence was possible. It was submitted that if it was competent for them to hear additional evidence when a matter was remitted back to them following a successful appeal, it would be useful then to have some guidance as to what issues might be relevant to the decision as to whether or not they should grant a request.

Decision

[24] The decision of NAP is challenged on the basis that it erred in not allowing the appeal on the basis that the PPC had not heard additional evidence when the matter was remitted back to them following the second appeal. As this argument turns on the issue of what was competent or appropriate for the PPC to do, that is the appropriate place to start.

[25] Two factors control the scope of the powers of the PPC when the matter was admitted to it. The first is the terms of the Regulations and the second is the basis on which the matter was remitted back to them. The regulations state that in allowing an appeal the Chair of the NAP shall “remit the decision back to the Board for reconsideration” (Schedule 3, Regulation 5(5)(b)). The first question is whether “reconsideration” means that the PPC has the power to hear further evidence. It is clear from the decisions in *DK* and

Perrett that it will not always require that. Nonetheless, it does not seem to me that either of these decisions precludes the hearing of additional evidence. Neither of those cases dealt with the Regulations but the same result follows from their terms. The power to remit back for reconsideration arises if the Chair is of the opinion that any of the circumstances specified in regulation 5(2B) have occurred. Two of those circumstances deal with failures on the part of the PPC to provide sufficient detail in their decision. As they relate to the process of preparing the decision, neither gives the impression that it would be necessary to hear further evidence to remedy any identified defects. However, the first of the possibilities in paragraph 5(2B) is that there has been a procedural defect in the way the application has been considered. It is at least possible that that defect may have resulted in the exclusion of evidence and that when the matter is remitted back to the PPC, in order to remedy that defect, they would wish to hear further evidence. On that basis it could be said that the issue of whether to hear additional evidence was for the PPC to determine.

[26] However, the second matter which controls the scope of what the PPC may do when a matter is remitted back to it, is the advice given by the Chair in terms of Regulation 5(5)(b) when making the remit. The need for the second decision arose out of the first appeal where the appeal was allowed and the matter admitted back to the PPC for a specific purpose. The second decision was vitiated and therefore did not address the advice from the Chair. That advice therefore remained outstanding and binding on the PPC when they came to take their third decision. It made the position clear that it was not the whole matter that was being remitted back to the PPC that the remit back was on a very specific basis. In the remit, the Chair stipulated that it was for the PPC, “to provide sufficient reasons as to their decision making regarding the Pharmacy First issue raised by the First Appellant.”.

Therefore, at the stage of the third decision the matter outstanding was the correction of the

defect which had been identified in the first appeal – stating sufficient reasons in relation to the Pharmacy First issue. That was the only matter which the PPC had been directed to consider by the chairman of the NAP having regard to paragraph 5(5)(b).

[27] Having regard to what was said in *DK* and in *Perrett*, it would not have been appropriate in view of the direction given by the first respondent on the first appeal, to have revisited the issue of adequacy with a clean sheet at the time of the third decision. To adopt the terminology from *DK*, it was not necessary to revisit the parts of the decision not infected by the identified error in relation to Pharmacy First. For the avoidance of doubt, I should also make plain that I do not consider that it is correct for the petitioner to say that the PPC required to consider adequacy of provision at the time of their second and third decisions. That is inconsistent with the limited remittal back to them by the Chair of the NAP and with the decision in *Lloyds Pharmacy*. There the Inner House stated the requirement as being to determine the adequacy of provision at the date of the decision by the PPC.

[28] It is clearly not satisfactory that the decision as to whether or not the third respondents' application is to be granted turns on an assessment of adequacy of provision made some time ago. That has arisen in part because of the difficulties in the earlier decision but also because of difficulties in constituting the relevant bodies. It is clear that neither the petitioners nor the third respondents bear the responsibility for the delay that has occurred. While the current position is unfortunate, it cannot overcome the wording of the statutes or what is required by them. I accept the submissions for the petitioner that the procedure set out in the Regulations is intended to be swift. It is unfortunate that that was not the position here. However, that notion of a swift procedure favours an interpretation of "reconsideration" which would enable it to be carried out rapidly and not one which would require a reopening of all issues. The proper meaning to be given to that word does not

change just because of circumstances which have arisen in a particular application sometime after the Regulations were introduced.

[29] In so far as the petitioner seeks to rely on the decision in *Abbey Chemists*, the issue that arose there was whether the PPC were required to make a new decision or simply to give reasons for the existing decision. No party raised the possibility that additional evidence should have been heard by the PPC and that issue was not considered. I do not find that decision of any assistance to the before me.

[30] While I understand the desire of the Health Board, the second respondent, to have guidance as to how to apply a discretion to hear additional evidence, it would not be helpful for me to attempt to give guidance to apply generally. The procedure in relation to the application is a statutory one. It would not be appropriate for a court to innovate on it or to modify it. It may be that in a particular dispute before it, the court can answer a particular question which will give guidance for the future but it should not seek to go further.

Remedy

[31] I was addressed by parties as to whether or not a remedy of reduction should be granted if I had found in the petitioner's favour. I was referred to the decision of Lord Ericht in *Greenpeace Limited v Advocate General for Scotland* [2025] CSOH 10. Although in view of my decision this matter is academic, had I been in the petitioners' favour on the merits of the challenge, I would have reduced the decision of the NAP. This is on the basis that there is a strong public interest in favour of unlawful decisions being reduced and remade on a lawful basis. Although the delay here is unsatisfactory and there appears to be significant public support for the opening of a new pharmacy, I do not consider that these factors amount to exceptional circumstances so as to justify refusal of reduction.

Disposal

[32] In view of the foregoing, I sustain the third plea in law for the third respondents. In view of my decision that it might be possible in some circumstances for the PPC to hear new evidence when a matter is remitted to it, I have considered whether it would be appropriate to grant the remedy sought in subparagraph (a) of statement of fact 4. I do not consider it appropriate. That was not the substance of the issue that was brought before me and would amount to giving general guidance to the NAP on the performance of its function. In the decision letters of both 18 July 2024 and 26 September 2024, the first respondent said that referral,

“does not *automatically* entitle a party to a full reconsideration of the application or for new evidence or information to be advanced.” (emphasis added)

[33] It is implicit in this that there will be circumstances in which there might be further evidence. There is thus no indication of an approach that might lead to unlawful decisions in future requiring the intervention of the court.

[34] I repel the remaining pleas for the third respondents and the pleas for the petitioner and the second respondent, and refuse to grant the remedies sought in the petition. I reserve questions of expenses meantime.