

First-Tier Tribunal Primary Health Lists

The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008

2024-01322.PHL

**Hearing held at the Royal Courts of Justice
on 15-16 July 2025**

Before

**Tribunal Judge S. Trueman
Specialist Member Ms S Billington
Specialist Member Ms J Everitt**

Vharmacy Ltd

Appellant

-v-

**Bedfordshire, Luton and Milton Keynes
Integrated Care Board**

Respondent

DECISION

The Application

1. This appeal is brought by Vharmacy Limited (a corporate entity) of whom two directors are Mr Burpinder Bharj and Mr Harpal Grewal. Although in a technical sense the only appellant is the company, given that the issues in this appeal really relate to the activities of Mr Bharj and to a lesser extent, Mr Grewal, this decision refers to them all collectively as ‘the appellants’ for convenience.
2. This appeal concerns the decision of the Bedford, Luton and Milton Keynes integrated Care Board (in this decision referred to as ‘the Respondent’), to refuse to admit the appellant company to the pharmacists list as a distance selling business by decision dated 25 October 2024, pursuant to rule 33(2)(b) of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013¹. These Regulations are referred to in this decision simply as ‘the Regulations’.

¹ SI 2013 No 349, as amended.

3. The appellant and Mr Bharj and Mr Grewal submitted an appeal to this tribunal on 15 November 2024, within the required time limit, and this matter now comes before us.

Attendance

4. Mr Burpinder Bharj and Mr Grewal appeared in person as directors of the company. They were also witnesses for the company, and their other witnesses were Ms Ashia Jamal, Ms Jean Butler, Dr Milind Jani, Ms Natasha Birdi, and Ms Sonia Birdi. In the event, for reasons explained below, only Mr Bharj, Mr Grewal, and Ms Natasha Birdi gave live evidence at the hearing. Mr Prashant Patel appeared as witness for the appellant by video link with the consent of the Tribunal given on 14 July 2025.
5. The Respondent was represented by Mr Alexander Dos Santos, counsel, instructed by Mr Richard Parker and Mr Ian Leslie, Hill Dickinson. The Respondent's witness was Ms Jackie Bidgood, Senior Community Pharmacy and Optometry Contract Manager.
6. District Tribunal Judge Hockney attended the hearing as a Judicial Observer on day 1 only.

Preliminary Issues

Non-disclosure of evidence.

7. On day 1 of the hearing, the Tribunal raised with the Respondent the fact that its initial grounds of resistance to the appeal made reference to the minutes of the decision meeting held on 25 September 2024, and to the terms in which it had considered the application by the appellant. Paragraph 12 of that initial response quoted extensively from those minutes, which appeared highly relevant to these proceedings, but which had been disclosed neither to the Tribunal nor to the appellant. We ordered their production. The Respondent duly provided the relevant parts of the minutes. We were informed that these minutes had been in the possession of Hill Dickinson since the outset but had been 'overlooked' in the disclosure process. The Respondent apologised for the oversight.
8. In our view this is a significant failure. It is incumbent on a Respondent, who almost always holds many of the cards in litigation, to be diligent and thorough in conducting disclosure exercises. It is hard to imagine a more basic document to forget, or a more important one, than the minutes of the meeting in which the decision under appeal was made. No application to withhold this was ever made, and it is plainly a highly relevant document. Such failures go to the heart of the fairness of litigation, and if it had contained anything significantly different from the reasons given in the remainder of the documents and statements, an application to adjourn to allow the appellants opportunity to deal with it might have been inevitable, with all of the associated cost and delay inherent in this and the potential for costs orders. We criticise Hill Dickinson for this failure.

Late Evidence

9. The directions order for this appeal made on 13 January 2025, required witness statements to be exchanged by 13 March 2025, and supplementary statements to be exchanged by 27 March. Although the Appellant complied largely with this order, it did not submit a statement from Mr Bharj himself. At a Case Management Hearing on 18 June, which the appellants did not attend, the Tribunal ordered that any statement from Mr Bharj was to be filed by 27 June. Mr Bharj filed a statement dated 24 June on 26 June. No reason for the failure to comply with the original order was ever offered.
10. Skeleton arguments were ordered to be filed by 8 July, but in the event the appellant only filed its skeleton on 9 July. No point was taken on these issues by the Respondent.
11. On 14 July, the Respondent submitted an agreed application to admit further evidence, being a third witness statement from Ms Bidgood, dated 11 July 2025, to update the Tribunal on a relevant change to the Regulations, and a second witness statement from Mr Bharj responding to this. We agreed to the submission of the late evidence at the outset of the hearing.
12. During the course of the hearing, we were also given additional late evidence by the Respondent, to which no objection was made, being an extract from the website of the General Pharmaceutical Council ('GPhC') on becoming a superintendent pharmacist, and an NHS document entitled 'Guidance Note for Parties involved in Pharmacy Appeals'. We also admitted those.

Witnesses

13. At the beginning of the hearing, we directed that all witnesses' written statements should stand as their evidence in chief to avoid oral repetition. We therefore indicated that oral questions would mostly be confined to cross-examination by the other party and any essential re-examination arising. Mr Dos Santos said that as much of the appellant's written evidence consisted of testimonials on Mr Bharj's ability as a pharmacist, which was not in dispute, he did not propose to cross examine some of the witnesses. On the basis that some of the evidence was to be uncontested, therefore, we discussed with Mr Bharj whether or not some witnesses needed to attend at all. Following this discussion, it was agreed that Aisha Jamal, Dr Jani, and Ms Butler did not need to attend to give oral evidence, because their evidence was not to be challenged. We therefore agreed that this evidence would be taken into account uncontested.
14. Although the evidence of Ms Sonia Birdi was contested, the same issues arose in relation to her evidence as arose in relation to Ms Natasha Birdi, and it was therefore agreed that the substance of the Respondent's case need be put only to one of them, to avoid repetition again.
15. We make clear that this was agreed by Mr Bharj and we took into account all of the evidence before us in reaching our decision, whether or not the witness attended the hearing.

Possession of the hearing bundle

16. At several points in the hearing, Mr Bharj indicated that he had not seen the

tribunal bundle in advance of the hearing. He said this particularly when it was put to him in the witness box that neither of the referees for the application had indicated that they were aware of his previous convictions. He said that had he seen in advance that the referees, Mr James Tugby and Mr Sergio Carrasco Fernandez had not ticked the required boxes he would have called them to the tribunal to give evidence.

17. We did not accept that Mr Bharj had not seen the bundle of documents before today. The directions made in this appeal on 13 January 2025 were agreed between the parties. These clearly contemplated that a bundle index would be prepared by 17 April and a full bundle would be prepared by 1 May. No indication was ever given by the appellants that they had not received the bundle, and no application for production of one was made. The Scott Schedule response which was due from the appellant on 5 June 2025 was completed, and Mr Bharj used page references from the bundle in completing that document. He responded to each of the allegations, which were also referred to by page references, and he did not indicate that he was unable to respond due to not having the documents. We are satisfied that the appellants were provided with the bundle in advance of the hearing.

The appellants as litigants in person

18. The Tribunal confirmed with Mr Bharj at the outset that he was content to act in person in this case and to not instruct a lawyer. As he and Mr Grewal were therefore in effect litigants in person, the Tribunal assisted the appellants to the extent of checking whether they had any questions of Ms Bidgood and helping them to frame them for a full response; checking whether they had any questions arising from cross examination of their own witnesses, and giving them chance to say anything else that they wanted to at the end of their evidence to make sure that all points they wanted us to consider were taken into account. We also noted that Mr Dos Santos was under a duty to draw to our attention any case law or matters that ran counter to his own case and had a duty to assist them to an extent as litigants in person.
19. At the end of the hearing, we gave both parties 45 minutes following the conclusion of evidence to reflect and prepare any final submissions, both on the law and on the facts of the case. We also allowed both Mr Bharj and Mr Grewal to address the tribunal, recognising that both were litigants and there was no representative. We note that Mr Bharj thanked us in his closing remarks for helping him to communicate effectively with the witnesses.

Background

20. Mr Bharj has been a pharmacist since 1980. He has known Mr Grewal, a businessman, for some 10 years or more. In August 2023, they decided to set up a business together and applied to the Respondent to register on the pharmacists' list as a distance selling pharmacy.
21. The function of making and maintaining a list of pharmacists entitled to provide NHS pharmaceutical services was one given to NHS England by the National Health Service Act 2006. It has since been delegated to the local ICB to

determine for the area in which a person or entity wishes to be registered. As Mr Bharj and Mr Grewal had decided to set up their distance selling pharmacy business at 11B Hawes Court, Bedford MK40, that application fell to the Respondent to determine.

22. The lists do not contain the names of individual pharmacists but set out names of contractors who can run a pharmacy, whether they are sole traders, partnerships or, as here, corporate bodies. Where the pharmacy is to be run by a corporate body, it must have a superintendent pharmacist who is also a registered pharmacist. Mr Bharj was to be the superintendent pharmacist of this business, Vpharmacy Limited.
23. The application is considered by the Respondent in two stages: is the applicant a fit and proper person? And then if so, what are the market entry considerations for new premises? In relation to the question of the suitability of the company to undertake the provision of pharmaceutical services, the Regulations provide that this includes not only the suitability of the company itself, but also of its directors (and superintendent) for many purposes. Thus, although the company was the applicant, Mr Bharj's own record as a pharmacist and a superintendent pharmacist was also relevant to the question of the company's suitability.
24. There was some delay in making the decision in question, which is the subject of some complaint in these proceedings, but in any event the Respondent wrote to the Appellants by letter dated 25 October 2024 and, in that letter, indicated that the application was refused. The reason given was set out in an enclosed report, but in any event amounted to little more than a statement that '*Rational [sic] – A director of the body corporate has been subjected to a past fraud investigation whereby the director was involved with fraudulent activity*'. The report set out some extracts from the Regulations, and the letter also indicated that the appellant had a right of appeal to this Tribunal which they had to exercise within 28 days.
25. To understand the reason for the refusal of registration, it is necessary to go back into Mr Bharj's history as a pharmacist, since the Respondent's response made clear that it was his position, and not that of Mr Grewal, which was the matter of concern.
26. In 1994 Mr Bharj was removed from the Pharmaceutical Register by the predecessor of the General Pharmaceutical Council for misconduct, being instances of selling out of date medication and two instances of substituting medication other than that on the prescription, and patient returns on the dispensary shelf. He was subsequently restored to the Register, though the date of this is unclear. It is assumed it was about 12-18 months later, that is by late 1996. He was certainly back on the register and practising by August 1997. But it is said he then received at least one reprimand and three warning letters thereafter for various prescribing and dispensing errors. Mr Bharj told us in evidence that at this period following restoration to the register he was acting as superintendent pharmacist for his own pharmacy.

27. In June 2002 following an inquiry, Mr Bharj pleaded guilty at Leeds Crown Court to two or three counts of obtaining property by deception, for which he was sentenced to 6 months imprisonment (though it is accepted he served only about 6 weeks). It was said that from about October 1985 to September 2001, when practising, he had claimed payments from the Prescription Pricing Authority of the NHS to which he was not entitled. He had supplied multiple small pack sizes of medication when in fact he had dispensed large pack sizes. The exact financial extent of the fraud was stated differently in different documents, but it was accepted in 2003 to be somewhere between £25,000-£40,000 (see bundle C100). It was said in 2007, to be closer to £19,000 (bundle C97). It was said in evidence, and we accept, that overall Mr Bharj paid back a sum of about £27,800 over time. As a result of this conviction, he was removed again from the Register in March 2003.
28. In July 2007, some 4 years later, Mr Bharj was restored to the Pharmaceutical Register as a pharmacist. The hearing which restored him to the register noted that the onus to establish suitability to be restored rested on him, and they concluded *'bearing in mind the length of time that Mr Bharj's name has been off the register and his evidence identifying the change in his attitude and in his character he succeeds in his application for his name to be restored'*, and the committee imposed a number of conditions on restoration including working under supervision and completing updated training. It is accepted that the conditions were removed in April 2008. Mr Bharj worked under the supervision of Mr Prashant Patel during the period to April 2008.
29. In June 2015, Mr Bharj was dismissed from his position as a pharmacist with Tesco Stores for what were said to be inappropriate comments to a female member of the public about her clothing. It is fair to record that in May 2016, having considered this and another allegation that Mr Bharj had sold medicine for animals for which the pharmacy did not have a licence, the General Pharmaceutical Council decided that his fitness to practise was not impaired- though it gave him advice on his future conduct and professional boundaries.
30. Mr Bharj said he took a break from work from 2015 to 2019 for personal reasons (to which we return later) but thereafter his work record in his application with Vpharmacy Ltd indicated that he worked as a locum pharmacist for a number of pharmacies in the Bedford area. As present, we understand he continues to work as a locum pharmacist pending the outcome of these proceedings. Referees for his application were drawn from those he had worked alongside in the preceding years.
31. Mr Bharj declared all of these matters in his application for registration. Indeed, if he had not declared the fraud conviction himself, this would have gone unnoticed, since the NHS Counter Fraud Authority's systems only record frauds that occur post 2007. We understand that steps are being taken to correct this evident gap in public protection.

Legal Framework

32. Under Part 7 of the National Health Service Act 2006, NHS England is

responsible for making arrangements for commissioning pharmaceutical services as part of the NHS in England. Section 147A of the Act enables by Regulations the creation and maintenance of lists of persons approved by NHS England for the provision and performance of pharmaceutical services through a regulatory scheme. That Scheme is set out in the Regulations, and anyone wishing to provide such services must be included in the relevant list. Anyone included in the list is bound by the terms of service set out in the Regulations.

33. For the reasons given above, references in the Regulations to NHS England are now to be read as references to the relevant ICB.
34. The pharmaceutical lists are created by regulation 10 and subsequent regulations provide for applications to be made and determined to join those lists. The appellants made an application to operate distance selling premises under regulation 25.
35. Regulation 25 at the time the application was made read as follows:

25. Distance selling premises applications

(1) Section 129(2A) of the 2006 Act (regulations as to pharmaceutical services) does not apply to an application—

(a) for inclusion in a pharmaceutical list by a person not already included; or
(b) by a person already included in a pharmaceutical list for inclusion in that list ...in respect of premises other than those already listed in relation to that person,

in respect of pharmacy premises that are distance selling premises.

(2) NHS England must refuse an application to which paragraph (1) applies—

(a) if the premises in respect of which the application is made are on the same site or in the same building as the premises of a provider of primary medical services with a patient list; and

(b) unless NHS England is satisfied that the pharmacy procedures for the pharmacy premises are likely to secure—

(i) the uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services, and

(ii) the safe and effective provision of essential services without face-to-face contact between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff.

36. On 23 June 2025, an amendment was made to the regulations deleting paragraph 25(a) which has the effect of preventing further applications for entry onto the register as a distance selling pharmacy. The effect of this is that if the present appeal is dismissed, the appellants will not be able to make another application for distance selling.

37. Regulation 33, so far as relevant, provides as follows:

33.— Refusal of applications for inclusion in a pharmaceutical list on fitness

grounds

(A1) In this regulation, “A” means, where an application for inclusion in a pharmaceutical list is made by a person who is—

(a) an individual, the individual making the application;

(b) a partnership, any partner in the partnership making the application; or (c) a body corporate—

(i) except for the purposes of paragraphs (1)(a) and (b) and (3)(h)(i), the body corporate making the application, and

(ii) except for the purposes of paragraph (2)(b) and (e), any director or superintendent of the body corporate making the application.

(1) An application for inclusion in a pharmaceutical list by a person ... who is not already included in it must be refused if NHS England is satisfied that—

(a) ...;

(b) A—

(i) has been convicted in the United Kingdom of a criminal offence, other than murder, which was committed after 1 April 2005, and

(ii) has been sentenced to a term of imprisonment of over 6 months;

...

(2) An application for inclusion in a pharmaceutical list by a person who is not already included may be refused if NHS England —

(a) ...

(b) considers that A is unsuitable to be included in the list;

(c) having—

(i) checked with the NHS BSA for any facts that it considers relevant relating to past or current fraud investigations involving or related to A, and

(ii) considered these and any other facts in its possession relating to fraud involving or relating to A,

considers the outcome of these enquiries justify refusal;

...

(3) Where NHS England is considering refusal of an application under paragraph (2), it must consider all facts which appear to it to be relevant and must in particular take into consideration in relation to paragraph (2)(b) to (e)—

(a) the nature of any offence, investigation or incident;

(b) the length of time since any offence, incident, conviction or investigation;

(c) whether there are other offences, incidents or investigations to be considered;

(d) any action taken or penalty imposed by any licensing or regulatory body, the police or the courts as a result of any such offence, incident or

investigation;

(e) the relevance of any offence, investigation or incident to the provision by A of pharmaceutical services and any likely risk to users of pharmaceutical services or to public finances;

...

(4) When NHS England takes into consideration the matters set out in paragraph (3), it must consider the overall effect of all the matters being considered.

(5) If an application for inclusion in a pharmaceutical list by a person who is not already included in it is refused under paragraph (1) or (2), NHS England must notify the applicant of that decision and it must include with the notification an explanation of—

(a) the reasons for the decision;

(b) the applicant's right of appeal against the decision to the First-tier Tribunal, which must be exercised within 30 days of the date on which the applicant was notified of the decision.

38. Although the Regulations impose these obligations on NHS England, since 1 April 2023 these functions have been transferred to and are now exercisable by the local Integrated Care Board (ICB) for the relevant area². The appellant falls therefore within the Bedford, Luton and Milton Keynes ICB.

39. The Respondent and 5 other ICBs in the East of England have set up a joint Pharmaceutical Services Regulations Committee ('the PSRC') to exercise these functions on behalf of these ICBs. Although the relevant decision was taken by the PSRC here, in law it remains the decision of the ICB. Ms Bidgood as Senior Community Pharmacy and Optometry Contract Manager indicated in her statement that she and her team provided secretariat services and more generally administered the pharmacists list for the 6 ICBs in the East of England.

40. Regulation 35 of the Regulations provides as follows:

35.— Granting applications for inclusion in a pharmaceutical list subject to efficiency conditions and conditions to combat fraud

(1) An application for inclusion in a pharmaceutical list by a person (P) who is not already included may be granted subject to a condition of a type mentioned in paragraph (3), which is determined by NHS England and which NHS England decides to impose with regard to P.

(2) NHS England may vary the terms of service of an NHS chemist for the purpose of or in connection with the imposition of the condition.

(3) A condition imposed under paragraph (1) must be a condition with a view to—

(a) preventing any prejudice to the efficiency of the services, or any of the services,

² See s. 65Z5 National Health Service Act 2006, as amended. As a result of section 65Z5(6) any liability incurred in respect of the exercise of these functions are enforceable only against that ICB.

which P has undertaken to provide; or

(b) preventing any act or omission within section 151(3)(a) of the 2006 Act (disqualification of practitioners).

(4) If NHS England decides to grant an application subject to a condition imposed under paragraph (1), it must notify P of that decision and it must include with the notification an explanation of—

(a) the reasons for the decision;

(b) P's right of appeal against its decision to the First-tier Tribunal;

(c) the time limit within which, in accordance with the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, the application notice must be sent to the Tribunal if an appeal is to be brought; and

(d) the effect of paragraph (5).

(5) If P issues a notice of commencement before the First-tier Tribunal has determined an appeal against a condition imposed under paragraph (1), P is to be included in the pharmaceutical list subject to the condition, but only pending the outcome of the appeal if the appeal is successful.

(6) The appeal is to be by way of redetermination of—

(a) the decision of NHS England to impose the condition; and

(b) if P has, at the time the appeal is determined, been included in the pharmaceutical list, any decision under paragraph (2) to vary the terms of service of P for the purpose of or in connection with the imposition of the condition.

(7) If at the time the appeal is determined, P has not been included in the pharmaceutical list, and—

(a) the First-tier Tribunal confirms the decision of NHS England; or

(b) imposes a different condition,

P must, within 30 days of P being notified of the First-tier Tribunal's decision, notify NHS England as to whether or not P wishes to withdraw P's application

(8) If P fails, in the circumstances described in paragraph (7), to notify NHS England within that 30 days that P does not wish to withdraw P's application, the grant of P's application lapses.

41. The process by which applications are made for inclusion in the pharmaceutical lists and the information that must be provided for this purpose is set out in Schedule 2 to the Regulations.

42. Section 71(6) and (7A) of the Medicines Act 1968 which concern the legal requirement for a superintendent pharmacist, and on which the definition in the 2013 Regulations relies, provide as follows:

“71 Business carried on by body corporate

...

(6) The requirements referred to in subsection (1)(a) of this section in relation to a superintendent are that—

(a) he is a pharmacist,

(aa) he is a senior manager of the retail pharmacy business who has the authority to make decisions that affect the running of the retail pharmacy business so far as concerns—

(i) the retail sale of medicinal products (whether they are on a general sale list or not), and

(ii) the supply of such products in circumstances corresponding to retail sale, and

(b) a statement in writing signed by him, and signed on behalf of the body corporate, specifying his name .., has been sent to the registrar.

...

(7A) For the purposes of subsection (6)(aa), a person is a senior manager of a retail pharmacy business if the person plays a significant role (irrespective of whether other individuals also do so) in—

(a) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or

*(b) the actual managing or organising of the whole or a substantial part of those activities”.*³

The Legal Appeal Process

43. The Regulations provide in a number of places for appeals to lie against the decisions of NHS England, or the ICB in their stead, to the First Tier Tribunal on some issues, and to the Secretary of State for Health for some other issues. There was no dispute for the purposes of this appeal that it lay to this Tribunal, because of the explicit provisions of regulation 33(5)(b). What was less clear however, was the extent of the powers of the Tribunal on such an appeal.

44. Under the analogous regulations that apply to doctors who are included in the Performers Lists for the purposes of undertaking NHS work, regulation 17(4) of the NHS (Performers' Lists) Regulations 2013⁴ provides explicitly for the powers of the Tribunal on any appeal (and these include the imposition of conditions). In this case the Regulations with which we are concerned are silent as to the specific powers available to us.

45. The Respondent submitted that we had no powers to impose conditions on the inclusion of the Appellant in the list because this made no sense in the context of the question under consideration- a person or a company is either suitable or it is not; and secondly because the ICB's own ability to impose conditions, under regulation 35, was limited to cases of efficiency and the combatting of

³ Subsection 7A was added by the Pharmacy (Responsible Pharmacists, Superintendent Pharmacists etc.) Order 2022 No. 849 Pt 2 art.6(1)(c) from 1 December 2022

⁴ SI 2013 No 335 as amended.

fraud. It was not accepted that the ICB could impose conditions in relation to an appellant being suitable as part of the application process, either. Mr Dos Santos said that we could only determine whether the appellant was suitable or not, and that if we decided that it was, the matter would still have to be further determined by the ICB, because the second part of the test for inclusion- what was referred to in Ms Bidgood's evidence as the 'market access' element- had not been determined, and any appeal against refusal on that basis would lie to the Secretary of State not to us. Mr Dos Santos accepted that the potential requirement for appellants to bring two separate appeals to two separate entities arising out of the same application for inclusion in the pharmaceutical list was unhelpful but said it followed from the scheme of the secondary legislation.

46. Having considered his further submissions, we are prepared to accept that paragraph 23(2) of Schedule 2 does require the ICB to determine the question of suitability of an applicant for inclusion in the list first, prior to consideration of any other issue. We are therefore content that it was necessary for the ICB to decide whether to refuse the application pursuant to regulation 33 before proceeding further, and for this matter to come before us in relation to that refusal, even though the remainder of what is said to be the test for inclusion remains uncompleted. That appears to follow from the scheme of the Regulations. That being so, it is strictly unnecessary for us to consider the question of what is meant by the requirement for any applicant to meet the 'market entry' requirement set out in Ms Bidgood's evidence, and where in the statutory scheme such a requirement lies. We were given a copy of the document entitled 'Guidance note for parties involved in Pharmacy Appeals', as an indication of the process for market entry determination. But this document was simply a generic document dealing with how the Secretary of State will approach and deal with appeals under the regulations more generally and is largely a (commendable) process guide intended to reduce the process for Secretary of State appeals set out in the Regulations into simple, clear English.
47. It was not clear to us however where in the regulations, if anywhere, the second element of the test lay- though it may perhaps simply be the application of the remainder of regulation 25; but it was concerning that the ICB did not appear to be able to answer this question either. As the scheme in the Regulations made under section 147A Health Act 2006 is intended to be an entire scheme, the answer must lie in the regulations, unless the ICB is bringing into consideration irrelevant and extraneous considerations. As we note, however, it was not necessary for us to get to the bottom of that issue for this appeal.
48. We turn therefore to consider the powers of the Tribunal and of the ICB to impose conditions on suitability grounds. It was said that neither we nor ICB could impose conditions on inclusion in the list on this basis since an applicant (and their directors or superintendent pharmacist by extension) were either suitable or not. Regulation 35 did not give the ICB this power, and it could not be intended that the Tribunal have that power if the ICB did not. Regulation 33(1)(d) we were told related to matters other than fitness, and contemplated appeals where a condition had been imposed by the ICB for other reasons.

49. We reject that submission. The plain wording of regulation 33(1), and in particular reg 33(1)(d), is capable of being interpreted as meaning either that the Tribunal has determined an appeal in which conditions were imposed by the ICB or that they were imposed by the Tribunal; and that a refusal to consent to the conditions so imposed is a mandatory ground for refusal in itself. We noted above that it was submitted that conditions could not reasonably be imposed in a suitability case because a person and an entity was either suitable or not. But that ignores that regulation 33 as a whole is concerned with fitness (as its title suggests) and also that a proper reading of regulation 35 does permit the imposition of conditions by the ICB also on fitness or suitability grounds.
50. Regulation 35(3) provides that a condition may be imposed on inclusion in the pharmaceutical list with a view to 'preventing any act or omission within s.151(3)(a) of the [Health Act 2006] (disqualification of practitioners)'. This means that a condition may be imposed by the ICB to prevent any act or omission that causes, or which risks causing, a detriment to any health scheme by [the person on whom the condition is imposed] securing or trying to secure for himself or another any financial or other benefit. Such a condition, it appears to us, would plainly be one aimed at ensuring suitability and the prevention of fraudulent criminal activity. And regulation 35(7) clearly contemplates that the Tribunal may vary or impose different conditions on an appeal where the ICB has itself imposed conditions.
51. In our view, it must logically follow that the Tribunal should have the power to impose conditions itself on the inclusion in the list, at least so far as the question of suitability is concerned. And the reference in regulation 33(1)(d) therefore is to be read as bearing either of the meanings we referred to earlier. We therefore find that the Tribunal on an appeal under regulation 33 may not only confirm the refusal or allow the appeal but may allow the appeal on conditions. Given the conclusion we reach below, however, that issue does not directly arise in this appeal.

Issues In The Appeal

52. The parties had identified 21 different issues in the Scott Schedule. However, many of these issues were not, in fact, matters that the Tribunal had itself to determine or make findings on; they consisted in part of a chronology of issues from Mr Bharj's time as a pharmacist, and although the Schedule was marked in various places 'disagree' by Mr Bharj, following discussion at the outset of the hearing, it wasn't that he was contesting the facts asserted so much as asserting that it was of limited value to the current decision making process and should be discounted as irrelevant or prejudicial given the amount of time that had passed since the issues referred to had occurred.
53. On analysis, the real issues in this case were far more limited and came down to this:
- a. What is the regulatory and criminal history of Mr Bharj that should be taken into account for the purposes of deciding whether he is a fit and

proper person to act as superintendent pharmacist for this company?

- b. What is the proper ambit of the role of a superintendent pharmacist and is it different from that of a normal pharmacist? Does it matter if the applicant is not aware of, or does not accept, the difference?
- c. What is the role, if any, to be played by the effluxion of time and the potential for rehabilitation of a pharmacist, and of Mr Bharj in particular, for these purposes?
- d. What is the role to be played in this decision by public confidence in the systems of the inclusion of this company in the list with Mr Bharj as superintendent pharmacist?

And

- e. Crucially, to determine this appeal, is Mr Bharj a fit and proper person to act as superintendent pharmacist for this corporate body such that the body can be considered a suitable person to operate a pharmacy in the pharmacy list? Are there any conditions that could be imposed on registration which might make him, and the company, suitable?

The Respondent's Position

- 54. The Respondent argued in this appeal that the decision to refuse the appellant inclusion in the pharmacist list was reasonable and proportionate in light of Mr Bharj being put forward as superintendent pharmacist and in light of his regulatory history and criminal convictions. They indicated that they were not making any assertions about whether Mr Bharj was a good pharmacist; but that the test they had to apply gave rise to entirely different questions and it was necessary to ensure that anyone seeking to join the list was 'free from regulatory sanctions, suspensions national disqualification and/or fraud'. The Respondent did not accept that Mr Bharj had had an 'unblemished' regulatory record since 2008 but said that there had been a repetitive course of conduct which consisted of multiple issues concerning his probity and conduct.
- 55. The Respondent said public confidence in pharmaceutical services could be compromised by including unsuitable companies in the list and this would include Vharmacy Ltd if Mr Bharj was its superintendent pharmacist.

The Appellant's Position

- 56. The Appellants' argument was that it was unreasonable, unfair and disproportionate to refuse the company inclusion in the list based on Mr Bharj's past history when he was now practising as a pharmacist on the list and there were no regulatory concerns. Mr Bharj had had a good regulatory record for a number of years now and his past should not be held against him long-term. The appellants denied that there was any real difference of substance between being a pharmacist on the register and being a superintendent pharmacist and the decision failed to consider the wider experience there would be in the business, the proposed safeguards against any possible criminal behaviour

and the provision of good references from practising pharmacists. They argued that delays in considering the application were deliberate and there was discrimination in the decision. They said that they had invested significant amounts into the business, but this had been ignored. They said they were going to be filling a gap in provision in the Bedford area.

Evidence

57. We do not here set out any of the evidence of the witnesses contained in their witness statements other than to the extent necessary below to explain our decision. We had a bundle of documents of 653 pages and a supplementary bundle of another 23 pages. We also had a small volume of late evidence that was not included in the bundle.

Ms Jackie Bidgood

58. In her oral evidence, Ms Bidgood said that her team had picked up dealing with applications to join the pharmacy list in 2020 from NHS England and said some parts of this process were reasonably new and evolving. She confirmed that there were two parts to the test for determining an application to be included in the pharmaceutical list for distance selling. This included a suitability test which assessed whether a body corporate was a fit and proper person to be on the list, and this required the company directors and any superintendent pharmacist to also be fit and proper persons. The second element looked at the type of application and business and this was a check essentially whether the company could deliver the practical elements of running a business. She indicated that this included considering whether or not the business could provide a safe and effective delivery service; and maintain the cold supply chain, for example. This second element she referred to as 'market entry', and she said this was always assessed after suitability. Ms Bidgood said that the second element hadn't been determined because the company had failed on suitability, but that if a company failed on the market entry provision a separate appeal would lie to the Secretary of State for Health.
59. Ms Bidgood said that there was nothing in the regulations which referred to how to weigh up previous convictions or findings, and there was no guidance issued by the NHS or the ICB on this either.
60. Ms Bidgood said that most of the applications for inclusion in the list did not involve any questions about suitability- this was usually not problematic. She said that in this case however, the suitability issue was complicated by Mr Bharj's regulatory history and previous convictions, and it appeared that there was clearly an element of risk to be considered in approving an application which involved him acting as superintendent pharmacist. She said she accepted that the conviction was 20 years ago, and that he was now restored to the register of pharmacists but said that the decision being made by the PSRC was different and was considering whether the company was suitable to be providing the service.
61. Ms Bidgood said that the ICB needed to consider whether Mr Bharj was suitable to be a superintendent pharmacist, and this brought into consideration

the wider scope of responsibility of that role, as against being a pharmacist. She noted that a pharmacist was a healthcare professional who was responsible for the day to day running and safety of the pharmacy when dispensing medication. She said that a superintendent pharmacist was responsible for every part of the business and everything that happened in it. She said that this included not only the delivery of clinical services, but clinical oversight, responsibility and management of staff and procedures and to ensure that all of these things were in place and working. She said it was possible to be superintendent pharmacist for more than one pharmacy. Ms Bidgood said that the oversight and checking functions promised from others in respect of this company did not allay the concerns because the existence of these support staff did not affect whether the superintendent pharmacist was a fit and proper person.

62. Ms Bidgood told the Tribunal that although there was no fixed job description for a superintendent pharmacist there was a statement of the role on the GPhC website. It was possible for the directors and the superintendent pharmacist of a company to flex the role, but the key point was that the accountability for all clinical issues and procedures rested with the superintendent pharmacist.
63. Ms Bidgood said that the PSRC had found it difficult to get over the repetitive nature of Mr Bharj's activities, and said that the committee considered that an individual who had been removed once from the pharmacists' register might be expected to be much more diligent when restored to the register, and to avoid further incident, whereas Mr Bharj had been implicated in further dishonest activity and had been imprisoned for fraud. She said there had also been issues in his employment for Tesco's, and he had been sacked from that role. She accepted that Mr Bharj had had a long history as a pharmacist and that he had been back on the register for some years but said this previous history could not be overcome.
64. It was accepted by Ms Bidgood that the application had taken a long time to determine and that there had been delay. She said that there had also been some extensive delays caused by the need to seek further information from the appellants as well, and from their referees. She said that the function was also newly transferred to the ICB at the time of the application, and this had also slowed the process down. She said that the ICB had not considered imposing conditions on the registration of the company because it felt that a person (and by extension the company) was either fit and proper and therefore suitable or it was not. Conditions could not make suitable what was otherwise not. She said that standard checks were undertaken on everyone, and standard information was sought from everyone. She denied that there had been any discrimination in the process aimed at the appellants.
65. Ms Bidgood said that the ICB needed to consider public protection as well as the right of Mr Bharj to be allowed to work. She noted that he could work anywhere as a pharmacist and anywhere as an employee and this was unaffected by the present decision. His career was largely unaffected. The only issue was his ability to be a superintendent pharmacist.

66. Ms Bidgood addressed the content of the decision letter and accepted that although it relied on reg. 33(2)(b) in refusing the application, the wording read much more as though relying on reg. 33(2)(c), relating to findings of fraud. She accepted that they did not know the exact value of the fraud. She accepted that the letter did not set out in terms whether, and to what extent, the requirements of reg 33(3) and (4) had been considered. She could not recall whether these had been discussed in the decision meeting. She said that the incidents that had occurred since the convictions had been discussed in the decision meeting, but she accepted that they were not included in the decision letter.
67. She said that this was really the first case that the ICB had dealt with involving criminality since the function had transferred. She said the issue of rehabilitation had not been considered and said whilst it was difficult to pre-empt future decisions, the ICB was likely to err on the side of caution given the risks to patients. She said that the issue of rehabilitation was one for the GPhC not for the ICB deciding on suitability. She said that the need to protect the public purse was important and where someone had been convicted of fraud and fraud in the NHS, there was a risk this could happen again in another pharmacy.

Mr Burpinder Bharj

68. Mr Bharj told us that in relation to the incidents for which he was initially struck off as a pharmacist in 1994, he had made a genuine error in dispensing Solpadeine instead of Solpadol when the concentrations of codeine in the two was different. He said it was an error and he had been trying to help the patient. He said he did not recall the circumstances of the other issues other than it related to poor stock rotation. He accepted that the description of the reasons for removal from the register in 1994 were as described in the January 2003 removal hearing (C100).
69. Mr Bharj accepted that he had been sentenced to 6 months imprisonment for obtaining property by deception, and he had been ordered to repay the amount stolen, but he could not recall the exact amount. He said that he appreciated that what he had done was wrong, but he said that when he was trained, he was told that all pharmacists did these things to which the NHS turned a blind eye and that it was rife. He admitted that he had acted fraudulently since 1985 and had been overclaiming but said that in relation to this count on his indictment he had been in error not dishonest. He accepted he had pleaded guilty, however. He accepted that in the other instance he had indicated that he was dispensing smaller packs of medication, but actually dispensing larger ones and was claiming the difference in price. He accepted that the fraudulent activity was actually over a period of sixteen years not 6 as the transcript of his restoration hearing in 2007 had suggested. He said this was his only criminal conviction.
70. Mr Bharj accepted that he had been dismissed from Tesco in April 2015 for a comment he had made which had upset a customer. He said that she had turned up at his counter with 'her breasts hanging out' and he had suggested she cover up. He said she had complained, and he had been dismissed. He accepted that this was what he had referred to on the application form as a

'harmless comment'. He said he had been under a lot of stress at Tesco and had worked late and early mornings and that had not been appreciated.

71. In relation to the incidents in August and October 2015 he said that on both occasions a pet owner had come into the pharmacy in Skegness looking for eye drops for their dog, which he could not supply, but that he had considered both customers, separately, had also had eye infections themselves, and he had dispensed medication for the human not the animal. He said both events had been witnessed by the same female who was in the shop and who had reported him. He felt that she had taken a dislike to him. He felt she had been racially motivated.
72. Mr Bharj was asked in cross-examination whether he had worked during the 4 year period 2015- 2019, which he declared on the form he had been non-working. He initially said 'no' as part of a discussion on the Scott Schedule and told one of the Tribunal specialist members that he did not have to revalidate his membership of the GPhC because of his long years of practice and it 'just happened'. But he later admitted that he had worked at times in the period in question to maintain his place on the register.
73. Mr Bharj said that his referees Mr Sergio Carrasco Fernandez and Mr James Tugby had both been aware of his previous convictions. He did not know why they had not ticked the boxes in their references to indicate that they were aware of previous convictions, and he said he had not realised this before today. He said he would have asked them to come to give evidence had he appreciated this but had not done so because they both worked. He offered to get them to the Tribunal during the hearing.
74. In terms of being a superintendent pharmacist, Mr Bharj said that he had been one before in the period from about 1995 to 2003, when he had been restored to the register of pharmacists. He accepted that he had continued to act dishonestly in this period. He said that he had had supervision over 5 pharmacies at one time. When asked what he had done to prepare to be a superintendent pharmacist again now, he said that the role was the same as being a normal pharmacist. He said he had undertaken the role before, and it was no different. He said the concept of a superintendent pharmacist existed mainly to allow individuals to own multimillion pound businesses without being a pharmacist. He said in any good business any pharmacist did the same things. He said that he was not aware of any standards for superintendent pharmacists. He said all that he had to do was sign the form. The website description from the GPhC of the role of a superintendent pharmacist was put to him and he said again that any good pharmacist could, and did, do this- it was 'like taking one hat off and putting on another'.
75. He said that there wasn't any training available on how to correctly endorse prescriptions and he hadn't done any training or downloaded any information on this after he was first struck off. He described endorsing a script as 'like breathing'.
76. He said that the safeguards they had proposed for the business was to provide

reassurance by keeping him away from the financial side of the business and claiming money for prescriptions would be done by others. He said the presence of the Accuracy Checking Pharmacy Technicians (ACPTs) within the business would mean that they would endorse prescriptions and ensure everything was done properly. He said he would undertake clinical checks to make sure the doctor hadn't made a mistake.

77. He was asked how a distance selling business which could allow people to order medication online from anywhere in England would help to meet need in the Bedford area, which had been one of the key planks of the appellants' case for inclusion in the list and a focus in their evidence. He said that a lot of pharmacists in the area had closed down and many of those remaining were struggling to take on being able to cope with the scripts that needed delivering. He said quite a lot of people were complaining that pharmacies were no longer able to fulfil some prescriptions because they didn't get sufficient funding from the NHS. He said that Vpharmacy would fill a gap in being able to deliver and to get to those who couldn't themselves get to a pharmacy. He said he wanted to be part of this business now because he was conscious, he'd not 'put back as much as he should have' over the years and accepted he'd not been honest in the 'early days'. He said he wanted to do this for his family, and he had changed since the offending behaviour.

Mr Harpal Grewal

78. Mr Grewal said that he was a businessman who ran internet retail businesses. He did not have experience in a pharmacy business. He said he would deal with the IT and distribution side of the business, and he would let Mr Bharj deal with the clinical side. He said he had experience of working in finance before, but this was his only experience of working in a regulated sector. He set out who would be directors of the company and Mr Bharj's role as superintendent pharmacist. He said that his wife had experience of logistics and she would bring that expertise to the company. He said that his understanding of the role of an ACPT was that they checked prescriptions before the medicine was dispensed. He said he had been clear that they would need to triple check everything before it went out. He acknowledged that they were not pharmacists, however. He said he understood the fiduciary duties he would owe the company as a director. He accepted that he, his wife, and Mr Bharj as the only three proposed directors of the business would take ultimate responsibility for it. He said he had only found out about Mr Bharj's convictions when they had put together the application. He said he had been aware that Mr Bharj had been removed from the pharmacist's register twice before for about 2 years. He said he had since looked into this and was happy with where Mr Bharj now was, and that he had undergone rehabilitation, and said he had invested money and faith in Mr Bharj based on the person he was now. He said nothing he had heard during the hearing was 'news'. But he did accept it had been a shock when he found out as he had known the family for 10 years.
79. Mr Grewal said that from his conversations with pharmacists and his experience to date he did not consider there was much difference between the role of a pharmacist and a superintendent pharmacist. He said he had not discussed the application for registration with the referees. He said he had

discussed hiring another superintendent pharmacist in place of Mr Bharj but said this had been a dream they had shared, and he was part of the vision of the business. He said he was doing this for the community and not for business or financial reasons. He said that Mr Bharj was a local character and he often got stopped in the street and asked for advice.

80. He said that the business intended to market itself locally and on billboards to those in the area and who were ill, and they would target clients. He said many pharmacies refused to do deliveries, but this firm would do that, and they would help others to access the service. He said he had incurred significant costs as part of setting up the business and had signed a 5 year lease at least one year of which had already expired, and the business was spending a lot of money on empty premises.

Mr Prashant Patel

81. Mr Patel told us that he had been a pharmacist for about 45 years and a superintendent pharmacist for about 40. He was now superintendent pharmacist for about 9 pharmacies. He said he had been Mr Bharj's supervisor in the rehabilitation period after he was restored to the pharmacists' register in 2007 and until the conditions on his practising were removed in April 2008. He said Mr Bharj had worked at the Barnes Green pharmacy in that time. He said that he had never worked with Mr Bharj other than in this period.
82. Mr Patel told us about his role as a superintendent pharmacist. He said that his role was to be responsible for all clinical matters in the pharmacy and to do whatever was in the best interests of the patient. He said that it could be a much wider role than simply clinical work. He said that individual pharmacists working in a pharmacy had a responsibility for their own clinical role and for their decisions, and they had to operate within the regulatory framework laid out by the GPhC. He said it was his responsibility to ensure they worked within the framework and to provide clinical leadership. He said there were some other activities – like ensuring staff were paid- that he was not sure were directly within the remit of the superintendent pharmacist but which if not fulfilled would impact patients' best interests which was the number one priority. He accepted that NHS pharmacists had a duty to the public purse and to ensure both the safe management of medicines but also proper auditing and monitoring of business expenses and claims. He said in this context it was important to assure that those things which the regulator required were done, though he said it remained the individual responsibility of pharmacists to follow all appropriate regulations.
83. When questioned about the role of a superintendent pharmacist as set out on the GPhC website, Mr Patel said that the role there described was appropriate if, for example a superintendent pharmacist was providing oversight to only one or two pharmacies; but he said in a substantial corporate entity- like Boots Chemists- it would be impossible for the superintendent pharmacist to provide direct oversight of 1500 pharmacies, even if they could give some direction. He said he was providing a view of the practical role undertaken by a superintendent pharmacist. He said that a person would make every attempt to ensure that pharmacies under their direction run in the way that they are

supposed to, but that it was impossible for this person to provide direct control in a large business. He accepted it was a trusted role and that part of the role is to ensure that there was no abuse of the process of dispensing prescriptions or claiming payment from the NHS. He said that whilst safeguarding against fraud was important, practically it was not possible for the superintendent pharmacist to keep a personal eye on everything that was going on. He accepted that ultimately however, the 'buck stops here'. He accepted that there was a difference between being a pharmacist and a superintendent pharmacist.

84. Mr Patel told the Tribunal that a responsible pharmacist was present in each pharmacy and that this person would ensure that all regulatory requirements were followed. This person was in control of the pharmacy day to day and said that in a single pharmacy business there was no difference between the responsible and superintendent pharmacist. He said it was only if the responsible pharmacist was unclear about something that they would contact the superintendent pharmacist. He gave an example of a script presented for a trade - named drug that isn't available, but it is not possible to contact the prescriber. He said if it was urgent that the patient got the medication in those circumstances, and if the drug was generic, then he might authorise a substitution and take responsibility for that decision. He said in those circumstances it would also be important to only claim the price of the generic medication and not the trade-named medication. He agreed that it was important that this person be honest. He said however that in the UK there was a strong history of redemption, forgiveness and the idea of giving people a chance. He said that decisions had to be made to determine what the position was if someone had been dishonest, but then over a long subsequent period had not been.
85. Mr Patel said that Mr Bharj had called him up in 2007 and asked if he would be his supervisor. He said he had got into a bit of trouble with the regulator and that he needed to be supervised by a superintendent pharmacist for a period. He said Mr Bharj had outlined the issues with the regulator but said he couldn't recall the exact conversation. He said he knew that Mr Bharj had been struck off twice. He said Mr Bharj 'may well' have mentioned his convictions, and he knew that these concerned fraud against the NHS. He said he was aware of a couple of incidents concerning eye drops but couldn't recall the details. In cross-examination he said he had thought the fraud had taken place over a year or two, he had not realised it had been over a 16 year period.
86. He said when Mr Bharj had been under his supervision, he had focused on ensuring that Mr Bharj followed the regulatory framework and not deviated from it, but said he did not otherwise focus supervision on any particular aspect. He said that the responsible pharmacist working with Mr Bharj checked that he dealt with all prescriptions appropriately. He was not himself a regular overseer of Mr Bharj's work, though he kept in touch with the responsible pharmacist and did pop into the pharmacy once or twice per week. He said that he could not recall how the supervisory period ended other than that he had had to write a report for the GPhC. He said he would be happy for Mr Bharj to work for him, knowing what he did about his history.

Ms Natasha Birdi

87. Ms Birdi told us that she had previously been a pharmacy technician and was now an Accuracy Checking Pharmacy Technician (ACPT) which is a more qualified role. Ms Birdi had a role presently in Bedford Hospital to lead the dispensary team even though there was a pharmacist there. She said that the pharmacists were in the background, and they checked the prescriptions, but it was her and her team's role to lead and ensure everything ran safely and was checked correctly. She said that she had 16 years' experience as a pharmacy technician or as an ACPT and wanted to be a pharmacist in due course. She said that this was why the new role was potentially quite important for her continuing professional development.
88. Ms Birdi told us that her ACPT role allowed her (and Ms Sonia Birdi, who was also an ACPT) to do a final check on a prescription once the pharmacist has signed it off. She agreed that the role was a safeguard against human error- it could have significant consequences if a patient was prescribed the wrong medication or the wrong dose. She accepted that it was a different role, and a less qualified role, than that of a pharmacist. She noted that ACPTs were still registered with the GPhC.
89. Ms Birdi agreed that it was intended that she and her sister, Ms Sonia Birdi were to have roles as ACPTs within Vpharmacy but that Mr Bharj would be the sole qualified pharmacist. She said that she and Ms Sonia Birdi would be responsible for checking the endorsement of prescription scripts and ensuring that payment amounts claimed were sent off to the NHS correctly. She said that she considered that they would lead the team to safeguard the public, to ensure collaborative working and that there were open and honest communications. She said that she appreciated that the intended business wouldn't be one where patients attended, but she said that they would email, and she would be authorised to communicate with them about any prescription needs.
90. Ms Birdi told us that she had worked alongside Mr Bharj in 2008 for about 6 months when first training in a community pharmacy and she had done her basic training there. She said she learned a lot from him on the clinical side and he was generous with his time explaining medications to her. She said at the time he had been an employee for a while, but thereafter she thought he was a locum.
91. Ms Birdi said that in her view it was the role of a superintendent pharmacist to have overall responsibility for the pharmacy, to ensure everything got processed correctly, and was running smoothly. She said patient safety was of the utmost importance and it was necessary to ensure that staff followed Standard Operating Procedures (SOP) and whilst they couldn't always do all tasks personally, they could delegate tasks to others. She noted that the role of pharmacy technicians had expanded greatly over time. She said she had had experience of a superintendent pharmacist in her role at Boots, and she had seen that person once or twice a month. She said that she felt that she would be able to challenge a colleague if she did not think that something was right, and if needed she would escalate this to the superintendent pharmacist or to the GPhC to ensure that communication was open and honest and in

compliance with the regulations. She set out what she would do if there was a medical error in terms of contacting a patient, the prescriber, and other steps to retrieve medication etc.

92. Ms Birdi agreed that a locum pharmacist would have a different role to that of a resident or superintendent pharmacist. She noted that they would attend and do whatever the team required to check prescriptions, to give over the counter advice and to be guided by the team. She said that they had the same responsibility for giving clinical advice as any other pharmacist, but they were not responsible for making decisions for the team.
93. Ms Birdi said that she knew Mr Bharj's regulatory history and about the fraud conviction though she said she'd not had this level of detail before. She accepted that the fact that Ms Sonia Birdi was her sister and that she was in a relationship with Mr Bharj did complicate the picture but said that as a professional this would not stop her from challenging Mr Bharj appropriately. She accepted that if there were problems there might be implications for the family as well as the business but said that she would give greater scrutiny to the way processes were run, to avoid a repeat of any issues in the past. She said that she had seen a big change in Mr Bharj's personality over the years and she felt he was honest and professional.

The Tribunal's conclusions with reasons

The decision letter of 25 October 2025

94. We start in this matter with some observations on the decision letter against which this appeal is brought. Mr Dos Santos, rightly in our view, conceded in closing submissions that the decision letter was poorly crafted and did not contain an 'impressive statement of the decision' and he accepted it was very short. Ms Bidgood too in her evidence had also accepted that the decision was low on rationale but said that at the time of its issue the function had recently transferred over to the ICB and the team were using standard templates to issue decisions. She accepted that much of the detail of what was discussed at the decision meeting did not make its way into the letter.
95. We note that if one leaves aside the standard indications of how a decision was reached and the information about bringing an appeal the sum total of the reasons given to Vpharmacy for the refusal of their application was simply: *'Rational [sic] – A director of the body corporate has been subjected to a past fraud investigation whereby the director was involved with fraudulent activity'*. But it was unclear from this whether in substance the decision maker was relying on regulation 33(2)(b) to reject the application, on suitability grounds, as it indicated, or whether in fact and substance the reason was that set out in reg 33(2)(d) which more closely mirrored the wording used. More fundamentally, none of the other matters and issues which were subsequently relied on in the Reasons for Opposing the Appeal dated 24 December 2024 had been communicated to the appellants as forming any part of the basis of the rejection beyond Mr Bharj's fraud conviction.
96. It is also apparent from Ms Bidgood's evidence, and we find, that the ICB did

not apply its collective mind conscientiously to the matters set out in regulation 33(3) and did not look at the evidence in the round as required by regulation 33(4). There was evidently no discussion of these issues at the September 2024 decision meeting, and there is no evidence of it in the minutes or the decision. So, we also find that the ICB failed to apply the regulations correctly in reaching their decision.

97. Be that as it may, however, appeals to this Tribunal on these matters do not proceed by way of review but by way of redetermination. That is to say that our consideration of the issues is not restricted to considering whether the decision reached was reached fairly, and whether it was reasonable, lawful, and proportionate and explained adequately. We undertake a reconsideration of all of the merits of the decision. We stand in the shoes of the ICB in redeciding this matter. Any flaws in the process below can be put right by us. That is perhaps lucky for the ICB because if we were reviewing this on public law grounds, there is no doubt that a decision of this poor quality would have been set aside and sent back to the decision maker to take again.

The meaning of 'suitable' in the 2013 Regulations

98. The word suitable as used in regulation 33(2)(b) is not defined and the starting point must be that it bear its ordinary English meaning. But there are indications in the regulations as to what Parliament intended to be included in that term from other parts of the regulations. Schedule 2 sets out the information that an applicant must supply as part of their application and paragraph 3 sets out 'fitness information about individuals' in particular. This includes information about the company but also about the directors and superintendent pharmacist (reflecting the requirement in regulation 33(A1) concerning corporate entities). It includes details of unspent convictions, here or overseas, any current proceedings, any current or previous investigations by the GPhC and any findings or removal from any relevant list, any investigation or findings by the NHS in relation to fraud, and previous refusals of inclusion in a list. It also includes details of investigations into, or proceedings relating to, professional conduct by an employer. Ms Bidgood characterised this decision as whether the person or persons were 'fit and proper', though this term is not used in the regulations. But it certainly encompasses their criminal record, if any; any professional and employment misconduct, or investigations and any previous administrative refusals.
99. In her statement Ms Bidgood referred a number of times to the fitness checks being ones that ensured that '*the superintendent and any directors are free from regulatory sanctions, suspensions, national disqualifications and/or fraud*'. But in our view that is not quite an accurate summary of the position under regulation 33 and schedule 2. The Regulations do not *require* any applicant, director or superintendent pharmacist to be 'free' of any such things; it merely requires them to be *declared* for the purposes of determining suitability overall. How they are to be considered is set out in regulation 33(3). So, in our view, a requirement that in all cases every and all applicants, directors and superintendent pharmacists must have *no* such issues would be to misapply the regulations. The only mandatory grounds for refusing inclusion in the list are those set out in regulation 33(1) which include a murder conviction or a term

of imprisonment of more than 6 months post 1 April 2005⁵ or a national disqualification. An ICB must otherwise conscientiously consider all of the circumstances and determine whether overall each of the relevant officers, and the company, are “suitable” having regard to the intended pharmaceutical services they are to provide. The ICB cannot, in our view, have a blanket policy concerning criminal convictions but in line with regulation 33(3) and (4) must consider all of the information that they consider to be relevant, and the specific matters contained in those regulations.

The Superintendent Pharmacist

100. The Appellants’ case, supported by the evidence of Mr Bharj and Mr Grewal was that there was substantively no difference between the role of a pharmacist and that of a superintendent pharmacist, and therefore there was no reason for any concern about Mr Bharj’s ability to take on such a role again. The appellants’ skeleton argument (paragraph 4) makes this a direct plank of their appeal: *“the GPhC has determined Mr Bharj fit to practice as a pharmacist. It is irrational to accept he can dispense NHS prescriptions under supervision but not co-own a company with oversight.”*

101. We turn first therefore to consider the issue of the scope of the role of superintendent pharmacist and whether this is substantially different from that of any other pharmacist working in a pharmacy business. This question is important for two reasons. Firstly, it goes to the question of whether there is any difference between someone being suitable to be a practising pharmacist and a superintendent pharmacist and therefore whether it is rational to ask different questions in deciding this. Secondly, someone proposing to undertake a role as superintendent pharmacist is less likely to be suitable if they do not understand what that role entails. We therefore need to decide what the role does entail.

102. As we noted at the hearing, the regulations rely on the definition of superintendent pharmacist set out in s.71 Medicines Act 1968, reproduced above (see regulation 2: interpretation) and it is clear even from this that the role requires a person not only to be a pharmacist, but also imposes additional requirements that this person be a senior manager with the ability to make decisions. Mr Dos Santos referred to this as the ‘bare bones’ of the role. Quite rightly, in our view, the GPhC has given additional guidance to its members about what it considers this definition to mean (and require) in practice. We were supplied with a copy of that guidance from their website. It is not necessary to set that all out, but a few key points are worth identifying. Amongst the roles identified in the guidance as falling to the superintendent pharmacist are:

- ‘monitoring and auditing medicine expenditure and...introducing new or revised working practices for all aspects of purchasing and the safe management of medicines;
- Making sure that all pharmacists and pharmacy technicians comply with our

⁵ We note that despite the assertion in the Respondent’s case that Mr Bharj would have been subject to a mandatory disqualification if convicted after 2005 this is not right, since he sentenced to 6 months’ imprisonment, not more than 6 months imprisonment, which is required under the Regulations.

- standards for pharmacy professionals;
- Promoting a culture of learning and making sure staff receive appropriate training;
- Making sure the team has the right skill mix and levels to deliver safe and effective pharmacy care to patients and the public;
- Assessing, recording and managing risks within the pharmacy;
- Documenting, maintaining and communicating safe and effective working practices, including compliance with standard operating procedures which must be signed off by either the superintendent pharmacist or another responsible individual.'

103. Mr Bharj told us he had not undertaken any particular training or done any particular work to prepare himself for such a role: he said in terms that *'it was only a case of taking one hat off and putting another hat on: a good pharmacist does all this anyway'*. Mr Patel however, who has been a superintendent pharmacist for many years, and Ms Birdi, accepted that there was a substantive difference, and that the role was more senior and included more requirements. As Mr Patel said, the 'buck stops here'.

104. Taking into account all of the evidence before us it seems to us self-evident that the superintendent pharmacist takes on not only ultimately all clinical responsibility for the safe and effective operation of the pharmacy or pharmacies under their control and for patient safety; but also has a key role in associated strategic management and oversight of the business, to ensure that it has and maintains appropriate staff skills and ratios and safe standard operating procedures to also keep patients safe. This is not at all solely the role that any pharmacist would undertake. If that were so, there would be no need for a statutory definition or for any guidance. And we note that the GPhC is also in the process of producing standards for superintendent pharmacist which would also be redundant if the two roles of superintendent pharmacists and pharmacist were no different.

105. We might be prepared to accept that in a one-pharmacy business where there is only one pharmacist, that pharmacist would have to do both roles. But even then, that person would still have to undertake the tasks and responsibilities of a superintendent pharmacist.

106. Looking at Mr Bharj's evidence, and his application form containing his recent work history it is evident (see bundle page C63 and C108- C114) that Mr Bharj has acted as a locum or responsible locum pharmacist for some years. None of these roles could be said to be comparable to that of a superintendent pharmacist and he has not formally assumed that role since he was imprisoned in 2002 and struck off for the second time.

107. We reject the submission that it is irrational not to allow Mr Bharj to be a superintendent pharmacist simply because he has been a practising pharmacist for 16 years since he was reinstated. The two roles are not comparable, and we accept that different considerations come into play. We also find that Mr Bharj fails to appreciate the breadth, scope and level of responsibility required of a superintendent pharmacist and consistently

minimises the requirements of the role and underestimates the level of responsibility that comes with it. We therefore take that finding into account in determining his suitability, as we set out below.

108. We therefore accept that it does not follow from the fact that someone is a practising pharmacist that they are necessarily suitable to be a superintendent pharmacist. Different considerations apply, which justify different questions being considered, and which may justify different answers.

The appellants' commitment to the Bedford area and community

109. Much was made in the application and in the witness statements about the appellants' commitment to the Bedford area and their desire to make a difference to the local community. This was admirable and we do not doubt its sincerity. However ultimately, this was not something we could take into account in determining this appeal. We note that the application made was one for distance selling under regulation 25. Of necessity therefore the pharmacy would not be one that local patients could walk into. It would provide remote- that is telephone or email/ internet- contact only, which was not entirely consistent with the assertion that this pharmacy would be at the heart of its community. Furthermore, we note that had the appellants been accepted onto the pharmacists' list, any inclusion would have been subject to the terms of regulation 64- which prevent offering of local services to people at or in the vicinity of the pharmacy and which prevent the pharmacy from marketing itself as a 'local' pharmacy in any way. It appeared to us that many of the proposals from Mr Grewal for local advertising would have likely fallen foul of these requirements.

110. In the event, therefore, we were unable to place much weight on the desire of the appellants to serve the Bedford area. This was not consistent with the application they had made to be a national distance seller.

The role for rehabilitation in relation to decisions on suitability

111. Part of the appellants' case to the Tribunal was that insufficient weight (or indeed no weight) was given in the decision- making process to the 16 years of Mr Bharj's continuous practice, it was said, without any regulatory sanctions. The skeleton argument said that all past issues had been voluntarily disclosed and Mr Bharj's first witness statement indicated that he considered that he had been through the necessary rehabilitation process. He said that he accepted the consequences of his actions and had served his sentence. Mr Bharj made reference in his witness statement to a number of cases⁶ which we agree with the Respondent have no relevance to the issues in this appeal. We do not say that critically of Mr Bharj, he is not a lawyer, but we also do not propose to say anything further about that case law.

112. Ms Bidgood's evidence was clear that the ICB does not have a policy or any guidance on how to approach previous criminal convictions by an applicant for registration and to a degree (as confirmed in her evidence) they said that they relied on the professional regulator to consider such issues. The problem with

⁶ *R (Faulkner) v Sec of State for Justice* [2013] UKSC 23 and *R (Tigere) v Sec of State for Business* [2015] UKSC 57.

that assertion, however, is that the regulator, here the GPhC, is looking at these issues for a different purpose; and the approach and weight to be given to a previous criminal history will vary, inevitably, according to what it is the applicant is proposing to do. Given that it was the ICB's case that acting as superintendent pharmacist was a very different one from being a pharmacist (and we have agreed), they cannot simply outsource consideration of a criminal history to the professional regulator.

113. Ms Bidgood's evidence was that to the extent the PSRC had considered it, any criminal history of any degree in an applicant would be problematic. She was asked whether a criminal conviction for a fight in a pub as a youth would affect an application by a pharmacist many years later and her answer was 'probably'. We find therefore that the ICB has, at present, a near blanket policy of regarding any criminal history as problematic. We note for these purposes that all of the major regulators have policies on the approach to be taken to past criminal convictions. This includes The General Dental Council, the Nursing and Midwifery Council, the General Optical Council and HCPC. Inevitably they take somewhat differing positions. All however say something about the passage of time and the steps taken by a person to rehabilitate as being relevant to the decision to whether to admit, or reinstate, a professional to the body.

114. The regulations also provide limited guidance on how these issues should be approached. Regulation 33(3) includes a requirement that the decision-maker consider the nature of the offence, the length of time since it occurred, whether there are other offences, the penalty imposed and any action by any regulatory body and the relevance of the offence to the provision of pharmaceutical services. Similar considerations apply to considering findings of professional bodies against an individual, and other investigations and incidents. But we consider it inevitable that the ICB, and other ICBs, will need to develop more detailed guidance, both for applicants and for decision-makers, as to how to assess criminal and regulatory offences in a consistent way.

115. Whether or not the ICB did consider the question of rehabilitation explicitly, we have done so below as part of our consideration of the suitability of Mr Bharj to be superintendent pharmacist of Vpharmacy Ltd.

The Role for public confidence and the public interest in decisions on suitability

116. The Respondent's skeleton argument refers to the well-known passage from *Bolton v Law Society*⁷ concerning the role of public confidence in regulated professions:

"The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will

⁷ [1994] 1 WLR 512, at p. 518H (per Lord Bingham MR).

be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

117. We remind ourselves, of course, that the decision we are making is not one as regulator, considering whether Mr Bharj is a fit and proper person or suitable to be a pharmacist, but one about the suitability of a company to be on the pharmacists' list with him as its superintendent pharmacist. We accept that the GPhC has accepted that he is suitable to be a pharmacist. But as part of a company seeking to go onto a pharmaceutical list to provide medicines to the public on behalf of the NHS by distance selling, similar considerations of the need to maintain public confidence in the NHS pharmacy system arise. In our view, we also need to give appropriate weight to the need to maintain public confidence in the system, and we consider that we can best do this through the application of regulation 33(4).

Allegations of indirect discrimination and of breaches of the European Convention on Human Rights

118. In the skeleton argument and in oral argument, the appellants raised two legal points. The first was an allegation that there was indirect discrimination by the Respondent in its decision adverse to the appellants because it was based solely on his past and this was said to disregard the Equality Act 2010. In his evidence, Mr Bharj appeared at one point to suggest that the complaints made against him in relation to his time in the Skegness Pharmacy in 2015 had been motivated by racism.

119. Although race is a protected characteristic within the meaning of the Equality Act 2010, the potential racism alleged here is not an act of the ICB. It is therefore not within the ambit of these proceedings. To the extent that the remainder of the issue here was one of discrimination on the basis of the previous conviction, this is not an issue that can be raised under the ambit of the Equality Act 2010 because that Act only prevents discrimination on the basis of one or other or a combination of protected characteristics. Mr Bharj's criminal conviction and his status because of that are not protected by this Act.

120. He also mentioned the European Convention on Human Rights. This Convention has been given statutory force in the United Kingdom by the Human Rights Act 1998. Mr Bharj complained of a breach of his rights under Article 8, (right to family and private life) on the basis that the decision was an interference with these rights. Mr Dos Santos also helpfully noted that a better argument on that might be that there was an infringement of the rights to property in Article 1 Protocol 1 to the Convention.

121. Although we accept that someone's professional life is engaged by Article 8, the ICB's decision does not prevent Mr Bharj from practising as a pharmacist nor does it restrict his ability to work for anyone he so chooses as an employee or to be a director of a company. It simply prevents the company from undertaking distance selling work for the NHS. We agree that Article 8 is

therefore not engaged directly by this decision. Although inclusion in a pharmacists' list might arguably be considered to be a possession within the meaning of Article 1 of Protocol 1, this point was not developed before us, and the basis of such an assertion was not explained. We therefore decline to consider that point either.

The decision to be made under regulation 33(2)

Is Mr Bharj a 'suitable' person to act as Superintendent Pharmacist for the appellant?

122. We turn finally to the key issue for resolution in this appeal. In many ways the factual history of this matter is not in dispute. The history and chronology set out in paragraphs 26 to 30 above were not disputed by Mr Bharj as factually inaccurate but rather disputed on the basis that they no longer had the relevance or weight that the ICB had given them. As we noted, he suggested that insufficient weight was given to his regulatory history after his reinstatement to the register of pharmacists and to his work since, and to the similarity of the work he had been doing up to the present to the work he would be doing for Vharmacy Ltd.

123. We have considered all of the evidence provided to us both in the bundle, and in the oral evidence given before us. We have taken into account the parties' submissions, and we have had regard to the matters in regulations 33(3) and (4) in reaching our decision. We find as follows.

124. Mr Bharj was convicted of two or three counts of obtaining property by deception in June 2002 for which he received a custodial sentence of 6 months. The dishonesty involved was admitted to have started in October 1985, barely 5 years into Mr Bharj's professional career. It continued until September 2001 when Mr Bharj was caught, and although it presumably stopped when he was struck off the register for the first time in 1994, it resumed, by his own admission, once he was restored to the register in about 1996 or 1997 and continued thereafter for another 3-4 years. The period of dishonest behaviour therefore extended over about a 16- year period, not a 6 year period as stated in the remarks of His Honour Judge Singh QC in July 2007. In our view that is a very sustained and serious period of dishonesty. It is aggravated by the fact that even being removed from the register did not apparently put a stop to his behaviour. The exact amount by which Mr Bharj profited is unclear but it appears to be in the region of £28,000, being the sum he paid back; more likely more. The initial regulatory proceedings indicated it was hard to assess and might be as much as £40,000.

125. The latter part of the period of dishonesty also coincided with a period when Mr Bharj was last a superintendent pharmacist, the period 1995/6 to 2003 (as director of Vemtech Ltd). Although during the hearing Mr Bharj accepted his dishonesty and the convictions, he also tried to assert that one of the convictions resulted from mistakes not dishonesty. But Mr Bharj cannot now assert that he was not guilty of the offence, especially as he pleaded guilty to it. And in our view, it is an aggravating factor that Mr Bharj is now seeking to minimise his criminal and dishonest behaviour.

126. Furthermore, for the purposes of regulation 33(3)(e) we note that the offence was highly relevant to the provision of pharmaceutical services; the fraud was one he could only commit because of his role as a trusted pharmacist and it was a fraud against the NHS. There is therefore a substantial risk to public finances resulting. But we accept that Mr Bharj was punished for the offence by a term of imprisonment, that this was more than 20 years ago and there is no suggestion made now that he has committed any other offences since.
127. We return to the regulatory history. There have been regulatory issues in Mr Bharj's practice since the mid-90s when he was found to have sold out of date medication and to have substituted medication other than that on the prescription and patient returns on the dispensary shelf. These regulatory concerns, of differing sorts, have continued intermittently since then with incidents in 1997, 2000, and most pertinently in 2015. We find that he has received a reprimand, warnings, advice and been struck off the pharmacists register twice and worked under conditions from July 2007 to April 2008.
128. Mr Bharj said that his dismissal from Tesco's was for what he called a 'harmless' comment; but it resulted in his dismissal. We do not speculate on the wider circumstances, but we note he was dismissed from his employer- and we consider that this information also goes to fitness by virtue of paragraph 3(6) of Schedule 2 to the regulations.
129. Of more concern were the two incidents in August and October 2015 in which it was alleged that Mr Bharj had sold eye drops intended for use for animals, when the pharmacy did not have a licence for this. At the time, the GPhC did not investigate this and treated it as a dispensing error. But the account of this given by Mr Bharj to us- that in both cases the owner of the pet had themselves had an eye infection that he had examined and which warranted the dispensing of medication, was frankly not credible. In our view these incidents indicate that Mr Bharj was at best cavalier about the rules that he was bound by, and at worst potentially dishonest.
130. On his application form to join the pharmacist list, Mr Bharj declared that he did not work in the period 2015 to 2019, and he initially told us this also in oral evidence. When he was asked about revalidation however, and how it was he had stayed on the pharmacists' register in this period without working, his story altered. At that point Mr Bharj told us that he had worked occasionally as a locum, but only enough to remain on the register and to enable him to achieve revalidation. But if this is so, it is unclear why he chose not to declare this on the application form. He made a positive assertion: *"I took a break from work from July 2015 to March 2019. My mother passed away in 2016 and I was ill prior to that in Bedford. In that gap I worked as a volunteer in a registered spiritual charity."*
131. Regulation 33(3) requires us to take all of these matters into account along with 'all facts which appear to [the Tribunal] to be relevant'. We must also under regulation 33(4) then consider the 'overall effect' of all of the various matters (the 'totality' of the evidence).
132. Although the offence was a long time ago it was about as serious an offence

of dishonesty over a sustained period as could be imagined for an NHS pharmacist, and it is one Mr Bharj is now seeking to minimise. Although he invited us to consider his rehabilitation, rehabilitation does not occur merely by effluxion of time since an event occurred. We accept that there has been no evidence of criminality since, but Mr Bharj has not been in a position of superintendent pharmacist since that time and the absence of further dishonesty is therefore, in our judgment, neutral. More persuasive of rehabilitation would be steps that Mr Bharj had taken proactively to demonstrate or promote this, but there was little evidence to support this beyond his own assertion and that of his witnesses. Mr Patel's evidence gave us no confidence that any real training or retraining had been done by Mr Bharj post restoration to the register in 2007 and Mr Bharj denied that there was any need to undertake any further or update training on endorsing scripts because this was 'like breathing' and he said this wasn't even available. However, this was one of the clear issues arising from his earlier regulatory and criminal behaviour. We also use our professional expertise and knowledge of pharmacy as a Tribunal to note that this is not true- such training is readily available.

133. Mr Bharj could give us no indication of any steps he had taken to undertake training, professional development or on the job learning following his restoration to the register focused on his offending or the issues which had led to either of his removals from the Pharmacists Register. It was telling, in our view, that all of the safeguards proposed by the appellant company to demonstrate its suitability consisted of things to be done by other people not by Mr Bharj himself. He gave us no indication that he understood the need to change his own behaviour and understanding to demonstrate proper rehabilitation. The incidents of the last few years, particularly the alleged dispensing of medication intended for use by animals, suggested rather the opposite. The appellants could have provided evidence that Mr Bharj was to undertake some form of specific programme of training; or that the company would subject itself at its own cost to annual forensic audits for a period to demonstrate that there were independent safeguards. But the only safeguards offered were to be by people who were connected in some way personally to Mr Bharj and/or who had a financial stake in the business being successful by being a director or employee.

134. We did not doubt the professionalism or honesty of Mr Patel or Ms Natasha Birdi, who both gave evidence. We did not hear from Ms Sonia Birdi in oral evidence but have no reason to doubt her professionalism or honesty either. But it seems to us that both Natasha and Sonia would be put in a very invidious and conflicted position were they to have to challenge the operation of the business; and as ACPTs it is unclear how they could ever really challenge the decisions of the superintendent pharmacist in any meaningful sense in any event other than by exercising the nuclear option of approaching the GPhC and thereby exposing the company to collapse and its employees to redundancy.

135. Furthermore, as we found above, Mr Bharj does not understand, or accept, the significantly different and enhanced role of being a superintendent pharmacist and minimises and underestimates the requirements. He accepted he had done no formal or informal work to prepare himself for this role and was

unable to explain even the 'bare bones' of the requirements. We have already rejected the notion that it is the same as being a pharmacist.

136. We accept that there were a number of excellent testimonials for Mr Bharj; but these went to his abilities as a pharmacist. Of those who gave live evidence it was clear that none knew the extent or duration of the dishonesty prior to this appeal. Of the others it was unclear whether they knew of the dishonesty or its extent.
137. The referees who were provided to support the application were never called to give evidence and we did not accept the explanation given that the references had not been seen before. Mr Bharj has had the bundle of material for some time. It is clear in the documents that neither referee indicates that they were aware of the earlier criminal behaviour and such understanding appears inconsistent with the answers they gave on the form in any event. Mr Bharj said they were aware and offered to call them at the hearing but in our view it was by then too late and it would not have been fair to the Respondent to allow witnesses to give evidence who had not submitted any prior statement in the proceedings. It was also not even clear that either would be available, or willing, to attend. It is for the appellants to make their case in advance of a hearing. It is not the role of the Tribunal to allow them to alter and supplement it at the Tribunal in the way proposed.
138. The remaining justifications for wanting to undertake distance selling on the pharmacists' list did not make sense in the context of the type of listing sought. Of necessity a distance selling licence is one not designed to supply only a particular local area, and the requirements of any grant of the licence under regulation 65 would prevent the kind of marketing that Mr Grewal was contemplating in any event.
139. Lastly, we turn to the question of public confidence in the NHS pharmacy system, bearing in mind as we do that this is not a decision about whether Mr Bharj can continue to be a pharmacist. In our view the public confidence point is very firmly against allowing this company to be included in the list. We consider that the public would be concerned to learn that someone who was struck off as a pharmacist twice and imprisoned for defrauding the NHS could be put back into a position where this would be possible again. We note that given the mitigation at his trial, which suggested that Mr Bharj's professional career as a pharmacist was over, he has been fortunate in any event to be allowed to return to practice. But given the nature of the offence for which he was imprisoned and the lack of any real evidence of rehabilitation to which we refer above, it appears that real risks may remain of further fraud and of further risks to those accessing pharmaceutical services. We consider that care to patients could be compromised and that it is essential to the maintenance of public confidence in the NHS pharmacy system that companies such as Varmacy are not included.
140. We note that there is extensive regulatory case law indicating that it is hard to

demonstrate rehabilitation from fraud convictions⁸, and given cases such as *Dhorajiwala v General Pharmaceutical Council*⁹ in which 6 accepted blameless years of practice after the theft and 24 years of unblemished record prior to the theft did not prevent the GPhC being right to strike off the pharmacist, it is equally hard to see how Mr Bharj could argue successfully now that the decision to refuse Vharmacy inclusion on the list with him as superintendent pharmacist could be regarded as disproportionate.

141. We have considered, in line with our conclusion above about the existence of our powers, whether it would be possible to impose some condition on the company that might enable Mr Bharj to be suitable to act as superintendent pharmacist. But having given the matter some careful thought we conclude that this is not possible. The issues of suitability are highly personal to Mr Bharj and he has shown, we conclude, no proactive approach to demonstrating rehabilitation. It is not for us to impose conditions, which he would need to accept, which in this context he has not proposed for himself.

142. In conclusion and taking all relevant matters into account and for the reasons set out above, we do not accept that Mr Bharj is a suitable person within the meaning of Regulation 33(2)(b) of the regulations and that consequently Vharmacy Ltd is also not suitable for inclusion in the pharmaceutical list. We consider that the refusal was a reasonable and proportionate step. That being so, we confirm the decision of the ICB and the appeal will be dismissed.

Concluding remarks

143. We understand that this decision will be disappointing to the company and to Mr Bharj and Mr Grewal in particular. We appreciate that as a result of the changes to Regulation 25 recently made, they will not be able to submit a revised application for inclusion as a distance seller either. But all witnesses for the appellant spoke eloquently and passionately about their commitment to the public in Bedford and to the supply of pharmaceutical services to the local area. We would note that they remain able to make a routine application to open a normal pharmacy in some part of the county in any event and can consider as part of that whether Mr Bharj could be an employee of the company or a director, if not superintendent pharmacist.

Decision:

The Tribunal confirms the decision of the Luton, Bedford and Milton Keynes Integrated Care Board to refuse inclusion in the Pharmaceutical lists to Vharmacy Limited on the grounds that the company is unsuitable to be included in the list.

The appeal is dismissed.

Judge S.A. Trueman

⁸ See for example the summary of principles in *General Medical Council v Nwachuku* [2017] EWHC 2085 (Admin) per O'Farrell J.

⁹ [2013] EWHC 3821 (Admin) per Stuart-Smith J

District Tribunal Judge

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