

The art of self defence: Comp

A new pharmacy in your neighbourhood could signal the beginning of the end for your business. David Parker shows how to protect your business and ward off rivals...

For an independent pharmacist, happily going about his/her business, not many things strike greater fear into the heart than the threat of a new competitor on the scene. Although some may say that this comes with the territory, the step-change in business that this can create is very hard to palate. The pain can be particularly acute for those who have recently mortgaged themselves to the hilt to buy a business, or those at the end of their career and hoping to cash in their hard-earned goodwill.

Whilst a good number of pharmacists are entirely up to speed with the "control of entry regulations", at least as many have only a passing knowledge. I still hear very experienced pharmacists talk with assurance of "The mile rule", or merrily mix and match different sets of regulations to suit. Others seem to think that waving the mysterious "necessary or desirable card" will protect them from all evil. To be fair, the "control of entry regulations" make poor bedtime reading (the beginning, middle and end are particularly disappointing!). It is easy to understand that people are less than fascinated with the intricacies of a legislation that is relevant to them on only a handful of occasions in a lifetime. Nevertheless, when the need arises, know-



The sure-fire way to ward off competition is to provide a high quality of service, says David Parker

New contract or relocation?

Threats from competitors come in two forms, new contracts or relocations of existing contracts. Although the regulations that apply to each are very different, there is an overriding concept that is applicable to both; that of neighbourhood.

Neighbourhood

All contract applications rely on the concept of neighbourhoods and the pharmacies that serve them. Neighbourhoods are not precisely

or river, to something more subtle like a moderate incline or even a change in socio-economic status of housing.

As a result, the most concrete guidance I can offer on the definition of a neighbourhood is to use your common-sense and ask yourself how, from an unbiased standpoint, you would see the local populations physically gaining access to their pharmaceutical needs. If people really do tend to stick to their side of the river then it could probably be considered a neighbourhood boundary. Likewise, if the location in question is a small village with no other populations for several miles, it too could be considered a distinct neighbourhood. Despite the difficulty in establishing a neighbourhood, it is essential that give it a go in order to stand a chance of fighting your corner.* If you do not feel confident with this I would suggest that you seek professional advice.

Process

Essential to defending against contract applications is adhering to the application process. There are very strict guidelines with respect to the notification process, and timescales for comment and counter-comment. It is essential that these are respected both by you and by the applicant.

New contract applications

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The majority of applications for new contracts are required to satisfy regulation 12

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ing what is, and what is not, an appropriate response can have a value running to hundreds of thousands of pounds.

The regulations themselves can be very complex and convoluted and read to the layperson as legal gobble-de-gook. Indeed specialist legal advisors exist to help with particularly complex applications. However, there are some fundamentals of the regulations that are easily grasped by mere mortals and, if properly applied, will protect against many an impostor. The following is a practical guide to some of the key frameworks of the regulations as they currently stand.

defined anywhere in the legislation or in any associated guidance notes. The reason for this is probably not, as one may cynically presume, to allow the PCT to make their own rules, but more probably because a single suitable definition cannot reasonably be arrived at. PCTs are in fact given guidance on what could potentially constitute a neighbourhood and, whilst there are no hard and fast rules to which they must adhere, there is an underlying common-sense principle of pharmacies serving populations is at its heart. Thus a neighbourhood could reasonably be bounded by something as obvious and tangible as a motorway

etitors contract applications

of the control of entry regulations, namely that “the proposed pharmacy is necessary or desirable to secure in the neighbourhood the adequate provision of NHS pharmaceutical services”. Fortunately for the defendant, this is a pretty hard argument to make. The burden of proof is with the applicant, firstly to prove that the existing service to the neighbourhood is inadequate and secondly that the granting of a new contract is necessary or desirable to solve this inadequacy. If the existing provision could reasonably be considered adequate then a new contract should not be granted, end of story. Furthermore, some new contract applications are subject to a prejudice test, whereby if the granting of a new contract should prejudice the provision of existing services it may be refused.

Since 2005, there are a number of new contract applications that are exempt from regulation 12, i.e. they do not need to pass the necessary or desirable test. The most common of these, and the only one I will mention here, is the 100-hour application. Defending against this type of application is much more difficult, but not impossible. The first defence that you

may have is if there are any LPS (Local pharmacy services) offered to the neighbourhood. If there are, then the exemption does not apply, and regulation 12 comes into force once more.

a new neighbourhood then it is not a minor relocation, but rather a “change of premises”, which does need to satisfy the necessary or desirable test and is, as a result, very difficult to

“Relocations within the same neighbourhood, but of significant distance, or to an awkward spot, should also be rejected.”

Unfortunately this defence is rarely available and, more often than not, the contract will be granted. A second line of defence is available that is both practical and commercial rather than legal. Because of the costs of staffing the business, a 100-hour pharmacy will require a turnover of almost £1m before it begins to turn a profit. Until that point, the business will be running at a loss and the operator will at least initially need deep pockets or may perhaps never make a profit. Surely any person embarking on such a venture would be very keen to know where their business will end up before signing a lease, shelling out to on a refit and buying their stock. You can help

with this. Although against all natural instincts, it may be a very good idea to share your trading figures with them. Invite them in to look, open book, at the business you are doing. If they see you are only dispensing 6,000 items they may be a little reluctant to take the risk. It's not often that a business exchange is truly win-win, but I believe this is one of them.

Relocations

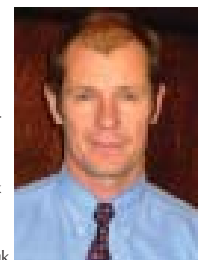
Most applications for relocation are for what is known as “minor relocation”. A minor relocation is defined as relocation within the same neighbourhood. This does not need to satisfy the necessary or desirable test but once again the neighbourhood definition is critical. If the relocation crosses into

achieve. As well as being restricted to the same neighbourhood a minor relocation should leave the pharmacy as accessible to the population as it originally was. Thus, relocations within the same neighbourhood, but of significant distance, or to an awkward spot, should also be rejected. Again since 2005 there has been a regulation change relating to minor relocations of less than 500m. These should be granted via an accelerated 30-day procedure without the need to consult affected businesses. However, it must be noted that this 500m rule only applies to minor relocations, i.e. those within the same neighbourhood, and as a result there are some relocations of less than 500m to which this does not apply. Be aware that some applicants attempt to relocate across neighbourhood boundaries, using this 500m rule as a loophole.

These are just some of the basic defences that are available to any existing contractor, but there remains one that is not mentioned anywhere in the legislation but which will serve you better than all the rest. Give your customers an exceptional service and, new contract or no new contract, your business should be secure.

**Note also that previous neighbourhood definitions do not necessarily hold true for future applications. As a general rule however, if a neighbourhood has been accepted by the appeals unit and nothing much has changed on the ground lately, then an alternative definition is unlikely.*

David Parker Consulting Ltd is a specialist in business sales, acquisitions and development. For more information visit www.davidparkerconsulting.co.uk call 0789 423 4873 or email david@davidparkerconsulting.co.uk



For the purposes of rejecting an application for a new pharmacy in the area you must try and define what you see as your ‘neighbourhood’

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