

19 September 2023

REF: SHA/26027

**APPEAL AGAINST NHS COVENTRY AND
WARWICKSHIRE INTEGRATED CARE BOARD
DECISION TO REMOVE HEATH PHARMACY (FTW85)
FROM THE PHARMACEUTICAL LIST AT 36 HEATH
CRESCENT, COVENTRY, CV2 4PR IN ACCORDANCE
WITH REGULATION 74**

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

Tel: 0203 928 2000
Email: nhsr.appeals@nhs.net

1 Outcome

- 1.1 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations and for the reasons given in this determination, I substitute the decision of NHS England with the decision that the Appellant's premises are not to be removed from the relevant pharmaceutical list.

A copy of this decision is being sent to:

Heath Pharmacy
NHS England

Advise / Resolve / Learn

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1 The Decision Letter

A letter dated 12 April 2023 was sent from NHS England - Midlands Region, on behalf of NHS Coventry and Warwickshire ICB, to Heath Pharmacy, 36 Heath Crescent, Coventry, CV2 4PR. The letter states:

- 1.1 “Further to my previous letters on this matter and the oral hearing held on 5th April 2023, we have considered all evidence and have decided that the above premises are to be removed from the pharmaceutical list for the area of Coventry Health and Wellbeing Board under Regulation 74 (3) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 1.2 Relevant Regulations
- 1.3 **Removal of listings: cases relating to death, incapacity or cessation of service**
- 1.4 **74.—(1)** Subject to paragraphs (2) and (4), if an NHS chemist (C)—
- 1.5 (a)dies;
- 1.6 (b)in the case of an NHS pharmacist, ceases to carry on a retail pharmacy business; or
- 1.7 (c)in the case of an NHS appliance contractor, ceases to carry on a business in the course of which C supplies appliances either by retail sale or in circumstances corresponding to retail sale,
- 1.8 the NHSCB must remove C from the relevant pharmaceutical lists.
- 1.9 (3) If the NHSCB determines that C has not, during the preceding 6 months, provided pharmaceutical services at chemist premises (“the particular premises”) listed in a particular pharmaceutical list—
- 1.10 (a)if there are other chemist premises listed in that pharmaceutical list in relation to C, the NHSCB must remove the listing of the particular premises from that list; or
- 1.11 (b)if there are no other chemist premises listed in that pharmaceutical list in relation to C, the NHSCB must remove C from that list.
- 1.12 Reasoning for decision
- 1.13 No evidence has been provided to NHS England, via written or oral representations to prove that the pharmacy has been providing services since 1st July 2022. As Regulation 74 (3) instructs that if Mr Adnan Ali, during the preceding 6 months, has not provided

pharmaceutical services at the premises then NHS England must remove them from the relevant pharmaceutical list.

- 1.14 You have a right of appeal to the Secretary of State against this decision.
- 1.15 Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:
- 1.16 NHS Resolution 8th Floor 10 South Colonnade Canary Wharf London E14 4PU
- 1.17 Enclosed is a copy of the Pharmacy Close Down Checklist which must be completed to ensure that the pharmacy closes down safely."

2 The Appeal

In an email dated 10 May 2023 addressed to NHS Resolution, Heath Pharmacy ("the Appellant") appealed against NHS England's decision. The grounds of appeal are:

- 2.1 "I have received a letter dated 12/04/2023, 'Re: Removal from the Pharmaceutical List-Heath Pharmacy-FTW85'. I wish to challenge the contents of this letter which has no factual basis.
- 2.2 I have been providing a pharmaceutical service and have submitted electronic prescriptions on a monthly basis.
- 2.3 This information/evidence is available to NHS England from NHSBSA.
- 2.4 I am sure without a shadow of doubt that if NHS England checks with NHSBSA they can confirm I have definitely submitted electronic prescriptions throughout the past year and also during the preceding 6 months. Please can this be clarified verbally with NHSBSA to avoid any confusion or mistakes.
- 2.5 As an example, I have attached August 2022 Schedule Of Payments from NHSBSA as proof and factual evidence, which clearly shows I have dispensed both exempt and paid items. The latter being paid for in the pharmacy, which meant I was providing a walk-in pharmaceutical service.
- 2.6 Therefore, on what basis has NHS England determined that no service has been provided from 1st July 2022.
- 2.7 Any action taken should be based on factual evidence which needs to be checked with due diligence before a decision is made.
- 2.8 Furthermore, I am unaware of any previous correspondence/ hearing as even this letter was delivered to the incorrect address, which I only received recently. Please could you send confirmation on receipt of this appeal to the email above."

3 Summary of Representations

This is a summary of representations received on the appeal.

- 3.1 NHS ENGLAND
 - 3.1.1 "Following receipt of the appeal by Mr Adnan Ali regarding his removal from the Pharmaceutical List, I would like to provide the following representations.
 - 3.1.2 I provide the bundle of evidence considered by the Pharmaceutical Services Regulations Committee when making the decision to remove Mr Adnan Ali

from the Pharmaceutical list (Email entitled FTW85 – Oral Hearing Information Mr Adnan Ali t/a Heath Pharmacy). This was also sent by post and no response was received

- 3.1.3 Consideration of Removal Letter providing Mr Ali information on providing written or oral representations is attached, no response was received. This was also sent by post (and returned as Addressee Gone Away as detailed in point 8).
- 3.1.4 NHSBSA have provided additional activity data which shows months where no activity has taken place at all (attached as Contract Activity – FTW85) They have also confirmed that they have had post returned to them from the contractor and are unable to make contact.
- 3.1.5 Regular contact has been attempted with Mr Ali, with no response. The only communication that he has reacted to is the decision to remove and he has made an appeal against the decision to NHS Resolution. Mr Ali has still not made any contact with NHS England.
- 3.1.6 Calls have been made regularly to the pharmacy which have all gone unanswered. Dates and times of calls since the appeal has been received are as follows:
 - 3.1.6.1 19/5/23 – 12:57 and 13:05 – Ringing – no answer
 - 3.1.6.2 6/6/23 – 17:05 - Automated message stating “sorry this number doesn’t exist”
 - 3.1.6.3 7/6/23 – 15:47 - Automated message stating “sorry this number doesn’t exist”
- 3.1.7 Visits to the pharmacy have shown that the shutters are down at different times of day.
- 3.1.8 Photo 1 – Taken 7/6/23 at 13.35
- 3.1.9 Photo 2 – Taken 15/6/23 at 09:10
- 3.1.10 No Temporary Suspension of Services notifications have been received for these dates (or any other)
- 3.1.11 A patient review on NHS.UK Website dated 12th April 2023 <https://www.nhs.uk/services/pharmacy/heathpharmacy/FTW85> Titled “It’s been closed for ages”, given a 1 star rating and the following review “I had a prescription sent there. However, this pharmacy is closed. Please see the photo on googlemaps. Visited April 23. Mr Ali has not responded to this review on NHS.UK, neither has he updated any information on there since 2018. It is now a contractual requirement to review and update information on a quarterly basis.
- 3.1.12 Our letter sent to the pharmacy premises on 10th February 2023, was returned via Royal Mail as “Addressee Gone Away” and received in our Stephenson Street office on the 15th June 2023.
- 3.1.13 No Registration can be traced for Mr Ali on the Information Commissioners Office (ICO), a legal requirement in order to process personal data.
- 3.1.14 Mr Ali has not completed the following contractual requirements

3.1.14.1CPAF Questionnaires

3.1.14.2Complaints Return

- 3.1.15 It is our view that Mr Adnan Ali t/a Heath Pharmacy is not open and providing NHS Services at 36 Heath Crescent, Coventry, CV2 4PR as detailed in the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 for their contracted hours of 09:00-18:00 Monday-Friday and should be removed from the Pharmaceutical List.”

3.2 NHS England provided a copy of the documents referred to above.

4 Observations

No observations were received by NHS Resolution in response to the representations received on appeal.

5 Consideration

- 5.1 Since 1 April 2023, Integrated Care Boards have taken on delegated responsibility for the commissioning of pharmaceutical services. NHS Resolution will issue this decision to NHS England and it is for NHS England to inform the relevant Integrated Care Board. References to NHS England in this determination should be taken to be references to the relevant Integrated Care Board where appropriate.

- 5.2 The Appellant seeks to appeal against the decision of the Integrated Care Board to remove its premises from the pharmaceutical list under Regulation 74(3).

- 5.3 Regulation 74 “Removal of listings: cases relating to death, incapacity or cessation of service” of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the “Regulations”), states:

“74.(3) If the NHSCB determines that C has not, during the preceding 6 months, provided pharmaceutical services at chemist premises (“the particular premises”) listed in a particular pharmaceutical list—

(a) if there are other chemist premises listed in that pharmaceutical list in relation to C, the NHSCB must remove the listing of the particular premises from that list; or

(b) if there are no other chemist premises listed in that pharmaceutical list in relation to C, the NHSCB must remove C from that list.”

- 5.4 As part of its appeal, the Appellant contends that it is “*unaware of any previous correspondence/hearing as even this letter (the decision letter from NHS England) was delivered to the incorrect address, which I only received recently.*”

- 5.5 Regulation 74(5) states:

“(5) Before taking a decision to remove C, or chemist premises listed in relation to C, from a pharmaceutical list under paragraph (1) or (3), the NHSCB must—

(a) give notice to C (or, in appropriate circumstances, a person whom the NHSCB reasonably believes is representing C or is an executor of C) of the decision that the NHSCB is minded to take;

(b) as part of that notification, advise C (or the representative or executor) that they may make—

(i) written representations to the NHSCB with regard to that action, provided they notify the NHSCB with those representations within 30 days beginning with the date of the notification by the NHSCB, and

(ii) oral representations to the NHSCB with regard to that action, provided—

(aa) they notify the NHSCB of their wish to do so within 30 days beginning with the date of the notification by the NHSCB, and

(bb) C (or the representative or executor, or someone representing the representative or executor) attends the hearing that the NHSCB arranges for the purpose of hearing those representations, which the NHSCB must give C reasonable notice of; and

(c) consult any Local Pharmaceutical Committee whose area includes the chemist premises that the NHSCB is minded to remove from the pharmaceutical list.”

- 5.6 In response to the appeal, NHS England states that “regular contact has been attempted with Mr Ali, with no response. The only communication he has reacted to is the decision to remove and he has made an appeal against the decision to NHS Resolution. Mr Ali has still not made any contact with NHS England.”
- 5.7 As part of its representations, NHS England has provided me with copies of two letters addressed to the Appellant, dated 10 February 2023 and 29 March 2023, with both of these letters notifying the Appellant of NHS England’s intention to remove it from the pharmaceutical list and giving the Appellant the opportunity to make written and oral representations.
- 5.8 I note the above letters were sent to the Appellant by post to its premises address, as well as by email to the following addresses: Pharmacy.FTW85@nhs.net and aliheath36@googlemail.com (10 February letter) and Pharmacy.FTW85@nhs.net, aliheath36@googlemail.com and pharmacy30.cpct@nhs.net (29 March letter). There are delivery receipts for Pharmacy.FTW85@nhs.net.
- 5.9 It is unclear why the decision letter of 12 April 2023 reached the Appellant but other correspondence did not and what happened to the delivered emails.
- 5.10 At this point, I note Schedule 4 ‘Terms of service of NHS pharmacists’, Paragraph 29 of the Regulations states:

“Contact via NHSmail, pharmacy profiles ...

29C.—(1) An NHS pharmacist (P) must ensure that pharmacy staff at pharmacy premises(including locums) have access to, and are able to send and receive NHSmail from, a premises specific NHSmail account.

(2) P must ensure that at least two members of the pharmacy staff have live, linked NHSmail accounts to the premises specific NHSmail account (unless fewer than two members of the pharmacy staff are engaged in the provision of NHS services).

(3) P must ensure that there is a comprehensive and accurate pharmacy profile in respect of P’s pharmacy premises in the [NHS England directory of services], and P must verify and where necessary update the information contained in that profile at least once each quarter of the financial year.

(4) P must ensure that there is a comprehensive and accurate pharmacy profile in respect of P's pharmacy premises on the NHS.uk website, and P must verify and where necessary update the information contained in that profile at least once each quarter of the financial year."

- 5.11 There is no dispute from the Appellant that Pharmacy.FTW85@nhs.net is the premises specific NHSmail account. Further, there is no information to show that the Appellant is unable to access this premises specific email address or that this email address is the incorrect email address for the pharmacy.
- 5.12 Therefore I am of the view that NHS England gave notice to the Appellant of its intention to remove its premises from the pharmaceutical list, in accordance with Regulation 74(5).
- 5.13 Turning to the substantive matter as to whether services have been provided, I note in its copy letter addressed to the Appellant dated 29 March 2023, NHS England states "NHSBSA confirmation dated 28th July 2022 that claims were still being by the pharmacy until May 2022 (Appendix 8)" [sic] and further "NHSBSA Confirmation dated 17th January 2023 that claims have not been submitted since June 2022 – A period of over 6 months (Appendix 9)". I note that I have not been provided with a copy of the 17 January 2023 email. The decision letter dated 12 April 2023 states *"No evidence has been provided to NHS England, via written or oral representations to prove that the pharmacy has been providing services since 1st July 2022. As Regulation 74 (3) instructs that if Mr Adnan Ali, during the preceding 6 months, has not provided pharmaceutical services at the premises then NHS England must remove them from the relevant pharmaceutical list."*
- 5.14 The Appellant contends that it has been providing a pharmaceutical service and has submitted electronic prescriptions on a monthly basis. Further the Appellant states that this information is available to NHS England from the NHS BSA.
- 5.15 I note as part of its appeal, the Appellant has provided a copy document titled 'Schedule of Payments' which contains the NHS BSA's letterhead. It also contains the subheading 'Dispensing Month: Aug 2022'. The Appellant states that the document clearly shows that it has dispensed both exempt and paid items. *"The latter being paid for in the pharmacy, which meant I was providing a walk-in pharmaceutical service. Therefore, on what basis has NHS England determined that no service has been provided from 1st July 2022."* I note the August 2022 data also aligns with that shown in a list of activity provided in an email dated 22 May 2023 from the NHS BSA to NHS England.
- 5.16 In its representations, NHS England includes data from the NHS BSA which shows the following activity:

Dispensing Month	Items paid by NHSBSA
Mar-23	6
Feb-23	3
Jan-23	9
Dec-22	0
Nov-22	3
Oct-22	0
Sep-22	0

Aug-22	97
Jul-22	640
Jun-22	1211
May-22	1423
Apr-22	1333
Mar-22	1339

- 5.17 NHS England made its decision to seek removal from the list based on there being no activity between July 2022 and January 2023 but I do note that there are some months of no activity.
- 5.18 However I note that between the months of July 2022 – January 2023, items have been paid for by the NHS BSA, albeit in small numbers. There is a significant drop in the number of paid items from August 2022, however there are only three months with no activity and these are non-consecutive. Therefore, the activity data provided by the NHS BSA does indicate to me that pharmaceutical services are still being provided from the Appellant's premises.
- 5.19 Based on the information provided, I am minded to substitute the decision of NHS England with the decision that the Appellant's premises are not to be removed from the relevant pharmaceutical list.
- 5.20 However, first I will consider other factors relevant to this matter.
- 5.21 I note several examples provided by NHS England, which have not been disputed, which could portray the premises as being closed; these being that calls to the pharmacy have gone unanswered, that letters have been returned via the Royal Mail as "*Addressee Gone Away*" and that photographs, that have been provided, have been taken at different times of the day and which show that the shutters are down on the premises. NHS England states that no Temporary Suspension of Services notifications have been received for these dates.
- 5.22 I note that NHS England has signposted me to a patient review on www.NHS.uk website dated 12 April 2023 which is titled 'It's been closed for ages', given a 1 star rating and the following review "*I had a prescription sent there. However, this pharmacy is closed. Please see the photo on googlemaps.*" I also note the other contractual requirements that have not been fulfilled by the Appellant in relation to updating the NHS.UK website, or completing either the CPAF Questionnaires or Complaints Returns. I also have had regard to the breach notice provided by NHS England which, according to its representations, does not appear to have been remedied.
- 5.23 Finally I note NHS England's comment that no registration can be traced for the Appellant on the Information Commissioners Office (ICO), which is a legal requirement in order to process personal data.
- 5.24 I consider that when taken in its totality this evidence certainly indicates a pharmacy that is closed, if not all the time then at the very least most of the time. However, I must consider the wording of Regulation 74, under which the decision to remove the Appellant's pharmacy from the pharmaceutical list was taken.
- 5.25 Regulation 74(3) states:

5.25.1 *"If the NHSCB determines that C has not, during the preceding 6 months, provided pharmaceutical services at chemist premises ("the particular premises") listed in a particular pharmaceutical list"*

- 5.26 I note that this wording is very clear, either there is or there is not any pharmaceutical services provided. It does not include any form of *de minimis* threshold. I also note that there is no further explanation of what would comprise pharmaceutical services. Consequently, I consider that it must mean that if any level of pharmaceutical services is provided, of any kind, and the Appellant can provide evidence to support this, then NHS England is not obliged to remove the premises from the pharmaceutical list.
- 5.27 I note that there does appear to be multiple issues with compliance by the Appellant in regards to its contractual and regulatory obligations, and the evidence suggests that the pharmacy is not operating during at least some of its contractual hours. I do not consider that the Appellant's compliance issues can be taken into consideration under Regulation 74, unless they actively demonstrate a total cessation of services which the activity data does not appear to support.
- 5.28 As the appeal was brought in relation to Regulation 74, and whilst I am able to substitute the decision with any decision that NHS England could make at the time, I do not consider that I have sufficient evidence of the circumstances to make a determination in relation to removal under Regulation 74. I therefore make no determination on whether a removal of listing could occur under Regulation 74. NHS England will want to consider what action it considers appropriate for the multiple breaches of the contractual and regulatory requirements based on the evidence it has in this regard.
- 5.29 Consequently, I must return to my earlier consideration that, given the evidence from the NHS BSA indicating that some level of pharmaceutical activity has been carried out, that the conditions of Regulation 74(3) have not been met.

6 Decision

- 6.1 Under NHS Resolution's powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of NHS England or substitute for that decision any decision that NHS England could have taken when it took that decision.
- 6.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations and for the reasons given in this determination, I substitute the decision of NHS England with the decision that the Appellant's premises are not to be removed from the relevant pharmaceutical list.

**Head of Appeals
NHS Resolution**