

6 November 2023

FILE REF: SHA/26068

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

DECISION MAKING BODY: NHS NOTTINGHAM AND
NOTTINGHAMSHIRE ICB
("the ICB")

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

PHARMACIST: MANOR PHARMACY
("the Appellant")

PREMISES: 185 LOUGHBOROUGH ROAD
WEST BRIDGFORD
NOTTINGHAM
NG2 7JR

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL
SERVICES) REGULATIONS 2013**

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

1 Outcome

1.1 I confirm the action of the ICB to issue the direction.

A copy of this decision is being sent to:

Manor Pharmacy
NHS Nottingham and Nottinghamshire ICB

Advise / Resolve / Learn

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SERVICES) REGULATIONS 2013 ["THE REGULATIONS"]**

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

DIRECTION OF ADDITIONAL CORE OPENING HOURS

1 Introduction

- 1.1 Relying on Paragraph 25 of Schedule 4, the ICB has requested that the Appellant open from 2pm – 4pm on Monday 25 December 2023, Christmas Day.
- 1.2 The Appellant seeks to appeal to NHS Resolution.

2 Consideration

Rights of appeal

- 2.1 Where the commissioner has directed a pharmacist to provide pharmaceutical services for its premises at set times and on set days in accordance with paragraph 25 of Schedule 4 of the Regulations, paragraph 25(7) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").
- 2.2 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 2.3 A pharmacy's opening hours may be categorised as:
 - 2.3.1 'core' opening hours (days on and times at which the pharmacy is obliged to be open), which may incorporate a direction of the commissioner requiring fewer or greater than 40 hours; or

- 2.3.2 'supplementary' opening hours (other days on and times at which the pharmacy undertakes to provide pharmaceutical services, as notified to the commissioner).

Alteration of 'core' (including 'directed') opening hours

- 2.4 In accordance with paragraph 1(7)(c) of Schedule 2 to the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list, the proposed core opening hours in respect of the premises during which it will be obliged to provide pharmaceutical services under paragraph 23(1) of Schedule 4 to the Regulations. These may be subject to a direction under paragraph 23(1)(c), (d) or (e).

Alteration of 'supplementary' opening hours

- 2.5 Other days or times at which services are to be provided (as set out in the original application for entry in the pharmaceutical list pursuant to paragraph 23(3) of Schedule 4 as "supplementary hours") may be altered by giving notice to the commissioner, in accordance with paragraph 23(6)(a) without the need to make an application.
- 2.6 Notices under paragraph 23(6)(a) are not subject to review by NHS Resolution.

The ICB's request

- 2.7 The ICB wishes the Appellant to open from 2pm – 4pm on Monday 25 December 2023, Christmas Day, a day on which it would otherwise be closed.

Information provided by parties

- 2.8 In a letter to the Appellant dated 10 August 2023, the ICB stated:
- 2.8.1 "We have concluded our assessment as to whether to issue a direction pursuant to paragraph 25(1) of Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended and have issued the enclosed direction.
- 2.8.2 Your core opening hours on **Monday 25 December 2023** are therefore: **14:00 – 16:00**
- 2.8.3 We have reviewed which pharmacies have opened on previous bank holidays to ensure that directing pharmacies to open has taken place on a fair share basis.
- 2.8.4 Please be advised that the level of remuneration for Christmas Day 25 December 2023, will be £350.00 per hour.
- 2.8.5 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing 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
- 2.8.5.1 Primary Care Appeals Case Manager, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU"
- 2.9 In an email to NHS Resolution dated 11 August 2023 the Appellant stated:
- 2.9.1 "We have received an email directing us to open on Christmas day 2023. We would like to challenge this decision on the following basis.

- 2.9.1.1 The business is currently in transition of ownership to the My Local Chemist chain. The business is still [sic] registered as Peak with the NHS but is now owned by My local chemist
- 2.9.1.2 My Local Chemist has operated the Christmas rota between 2015 and 2021. At our main branch in West Bridgford account FGM17. With the exception of one year when the contract was awarded to another party.
- 2.9.1.3 As a business we would struggle to staff the branch for the time period. This is the reason we have not applied for the contract for our main branch in the area.
- 2.9.2 We feel that after the transition there are other contractors who have not provided this service.”
- 2.10 In a letter to NHS Resolution dated 11 September 2023 the ICB stated:
 - 2.10.1 “Thank you for your letter dated 21 August 2023; Nottingham and Nottinghamshire ICB, would like to make the following representations.
 - 2.10.2 Nottingham and Nottinghamshire ICB note that Peak Pharmacy/My Local Chemist are appealing this direction on the basis that:
 - 2.10.2.1The business is currently in transition of ownership to the My Local Chemist chain. The business is still registered as Peak with the NHS but is now owned by My Local Chemist
 - 2.10.2.2My Local Chemist has operated the Christmas rota between 2015 and 2021. At our main branch in West Bridgford account FGM17. With the exception of one year when the contract was awarded to another party.
 - 2.10.2.3As a business we would struggle to staff the branch for the time period. This is the reason we have not applied for the contract for our main branch in the area.
 - 2.10.2.4We feel that after the transition there are other contractors who have not provided this service.
 - 2.10.3 Nottingham and Nottinghamshire ICB under Schedule 4, Part 3, paragraph 25(2)(b) of the NHS (Pharmaceutical Services and Local Pharmaceutical Services) Regulations 2013 (as amended) states that NHS England can direct a pharmacy to open where a need is determined. NHS England must notify the pharmacy of any direction issued or any other action taken under subparagraph (3), and where it sets new days on which or times at which the pharmacy is to provide pharmaceutical services at pharmacy premises, it must include with the notification a statement of— (a)the reasons for the change; and (b)The pharmacy’s right of appeal under paragraph (7).
 - 2.10.4 As NHS Resolution will be aware, pharmacies are not required by their terms of service to open on Christmas Day, Good Friday, Easter Sunday or on a bank holiday, although they may choose to do so.
 - 2.10.5 Nottingham and Nottinghamshire ICB can confirm that it has not been notified of any pharmacies that will be open in Nottingham NG2 on Christmas Day this year.
 - 2.10.6 As NHS Resolution will also be aware, under section 126 of the NHS Act 2006 (Arrangements for pharmaceutical services), NHS England must make arrangements for the provision, to persons who are in England, of:

- 2.10.6.1 Proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown
- 2.10.6.2 Proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of— (i) his functions in the health service, the Scottish health service or the Northern Ireland health service (other than 5 functions exercised in pursuance of the provision of services mentioned in paragraph (c)), or (ii) his functions in the armed forces of the Crown
- 2.10.6.3 Listed drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of the provision of primary dental services or equivalent services in the Scottish health service or the Northern Ireland health service
- 2.10.6.4 Such drugs and medicines and such listed appliances as may be determined by the Secretary of State for the purposes of this paragraph and which are ordered for those persons by a prescribed description of person in accordance with such conditions, if any, as may be prescribed, in pursuance of functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown
- 2.10.6.5 Such other services as may be prescribed.
- 2.10.7 Nottingham and Nottinghamshire ICB has therefore considered what arrangements need to be put in place on Christmas Day 2023 in order to discharge this duty.
- 2.10.8 Nottingham and Nottinghamshire ICB is of the opinion that whilst demand for the full range of pharmaceutical services may be lower on this day compared to a Monday that is not a public holiday, there will still be a need for pharmaceutical services by people who live within Nottingham NG2 or that are visiting the area for this period. Whilst GP practices will be closed on Christmas Day 2023, other providers of NHS services will be open such as the GP out of hours service and A&E departments.
- 2.10.9 Nottingham and Nottinghamshire ICB note that in SHA/24664 (issued on 15 December 2021) the head of operations, Primary Care Appeals, stated that they were of the view that the day in question (Monday 25 December 2023) are, in relation to pharmaceutical services, no different from any other day and that they had seen no information in that appeal which indicated a change of attitude towards those particular days (from a pharmaceutical services perspective).
- 2.10.10 Nottingham and Nottinghamshire ICB believe that, as a minimum, the services for which there will be a need on Christmas Day are as follows:
- 2.10.11 The dispensing service for prescriptions issued by a NHS service provider that is open on that day or for prescriptions that have been issued on a previous day but which a person has not been able to have dispensed due, for example, being at work and pharmacies reducing their supplementary opening hours on the previous day.
- 2.10.12 The community pharmacist consultation service for both the provision of drugs and also of advice following referral from NHS 111.

- 2.10.13 As GP practices will be closed on Christmas Day, people seeking advice on the management of low acuity/minor illnesses will turn to, or be referred to, pharmacies. Of course, some people may wish to access other essential and advanced services.
- 2.10.14 As stated above, Nottingham and Nottinghamshire ICB are not aware of any pharmacies that will be open on Christmas Day and therefore at present Nottingham and Nottinghamshire ICB is unable to discharge its duty as set out in section 126 of the NHS Act 2006.
- 2.10.15 In the past, the approach would have been to direct pharmacies that were close to where prescriptions would be generated, for example near to the GP out of hours service and A&E departments, as people would be travelling to those locations and then seeking a pharmacy nearby.
- 2.10.16 However, the advent of the community pharmacist consultation service, and before it the NHS urgent medicines supply advanced service, means that those requiring pharmaceutical services will need to access a pharmacy near to where they live.
- 2.10.17 As a result Nottingham and Nottinghamshire ICB need to ensure that there is a good spread of pharmacies that are open on Christmas Day across its area.
- 2.10.18 In 2015 Nottingham and Nottinghamshire ICB worked with the LPCs in its area in order to develop a process by which Nottingham and Nottinghamshire ICB could discharge its duty and ensure that all pharmacies are treated as equally as possible in relation to the public and bank holidays, including Easter Sunday and Christmas day. It was agreed with the LPCs that Nottingham and Nottinghamshire ICB would jointly work on a locality basis when identifying whether or not a pharmacy needs to be directed to open on such a day, rather than reviewing each pharmacy individually.
- 2.10.19 Localities were based on patient footfall, patient usage of services and ease of access. These localities were defined in collaboration with the LPC to determine the most effective distribution of and access to available services.
- 2.10.20 This approach was agreed by all parties as it ensures Nottingham and Nottinghamshire ICB can discharge its duty in a way that is fair to all pharmacies and followed regulation 25 as detailed below:
- 2.10.21 *“Determination of pharmacy premises core opening hours instigated by the NHSCB 25.—(1) Where it appears to the NHSCB, after consultation with or having considered the matter at the request of the Local Pharmaceutical Committee for the area in which the premises are situated, that the days on which or times at which pharmacy premises are or are to be open for the provision of pharmaceutical services will not, or no longer, meet the needs of”*
- 2.10.22 These localities are reviewed with the LPCs annually to ensure they still meet the demand for pharmaceutical access. This pharmacy falls within the Nottingham NG2 locality.
- 2.10.23 Within this locality there are 15 pharmacies, none of which have indicated that they will be open for all or part of their usual opening hours on Christmas Day 2023. The process followed for Christmas Day is as follows.
- 2.10.24 Nottingham and Nottinghamshire ICB wrote out to all contractors to ask whether anyone would like to volunteer to provide pharmaceutical services on Christmas Day 2023. This would allow it to direct a contractor who wants to open where Nottingham and Nottinghamshire ICB have this option or for an SLA to be used to support extended opening where appropriate.

- 2.10.25 Nottingham and Nottinghamshire ICB did not receive any volunteers within the Nottingham NG2 locality for Christmas Day. The requirement for pharmaceutical service provision on Christmas day was reviewed with the LPCs and a determination made as to what cover is jointly felt to be required.
- 2.10.26 Contractors within a locality were reviewed and it was identified which pharmacies have been directed to open in the past and then identified which could be directed to be open on a rolling basis.
- 2.10.27 The LPCs also had sight of which pharmacies were selected for direction within the localities so that they can offer advice on whether the spread of contractors is sufficient and fair.
- 2.10.28 Nottingham and Nottinghamshire ICB have enclosed a map to demonstrate the locations of the pharmacies with Peak Pharmacy/My Local Chemist located to the south of the map amongst the number 2.
- 2.10.29 [Map provided.]
- 2.10.30 When determining which pharmacies to direct Nottingham and Nottinghamshire ICB have reviewed the claim forms submitted by contractors via pharm outcomes, who have previously opened on Christmas Day within the Nottingham NG2 locality and determined the level of cover required from the information provided regarding the number of patients accessing pharmaceutical services, the number of prescriptions dispensed and the number of patients requesting advice from a Pharmacist. The timing of the hours that Nottingham and Nottinghamshire ICB are asking pharmacies to open is based on a review of directed rota claim forms submitted by contractors, which indicated the level of demand for services at various times of the day on Christmas Day in previous years within the Nottingham NG2 locality.
- 2.10.31 Nottingham and Nottinghamshire ICB have determined there is sufficient demand for pharmaceutical services to require a minimum of two hours pharmaceutical cover on Christmas day.
- 2.10.32 Nottingham and Nottinghamshire ICB are aware that on any given Monday patients are accustomed to having several hours of pharmaceutical services available to them via fifteen pharmacies in the Nottingham NG2 locality.
- 2.10.33 Whilst Nottingham and Nottinghamshire ICB acknowledge that demand for pharmaceutical services in the Nottingham NG2 locality will be lower on Christmas day than on a standard Monday, as demonstrated above it believes that a minimum of two hours access is required based on the information provided by the pharmacies in the Nottingham NG2 locality from previous Christmas Day opening.
- 2.10.34 Nottingham and Nottinghamshire ICB note that the Appellant has stated that they should not open because:
- 2.10.35 [See paragraphs 2.10.2.1 – 2.10.2.4 above]
- 2.10.36 Whilst Nottingham and Nottinghamshire ICB do try to rotate pharmacies to ensure equitability this is a secondary reason for a direction. As also stated by the appellant the branch that opened on previous Christmas Days was in a different location and therefore has no bearing on whether we should direct this particular branch which I can confirm has never been directed to open Christmas Day over the last five years.

- 2.10.37 As the change of ownership has not yet been agreed by Nottingham and Nottinghamshire ICB, the direction has been issued to the current owners, Peak Pharmacy. As part of any change of ownership any incoming owner has a responsibility to take on the obligations of the outgoing pharmacy including any directions that may be in place.
- 2.10.38 As previously stated Nottingham and Nottinghamshire review the geographical location of a pharmacy within an agreed locality and in the case of Nottingham NG2 it believes that there is a requirement for a pharmacy in this location to open on Christmas day to ensure there is equitable access for patients who do not have access to a car on a day where public transport is not likely to be operating, which is why Peak Pharmacy/My Local Chemist have been selected and directed to open on Christmas day 2023.
- 2.10.39 NHS Resolution will note from the map provided of the Nottingham NG2 area that the areas highlighted in dark shades are identified as areas with highest levels of health deprivation, with the area with a red outline being one of the most health deprived areas in the UK, scoring decile point 1 out of 10 with 1 being the most deprived.
- 2.10.40 Therefore, Nottingham and Nottinghamshire ICB can surmise that patients residing in or visiting these areas are likely to have an increased need to access pharmaceutical services on a day when other health care providers will be closed.
- 2.10.41 Peak Pharmacy/My Local Chemist sits within close proximity of three of these areas with a decile point of 1 and is surrounded by other areas of deprivation, therefore it is determined that there is a need for services from this pharmacy with patients being able to access from these most deprived areas to the North and West of its location.
- 2.10.42 Nottingham and Nottinghamshire ICB wrote to contractors advising that they are being considered for a direction and inviting them to submit representations to Nottingham and Nottinghamshire ICB within 30 days of the date of its initial letter (this year that was by 4 August 2023). Peak Pharmacy/My Local Chemist did not submit a representation during this period.
- 2.10.43 Nottingham and Nottinghamshire ICB has chosen to give Peak Pharmacy/My Local Chemist over five months' notice of the potential requirement to open on this date, and just over four months' notice when the direction was issued, in order that the contractor has sufficient time to prepare accordingly.
- 2.10.44 Nottingham and Nottinghamshire ICB had regard to all representations received including information as to whether other pharmacies may or may not be able to provide cover before moving to issuing a direction.
- 2.10.45 Nottingham and Nottinghamshire ICB was not in a position to be assured that adequate levels of pharmaceutical service provision, as agreed with the LPCs with regard to the needs of the population, would be in place in this locality without issuing directions.
- 2.10.46 Nottingham and Nottinghamshire ICB believe it met the requirements of the Regulations under the following two paragraphs:
- 2.10.47 Nottingham and Nottinghamshire ICB considered the local Pharmaceutical Needs Assessment (PNA) to understand the needs of the local population and has taken into consideration the provision and availability of other health care services e.g. GP primary care provision and Out of Hours at the time of the directed rota. The PNAs reference that if Nottingham and Nottinghamshire ICB consider there is a need for pharmacy services in an area on any specific day,

that it can direct a rota, as such it is established that the Health and Wellbeing Board expects rota provision to be enacted by Nottingham and Nottinghamshire ICB at times where it has been established that there is not adequate provision of pharmaceutical services identified.

2.10.48 Some commissioned pharmaceutical services for example Community Pharmacy Consultation Service are of their nature a timebound services, which does not take in to account a lack of provision over bank holidays.

2.10.49 Nottingham and Nottinghamshire ICB has assessed the need in the Nottingham NG2 locality for the provision of pharmaceutical services. Nottingham and Nottinghamshire ICB had regard to location and opening of pharmacies in the Nottingham NG2 locality, the pharmacy needs assessment and responses to consultation from the LPCs.

2.10.50 As a result of this assessment, it was determined that direction is required to provide adequate pharmaceutical services at the times stated in the attached direction letter.

2.10.51 The consideration as to whether to direct a pharmacy to open on Christmas day involved contractors included in the relevant pharmaceutical list in the locality (in this case Nottingham NG2).

2.10.52 In seeking to ensure that pharmaceutical services are provided on such days and at such times as are necessary to meet the needs of people in its area or other likely users of the pharmacy premises, in this case to ensure sufficient cover arrangements are in place on Christmas day, Nottingham and Nottinghamshire ICB has followed its processes (as described above) accordingly by directing pharmacies to open.

2.10.53 For the reasons provided above, Nottingham and Nottinghamshire ICB maintain its decision to issue this direction to Peak Pharmacy/My Local Chemist and requests that the appeal be rejected.

2.10.54 Nottingham and Nottinghamshire ICB have attached for information to the email as have been advised by NHSR that embedded documents do not open:

2.10.54.1A letter advising contractors that they were being considered for direction on Christmas Day 2023 and inviting them to submit representation.

2.10.54.2A letter directing the contractor to open on Easter Sunday [sic] 2023 and notifying them of their right of appeal.

2.10.54.3A screenshot of the map used to plot pharmaceutical access across Nottingham NG2 when determining Christmas day directions."

2.11 No observations were made by the Appellant in response to the representations from the ICB.

2.12 I note from the information provided, the Appellant's core opening hours are as follows:

2.12.1 Monday to Friday – 9am – 1pm and 1.30pm – 5.30pm

2.12.2 Saturday and Sunday - Closed

Assessment

2.13 I have considered paragraph 25 of Schedule 4 (Determination of pharmacy premises core opening hours instigated by the NHSCB), which reads as follows:

1. *Where it appears to the NHSCB, after consultation with or having considered the matter at the request of the Local Pharmaceutical Committee for the area in which the premises are situated, that the days on which or times at which pharmacy premises are or are to be open for the provision of pharmaceutical services will not, or no longer, meet the needs of—*

(a) *people in its area; or*

(b) *other likely users of the pharmacy premises,*

for the pharmaceutical services available at or from those premises, it must carry out an assessment as to whether to issue a direction requiring the NHS pharmacist (P) whose premises they are to provide pharmaceutical services at the pharmacy premises at set times and on set days (which may include Christmas Day, Good Friday and bank holidays).

2. *Before concluding the assessment under sub-paragraph (1) the NHSCB must—*

(a) *give notice to P of any proposed changes to the days on which or times at which the pharmacy premises are to be open; and*

(b) *allow P 30 days within which to make written representations to the NHSCB about the proposed changes.*

3. *When it determines the outcome of its assessment, the NHSCB must—*

(a) *issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs (4) and (5);*

(b) *confirm any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises, provided that the existing direction (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub-paragraphs (4) and (5); or*

(c) *either—*

(i) *revoke, without replacing it, any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations), or*

(ii) *in a case where there is no existing direction, issue no direction, in which case, by virtue of whichever of paragraph 23(1)(a) or (b) applies, the pharmacy will need to be open for 40 hours each week or for at least 100 hours each week.*

4. *Where the NHSCB issues a direction under sub-paragraph (3) in respect of pharmacy premises that are to be required to be open—*

(a) *for more than 40 hours each week, it must set out in that direction—*

(i) *the total number of hours each week for which P must provide pharmaceutical services at the pharmacy, and*

(ii) *as regards the additional opening hours, the days on which and the times at which P is required to provide those services during those hours,*

but it must not set out in that direction the days on which or times at which P is to provide pharmaceutical services during hours which are not additional opening hours; or

(b) *for less than 40 hours each week, it shall set out in that direction the days on which and times at which pharmaceutical services are to be provided at the pharmacy premises.*

5. *The NHSCB must not issue a direction under sub-paragraph (3) that has the effect simply of requiring pharmacy premises to be open for 40 hours each week on set days and at set times (that is, the direction must have the effect of requiring pharmacy premises to be open for either more or less than 40 hours each week).*
6. *The NHSCB must notify P of any direction issued or any other action taken under sub-paragraph (3), and where it sets new days on which or times at which P is to provide pharmaceutical services at pharmacy premises, it must include with the notification a statement of—*
 - (a) *the reasons for the change; and*
 - (b) *P's right of appeal under paragraph (7).*
7. *P may, within 30 days of receiving notification under sub-paragraph (6), appeal in writing to the Secretary of State against any direction issued or any other action taken under sub-paragraph (3) which sets new days on which or times at which P is to provide pharmaceutical services.*
8. *The Secretary of State may, when determining an appeal, either confirm the action taken by the NHSCB or take any action that the NHSCB could have taken under paragraph (3).*
9. *The Secretary of State shall notify P of the determination and shall in every case include with the notification a statement of the reasons for the determination.*
10. *If the days on which or times at which P is to provide pharmaceutical services at pharmacy premises have been changed in accordance with this paragraph, P must introduce the changes—*
 - (a) *if P has not appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (6); or*
 - (b) *if P has appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (9).*
11. *This paragraph does not apply where regulation 65(5) to (7) applies.*

2.14 I am mindful that paragraph 23(12) of Schedule 4 states:

For the purposes of calculating the number of hours that a pharmacy premises are open during a week that includes Christmas Day, Good Friday, Easter Sunday or a bank holiday, it is to be deemed that the pharmacy premises were open on that day at the times at which they would ordinarily have been open on that day of the week.

- 2.15 I am of the view that the pharmacy would normally be closed on Christmas Day and that this would be in accordance with the Regulations.
- 2.16 I am conscious that paragraphs 25(1) and (2) require that before any direction is made, an assessment must be undertaken and that, before the assessment is concluded, the pharmacist providing services from the premises must be given notice of the proposed changes and 30 days to make written representations about the proposed changes.
- 2.17 The ICB states that it was agreed with the LPCs that it would jointly work on a locality basis when identifying whether or not a pharmacy needs to be directed to open. I have not been provided with a copy of the consultation with the LPC. I note that the ICB wrote to the pharmacy on 7 July 2023 [copy provided with its representations] indicating that it proposed to direct the pharmacy to open for the hours in question and the pharmacy was provided with 30 days to provide representations regarding the proposal. In its representations, the ICB states that the Appellant did not submit any representations during this period.

- 2.18 I am of the view that the ICB has undertaken a consultation process as set out in the Regulations and that there is no dispute from the Appellant in this regard.
- 2.19 I am mindful that the ICB is required by paragraph 25(6) of Schedule 4 to provide reasons for its decision. In my view, these reasons should set out the basis of any determination that days and times of opening will no longer be such as will meet the pharmaceutical needs of relevant persons and (if they are, such that a direction may be made) the assessment that led to the direction, taking into account any written representations from the pharmacist.
- 2.20 The direction letter of 10 August 2023 states *"We have concluded our assessment as to whether to issue a direction pursuant to paragraph 25(1) of Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended and have issued the enclosed direction."*
- 2.21 I note that the only reasoning provided in the direction letter to the Appellant is that the ICB has *"...reviewed which pharmacies have opened on previous bank holidays to ensure that directing pharmacies to open has taken place on a fair share basis."*
- 2.22 In its response to the appeal, the ICB has provided its reasons for the direction and the assessment that was carried out. The ICB states that *"demand for the full range of pharmaceutical services may be lower on this day compared to a Monday that is not a public holiday, there will still be a need for pharmaceutical services by people who live within Nottingham NG2 or that are visiting the area for this period. Whilst GP practices will be closed on Christmas Day 2023, other providers of NHS services will be open such as the GP out of hours service and A&E departments."*
- 2.23 The ICB states that the timing of the hours that it is asking pharmacies to open is based on a review of the claim forms submitted by contractors which indicated the level of demand for services at various times of the day on Christmas Day in previous years within the Nottingham NG2 locality, which has enabled it to determine the level of cover required.
- 2.24 The ICB further states that it is *"aware that on any given Monday patients are accustomed to having several hours of pharmaceutical services available to them via fifteen pharmacies in the Nottingham NG2 locality. Whilst [the ICB] acknowledge that demand for pharmaceutical services ... will be lower on Christmas Day than on a standard Monday, as demonstrated above, it believes that a minimum of two hours access is required based on the information provided by the pharmacies in the Nottingham NG2 locality from previous Christmas Day opening."*
- 2.25 I have also been provided with a copy of the map used by the ICB when making the assessment and showing the geographical location of the pharmacies within the locality. The ICB concludes that *"in the case of Nottingham NG2 it believes that there is a requirement for a pharmacy in this location to open on Christmas day to ensure there is equitable access for patients who do not have access to a car on a day where public transport is not likely to be operating, which is why [the Appellant] have been selected and directed to open on Christmas day 2023. NHS Resolution will note from the map provided of the Nottingham NG2 area that the areas highlighted in dark shades are identified as areas with highest levels of health deprivation, with the area with a red outline being one of the most health deprived areas in the UK, scoring decile point 1 out of 10 with 1 being the most deprived. Therefore, [the ICB] can surmise that patients residing in or visiting these areas are likely to have an increased need to access pharmaceutical services on a day when other health care providers will be closed. [The Appellant] sits within close proximity of three of these areas with a decile point of 1 and is surrounded by other areas of deprivation, therefore it is determined that there is a need for services from this pharmacy with patients being able to access from these most deprived areas to the North and West of its location."*

- 2.26 It is unfortunate that the detail of the ICB's assessment was omitted from the direction letter, however I note that the Appellant has not sought to dispute the ICB's comments relating to its location and it being well placed in the Nottingham NG2 locality to be able to serve patients.
- 2.27 I note that on appeal, the Appellant states that its business *"is currently in transition of ownership to the My Local Chemist chain... My Local Chemist has operated the Christmas rota between 2015 and 2021. At our main branch in west Bridgford account FGM17. With the exception of one year when the contract was awarded to another party."* And further that it *"would struggle to staff the branch for the time period"*.
- 2.28 In its representations on the appeal, the ICB states *"Whilst Nottingham and Nottinghamshire ICB do try to rotate pharmacies to ensure equitability this is a secondary reason for a direction. As also stated by the appellant the branch that opened on previous Christmas Days was in a different location and therefore has no bearing on whether we should direct this particular branch which I can confirm has never been directed to open Christmas Day over the last five years. As the change of ownership has not yet been agreed by Nottingham and Nottinghamshire ICB, the direction has been issued to the current owners, Peak Pharmacy. As part of any change of ownership any incoming owner has a responsibility to take on the obligations of the outgoing pharmacy including any directions that may be in place."*
- 2.29 The ICB went on to state that it had given the Appellant *"over five months' notice of the potential requirement to open on this date, and just over four months' notice when the direction was issued, in order that the contractor has sufficient time to prepare accordingly"*.
- 2.30 I take no view on previous years rotas given the Appellant's comments are in relation to a different premises. Further I consider that it is a matter for the Appellant to arrange staff cover in the event that it is required to open.
- 2.31 I am of the view that, given the explanation of the ICB's assessment in its representations on this appeal, I have been provided with sufficient information to substantiate the view as to why the Appellant's pharmacy will be best placed in terms of access and geography to meet the envisaged demand for services.
- 2.32 I am satisfied with the ICB's assessment and I consider that the ICB has provided sufficient information to support the conclusion reached.
- 2.33 On appeal, I may (in accordance with paragraph 25(8) of Schedule 4) either confirm the action of the ICB or take such other action as it could have taken.
- 2.34 On the basis of the information available to me, and the reasons given above, I am satisfied that the ICB has demonstrated that the needs of people in its area or other likely users of the pharmacy for pharmaceutical services will not be met on Monday 25 December 2023 such that it is appropriate to issue a direction requiring the Appellant's pharmacy to open on the days and times indicated in the direction.

3 Determination

- 3.1 I confirm the action of the ICB to issue the direction.

**Head of Appeals
NHS Resolution**