

8 December 2023

**FILE REF:** SHA/26073

**DECISION MAKING BODY:** NHS DERBY AND DERBYSHIRE  
INTEGRATED CARE BOARD  
("ICB")

8<sup>th</sup> Floor  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

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

**PHARMACIST:** PEAK PHARMACY  
("the Appellant")

**PREMISES:** 3 SCARSDALE PLACE, MARKET PLACE,  
BUXTON SK14 6EF

**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 uphold the appeal against the decision to issue the direction and as such, the Appellant's pharmacy is not required to open on Monday 25 December 2023 between 2pm to 4pm.

A copy of this decision is being sent to:

Peak Pharmacy  
NHS Derby and Derbyshire ICB

**Advise / Resolve / Learn**

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**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL  
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 to 4pm on Monday 25 December 2023.
- 1.2 The Appellant seeks to appeal to NHS Resolution.

**2 Consideration**

***Rights of appeal***

- 2.1 Where the ICB 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 ICB 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 ICB).

*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 ICB, 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 to 4pm on Monday 25 December 2023, 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](mailto:nhsr.appeals@nhs.net) or
- 2.8.6 By email to:
- Primary Care Appeals Case Manager  
NHS Resolution  
8th Floor 10 South Colonnade,  
Canary Wharf,  
London,  
E14 4PU"

- 2.9 In a letter to NHS Resolution dated 30 August 2023 the Appellant stated:
- 2.9.1 “Further to a direction of core opening hours received by email dated 10 August 2023 for the above pharmacy to open on Monday 25th December 2023 (Christmas Day) at 14:00 until 16:00, PCT Healthcare Limited writes to appeal to the Primary Care Appeals Unit.
- 2.9.2 There was a previous email sent to the pharmacy FVK66 on 7 July 2023, this email was not sent into Head Office to be appealed.
- 2.9.3 PCT Healthcare Limited have attached the emails and letters received from NHS Derby and Derbyshire ICB regarding this direction for your convenience. Please note that the letter from NHS Derby and Derbyshire ICB dated 10 August 2023 is unsigned.
- 2.9.4 Firstly, we are aware of the need for adequate pharmaceutical services provision. However, we feel that this particular direction has not been based on adequate research and reasoning by NHS Derby and Derbyshire ICB. There is no detail within the letters of direction to indicate the reasons as to how or why this direction supports an assessment which concluded the pharmaceutical needs of the relevant persons will not be met on this day that we are required to open our pharmacy, FVK66 in Buxton.
- 2.9.5 Under Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS regulations NHS England must include with the notification a statement of “the reasons for the change”. We note that the Regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation, which should conclude with the needs of the local population and likely users of our pharmacy not being met on this day such that we are required to open from 14:00 until 16:00 on Monday 25th December 2023.
- 2.9.6 The letter from NHS Derby and Derbyshire ICB dated 10 August 2023 states:
- 2.9.6.1 *“We have concluded our assessment...and have issued the enclosed direction.” In addition, “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”*
- 2.9.7 In particular, the letter dated 10th August 2023 makes no reference to any specific results linking our pharmacy to any lack of service provision on 25 December 2023. Furthermore, there is no actual details of the findings of a consultation or assessment, and therefore no reasons behind the direction which is contrary to paragraph 25(1) and 25(6) of Schedule 4.
- 2.9.8 Our appeal is that PCT Healthcare Limited notes in previous letters to our pharmacies that NHS Derby and Derbyshire ICB itself states *“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.”*
- 2.9.9 PCT Healthcare Limited t/a Peak Pharmacy do not believe this direction to meet the requirements of paragraph 25(6) of Schedule 4 as NHS Derby and Derbyshire ICB have not stated in their letter reasons for its decision.
- 2.9.10 In conclusion, our pharmacy has received this direction, however for the reasons discussed above we do not feel it has been made clear as to why our pharmacy, in particular, has been chosen to open at 14:00 to 16:00 on Christmas Day 2023, as opposed to another pharmacy in Buxton.”
- 2.10 In a letter to NHS Resolution dated 27 September 2023, the ICB stated:

- 2.10.1 “Thank you for your letter dated 08 September 2023; Derbyshire ICB, would like to make the following representations.
- 2.10.2 Derbyshire ICB note that PCT Healthcare are appealing this direction on the basis that:
- 2.10.3 They do not feel an assessment was carried out to determine the reason for directing to open pharmacy FVK66.
- 2.10.4 Derbyshire 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 sub-paragraph (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).
- 2.10.5 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.
- 2.10.6 Derbyshire ICB can confirm that it has not been notified of any pharmacies that will be open in Buxton, Derbyshire on Christmas Day this year.
- 2.10.7 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:
- 2.10.7.1Proper 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;
- 2.10.7.2Proper 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;
- 2.10.7.3Listed 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;
- 2.10.7.4Such 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;
- 2.10.7.5Such other services as may be prescribed.
- 2.10.8 Derbyshire ICB has therefore considered what arrangements need to be put in place on Christmas Day 2023 in order to discharge this duty.

- 2.10.9 Derbyshire 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 Buxton 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.
- 2.10.10 Derbyshire 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).
- 2.10.11 Derbyshire ICB believe that, as a minimum, the services for which there will be a need on Christmas Day are as follows:
- 2.10.11.1 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;
- 2.10.11.2 The community pharmacist consultation service for both the provision of drugs and also of advice following referral from NHS 111;
- 2.10.11.3 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.
- 2.10.12 As stated above, Derbyshire ICB are not aware of any pharmacies that will be open on Christmas Day and therefore at present Derbyshire ICB is unable to discharge its duty as set out in section 126 of the NHS Act 2006.
- 2.10.13 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.
- 2.10.14 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.
- 2.10.15 As a result Derbyshire ICB need to ensure that there is a good spread of pharmacies that are open on Christmas Day across its area.
- 2.10.16 In 2015 Derbyshire ICB worked with the LPCs in its area in order to develop a process by which Derbyshire 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 Derbyshire 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.
- 2.10.17 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.

2.10.18 This approach was agreed by all parties as it ensures Derbyshire ICB can discharge its duty in a way that is fair to all pharmacies and followed regulation 25 as detailed below:

2.10.18.1 *“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”*

2.10.19 These localities are reviewed with the LPCs annually to ensure they still meet the demand for pharmaceutical access. This pharmacy falls within the Buxton locality.

2.10.20 Within this locality there are 7 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:

2.10.20.1 Derbyshire 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 Derbyshire ICB have this option or for an SLA to be used to support extended opening where appropriate;

2.10.20.2 Derbyshire ICB did not receive any volunteers within the Buxton 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;

2.10.20.3 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.

2.10.21 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.

2.10.22 Derbyshire ICB have enclosed a map [provided] to demonstrate the locations of the pharmacies with PCT Healthcare highlighted in red on the map. There is a further pharmacy outside of this map and is on the outskirts of Buxton that was also considered.

2.10.23 When determining which pharmacies to direct Derbyshire ICB have reviewed the claim forms submitted by contractors via pharm outcomes, who have previously opened on Christmas Day within the Buxton 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 Derbyshire 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 Buxton locality.

2.10.24 Derbyshire ICB have determined there is sufficient demand for pharmaceutical services to require a minimum of two hours pharmaceutical cover on Christmas day.

- 2.10.25 Derbyshire ICB are aware that on any given Monday patients are accustomed to having several hours of pharmaceutical services available to them via seven pharmacies in the Buxton locality.
- 2.10.26 Whilst Derbyshire ICB acknowledge that demand for pharmaceutical services in the Buxton 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 Buxton locality from previous Christmas Day opening.
- 2.10.27 Derbyshire ICB note that the Appellant has stated that they should not open because:
- 2.10.27.1 They do not feel an assessment was carried out to determine the reason for directing to open pharmacy FVK66.
- 2.10.28 Derbyshire ICB have analysed previous openings within the Buxton area as well as assessed the data for previous Christmas Day openings in relation to prescriptions issued. The Derbyshire LPC have also been consulted and had no objection to directing the appellant to open on Christmas Day 2023. We do try to rotate pharmacies to ensure equitability however this is a secondary reason for a direction.
- 2.10.29 I can confirm that the appellant has not previously been directed to open on Christmas Day and the last direction issued to this pharmacy was for Easter Sunday 2020.
- 2.10.30 As previously stated Derbyshire ICB review the geographical location of a pharmacy within an agreed locality and in the case of Buxton 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 PCT Healthcare have been selected and directed to open on Christmas day 2023.
- 2.10.31 NHS Resolution will note from the map [provided] of the Buxton 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.
- 2.10.32 Therefore, Derbyshire 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.
- 2.10.33 PCT Healthcare sits within proximity of this area which has a decile point of 1 and is surrounded by other areas of deprivation, decile point 2 to 5, 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, South and East of its location.
- 2.10.34 Derbyshire ICB wrote to the contractor advising that they are being considered for a direction and inviting them to submit representations to Derbyshire ICB within 30 days of the date of its initial letter (this year that was by 6 August 2023). PCT Healthcare did not submit a representation during this period.
- 2.10.35 Derbyshire ICB has chosen to give PCT Healthcare 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.

- 2.10.36 Derbyshire 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.
- 2.10.37 Derbyshire 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.
- 2.10.38 Derbyshire ICB believe it met the requirements of the Regulations under the following two paragraphs:
- 2.10.38.1 Derbyshire 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 Derbyshire 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 Derbyshire ICB at times where it has been established that there is not adequate provision of pharmaceutical services identified.
- 2.10.38.2 Some commissioned pharmaceutical services for example Community Pharmacy Consultation Service are of their nature a timebound service, which does not take in to account a lack of provision over bank holidays.
- 2.10.39 Derbyshire ICB has assessed the need in the Buxton locality for the provision of pharmaceutical services. Derbyshire ICB had regard to location and opening of pharmacies in the Buxton locality, the pharmacy needs assessment and responses to consultation from the LPCs.
- 2.10.40 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.
- 2.10.41 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 Buxton).
- 2.10.42 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, Derbyshire ICB has followed its processes (as described above) accordingly by directing pharmacies to open.
- 2.10.43 For the reasons provided above, Derbyshire ICB maintain its decision to issue this direction to PCT Healthcare and requests that the appeal be rejected.
- 2.10.44 Derbyshire ICB have attached for information to the email as have been advised by NHSR that embedded documents do not open:
- 2.10.44.1 A letter advising contractors that they were being considered for direction on Christmas Day 2023 and inviting them to submit representation.
- 2.10.44.2 A letter directing the contractor to open on Christmas Day 2023 and notifying them of their right of appeal.

2.10.44.3A screenshot of the map used to plot pharmaceutical access across Buxton when determining Christmas day directions.”

2.11 In a letter to NHS Resolution dated 23 October 2023 the Appellant stated:

2.11.1 “Further to the representations received with regards to our appeal PCT Healthcare Limited has the following observations to make.

2.11.2 We note that the core and supplementary opening hours in the Derbyshire ICB letter dated 7/7/23 are incorrect.

2.11.3 The core opening hours at this pharmacy are 40 hours per week:

| ODS code | MON                         | TUES                        | WEDS                        | THUR                        | FRI                         | SAT  | SUN  |    |
|----------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|------|------|----|
| FVK66    | 09:00-13:00,<br>13:30-17:30 | 09:00-13:00,<br>13:30-17:30 | 09:00-13:00,<br>13:30-17:30 | 09:00-13:00,<br>13:30-17:30 | 09:00-13:00,<br>13:30-17:30 | None | None | 40 |

2.11.4 Total opening hours at this pharmacy are 44 hours per week:

| Total Opening Hours         |                             |                             |                             |                             |             |        |
|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-------------|--------|
| MON                         | TUE                         | WED                         | THUR                        | FRI                         | SAT         | SUN    |
| 09:00-13:00,<br>13:30-17:30 | 09:00-13:00,<br>13:30-17:30 | 09:00-13:00,<br>13:30-17:30 | 09:00-13:00,<br>13:30-17:30 | 09:00-13:00,<br>13:30-17:30 | 09:00-13:00 | Closed |

2.11.5 With respect to the Derbyshire ICB letter dated 27th September 2023, regarding our appeal. We note that the contents of the Derbyshire ICB letter are almost word for word with only the location amended to a letter written by Derbyshire ICB dated 28 February 2023 reference SHA/26069, regarding an appeal for Darley Dale, Matlock, Derbyshire. It is important that when any application and appeal is considered that the representations are individual to the area and to the needs of patients in that town on that particular day, rather than being based on a template format.

2.11.6 We note that not only is this template format being utilised within Derbyshire ICB it seems that all ICBs are utilising this template. For information we attach the appeal SHA/25838 NHS England North West, where the format was utilised.

2.11.7 Under Regulation 25 (1):

2.11.7.1 “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 people in its area or other likely users of the pharmacy premises.”*

2.11.8 The Derbyshire ICB mentions throughout their representation that they have reviewed with LPCs, there are no minutes or dates of consultations with LPCs within the representation from Derbyshire ICB. It is the full committee of Community Pharmacy Derbyshire who are the Statutory Body representing community pharmacies in Derbyshire, covering the Buxton region. The full committee of Community Pharmacy Derbyshire will be discussing the localities and timings of the directions sent out by Derbyshire ICB in their November 2023 meeting. The Committee shall be discussing Directions for Bank Holidays from Christmas Day 2023 until New Year's Day 2025. For Community Pharmacy Derbyshire to be discussing these directions after they are issued by Derbyshire ICB, is contrary to Regulation 25(1).

2.11.9 In the letter dated 27 September 2023 Derbyshire ICB state:

2.11.9.1 On page 3: *“these localities are reviewed with the LPCs (now known as Community Pharmacy Derbyshire) annually to ensure they still meet the demand for pharmaceutical services.”*

2.11.10 As Community Pharmacy Derbyshire are not discussing these directions and localities until their November meeting the localities for 2023-2025 have not been reviewed yet by the statutory body.

2.11.11 PCT Healthcare Ltd wants to reiterate again that:

2.11.11.1 There is no detail within the letters of direction sent on 7th July 2023 nor the direction letter dated 10 August 2023; to conclude that our pharmacy, FVK66 is required to open for two hours on Christmas Day 2023. There are no details within the direction letters of the assessment outcomes to indicate specifically why it is the pharmacy owned by PCT Healthcare Ltd t/a Peak Pharmacy, on 3 Scarsdale Place, Market Place, Buxton Derbyshire SK17 6EF who are required to open on Sunday 25th December 2023.

2.11.11.2 Under Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS regulations NHS England must include with the notification a statement of “the reasons for the change”. We note that the Regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation with the local LPC (now known as Community Pharmacy Derbyshire), which should conclude with the needs of the local population and likely users of our pharmacy not being met on this day such that we are required to open from 14:00 until 16:00 on Monday 25th December 2023.

2.11.11.3 Within the representation from Derbyshire ICB there are no results given regarding the assessment which concluded before the letter dated 10 August 2023 to issue the direction from Derbyshire ICB. There are no specifics given regarding level of patient need within Buxton for Christmas Day, several services are listed there is however no evidence of previous activity for Christmas Day in Buxton. There is no detail of the number of patients accessing a pharmacy on Christmas Day within the Buxton area, more specifically there are no assessment details for the Buxton area for our patients requiring pharmaceutical provision.

2.11.12 Derbyshire ICB staff have commented that the audits for usage and demand, though they are issued to pharmacies that take part in the rota service,

completion is not mandatory, and the response rate is very low. If there is no evidence of need how can an assessment be carried out without the activity reports being available.

2.11.13 Derbyshire ICB mention in their letter that A&E departments will be open on Christmas Day, there is no A&E department in Buxton, the closest A&E department to Buxton is in Macclesfield over 9 miles away. There are community pharmacies open from 10am until 4pm in Macclesfield.

2.11.14 There is a map as shown on page 4 of the Derbyshire ICB letter dated 27 September 2023, there is no reference of where this map is published, there is no date assigned to this map. The map should indicate the location of the 6 pharmacies within Buxton as Derbyshire ICB indicate that only 1 pharmacy is outside the map itself. The map seems to indicate 2 pharmacies as Pha, another two pharmacies within the number 2 in a circle and our pharmacy as Peak Pharmacy. There is no index accompanying this map and the map does not clearly show the 6 pharmacies that this location would include. This map is not from the Derbyshire PNA, nor from the Derbyshire JSNA.

2.11.15 The Derbyshire ICB state that there is a highly deprived decile point 1 area within Buxton, our pharmacy team know this area to be Fairfield. Our pharmacy is not the closest pharmacy to this area, this area is served by Fairfield Pharmacy which is walking distance for residents in this deprived area. There are two other pharmacies closer to Fairfield these are Boots and Superdrug. To access our pharmacy residents and visitors to Fairfield would be required to use transport, as there will be no buses on Christmas Day, taxis will be limited with the higher rate of fares being cost-prohibitive and a barrier to access for individuals.

2.11.16 In addition, there is no evidence from Derbyshire ICB of any patients/visitors from the deprived areas accessing pharmaceutical provision on Christmas Day, there are no numbers of patients or customers accessing pharmacy services provided nor their postcodes from the assessment undertaken by the ICB.

2.11.17 PCT Healthcare Ltd can confirm that our pharmacy FVK66 will be open for our full core and supplementary hours in the week proceeding Christmas Day 2023 enabling our patient's ample opportunity to collect their prescriptions and access pharmaceutical services.

2.11.18 The Derbyshire ICB state that the localities to select pharmacies to be directed to open on Christmas Day were based on patient footfall, patient usage of services and ease of access. PCT Healthcare Limited wish to address these areas in turn:

#### 2.11.18.1 Patient footfall

2.11.18.1.1 No evidence supplied by Derbyshire ICB in the Direction Letters, or their representation letter dated 27 September 2023, to state why a direction is necessary in Buxton.

#### 2.11.18.2 Patient usage of service

2.11.18.2.1 No details supplied by Derbyshire ICB in the Direction Letters, or their representation letter dated 27 September 2023 of patient usage on Christmas Day from PharmOutcome data supplied by any contractors opening on previous Christmas Days.

#### 2.11.18.3 Ease of access

- 2.11.18.3.1 No evidence supplied that our pharmacy PCT Healthcare Ltd which is located (sic) the retail area rather than a residential area is appropriate to be directed to open.
- 2.11.18.3.2 There will be no buses operating on Christmas Day, for those residents within the Deprived area of Fairfield decile point 1, we are a car journey or taxi journey away which is cost-prohibitive to access.
- 2.11.19 PCT Healthcare Limited believe that this direction has not been based on adequate research and reasoning by NHS Derby and Derbyshire ICB. There is no detail within the letters of direction to indicate the reasons as to how or why this direction supports an assessment which concluded the pharmaceutical needs of the relevant persons will not be met [sic] on this day that we are required to open our pharmacy, FVK66 in Buxton.
- 2.11.20 Under Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS regulations NHS England must include with the notification a statement of "the reasons for the change". We note that the Regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation, which should conclude with the needs of the local population and likely users of our pharmacy not being met on this day such that we are required to open from 14:00 until 16:00 on Monday 25th December 2023.
- 2.11.21 The letter from NHS Derby and Derbyshire ICB dated 10 August 2023 states: *"We have concluded our assessment...and have issued the enclosed direction."* In addition, *"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."*
- 2.11.22 In particular, the letter dated 10th August 2023 makes no reference to any specific results linking our pharmacy to any lack of service provision on 25 December 2023. Furthermore, there is no actual details of the findings of a consultation or assessment with Community Pharmacy Derbyshire, and therefore no reasons behind the direction which is contrary to paragraph 25(1) and 25(6) of Schedule 4.
- 2.11.23 PCT Healthcare Limited t/a Peak Pharmacy does not believe this direction meets the requirements of paragraph 25(6) of Schedule 4 as NHS Derby and Derbyshire ICB have not stated in their letter reasons for its decision.
- 2.11.24 In conclusion, our pharmacy FVK66 has received this direction, however for the reasons discussed above we do not believe it has been made clear as to why our pharmacy, in particular, has been chosen to open at 14:00 to 16:00 on Christmas Day 2023, as opposed to another pharmacy in Buxton.
- 2.11.25 There is no evidence specifically provided from the assessment of patient numbers, their postcode and service usage on Christmas Days in Buxton. In addition, the full committee of Derbyshire LPC have still to discuss the Bank Holiday directions for the whole of Derbyshire from Christmas Day 2023 to New Years Day 2025 at their committee meeting in November 2023.
- 2.11.26 The points we have raised are contrary to the NHS Pharmaceutical Regulations, PCT Healthcare Limited respectfully request NHS Resolution to grant this appeal."

- 3.1 I note the Appellant's comment that the letter to it from the ICB dated 10 August 2023 is unsigned. Whilst this is unfortunate, I have no reason to believe that it is other than a legitimate direction for the Appellant to open its pharmacy on Monday 25 December 2023 between 2pm and 4pm. I note a copy of the same unsigned letter has been sent to me with the ICB's representations on the appeal.
- 3.2 I note the Appellant's comment that the core and supplementary opening hours for its pharmacy as referred to in the ICB's letter dated 7 July 2023 (inviting the Appellant's representations on the proposed direction) are incorrect. The Appellant has provided the correct opening times which total 44 hours per week of which 40 are core hours.
- 3.3 I note the Appellant's claim that the ICB's letter dated 27 September 2023 providing representations on the current appeal, is similarly worded to that which it submitted in response to a previous appeal. How the ICB conveys what it considers to be an accurate account of its decision is a matter for them but the content of the decision will form part of my later consideration.
- 3.4 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.*

3.5 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.*

- 3.6 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.
- 3.7 I am aware that in accordance with paragraphs 25(1) and (2) above, the ICB is required to consult with the Local Pharmaceutical Committee (LPC) prior to carrying out an assessment as to whether to issue a direction requiring the NHS pharmacist to provide pharmaceutical services at its pharmacy premises on set times and on set days. I note that in its final observations on appeal, the Appellant has challenged the ICB's consultation with the LPC. The Appellant argues that:
- 3.7.1 The full committee of the LPC were due to discuss the localities and timings of the directions sent out by ICB at their November 2023 meeting.
- 3.7.2 The LPC would be discussing Directions for Bank Holidays from Christmas Day 2023 until New Year's Day 2025.
- 3.7.3 For the LPC to be discussing these directions (including the Appellants) after they are issued by the ICB, is contrary to Regulation 25(1).
- 3.8 I am mindful that the ICB's letter with the direction for the Appellant's pharmacy to open on Christmas Day during the given times, was issued on 10 August 2023. This would suggest that consultation with the LPC in accordance with the Regulations may not have taken place as claimed by the Appellant. I have considered whether the ICB's representations have spread any light on this matter.
- 3.9 The ICB states that it has an agreement with the local LPCs to jointly work on a locality basis when identifying whether or not a pharmacy needs to be directed to open. Localities were based on patient footfall, patient usage of services and ease of access. According to the ICB, these localities were defined in collaboration with the LPC to determine the most effective distribution of and access to available services. These localities are reviewed with the LPCs annually to ensure they still meet the demand for pharmaceutical access. I note though, that the ICB has not provided me with any information including copy correspondence between itself and the LPC to show that there has been consultation as required by the Regulations prior to issuing the Direction to the Appellant. I cannot therefore be satisfied that the ICB has undertaken a consultation process as set out in the Regulations.
- 3.10 I note that the assessment which the ICB must undertake prior to issuing any Direction to the Appellant, involves the ICB inviting the Appellant to submit any representations that it may have about that ICB's proposal that its pharmacy should open on a set day and time. The ICB wrote to the Appellant on 7 July 2023. The ICB's letter explained that it considered that the current core opening hours may not meet the needs of people in the area or other likely users of the pharmacy premises by reason that there is no pharmacy provision (even after requests by the ICB for a pharmacy to volunteer) in the Derbyshire area on Sunday 25 December 2023. I am satisfied that this part of the assessment took place.
- 3.11 The ICB states that the Appellant did not submit any representations regarding the ICB's proposal. The Appellant claims on appeal, that the 7 July 2023 letter was sent to its pharmacy rather than to its head office. I consider that it is a matter for the Appellant to ensure the appropriate escalation of communications sent to its pharmacy and thus be able to act upon them. I am therefore of the view that the ICB has complied with the Regulations in this regard.
- 3.12 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. I note that Appellant's claim that there is no detail within the letter sent to it on 7 July 2023 nor the direction letter dated 10 August 2023.

- 3.13 The ICB's direction letter to the Appellant 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."*
- 3.14 I note that the only reasoning provided in the direction letter 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."*
- 3.15 In its response to the appeal, the ICB has provided further reasoning for the direction and the assessment that was carried out. The ICB states that *"Derbyshire 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 Buxton 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."* The ICB states that the timing of the hours that it is 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 Buxton locality. However, I have not been provided with any detailed information in terms of usage i.e. volume and range of services sought to substantiate the ICB's reasoning to issue a Direction, including why the hours specified meet the needs of people or other likely users.
- 3.16 I note the ICB's further comment when responding to the appeal, that its map of the Buxton area shows areas highlighted in dark shades which are those identified by the ICB as areas with highest levels of health deprivation. The area with a red outline indicates one of the most health deprived areas in the UK, scoring decile point 1 out of 10 with 1 being the most deprived. The ICB therefore surmised 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's pharmacy was said by the Appellant to not be the closest pharmacy to this area. Fairfield is served by Fairfield Pharmacy which is within walking distance for residents in this deprived area. In the absence of any further response from the ICB to this particular argument, I cannot be assured that the Appellant's pharmacy is best placed to provide pharmaceutical services at the specified times.
- 3.17 I am not satisfied with the ICB's assessment and I consider that the ICB has not provided sufficient information to support the conclusion reached.
- 3.18 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.
- 3.19 On the basis of the information available to me and for the reasons given above, I am not 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.

#### 4 Determination

- 4.1 I uphold the appeal against the decision to issue the direction and as such, the Appellant's pharmacy is not required to open on Monday 25 December 2023 between 2pm to 4pm.

#### Head of Appeals

## NHS Resolution