

15 December 2023

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10 South Colonnade  
Canary Wharf  
London  
E14 4PU

**FILE REF:** SHA/26075

Tel: 0203 928 2000  
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**DECISION MAKING BODY:** WEST MIDLANDS INTEGRATED  
CARE BOARD (“the  
Commissioner”)

**PHARMACIST:** ROSHBAN HEALTHCARE LIMITED T/A  
STOURBRIDGE PHARMACY (“the Applicant”)

**PREMISES:** 35 WORCESTER STREET,  
DUDLEY, WEST MIDLANDS,  
DY8 1AT

**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]**

**Outcome**

- 1.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I am satisfied that maintaining the current level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 1.2 The action taken by West Midlands Integrated Care Board to refuse the application is confirmed.

A copy of this decision is being sent to:

Roshban Healthcare Ltd t/a Stourbridge Pharmacy (represented by Rushport Advisory LLP)  
West Midlands Integrated Care Board

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

**1 Introduction**

- 1.1 The Applicant has applied to the Commissioner to change the days and times at which it is obliged to provide pharmaceutical services at the above premises. The Applicant seeks to keep the total number of core opening hours the same while offering a different distribution of these hours during the week.
- 1.2 The Commissioner has refused the application. The Applicant seeks to appeal to NHS Resolution.

**2. Consideration**

**Rights of appeal**

- 2.1 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) 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” (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations), which may incorporate a direction of NHS England requiring fewer or greater than 40 hours and at set times and days; or

- 2.3.2 “supplementary” opening hours (other hours during which the pharmacy premises are open which are in addition to the core hours), pursuant to paragraph 23(3) of Schedule 4 of the Regulations

#### Alteration of core opening hours

- 2.4 In accordance with paragraphs 1(7)(c) and 1(7)(d) of Schedule 2 of the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list:
- 2.4.1 the proposed core opening hours in respect of the premises; and
- 2.4.2 the total proposed opening hours for the premises (having regard to both the proposed core opening hours and any supplementary opening hours).
- 2.5 The Commissioner maintains pharmaceutical lists that include the days on which and times at which, at those premises, the listed person is to provide those services during the core opening hours and any supplementary opening hours of the premises.
- 2.6 The days on which or times at which a pharmacy is obliged to provide pharmaceutical services at the premises may only be altered by the pharmacy on application under paragraph 26(1) of Schedule 4 of the Regulations, so long as the effect of that application is to reduce the total number of hours for which a pharmacy is obliged to provide, or keep the total number of hours the same.

#### Alteration of supplementary opening hours

- 2.7 Supplementary opening hours may be altered by the pharmacy giving notice to the Commissioner, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations, without the need to make an application to the Commissioner.
- 2.8 There is no specific right of appeal to NHS Resolution in respect of notices given under paragraph 23(6)(a).

#### Roshban Healthcare Ltd proposals

- 2.9 The Applicant in its application indicates that it currently has core opening hours totalling 40 hours per week.
- 2.10 The Applicant wishes to keep the core opening hours at 40 but amend the distribution of these hours:
- 2.10.1 By opening at 9am on weekdays rather than 8.30am;
- 2.10.2 By closing over the lunchtime period between 1pm and 2pm, rather than the current 12.15pm to 2.30pm;
- 2.10.3 By closing at 6pm on weekdays rather than 6.30pm; and
- 2.10.4 By removing any core hours during Saturday opening.

#### Assessment

- 2.11 In this case, the Applicant provided the following information in its application dated 2 June 2023:
- 2.11.1 “This is an application to permanently change core opening hours.

Current opening hours for these premises:

|           |                                |
|-----------|--------------------------------|
| Monday    | 08:30 – 12:15<br>14:30 – 18:30 |
| Tuesday   | 08:30 – 12:15<br>14:30 – 18:30 |
| Wednesday | 08:30 – 12:15<br>14:30 – 18:30 |
| Thursday  | 08:30 – 12:15<br>14:30 – 18:30 |
| Friday    | 08:30 – 12:15<br>14:30 – 18:30 |
| Saturday  | 09:00 – 09:45<br>11:30 – 12:00 |
| Sunday    | Nil                            |

Proposed core opening hours for these premises:

|           |                                |
|-----------|--------------------------------|
| Monday    | 09:00 – 13:00<br>14:00 – 18:00 |
| Tuesday   | 09:00 – 13:00<br>14:00 – 18:00 |
| Wednesday | 09:00 – 13:00<br>14:00 – 18:00 |
| Thursday  | 09:00 – 13:00<br>14:00 – 18:00 |
| Friday    | 09:00 – 13:00<br>14:00 – 18:00 |
| Saturday  | Nil                            |
| Sunday    | Nil                            |

If this is a permanent change, please state below the date from which you would like the change to take effect: 1 August 2023.”

Supporting letter dated 5 June 2023

“I act for Roshban Limited in the above application and have been instructed by my client to submit this letter in support of their request to amend their core opening hours.

My client agreed to purchase this pharmacy from Lloyds and completed the purchase in March 2022. Had my client not purchased the pharmacy Lloyds intended to close as it was loss making.

My client has hoped to improve the pharmacy’s profitability as part of their group and consider the pharmacy to be an important local service as it dispenses circa 5,000 items per month.

Unfortunately and as the Committee will be well aware, since the middle of 2022 all people and businesses have experienced a dramatic increase in costs for everything from utility bills to staff costs. At the same time pharmacy funding has remained frozen with the global sum not changing to reflect any of the increased costs that pharmacy contractors now face.

My client had taken the difficult decision to close the pharmacy as it remains loss making, but with the announcement of new pharmacy Regulations from 25 May my client is now hopeful of being able to keep the pharmacy open if the ICB is able to agree this proposed change to core opening hours.

#### Proposed Change and Rationale

My client is currently open on a Saturday morning and also from 8.30am Monday to Friday and also closes at 6.30pm Monday to Friday.

The hours from 8.30am to 9am and 6pm to 6.30pm Monday to Friday and also Saturday mornings are extremely quiet with almost no activity at the pharmacy and no patient visits. This additional opening time, whilst relatively short, causes a significant staffing problem as the hours are too long for one pharmacist to work a full week and additional locum cover or overtime payments are required.

The cost of these additional payments has increased substantially in the past 12 months, to the point where a small number of hours have now rendered the pharmacy unviable.

My client has allowed me to provide the Committee with the last set of Management Accounts for this branch and these are attached with this letter. The accounts cover the period from April 2022 to September 2022. The next set of Management Accounts for September 2022 to March 2023 will be ready in the next few weeks and can be sent to the Committee as required.

These accounts do not show the real impact of wage inflation as that has become significantly worse since September 2022, but they do show that whilst the first month of full operation showed a health (sic) profit, since then there were only 2 profitable months and the total profit for the 6 month period was only £2,812. September 2022 was the first month where significantly higher wage costs started to apply and this is evident in the loss for that month.

These accounts are only at “branch level” they do not account for the costs of running the head office and area management costs – which are in excess of £10,000 for each branch for a 6 month period.

This position is now worse and if the Committee does not feel able to approve this request my client will have to submit a closure notice for the pharmacy.

#### Location

The pharmacy is located relatively close to the town centre, but still serves its own local population.

We ask that the Committee approves this change as it will maintain a sustainable level of adequate service provision for the people in the area of the pharmacy as the existing level of service is no longer realistically achievable.

Patients will still be able to access Boots pharmacy in the town centre which is only an 8 minute walk away from my client's pharmacy and is open from 9am to 5pm on Saturdays. There are other pharmacies in the local area and these include the Day Night Pharmacy at High Street, Lye, which is 1.7 miles from my clients pharmacy and opens 7 days per week.

Overall this proposal maintains provision and whilst it is never ideal to lose opening hours we submit that instances like this are exactly why the Department of Health has relaxed the legal test in respect of permitting 40 hour pharmacies to change their hours without having to show a change in needs in the local population.

We look forward to hearing from you in due course.”

2.11.2 [Accounts redacted by NHS Resolution.]

2.12 In a letter to the Applicant dated 3 August 2023, the Commissioner stated:

2.12.1 “Further to your application to change the opening hours at the above address, I am writing to confirm that it has been refused.

The application did not meet paragraph 24(1) or 24(1)(b) of the Regulation.

In considering the two specific matters set out in paragraph 24(1), Schedule 4 of the 2013 regulations:

*24.—(1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as—*

*(a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or*

The existing level of service provision would not be maintained.

*(b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.*

A sustainable level of adequate service provision would not be maintained.

You have a right of appeal to the Secretary of State against the issuing of this direction. Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of receiving this notice to [nhsr.appeal@nhs.net](mailto:nhsr.appeal@nhs.net) or Primary Care Appeals, NHS Resolution, 8<sup>th</sup> Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.”

2.13 In a letter to NHS Resolution dated 29 August 2023, the Applicant stated:

2.13.1 “I act for Roshban Limited in the above application and have been instructed by my client to submit this appeal against the decision of West Midlands ICB to refuse my clients request to amend their core opening hours.

As the Committee will note, the ICB has provided no reasons for their decision in this application and simply say that;

The existing level of service provision would not be maintained.

and

A sustainable level of adequate service provision would not be maintained.

The entire point of paragraph 24(1) of Schedule 4 is to provide some help to contractors who are unable to continue with their existing opening hours whilst balancing this with patient need. In particular paragraph (b) states that a change in core hours may be permitted;

*To maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.*

The Explanatory Note to the regulatory changes states that;

*In other cases, the “needs” tests has itself been changed so that, going forward, the applicant who wants to change their core opening hours must either demonstrate that they are able to maintain as necessary the existing level of service provision for the people in that area, or, if maintaining the existing level of service provision is neither a necessary nor a realistically achievable outcome, they must instead show that they are able to maintain a sustainable level of adequate service provision (regulation 11(1) and (2)).*

The purpose of the changes is therefore to remove the requirement to show a change in patient need and moves the test to being one of considering what is realistically achievable. It is a clear acknowledgement of the financial pressure that pharmacy contractors now face and appears, on the face of it, to be an attempt to stem the tide of hundreds of pharmacy closures that the sector is now experiencing. We submit that a pragmatic approach is appropriate in these cases.

My client agreed to purchase this pharmacy from Lloyds and completed the purchase in March 2022. Had my client not purchased the pharmacy Lloyds intended to close it as it was loss making.

My client has tried to improve the pharmacy's profitability as part of their group and consider the pharmacy to be an important local service as it dispenses circa 5,000 items per month.

Unfortunately, and as the Committee will be well aware, since 2022 all people and businesses have experienced a dramatic increase in costs for everything from utility bills to staffing. At the same time pharmacy funding has remained frozen with the global sum not changing to reflect any of the increased costs that pharmacy contractors now face.

My client had taken the difficult decision to close the pharmacy as it remained loss making, but with the announcement of new pharmacy Regulations from 25 May 2023 my client believes that they will be able to keep the pharmacy open as, if this proposed change to core opening hours is approved, it will reduce the operating costs of the pharmacy significantly with minimal change to overall hours.

#### Proposed Change and Rationale

My client is currently open Monday to Friday from 8.30am to 6.30pm. They also open on Saturday from 9am to 12pm (although the core hours show a break in the middle of Saturday opening the pharmacy remains open).

The hours from 8.30am to 9am and 6pm to 6.30pm Monday to Friday and also Saturday mornings are extremely quiet with almost no activity at the pharmacy and no patient visits. This additional opening time, whilst relatively

short, causes a significant staffing problems as the hours are too long for one pharmacist to work a full week and additional locum cover or overtime payments are required. In addition, Saturday morning opening is the most costly to cover as most locums will not agree to work for only 3 hours when they could get paid for a full day elsewhere and therefore charge higher rates.

The cost of these additional payments has increased substantially in the past 12 months, to the point where a small number of hours have now rendered the pharmacy unviable.

My client has allowed me to provide the Committee with the last set of Management Accounts for this branch and these are attached with this letter. The accounts cover the period from April 2022 to September 2022.

These accounts do not show the real impact of wage inflation as that has become significantly worse since September 2022, but they do show that whilst the first month of full operation showed a health profit (sic), since then there were only 2 profitable months and the total profit for the 6 month period was only £2,812. September 2022 was the first month where significantly higher wage costs started to apply and this is evident in the loss for that month.

These accounts are only at “branch level”. They do not account for the costs of running the head office and area management costs – which are in excess of £10,000 for each branch for a 6 month period.

Till sales (i.e., the amount customers spend on medicines and healthcare products) has fallen significantly and this appears to be a result of patients having less disposable income after essentials such as food and utilities.

By allowing this change in core opening hours a sustainable level of adequate provision for the people in the area of this pharmacy will be maintained.

We submit that the provision will be “adequate” because the pharmacy is located relatively close to the town centre.

Patients will still be able to access Boots pharmacy in the town centre which is only an 8 minute walk away from my client's pharmacy and is open from 9am to 5pm on Saturdays. There are other pharmacies in the local area and these include the Day Night Pharmacy at High Street, Lye, which is 1.7 miles from my client's pharmacy and opens 7 days a week.

We submit that having an alternate pharmacy on a Saturday which is only an 8 minute walk from my clients pharmacy should, at the very least, be considered adequate.

It is unlikely that the word “adequate” was used by chance by those drafting the Regulations given the previous use of the word in the 2005 Regulations (and ongoing use in Northern Ireland and Scotland) and its use when considered whether a new pharmacy would be permitted to open within a given neighbourhood.

We therefore reiterate that services will remain adequate with the amended hours as they properly meet the needs of patients and match the times of demand for services.

We look forward to hearing from you in due course.”



2.13.2 Included with the appeal was the following information:

Profit and loss accounts for the six months ended 30 September 2022.  
[redacted by NHS Resolution.]

2.14 The Commissioner chose not to provide any representations on the appeal.

2.15 I note the following:

2.15.1 the Applicant's core opening hours total 40 hours and the Applicant proposed to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4. The Applicant seeks to provide services as per its proposed changes in the table at 2.11 above.

2.16 The Applicant proposes to:

2.16.1 Open at 9am on Monday to Friday rather than 8.30am;

2.16.2 Close over the Monday to Friday lunchtime period between 1pm and 2pm, rather than the current 12.15pm to 2.30pm;

2.16.3 Close at 6pm on Monday to Friday rather than 6.30pm; and

2.16.4 Remove any core hours during Saturday opening.

2.17 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023.

2.18 The application to change the hours was made by the Applicant on 2 June 2023 and a decision was made by the Commissioner on 3 August 2023. The decision was appealed to NHS Resolution by letter dated 29 August 2023. I am of the view that the application and subsequent appeal should be considered against the Regulations as amended with effect from 25 May 2023.

2.19 The Applicant has sought to change the days and times which it is obliged to provide pharmaceutical services under paragraph 26 of Schedule 4, Part 3, "Hours of Opening".

2.20 Paragraph 26(1) states:

*"26.— (1) An NHS pharmacist (P) may apply to the NHSCB for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P's pharmacy premises in a way that—*

*(a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week...; or*

*(b) keeps that total number of hours the same."*

2.21 I have first considered paragraph 26(2) of Schedule 4 of the Regulations, which reads as follows:

*"Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1)."*

2.22 Paragraph 24(1) reads as follows:

*“24 (1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times as which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as –*

*(a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or*

*(b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.”*

2.23 Paragraph 24(2) states:

*“(2) In considering the matters mentioned in sub-paragraph (1), the NHSCB –*

*(a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and*

*(b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.”*

2.24 I will start by considering the application of paragraph 24(1)(a) and whether the proposed hours are such as to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I will then consider the application of paragraph 24(1)(b) if that is required.

2.25 The Applicant provides the following reasoning for its application:

*“The hours from 8.30am to 9am and 6pm to 6.30pm Monday to Friday and also Saturday mornings are extremely quiet with almost no activity at the pharmacy and no patient visits” and further note “This additional opening time, whilst relatively short, causes a significant staffing problem as the hours are too long for one pharmacist to work a full week... additional locum cover or overtime payments are required”.*

2.26 To properly assess the application against paragraph 24(1)(a), I need to determine the existing level of service provision. I then need to consider whether it is necessary to maintain the existing level of service provision. If it is necessary to maintain the existing level of service provision, I need to consider whether, despite the proposed change of hours, the existing level of service provision to people in the area or other likely users would be maintained e.g. by nearby pharmacies being open and providing the same level of service provision.

2.27 If I consider it unnecessary to maintain the existing level of service provision or that it is necessary to maintain the existing level of service provision but doing so is not a realistically achievable outcome, then I need to consider paragraph 24(1)(b) and determine whether the proposed change of hours are such that a sustainable level of adequate service provision would be maintained.

2.28 I therefore need to be provided with sufficient information to understand a range of matters, starting with the existing level of service provision. The references to days and times in paragraph 24(1) leads me to consider that the reference to "level" of service provision in paragraph 24(1)(a) is mainly focused on the days and times services are provided. I would point out that "level" of service provision could also refer to other characteristics of the service, such as types and range of services provided, geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided.

- 2.29 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours that pharmacies in the local area are open.
- 2.30 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that as the Applicant is not looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is maintained such that consideration of whether it is necessary to maintain the level of service provision is not needed.
- 2.31 However, the Applicant is applying to change the days and times that services are provided. Taking Saturday as an example, the level of service provision at the Applicant's premises on a Saturday is not being maintained. I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.
- 2.32 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.
- 2.33 The Applicant has stated that "*The hours from 8.30am to 9am and 6pm to 6.30pm Monday to Friday and also Saturday mornings are extremely quiet with almost no activity at the pharmacy and no patient visits*". I note that the Applicant has not provided any information to substantiate this claim of low pharmacy usage however did include business accounts for the months April 2022 – September 2022 in order to demonstrate the impact of increased costs on the business. I am of the view that the accounts do not provide evidence that directly relates to the times that the Applicant is proposing to close.
- 2.34 By the Applicant's own admission, there are people using the pharmacy, albeit with "*almost no activity*" at the times it wishes to close. I consider that it is relevant to have information as to why persons are using the pharmacy at these times. It is difficult to draw conclusions about the necessity of maintaining the existing level of service provision if there is no information on what services, if any, are being provided at those times. No further information in relation to activity has been provided by the Applicant.
- 2.35 Without this information it is difficult to make an assessment of whether it is necessary to maintain the existing level of service provision and this in turn makes it difficult to apply paragraph 24(1)(a). I consider it reasonable to take the position that unless I am provided with evidence to the contrary, I should consider that it is necessary to maintain the existing level of service provision.
- 2.36 Having determined that it is reasonable to assume that maintaining the existing level of service provision is necessary, I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision. The Applicant cannot maintain this as it is changing its hours, but I note the undisputed information from the Applicant with regard to other pharmacies in the area that, between them, have opening hours during the times that the Applicant is proposing to close, namely Boots and Day Night Pharmacy.
- 2.37 If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a).

- 2.38 The Applicant has provided information regarding access to those pharmacies for those who currently access its own pharmacy and how they might travel to find alternative pharmaceutical services. I have not been provided with any specific information but it is likely that there will be a mix of people who drive to the Applicant's pharmacy, those who use public transport and those who walk. The Applicant has described the pharmacies in the area indicating how far away certain pharmacies are.
- 2.39 It is worth noting that characteristics of the persons using the pharmacy might be relevant here as well as from where they start their journey to the pharmacy. If they live close by, walk a few minutes to the pharmacy and walk back home, then even an additional 8-minute walk to the next nearest pharmacy might be considered as not maintaining the level of service provision to users of the pharmacy. I do not consider that every single individual need should be considered at length in this regard, but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.
- 2.40 I note that the distance to the Boots pharmacy in Dudley town centre has been described as being "*only an 8-minute walk away*" with no details regarding the nature of the route provided. I am of the opinion that an 8 minute walk on a relatively flat terrain with street lighting and pavements will feel very different to that of an 8 minute walk on an incline without lighting or pavements, regardless of whether the patient is of an average mobility level with no inclement health problems and that it would have been beneficial to have knowledge of the route that the Applicant proposes pharmacy users would be likely to take.
- 2.41 The Applicant states that Boots is open from 9am to 5pm on a Saturday, although no information is provided about its weekday opening. The Applicant also states that Day Night Pharmacy (1.7miles from the Applicant's premises) is open 7 days a week, although it has not provided any information in relation to the opening hours at that store. I am of the view that, if the Applicant's proposed hours are implemented, Day Night Pharmacy would not be a reasonable walking distance away for patients. Although the 8 minute walk to Boots does not sound particularly long, I am unable to comfortably make this judgement based on the limited information placed before me.
- 2.42 No information has been provided in relation to parking facilities or public transport in the area which patients would be able to use when travelling to an alternative pharmacy in the event the Applicant's proposals are approved.
- 2.43 I am therefore not satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 2.44 I have decided that it is necessary to maintain the current service provision but, due to the cumulative effect of:
- 2.44.1 the lack of evidence regarding usage of the pharmacy on Saturday morning opening in particular; and
- 2.44.2 a lack of information about services being provided elsewhere during the hours the Applicant is proposing to close;
- I am not satisfied that there will be maintenance of the existing level of service provision, whether by virtue of other pharmacies in the area or by the Applicant swapping hours to earlier in the morning.
- 2.45 I therefore consider if I need to have regard to paragraph 24(1)(b) which states that I must seek to ensure that the changed hours are such as to:
- "maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining*

*the existing level of service provision is either unnecessary or not a realistically achievable outcome”.*

- 2.46 I have already determined that it is necessary to maintain the existing level of service provision so reference in paragraph 24(1)(b) to *“in circumstances where maintaining the existing level of service provision is ... unnecessary”* is not relevant.
- 2.47 The Applicant states that *“Saturday morning opening is the most costly to cover as most locums will not agree to work for only 3 hours when they could get paid for a full day elsewhere and therefore charge higher rates.”* Further *“the cost of these additional payments has increased substantially in the past 12 months, to the point where a small number of hours have now rendered the pharmacy unviable.”* I consider that the Applicant is effectively relying on the second part of paragraph 24(1)(b), that maintaining the existing level of service provision is not a realistically achievable outcome. I consider that I need to determine if it is or is not a realistically achievable outcome and if I determine that it is, then I need to consider if the amended hours are such as to maintain a sustainable level of service provision.
- 2.48 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, the Applicant has provided, in addition to the commentary I have referred to above, the profit and loss accounts for the six months ended 30 September 2022. I have considered whether this supports the statements regarding the viability of the pharmacy. As an initial point, the Applicant has conceded that these do not show the impact of “wage inflation” and it has suggested that only the month of September demonstrates the higher costs it is referring to. I note that the Applicant indicated that the accounts from September 2022 to March 2023 would be available “in the next few weeks”, however, these have not been provided to me.
- 2.49 On reviewing the accounts, I note that the costs included in the accounts provided appear to be stable without large fluctuation and further that it is noticeable how some minor variation in the figures provided creates an overall negative. On examining the accounts, I am able to see that for the month of August 2022 the Applicant had a much lower locum fee than in the other months in the sample provided (this being almost £1000 lower than the second lowest month) however I have not been provided with an explanation for why the month of August required a smaller locum presence at the pharmacy, especially if the assertion of there being *“almost no activity”* at the premises during the times in which the proposed opening hours is to be changed.
- 2.50 The month of September does demonstrate a noticeable increase in locum fees compared to other months, as alluded to by the Applicant. However, given the fluctuations in locum fees evident within the sample, a single month of increased fees does not demonstrate that this is a trend.
- 2.51 I also consider that no evidence has been put forward to support the Applicant's statement that it is difficult to secure locums due to the limited hours currently offered on a Saturday. No evidence of costs for overtime or locums at different times has been provided. I also note that the pharmacy has not provided any suggestion that the pharmacy has been closed due to a failure to secure viable locum cover which might suggest maintaining service provision at the relevant hours is not realistically achievable.
- 2.52 I specifically note that the accounts provided do not provide adequate detail to indicate during what times the locum provision was required. This prevents me from establishing a correlative link between the increased fees in months where no profit was made and the hours the pharmacy is open for. To demonstrate that keeping the pharmacy open for its existing core hours is not realistically achievable, the Applicant must be able to demonstrate the correlation between the hours being complained of and the purported issues. I do not consider that the accounts provide support for the Applicant's statements.

- 2.53 I note the Applicant's comments regarding the fact that these accounts are only at "branch level", and that an additional £10,000 of loss should be accounted for due to "head office and area management". I note that no evidence to support this figure has been provided. It is unclear how this figure is calculated, and on what basis this amount would be attributable to each branch that the Applicant runs. I also note that this appeal relates to the specific pharmacy premises at hand, not the business practices of the Applicant. Consequently, without evidence to explain and support this notion, I do not consider that I can have regard to the purported additional £10,000 of losses. It is also unclear how the change in hours would offset this amount of loss, given that the profit was only £2,812. I am unclear, therefore, how this information supports the proposed change of hours.
- 2.54 I further note the Applicant's reference to the decrease in till sales, which would reduce the income available to the pharmacy with which to pay locums. The Applicant states that this relates to patients having "less disposable income". However, there is significant fluctuation of the "till sales" recorded in the accounts over the 6 month period. I, therefore, do not consider that any trend is represented in this sample of data. Whilst it may be the case that this is demonstrated in the following months, I cannot concur with the Applicant on this point based on the information and data provided. Consequently, I will not consider this point further.
- 2.55 The wording of paragraph 24(1)(b) is such that maintaining existing service levels must not be realistically achievable before considering a sustainable level of adequate provision. I consider that this sets a fairly high bar as to the level of difficulty that the Applicant must find themselves in. Whilst I am sympathetic to the difficulties that the Applicant claims to be facing in relation to the viability of the premises and the accounts that have been provided for consideration, I do not consider that sufficient evidence has been provided to indicate that the economic and practical viability of the current opening hours has been compromised. Specifically I note that, in spite of some months where no profit was made, the pharmacy, overall, in this period made a profit. I also note that the accounts provided to me are now over a year old and I have not been provided with any evidence that the situation presented through the accounts is still ongoing. I therefore consider that maintaining the existing level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 2.56 I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions and that maintaining a level of service provision includes all services that the pharmacy may offer, including additional enhanced and advanced services that may be commissioned. I am of the view that I have not been provided with information to demonstrate how the proposed change of hours would maintain, as necessary, the existing levels of service provision.

### 3. Determination

- 3.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I am satisfied that maintaining the current level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 3.2 The action taken by the Commissioner to refuse the application is confirmed.