

6 December 2023

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

FILE REF: SHA/26097
DECISION MAKING BODY: NHS SOUTH WEST

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

PHARMACIST: BOOTS UK LTD
("the Appellant")

PREMISES: 11 MARKET PLACE
FROME
SOMERSET
BA11 1AB

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

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

1 Outcome

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

A copy of this decision is being sent to:

Boots UK Ltd
NHS South West

Advise / Resolve / Learn

NHS Resolution is the operating name of NHS Litigation Authority – we were established in 1995 as a Special Health Authority and are a not-for-profit part of the NHS. Our purpose is to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care. To find out how we use personal information, please read our privacy statement at <https://resolution.nhs.uk/privacy-cookies/primary-care-appeals/>



FILE REF: SHA/26097

DECISION MAKING BODY: NHS SOUTH WEST

PHARMACIST: BOOTS UK LTD
("the Appellant")

PREMISES: 11 MARKET PLACE
FROME
SOMERSET
BA11 1AB

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

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

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 Commissioner has requested that the Appellant open from 2pm to 4pm on 25 December 2023 (Christmas Day).
- 1.2 The Appellant seeks to appeal to NHS Resolution.

2 Consideration

Rights of appeal

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

Opening hours

- 2.3 A pharmacy's opening hours may be categorised as:
- 2.3.1 'core' opening hours (days on and times at which the pharmacy is obliged to be open), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours; or
- 2.3.2 'supplementary' opening hours (other days on and times at which the pharmacy undertakes to provide pharmaceutical services, as notified to the Commissioner).

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

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

Alteration of 'supplementary' opening hours

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

The Commissioner's request

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

Information provided by parties

- 2.8 In a letter to the Appellant dated 4 October 2023, the Commissioner stated:

"DIRECTION TO OPEN ON Monday 25th December 2023

Re: FLA13, Boots Pharmacy. 10-11 Market Place, Frome. BA11 1AB

A Pre-Direction Letter was sent on your pharmacy by email on 21 August 2023 regarding opening hours for Christmas Day 2023. The pharmacy was given 30 days in which to comment on our proposal to direct you to open on this day.

The pre-direction 30-day consultation period resulted in: No response to the pre-direction letter has been received.

With no GP surgeries expected to be open on Christmas Day, patients will look to other services to meet any health needs they may have. Accordingly, NHS South West Collaborative Commissioning Hub (on behalf of Somerset Integrated Care Board) is of the opinion there will continue to be a level of need for pharmaceutical services on this date, including:

- Providing advice on self-care, in particular on the treatment of common ailments,
- Selling over-the-counter medication, including Pharmacy-only medicines,
- Dispensing medication prescribed by the out-of-hours medical service, or
- Issuing emergency supplies of prescription medicines which patients may have run out of.

Activity reports from previous bank holidays, indicate a need for access to all of the above services for patients. If there were not adequate pharmacy cover, or patients consider any pharmacies which are open to not be reasonably accessible, then patients may contact the out-of-hours service; present at hospital emergency departments or summon an ambulance inappropriately, putting additional pressure on other parts of the NHS. Alternatively, patients may go without treatment and possibly suffer preventable harm.

Provision has been sought in locations not only to support patients in your immediate community but, as there will be limited access to resources on the day, to also ensure access to pharmaceutical services for patients from further afield. During Easter 2022,

Christmas 2022 and New Year 2023 and all commissioned hours on other bank holidays in 2022 and so far in 2023 monitoring data supplied indicates patients made extensive use of this provision across our region as set out below.

- 3,519 patients were seen who were referred from 111 or out of hours provider.
- 6,236 prescriptions presented dated the day of the bank holiday(s), with a total of 8,760 items dispensed.
- 7,659 prescriptions presented on the day dated prior to the bank holiday, with a total of 13,160 items dispensed.
- 2,661 patients received advice only (inclusive of telephone advice)
- 12,576 patients received advice and purchased either a GSL or P medication.
- 254 patients accessed locally commissioned services EHC PGD services.
- 1,084 patients received an emergency supply of regular repeat medication.

Based on the monitoring data submitted for the categories reported, excluding the number of referrals from 111/OoHs and assuming each patient accessed only 1 service, over 30,000 patients will have accessed a pharmacy commissioned to provide services on the bank holiday dates noted above across the South West.

Unfortunately, NHS South West Collaborative Commissioning Hub believes there will be insufficient voluntary provision of pharmaceutical services in the area on this date to meet the anticipated needs of patients despite efforts to secure this without the need to issue a direction.

In the absence of volunteers, we have reviewed which pharmacies have opened on previous bank holidays and have tried, where possible, to ensure that directing pharmacies to open has taken place on a fair share basis, according to local need. We consider that on this occasion it is appropriate to direct your pharmacy to open.

The locations identified at which pharmacies will be directed to open on Christmas Day has been reached to ensure reasonable levels of access throughout the day. These locations will see most patients having access to a pharmacy within a 30-minute drive at some point during the day on this date. For patients living in remote rural areas this journey may be longer and in densely populated urban areas the journey time would be significantly less.

We have previously consulted with the Local Pharmaceutical Committees (now known as Community Pharmacy Locals, CPLs) regarding our general approach to bank holiday provision. On 25 September 2023 NHS South West Collaborative Commissioning Hub sought the CPLs' comments on the list of pharmacies that the NHS South West Collaborative Commissioning Hub was considering directing for this bank holiday, where insufficient voluntary provision had been secured, and have considered the comments made.

NHS South West Collaborative Commissioning Hub, on behalf of Somerset Integrated Care Board, is now exercising its power under paragraph 25 of the Terms of Service (determination of pharmacy premises core opening hours instigated by the NHSCB) to direct pharmacies to open in order to secure adequate provision of pharmaceutical services in the area.

NHS South West Collaborative Commissioning Hub has found it necessary to direct (FLA13) to open from 14:00-16:00 on Monday, 25th December 2023.

Please note that pharmacies directed to open will be remunerated for the hours worked at a rate of £350.00 per hour. Please complete the enclosed monitoring form, and submit the data via this link [Bank Holiday Activity Form](#) in order for your payment to be generated. Submitting this data will also enable us to use the monitoring information to support commissioning intentions for future pharmaceutical services during bank holiday periods.

We are obliged to notify you of your right of appeal against this direction which must be received within 30 days of this direction. Appeals must be emailed to appeals@resolution.nhs.uk or sent in writing to:

Primary Care Appeals
NHS Resolution
4th Floor
Arena Point
Merrion Way
Leeds
LS2 8PA"

2.9 In an email to NHS Resolution dated 19 October 2023 the Appellant stated:

"We have received a letter of direction for our pharmacy Boots Frome 0267 FLA13 to open on Christmas day.

We would like to appeal this decision, due to the size of the store (we are a large retail store) and location of the pharmacy being at the back of the store we would struggle to have the required resources for us to open.

We are already working the full weekend before Christmas as we are open 7 days a week, so we will be providing necessary urgent care to patients to ensure any emergency requests are fulfilled during this time.

Could we please ask this to be reviewed."

2.10 In a letter to NHS Resolution dated 7 November 2023 the Commissioner stated:

"Please can I ask you to treat the following emails, attached, as part of NHS South West Collaborative Commissioning Hub's representations on this appeal:

- Email of 21 August 2023 to the contractor with the pre-direction letter
- Email of 4 October 2023 to the contractor with the direction letter
- Maps showing the Index of Multiple Deprivation (IMD) plus additional deprivation data from 2019 for Frome (Appendix A)
- Map showing ONS census 2021 deprivation data (Appendix B)
- Map showing pharmacies due to open in Somerset on Christmas Day 2023 (Appendix C)
- Somerset activity data submitted for Christmas 2022 (Appendix D)

Planning for the Christmas and New Year Holiday periods began in July 2023, with a letter being shared with contractors on 1 August asking for expressions of interest to be submitted for any hours which could be offered on any of the bank holidays.

NHS South West Collaborative Commissioning Hub undertook an assessment of the secured provision for Christmas in mid-August to identify where additional pharmaceutical support would be required on Christmas Day. No voluntary provision had been secured in Frome on Christmas Day, Asda had indicated they intended to be open on Boxing Day and New Years Day. A pre-direction was issued to Boots Pharmacy for Christmas Day on 21 August 2023.

The population of Frome is served by five pharmacies, two branches of small multiples with Boots, Asda and Lloyds also having one pharmacy each in Frome. All five pharmacies would usually be open on a Monday with hours between 09:00-21:00. None of these pharmacies are expected to be open voluntarily on Christmas Day.

Frome is located on the easterly edge of Somerset, close to the border with Wiltshire. It is the largest town within the Mendip locality. Capitation GP practice list data for October 2023 shows 29,241 patients were registered with the Frome Medical Centre,

the only provider of primary care medical services in Frome. Due to the rurality of the areas around Frome it is likely many patients from the wider geography would access pharmaceutical services, if needed, from Frome on Christmas Day, including people residing in Beckington, Bruton, Evercreech, Coleford and Oakhill.

Within the 2022-25 Somerset PNA links are provided to data showing the Index of Multiple Deprivation (IMD) data from 2019. Data showing the IMD for Frome is included (Appendix A). The map shows the location of neighbourhoods in the most deprived areas nationally (by Lower Super Output Area, LSOA) Frome Market (004C) is noted as one of the neighbourhoods in the second most deprived decile across England. Four other LSOA in Frome are within the fourth most deprived decile.

The additional data at Appendix A shows two LSOAs in Frome have levels of health deprivation and disability in the third decile and three LSOAs in the fourth decile. On the map showing income deprivation affecting children Frome Market (004C) is in the highest decile and Frome Keyford (007D) in the second decile across England.

Data from 2021 census published by the Office for National Statistics (ONS) is included at Appendix B. This shows several pockets of deprivation within Frome Parish where over 40% of households are noted as deprived in at least 1 dimension. The most deprived area in Mendip is noted as Frome North West.

Records relating to which pharmacies had been commissioned to open on other recent bank holidays in Frome were reviewed, to ensure contractors were being selected on a fair share basis. In an email to Boots Frome on 19 October, in response to the initial appeal notification received by email to england.pharmacysouthwest@nhs.net, it was noted the pharmacy had not been asked to support on a special bank holiday, namely Christmas Day or Easter Sunday, since Christmas 2018. Other pharmacies within Frome had been directed or offered to help on these bank holidays from Easter 2019-Easter 2023.

Within the appeal letter, Boots Frome have indicated they would find it difficult to open due to the size of the store and location of the pharmacy. While we appreciate the additional logistical considerations this poses we believe this should not negate the need for pharmacies in larger retail premises, including pharmacies located in supermarkets, to undertake provision of pharmaceutical services when required on a bank holiday.

As can be noted from the map (Appendix C) NHS South West Collaborative Commissioning Hub concluded having no pharmacy open in Frome on Christmas Day would create a significant geographical gap in East Somerset for the local population to access pharmaceutical services. Patients from Frome would need to travel to Glastonbury (40 minutes away by car) on Christmas Day if no provision was available in Frome. Were the appeal to be granted this could result in patients needing to travel significant distances to access pharmaceutical services on Christmas Day.

Somerset Integrated Care Boards Urgent and Emergency Care team have indicated they will be providing an out of hour's clinic in Shepton Mallet over the Christmas period. Pharmaceutical provision has been commissioned in Glastonbury and Frome which are located approximately 20-25 mins away on either side of Shepton Mallet.

As Christmas Day is a bank holiday, no pharmacy contractors are obliged to open and so can choose to close without the need to give notice. In light of this, the decision has been taken to ensure that NHS South West Collaborative Commissioning Hub has secured, or directed, provision in areas where there is an anticipated need for pharmaceutical services on this date to ensure a minimum level of provision within a reasonable distance for the majority of patients. The activity data from Christmas Day 2022 (Appendix D), shows that pharmacies commissioned to open on Christmas Day 2022 in Somerset were well utilised by patients to access a full range of pharmaceutical

services on these dates. This demonstrates the need not just for dispensing services but also for access to other services and healthcare advice.

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:

- (a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown,
- (b) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of—
 - (i) his functions in the health service, the Scottish health service or the Northern Ireland health service (other than functions exercised in pursuance of the provision of services mentioned in paragraph (c)), or
 - (ii) his functions in the armed forces of the Crown,
- (c) listed drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of the provision of primary dental services or equivalent services in the Scottish health service or the Northern Ireland health service,
- (d) such drugs and medicines and such listed appliances as may be determined by the Secretary of State for the purposes of this paragraph and which are ordered for those persons by a prescribed description of person in accordance with such conditions, if any, as may be prescribed, in pursuance of functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown, and
- (e) such other services as may be prescribed.

NHS South West Collaborative Commissioning Hub, on behalf of Somerset Integrated Care Board who have delegated authority from NHS England for the commissioning of pharmaceutical services, has therefore considered what arrangements need to be put in place on Christmas Day 2023 in order to discharge this duty. NHS South West Collaborative Commissioning Hub 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 bank holiday, there will still be a need for pharmaceutical services by people who live in Frome, or who may be visiting the area over Christmas. Whilst GP practices will be closed on Christmas Day, other providers of NHS services will be open such as the GP out of hours service, NHS111 and A&E departments. Without adequate pharmaceutical provision being available, patients may choose to access other providers on Christmas Day increasing demand in other parts of the system.

An email was shared with Somerset Community Pharmacy Local and Somerset Integrated Care Board on 26 September 2023 noting the voluntary hours and pre-directed contractors for Christmas 2023. Somerset Community Pharmacy Local responded on 28 September noting they were happy with the proposed provision. No response was received from Somerset Integrated Care Board.

NHS South West Collaborative Commissioning Hub has worked extensively with all 7 Community Pharmacy Locals across the South West, and reviewed activity data, to determine the locations in which support would be required on bank holidays. Most recently all South West Community Pharmacy Locals and Integrated Care Boards have been consulted on a proposed 5 year rolling rota for the special bank holidays, Christmas Day and Easter Sunday, to be used where no voluntary provision has been secured in locations where provision has been required historically, from Easter 2023-Christmas 2027. The proposed rolling rotas were discussed at the NHS England/LPC meeting on 17 November 2022 and shared via email on 30 November 2022. Somerset Community Pharmacy Local responded on 30 November 2022 noting the plan seemed sensible whilst highlighting supermarket pharmacies would face additional challenges

opening on these dates. NHS South West Collaborative Commissioning Hub responded noting while we appreciate pharmacies located in supermarkets may face additional obstacles to opening on a day when the main store is closed we do, however, feel they should be asked to provide support on a fair share basis. We have historically directed a number of supermarket pharmacies and most have opened after negotiating access with the landlord.

The proposed rolling rota was also shared with Somerset Integrated Care Board on 4 January 2023. Somerset ICB responded noting this was a pragmatic approach. Boots Frome were noted on the proposed rolling rota for Christmas Day 2023 shared with Somerset Community Pharmacy Local and Somerset Integrated Care Board. Consultation with contractors on the proposed rolling rotas has been delayed due to the current level of market entry and exit activity requiring the drafts to be updated frequently.

Whilst NHS South West Collaborative Commissioning Hub appreciates the pressures facing community pharmacies, it is of the view that securing sufficient access to pharmaceutical provision on bank holidays is vital to ensure patients can access appropriate support within a reasonable distance in order to reduce the demand on other NHS services. NHS South West Collaborative Commissioning Hub maintains the decision to issue this direction to Boots Pharmacy Frome was necessary and requests that the appeal be rejected.”

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

Assessment

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

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

- (a) people in its area; or*
- (b) other likely users of the pharmacy premises,*

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

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

- (a) give notice to P of any proposed changes to the days on which or times at which the pharmacy premises are to be open; and*
- (b) allow P 30 days within which to make written representations to the NHSCB about the proposed changes.*

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

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

the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub-paragraphs (4) and (5); or

(c) *either—*

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

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

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

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

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

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

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

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

5. *The NHSCB must not issue a direction under sub-paragraph (3) that has the effect simply of requiring pharmacy premises to be open for 40 hours each week on set days and at set times (that is, the direction must have the effect of requiring pharmacy premises to be open for either more or less than 40 hours each week).*

6. *The NHSCB must notify P of any direction issued or any other action taken under sub-paragraph (3), and where it sets new days on which or times at which P is to provide pharmaceutical services at pharmacy premises, it must include with the notification a statement of—*

(a) *the reasons for the change; and*

(b) *P's right of appeal under paragraph (7).*

7. *P may, within 30 days of receiving notification under sub-paragraph (6), appeal in writing to the Secretary of State against any direction issued or any other action taken under sub-paragraph (3) which sets new days on which or times at which P is to provide pharmaceutical services.*

8. *The Secretary of State may, when determining an appeal, either confirm the action taken by the NHSCB or take any action that the NHSCB could have taken under paragraph (3).*

9. *The Secretary of State shall notify P of the determination and shall in every case include with the notification a statement of the reasons for the determination.*

10. *If the days on which or times at which P is to provide pharmaceutical services at pharmacy premises have been changed in accordance with this paragraph, P must introduce the changes—*

(a) *if P has not appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (6); or*

- (b) *if P has appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (9).*

11. *This paragraph does not apply where regulation 65(5) to (7) applies.*

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

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

2.14 I am of the view that the pharmacy would normally be closed on Christmas Day and that this would be in accordance with the Regulations.

2.15 I am conscious that paragraphs 25(1) and (2) require that before any direction is made, an assessment must be undertaken and that, before the assessment is concluded, the pharmacist providing services from the premises must be given notice of the proposed changes and given 30 days to make written representations about the proposed changes.

2.16 The Commissioner has provided, in its representations on the appeal, a letter sent to the pharmacy dated 21 August 2023 which informs the pharmacy of its intention to direct the pharmacy to open on 25 December 2023. I note the Appellant has not disputed the content of this letter. The Commissioner has also referred in its representations to a letter which was shared with contractors on 1 August asking for expressions of interest to be submitted for any hours which could be offered on any of the bank holidays. I have not been provided with a copy of this letter, but the Appellant has not disputed that it was circulated.

2.17 The Commissioner has indicated that it contacted Somerset Community Pharmacy Local on 26 September 2023 setting out the voluntary hours and pre-directed contractors for Christmas 2023. I note the Commissioner's comment that Somerset Community Pharmacy Local responded to indicate that it was content with the proposed provision.

2.18 I am of the view that the Commissioner has undertaken a consultation process as set out in the Regulations and that there is no dispute from the Appellant in this regard.

2.19 I am mindful that the Commissioner is required by paragraph 25(6) of Schedule 4 to provide reasons for its decision. In my view, these reasons should set out the basis of any determination that days and times of opening will no longer be such as will meet the pharmaceutical needs of relevant persons and (if they are, such that a direction *may* be made) the assessment that led to the direction, taking into account any written representations from the pharmacist.

2.20 I note that in the direction letter the Commissioner states that it *"...is of the opinion there will continue to be a level of need for pharmaceutical services on this date..."* and that this would include the provision of advice on self-care, over-the counter medication including Pharmacy-only medicines, dispensing medication prescribed by the out-of-hours medical service and the emergency supply of prescription medicines.

2.21 The Commissioner provided reasoning in the direction letter including:

2.21.1 *"Activity reports from previous bank holidays, indicate a need for access to all of the above services for patients. If there were not adequate pharmacy cover, or patients consider any pharmacies which are open to not be reasonably accessible, then patients may contact the out-of-hours service; present at hospital emergency departments or summon an ambulance inappropriately,*

putting additional pressure on other parts of the NHS. Alternatively, patients may go without treatment and possibly suffer preventable harm.”

- 2.21.2 *“Provision has been sought in locations not only to support patients in your immediate community but, as there will be limited access to resources on the day, to also ensure access to pharmaceutical services for patients from further afield. During Easter 2022, Christmas 2022 and New Year 2023 and all commissioned hours on other bank holidays in 2022 and so far in 2023 monitoring data supplied indicates patients made extensive use of this provision across our region as set out below.”*
- 2.21.3 *“Based on the monitoring data submitted for the categories reported, excluding the number of referrals from 111/OoHs and assuming each patient accessed only 1 service, over 30,000 patients will have accessed a pharmacy commissioned to provide services on the bank holiday dates noted above across the South West.”*
- 2.21.4 *“Unfortunately, NHS South West Collaborative Commissioning Hub believes there will be insufficient voluntary provision of pharmaceutical services in the area on this date to meet the anticipated needs of patients despite efforts to secure this without the need to issue a direction.”*
- 2.21.5 *“The locations identified at which pharmacies will be directed to open on Christmas Day has been reached to ensure reasonable levels of access throughout the day. These locations will see most patients having access to a pharmacy within a 30-minute drive at some point during the day on this date. For patients living in remote rural areas this journey may be longer and in densely populated urban areas the journey time would be significantly less.”*
- 2.22 The Commissioner has expanded on its reasoning in its representations on the appeal, including to state:
 - 2.22.1 *“Frome is located on the easterly edge of Somerset, close to the border with Wiltshire. It is the largest town within the Mendip locality. Capitation GP practice list data for October 2023 shows 29,241 patients were registered with the Frome Medical Centre, the only provider of primary care medical services in Frome. Due to the rurality of the areas around Frome it is likely many patients from the wider geography would access pharmaceutical services, if needed, from Frome on Christmas Day, including people residing in Beckington, Bruton, Evercreech, Coleford and Oakhill.”*
 - 2.22.2 *“Within the 2022-25 Somerset PNA links are provided to data showing the Index of Multiple Deprivation (IMD) data from 2019. Data showing the IMD for Frome is included (Appendix A). The map shows the location of neighbourhoods in the most deprived areas nationally (by Lower Super Output Area, LSOA) Frome Market (004C) is noted as one of the neighbourhoods in the second most deprived decile across England. Four other LSOA in Frome are within the fourth most deprived decile.”*
 - 2.22.3 *“The additional data at Appendix A shows two LSOAs in Frome have levels of health deprivation and disability in the third decile and three LSOAs in the fourth decile. On the map showing income deprivation affecting children Frome Market (004C) is in the highest decile and Frome Keyford (007D) in the second decile across England.”*
 - 2.22.4 *“Data from 2021 census published by the Office for National Statistics (ONS) is included at Appendix B. This shows several pockets of deprivation within Frome Parish where over 40% of households are noted as deprived in at least 1 dimension. The most deprived area in Mendip is noted as Frome North West.”*

- 2.22.5 *“Somerset Integrated Care Boards Urgent and Emergency Care team have indicated they will be providing an out of hour’s clinic in Shepton Mallet over the Christmas period. Pharmaceutical provision has been commissioned in Glastonbury and Frome which are located approximately 20-25 mins away on either side of Shepton Mallet.”*
- 2.22.6 *“As Christmas Day is a bank holiday, no pharmacy contractors are obliged to open and so can chose to close without the need to give notice. In light of this, the decision has been taken to ensure that NHS South West Collaborative Commissioning Hub has secured, or directed, provision in areas where there is an anticipated need for pharmaceutical services on this date to ensure a minimum level of provision within a reasonable distance for the majority of patients. The activity data from Christmas Day 2022 (Appendix D), shows that pharmacies commissioned to open on Christmas Day 2022 in Somerset were well utilised by patients to access a full range of pharmaceutical services on these dates. This demonstrates the need not just for dispensing services but also for access to other services and healthcare advice.”*
- 2.23 The Appellant has not disputed the Commissioner’s comments relating to the analysis of the data and its conclusions.
- 2.24 The Appellant’s grounds of appeal are based on the difficulties it will experience in opening its pharmacy on the day. The Appellant comments that it is a large retail store, with the pharmacy being based at the back of the store, and that it would struggle with the required resources for it to open. The Commissioner has responded to indicate that whilst it appreciates the Appellant’s difficulties in this respect, it does not consider that this should negate the need for pharmacies in larger retail premises to provide pharmaceutical services when required on a bank holiday.
- 2.25 I note the Appellant’s comment that *“We are already working the full weekend before Christmas as we are open 7 days a week, so we will be providing necessary urgent care to patients to ensure any emergency requests are fulfilled during this time”*, however I do not consider that this is relevant to consideration of pharmaceutical services on the day in question.
- 2.26 Whilst the Appellant has indicated that it will struggle with the required resources to open, I do not consider that any information has been provided by which to conclude that the Appellant is actually unable to do so. I am of the view that, given the explanation of the Commissioner’s assessment in its representations on this appeal, I have been provided with sufficient information to substantiate the view as to why the Appellant’s pharmacy will be best placed in terms of access and geography to meet the envisaged demand for services.
- 2.27 On appeal, I may (in accordance with paragraph 25(8) of Schedule 4) either confirm the action of the Commissioner or take such other action as it could have taken.
- 2.28 On the basis of the information available to me, I am satisfied that the Commissioner has demonstrated that the needs of people in its area or other likely users of the pharmacy for pharmaceutical services will not be met on Monday 25 December 2023 such that it is appropriate to issue a direction requiring the Appellant’s pharmacy to open on the days and times indicated in the direction.

3 **Determination**

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

Head of Appeals
NHS Resolution