

19 January 2024

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FILE REF: SHA/26108

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DECISION MAKING BODY: Bristol, North Somerset and South Gloucestershire ICB (“the Commissioner”)

PHARMACIST: Yatton Health Limited (“the Applicant”)

PREMISES: Yatton Pharmacy
Yatton
Bristol
BS49 4EG

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 the Commissioner to refuse the application is confirmed.

A copy of this decision is being sent to:

Yatton Pharmacy
Bristol, North Somerset and South Gloucestershire ICB

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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 the Commissioner 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).

The Applicant's proposals

- 2.9 The Applicant in its letter of appeal indicates that it currently has core opening hours totalling 40 hours per week.
- 2.10 The Applicant wishes to:
- 2.10.1 Open between 12noon and 2pm Monday, Tuesday and Friday rather than closing;
- 2.10.2 Open between 12noon and 3pm on a Wednesday rather than closing;
- 2.10.3 Open between 12noon and 2:30pm on a Thursday rather than closing;
- 2.10.4 Close at 5pm Monday to Friday rather than close at 6pm; and
- 2.10.5 Close on a Saturday rather than opening from 9am to 12noon and 2pm to 5:30pm.

Assessment

- 2.11 In this case, the Applicant provided the following information in its application form and supporting information dated 30 August 2023:
- 2.11.1 “This is an application to permanently change core opening hours.

2.11.2 Current opening hours for these premises:

Monday	09:00 – 12:00 14:00 – 18:00
Tuesday	09:00 – 12:00 14:00 – 18:00
Wednesday	09:00 – 12:00 15:00 – 18:00
Thursday	09:00 – 12:00 14:30 – 18:00
Friday	09:00 – 12:00 14:00 – 18:00
Saturday	09:00 – 12:00 14:00 – 17:30
Sunday	Closed

2.11.3 Proposed core opening hours for these premises:

Monday	09:00 – 17:00
Tuesday	09:00 – 17:00
Wednesday	09:00 – 17:00
Thursday	09:00 – 17:00
Friday	09:00 – 17:00
Saturday	Closed
Sunday	Closed

2.11.4 If this is a permanent change, please state below the date from which you would like the change to take effect: 1st Dec 2023

2.11.5 We have redistributed the core and supplementary hours. Both applications/notifications will take effect 90 days from submission which is 1st Dec 2023.”

2.12 In an email of 16 September 2023 to the Commissioner, the Applicant provided supporting information in the form of a survey [Appendix A].

2.13 In a letter to the Applicant dated 24 October 2023 the Commissioner stated:

2.13.1 “I refer to the application to change the contractual opening hours for the above pharmacy. The NHS South West Pharmaceutical Services Regulations Committee (PSRC) considered your request on 5th October, please see details of the decision below.

1. The SW Committee noted the proposal to move the Saturday core hours and replace them with supplementary hours.
2. The SW Committee noted there was no response from any interested parties consulted, so had no other local considerations to factor into its decision making.
3. The change to the Regulations in May 2023 was noted in terms of the requirement to demonstrate that Core hours are set so as to sustain the necessary level of adequate service provision.
4. The SW Committee looked at the alternative access available on Saturday and noted the other pharmacy in Yatton does not open on Saturday and the next nearest pharmacy in Congresbury which at 1.5 miles is a material distance to travel in this location.

5. The SW Committee noted that maintaining easy access to services evenings and weekends is important, not just for prescriptions but for the wider range of services and advice pharmacies provide to patients. It is particularly important this is maintained at weekends to ease pressure on urgent care services, which is a significant part of BNSSG system-wide plans being developed, to reduce winter pressure.
6. It was not clear to the SW Committee why the applicant was making such an application when the actual opening hours would remain the same. However, the SW Committee was aware that supplementary hours can be altered or removed by just giving notice, so there was a risk of a loss of Saturday opening hours in the future.
7. As the applicant had provided no evidence of a need to change on the grounds of sustainability the SW Committee could see no good reason to grant the application
8. The application is REFUSED.

2.13.2 The application was therefore declined, and the contractual opening hours of the pharmacy remain as follows:

Core		Supplementary	
Monday	09:00 – 12:00 & 14:00 – 18:00	Monday	12:00 – 14:00
Tuesday	09:00 – 12:00 & 14:00 – 18:00	Tuesday	12:00 – 14:00
Wednesday	09:00 – 12:00 & 15:00 – 18:00	Wednesday	12:00 – 15:00
Thursday	09:00 – 12:00 & 14:30 – 18:00	Thursday	12:00 – 14:30
Friday	09:00 – 12:00 & 14:00 – 18:00	Friday	12:00 – 14:00
Saturday	09:00 – 12:00 & 14:00 – 17:30	Saturday	12:00 – 14:00
Sunday	Closed	Sunday	Closed

2.13.3 Please note that any variation to contractual opening hours, without prior consent, will be deemed a breach of terms of service. Performance related sanctions, as directed within the 2013 Regulations, may be imposed where a breach occurs.

2.13.4 You have a right of appeal against the decision not to allow the amendment to Core Hours. Any appeal must contain a concise statement of the facts and contentions on which you intend to rely and should be submitted in writing within 30 days to: nhsr.appeals@nhs.net or by post to: NHS Resolution, 8th Floor 10 South Colonnade, Canary Wharf London, E14 4PU.

2.13.5 If you wish to change the hours in the future, you will still need to complete and submit a further notification form to NHS England.”

2.14 In an email to NHS Resolution dated 30 October 2023 the Applicant stated:

2.14.1 “We would like to appeal the below decision and have provided the required paperwork.”

2.15 In a second email to NHS Resolution of 30 October 2023 the Applicant stated:

2.15.1 “We would like to appeal on the basis that we feel we have provided the relevant information and the changes/redistribution of the hours are in line with the community needs and based on the surveys conducted and submitted.

2.15.2 We have provided GP and other healthcare provider information which we feel has not been taken into account accordingly.

- 2.15.3 I hope that this is sufficient to appeal.”
- 2.16 In an email to NHS Resolution of 4 November 2023 the Applicant provided copies of the survey conducted [Appendix A] and supporting documents including GP and other healthcare provider information [Appendix B].
- 2.17 In a second email to NHS Resolution of 4 November 2023 the Applicant stated:
- 2.17.1 “Find attached our application to amend our core & supplementary hours.
- 2.17.2 Overall we are looking to redistribute & reduce the weeks supplementary (if you would like us to complete the redistribution of supplementary hours notification/application please advise but the attached should suffice as there are now several forms) and amended our core hours.
- 2.17.3 Below and attached information will allow the ICB [sic] to make an informed decision.
- 2.17.4 The local surgeries (1 mile radius) open and close as follows: (info from NHS.uk) – see attached [Appendix B].
- 2.17.5 Out of hours closes at: (info from NHS.UK) [see Appendix B].
- 2.17.6 Urgent care – attached nhs uk
- 2.17.7 CPCS Urgent Medicine data – n/a – no data
- 2.17.8 CPCS Minor illness Data – n/a – no data
- 2.17.9 Attachments and Purpose of Attachment is to support application for approval
- 2.17.10 All data from pharmoutcomes
- 2.17.11 Local pharmacies – list attached from NHS.UK – this shows there is no loss of service in the locality. [Appendix B].
- 2.17.12 Walk In & Urgent Care Centre Information – This is located over 3.7 miles away and we do not receive any prescriptions from the Urgent Care. Again other local pharmacies are open.”
- 2.18 In a letter to NHS Resolution dated 6 December 2023 the Commissioner stated:
- 2.18.1 “Thank you for your email dated 10 November 2023 inviting representation in response to the appeal received against the decision made by the NHS South West Collaborative Commissioning Hub (NHS SW CCH) to refuse a change of opening hours for Yatton Health Ltd T/A Yatton Pharmacy (FNA45).
- 2.18.2 NHS SW CCH confirms that the decision to refuse the opening hour changes was made in accordance with NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, Schedule 4, Paragraph 24 and Schedule 4, Paragraph 26.
- 2.18.3 Please can I ask you to treat the attached as part of NHS South West Collaborative Commissioning Hub’s representations on this appeal:
- Appendix 1 – PDF: Yatton Pharmacy Supporting Information 04 11 23
 - Appendix 2 – PDF: FNA45 Decision Letter
 - Appendix 3 – PDF: August PSRC minutes FINAL [sic]
 - Appendix 4 – Change of Hours application and associated information
 - Appendix 5 – PDF: Yatton Pharmacy Appeal combined 30.10.23.

- 2.18.4 The Pharmaceutical Services Regulation Committee (PSRC) would respectfully suggest that the hours of opening at the pharmacy were put in place in order to support the delivery of the full range of pharmacy services to the local population of Yatton. The applicant has provided no evidence of a need to change the hours on the grounds of sustainability within the original application. Furthermore, the Yatton Pharmacy Survey provided, as supporting evidence for the appeal (see within Appendix 1) only asks patients if they use the pharmacy Monday to Friday and at what times on these days.
- 2.18.5 As the survey only provided responses for patients accessing the pharmacy Monday to Friday, there is no indication if any patients surveyed visit the pharmacy on Saturdays as no Saturday option was provided, only if a closure would affect them. This infers that the surveyed patients only access the pharmacy on weekdays and would not be the target group that should have been surveyed. Access to pharmaceutical services is essential on Saturdays for those who are unable to access services on weekdays due to work or other commitments and for those with acute prescriptions issued by out of hours and urgent care services.
- 2.18.6 In considering this request, PSRC takes the view that community pharmacies have a role in both the provision of advanced and essential services, including self-care advice, as part of the wider NHS provision of accessible services to patients. The role of Community Pharmacy is also rapidly growing through the pharmacy integration transformation programme and patients will need to access these services at the pharmacy on Saturday, as well as during the week. Linked to this, NHS SW CCH and the Bristol, North Somerset, South Gloucestershire (BNSSG) ICB have worked with 111 providers, and this has resulted in recent increases in utilisation of 111-CPCS. Similarly, the National Operating Plan for 2023/24 will drive up utilisation of CPCS, which is reflected in an ambitious ICB Operating Plan target to increase activity.
- 2.18.7 Whilst the NHS SW CCH appreciates the pressures facing community pharmacies, PSRC is of the view that securing sufficient access to pharmaceutical provision on Saturdays is vital to ensure patients can access appropriate advice and care, including the expanding range of service, within a reasonable distance. This is an important role for Community Pharmacy within the wider ICB provision of services at the weekend and is a critical integrated part of the management of urgent care services at the weekend.
- 2.18.8 The applicant provided a list of local pharmacies in their supporting information and noted that “there is no loss of service in the locality” (Appendix 1). As noted within the decision letter (Appendix 2) and the August PSRC minutes [sic] (Appendix 3), “the SW Committee looked at the alternative access available on Saturday and noted the other pharmacy in Yatton does not open on Saturday and the next nearest pharmacy in Congresbury which at 1.5 miles is a material distance to travel in this location.” The GP Surgeries, Urgent Treatment Centres, Dentists and Hospitals provided as part of the original application (Appendix 4), and that the applicant said, “has not been taken into account accordingly” when they submitted the appeal (Appendix 5) provide a different role than community pharmacy and NHS SW CCH does not believe they are relevant to the application or appeal with regards to opening hours. Without adequate pharmaceutical provision being available patients may choose to access other providers such as out of hours services or minor injury units, increasing demand in other parts of the system for issues that can be dealt with at a Community Pharmacy.
- 2.18.9 NHS SW CCH respectfully requests that the decision to decline the application is upheld.”

2.19 In an email to NHS Resolution dated 12 December 2023 the Applicant stated:

- 2.19.1 "Many Thanks
- 2.19.2 The survey was conducted over the weekdays and Saturday's to ensure that we reviewed all patients coming into the pharmacy and whether they used the pharmacy on Saturday. No place does it state we have excluding speaking to patients who visit on a Saturday and the NHS have made an inference. They could have asked us to confirm this and to now raise this as an objection.
- 2.19.3 Question 3 has an option of other and this can be used to state Saturday and times.
- 2.19.4 Question 4 covers Saturdays and this NHS response is rebutted to the effect that the relevant questions were asked.
- 2.19.5 Urgent care information was added to show that the centre is several miles away and patients would you [sic] pharmacies local to that on the weekend and no effect on either closure or changes to supplementary hours.
- 2.19.6 CPCS 111 is mentioned but that in itself does not prove that this service is fully utilised by the NHS and effective for patients. The pharmacy has and will always keep under review demand and patient needs. If there was a need for a Saturday service then that would not be an issue unless the NHS want to fund a Saturday rota to ensure patient needs are met but at the same time it is cost effective to open on a Saturday no business can run n [sic] a loss for opening any business on the weekend.
- 2.19.7 The NHS can prevent issues and request weekend opening by having funds to commission a weekend service which is funded appropriately.
- 2.19.8 Regards
- 2.19.9 Therefore no further response is required other than to answer there [sic] current objection."
- 2.20 I note the following:
 - 2.20.1 The Applicant's core opening hours total 40 hours and the Applicant proposes 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.
- 2.21 The Applicant proposes to:
 - 2.21.1 Open between 12noon and 2pm Monday, Tuesday and Friday rather than closing;
 - 2.21.2 Open between 12noon and 3pm on a Wednesday rather than closing;
 - 2.21.3 Open between 12noon and 2:30pm on a Thursday rather than closing;
 - 2.21.4 Close at 5pm Monday to Friday rather than close at 6pm; and
 - 2.21.5 Close on a Saturday rather than opening from 9am to 12noon and 2pm to 5:30pm.
- 2.22 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.

- 2.23 The application to change the hours was made by the Applicant on 30 August 2023 and a decision was made by the Commissioner on 24 October 2023. The decision was appealed to NHS Resolution by email of 30 October 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.
- 2.24 The Applicant has sought to change the days and times at which it is obliged to provide pharmaceutical services under paragraph 26 of Schedule 4, Part 3, "Hours of opening".
- 2.25 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."*
- 2.26 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).*
- 2.27 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.*
- 2.28 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.*
- 2.29 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 24(1)(b) if that is required.

- 2.30 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.
- 2.31 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.
- 2.32 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.
- 2.33 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.
- 2.34 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.
- 2.35 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.
- 2.36 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.
- 2.37 The Applicant has provided 30 completed patient surveys in support of its application. The survey is limited in terms of quality, the quantity of responses and whilst the Applicant stated that the survey was carried out "*over the weekdays and Saturday's to ensure that we reviewed all patients coming into the pharmacy and whether they used the pharmacy on a Saturday*" it is difficult to specifically establish if anyone is using the pharmacy during either the weekday hours or the Saturday hours that the Applicant wishes to close. I also note that the survey only covers two Saturdays, one of which is at the end of the summer holidays. As a result, it is difficult to draw conclusions about the necessity of maintaining the existing level of service provision if there is only limited information on what services persons are using and on/at what days/times.
- 2.38 Without more detail 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.

- 2.39 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. I have been provided with information from NHS Choices regarding the addresses of dental and medical practices in the area as well as an overview of the closest dental and medical practices, also from NHS Choices. I have also been provided with limited information, again from NHS Choices, in respect of the nearest pharmacies to the Applicant's pharmacy. Whilst this information provides me with the addresses of these pharmacies, I am unable to ascertain if these pharmacies have opening hours during the times that the Applicant is proposing to close.
- 2.40 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).
- 2.41 Given the lack of information surrounding other pharmacies in the area, I am struggling to be satisfied that the existing level of service provision would be maintained by virtue of the existing of other local pharmacies.
- 2.42 I have decided that it is necessary to maintain the current service provision but, due to the cumulative effect of:
- 2.42.1 the survey not assuring me that it is representative of the use of the pharmacy;
 - 2.42.2 a lack of information about the services being provided during the hours the Applicant is proposing to close; and
 - 2.42.3 a lack of information about access to alternative pharmacies in the area;
- 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.
- 2.43 I therefore next 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".*
- 2.44 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.
- 2.45 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, I consider that no evidence has been put forward in respect of this criteria.
- 2.46 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. I do not consider that any evidence has been provided to indicate that the economic and practical viability of the current opening hours has been compromised. 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).

- 2.47 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 sufficient 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.

**Head of Appeals
NHS Resolution**