

2 February 2024

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**FILE REF:** SHA/26098

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**DECISION MAKING BODY:** Birmingham & Solihull Integrated  
Care Board (“the Commissioner”)

**PHARMACIST:** Firoz Healthcare Limited t/a Dean Pharmacy  
(FHQ02) (“the Applicant”)

**PREMISES:** 175 Weoley Castle Road, Weoley Castle,  
Birmingham, B29 5QH

**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:

Firoz Healthcare t/a Dean Pharmacy – Applicant  
Office of the West Midlands Partnership of Integrated Care Boards on behalf of Birmingham & Solihull  
Integrated Care Board

**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/>



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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 times at which it is obliged to provide pharmaceutical services at the above premises. The Applicant seeks to increase its core opening hours by half an hour while offering a different distribution of its opening 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:
- 2.10.1 Monday to Friday – close after mid-day at 13:30 rather than 13:00 as at present;
- 2.10.2 Monday to Friday – resume services at 14:30 rather than 16:30 as at present;
- 2.10.3 Monday to Friday – close at 17:30 rather than 19:00 as at present.
- 2.10.4 Saturday – close at 12:00 rather than 16:30 as at present.

#### Assessment

- 2.11 In this case, the Applicant provided the following information in its application form and supporting information dated 11 August 2023:
- 2.11.1 “This is an application to permanently change core opening hours.
- 2.11.2 Current core opening hours for these premises:

|                  |                                |
|------------------|--------------------------------|
| Monday to Friday | 09.00 – 13:00<br>16.30 – 19:00 |
| Saturday         | 09:00 – 16.30                  |
| Sunday           | -                              |

2.11.3 Proposed core opening hours for these premises:

|                  |                                |
|------------------|--------------------------------|
| Monday to Friday | 09:00 – 13:30<br>14:30 – 17:30 |
| Saturday         | 09:00 – 12:00                  |
| Sunday           | -                              |

2.11.4 If this is a permanent change, please state in the box below the date from which you would like the change to take effect

2.11.4.1 At least [sic] 30 days after permission granted.

2.11.5 Total number of core hours remains the same. We are changing distribution to bring it up to date with our organisation and to allow us to cover our core hours during emergency such as covid period.

2.11.6 We are not looking to change the current provision at all during the weekdays.

2.11.7 However we would like an option to reduce our current opening hours on Saturday from 16.30 to 14:00. There is very little need beyond 2pm and the cost of provision is significant compared to the benefit.

2.11.8 We have 3 methadone patients who turn up before 2.00pm as the pharmacy has had uncertain opening and staffing issues when it was under previous ownership. Core hours need to be sustainable and at the moment the distribution is not. We have lost turnover from 8k items per month to 4k items per month, So we need to adjust to remain viable and sustainable.[sic]

2.11.9 Local health centre millenium is not open on Saturday

2.11.10 Lookin [sic] at last 8 weeks data we see roughly 5 to 6 items between 2.00pm to 4.30pm. with locum cost at £30 to £35.00 per hour plus staff We are looking at roughly £200 cost in total for the 2.5h to and this is not sustainable.

2.11.11 This is by no means certain or decided upon, but I would like the option to be able to do this.

2.11.12 For other services such as counter advice, EHC

2.11.13 We do have another pharmacy (Kings pharmacy) which is minute walk and open till 4.00pm and another Pharmacy Medipharma B29 6JE is open till 6pm on Saturday (verified from NHS profile and Google opening hours)"

2.12 In a letter to the Applicant dated 22 September 2023 the Commissioner stated:

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

2.12.2 Committee agreed to refuse the application as it doesn't meet paragraph 24(1) a or 24(1) b of the regulation.

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

2.12.4 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—

2.12.4.1(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

2.12.4.2 **Not met – The existing level of provision would not be maintained.**

2.12.4.3(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 maintained.

2.12.4.4 **Not met – A sustainable level of adequate service provision would not be maintained.**

2.12.5 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.appeals@nhs.net](mailto:nhsr.appeals@nhs.net) or:

Primary Care Appeals  
NHS Resolution  
8th Floor  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

2.13 In a letter to NHS Resolution dated 17 October 2023 the Applicant stated:

2.13.1 “I believe that NHSE West Midlands’ application of test around core hours has been incorrect and too rigid.

2.13.2 If anything the change in regulations was to allow flexibility in distribution of core hours to allow for lunch breaks etc. to ease the burden and reduce unplanned closures.

2.13.3 We are making minor adjustments to meet our new business continuity obligations under the regulations.

2.13.4 Pharmacies are a business and engage where there is demand. I have been quite open about low demand on Saturday after 2 pm and that is the only amendment we may make although we are not proposing to do so now.

2.13.5 However with core hours offer till 2pm on Saturday will ensure there is still adequate over [sic] on Saturday.

2.13.6 Our prescriptions overwhelmingly come from two sources Millenium Medical Centre, 121 Weoley Castle Road and Weoley Park Surgery, 112 Weoley Park Rd, Selly Oak, Birmingham B29 SHA.

2.13.7 Both are open till 6.30pm during weekdays but closed during weekends. So there is no dispensing demand on Saturday for scripts generated on Saturday post 2pm.

2.13.8 Looking at our dispensing information. There has been dispensing of roughly average of 15 prescriptions per month post 2pm but these are for prescriptions

generated on other days i.e. delayed dispensing. If and when the new opening times are published this would be absorbed to pre 2pm dispensing.

- 2.13.9 We appreciate dispensing is not the only service pharmacies offer and contend that opening till 2pm provides adequate cover.
- 2.13.10 Current Birmingham and Solihull PNA considers essential services only as being necessary for the provision of pharmaceutical services and therefore that should be the only test and in addition weekend cover is provided by urgent Care Center, 15 Katie Rd, Selly Oak, Birmingham B29 6JG from with [sic] and adjacent pharmacy which is open till 7pm during weekdays and till 6.00pm on Saturdays.
- 2.13.11 The proposal is to ensure a sustainable future service. So although economics may not come into regulation, the test would require the committee to make a judgment on the need and sustainability of the service.
- 2.13.12 NHSE has sufficient assurance that the change in hours will maintain the adequate provision of pharmaceutical services that continue to meet the needs of patients and other users of pharmacy.
- 2.13.13 There are two pharmacies within 100m which are open till 6.30pm and another pharmacy, Medipharma Pharmacy within the same neighbourhood, Medipharma, on the main transport routes which is open till 7.00pm during weekdays and 6.00pm on Saturdays. (please see photo attached. Dean pharmacy is shown as Lloyds pharmacy as that was the previous name).
- 2.13.14 In considering the two specific matters set out in paragraph 24(1), Schedule 4 of the 2013 regulations:
- 2.13.14.124.-(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-
- 2.13.14.2(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
- 2.13.15 I am not proposing to change the number of core hours.
- 2.13.16 I am not proposing to change my opening hours.
- 2.13.17 There are no local hours plan or directions outlining the local need which I am failing to meet, and we have not been issued with any directions under regulation 65 for set time and set opening hours. Consequently there needs to be some flexibility to allow providers to adjust the hours without compromising service and NHSE.
- 2.13.18 We are not doing any specific service which is different from other pharmacies other Needle exchange. [sic] We do not provide that service in the first or last hour of the day for staff security and other end of day processing needs.
- 2.13.19 PNA lists an average of 24 pharmacies per 100,000 people which is more than the national average and furthermore adequate provision of current and future needs.

- 2.13.20 Local Bsol PNA lists essential all services as necessary and other services as offering choice and improvements. We do not provide any local sexual health services which would be compromised.
- 2.13.21 Consequently I disagree that the existing needs would not be met.
- 2.13.21.1 (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 maintained.
- 2.13.22 I disagree with the finding.
- 2.13.23 **Not met- sustainable level of adequate service provision would not be maintained.**
- 2.13.24 The demand for pharmaceutical services has declined from an average of 8,000 items per month. We are now dispensing nearly half the items per month resulting in the sale of the pharmacy by a multiple chain.
- 2.13.25 So my reason for proposing the change is to make the service more sustainable esp.[sic] during emergency or pandemic situations and to provide an option to cut costs on Saturday to be viable and sustainable should the activity between 2.00pm to 4.30pm remain the same. Currently the supplementary hours are sandwiched between core hours, and this is not economically sustainable if we have workforce or other business continuity issues.
- 2.13.26 The arrangements proposed provide the same level of cover but in a more efficient manner. The distribution of hours is minor and I hope the committee considers that enough information is available to allow it to come to a favourable determination.
- 2.13.27 I therefore request the resolution committee to overturn the decision of the local NHSE office and redetermine the application to re-distribute the core hours."
- 2.14 In a letter to NHS Resolution dated 27 October 2023 the Commissioner stated:
- 2.14.1 "We have attached the application paper that was presented to the meeting, redacted agenda for the meeting, decision that sent to the Contractor, application sent by the Contractor and redacted minutes for the meeting.
- 2.14.2 We have no further comments."
- 2.15 By letter to both parties dated 25 October 2023, NHS Resolution noted that the ICB's decision letter dated 22 September 2023 referred to Schedule 4, Part 3, Paragraph 24(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as being the regulatory test against which the application was considered. NHS Resolution pointed out that Schedule 4, Paragraph 24 concerns 'Matters to be considered when issuing directions in respect of pharmacy premises core opening hours'. An application to change core hours would normally be considered under Schedule 4, Paragraph 26 'Determination of pharmacy premises core opening hours instigated by the NHS pharmacist'. The parties were invited to provide representations regarding the specific matter above, which should be provided together with representations regarding the appeal.
- 2.16 In a letter to NHS Resolution dated 28 November 2023 the Applicant stated:
- 2.16.1 "My apologies I am a couple of days late in sending this email as I had understood incorrectly as response deadline date to be 28.11.23

- 2.16.2 I am not introducing any new facts but wish to include some information which the committee may find helpful:
- 2.16.2.1 there is 12 pharmacies [sic] within the neighbourhood which are open during weekdays most until 18:00 pm;
- 2.16.2.2 there are two 100hrs pharmacy contracts within miles of the site, Pittman Pharmacy B31 JR and Ridgeacre Pharmacy B32 2TJ;
- 2.16.2.3 we carried out an audit during weekdays from 23.10.23 to 18.11.23 from 18:00 to 19:00 by inhouse staff between the hours of 18:00 to 18:30 there were 3 prescriptions ,15 over the counter sales,2 instances of advice and no ehc and no CPCS;
- 2.16.2.4 between hours of 18:30 to 19:00 there were just two instances of OTC advice;
- 2.16.2.5 on Saturdays we had no prescriptions after 2pm ,13 Medicine purchases ,11 instances of advice, and no EHC sale or CPCS.”
- 2.17 In a letter to NHS Resolution dated 8 December 2023 the Applicant stated:
- 2.17.1 “Thank you for your information and I hope to enter the following comments on the minutes of PSRC committee NHS England determination.
- 2.17.2 The total number of core hours are to remain the same & redistributed into a sustainable pattern because currently the supplementary hours were squeezed between core hours and this is not sustainable.
- 2.17.3 The minutes from PSRC suggest that I was proposing to close early Monday to Saturday this is not correct. Opening hours were to remain the same and that is why the supplementary [sic] hours were changed to deliver the same opening hours as current.
- 2.17.4 The application was considered under Schedule 4 paragraph [sic] 24 and this was not appropriate test.
- 2.17.5 Although there may not have been unplanned closure, the current business was closing during lunchtime due to security and workforce issues and working behind closed door.
- 2.17.6 NHS England has not issued any directions for extended core hour cover under Schedule 4 paragraph 26(4) or consulted the LPC to that effect so there is adequate cover.
- 2.17.7 I attach a screen shot of nearby pharmacies with extended opening hours at 1.3 and 1.4 miles and Pitman pharmacy is a 100hr pharmacy contract.
- 2.17.8 The correct test should be Schedule 4 paragraph 26 under this test we have reasonably supplied any information requested and as per para 26(2). I am proposing to keep the same hours.
- 2.17.9 "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 at P's pharmacy premises in a way that—
- 2.17.9.1(a)reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week (but not those required under any 100 hours condition); or

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

2.17.10 (2) 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 any changes to the needs of the people in its area, or other likely users of the pharmacy, for pharmaceutical services that are material to the application.

2.17.11 (3) The NHSCB must determine the application within 60 days of receiving it (including any information required of P in accordance with sub-paragraph (2)).

2.17.12 (4) When it determines the application, the NHSCB must—

2.17.12.1(a) issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs (5) and (6) and which has the effect of either granting the application under this paragraph or granting it only in part;

2.17.12.2(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 (5) and (6); or

2.17.12.3(c) either—

2.17.12.3.1(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), where this has the effect of granting the application under this paragraph or granting it only in part, or

2.17.12.3.2(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.

2.17.13 NHS England was at liberty to grant the application in part and argue where it was not satisfied .I don't have such information and a complete refusal is equivalent to dictating which days and what times I may deliver those core hours which is at odds with paragraph 26(5)."

2.18 The Applicant further provided details of the location and opening hours of two existing pharmacies.

2.19 I note the following:

2.19.1 The Applicant's core opening hours total 40 hours and the Applicant proposes to increase its opening hours by half an hour and redistribute those core opening hours pursuant to paragraph 26 of Schedule 4. The Applicant proposes:

2.19.1.1 Monday to Friday – close after mid-day at 13:30 rather than 13:00 as at present;

2.19.1.2 Monday to Friday – resume services at 14:30 rather than 16:30 as at present;

2.19.1.3 Monday to Friday – close at 17:30 rather than 19:00 as at present;

2.19.1.4 Saturday – close at 12:00 rather than 16:30 as at present.

2.20 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.

2.21 The application to change the hours was made by the Applicant on 11 August 2023 and a decision was made by the Commissioner on 22 September 2023. The decision was appealed to NHS Resolution by email of 18 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.

2.22 The Applicant has sought to change the times at which it is obliged to provide pharmaceutical services under paragraph 26 of Schedule 4, Part 3, “Hours of opening”.

2.23 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.”*

2.24 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).*

2.25 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 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*

*(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.*

2.26 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.*

- 2.27 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.
- 2.28 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.
- 2.29 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.
- 2.30 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.
- 2.31 I note that the Applicant's information on appeal refers to the following services provided by its pharmacy:
- 2.31.1 Dispensing of prescriptions – mostly originating from Millenium Medical Centre, 121 Weoley Castle Road, and Weoley Park Surgery, 112 Weoley Park Road, Selly Oak, Birmingham B29 5HA;
  - 2.31.2 Needle exchange;
  - 2.31.3 Providing services (on a Saturday) to three patients requiring Methadone;
  - 2.31.4 Counter advice;
  - 2.31.5 EHC;
  - 2.31.6 Counter sales;
  - 2.31.7 CPCS.
- 2.32 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.
- 2.33 Following a request to the ICB from Primary Care Appeals to confirm which of the Applicant's current opening hours are core hours and which are supplementary hours, the ICB has provided the following information:

Current core opening hours

| Mon                        | Tues                       | Weds                       | Thurs                      | Fri                        | Sat         | Sun | Total    |
|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|-------------|-----|----------|
| 09:00-13:00<br>16:30-19:00 | 09:00-13:00<br>16:30-19:00 | 09:00-13:00<br>16:30-19:00 | 09:00-13:00<br>16:30-19:00 | 09:00-13:00<br>16:30-19:00 | 09:00-16:30 |     | 40 Hours |

#### Current Supplementary hours

| Mon         | Tues        | Weds        | Thurs       | Fri         | Sat | Sun | Total       |
|-------------|-------------|-------------|-------------|-------------|-----|-----|-------------|
| 13:00-16:30 | 13:00-16:30 | 13:00-16:30 | 13:00-16:30 | 13:00-16:30 | -   | -   | 17:30 Hours |

- 2.34 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that where 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 because the hours are reduced. 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 In its appeal letter the Applicant has stated "Our prescriptions overwhelmingly come from two sources, Millenium medical Center, 121 Weoley castle road and Weoley park surgery, 112 Weoley Park Rd, Selly Oak, Birmingham B29 5HA." Both are said by the Applicant to be open until 18:30 during weekdays.
- 2.38 In its representations on appeal, the Applicant states "We carried out a audit during weekdays from 23.10.23 to 18.11.23 from 18:00 to 19:00 by in house staff. Between the hours of 18:00 to 18:30 there were 3 prescriptions, 15 over the counter sales, two instances of advice and no ehc and no CPCS. Between the hours of 18:00 to 19:00 there were just two instances of OTC advice." With regard to the application as it relates to Saturdays, the Applicant claimed that; "There is very little need beyond 2pm and the cost of provision is significant compared to the benefit." I note the Applicant's comment "Lookin [sic] at last 8 weeks data we see roughly 5 to 6 items between 2pm to 4.30pm." On appeal, the Applicant states "Looking at our dispensing information. There has been dispensing of roughly average of 15 prescriptions per month on Saturday post 2pm but these are for prescriptions generated on other days i.e. delayed dispensing." When providing its representations the Applicant states "on Saturdays we had no prescriptions after 2pm, 13 Medicine purchases, 11 instances of advice and no EHC sale or CPCS." The Applicant stated: "We appreciate dispensing is not the only service pharmacies offer and contend that opening hours until 2pm provides adequate cover."

The Applicant stated that “For other services such as counter advice, EHC, we do have another pharmacy (Kings pharmacy) which is a minute walk and open till 4pm and another Medipharma B29 6JE that is open till 6pm on Saturday.”

- 2.39 It is clear that there are people using the pharmacy at the times the Applicant wishes to close. 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.
- 2.40 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.
- 2.41 I note the Applicant’s information on appeal, includes the following comments regarding existing pharmacies in the area:
- 2.41.1 “In addition Weekend cover is provided by the Urgent Care Centre, 15 Katie Road, Selly Oak, Birmingham B29 6JG which has an adjacent pharmacy which is open til (sic) 19:00 weekdays and 18:00 on Saturdays.”
- 2.41.2 “there are two pharmacies within 100m which are open until 18:30. and another pharmacy, Medipharma Pharmacy within the same neighbourhood. Medipharma, on (sic) the main transport routes which is open until 19:00 on weekdays and 18:00 on Saturdays.”
- 2.41.3 The Applicant’s application stated: “We do have another pharmacy (Kings pharmacy) which is minute walk and open til 4.00pm and another Pharmacy Medipharma B29 6JE is open till 6pm on Saturday (verified from NHS profile and google opening hours).”
- 2.42 When providing representations on appeal, the Applicant stated that:
- 2.42.1 “there is 12 pharmacies within the neighbourhood which are open during weekdays most until 18:00”
- 2.42.2 “there are two 100hrs pharmacy contracts within miles of the site, Pittman Pharmacy B31 2JR (open 9:00 to 21:00) and Ridgeacre Pharmacy B32 2TJ.”
- 2.43 I note the copy minutes of the ICB’s Pharmacy Services Regulations Committee of 4 September 2023 includes details of pharmacies within 1 mile of the Applicant’s pharmacy:

| FCODE | Name           | Address                                                               | CB   | Core Hours                                                  | Dispense Appliances | Advanced/Enhanced                                                                 | Distance  |
|-------|----------------|-----------------------------------------------------------------------|------|-------------------------------------------------------------|---------------------|-----------------------------------------------------------------------------------|-----------|
| FQ534 | Castle chemist | 104 Weoley Castle Road, Selly Oak, Birmingham, West Midlands, B29 5PT | BSOL | Monday-Friday 09:00-13:00; 14:00-17:30 Saturday 09:30-12:00 | Yes                 | NMS, Flu, CPCS, Hypertension, Smoking cessation, contraception, Extended care 1,2 | 0.1 miles |
| FRF17 | Kings          | 118-120 Weoley                                                        | BSOL | Monday-                                                     | Yes                 | NMS, Flu, CPCS,                                                                   | 0.1       |

|       |                                        |                                                                                      |      |                                                                                                                                |     |                                                                                                         |              |
|-------|----------------------------------------|--------------------------------------------------------------------------------------|------|--------------------------------------------------------------------------------------------------------------------------------|-----|---------------------------------------------------------------------------------------------------------|--------------|
|       | pharmacy                               | Castle Sq,<br>Weoley<br>Castle,<br>Birmingham, B29<br>5PT                            |      | Friday<br>09:00-<br>13:00;<br>14:00-<br>17:30 Satur<br>day 09:30-<br>12:00                                                     |     | Hypertension,<br>Smoking<br>cessation,<br>contraception,<br>Extended<br>care 1,2                        | Miles        |
| FDG00 | G R<br>pharmacy                        | 44-46<br>Hillwood<br>Road,<br>Northfield,<br>Birmingham, B31<br>1DJ                  | BSOL | Monday-<br>Friday<br>09:00-<br>17:00                                                                                           | Yes | NMS, Flu,<br>CPCS,<br>Hypertension,<br>Smoking<br>cessation,<br>contraception,<br>Extended<br>care 1,2  | 0.8<br>miles |
| FDX11 | Aston<br>Chemist<br>Ltd                | 4 Shenley<br>Green,<br>Shenley<br>Lane, Selly<br>Oak,<br>Birmingham,<br>B29 4HH      | BSOL | Monday,<br>Tuesday,<br>Thursday,<br>Friday<br>09:00-<br>13:00;<br>14:00-<br>18:00 Wed<br>nesday and<br>Saturday<br>09:00-13:00 | Yes | NMS, Flu,<br>CPCS,<br>Hypertension,<br>Smoking<br>cessation,<br>contraception,<br>Extended<br>care 1,2  | 0.8<br>Miles |
| FCX95 | Boots<br>Pharmacy                      | 61 Stevens<br>Avenue,<br>Woodgate<br>Valley, Birmingham<br>B32 3SD                   | BSOL | Monday-<br>Friday<br>09:00-<br>14:00<br>15:00-<br>18:00                                                                        | Yes | NMS, Flu,<br>CPCS,<br>Hypertension,<br>Extended<br>care 1,2                                             | 0.9<br>Miles |
| FJ513 | Knights<br>Jiggins<br>Lane<br>pharmacy | 17 Jiggins<br>Lane,<br>Bartley<br>Green,<br>Birmingham,<br>West Midlands,<br>B32 3LA | BSOL | Monday-<br>Friday<br>09:00-<br>17:00                                                                                           | Yes | NMS, Flu,<br>CPCS,<br>Hypertension,<br>Smoking<br>13essation,<br>contraception,<br>Extended<br>care 1,2 | 1 mile       |

- 2.44 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).
- 2.45 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 10 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.
- 2.46 I am mindful that supplementary hours may be altered by the pharmacy by giving notice to the Commissioner in accordance with paragraph 23(6)(a) of Schedule 4 without the need to make an application to the Commissioner. On this basis, I have not placed

weight on the provision of pharmaceutical services by alternative providers on a weekday evening past 18:00 and on a Saturday from noon to 16:30. In doing so, I have relied upon the table at 2.43.

- 2.47 I have already noted at point 2.41 above, the Applicant's comments regarding the distances to other pharmacies, and the hours of those pharmacies.
- 2.48 The Applicant has provided no substantive information regarding access to those pharmacies for those who currently access its own pharmacy and how they might travel to find alternative pharmaceutical services. From the limited information provided to me, I am struggling to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 2.49 I have decided that it is necessary to maintain the current service provision but, due to the lack of information to show that other existing pharmacies are reasonably accessible during the hours the Applicant's pharmacy proposes to be closed, I am not satisfied that there will be maintenance of the existing level of service provision, by virtue of other pharmacies in the area.
- 2.50 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".*
- 2.51 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.
- 2.52 In support of its application the Applicant claimed that "There is very little need beyond 14:00 [on a Saturday] and the cost of provision is significant compared to the benefit." 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.
- 2.53 The Applicant claims it's Saturday costs for locums are "At a cost of £30 to £35.00 per hour plus staff, gives roughly £200 cost in total for the 2.5 hours".
- 2.54 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, I consider that no evidence in the form of management accounts has been put forward to support the Applicant's statement regarding the economic sustainability of the pharmacy. No evidence of costs for locums at different times has been provided. There is no explanation as to why locums rather than employees have to be used. 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. The Applicant appears to be saying it is not sustainable to keep paying locums to cover these hours but it has not presented evidence that suggests these fees are compromising the economic viability of its operations at the weekend or otherwise.
- 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. 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. 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 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**