

7 February 2024

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

FILE REF: SHA/26100

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

DECISION MAKING BODY: NORTH EAST LONDON
INTEGRATED CARE BOARD (“the
Commissioner”)

PHARMACIST: SHEAV CHEM LTD T/A PROCARE
PHARMACY (“the Applicant”)

PREMISES: 5 WARWICK PARADE, BELMONT CIRCLE,
HARROW, HA3 8SA

**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:

Sheav Chem Ltd t/a Procure Pharmacy,
North East London ICB

Advise / Resolve / Learn

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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 Redistribute its core opening hours from the existing 6 hours on Monday - Friday (allocated 09:00 – 12:00 and 18:00 – 21:00), Saturday (09:00 – 12:00 and 16:00 – 19:00) and Sunday (11:00 – 13:00 and 14:00 – 16:00) to Monday – Friday hours opening 09:00 – 17:00 with no weekend core hours.

Assessment

- 2.11 In this case, the Applicant provided the following information in its application form and supporting information dated 27 June 2023:
- 2.11.1 "This is an application to permanently change core opening hours.
 - 2.11.2 Current opening hours for these premises:

Monday	9am – 12noon 6pm – 9pm
Tuesday	9am – 12noon 6pm – 9pm
Wednesday	9am – 12noon 6pm – 9pm
Thursday	9am – 12noon

	6pm – 9pm
Friday	9am – 12noon 6pm – 9pm
Saturday	9am – 12noon 4pm – 7pm
Sunday	11am – 1pm 2pm – 4pm

2.11.3 Proposed core opening hours for these premises:

Monday	9am – 5pm
Tuesday	9am – 5pm
Wednesday	9am – 5pm
Thursday	9am – 5pm
Friday	9am – 5pm
Saturday	Nil
Sunday	Nil

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

2.11.5 Yes, expected date of change 1 August 2023.

2.11.6 “Reasons for change:

Unfriendly hours;

Pharmacist / Staff shortage issue with evening and weekend hours;

All nearby surgeries closes by 6.30pm and out of hours services are 8am – 9pm;

Nearest pharmacy is (less than 0.1 mile) – open til [sic] 8pm weekdays and 9am – 6pm on Saturday;

Harrow Pharmacy near us is open 0730 – 1030pm (Mon – Fri (0800–0900pm (Sat) and 0900 – 0900pm (Sun);

We will be offering FREE prescription delivery services to all nearby areas 6 days a week (including care home/house bound residents);

We are also installing Pharmaself24 – which will allow patient to collection prescription from pharmacy’s ATM machine 24/7 365 days a year;

Pharmaself will be able to close to 200 ready prescription bags for small and large medicines to be collected by patients;

Our supplement hours will support our core hours;

Locum rate for evening and weekend £45 per hour due to shortage of pharmacist, total 45*77 = £13,860 pharmacist cost alone plus staff, premises, rent, electricity and other cost, more than 40K per month (excluding drug cost), business not sustainable even for few months.”

2.12 In a letter to the Applicant dated 28 September 2023 the Commissioner stated:

2.12.1 “I am writing in regard to your request to amend your core hours.

Your application to change core hours has been presented to the London Pharmaceutical Services Regulations Committee, who have considered your application.

The Committee have refused your request to change your hours for the following reason:

The PSRC considered any information that you have provided in your application.

Our records show that the pharmacy has:

Core opening hours between; Mon to Fri – 9am to 12pm & 6pm to 9pm. Sat 9am to 12pm & 4pm to 7pm, Sun 11am to 1pm & 2pm to 4pm.

Supplementary opening hours from; Mon to Fri – 12pm to 6pm, Sat 12pm to 4pm, Sun 10am to 11am, 1pm to 2pm & 4pm to 5pm.

Total opening hours: Mon to Fri – 9am to 9pm, Sat 9am to 7pm & Sun 10am to 5pm.

As regards the requested changes to core hours your application has been considered by the London Region Pharmaceutical Services Regulations Committee. The Committee has **refused** your application.

PSRC looked at the current service provision in this area and have noted that whilst you noted one of the nearby pharmacies as opening from 7.30am to 10.30pm on weekdays, that this has since changed, and the pharmacy is opening for less hours.

Your application mentioned that you will be offering free prescription deliveries and installing a Pharmaself 24 to allow patients to collect prescriptions from a pharmacy ATM. This is not as yet in place.

It was noted that none of the nearby pharmacies opened on Sundays or past 6pm on Saturdays.

The alternative pharmacy suggested is approx. 1.5 miles walking distance from this pharmacy, which at an average pace would take around half an hour to walk.

Amending the core opening hours would not maintain the existing level of service available for patients.

You have a right of appeal to the Secretary of State against this decision. Should you choose to appeal, you should send a concise and reasoned statement of the grounds for your appeal within 30 days of this letter to: NHS Resolution, Primary Care Appeals, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU or email nhsr.appeals@nhs.net”

2.13 In a letter to NHS Resolution dated 19 October 2023 the Applicant stated:

2.13.1 “Thank you for your email dated 28 September in relation to our application to amend core hours.

We acknowledge the refusal of our application by PSRC. We strongly feel [sic] situation has changed so much in [sic] last few years and we have factual data to show this. Additionally, surgeries have reduced their working hours and even some walk-in centres that were open 7 days a week have completely closed down. Online pharmacies have completely changed patients habits and perception and they have grown exponentially and covers large numbers of patients.

We have collected hourly data of all patients/customers visiting the pharmacy for various reasons for two weeks. We have substantial findings of behavioural changes in patients that access the pharmacy. (document attached).

As we can see from these data sets, that although there is a demand, however that's only up until 7pm or earlier. We can also see from data collected, that past 7pm we have hardly seen any patient coming for any pharmacy services. Majority of patients are either collecting medicines or coming to buy retail/OTC products. There were not even many acute prescriptions after 7pm on weekdays and after 3pm on Saturday.

Sunday was almost deserted with only retail/OTC demands. We have done some covid/flu vaccinations on weekends when it was first rolled out, however we only see handful of walk-ins and bookings via NBS. We are vaccinating maybe max 10 vaccines in weekdays and 4-5 on weekends. This is becoming completely unviable financially to sustain the business and impossible to even pay for locum (35-40 per hour) and staff cost.

Regarding collection of medicines, as we have previously stated that we are installing an ATM Robot-pharmaself 24 by Omnicell and its getting installed around 2nd week of November (email confirmation attached from Omnicell). This machine will help all those patients that wants to collect medicines past normal business hours or can use this service 24 hour day, 7 days a week and 365 days a year. Pharmaself will store 170 bags at any given time. Also, we also offer free delivering of medicines to elderly and patient in need from 1st July every single day (min 15-20 deliveries/day). Delivery free of cost unlike Former Llyod's [sic] pharmacy who was charging patients. We have substantial increase in patients requesting delivery of medicine since we have taken over. (Delivery sheets can be produced on demand, not attached due to data confidentiality)

Harrow is highly dense with number of pharmacies in close proximity. Attached number of surgeries, there [sic] opening times and served by 14 pharmacies in one mile of ProCare Pharmacy HA3 8SA along with their opening times for your reference (sheet attached). As you will see from that, pharmacies are in very close proximity to each other and nearest pharmacy is only 0 mile away and is open 9am – 8pm weekdays and 9am – 6pm Saturday. Theres not much pharmaceutical service needs compared to surgeries in this area.

There are no walk in centre/ urgent care or hospital near ProCare Pharmacy HA3 8SA. It has been 3 years now, since Belmont walk-in centre which operated 7 days a week was completely closed. So now, nearest walk-in centre for patients is 2.1 miles away, Edgware Community Hospital. This is served by various nearby pharmacies in that area.

Shortage of pharmacist and skilled labour is a major issue, especially getting locum for evening and weekend work. Locums are not ready to cover till 9pm on weekdays and Saturday 10 hours and Sunday shift.

I have attached sheet showing some of the recent comment by locum re rate they want. Also, regular pharmacy manager has resigned as not prepared to work 12 hour shift and Saturday. (word document for your reference) Pharmacy is doing only 6k items per month due to so much competitions with nearby pharmacies, how business is financially viable and to pay to locum and manager such a high rate. There is no work life balance for me, being an owner as worked 7 days a week, whole July/August, despite my younger kids school holidays. How is it mentally and physically expect from pharmacy owner? This only leads to frustrations and how can you achieve your goal of providing safe and pharmacy services to patients. ARRS funding have taken away most community pharmacist in GP surgeries in current situation.

In a summary, world has completely changed since COVID-19, especially habits and perceptions of patients/customers as numbers are dwindling into retail and pharmacy. As Online Pharmacies are flourishing and growing exponentially, number of online pharmacies has grown tremendously year on year and there's no sign of slowing down. All the overheads have increased from rates, electricity, locums Pharmacist rates are off the roof.

In highlights of all these, we are proposing redistribution of core hours and supplementary hours to keep pharmacy viable and providing excellent services to local communities.

Core hours

Monday – Friday: 9 – 5pm

Saturday: 9 – 1pm [sic]

Supplementary hours

Monday – Friday: 5 – 7pm

Saturday: 1 – 4pm

Sunday: closed or if needed 11am – 2pm

We really appreciate if you can look into this considering all facts and attached documents and if you need any further information, we are happy to provide you with the same.

14 Pharmacies in one mile distance from ProCare Pharmacy, HA3 8SA

Belmont Pharmacy – distance: 0 miles

Monday 9am to 8pm

Tuesday 9am to 8pm

Wednesday 9am to 8pm

Thursday 9am to 8pm

Friday 9am to 8pm

Saturday 9am to 6pm

Sunday Closed

K.L. Pharmacy – distance: 0.4 miles

Monday 9am to 6.30pm

Tuesday 9am to 6.30pm

Wednesday 9am to 5pm

Thursday 9am to 6.30pm

Friday 9am to 6pm

Saturday 9am to 6pm

Sunday Closed

Boots Pharmacy – distance: 0.6 miles

Monday 9am to 6pm

Tuesday 9am to 6pm

Wednesday 9am to 6pm

Thursday 9am to 6pm

Friday 9am to 6pm

Saturday 9am to 6pm

Sunday Closed

Kings Pharmacy – distance: 0.8 miles

Monday 9am to 6.30pm

Tuesday 9am to 6.30pm

Wednesday 9am to 6.30pm

Thursday 9am to 6.30pm

Friday 9am to 6.30pm

Saturday Closed

Sunday Closed

Nowells Pharmacy – distance: 1 mile

Monday 8.45am to 6.45pm

Tuesday 8.45am to 6.45pm

Wednesday 8.45am to 6.30pm

Thursday 8.45am to 6.45pm

Friday 8.45am to 6.45pm

Saturday 9am to 5pm

Sunday Closed

Wellcare Pharmacy – distance: 1 mile

Monday 9am to 7pm

Tuesday 9am to 7pm

Wednesday 9am to 7pm

Thursday 9am to 7pm

Friday 9am to 7pm

Saturday 9am to 5.30pm

Sunday Closed

Almeric Pharmacy – distance: 1 mile

Monday 9am to 7pm

Tuesday 9am to 7pm

Wednesday 9am to 7pm

Thursday 9am to 7pm

Friday 9am to 7pm

Saturday 9am to 2pm

Sunday Closed

Reems Pharmacy – distance: 1 mile

Monday 9am to 6pm

Tuesday 9am to 6pm

Wednesday 9am to 6pm

Thursday 9am to 6pm

Friday 9am to 6pm

Saturday 9am to 1pm

Sunday Closed

Harrow Pharmacy – distance: 1.1 mile

Monday 9.30am to 9pm

Tuesday 9.30am to 9pm

Wednesday 9.30am to 9pm

Thursday	9.30am to 9pm
Friday	9.30am to 9pm
Saturday	4pm to 9pm
Sunday	8am to 8pm"

2.13.2 Attached with the appeal was the following information:

2.13.2.1 Email confirmation from Omnicell of the installation of the Pharmaself 24 system;

2.13.2.2 Four Whatsapp screenshots showing discussions between Contractor and locum pharmacist regarding hourly rate.

2.13.2.3 Tables detailing patient behaviour at the pharmacy during the two week period from 1 October 2023 to 15 October 2023, condensed by NHS Resolution as below.

Monday – Friday

	Collection of eps Rx	Green/Yellow paper Rx – walk in	CPCS – minor ailment/ES	Advice/ Signposting	Covid/Flu vaccines	Supervised consumption	OTC/Retail
09:00 – 10:00	38	5		3	38	4	23
10:00 – 11:00	25	9	1	10	22	3	29
11:00 – 12:00	40	5	1	1	27	2	25
12:00 – 13:00	34	5	1		24	4	26
13:00 – 14:00	29	4		1	27	6	26
14:00 – 15:00	29	1		2	18	6	27
15:00 – 16:00	37	4			18	2	32

16:00 – 17:00	35	7			22	5	28
17:00 – 18:00	37	6			21	2	29
18:00 – 19:00	26			1	13	4	24
19:00 – 20:00	27				8	2	35
20:00 – 21:00	31				1	1	24

Saturday

	Collection of eps Rx	Green/Yellow paper Rx – walk in	CPCS – minor ailment/ES	Advice/ Signposting	Covid/Flu vaccines	Supervised consumption	OTC/Retail
09:00 – 10:00	6	2			9	2	9
10:00 – 11:00	4				6	2	4
11:00 – 12:00	5	1		1	4	1	7
12:00 – 13:00	9				3	1	7
13:00 – 14:00	6				3		5
14:00 – 15:00	5				3		6
15:00 –	5				2		7

16:00							
16:00 – 17:00	3				2		8
17:00 – 18:00	3	2					6
18:00 – 19:00	1						9

Sunday

	Collection of eps Rx	Green/Yellow paper Rx – walk in	CPCS – minor ailment/ES	Advice/ Signposting	Covid/Flu vaccines	Supervised consumption	OTC/Retail
11:00 – 12:00	6	2			5		12
12:00 – 13:00	6	1			3		11
13:00 – 14:00	2				2		11
14:00 – 15:00	5	3			9		10
15:00 – 16:00	4	1			4		5

2.14 In a letter to NHS Resolution dated 22 November 2023 the Commissioner stated:

2.14.1 “We are responding to the appeal for the above application.

As per the decision letter the application was determined and refused for the following reasons:

PSRC looked at the current service provision in this area and have noted whilst you noted one of the nearby pharmacies as opening from 7.30am to 10.30pm on weekdays, that this has since changed, and the pharmacy is opening for less hours.

Your application mentioned that you will be offering free prescription deliveries and installing a pharself24 to allow patients to collect prescriptions from a pharmacy ATM. This is not as yet in place.

It was noted that none of the nearby pharmacies opened on Sundays or past 6pm on Saturdays.

The alternative pharmacy suggested is approx. 1.5 miles walking distance from this pharmacy, which at an average pace would take around half an hour to walk.

Amending the core opening hours would not maintain the existing level of service available for patients.

Please also refer to the committee report that has been provided as additional information for this appeal. The report quotes the regulations that were reviewed.

We note that since the determination this pharmacy is now providing NMS, Fly, CPCS, Stop Smoking and Hypertension. At the time of the determination, it was quite soon after the current owner had taken over the pharmacy, and they had not at that point re-signed up for the advanced services associated with the new ODS code. The contractor has also stated that they will have a number of supplementary hours which was not within the application submitted when a determination was made.

We also note that the applicant has provided some additional information that was not available when the application was initially determined, regarding patient demand for services.

The contractor has also clarified that some of the points made in the application that were being planned have now been confirmed. For example, the pharself24 collection point. Within the additional information that has been provided the contractor shows that there is some demand for services in terms of OTC or retail. The essential service part of the contract covers more than just dispensing prescriptions, this includes self-care. At the weekend when GPs are closed, pharmacies are an important service for patients.

The distances from this site that the contractor has quoted are straight line distances rather than walking distances, these are at least half a mile in addition to the straight-line distances, this needs to be taken into account when accessing the levels of service and availability of pharmacies for patients.

The PSRC were concerned that reducing the core hours for this pharmacy would mean that the existing level of service available for patients would not be maintained and patients would find difficulty in accessing services within this vicinity.

- 2.15 In a letter to NHS Resolution dated 6 December 2023 Pharmacy Sales & Consultancy, on behalf of the Applicant, stated:

- 2.15.1 "We act for Sheav Chem Limited and have provided a letter of authorisation from our clients accordingly.

Our clients have passed us a copy of your letter dated 1 December, as well as assorted correspondence in relation to this appeal and they have asked us to submit final observations on their behalf.

We are conscious that any information submitted at this stage must be limited to rebuttal of comments received in respect of our client's appeal. We therefore refer to the letter dated 22nd November from the London Dentistry, Optometry and Pharmacy Commissioning Hub (on behalf of the relevant ICB) and respond to the [sic] comments in that letter accordingly.

Taking each of the bullet points provided on the first page of the letter:

'PSRC looked at the current service provision in this area and have noted that whilst you noted one of the nearby from 7.30am to 10.30pm on weekdays, that this has since changed, and the pharmacy is opening for less hours.'

At the time our client's application for a change of core hours was submitted, the Harrow Pharmacy (73 Station Road, Harrow) was open from 7.30am to 10.30pm in accordance with the requirements of its 100 hour contract. The ICB is correct in saying that this pharmacy has subsequently reduced its hours, however these new hours are as follows:

Monday to Friday 9.30am to 9.00pm

Saturday 4.00pm to 9.00pm

Sunday 8.00am to 8.00pm

The hours our client propose to remove from their core hours are:

Monday to Friday 5.00pm to 9.00pm – The Harrow Pharmacy remains open for these despite the recent reduction.

Saturday 9.00am to 12.00pm and 4.00pm to 9.00pm – Belmont Pharmacy, located less than 100m away opens on Saturday until 6.00pm and the Harrow Pharmacy is open until 9.00pm.

Sunday 11.00am to 1.00pm and 2.00pm to 4.00pm – The Harrow Pharmacy is open for all these hours.

We discuss the accessibility of the alternative pharmacies later but the specific point here, in response to the comment made by the ICB, is that the recent change in opening hours at The Harrow Pharmacy does not diminish our client's case that there is alternative provision. That pharmacy is still contractually obliged to open until 9pm, 7 days a week, so remains a reasonable alternative provider if our clients are permitted to change their core hours.

'Your application mentioned that you will be offering prescription deliveries and installing a pharماسelf24 to allow patients to collect prescriptions from a pharmacy ATM. This is not as yet in place.'

Our client provided evidence with their appeal (and this is referred to on the second page of the letter from the ICB), that the installation of the Pharmed24 machine was imminent. I can confirm that this machine is now installed and is operational.

'It was noted that none of the nearby pharmacies opened on Sundays or past 6pm on Saturdays.'

'The alternative pharmacy suggested is approx. 1.5 miles walking distance from this pharmacy, which at an average pace would take around half an hour to walk.'

The first statement is subjective in its use of the word 'nearby'. In their appeal letter our clients provided information in respect of the opening hours of other pharmacies within a distance of approximately one mile. They also mentioned Tesco and Morrisons pharmacies, both of which open 7 days a week, including 6 hours on a Sunday.

We have therefore considered the accessibility of alternative pharmacies for patients who wish to access pharmaceutical services.

Firstly it is important to have regard to the survey carried out by our client from the 2nd to the 15th of October inclusive. This showed that, after 7pm on weekdays, patient visits to the pharmacy were almost exclusively limited to the collection of dispensed medication and the purchase of OTC or retail products. There were very occasionally vaccinations provided in the evening, but this is a seasonal service so for most of the year this service is not required.

Similarly, on Saturdays the only demand after 6pm was for prescription collection or OTC purchases. On the Sundays surveyed, demand was similar throughout the day, but was very limited.

Secondly, it should be noted that the nearest alternative pharmacy, namely Belmont Pharmacy, is located less than 100m away. This can be seen in the image below, where both pharmacies are marked with a red pharmacy icon.

It is very clear that patients who currently attend our client's pharmacy, will easily be able to access Belmont Pharmacy if required, no matter what their means of transport as it is less than one minute's walk away.

Belmont Pharmacy opens from 9.00am to 8.00pm from Monday to Friday and 9.00am to 6.00pm on Saturday. Every NHS service that is offered by our clients' pharmacy is also offered by Belmont Pharmacy.

For patients who are accustomed to accessing our clients' pharmacy after 5pm on weekdays, or on Saturdays, they will be able to access Belmont Pharmacy for all but the last hour of the day compared to the hours they currently trade i.e. from 8pm to 9pm Monday to Friday and 6pm to 7pm on Saturday.

As the survey showed, at this time the only meaningful services provided were collection of dispensed medicines, OTC purchases and vaccinations.

In terms of collection, as described earlier, our clients have now installed a Pharmaself collection machine that will be available 24 hours a day for patients to collect dispensed medication. This will *improve* access for collection compared to the current situation.

As far as OTC purchases are concerned, many of these are for General Sales List products that can be obtained from numerous convenience stores in the area such as Tesco Express which is 50m away from our clients pharmacy and opens from 6am to 11pm 7 days a week. Pharmacy only medicines are available from other pharmacies in the wider area.

In the case of vaccinations, as discussed earlier these are seasonal and pharmacy contractors are under no obligation to provide them. They are not carried out on an urgent basis, so patients who wish to receive a vaccination will typically plan to have this in advance and will therefore visit the pharmacy of their choice during its opening hours. If they find that the pharmacy is closed and they do not wish to find an alternative provider, they will simply visit at another time.

However, for patients who do still wish to access pharmaceutical services after 8pm on a weekday, 6pm on a Saturday or on Sunday we have considered alternative provision.

As discussed earlier, the nearest alternative pharmacy open during these hours is The Harrow Pharmacy. As with Belmont Pharmacy, The Harrow Pharmacy provides the same contractual NHS services as our client.

As the ICB has suggested, the journey to this pharmacy on foot from our clients' pharmacy is slightly further than the 1.1 miles in a straight line. The actual distance is 1.4 miles, a walk of 32 minutes as can be seen on the map below. Of course most people do not live in Belmont Circle, they live in the residential areas around this part of London, so their journey from home is unlikely to take them past our clients' pharmacy and may well be shorter.

We have considered public transport options (source www.tfl.gov.uk) and found that bus route 186 travels directly from Belmont Circle to The Harrow Pharmacy, and there are stops on both sites [sic] of the road within 250m of The Harrow Pharmacy.

This route runs for 7 days per week until around midnight each day with buses running every 10-15 minutes Monday to Saturday and every 20 minutes on Sunday. The journey time is 11-12 minutes. The bus route is shown below, with our clients pharmacy marked with a blue star and The Harrow Pharmacy marked with a green star.

For motorists, the journey from Belmont Circle to The Harrow Pharmacy would take 5-10 minutes depending on traffic conditions and on-road parking is provided almost immediate outside the pharmacy on a pay & display basis (although there is no charge after 6.30pm). Alternatively patients travelling by car may prefer to use the Tesco Pharmacy, which is less than 100m from The Harrow Pharmacy and benefits from a large customer car park.

It is clear, therefore, that for the very limited time patients may not be able to access pharmaceutical services from Belmont Circle, within 100m of our client's pharmacy, they can access alternative provision without undue difficulty. Patients' expectations in respect of pharmaceutical services provision late in the evenings or on Sundays are that they may need to travel a little bit further to access these services. For those who do not wish, or are unable, to walk they are able to access these services within less than 15 minutes either by public transport or by car.

'Amending the core opening hours would not maintain the existing level of service available for patients.'

It is inevitable that any change in the hours for which pharmaceutical services are provided may require a small number of patients to seek alternative provision at certain times of the day. In this case it is clear that the alternative provision is such that any reduction the level of service available for patients will not be material. That being the case we disagree with this statement from the ICB.

In their letter the ICB go on to discuss the services that are now being provided by our clients that were not being provided when the application was first determined. The relevance of this statement is not entirely clear but, importantly, as we have previously described, all the services being provided by our clients at present are also provided by alternative contractors within close proximity.

Further, the ICB, quite correctly, remind the Primary Care Appeals committee that the essential services provided by pharmacy contractors are not limited to dispensing prescriptions. As we have demonstrated, not only are alternative providers easy to access, they also provide all the services provided at our client's pharmacy so the level of service provision for *all* essential services will be maintained.

We have nothing further to add at this stage but should Primary Care Appeals decide to hold an oral hearing I can confirm that our client would wish to be represented.'

2.16 I note the following:

2.16.1 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.

2.17 The Applicant proposes to:

2.17.1 Close earlier on weekdays at 5pm rather commence core hours between 6pm and 9pm;

2.17.2 Have core opening hours consistently between 9am and 5pm on weekdays, rather than supplementary hours over the lunchtime period; and

2.17.3 No longer open on either Saturday or Sunday.

2.18 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.

2.19 The application to change the hours was made by the Applicant on 27 June 2023 and a decision was made by the Commissioner on 28 September 2023. The decision was appealed to NHS Resolution by email of 19 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.

2.20 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".

2.21 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."

2.22 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).

2.23 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.

2.24 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.

2.25 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.

2.26 The Applicant provides the following reasoning for its application:

“Unfriendly hours. Pharmacist/staff shortage issue with evening & weekend work.”

and

“Although there is a demand, however that’s only up until 7pm or earlier... All the overheads have increased from rates, electricity, locum pharmacist rates are off the roof.”

2.27 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.

2.28 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.

2.29 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.

- 2.30 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.
- 2.31 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.
- 2.32 However, the Applicant is applying to change the days and times that services are provided. Taking the weekend as an example, the level of service provision at the Applicant's premises on both a Saturday and Sunday 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.
- 2.33 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.
- 2.34 The Applicant has provided data to demonstrate the footfall taking place at the pharmacy premises throughout the two week period (from 1 October 2023 to 15 October 2023) spanning the time between the decision being issued by the Commissioner and the Applicant submitting its appeal to NHS Resolution. The data depicts what services are offered by the pharmacy as well as the services which were utilised by patients on both weekdays and the weekends.
- 2.35 From the information provided, it is clear that there are some people using the pharmacy at the times the Applicant wishes to close, albeit low numbers and therefore I consider it necessary to maintain the existing level of service provision.
- 2.36 The Applicant has confirmed installation of a Pharmaself24 system and that this is now a functioning part of the premises since the Commissioner reached its determination. I am mindful that whilst patients would be able to use this system to obtain any pre-arranged prescriptions during any time that the Applicant's pharmacy is closed, pharmaceutical services are not limited to obtaining prescriptions and so I will need to consider other services offered.
- 2.37 I need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision. The Applicant cannot maintain this as it is changing its hours, but I note the undisputed information from the Applicant with regard to other pharmacies in the area that, between them, have opening hours during the times that the Applicant is proposing to close, namely Harrow Pharmacy and Belmont Pharmacy.
- 2.38 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).

- 2.39 The Applicant has provided information regarding access to those pharmacies for those who currently access its own pharmacy and how they might travel to find alternative pharmaceutical services. I have not been provided with any specific information, but it is likely that there will be a mix of people who drive to the Applicant's pharmacy, those who use public transport and those who walk. The Applicant has described the pharmacies in the area indicating how far away certain pharmacies are and whether there is parking available as well as providing some information relating to public transport links.
- 2.40 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. 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.
- 2.41 I note that Belmont Pharmacy is "*less than 100m away*" and, upon considering the map provided by the Applicant, do not believe that there is a conceivable reason as to why patients would experience any difficulty accessing this alternative pharmacy if the Applicant's proposal to change hours were to be approved. I further note the information provided by the Applicant that details the opening hours of Belmont Pharmacy, namely that they operate 9am to 8pm on weekdays and 9am to 6pm on a Saturday.
- 2.42 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 outside of the core hours offered by other pharmacies in the area.
- 2.43 Belmont Pharmacy has core hours limited to 9am to noon and 1pm to 6pm, Monday to Friday. I am, however, of the view that patients would be able to access pharmaceutical services up to 6pm on weekdays. Belmont Pharmacy provides NMS, Flu, CPCS, Hypertension and Stop smoking services. I therefore need to consider if patients would be able to access services reasonably between 6pm to 9pm on weekdays, on Saturdays (9am to noon and 4pm to 7pm) and on Sundays (11am to 1pm and 2pm to 4pm) if the Applicant's application were to be approved.
- 2.44 I note Boots Pharmacy at 66-72 High Street has core hours on weekends from 10am to 2pm and 3pm to 5pm. Whilst not identical to the Applicant's current weekend core hours, it provides NMS, Flu, CPCS and Hypertension. On the basis of formerly being a 100 hour pharmacy, Harrow Pharmacy appears to have core hours from 9.30am to 9pm, Monday to Friday, Saturday 4pm to 9pm and Sunday 8am to 8pm. However, I have not been told what services it provides. I shall consider this point later.
- 2.45 I note that the distance to Boots Pharmacy is 0.8 miles (as cross flies) and Harrow Pharmacy is 1.1 miles (as the crow flies) and that the walking route to the latter pharmacy would be approx. 1.4 miles and take around 32 minutes. Although I have considered the map provided by the Applicant detailing a potential route from the Applicant's pharmacy to Harrow Pharmacy, no information has been provided as to the conditions of the route to both pharmacies i.e. are they on an incline or via well lit pathways. I am of the view, however, that some patients may be unable to walk to either and a majority of patients would be unlikely to make the 32 minute walk to access pharmaceutical services at Harrow Pharmacy.
- 2.46 I then moved to consider if Boots Pharmacy and Harrow Pharmacy are accessible to patients that may be accessing pharmaceutical services via private transport or car.
- 2.47 I have considered the information provided by the Applicant stating that a drive from the Applicant's pharmacy to Harrow Pharmacy would take in the region of 5 – 10 minutes and that there is pay & display parking "*almost immediately outside*", or that

there is an alternative pharmacy to this “less than 100m from Harrow Pharmacy” with a large customer car park located at Tesco Pharmacy.

- 2.48 When considering whether patients would be able to access an alternative pharmacy via public transport, I have before me the information provided by the Applicant with regard to the bus route 186. Although I have not been provided with a copy of the complete bus timetable or route, I note the Applicant’s undisputed comment that these buses run every 10 – 15 minutes Monday to Saturday and every 20 minutes on Sunday, and that the route from the Belmont Circle (where the Applicant’s pharmacy is located) to the bus stop closest to Harrow Pharmacy, being approximately 250m away on both sides of the road. I further note the comment that a bus journey from Belmont Circle to Harrow Pharmacy would take no more than 12 minutes, dependant on traffic.
- 2.49 Returning to the issue of services used by patients at the Applicant’s pharmacy at the times it now wishes to close, these are predominantly dispensing, Covid and flu vaccinations and OTC. I do not know the breakdown of Covid and flu vaccinations and am unclear if Belmont, Boots and Harrow Pharmacy provide this service. There are two instances of Advice/Signposting which is an essential service for all pharmacies. However, there were 14 instances of supervised consumption on weekday evenings past 6pm and Saturday mornings 9am to noon.
- 2.50 From the information provided, I note that Belmont and Boots pharmacies do not currently provide supervised consumption, nor do I have the information before me as to the services provided by Harrow Pharmacy. Therefore I am unable to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies as depicted in paragraph 24(1)(a).
- 2.51 I have therefore decided that it is necessary to maintain the current service provision but, due to the effect of a lack of information about the services being provided by all alternative pharmacies during the hours the Applicant is proposing to close, I am not satisfied that there will be maintenance of the existing level of service provision, by virtue of other pharmacies in the area.
- 2.52 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”.*
- 2.53 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.
- 2.54 The Applicant states that *“shortage of pharmacist and skilled labour is a major issue, especially getting locum for evening and weekend work”* and that *“locums are not ready to cover till [sic] 9pm on weekdays and Saturday 10 hours and Sunday shift”*. Further, the Applicant states that the *“world has completely changed since COVID-19, especially habits and perceptions of patients/customers as numbers are dwindling into retail and pharmacy... Overheads have increased from rates, electricity, locums pharmacist rates are off the roof”*. 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 and if I determine that it is, then I need to consider if the amended hours are such to maintain a sustainable level of service provision.
- 2.55 On the point of whether maintain the existing level of service provision is not a realistically achievable outcome, I note that the Applicant has provided screenshots of

WhatsApp messages pertaining to be between the Applicant and potential locum pharmacists. These screenshots depict that the Applicant is offering a rate of £30 p/h for locum pharmacists which is not the rate acceptable to the four separate chat logs provided as part of the appeal process. Whilst these screenshots do provide some evidence towards the Applicant's claim that "*locums are not ready to cover*", I am of the view that these four screenshots show that there are indeed locum pharmacists willing to provide cover to the pharmacy during the hours requested, however this is not at the price point preferred by the Applicant. In terms of increasing overheads, I have not been provided with any information to support the point.

- 2.56 I note that the Applicant states that its "*regular pharmacy manager has resigned as not prepared to work 12 hour shifts*" and as a result of this resignation, alongside the claimed high rates demanded by locum pharmacists, the Applicant, as the owner of the pharmacy, has been required to work 7 days a week to provide cover. While I have some sympathy towards the Applicant, I have not been provided with any information to demonstrate that the pharmacy has suffered unforeseen closures as a result of not obtaining pharmacist, locum or otherwise, cover during its core opening hours which might suggest that maintaining the current service provision during the relevant hours is not realistically achievable.
- 2.57 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).
- 2.58 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**