

28 February 2024

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10 South Colonnade
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FILE REF: SHA/26124

Tel: 0203 928 2000
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DECISION MAKING BODY: NHS Birmingham and Solihull ICB
("the Commissioner")

PHARMACIST: Walsall Road Partnership
("the Applicant")

PREMISES: Tower Hill Pharmacy
435 Walsall Road
Perry Barr
Birmingham
B42 1BT

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:

Temple Bright LLP on behalf of the Applicant
Office of the West Midlands ICBs

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 application indicates that it currently has core opening hours totalling 100 hours per week.
- 2.10 The Applicant wishes to:
- 2.10.1 Open 30 minutes earlier, Monday to Friday, from 6.30am instead of 7am;
- 2.10.2 Close 1 hour later, Monday to Saturday, at 10.30pm rather than 9.30pm; and
- 2.10.3 Open 3 hours later at 11am instead of 8am, and close 5 hours earlier at 4pm instead of 9pm, on Sunday.

Assessment

- 2.11 In this case, the Applicant provided the following information in its application form dated 29 September 2023:
- 2.11.1 “This is an application to permanently change core opening hours.
- 2.11.2 Current opening hours for these premises:

Monday	07:00 – 21:30
Tuesday	07:00 – 21:30

Wednesday	07:00 – 21:30
Thursday	07:00 – 21:30
Friday	07:00 – 21:30
Saturday	07:00 – 21:30
Sunday	08:00 – 21:00

2.11.3 Proposed core opening hours for these premises:

Monday	06:30 – 22:30
Tuesday	06:30 – 22:30
Wednesday	06:30 – 22:30
Thursday	06:30 – 22:30
Friday	07:00 – 22:30
Saturday	07:00 – 22:30
Sunday	11:00 – 16:00

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

2.11.4.1 12 November 2023

2.11.5 Granting this application would maintain, as necessary, the existing level of service provision for people in the pharmacy or other likely users of the pharmacy premises.

2.11.6 The pharmacy is located on Walsall Road and is collocated with the Tower Hill Partnership Medical Practice. Due to its co-location with the Tower Hill Partnership Medical Practice, most prescriptions that are dispensed by the pharmacy (and, consequently, patients who use the pharmacy) are registered with the Medical Practice. In fact, around 85% of the prescriptions dispensed by the pharmacy originate from the Tower Hill Partnership Medical Practice.

2.11.7 The Medical Practice is open from 8am to 8pm Monday, Tuesday and Thursday and from 8am to 6.30pm on Wednesday and Friday. The Medical Practice is closed on Saturday and Sunday.

2.11.8 As a result, the great majority of the pharmacy's patients access the pharmacy either during the opening hours of the surgery (ie after they have seen their GP or visited the surgery for some other reason) or on a Saturday. The pharmacy has very few patients who access the pharmacy outside of the surgery times and, in particular, on Sunday.

2.11.9 This application is therefore made to re-distribute the pharmacy's opening hours to increase the opening hours during the working week and to reduce the hours on a Sunday to take into account the pattern of usage of the pharmacy by its patients.

2.11.10 In particular, the application seeks to reduce the current Sunday hours of 8am to 9pm to 11am to 4pm. This will maintain necessary access to pharmaceutical services on a Sunday for those who require it but will remove hours when the pharmacy is little used.

2.11.11 In order to support this application, we carried out a survey of the pharmacy's usage between the hours of 8am to 11am and 4pm to 9pm on a Sunday. The survey confirmed our anecdotal experience that very few patients choose to access the pharmacy at those times.

- 2.11.12 In relation to the dispensing of NHS prescriptions, the pharmacy dispenses in the region of 26,000 items per month, with over 1,300 items dispensed per day from Monday to Friday. The prescription numbers dispensed on weekends are much lower, particularly on a Sunday. In August, for example, the pharmacy dispensed only 50 prescriptions over the 4 Sundays of August, representing fewer than 0.2% of the total number of items dispensed that month. Those prescriptions could easily be dispensed during the remaining Sunday hours that we propose or at other times during the week – since the Medical Practice is closed on a Sunday then the prescriptions dispensed on a Sunday are almost always repeat, non-urgent. prescriptions.
- 2.11.13 In terms of other services, there is very little provision of enhanced and advanced services. on a Sunday and very few people come into the pharmacy in order to purchase a medicinal product. By way of example, the smoking cessation service offered by the pharmacy does not run on a Sunday and flu vaccination services are seasonal and patients attend the pharmacy during the scheduled opening times (so would, of course, attend on a Sunday during the amended hours if this application were to be granted). Again, any patients who do currently choose to access the pharmacy on a Sunday could easily do so during the remaining hours that we propose to provide.
- 2.11.14 Should any patients require urgent access to pharmaceutical services either between 9am [sic] and 11am or 4pm to 9pm on Sunday (ie, the hours that we are seeking to re-distribute), there are other pharmacies in the area that are open at these times.
- 2.11.15 By way of example, Heathfield Pharmacy is located 2 miles from Tower Hill Pharmacy and is open from midday until 11pm on a Sunday. Heathfield Pharmacy is only a 6-minute drive from Tower Hill Pharmacy. Heathfield Pharmacy is also connected to Tower Hill Pharmacy by bus route 52, which stops directly outside both pharmacies and with services every 30 minutes on a Sunday running from 9am to 11pm.
- 2.11.16 In relation to Sunday morning openings (from 9am to 11pm), Al-Shifa Pharmacy is located close to Heathfield Pharmacy (2.3 miles from Tower Hill Pharmacy) and is similarly accessible by car and by bus.
- 2.11.17 In conclusion, therefore, our application would maintain, as necessary the existing level of pharmaceutical service provision for the reasons given above: the pharmacy is little used on a Sunday and that use could easily be accommodated during the proposed, amended Sunday opening times and there are other pharmacies locally that are available to patients who may require access to pharmaceutical services during the remaining Sunday hours.”
- 2.12 In a letter to the Applicant dated 14 November 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—

2.12.5 (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

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

2.12.7 (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.

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

2.12.9 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 or:

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

2.13 In a letter to NHS Resolution dated 13 December 2023 the Applicant stated:

2.13.1 “We act for Walsall Road Partnership Limited. On behalf of our client we write to appeal a decision of NHS England to refuse our client’s application to amend its core hours. The decision was notified to our client by letter dated 14th November 2023.

2.13.2 We enclose, with this letter of appeal, a copy of our client’s change of core hours application form and a copy of NHS England’s decision letter.

2.13.3 Our client’s ground of appeal is that NHS England failed to give any reasons for its decision.

2.13.4 As NHS Resolution will note from the attached application form, our client applied to vary its core hours from 7am to 9.30pm Monday to Saturday and 8am to 9pm on Sunday to 6.30am to 10.30pm Monday to Thursday, 7am to 10.30pm Friday and Saturday and 11am to 4pm on Sunday.

2.13.5 In support of its application, our client noted that its pharmacy is located on Walsall Road and is co-located with the Tower Hill Partnership Medical Practice. Due to its co-location with the Tower Hill Partnership Medical Practice, the overwhelming majority of prescriptions that are dispensed by the pharmacy (and, consequently, patients who use the pharmacy) are registered with the Medical Practice. In fact, around 85% of the prescriptions dispensed by the pharmacy originate from the Tower Hill Partnership Medical Practice.

2.13.6 The Medical Practice is open from 8am to 8pm Monday, Tuesday and Thursday and from 8am to 6.30pm on Wednesday and Friday. The Medical Practice is closed on Saturday and Sunday.

2.13.7 As a result of its co-location with the Medical Practise and the opening hours of the Practice, the great majority of the pharmacy’s patients access the pharmacy either during the opening hours of the surgery (ie after they have seen their GP or visited the surgery for some other reason) or on a Saturday. The pharmacy has very few patients who access the pharmacy outside of the surgery times and, in particular, on Sunday.

- 2.13.8 In order to support its application, our client carried out a survey of the pharmacy's usage between the hours of 8am to 11am and 4pm to 9pm on a Sunday (being the Sunday hours that our client proposes to remove). The survey confirmed our client's anecdotal experience that very few patients choose to access the pharmacy at those times.
- 2.13.9 In relation to the dispensing of NHS prescriptions, the pharmacy dispenses in the region of 26,000 items per month, with over 1,300 items dispensed per day from Monday to Friday. The prescription numbers dispensed on weekends are much lower, particularly on a Sunday. In August, for example, the pharmacy dispensed only 50 prescriptions over the 4 Sundays of August, representing fewer than 0.2% of the total number of items dispensed that month.
- 2.13.10 Those prescriptions could easily be dispensed during the remaining Sunday hours that our client proposes or at other times during the week: since the Medical Practice is closed on a Sunday then the prescriptions dispensed on a Sunday are almost always repeat, non-urgent prescriptions.
- 2.13.11 In terms of other services, there is very little provision of enhanced and advanced services on a Sunday and very few people come into the pharmacy in order to purchase a medicinal product. By way of example, the smoking cessation service offered by the pharmacy does not run on a Sunday and flu vaccination services are seasonal and patients attend the pharmacy during the scheduled opening times (so would, of course, attend on a Sunday during the amended hours if this application were to be granted). Again, any patients who do currently choose to access the pharmacy on a Sunday could easily do so during the remaining hours that our client proposes to provide.
- 2.13.12 Our client therefore believes that its Sunday opening hours from 9am to 11am and from 4pm to 9pm are not necessary in order to maintain the existing level of service provision for the people in the area because, as stated above, the pharmacy has only a very small number of patients who currently access the pharmacy at those times, on average, and those patients represent a tiny fraction of the pharmaceutical services that the pharmacy currently provides.
- 2.13.13 Additionally, our client believes that the hours proposed in its application would continue to maintain a sustainable level of service provision for people in the area where maintaining the existing level is unnecessary.
- 2.13.14 Should any patients require urgent access to pharmaceutical services either between 9am and 11am or 4pm to 9pm on Sunday (ie, the hours that our client is seeking to re-distribute), there are other pharmacies in the area that are open at these times.
- 2.13.15 By way of example, Heathfield Pharmacy is located 2 miles from Tower Hill Pharmacy and is open from midday until 11pm on a Sunday. Heathfield Pharmacy is only a 6-minute drive from Tower Hill Pharmacy. Heathfield Pharmacy is also connected to Tower Hill Pharmacy by bus route 52, which stops directly outside both pharmacies and with services every 30 minutes on a Sunday running from 9am to 11pm.
- 2.13.16 In relation to Sunday morning openings (from 9am [sic] to 11pm), RX Pharmacy is open from 10am to 2pm and is 1.2 miles away from Tower Hill Pharmacy with a direct route along the A34, including a direct bus service (51/52) operating every 20 minutes on a Sunday and a journey time of around 7 minutes.
- 2.13.17 In addition, Al-Shifa Pharmacy is open from 9am to 8pm on a Sunday and is located close to Heathfield Pharmacy (2.3 miles from Tower Hill Pharmacy) and is similarly accessible by car and by bus.

- 2.13.18 In conclusion, therefore, our client considers that its application meets the relevant regulatory test and, on behalf of our client, we invite NHS Resolution to uphold its appeal and to grant its application.
- 2.13.19 We look forward to hearing from you.”
- 2.14 In an email to NHS Resolution dated 19 December 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 was 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 I note the following:
- 2.15.1 The Applicant's core opening hours total 100 hours and the Applicant proposes to redistribute those 100 core opening hours pursuant to paragraph 26 of Schedule 4. The Applicant seeks to provide services as per its proposed changes in the table at 2.11 above.
- 2.16 The Applicant proposes to:
- 2.16.1 Open 30 minutes earlier, Monday to Friday, from 6.30am instead of 7am;
- 2.16.2 Close 1 hour later, Monday to Saturday, at 10.30pm rather than 9.30pm; and
- 2.16.3 Open 3 hours later at 11am instead of 8am, and close 5 hours earlier at 4pm instead of 9pm, on Sunday.
- 2.17 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023.
- 2.18 The application to change the hours was made by the Applicant on 29 September 2023 and a decision was made by the Commissioner on 14 November 2023. The decision was appealed to NHS Resolution by email of 14 December 2023. I am of the view that the application and subsequent appeal should be considered against the Regulations as amended with effect from 25 May 2023.
- 2.19 The Applicant has sought to change the days and times at which it is obliged to provide pharmaceutical services under paragraph 26 of Schedule 4, Part 3, “Hours of opening”.
- 2.20 Paragraph 26(1) states:
- “26.— (1) An NHS pharmacist (P) may apply to the NHSCB for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P's pharmacy premises in a way that—*
- (a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week ...; or*
- (b) keeps that total number of hours the same.”*
- 2.21 I have first considered paragraph 26(2) of Schedule 4 of the Regulations, which reads as follows:
- “Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such*

information as the NHSCB may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1).

- 2.22 Paragraph 26(2A) is for an application for a direction in respect of a pharmacy that was included on the list as an excepted application that was going to provide 100 hours a week. The Applicant is currently included on the pharmaceutical list to provide pharmaceutical services for 100 hours a week, therefore paragraph 26(2A) may apply in this instance and I have first considered this.

- 2.23 Paragraph 26(2A) states:

“In the case of an application for a direction under sub-paragraph (4) that has the effect of reducing, in the case of any premises in respect of which a 100 hours condition applies or has ever applied, or in respect of which a direction that replaced (at any distance in succession) a 100 hours condition applies, the total number of core opening hours to 72 or above, but without changing any or all of the following—

(a) the core opening hours on a Monday to Saturday at times between 5pm and 9pm;

(b) the core opening hours on a Sunday at times between 11am and 4pm, other than by way of the inclusion of, or a change to, a rest break which—

(i) is no longer than one hour, and

(ii) starts at least 3 hours after the start of the pharmacy’s opening hours and ends at least 3 hours before the end of the pharmacy’s opening hours; and

(c) the total number of core opening hours on a Sunday,

NHS England must grant that application, and paragraph 24(1) does not apply to such an application.”

- 2.24 The Applicant is seeking to keep the pharmacy open for 100 hours but redistribute those hours during the week. Given that the Applicant is not proposing to reduce the total number of core opening hours to 72 or above but wishes to maintain opening hours of 100 core hours a week, this application does not fall to be considered under paragraph 26(2A).

- 2.25 As paragraph 26(2A) does not apply in this instance, I am of the view that paragraph 24(1) does apply to this application and it is on this basis that the Applicant applied to the Commissioner to amend its core opening hours. I have therefore proceeded to consider the application before me in accordance with paragraph 24(1).

- 2.26 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.

2.27 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.

2.28 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.

2.29 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.

2.30 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.

2.31 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.

2.32 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 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.

2.34 However, the Applicant is applying to change the days and times that services are provided. Taking Sunday as an example, the level of service provision at the Applicant's premises on a 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.

- 2.35 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.
- 2.36 I note the Applicant's pharmacy is collocated with Tower Hill Partnership Medical Practice. The Applicant contends that *"the pharmacy has very few patients who access the pharmacy outside of the surgery times and, in particular, on Sunday."*
- 2.37 The Applicant states that *"we carried out a survey of the pharmacy's usage between the hours of 8am to 11am and 4pm to 9pm on a Sunday. The survey confirmed our anecdotal experience that very few patients choose to access the pharmacy at those times."*
- 2.38 Further *"the prescription numbers dispensed on weekends are much lower, particularly on a Sunday."*
- In terms of other services, there is very little provision of enhanced and advanced services on a Sunday and very few people come into the pharmacy in order to purchase a medicinal product. By way of example, the smoking cessation service offered by the pharmacy does not run on a Sunday and flu vaccination services are seasonal and patients attend the pharmacy during the scheduled opening times".*
- 2.39 Although I have not been provided with a copy of the survey, by the Applicant's own admission, there are people using the pharmacy at the times that is it proposing to close, albeit low in numbers.
- 2.40 Therefore I consider that it is necessary to maintain the existing level of service provision.
- 2.41 I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision.
- 2.42 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).
- 2.43 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.
- 2.44 I note the Applicant provides NMS, CPCS, hypertension case-finding, contraception, smoking cessation and flu vaccination services. Beyond its comment that there is *"very little provision of enhanced and advanced services on a Sunday"*, *"very few people come into the pharmacy in order to purchase a medicinal product"*, *"the smoking cessation service offered by the pharmacy does not run on a Sunday and flu vaccination services are seasonal"*, the Applicant has not provided any evidence to show exactly what services patients are accessing at the times at which the Applicant is wanting to close. Again I note the Applicant undertook a survey however the results of this has not been provided, therefore I am unable to ascertain what enhanced and advanced services patients are accessing and therefore consider it necessary to ensure that patients can access the same services from other pharmacies in the area.
- 2.45 In relation to Sunday morning opening, the Applicant states that *"RX Pharmacy is open from 10am to 2pm and is 1.2 miles away from Tower Hill Pharmacy with a direct route*

along the A34, including a direct bus service (51/52) operating every 20 minutes on a Sunday and a journey time of around 7 minutes.” This has not been disputed by the Commissioner. Whilst not identical to the Applicant’s current opening hours on a Sunday morning, I note that RX Pharmacy provides NMS, CPCS, hypertension and flu vaccination services.

2.46 I therefore need to consider if patients would be able to access the same pharmaceutical services as provided by the Applicant, after 4pm on Sundays, if the Applicant’s application were to be approved.

2.47 I note the Applicant undisputed comments that *“Heathfield Pharmacy is located 2 miles from Tower Hill Pharmacy and is open from midday until 11pm on a Sunday. Heathfield Pharmacy is only a 6-minute drive from Tower Hill Pharmacy. Heathfield Pharmacy is also connected to Tower Hill Pharmacy by bus route 52, which stops directly outside both pharmacies and with services every 30 minutes on a Sunday running from 9am to 11pm. ...*

In addition, Al-Shifa Pharmacy is open from 9am to 8pm on a Sunday and is located close to Heathfield Pharmacy (2.3 miles from Tower Hill Pharmacy) and is similarly accessible by car and by bus.”

2.48 However I have not been told what services either Heathfield Pharmacy or Al-Shifa Pharmacy provide, therefore 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, during the hours of 4pm – 9pm on a Sunday, within which the Applicant proposes to close.

2.49 I have decided that it is necessary to maintain the current service provision but, due to a lack of information about the services being provided 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.

2.50 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 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, I consider that no evidence has been put forward in respect of this criteria.

2.53 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 for example. 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).

2.54 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**