

4 June 2024

FILE REF: SHA/26160

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

DECISION MAKING BODY: NHS NORTHAMPTONSHIRE
INTEGRATED CARE BOARD (“the
Commissioner”)

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

PHARMACIST: DAVENTRY PHARMA LTD T/A DAVENTRY
DAY & NIGHT PHARMACY
(“the Applicant”)

PREMISES: 5-6 ST JOHNS SQUARE
DAVENTRY
NORTHAMPTONSHIRE
NN11 4FG

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 The action taken by the Commissioner to refuse the application is confirmed.

A copy of this decision is being sent to:

Daventry Pharma Ltd t/a Daventry Day & Night Pharmacy
NHS Northamptonshire 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/>



INVESTORS IN PEOPLE®
We invest in people Gold



FILE REF: SHA/26160

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

DECISION MAKING BODY: NHS NORTHAMPTONSHIRE
INTEGRATED CARE BOARD ("the
Commissioner")

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

PHARMACIST: DAVENTRY PHARMA LTD T/A DAVENTRY
DAY & NIGHT PHARMACY
("the Applicant")

PREMISES: 5-6 ST JOHNS SQUARE
DAVENTRY
NORTHAMPTONSHIRE
NN11 4FG

**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]**

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 reduce the total number of core opening hours 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 84 ½ hours per week. The Applicant wishes to reduce its core opening hours to 75 ½ hours, by:
- 2.9.1 Closing between 00:00 and 09:00 on a Sunday (when it would normally be open).

Assessment

- 2.10 In this case, the Applicant provided the following information in its application form and supporting information dated 26 May 2023:
- 2.10.1 “This is an application to permanently change core opening hours.
- 2.10.2 Current opening hours for these premises:

Monday	09:00 – 13:00 14:00 – 21:00 (11)
Tuesday	09:00 – 13:00 14:00 – 21:00 (11)
Wednesday	09:00 – 13:00 14:00 – 21:00 (11)
Thursday	09:00 – 13:00

	14:00 – 21:00 (11)
Friday	09:00 – 13:00 14:00 – 21:00 (11)
Saturday	09:30 – 13:30 14:30 – 21:00 (10.5)
Sunday	00:00 – 19:00 (19)

2.10.3 Proposed core opening hours for these premises:

Monday	09:00 – 13:00 14:00 – 21:00 (11)
Tuesday	09:00 – 13:00 14:00 – 21:00 (11)
Wednesday	09:00 – 13:00 14:00 – 21:00 (11)
Thursday	09:00 – 13:00 14:00 – 21:00 (11)
Friday	09:00 – 13:00 14:00 – 21:00 (11)
Saturday	09:30 – 13:30 14:30 – 21:00 (10.5)
Sunday	09:00 – 19:00 (10)

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

2.10.4.1 1st March 2024

2.10.5 Data provided in excel for 3 months showing that patient numbers and need is very low between Sunday 00:00-09:00. Currently doing 84 ½ hours and by making the above Sunday change ONLY we will be providing 75 ½ hours above the 72 hour requirement. If you require more information do ask and we will endeavour to provide in order to get this approval. We feel there is no need as can be seen from the data and also to get a pharmacist to do a night shift has become very hard and locum cover is also becoming hard. Patient survey during the hours of Sunday 00:00-09:00 was not done as data provided from the PMR provides the desired results and evidence.”

2.11 In a letter to the Applicant dated 18 January 2024 the Commissioner stated:

2.11.1 “Thank you for your application to make a permanent change to the core opening hours at Daventry Day & Night Pharmacy, received on 24 November 2023.

2.11.2 The Pharmaceutical Services Regulations Committee (PSRC) met on 16 January 2024 and a decision was made to refuse the request to change the core opening hours at the above pharmacy from 01 March 2024.

2.11.3 The committee felt the pharmacy had not met Regulation 26 (2) as the pharmacy did not demonstrate within the application a change to the needs of the people in its area, or other likely users of the pharmacy. As well as not delivering the same number of core hours on a Sunday (Paragraph 26 (2A) Schedule 4.

2.11.4 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and

reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: nhsr.appeals@nhs.net

2.11.4.1NHS Resolution 8th Floor 10 South Colonnade Canary Wharf London E14 4PU”

- 2.12 In an email to NHS Resolution dated 6 February 2024 the Applicant stated:
- 2.12.1 “Find attached a refusal for change of hours which we are appealing and will submit additional information in due course. Another email will follow with what we submitted to the NHS initially.”
- 2.13 In a second email to NHS Resolution dated 6 February 2024 the Applicant provided 12 Excel spreadsheets, which contained details such as the numbers of prescriptions and times presented at the pharmacy, over several dates in July – September 2023.
- 2.14 In an email to NHS Resolution dated 9 February 2024 the Applicant stated
- 2.14.1 “We feel that data provided for the Sunday is sufficient [sic] evidence to show the lack of need and that the pharmacy opening is still above the 72 hours required for the 100 hour pharmacy. As everyone will appreciate that night hours and the data provided clearly show that the hours opened are not sustainable in light of all the losses pharmacies are having.”
- 2.15 In a letter to NHS Resolution dated 14 March 2024 the Commissioner stated:
- 2.15.1 “Thank you for your letter dated 13 February 2024; The East Midlands Primary Care Team on behalf of Northamptonshire Integrated Care Board would like to make the following representations.
- 2.15.2 Schedule 4, Part 3 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—
- 2.15.3 (a)the core opening hours on a Monday to Saturday at times between 5pm and 9pm;
- 2.15.4 (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—
- 2.15.4.1(i)is no longer than one hour, and
- 2.15.4.2(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
- 2.15.5 (c)the total number of core opening hours on a Sunday,
- 2.15.6 Schedule 4, Part 3 paragraph 26 (4a) states that the commissioner must not issue a direction under sub-paragraph (4), or revoke without replacing it an existing direction under that sub-paragraph, if doing so would have 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, any or all of the following—

- 2.15.7 (a) the total number of core opening hours to below 72;
- 2.15.8 (b) the core opening hours on a Monday to Saturday at times between 5pm and 9pm;
- 2.15.9 (c) 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—
 - 2.15.9.1(i) is no longer than one hour, and
 - 2.15.9.2(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
- 2.15.10 (d) the total number of core opening hours on a Sunday,
- 2.15.11 and an application seeking such a change is not a valid application for the purposes of sub-paragraph (2B).
- 2.15.12 100-hour pharmacies were granted NHS Contracts under an exemption to the normal control of entry process on the basis they guaranteed to open 100 hours per week in a bid to improve out of hours access. This was named the 100 hour rule. Historically there was no provision within the pharmacy regulations for 100 hour pharmacies to reduce their core opening hours.
- 2.15.13 New regulations implemented on 25 May 2023 allowed 100 hour pharmacies to amend their core opening hours to no less than 72 hours, however the pharmacies have to meet strict criteria for the applications to be approved by the Pharmaceutical Services Regulations Committee. This criteria is as follows;
 - 2.15.13.1a) the pharmacy will still have 72 or more core opening hours per week;
 - 2.15.13.2b) the pharmacy will still have core opening hours on a Monday to Saturday between 17.00 and 21.00;
 - 2.15.13.3c) there are no changes to any core opening hours that the pharmacy may have on a Sunday between 11:00 and 16:00 other than by way of the inclusion of, or a change to, a rest break which:
 - 2.15.13.4d) is no longer than one hour, and
 - 2.15.13.5e) starts at least three hours after the start of the pharmacy's opening hours and ends at least three hours before the end of the pharmacy's opening hours; and
 - 2.15.13.6f) the total number of core opening hours on a Sunday will remain the same (but could start and finish at different times) (paragraph 26(2A), Schedule 4).
- 2.15.14 An application to permanently change core opening hours at Daventry Day and Night Pharmacy, 5-6 St John Square, Daventry, Northamptonshire, NN11 4FG was received on 24 November 2023 and the decision was made to refuse the application on the basis that the pharmacy did not demonstrate within the application a change in the need of the people in its area, or other likely users of the pharmacy; The refusal was also due to the pharmacy was not delivering the same core hours on a Sunday.

- 2.15.15 A decision letter was sent to the pharmacy on 19 January 2024 the letter confirmed the decision of the committee, however the first part of the refusal was an admin error and should not have been put into the letter, however the refusal would still remain as the pharmacy has failed to meet all of the criteria of Schedule 4, Part 3 paragraph 26 (4a) due to not providing the same core hours on a Sunday.
- 2.15.16 Although the commissioner sympathises with regards to the pharmacy's workforce issues with locums, the arrangements and the number of the pharmacists employed either as permanent, or relief pharmacists or as locums procured to cover core contracted as well as supplementary hours offered by a pharmacy are a commercial consideration of the pharmacy."
- 2.16 In a letter to NHS Resolution undated (received by email on 8 April 2024) the Applicant stated:
- 2.16.1 "By an application dated 26 May 2023, permission was sought Daventry Day and Night Pharmacy from NHS England to allow a permanent reduction in opening hours with effect from 1 March 2024. The Pharmacy wished to close on a Sunday between 00:00-09:00.
- 2.16.2 The application was made in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (as amended) and PART 3 [Hours of Opening] of Schedule 4 thereto [Terms of Service of NHS Pharmacists].
- 2.16.3 The current opening hours are:
- 2.16.4 [see table at paragraph 2.10.2]
- 2.16.5 The proposed opening hours were:
- 2.16.6 [see table at paragraph 2.10.3]
- 2.16.7 In effect, therefore, permission was being sought to reduce the opening hours on Sundays, from the present opening hours of 00:00-19:00 to the proposed opening hours of 09:00-19:00; in other words, to not have to open between the hours of midnight and 09:00 am, being a reduction of nine hours.
- 2.16.8 The basis of the application was:
- 2.16.8.1 Patient numbers between 00:00 and 09:00 are low
- 2.16.8.2 Demand for services between 00:00 and 09:00 is low
- 2.16.8.3 By allowing the reduction to opening hours on a Sunday, the pharmacy would still be maintaining a minimum opening of 72 hours throughout the week.
- 2.16.8.4 The pharmacy would be providing 75 ½ hours service in a week (above the minimum floor of 72 hours).
- 2.16.8.5 Obtaining night cover is difficult.
- 2.16.8.6 Obtaining locum cover is difficult.
- 2.16.8.7 PMR data provided the relevant information to help support the application.

2.16.9 By a letter dated 18 January 2024, NHS England East Midlands Primary Care Team refused the application. They gave the following reasons for the refusal: the committee felt the pharmacy had not met Regulation 26 (2) as:

2.16.9.1the Pharmacy did not demonstrate within the application a change to the needs of the people in its area, or other likely users of the pharmacy.

2.16.9.2The Pharmacy would not be delivering the same number of core hours on a Sunday (Paragraph 26 (2A) Schedule 4).

2.16.10 By a letter dated 27 March 2024, NHS Resolution provided a copy of the representations made by the NHS East Midlands Primary Care Contracting Team dated 14 March 2024 and invited further representations from the Pharmacy if any.

2.16.11 We now make the following representations:

2.16.12 NHS East Midlands Primary Care Contracting Team have applicable legislation.

2.16.13 Data was extracted from PMR for the period 1 July 2023 to September 2023 which shows for Sundays between 00:00-09:00 that the demand for services is very low:

2 July 2023	0 patients (advance preparation of CD)
9 July 2023	1 patient
16 July 2023	2 patients
23 July 2023	3 patients
30 July 2023	2 patients
6 August 2023	1 patient
13 August 2023	2 patients
20 August 2023	2 patients
27 August 2023	4 patients
10 September 2023	3 patients
17 September 2023	1 patient
24 September 2023	1 patient

2.16.14 There is therefore very little demand for our service during this time period on Sundays. The data period covers thirteen Sundays so is around three months' worth of data. Data for further 3 – 9 months can be provided if required to make a decision based on 12 months data.

2.16.15 Demand for service is limited during the hours of 00:00-09:00 and that the Sunday hours are therefore unnecessary in accordance with paragraph

24(1)(a) and/or is not a realistically achievable outcome (because of the difficulties in obtaining cover during the hours of 00:00-09:00 and the low demand for pharmacy services).

2.16.16 For the purposes of paragraph 24(1), it is therefore clear that the Sunday hours of 00:00-09:00 are “unnecessary” (in accordance with paragraph 24(1)(a)). That is, since the Pharmacy is not being used on a Sunday in that period to any meaningful extent for the provision of NHS pharmaceutical services, the provision that it offers on a Sunday cannot be considered “necessary” for the purposes of paragraph 24(1)(a).

2.16.17 The NHS England opposition is essentially this: “however the refusal would still remain as the pharmacy has failed to meet all of the criteria of Schedule 4, Part 3 paragraph 26 (4a) due to not providing the same core hours on a Sunday.” In its representations, NHS England also states that the criteria is that “there are no changes to any core opening hours that the pharmacy may have on a Sunday between 11:00 and 16:00”. As can be seen, the application relates to the hours of 00:00-09:00 and the opening hours of 09:00-19:00 (which more than cover the core hours) remain which demonstrates that NHS England have misunderstood the application and/or the applicable NHS England guidance and have therefore incorrectly refused this application. NHS England has considered Sunday in the context of the wrong regulations. In this application, they have used two different regulations to refuse this application.

2.16.18 We therefore submit that the information provided with the application and/or this appeal shows that our application would maintain a sustainable level of adequate service provision for the people in the area or other likely users of the Pharmacy premises in circumstances where maintaining the existing level of service provision is unnecessary.”

2.17 I note the following:

2.17.1 The Applicant's core opening hours total 84 ½ hours and the Applicant proposes to reduce its core opening hours to 75 ½, pursuant to paragraph 26 of Schedule 4. The Applicant seeks to provide services as per its proposed changes in the table at 2.10 above.

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 26 May 2023 and a decision was made by the Commissioner on 18 January 2024. The decision was appealed to NHS Resolution by email of 6 February 2024. 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 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.

- 2.24 I note the Applicant was included in the pharmaceutical list to provide 100 hours a week. The Applicant initially applied to reduce its 100 hours to 84 ½ which was granted by the Commissioner. The instant application is a subsequent application to further reduce its core opening hours to 75 ½.

- 2.25 Therefore paragraph 26(2A) may apply in this instance and I have first considered this.

- 2.26 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.”

- 2.27 Paragraph 26(4) states:

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

issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs [F391(4A),] (5) and (6) and which has the effect of either granting the application under this paragraph or granting it only in part;

...

(4A) NHS England must not issue a direction under sub-paragraph (4), or revoke without replacing it an existing direction under that sub-paragraph, if doing so would have 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, any or all of the following—

the total number of core opening hours to below 72;

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

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—

is no longer than one hour, and

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

the total number of core opening hours on a Sunday,

and an application seeking such a change is not a valid application for the purposes of sub-paragraph (2B).

(4B) On and after 25th May 2023, NHS England must not issue a direction under sub-paragraph (4), or revoke without replacing it an existing direction under that sub-paragraph, pursuant to an application made before 25th May 2023 for a direction pursuant to this paragraph as it had effect before 25th May 2023, if doing so would have the effect of reducing, in the case of any premises in respect of which a 100 hours condition applies, any or all of the following—

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

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—

is no longer than one hour, and

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

the total number of core opening hours on a Sunday.”

- 2.28 The Applicant is seeking to further reduce its 100 hours, therefore paragraphs 26(2A), 26(4) and 26(4A) apply. However, the application was made after 25 May 2023, so paragraph 26(4B) does not.
- 2.29 I note that the reason for refusal stated by the Commissioner is due to failure by the Applicant to meet the criteria in Schedule 4, Part 3, paragraph 26 (4A) of the Regulations, in relation to reducing the number of core hours provided on a Sunday. As per the extract above, under this paragraph, the Commissioner must not issue a direction if doing so would have the effect of reducing the total number of core opening hours at the Applicant's premises on a Sunday.

- 2.30 I note that in its application to change core opening hours the Applicant listed its premises core opening hours on Sunday as being from 00:00-19:00, for a total of 19 hours. It is now applying to change this so that the premises are open from 09:00-19:00 for a total of 10 hours. I, therefore, consider that the Applicant's total number of core opening hours on a Sunday are being reduced at the premises, and so the Commissioner must not issue a direction.
- 2.31 I note that the Applicant has stated at paragraph 2.16.17 that "*NHS England* [sic]" has either misunderstood the application or the guidance and hence has incorrectly refused the application. The Applicant refers to the quote that "*there are no changes to any core opening hours that the pharmacy may have on a Sunday between 11:00 and 16:00*", and that the change relates to 00:00-09:00 so the core opening hours of 11:00 to 16:00 will still be covered. I consider that the criteria that the Applicant is quoting is Schedule 4, Part 3, paragraph 26(4A)(c). I note that this is not the criteria to which the Commissioner is referring to as to why this application was refused. Whilst the Applicant is correct that paragraph 26(4A)(c) does not apply to its application, paragraph 26(4A)(d) does, for the reasoning I have set out above. Therefore, there has been no misunderstanding of the guidance or application by the Commissioner.
- 2.32 I note that in its Representations the Commissioner stated that the elements of the decision relating to the pharmacy not demonstrating within the application a change in the need of the people in its area, or other likely users of the pharmacy were included in error. Given this, and that Schedule 4, Part 3, paragraph 26 (2A) applies, it is not necessary for me to consider the Applicant's evidence in relation to a sustainable level of adequate service provision for the people in the area or other likely users of the Pharmacy premises in circumstances where maintaining the existing level of service provision is unnecessary, as would be required under paragraph 24(1).

3. Determination

- 3.1 The action taken by the Commissioner to refuse the application is confirmed.

Head of Appeals
NHS Resolution