

19 July 2024

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FILE REF: SHA/26216

Tel: 0203 928 2000
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DECISION MAKING BODY: DERBY & DERBYSHIRE ICB
("the Commissioner")

PHARMACIST: PCT HEALTHCARE LIMITED
T/A PEAK PHARMACY (FEL83)
("the Appellant")

PREMISES: 40 ROSEMARY STREET,
MANSFIELD,
NOTTINGHAMSHIRE,
NG18 1QL

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL
SERVICES) REGULATIONS 2013**

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

1 Outcome

1.1 The appeal is granted and, pursuant to paragraph 25(3)(c)(ii), no direction is issued.

A copy of this decision is being sent to:

PCT Healthcare Limited, T/A Peak Pharmacy
Derby & Derbyshire ICB

Advise / Resolve / Learn

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**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]**

DIRECTION OF ADDITIONAL CORE OPENING HOURS

1 Introduction

1.1 Relying on Paragraph 25 of Schedule 4, the Commissioner has requested that the Appellant open from 10.00am to 12.00pm on Monday 26 August 2024.

1.2 The Appellant seeks to appeal to NHS Resolution.

Rights of appeal

1.3 Where the Commissioner has directed a pharmacist to provide pharmaceutical services for its premises at set times and on set days in accordance with paragraph 25 of Schedule 4 of the Regulations, paragraph 25(7) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").

1.4 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

1.5 A pharmacy's opening hours may be categorised as:

1.5.1 'core' opening hours (days on and times at which the pharmacy is obliged to be open), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours; or

- 1.5.2 'supplementary' opening hours (other days on and times at which the pharmacy undertakes to provide pharmaceutical services, as notified to the Commissioner).

Alteration of 'core' (including 'directed') opening hours

- 1.6 In accordance with paragraph 1(7)(c) of Schedule 2 to the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list, the proposed core opening hours in respect of the premises during which it will be obliged to provide pharmaceutical services under paragraph 23(1) of Schedule 4 to the Regulations. These may be subject to a direction under paragraph 23(1)(c), (d) or (e).

Alteration of 'supplementary' opening hours

- 1.7 Other days or times at which services are to be provided (as set out in the original application for entry in the pharmaceutical list pursuant to paragraph 23(3) of Schedule 4 as "supplementary hours") may be altered by giving notice to the Commissioner, in accordance with paragraph 23(6)(a) without the need to make an application.
- 1.8 Notices under paragraph 23(6)(a) are not subject to review by NHS Resolution.

The Commissioner's Request

- 1.9 The Commissioner wishes the Appellant to open from 10.00am to 12.00pm on Monday 26 August 2024, a day on which it would otherwise be closed.

2 The Direction

In a letter to the Appellant dated 25 April 2024, sent via email on 1 May 2024, the Commissioner stated:

- 2.1 "Thank you for your representation regarding the direction of your pharmacy operating on 26 August 2024.
- 2.2 The Pharmaceutical Services Regulations Committee (PSRC) convened on 16 April 2024 and resolved to maintain the directive for your pharmacy to open on the bank holiday to be held on 26 August 2024, the outcome is as follows:
- 2.2.1 The Committee believes there is sufficient time for your pharmacy to arrange the necessary staffing.
- 2.2.2 The location of the pharmacy was not considered a sufficient reason to exempt it from this directive.
- 2.2.3 The directive aims to serve not only Chesterfield [sic] but also the surrounding areas, as travel is a necessity for whichever pharmacy is directed to open. This decision primarily addresses the needs of those with urgent health requirements during the bank holiday held on 26 August 2024.
- 2.3 Should you wish to appeal this decision, you have the right to do so. Please submit a detailed and reasoned appeal to the Secretary of State within 30 days from the date of this letter by emailing it to nhsr.appeals@nhs.net.
- 2.4 Or by post:
- 2.4.1 NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.
- 2.5 If you have any questions, please do not hesitate to contact me."

- 2.6 [It is noted that there are two other iterations of a Commissioner decision, with right of appeal, dated 17 April 2024 (see 4.6.2 below) and 26 April 2024 (see 4.6.3 below) which the Commissioner provided with it's representations].

3 The Appeal

In a letter to NHS Resolution dated 20 May 2024 the Appellant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "Further to a direction of core opening hours received by email dated 27th March 2024 for the above pharmacy to open on Monday 26th August 2024 (Summer Bank Holiday) at 10:00 until 12:00, PCT Healthcare Limited writes to appeal to the Primary Care Appeals Unit.
- 3.2 There was a previous email sent to the pharmacy FAD98 in March 2024, this email was appealed to NHS England.
- 3.3 Firstly, we are aware of the need for adequate pharmaceutical services provision. However, we feel that this particular direction has not been based on adequate research and reasoning by NHS Nottingham and Nottinghamshire ICB. There is no detail within the letters of direction to indicate the reasons as to how or why this direction supports an assessment which concluded the pharmaceutical needs of the relevant persons will not be met on this day that we are required to open our pharmacy, FEL83 in Mansfield.
- 3.4 Under Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS regulations NHS England must include with the notification a statement of "the reasons for the change". We note that the Regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation, which should conclude with the needs of the local population and likely users of our pharmacy not being met on this day such that we are required to open from 10:00 to 12:00 on Monday 26th August 2024.
- 3.5 The first communication from NHS England [sic] was in an email dated 14 September 2023, which contained a grid indicating which pharmacies would be directed to open on each Bank Holiday in 2023 and 2024. As well as the grid a letter was attached including the following:
- 3.6 *The ICBs and LPCs across the East Midlands have worked in collaboration over the last few months to develop a pharmacy rota to cover bank holidays for the period of December 2023 – March 2025 across the East Midlands, with the view of this being reviewed annually.*
- 3.7 *After listening to feedback from contractors, we believe there are many benefits to this approach, including:*
- 3.7.1 *It will avoid last minute requests to open, which can be difficult to fulfil and a rota ahead of time would be beneficial to all involved.*
- 3.7.2 *It will ensure pharmacy provision for patients on each directed day.*
- 3.7.3 *Pharmacies will be able to forward plan staffing and arrangements that are needed.*
- 3.7.4 *It will help embed a fair and equitable process for all.*
- 3.7.5 *Meeting the needs of the changing pharmacy landscape*
- 3.8 The communication from NHS Nottingham and Nottinghamshire dated April 2024 states:

- 3.8.1 *“We have concluded our assessment...and have issued the enclosed direction.”*
- 3.8.2 In addition, *“We have reviewed which pharmacies have opened on previous bank holidays to ensure that directing pharmacies to open has taken place on a fair share basis.”*
- 3.9 In particular, the letter dated April 2024 makes no reference to any specific results linking our pharmacy to any lack of service provision on 26 August 2024. Furthermore, there is no actual details of the findings of a consultation or assessment, and therefore no reasons behind the direction which is contrary to paragraph 25(1) and 25(6) of Schedule 4.
- 3.10 Our appeal is that PCT Healthcare Limited notes in previous letters to our pharmacies that NHS Nottingham and Nottinghamshire ICB itself states *“We have reviewed which pharmacies have opened on previous bank holidays to ensure that directing pharmacies to open has taken place on a fair share basis.”*
- 3.11 PCT Healthcare Limited t/a Peak Pharmacy do not believe this direction to meet the requirements of paragraph 25(6) of Schedule 4 as NHS Nottingham and Nottinghamshire ICB have not stated in their letter reasons for its decision.
- 3.12 PCT Healthcare Limited is aware that several contractors are already opening on 26th August 2024 in Mansfield, this detail was given to NHS Nottingham and Nottinghamshire ICB in our initial appeal representation to NHS England which the Pharmaceutical Services Regulations Committee (PSRC) dismissed.
- 3.13 In conclusion, our pharmacy has received this direction, however for the reasons discussed above we do not feel it has been made clear as to why our pharmacy, in particular, has been chosen to open at 10:00 to 12:00 on Monday 26th August 2024, as opposed to another pharmacy in Mansfield.”
- 3.14 Enclosures:
- 3.15 Enclosure 1 – Contractor Communication [from the Commissioner to All Pharmacy Contractors] 13 September 2023
- 3.15.1 “The ICBs and LPCs across the East Midlands have worked in collaboration over the last few months to develop a pharmacy rota to cover bank holidays for the period of December 2023 – March 2025 across the East Midlands, with the view of this being reviewed annually.
- 3.15.2 After listening to feedback from contractors, we believe there are many benefits to this approach, including:
- 3.15.2.1It will avoid last minute requests to open, which can be difficult to fulfil and a rota ahead of time would be beneficial to all involved.
- 3.15.2.2It will ensure pharmacy provision for patients on each directed day.
- 3.15.2.3Pharmacies will be able to forward plan staffing and arrangements that are needed.
- 3.15.2.4It will help embed a fair and equitable process for all.
- 3.15.2.5Meeting the needs of the changing pharmacy landscape.
- 3.15.3 The areas identified for bank holiday cover are the following:
- 3.15.4 Lincolnshire:

- 3.15.4.1 Skegness
- 3.15.4.2 Mablethorpe/Sutton-on-Sea
- 3.15.4.3 Spalding
- 3.15.4.4 Lincoln LN1 and LN2 (combined)
- 3.15.4.5 Lincoln LN6
- 3.15.4.6 Louth
- 3.15.4.7 Gainsborough
- 3.15.4.8 Grantham
- 3.15.4.9 Boston
- 3.15.4.10 Stamford
- 3.15.4.11 Sleaford
- 3.15.5 Nottinghamshire:
 - 3.15.5.1 Nottingham NG1
 - 3.15.5.2 Nottingham NG2
 - 3.15.5.3 Nottingham NG3
 - 3.15.5.4 Nottingham NG5
 - 3.15.5.5 Nottingham NG7
 - 3.15.5.6 Nottingham NG8
- 3.15.6 Newark
 - 3.15.6.1 Worksop
 - 3.15.6.2 Hucknall
 - 3.15.6.3 Mansfield
 - 3.15.6.4 Sutton-in-Ashfield
- 3.15.7 Derbyshire:
 - 3.15.7.1 Matlock, Bakewell, Wirksworth & Darley Dale (combined)
 - 3.15.7.2 Derby DE1
 - 3.15.7.3 Chesterfield (two contractors)
 - 3.15.7.4 Ilkeston
 - 3.15.7.5 Buxton
 - 3.15.7.6 Belper

3.15.7.7 Ashbourne

3.15.7.8 Alfreton

3.15.8 LLR:

3.15.8.1 Hinckley & LE9 (combined)

3.15.8.2 Leicester LE3

3.15.8.3 Leicester LE2

3.15.8.4 Leicester LE4

3.15.8.5 Oakham

3.15.8.6 Loughborough

3.15.8.7 Market Harborough

3.15.8.8 LE19

3.15.8.9 Leicester LE1

3.15.8.10 Ashby De La Zouch & Coalville (combined)

3.15.9 Northamptonshire:

3.15.9.1 Northampton NN1

3.15.9.2 Northampton NN4

3.15.9.3 Brackley & Middleton Cheney (combined)

3.15.9.4 Corby

3.15.9.5 Kettering

3.15.9.6 Daventry

3.15.10 We will continue to ask pharmacies to submit their intentions to open twice a year to establish pharmaceutical cover for all of the East Midlands, these will be seen as additional pharmacy support to those that are being directed and not a replacement.

3.15.11 We now have a draft copy of the rota which is ready for sharing. The rota has been created based on monitoring data from previous bank holidays to meet expected demand for pharmacy services. We have attempted to minimise the impact on any individual pharmacy.

3.15.12 We are writing to ask each pharmacy to review the attached draft rota and to declare any issues to the ICB by 20th September 2023. Please respond by email to england.eastmidsparmacy@nhs.net if there are any problems or inaccuracies that we need to know about.

3.15.13 Following this date, we will review all responses and issue a final version of the rota by 26th September 2023, with proposal to direct letters and SLAs for Boxing Day 2023.

- 3.15.14 A direction letter and SLA for the remaining directed days from New Years Day 2024 to New Years Day 2025 will follow shortly after.
- 3.15.15 Renumeration for each directed pharmacy will be as follows:
- 3.15.15.1 Good Friday £275 per hour
 - 3.15.15.2 Easter Sunday £350 per hour
 - 3.15.15.3 Easter Monday £275 per hour
 - 3.15.15.4 May Day £275 per hour
 - 3.15.15.5 Spring BH £275 per hour
 - 3.15.15.6 August BH £275 per hour
 - 3.15.15.7 Xmas Day £350 per hour
 - 3.15.15.8 Boxing Day £275 per hour
 - 3.15.15.9 New Years Day £350 per hour
- 3.15.16 This would be limited to a maximum of 2 hours renumeration.
- 3.15.17 The attached draft rota has been shared with LPC and ICB colleagues who have agreed the proposal.
- 3.15.18 We will continue to liaise with the LPC/ICB throughout this process.
- 3.15.19 If you have any questions, please email england.eastmidspharmacy@nhs.net
- 3.16 Enclosure 2 - Proposal to Direct Letter to Peak Pharmacy dated 27 March 2024
- 3.16.1 **“Re: Direction of opening hours on Monday 26th August 2024 at Peak Pharmacy 40 Rosemary Street, , Mansfield, Nottinghamshire, NG18 1QL.**
 - 3.16.2 **Your current core opening hours are**
 - 3.16.3 Monday – Friday 09:00 – 13:00 14:00 – 18:00
 - 3.16.4 Saturday – Sunday Closed
 - 3.16.5 **The total opening hours (core & supplementary) of the above pharmacy premises are:**
 - 3.16.6 Monday – Friday 09:00 – 13:00 14:00 – 18:00
 - 3.16.7 Saturday – Sunday Closed
 - 3.16.8 We consider that the current core opening hours may not meet the needs of people in the area or other likely users of the pharmacy premises for the following reasons:
 - 3.16.9 There is no pharmacy provision in the Mansfield area on Monday 26th August 2024 following requests by the ICB for a pharmacy to volunteer.
 - 3.16.10 We are carrying out an assessment as to whether to issue a direction pursuant to paragraph 25(1) of Schedule 4 of the NHS (Pharmaceutical and Local

Pharmaceutical Services) Regulations 2013 requiring you to provide pharmaceutical services on the following date and time:

3.16.11 Summer Bank Holiday – Monday 26th August 2024 - Time: 10:00-12:00

3.16.12 If you wish to make written representations about the proposed direction, they should be sent to england.eastmidsparmacy@nhs.net within 30 days of the date of this letter, i.e. by 26th April 2024.

3.16.13 If you have any questions, please do not hesitate to contact me.”

3.17 Enclosure 3 - The Commissioner Email to Peak Pharmacy dated 27 March 2024

3.17.1 “Following the publication of the rota for 23/24 and 24/25 in conjunction with the ICB and LPC. We are proposing to direct your pharmacy to open on Summer Bank Holiday Monday 26th August 2024 to provide pharmaceutical services to the local population.

3.17.2 This will be for 2 hours only and full details are on the letter provided. The rate of commission for this service is £275 per hour for a maximum of 2 hours and can be claimed via pharmoutcomes, no later than 28 days after the directed day.”

3.18 Enclosure 4 - PCT Healthcare T/A Peak Pharmacy Email to the Commissioner dated 28 March 2024

3.18.1 “PCT Healthcare Ltd wish to make written representations regarding the direction in a letter dated 27/3/24 re our pharmacy FEL83 as Tesco in Mansfield will be open on Summer Bank Holiday Monday 26th August 2024.

3.18.2 As a contractor shall be open in Mansfield the needs of the population shall be met on Monday 26th August 2024 and as such we request that NHS England rescind this direction.”

3.19 Enclosure 5 - The Commissioner cover email to PCT Healthcare T/A Peak Pharmacy dated 1 May 2024

3.19.1 “Thank you for your email.

3.19.2 Please see the attached letter for your attention.” [See 3.20 below]

3.20 Enclosure 6 - The Commissioner’s Decision Letter dated 25 April 2024 (sent via email on 1 May 2024 [as per 2.1 to 2.5 above])

3.21 Enclosure 7 - Copy of Bank Holiday Rota 2023/24 and 2024/25 Nottingham [Spreadsheet available for adjudicator].

4 Representations

In a letter to NHS Resolution dated 27 June 2024 the Commissioner stated:

4.1 “Thank you for your letter dated 28 May 2024; The East Midlands Primary Care Team on behalf of Nottingham and Nottinghamshire Integrated Care Board would like to make the following representations.

4.2 The process that the East Midlands primary care team follow for directing for all bank holidays on behalf of Nottingham and Nottinghamshire ICB is as follows;

4.2.1 A communication is sent out to all pharmacies in the Health and Wellbeing Board (HWB) twice a year requesting the proposed opening days and times

for all bank and public holidays, and Easter Sunday Pursuant to paragraph 35(4) of Schedule 4 (pharmacy contractors) or paragraph 25(3), Schedule 5 (dispensing appliance contractors) to the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended.

- 4.2.2 Once it is known when the pharmacies in a HWB area will be open, an assessment will be made as to whether a contractor is to open on a particular day or days. Part of the assessment includes engagement with the LPC.
- 4.2.3 Following the assessment and engagement, if it is felt that the pharmaceutical provision within any area would not meet the needs of the people or other likely users in the area then a proposal to direct will be issued. As part of the proposal to direct, notice is given to the contractor of the proposed changes to the days on which, or times at which, the premises are to be open. As part of that notice the contractor is advised that it may make written representations about the proposed changes within 30 days.
- 4.2.4 At the end of the 30 days, should representations be received these will be reviewed by the Pharmaceutical Services Regulations Committee who will decide whether a direction is to be issued regarding the contractor's opening hours. If the decision is to issue the direction, a 30 day period is given to the contractor in which they can appeal the direction with NHS Resolution.
- 4.3 Following the assessment of the returns from Mansfield area and engagement with the LPC a proposal to direct letter was sent to PCT healthcare on 27 March 2024, representations against this proposal was received on 28 March 2024. The pharmacy cited the fact that Tesco Pharmacy was open in the area and therefore the needs of the people were met, however on contact with Tesco head office, assurance could not be given that the pharmacy was going to be open on August Bank holiday 2024.
- 4.4 The representation was reviewed by the PSRC on 16 April 2024 and the decision was made to carry on with the issue of the direction. This decision was based on the fact that assurance could not be given that other pharmacies in the area would be open for the period detailed within the direction.
- 4.5 I would like to take this opportunity to respond to any further representations provided by Peak Pharmacy, 40 Rosemary Street, Mansfield, Nottinghamshire NG18 1QL."
- 4.6 Enclosures:
 - 4.6.1 Enclosure 1 - Letter from the Commissioner to Peak Pharmacy dated 27 March 2024 [see 3.16 to 3.16.13 above].
 - 4.6.2 Enclosure 2 - Letter from the Commissioner to Peak Pharmacy dated 17 April 2024
 - 4.6.2.1 "Thank you for your representation regarding the potential to direct your pharmacy to open on August summer bank holiday Monday 2024.
 - 4.6.2.2 The Pharmaceutical Services Regulations Committee (PSRC) met on 16 April 2024 and a decision was made to continue with the direction for the pharmacy to open on August 26th summer bank holiday 2024.
 - 4.6.2.3 The Committee felt that the pharmacy has enough time to arrange pharmacist and staff cover and did not feel that because of the pharmacy location that this should make the pharmacy exempt from consideration of direction.
 - 4.6.2.4 In relation to travel, whichever pharmacy is to be directed, patients will have to travel, the direction is not in place to serve just those in

Mansfield, but to those in surrounding areas. Neither is it for those based only in Mansfield. A direction for a bank holiday is put in place for those with acute needs.

- 4.6.2.5 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 [or] NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.
- 4.6.2.6 If you have any questions, please do not hesitate to contact me.”
- 4.6.3 Enclosure 3 - Letter from the Commissioner to Peak Pharmacy dated 26 April 2024
 - 4.6.3.1 “We have concluded our assessment as to whether to issue a direction pursuant to paragraph 25(1) of Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended and have issued the enclosed direction.
 - 4.6.3.2 Your core opening hours on Summer Bank Holiday 26 August 2024 are therefore: **10:00-12:00**. The assessment was completed by Nottingham & Nottinghamshire Integrated Care Board (ICB) and the Local Pharmaceutical Council (LPC).
 - 4.6.3.3 We have also reviewed which pharmacies have opened on previous bank holidays to ensure that directing pharmacies to open has taken place on a fair share basis.
 - 4.6.3.4 Please be advised that the level of remuneration for Summer Bank Holiday – 26 August 2024, will be £275.00 per hour for a maximum of 2 hours. This should be claimed through PharmOutcomes within 28 days of the day of closure.
 - 4.6.3.5 Please Ensure that you update the Directory of service and NHS UK using profile manager with the hours that you are being directed to open.
 - 4.6.3.6 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 or by post to:
 - 4.6.3.7 Primary Care Appeals Case Manager, NHS Resolution, 8th Floor 10 South Colonnade, Canary Wharf, London, E14 4PU.
 - 4.6.3.8 If you have any questions, please do not hesitate to contact me.”

5 Observations

In a letter to NHS Resolution dated 12 July 2024 the Appellant stated:

- 5.1 “Further to the representations received with regards to our appeal PCT Healthcare Limited has the following observations to make.
- 5.2 With respect to the Nottinghamshire ICB letter dated 27th June 2024 regarding our appeal.

- 5.3 Under Regulation 25 (1):
- 5.4 *“Determination of pharmacy premises core opening hours instigated by the NHSCB 25.—(1) Where it appears to the NHSCB, after consultation with or having considered the matter at the request of the Local Pharmaceutical Committee for the area in which the premises are situated, that the days on which or times at which pharmacy premises are or are to be open for the provision of pharmaceutical services will not, or no longer, meet the needs of people in its area or other likely users of the pharmacy premises.”*
- 5.5 The Nottinghamshire ICB mentions throughout their representation that they have reviewed with Nottinghamshire LPC (now known as Community Pharmacy Nottinghamshire), there are no minutes or dates of consultations with the LPC within the representation from Nottinghamshire ICB. It is the full committee of Community Pharmacy Nottinghamshire who are the Statutory Body representing community pharmacies in Nottinghamshire, covering the Mansfield region. The full committee of Community Pharmacy Nottinghamshire discussed the localities and timings of the directions sent out by Nottinghamshire ICB in their November 2023 meeting. The Committee discussed Directions for Bank Holidays from Christmas Day 2023 until New Year's Day 2025. As Community Pharmacy Nottinghamshire were discussing these directions after they are issued by Nottinghamshire ICB, this is contrary to Regulation 25(1).
- 5.6 As Community Pharmacy Nottinghamshire did not discuss these directions and localities until their November meeting the localities for 2023- 2025 were not reviewed by the statutory body at the time of circulation to all community pharmacies.
- 5.7 PCT Healthcare Ltd wants to reiterate again that:
- 5.8 There is no detail within the letters of direction sent from Nottinghamshire ICB; to conclude that our pharmacy, FEL83 is required to open for two hours on Bank Holiday Monday 26 August 2024. There are no details within the direction letters of the assessment outcomes to indicate specifically why it is the pharmacy owned by PCT Healthcare Ltd t/a Peak Pharmacy, at 9 Church Street, Staveley, Mansfield S43 3TL who are required to open on Bank Holiday Monday 26 August 2024.
- 5.9 Under Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS regulations NHS England must include with the notification a statement of “the reasons for the change”. We note that the Regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation with the local LPC (now known as Community Pharmacy Nottinghamshire), which should conclude with the needs of the local population and likely users of our pharmacy not being met on this day such that we are required to open from 10:00 until 12:00 on Bank Holiday Monday 26 August 2024.
- 5.10 Within the representation from Nottinghamshire ICB there are no results given regarding the assessment which concluded before the letter dated 26th April 2024 to issue the direction from Nottinghamshire ICB. There are no specifics given regarding level of patient need within Mansfield for the summer Bank Holiday, there is no evidence of previous activity for the summer Bank Holiday in Mansfield. There is no detail of the number of patients accessing a pharmacy on the summer Bank Holiday within the Mansfield area, more specifically there are no assessment details for the Mansfield area for our patients requiring pharmaceutical provision.
- 5.11 Nottinghamshire ICB staff have commented that the audits for usage and demand, though they are issued to pharmacies that take part in the rota service, completion is not mandatory, and the response rate is very low. If there is no evidence of need, how can an assessment be carried out without the activity reports being available.
- 5.12 Nottinghamshire ICB mention in their letter of 26 April 2024 that the direction is made to meet the needs of patients. There is no A&E Department in Mansfield the closest is

in Sutton-in-Ashfield. The closest A&E department is located at Kings Mill Hospital, on Mansfield Road, Sutton-in-Ashfield NG17 4JL this site is located over 2 miles away from our pharmacy. There are seven closer pharmacies listed on NHS.uk to the A&E department than our pharmacy. Should a patient from Mansfield A&E wish to access our pharmacy it is a 16-minute bus ride to our pharmacy, the bus service will be a “Sunday service” on the Bank Holiday 26th August 2024. Taxis will be limited on this day with the higher rate of fares being cost-prohibitive to most patients and a barrier to access for individuals.

- 5.13 In addition, there is no evidence from Nottinghamshire ICB of any patients/visitors from the deprived areas within Mansfield accessing pharmaceutical provision on Bank Holiday Monday 26 August 2024, there are no numbers of patients or customers accessing pharmacy services provided nor their postcodes from the assessment undertaken by the ICB.
- 5.14 PCT Healthcare Ltd can confirm that our pharmacy FEL83 will be open for our full core and supplementary hours in the week proceeding Bank Holiday Monday 26th August enabling our patient's ample opportunity to collect their prescriptions and access pharmaceutical services.
- 5.15 The Nottinghamshire ICB state that the localities to select pharmacies to be directed to open on Bank Holidays were based on an assessment.
- 5.16 The expectation of an assessment is that it will cover patient footfall, patient usage of services and ease of access. PCT Healthcare Limited t/a Peak Pharmacy wish to address these areas in turn:
 - 5.16.1 Patient footfall
 - 5.16.2 No evidence supplied by Nottinghamshire ICB in the Direction Letters, or their representation letter dated 27 June 2024, to state why a direction is necessary in Mansfield.
 - 5.16.3 Patient usage of service
 - 5.16.4 No details supplied by Nottinghamshire ICB in the Direction Letters, or their representation letter dated 27 June 2024 of patient usage on Summer Bank Holiday from PharmOutcome supplied by any contractors opening on previous Summer Bank Holidays.
 - 5.16.5 No evidence supplied that our pharmacy PCT Healthcare Ltd – FEL83 which is located to the north of Mansfield should be selected to open rather than another pharmacy within Mansfield.
 - 5.16.6 Within the environs of Mansfield there are 12 pharmacies (data from NHS.uk – including Mansfield & Forest Town)
 - 5.16.7 Ease of access
- 5.17 Within the Mansfield environs there is an Asda Pharmacy located within Forest Town which opens on all Bank Holidays except Christmas Day & New Years Day. Why have the ICB not approached this pharmacy regarding the Direction?
- 5.18 PCT Healthcare Limited believe that this direction has not been based on adequate research and reasoning by NHS Derby and Nottinghamshire ICB. There is no detail within the letters of direction to indicate the reasons as to how or why this direction supports an assessment which concluded the pharmaceutical needs of the relevant persons will not be met on this day that we are required to open our pharmacy, FEL83 in Mansfield.

- 5.19 The letter from NHS Derby and Nottinghamshire ICB dated 26th April 2024 states:
- 5.20 *"We have concluded our assessment...and have issued the enclosed direction."*
- 5.21 *In addition, "We have reviewed which pharmacies have opened on previous bank holidays to ensure that directing pharmacies to open has taken place on a fair share basis."*
- 5.22 In particular, the letter dated 26 April 2024 makes no reference to any specific results linking our pharmacy to any lack of service provision on 26 August 2024. Furthermore, there is no actual details of the findings of a consultation or assessment with Community Pharmacy Nottinghamshire, and therefore no reasons behind the direction which is contrary to paragraph 25(1) and 25(6) of Schedule 4.
- 5.23 PCT Healthcare Limited t/a Peak Pharmacy does not believe this direction meets the requirements of paragraph 25(6) of Schedule 4 as NHS Derby and Nottinghamshire ICB have not stated in their letter reasons for its decision.
- 5.24 In conclusion, our pharmacy FEL83 has received this direction, however for the reasons discussed above we do not believe it has been made clear as to why our pharmacy, in particular, has been chosen to open at 10:00 to 12:00 on Bank Holiday Monday 26 August 2024, as opposed to another pharmacy in Mansfield.
- 5.25 There is no evidence specifically provided from the assessment of patient numbers, their postcode and service usage on the August Bank Holiday.
- 5.26 The points we have raised are contrary to the NHS Pharmaceutical Regulations, PCT Healthcare Limited respectfully request NHS Resolution to grant this appeal."

6 **Assessment**

- 6.1 I have considered paragraph 25 of Schedule 4 (Determination of pharmacy premises core opening hours instigated by NHS England), which reads as follows:
1. *Where it appears to NHS England, after consultation with or having considered the matter at the request of the Local Pharmaceutical Committee for the area in which the premises are situated, that the days on which or times at which pharmacy premises are or are to be open for the provision of pharmaceutical services will not, or no longer, meet the needs of—*
 - (a) *people in its area; or*
 - (b) *other likely users of the pharmacy premises,**for the pharmaceutical services available at or from those premises, it must carry out an assessment as to whether to issue a direction requiring the NHS pharmacist (P) whose premises they are to provide pharmaceutical services at the pharmacy premises at set times and on set days (which may include Christmas Day, Good Friday and bank holidays).*
 2. *Before concluding the assessment under sub-paragraph (1) NHS England must—*
 - (a) *give notice to P of any proposed changes to the days on which or times at which the pharmacy premises are to be open; and*
 - (b) *allow P 30 days within which to make written representations to NHS England about the proposed changes.*
 3. *When it determines the outcome of its assessment, NHS England must—*
 - (a) *issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs (4) and (5);*
 - (b) *confirm any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises, provided*

that the existing direction (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub-paragraphs (4) and (5); or

- (c) *either—*

 - (i) *revoke, without replacing it, any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations), or*
 - (ii) *in a case where there is no existing direction, issue no direction, in which case, by virtue of whichever of paragraph 23(1)(a) or (b) applies, the pharmacy will need to be open for 40 hours each week or for at least 100 hours each week.*
- 4. *Where NHS England issues a direction under sub-paragraph (3) in respect of pharmacy premises that are to be required to be open—*

 - (a) *for more than 40 hours each week, it must set out in that direction—*

 - (i) *the total number of hours each week for which P must provide pharmaceutical services at the pharmacy, and*
 - (ii) *as regards the additional opening hours, the days on which and the times at which P is required to provide those services during those hours,*

but it must not set out in that direction the days on which or times at which P is to provide pharmaceutical services during hours which are not additional opening hours; or
 - (b) *for less than 40 hours each week, it shall set out in that direction the days on which and times at which pharmaceutical services are to be provided at the pharmacy premises.*
- 5. *NHS England must not issue a direction under sub-paragraph (3) that has the effect simply of requiring pharmacy premises to be open for 40 hours each week on set days and at set times (that is, the direction must have the effect of requiring pharmacy premises to be open for either more or less than 40 hours each week).*
- 6. *NHS England must notify P of any direction issued or any other action taken under sub-paragraph (3), and where it sets new days on which or times at which P is to provide pharmaceutical services at pharmacy premises, it must include with the notification a statement of—*

 - (a) *the reasons for the change; and*
 - (b) *P's right of appeal under paragraph (7).*
- 7. *P may, within 30 days of receiving notification under sub-paragraph (6), appeal in writing to the Secretary of State against any direction issued or any other action taken under sub-paragraph (3) which sets new days on which or times at which P is to provide pharmaceutical services.*
- 8. *The Secretary of State may, when determining an appeal, either confirm the action taken by NHS England or take any action that NHS England could have taken under paragraph (3).*
- 9. *The Secretary of State shall notify P of the determination and shall in every case include with the notification a statement of the reasons for the determination.*
- 10. *If the days on which or times at which P is to provide pharmaceutical services at pharmacy premises have been changed in accordance with this paragraph, P must introduce the changes—*

- (a) *if P has not appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (6); or*
- (b) *if P has appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (9).*

11. *This paragraph does not apply where regulation 65(5) to (7) applies.*

6.2 I am mindful that paragraph 23(12) of Schedule 4 states:

For the purposes of calculating the number of hours that a pharmacy premises are open during a week that includes Christmas Day, Good Friday, Easter Sunday or a bank holiday, it is to be deemed that the pharmacy premises were open on that day at the times at which they would ordinarily have been open on that day of the week.

6.3 I am of the view that the pharmacy would normally be closed on Monday 26 August 2024, which is a bank holiday, and that this would be in accordance with the Regulations.

6.4 I am conscious that paragraphs 25(1) and (2) require that before any direction is made, an assessment must be undertaken and that, before the assessment is concluded, the pharmacist providing services from the premises must be given notice of the proposed changes and given 30 days to make written representations about the proposed changes.

6.5 I have been provided with three different decision letters from the Commissioner addressed to the Appellant, each directing the Appellant to open on Monday 26 August 2024. I consider this to be unhelpful and confusing. Further all three letters have slight variations in their wording. I have selected the decision letter dated 26 April 2024 (at 4.6.3 above) for the purpose of my consideration as this letter was the most recent and does make specific reference to the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. However it would be helpful if, in future, the Commissioner could restrict itself to one decision notification.

6.6 I note in its letter of 26 April 2024 the Commissioner states that the assessment was completed by the Commissioner in consultation with Community Pharmacy Derbyshire (formerly the LPC), although I have not been provided with a copy of the consultation with Community Pharmacy Derbyshire. I have been provided with a letter sent to all pharmacy contractors dated 13 September 2023 which references a “*draft rota has been shared with LPC and ICB colleagues who have agreed the proposal*” and further states “*We will continue to liaise with the LPC/ICB throughout this process*”. I note that a proposed direction letter [copy provided], was sent to the Appellant on 27 March 2024 and the pharmacy was given 30 days to provide representations with regard to the proposal. I note the Appellant responded to the Commissioner within the 30 day period and stated “*Tesco in Mansfield will be open on Summer Bank Holiday Monday 26th August 2024. As a contractor shall be open in Mansfield the needs of the population shall be met on Monday 26th August 2024 and as such we request that NHS England rescind this direction.*” In its representations, the Commissioner stated that “*on contact with Tesco head office, assurance could not be given that the pharmacy was going to be open on August Bank holiday 2024*”. Further the Commissioner stated “*The representation was reviewed by the PSRC on 16 April 2024 and the decision was made to carry on with the issue of the direction. This decision was based on the fact that assurance could not be given that other pharmacies in the area would be open for the period detailed within the direction.*”

6.7 I note the comment from the Appellant in its observations with regard to “*the full committee of Community Pharmacy Nottinghamshire discussed the localities and timings of the directions sent out by Nottinghamshire ICB in their November 2023 meeting*” and further, that “*as Community Pharmacy Nottinghamshire were discussing these directions after they are issued by Nottinghamshire ICB, this is contrary to*

Regulation 25(1)". I am of the view that as the most recent direction letter was issued to the Appellant on 26 April 2024, the Commissioner has undertaken a consultation process as set out in the Regulations.

- 6.8 I am mindful that the Commissioner is required by paragraph 25(6) of Schedule 4 to provide reasons for its decision. In my view, these reasons should set out the basis of any determination that days and times of opening will no longer be such as will meet the pharmaceutical needs of relevant persons and (if they are, such that a direction *may* be made) the assessment that led to the direction, taking into account any written representations from the pharmacist.
- 6.9 I note that the Commissioner, in its representations, has commented further on the process it has undertaken, however, it has not expanded on its reasoning or the assessment it carried out. I am of the view that I have not been provided with any information to substantiate the view as to why the Appellant's pharmacy will be best placed such as the consideration of other pharmacies in the area, the locations of those pharmacies and their accessibility or otherwise. I have not been provided with any information as to what pharmaceutical cover may be required or why the hours of 10.00am to 12.00pm on Monday 26 August 2024 will provide this cover.
- 6.10 I am of the view that there is no information from the Commissioner as to how directing pharmacies, taking into account those which have opened previously, provides a robust assessment of the need for pharmaceutical provision in terms of providing services to patients. I am not satisfied with the Commissioner's approach in this regard and I consider that the Commissioner has provided limited information to support the conclusion reached. Further, the Commissioner has not set out details of a robust assessment that lies behind the direction to this particular pharmacy, which is a requirement of the Regulations.
- 6.11 On appeal, I may (in accordance with paragraph 25(8) of Schedule 4) either confirm the action of the Commissioner or take such other action as it could have taken.
- 6.12 None of the correspondence issued by the Commissioner to the Appellant or its response to this appeal provide me with any information which I consider sufficient to provide reasons on the basis of which I can confirm the decision, nor information upon which I might rely to make a direction for alternative reasons.
- 6.13 The letters explain the process which has taken place and the conclusions reached, but not the reasoning that lies behind the direction.
- 6.14 On the basis of the limited information available to me, I am not satisfied that the Commissioner has demonstrated that the needs of people in its area or other likely users of the pharmacy for pharmaceutical services will not be met on Monday 26 August 2024.

7 Determination

- 7.1 The appeal is granted and, pursuant to paragraph 25(3)(c)(ii), no direction is issued.

**Head of Appeals
NHS Resolution**