

13 August 2024

**FILE REF:** **SHA/26211**

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**DECISION MAKING BODY:** **SOUTH YORKSHIRE ICB**  
**("the Commissioner")**

**PHARMACIST:** **M & A PHARMACY(FYL47)**  
**("the Applicant")**

**PREMISES:** **2 BRIDGE HILL**  
**OUGHTIBRIDGE**  
**SOUTH YORKSHIRE**  
**S35 0FL**

**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 application cannot have been made pursuant to paragraph 26 of Schedule 4 of the Regulations. The application is to increase core hours. Paragraph 26 refers to an application to change hours in a way that reduces the total number of hours or keeps that number the same. I cannot therefore determine this matter pursuant to paragraph 26 and I cannot identify any other provision of the Regulations under which I may determine this matter.
- 1.2 I therefore have no jurisdiction to determine this matter.

A copy of this decision is being sent to:

M & A Pharmacy  
South Yorkshire ICB

**Advise / Resolve / Learn**

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

**1 Introduction**

- 1.1 The Applicant has applied to the Commissioner to change the times at which it is obliged to provide pharmaceutical services at the above premises. The Applicant seeks to increase the total number of core opening hours whilst also 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.

**Rights of appeal**

- 1.3 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").
- 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" (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

- 1.5.2 “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

- 1.6 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:
- 1.6.1 the proposed core opening hours in respect of the premises; and
- 1.6.2 the total proposed opening hours for the premises (having regard to both the proposed core opening hours and any supplementary opening hours).
- 1.7 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.
- 1.8 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

- 1.9 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.
- 1.10 There is no specific right of appeal to NHS Resolution in respect of notices given under paragraph 23(6)(a).

## 2. Application

In this case, the Applicant provided the following information in its application form and supporting information dated 4 March 2024:

- 2.1 “This is an application to permanently change core opening hours.
- 2.2 Current opening hours for these premises:

|           |                            |
|-----------|----------------------------|
| Monday    | 9am – 12:30<br>14:30 – 6pm |
| Tuesday   | 9am – 12:30<br>14:30 – 6pm |
| Wednesday | 9am – 12:30<br>14:30 – 6pm |
| Thursday  | 9am – 12:30                |
| Friday    | 9am – 12:30<br>14:30 – 6pm |
| Saturday  | 9.00am – 12.30             |
| Sunday    | Closed                     |

- 2.3 Proposed core opening hours for these premises:

|           |                                    |
|-----------|------------------------------------|
| Monday    | 8:30 am to 18:30<br>1pm -2pm lunch |
| Tuesday   | 8:30 am to 18:30<br>1pm -2pm lunch |
| Wednesday | 8:30 am to 18:30<br>1pm -2pm lunch |
| Thursday  | 8:30am to 12:30pm                  |
| Friday    | 8:30 am to 18:30<br>1pm -2pm lunch |
| Saturday  | Closed                             |
| Sunday    | Closed                             |

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

2.4.1 Ideally we would like the change to take effect May/June.

2.5 Our services will remain the same and we are proposing the hours listed above to align with the local surgery. Our patients have been on many occasions complained and not happy [sic] with the pharmacy closing for lunch more than an hour.[sic] We would therefore like to amend the hours and close for Saturdays as the surgery is also closed Saturdays and we don't really deal with emergency medication on the Saturdays [sic]. Most residents in the area know that the Asda pharmacy is open though [sic] out the weekend and if any emergencies were to arise, that would be their first choice. Additional [sic] we have carried out a questionnaire with a 100 patients to highlight if closing Saturdays would have any effect on the local community. I have attached the results of the questionnaire with [sic] application."

### 3. The Decision

In a letter to the Applicant dated 30 April 2024 the Commissioner decided to refuse the application. The Commissioner stated:

3.1 "NHS South Yorkshire Integrated Care Board (ICB) has considered your application for a permanent change to the core opening hours of the above pharmacy, and I am writing to confirm that it has been refused. The Committee was not satisfied that the proposed changes would maintain the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises, nor that the existing level of service provision is unnecessary. The Committee noted that some patient survey data had been provided, though there was a lack of detail about the survey, for example when and how it was undertaken. The survey results show that patients are accessing pharmaceutical services during the core hours that would be removed. Furthermore, the Committee noted that none of the other pharmacies within two miles of the above premises open on Saturdays. The Committee also noted that the patient survey did not consider the full range of pharmaceutical services. For example, the pharmacy has opted-in to the NHS Pharmacy First Advanced Service however no data was provided about this. The Committee then considered the sustainability of the pharmacy continuing to provide the current core opening hours. Based on the information included in the application, the Committee found no evidence that the existing level of service provision is not a realistically achievable outcome.

3.2 You have a right of appeal to the Secretary of State against NHS South Yorkshire ICB's decision. Should you choose to appeal then either complete the online form available on the NHS Resolution website or send 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](mailto:nhsr.appeals@nhs.net) or:

Primary Care Appeals

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

4. **The Appeal**

In an email to NHS Resolution dated 20 May 2024 the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 4.1 “I would be utmost grateful if you would kindly reconsider our application to close on Saturdays and use them hours to open all day Thursdays as currently we are only open half days on Thursdays and our patients are not happy about this. [sic]
- 4.2 The surgery is closed on a Saturday and for this reason we are generally very quite [sic] on a Saturday and our patients only use Saturdays to collect their medications.
- 4.3 It's quite a way to travel for our pharmacists to only open a few hours on Saturdays, with the cutbacks we are finding it difficult to pay the high rates the pharmacists are demanding. We would like to do what is most beneficial for our patients and opening all day Thursdays and closing Saturdays would [sic] be if great help for us as a pharmacy and the local community.
- 4.4 I have attached the appropriate application to repeal our original application and look forward to hearing from you.”

The Applicant also completed ‘NHS Resolution’s on line form for pharmacy application appeals’ which states:

- 4.5 “We would be grateful if you reconsider our original application to change hours at the pharmacy.
- 4.6 Opening on a Saturday is of no benefit to local patients as our local surgery is closed on a Saturday and these hours can be used on the Thursday (where we are only open half day) to open all day which would be much more beneficial to patients. Also our pharmacist travel [sic] quite a distance to come for only a few hours on a Saturday. Saturdays are only used by patients to collect their meds and no other services are generally provided on Saturday as is a very quiet morning.”

5. **Representations**

- 5.1 No representations were received.

6. **Consideration**

- 6.1 I have considered paragraph 26(1) of Schedule 4 of the Regulations, which 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.”*

- 6.2 Paragraph 26(1) clearly states that a pharmacy contractor can only apply to change its hours in a way that reduces the total number of hours or keeps that number the same.

- 6.3 The Applicant in the present case is seeking to increase the number of core hours from 35 to 40 hours a week. This is not therefore an application to reduce hours or keep hours the same.
- 6.4 As such it appears that the Applicant's application has not been made pursuant to paragraph 26(1) of Schedule 4 of the Regulations.
- 6.5 I have not been directed to, and cannot identify, any provision of the Regulations that enables a pharmacy contractor to apply to increase its core hours. I would make the point that there is no need for a pharmacy contractor to apply to increase its core hours because a pharmacy contractor is at any time able to open for more than its core hours. These hours will be deemed supplementary opening hours.
- 6.6 As the application does not appear to be an application that the Applicant can make under the Regulations, I have no jurisdiction to consider this matter.

## **7. Determination**

- 7.1 The application cannot have been made pursuant to paragraph 26 of Schedule 4 of the Regulations. The application is to increase core hours. Paragraph 26 refers to an application to change hours in a way that reduces the total number of hours or keeps that number the same. I cannot therefore determine this matter pursuant to paragraph 26 and I cannot identify any other provision of the Regulations under which I may determine this matter.
- 7.2 I therefore have no jurisdiction to determine this matter.

**Head of Appeals  
NHS Resolution**