

15 October 2024

REF: SHA/26273

**APPEAL AGAINST DERBY AND DERBYSHIRE ICB
DECISION REGARDING A REMEDIAL NOTICE AT
WELLFIELD BUXTON LTD T/A BUXTON PHARMACY, 2
TEMPLE ROAD, BUXTON, DERBYSHIRE, SK17 9BA**

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

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

1 Outcome

- 1.1 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I substitute the decision of the Commissioner to issue the Remedial Notice with a decision not to issue the Remedial Notice.

A copy of this decision is being sent to:

Wellfield Buxton Ltd
Derby and Derbyshire ICB

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1 The Remedial Notice

A Remedial Notice dated 5 August 2024 was sent to Wellfield Buxton Ltd (“the Appellant”) in respect of Buxton Pharmacy, 2 Temple Road, Buxton, Derbyshire, SK17 9BA. The Remedial Notice stated:

- 1.1 **“Name of contractor:** Wellfield Buxton Ltd
- 1.2 **Pharmacy Name** Buxton Pharmacy
- 1.3 **Address of premises:** 2 Temple Road, Buxton, Derbyshire, SK17 9BA
- 1.4 **Date of inclusion in the pharmaceutical list for the area of Derbyshire Health and Wellbeing Board:** 31 January 2023
- 1.5 This is a Remedial Notice issued under regulation 70 of the National Health Services (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 1.6 **Nature of the breach**
- 1.7 Pharmaceutical Services (Advanced and Enhanced Services) Directions 2013 Part 4 Direction 14(1)(m). States that the ICB is authorised to arrange for the provision of the following additional pharmaceutical services with a pharmacy contractor (P) –
 - 1.7.1 Out of Hours Services, the underlying purpose of which is for P to dispense drugs and appliances in the out of hours period (whether or not for the whole of the out of hours period).
- 1.8 The team have followed the process of directing the pharmacy to open on 31 March 2024.
- 1.9 This included assessment of need in conjunction with the ICB and LPC, issuing the directed rota, sending a proposal to direct letter in which the pharmacy had the right to send in representations and a direction letter in which the pharmacy was able to appeal.
- 1.10 The pharmacy was also able to claim for opening via pharmoutcomes which they did not and was asked to provide assurance the store was open which was not provided.
- 1.11 This failure to provide pharmaceutical services under direction was referred to the Pharmaceutical Services Regulations Committee (PSRC) on 16th April 2024. The PSRC found the pharmacy to be in breach of the regulations as detailed above as they did not provide any evidence of fulfilling their duties of delivering the directed service.
- 1.12 The commissioner therefore found Wellfield Buxton Ltd, Buxton Pharmacy, 2 Temple Road, Buxton, Derbyshire, SK17 9BA to be in remedial notice [sic] under Regulation 70 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended.

1.13 Next Steps

1.14 In order to remedy the remedial notice, the pharmacy must supply the ICB with assurance they were open on the directed day. This must be completed by within [sic] 30 days of the date of this letter and sent to england.eastmidspharmacy@nhs.net.

1.15 This can be in the form of an RP log, till receipts, alarm log in and out records or any other form of evidence you feel would be suitable.

1.16 You have a right of appeal to the Secretary of State against the issuing of this breach notice [sic]. Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this notice to nhsr.appeals@nhs.net or:

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

1.17 Please note that should you fail to comply with the requirements of this remedial notice we reserve the right to exercise our powers to take further action."

2 The Appeal

In an email dated 6 August 2024 addressed to NHS Resolution, the Appellant appealed against Derby and Derbyshire ICB's ("the Commissioner") decision. The grounds of appeal are:

2.1 "We would like to appeal this notice as we were open from 10:00 - 16:00, please see attached RP log and till receipts attached. We did try to claim for the day but unfortunately we were unable to do so as the option on our pharmoutcomes was not there to claim. Can we please resolve this issue?"

3 Summary of Representations

No representations were received by NHS Resolution in response to the appeal.

4 Consideration

4.1 Under Regulation 70(1) "Breaches of terms of service: remedial notices" of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), a remedial notice may be issued:

70. (1) Where an NHS chemist (C) breaches a term of service and the breach is capable of remedy, NHS England may by a notice ("a remedial notice") require C to remedy the breach.

4.2 The Regulations state that an NHS Chemist means "an NHS appliance contractor or an NHS pharmacist". An NHS pharmacist is defined as "a person included in a pharmaceutical list of the type referred to in regulation 10(2)(a);". Regulation 10(2)(a) states:

10(2) "Those lists (which are pharmaceutical lists) are

(a) a list of persons who undertake to provide pharmaceutical services in particular by way of the provision of drugs;"

4.3 I note that the Appellant is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.

4.4 I note in the Remedial Notice the Commissioner states that the pharmacy had been previously asked to provide assurance the store was open. The Appellant does not

dispute that there was an opportunity for the matter to be resolved prior to the Remedial Notice being issued. Therefore it appears as though some form of local dispute resolution has taken place.

- 4.5 The Pharmaceutical Services (Advanced and Enhanced Services) (England) Directions 2013 (the "Directions") are included in Part VIC of the Drug Tariff and are made under section 127 of the NHS Act 2006. The Regulations define "directed services" as additional pharmaceutical services provided in accordance with directions under section 127 of the NHS Act 2006.
- 4.6 I note that Regulation 11(1) makes clear that terms of service include any provisions affecting an NHS pharmacist's rights or obligations that are:
- 4.6.1 included in the Drug Tariff; and
- 4.6.2 included in any arrangements that NHS England makes with an NHS pharmacist for the provision of any directed services.
- 4.7 I therefore consider that obligations contained in the Directions are deemed to be terms of service by virtue of Regulation 11 of the Regulations and the ability to issue a breach notice or a remedial notice under the Regulations applies to a failure to comply with such obligations.
- 4.8 I note Direction 14(1)(m) of the Directions states:
- Enhanced services provided by pharmacy contractors*
- 14.—(1) The NHSCB is authorised to arrange for the provision of the following additional pharmaceutical services with a pharmacy contractor (P)—*
- (m) Out of Hours Services, the underlying purpose of which is for P to dispense drugs and appliances in the out of hours period (whether or not for the whole of the out of hours period);*
- 4.9 I note that there is no dispute that in accordance with Direction 14(1)(m) of the Directions, the Appellant was directed to provide the Out of Hours service on 31 March 2024.
- 4.10 I note that the Remedial Notice refers to Direction 14(1)(m) of the Directions and the Appellant's failure to meet its duty in delivering the additional service on 31 March 2024 on the basis that the Appellant had not provided evidence that it had fulfilled its duty.
- 4.11 In its appeal, the Appellant contends that it was open from 10:00 – 16:00 and that it did try to claim for the day but it was unable to do so as the option on pharmoutcomes was not there to claim.
- 4.12 The Appellant has not evidenced what is meant by "...as the option on pharmoutcomes was not there to claim" but if screenshots were available, these would have supported the Appellant's contention.
- 4.13 I note on appeal, the Appellant has provided a copy of its RP log and till receipts which show that Kiran Mahmood was logged in as the responsible pharmacist on 31 March 2024 and further that till sales had been taken on the same day, between 14:12 and 15:49. The Commissioner has not responded to the appeal and this specific information despite the Remedial Notice indicating that this would be the type of information needed to demonstrate that the pharmacy was open.
- 4.14 Further I note the Commissioner could not be satisfied at the time of issuing the Remedial Notice, that the Appellant was open on 31 March 2024 and providing the Out of Hours service as directed.

- 4.15 However on appeal, I consider that sufficient evidence has been provided to show that the Appellant was open and providing the directed service.

5 Decision

- 5.1 I am of the view that under NHS Resolution's powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of the Commissioner or substitute for that decision any decision that the Commissioner could have taken when it took that decision.
- 5.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I substitute the decision of the Commissioner to issue the Remedial Notice with a decision not to issue the Remedial Notice.

**Head of Appeals
NHS Resolution**