

13 November 2024

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FILE REF: SHA/26309

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

PHARMACIST: DELAPRE PHARMACY
("the Applicant")

PREMISES: 52 GLOUCESTER AVENUE,
NORTHAMPTON,
NORTHAMPTONSHIRE,
NN4 8QF

**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:

Delapre Pharmacy
Northamptonshire ICB

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

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Email: nhsr.appeals@nhs.net

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**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL
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**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 2pm to 4pm on Wednesday 25 December 2024 (Christmas Day).
- 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 2pm to 4pm on Wednesday 25 December 2024, a day on which it would otherwise be closed.

2 The Direction

In a letter to the Appellant dated 20 August 2024, the Commissioner stated:

- 2.1 "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.
- 2.2 Your core opening hours on Wednesday 25 December 2024 are therefore: 14:00 – 16:00.
- 2.3 The assessment was completed by NHS Northamptonshire Integrated Care Board (ICB) and the Local Pharmaceutical Council (LPC).
- 2.4 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.
- 2.5 Please be advised that the level of remuneration for Christmas Day – 25 December 2024, will be £350 per hour for a maximum of 2 hours. This should be claimed through PharmOutcomes within 28 days of the day of closure.
- 2.6 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.
- 2.7 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 of your appeal within 30 days of the date of this letter to: nhsr.appeals@nhs.net or by post to:
- 2.8 Primary Care Appeals Case Manager, NHS Resolution, 8th Floor 10 South Colonnade, Canary Wharf, London, E14 4PU.
- 2.9 If you have any questions, please do not hesitate to contact me."

3 The Appeal

In an email to NHS Resolution dated 10 September 2024 the Appellant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "We have received the communication with regards to the Christmas Bank Holiday Rota, and note that we have been selected to open from 14.00 – 16.00pm on Wednesday 25 December 2024.
- 3.2 We previously communicated with you via email earlier this year if you would reconsider this request.
- 3.3 Last year our pharmacy was selected to open on Boxing Day from 14.00 – 16.00pm, which we did.
- 3.4 We feel that it would be unfair to request that our staff disrupt their Christmas plans again this year to accommodate this opening.
- 3.5 We await your response to our request."

4 Representations

In a letter to NHS Resolution dated 9 October 2024 the Commissioner stated:

- 4.1 "Thank you for your letter dated 19 September 2024; The East Midlands Primary Care Team on behalf of Northamptonshire Integrated Care Board (ICB) 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 Northamptonshire ICB is as follows;
 - 4.2.1 A communication is set out to all pharmacies in the Health and Wellbeing Board (HWB) twice a year requesting the proposed opening days and times for all bank holidays 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 Local Pharmaceutical Committee (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 local population, then a proposal to direct will be issued. As part of the proposal to direct, notice is given to the contractor or 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 the Northampton NN4 area and engagement with the Local Pharmaceutical Committee a proposal to direct letter was sent to Delapre Pharmacy on 25 July 2024.

- 4.4 With regard to the comment from the appellant that they had previously contacted the team we have reviewed our records and do not appear to have received any representations in response to the proposal to direct and therefore the decision was made to proceed with the direction.
- 4.5 The 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. The area also has an urgent treatment centre, so pharmacy cover is imperative. Delapre Pharmacy has not been directed to open since Boxing Day 2023.
- 4.6 I would like to take this opportunity to respond to any further representations provided by Delapre Pharmacy, 52 Gloucester Avenue, Northampton, Northamptonshire NN4 8QF.”

LETTER FROM THE COMMISSIONER DATED 25 JULY 2024

- 4.7 “Re: Proposal to direct of opening hours on Christmas Day, 25th December 2024, at Delapre Pharmacy, 52 Gloucester Avenue, Northampton, Northamptonshire, NN4 8QF.
- 4.8 Your current core opening hours are:
- 4.8.1 Monday – Friday: 09:00 – 12:30, 13:30 – 18:00
- 4.8.2 Saturday: CLOSED
- 4.8.3 Sunday: CLOSED
- 4.9 The total opening hours (core & supplementary) of the above pharmacy premises are:
- 4.9.1 Monday – Friday: 08:30 – 18:00
- 4.9.2 Saturday: CLOSED
- 4.9.3 Sunday: CLOSED
- 4.10 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:
- 4.11 There is no pharmacy provision in the Northampton NN4 area on Christmas Day, 25 December 2024, following requests by the ICB for a pharmacy to volunteer.
- 4.12 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:
- 4.12.1 Christmas Day, 25 December 2024
- 4.12.2 14:00 – 16:00
- 4.13 This assessment is being carried out in conjunction with Leicester, Leicestershire & Rutland Integrated Care Board (ICB) and the local Local [sic] Pharmaceutical Council (LPC).
- 4.14 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 24 August.

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

5 Observations

No observations were made by the Appellant in response to the representations from the Commissioner.

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 Christmas Day 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 The Commissioner has provided, in its representations on the appeal, a letter sent to the pharmacy, dated 25 July 2024 which informs the pharmacy of its intention to direct the pharmacy to open on 25 December 2024. I note that the Appellant in its appeal stated that it had “*previously communicated to [the Commissioner] via email earlier this year if [the Commissioner] would reconsider this request*”. I further note that the Commissioner in its representations claims not to have received any such communication and I note that the Appellant did not submit a copy of this alongside its appeal.
- 6.6 The Commissioner has also indicated that it consulted the relevant LPC when drawing up the Bank Holiday directions for the provision of pharmaceutical services over the Christmas period.
- 6.7 I am of the view that the Commissioner has undertaken a consultation process as set out in the Regulations and that there is no dispute from the Appellant in this regard.
- 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 and provided limited reasoning as to why the Appellant’s premises has been directed to open. 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, other than the statement that there is a nearby urgent treatment centre, or why the hours of 2pm to 4pm on Wednesday 25 December 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 provided 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 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 Wednesday 25 December 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**