

11 December 2024

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FILE REF: SHA/26361

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DECISION MAKING BODY: CHESHIRE & MERSEYSIDE ICB
("the Commissioner")

PHARMACIST: STEPHENS PHARMACY (FKJ51)
("the Appellant")

PREMISES: 516 MATHER AVENUE, ALLERTON,
LIVERPOOL, L19 4UG

**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 I confirm the action of the Commissioner to issue the direction.

A copy of this decision is being sent to:

St Helens Pharmacy Group
Cheshire & Merseyside 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 14:00 to 16:00 on 25 December 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 14:00 to 16:00 on 25 December 2024, a day on which it would otherwise be closed.

2 **The Direction**

In a letter to the Appellant dated 27 September 2024, the Commissioner stated:

- 2.1 **"Re: Directed Rota Service – Christmas Day- Wednesday 25th December 2024.**
- 2.2 Further to the letter of 24/08/2024 I enclose an updated version of the directed rota service for **Christmas Day- Wednesday 25th December 2024**. Please ensure that you check the attached sheet for the details of your direction.
- 2.3 **Your pharmacy is directed in line with NHS Pharmaceutical and Local Pharmaceutical services Regulations (2013) (as amended), Schedule 4, Part 3, Regulation 24, to open as detailed on the attached sheet.**
- 2.4 NHS Cheshire & Merseyside acknowledges that your pharmacy is directed to open on a Bank Holiday. NHS Cheshire & Merseyside is obliged to provide a directed rota service in order to ensure adequate pharmaceutical provision is provided in a given area on days when many contractors will choose to close.
- 2.5 NHS Cheshire & Merseyside does write out to all contractors before producing a directed rota to ask whether anyone would like to volunteer, as we would much rather direct a contractor who wants to open where we have the option. Unfortunately, we have not received a volunteer within your locality. Where it is deemed necessary to direct a rota due to a lack of volunteers, pharmacies are directed in rotation for each bank holiday within localities as agreed with the Local Pharmaceutical Committee (LPC).
- 2.6 In seeking to ensure that pharmaceutical services are provided on such days and at such times as are necessary to meet the needs of people in its area or other likely users of the pharmacy premises, NHS Cheshire & Merseyside has followed the Regulations accordingly by directing pharmacies to open. The consideration as to whether to direct a pharmacy to open on **Christmas Day- Wednesday 25th December 2024** involved a review of services available to patients on this date in this locality.

- 2.7 NHS Cheshire & Merseyside considered the local Pharmaceutical Needs Assessment (PNA) to understand the needs of the local population and has taken into consideration the provision and availability of other health care services e.g. GP primary care provision and Out of Hours at the time of the directed rota. The PNA does not indicate that on Bank/Public Holidays and Special Days the needs for the population to access pharmaceutical services have changed, as such it can be determined that in each patient conurbation there will be a need for pharmaceutical services on such days and that a service should be accessible in each patient conurbation across the key times that patients are used to accessing services. Some commissioned pharmaceutical services for example Community Pharmacy Consultation Service are of their nature a timebound services, which does not take in to account a lack of provision over Bank Holidays.
- 2.8 NHS Cheshire & Merseyside has assessed the need in your locality for the provision of pharmaceutical services. This assessment included:
- 2.8.1 Location and opening times of pharmacies in your locality
 - 2.8.2 Pharmaceutical Needs Assessment (PNA) for your locality
 - 2.8.3 Responses to consultation from the LPCs
 - 2.8.4 Representations submitted during the 30 days since issuing the initial direction letter
 - 2.8.5 Details of the times at which pharmacies in your locality were busiest during previously directed Bank/Public Holidays
 - 2.8.6 The geographical location of your pharmacy within your locality and the distance to the nearest pharmacy that will be open on **Christmas Day- Wednesday 25th December 2024.**
 - 2.8.7 Availability of public transport on **Christmas Day- Wednesday 25th December 2024.**
 - 2.8.8 Patient deprivation indices
- 2.9 As a result of this assessment, it is determined that direction is required to provide adequate pharmaceutical services at the times stated in the attached directed rota.
- 2.10 You will receive £240 per hour. In order to receive this payment you will need to submit both your Responsible Pharmacist log and a rota claim form within 28 days of fulfilling your rota duties.
- 2.11 Your opening hours will be shared with other NHS organisations such as CCGs, NHS 111, hospitals and GPs for signposting patients. It is important that NHS 111 has this information in order to direct patients to pharmaceutical services, so please can you ensure that you update your DoS profile using the DoS correction tool. Updating your NHS Choices profile is also advised.
- 2.12 This notification can be appealed, within 30 days of the date above. This is in accordance with Schedule 4, Part 3, Regulation 25(7) the NHS (Pharmaceutical Services & Local Pharmaceutical Services) Regulations 2013 (as amended). The appeal must be sent in writing to:

NHS Resolution (Primary Care Appeals)
8th Floor
10 South Colonnade
Canary Wharf
London E14 4PU

3 The Appeal

- 3.1 By email to NHS Resolution dated 23 October 2024 the Appellant appealed against the Commissioner's decision. The grounds of appeal are:
- 3.2 "RE: Direction of core opening hours for Stephens Pharmacy FKJ51.
- 3.3 Further to a direction of core opening hours received by email dated 27.09.24 for the above pharmacy to open on Wednesday 25th December 2024 between 14:00 and 16:00, St Helens Pharmacy Ltd writes to appeal to NHS Resolution.
- 3.4 First and foremost, I am conscious of the need for adequate pharmaceutical service provision. However, I feel that this decision has not been based on adequate research by NHS England to action the direction. There is nothing in our correspondence to indicate how or why this direction supports a decision from an assessment that concluded the pharmaceutical needs of relevant persons will not be met on this day such that I am required to open.
- 3.5 I believe NHS England is required by paragraph 25(6) of Schedule 4 of the NHS Pharmaceutical and LPS Regulation (2013) to provide reasons for its decision. I note the regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation, which should conclude that the needs of the local population and the likely users of my pharmacy would not be met on this day such that I am required to open from 2pm to 4pm on Christmas Day 2024. Neither of the letters we have received refer to any specific results linking my pharmacy specifically to any lack of service provision on this day.
- 3.6 In both letters from the NHS, I have been given a sentence or two informing me an assessment has taken place, and a sentence stating the final decision reached, and bullet points informing us of what the assessment involved, but there has been no reasoning or results given behind the direction. In particular, what regard was had to the specific day and time of opening and how these will no longer be such to meet the pharmaceutical needs of the patients and that as a result we would be required to open from 2 till 4pm on Xmas Day 2024. Furthermore, there are only general details and no specific outcomes of a consultation or assessment, and therefore no specific reasons behind the direction of our pharmacy which is contrary to paragraph 25(1) and 25(6) of Schedule 4.
- 3.7 Stephens Pharmacy does not believe that this direction meets the requirements of paragraph 25(6) of Sch 4.
- 3.8 We are also aware that the Liverpool Area contains many contractors already opening voluntarily for the full or part of the day. This includes FN768, FKW38, FN768, FA552, FDN14, FV880, FWK89, FEF46, FV731, FJA42, FEM99 and FDN14 which will be opening for the full day (at least 10am till 4pm) and FLP04, FTM09, FHJ15, FWF82 and FEG32 which will be open for at least 4 hours.
- 3.9 In conclusion, my pharmacy has been directed, however for the reasons discussed above, I do not feel it has been made clear as to why this pharmacy has been chosen to open on this time and date, as opposed to other pharmacies in the area. There is no evidence to suggest the 'conclusions' from the 'assessment' link our pharmacy to any reduction in pharmaceutical services such that the needs of the patients will no longer be met by not opening, nor as previously stated, any evidence that a full and proper assessment even took place and therefore I am appealing against the NHS decision for the reasons discussed above."

4 Representations

In a letter to NHS Resolution dated 13 November 2024 the Commissioner stated:

4.1 “Thank you for your email notifying us that St Helens Pharmacy Ltd T/A Stephens Pharmacy has appealed against NHS Cheshire & Merseyside ICB’s decision to direct their pharmacy (FNJ85) to open on Christmas Day 2024 (25/12/2024)

4.2 We note that St Helens Pharmacy Ltd is appealing this direction on the basis that they feel NHS Cheshire & Merseyside ICB has not carried out an appropriate assessment to determine their pharmacy should be directed to open.

4.3 NHS Cheshire & Merseyside ICB under Schedule 4, Part 3, paragraph 25(2)(b) of the NHS (Pharmaceutical Services and Local Pharmaceutical Services) Regulations 2013 (as amended) has the ability to direct a pharmacy to open where a need is determined. The Regulations state:

“(6) The NHSCB must notify P of any direction issued or any other action taken under subparagraph (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).”

4.4 As you will be aware, pharmacies are not required by their terms of service to open on Christmas Day, Good Friday, Easter Sunday or on a bank holiday, although they may choose to do so.

4.5 I can confirm that we have issued a direction both [sic] of the following pharmacies to open 2 hours each for the locality of Belle Vale, Garston, Hale Wood, Speke, Woolton:

4.5.1 FPA31 Kays Chemist, Netherley Health Centre, Middlemass Hey, Liverpool, L27 7AF

4.5.2 FKJ51 and that St Helens Pharmacy Ltd T/A Stephens Pharmacy

4.6 However, as will be detailed further in this letter we have assessed the need for Pharmaceutical Services in this locality and feel further provision is required. As you will also be aware, under section 126 of the NHS Act 2006 (Arrangements for pharmaceutical services), NHS Cheshire & Merseyside ICB must make arrangements for the provision, to persons who are in England, of:

4.7 “proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, Crown, proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of—

(i) his functions in the health service, the Scottish health service or the Northern Ireland health service (other than functions exercised in pursuance of the provision of services mentioned in paragraph (c)), or

(ii) his functions in the armed forces of the Crown,

listed drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of the provision of primary dental services or equivalent services in the Scottish health service or the Northern Ireland health service,

such drugs and medicines and such listed appliances as may be determined by the Secretary of State for the purposes of this paragraph and which are ordered for those persons by a prescribed description of person in accordance with such conditions, if any, as may be prescribed, in pursuance of functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown, and

such other services as may be prescribed.”

- 4.8 We have also consulted with from [sic] Local Pharmacy Committee (LPC) who advised Belle Vale, Garston, Hale Wood, Speke, Woolton - Liverpool locality will require a minimum 4 hours of pharmaceutical service on Christmas Day and Easter Sunday.
- 4.9 NHS Cheshire & Merseyside ICB has therefore considered what arrangements need to be put in place on Christmas Day in order to discharge this duty. We are of the opinion that whilst demand for the full range of pharmaceutical services may be lower on this day compared to a Wednesday that is not a public holiday, there will still be a need for pharmaceutical services by people who live within Cheshire and Merseyside or are visiting the area for the festive period. Whilst GP practices will be closed on Christmas Day, other providers of NHS services will be open such as the GP out of hours service and A&E departments.
- 4.10 We note that in SHA/24664 (issued on 15 December 2021) the head of operations, Primary Care Appeals, stated that they were of the view that the days in question (Sunday 26 December 2021 and Saturday 1 January 2022) are, in relation to pharmaceutical services, no different from any other day and that they had seen no information in that appeal which indicated a change of attitude towards those particular days (from a pharmaceutical services perspective). We believe the same to be true for Christmas Day 2024.
- 4.11 We believe that, as a minimum, the services for which there will be a need on Christmas Day are as follows.
- 4.11.1 The dispensing service for prescriptions issued by a NHS service provider that is open on that day or for prescriptions that have been issued on a previous day but which a person has not been able to have dispensed due, for example, being at work and pharmacies reducing their supplementary opening hours over the Easter period.
- 4.11.2 The Pharmacy First service for both the provision of drugs and also of advice following referral from NHS 111. As GP practices will be closed on Christmas Day, people seeking advice on the management of low acuity/minor illnesses will turn to, or be referred to, pharmacies.
- 4.12 Of course, some people may wish to access other essential and advanced services. As stated above, we do not believe there will be sufficient pharmaceutical cover within the Belle Vale, Garston, Hale Wood, Speke, Woolton – Liverpool locality and therefore at present NHS Cheshire & Merseyside ICB is unable to discharge its duty as set out in section 126 of the NHS Act 2006.
- 4.13 In the past, the approach would have been to direct pharmacies that were close to where prescriptions would be generated, for example near to the GP out of hours service and A&E departments, as people would be travelling to those locations and then seeking a pharmacy nearby. However, the advent of the Pharmacy First Service, and before it the community pharmacist consultation service, and NHS urgent medicines supply advanced service, means that those requiring pharmaceutical services will need to access a pharmacy near to where they live.

- 4.14 As a result we need to ensure that there is a good spread of pharmacies that are open on Christmas Day across our area. St Helens Pharmacy Ltd T/A Stephens Pharmacy is located in the Belle Vale, Garston, Hale Wood, Speke, Woolton – Liverpool locality.
- 4.15 We have worked with the LPCs in our area in order to develop a process by which we could discharge our duty and ensure that all pharmacies are treated as equally as possible in relation to the public and bank holidays and Easter Sunday. It was agreed with the LPCs that we would jointly work on a locality basis when identifying whether or not a pharmacy needs to be directed to open on such a day, rather than reviewing each pharmacy individually. Localities were based on patient footfall, patient usage of services and ease of access.
- 4.16 These localities were defined in collaboration with the LPC to determine the most effective distribution of and access to available services. This approach was agreed by all parties as it ensures NHS Cheshire & Merseyside ICB can discharge its duty in a way that is fair to all pharmacies. These localities are reviewed with the LPCs annually to ensure they still meet the demand for pharmaceutical access.
- 4.17 At the time of producing the directed rota for Christmas Day there were 18 pharmacies within this locality. NHS Cheshire & Merseyside ICB did not receive any voluntary offers to open on Christmas Day.
- 4.18 The process followed for Christmas Day is as follows:
- 4.19 NHS Cheshire & Merseyside ICB wrote out to all contractors to ask whether anyone would like to volunteer to provide pharmaceutical services on Christmas Day 2024. This would allow us to direct a contractor who wants to open where we have this option or for an SLA to be used to support extended opening where appropriate. NHS Cheshire & Merseyside ICB did not receive any volunteers within the Belle Vale, Garston, Hale Wood, Speke, Woolton – Liverpool locality area for Christmas Day.
- 4.20 The requirement for pharmaceutical service provision on Christmas Day was reviewed with the LPCs and a determination made as to what cover we jointly feel is required. Contractors within a locality were reviewed and we identified which pharmacies have been directed to open in the past and then identified which could be directed to be open on a rolling basis.
- 4.21 The LPCs also had sight of which pharmacies were selected for direction within the localities so that they can offer advice on whether the spread of contractors is sufficient and fair.
- 4.22 When determining which Pharmacies to direct we have reviewed the claim forms submitted by contractors who have previously opened on Christmas Day within the Belle Vale, Garston, Hale Wood, Speke, Woolton – Liverpool locality and determined the level of cover required from the information provided regarding the number of patients accessing pharmaceutical services, the number of prescriptions dispensed and the number of patients requesting advice from a Pharmacist.
- 4.23 The timing of the hours that we are asking pharmacies to open is based on a review of directed rota claim forms submitted by contractors, which indicated the level of demand for services at various times of the day on Christmas Day in previous years within the Belle Vale, Garston, Hale Wood, Speke, Woolton – Liverpool locality. We have determined there is sufficient demand for pharmaceutical services to require a minimum of four hours cover between 10am – 4pm. This cover is spread between two pharmacies. This ensures that patients have access to these services on a day where public transport is not as easily accessible.
- 4.24 Whilst NHS Cheshire & Merseyside ICB does try to rotate pharmacies to ensure equitability this is a secondary reason for a direction. As previously stated we review the geographical location of a pharmacy within an agreed locality and in the case Belle

Vale, Garston, Hale Wood, Speke, Woolton – Liverpool locality we believe that there is a requirement for two pharmacies to open on Christmas Day to ensure there is equitable access for patients who do not have access to a car on a day where public transport is not likely to be operating, which is why Stephens Pharmacy have been selected and directed to open on Christmas Day 2024. I have enclosed a map that shows the geographical location of the above two pharmacies demonstrating that we have directed one pharmacy that sits to the north of the Belle Vale, Garston, Hale Wood, Speke, Woolton locality and one to the south, ensuring that patients residing in this locality are able to access pharmaceutical provision on a day where public transport may not be easily available.

- 4.25 You will note from the enclosed map that the darker areas with a red border are identified as areas with highest levels of health deprivation within the Belle Vale, Garston, Hale Wood, Speke, Woolton – Liverpool locality. Therefore, we can surmise that patients residing in or visiting these areas are likely to have an increased need to access pharmaceutical services on a day when other health care providers will be closed. Stephens Pharmacy sits within one of these areas and adjacent to other areas identified as having high levels of health deprivation, therefore it is determined that the need for services from this pharmacy will be greater than the need for pharmacies within other areas of the case Belle Vale, Garston, Hale Wood, Speke, Woolton – Liverpool locality.
- 4.26 We wrote to contractors advising that they are being considered for a direction and inviting them to submit representations to NHS Cheshire & Merseyside ICB within 30 days of the date of our initial letter sent on 24/08/2024. St Helens Ltd T/A Stephens Pharmacy did not submit any representation during this period; therefore, NHS Cheshire & Merseyside ICB moved to issuing a direction on 27th September 2024, as we had not been provided with any information to suggest this direction was not required.
- 4.27 NHS Cheshire & Merseyside ICB has chosen to give Stephens Pharmacy 4 months' notice of the potential requirement to open on this date, and just under 3 months' notice when the final direction was issued, in order that the contractor has sufficient time to prepare accordingly. NHS Cheshire & Merseyside ICB had regard to all representations received including information as to whether other pharmacies may or may not be able to provide cover before moving to issuing a direction. NHS Cheshire & Merseyside ICB was not in a position to be assured that adequate levels of pharmaceutical service provision, as agreed with the LPCs with regard to the needs of the population, would be in place in this locality without issuing directions.
- 4.28 We believe we meet the requirements of the Regulations under the following paragraphs in the letter dated 27/09/2024: "NHS Cheshire & Merseyside ICB considered the local Pharmaceutical Needs Assessment (PNA) to understand the needs of the local population and has taken into consideration the provision and availability of other health care services e.g. GP primary care provision and Out of Hours at the time of the directed rota. The PNA does not indicate that on Bank/Public Holidays and Special Days the needs for the population to access pharmaceutical services have changed, as such it can be determined that in each patient conurbation there will be a need for pharmaceutical services on such days and that a service should be accessible in each patient conurbation across the key times that patients are used to accessing services. Some commissioned pharmaceutical services for example Community Pharmacy Consultation Service are of their nature a timebound service, which does not take in to account a lack of provision over Bank Holidays.
- 4.29 NHS Cheshire & Merseyside ICB assessed the need in your locality for the provision of pharmaceutical services. This assessment included:
 - 4.29.1 "Location and opening times of pharmacies in your locality;
 - 4.29.2 Pharmaceutical Needs Assessment (PNA) for your locality;

- 4.29.3 Responses to consultation from the LPCs;
- 4.29.4 Representations submitted during the 30 days since issuing the initial direction letter;
- 4.29.5 Details of the times at which pharmacies in your locality were busiest during previously directed Bank/Public Holidays;
- 4.29.6 The geographical location of your pharmacy within your locality and the distance to the nearest pharmacy that will be open on Christmas Day 2024;
- 4.29.7 Availability of public transport on Christmas Day 2024;
- 4.29.8 Patient deprivation indices"
- 4.30 The consideration as to whether to direct a pharmacy to open on Christmas Day 2024 involved contractors included in the relevant pharmaceutical list in the locality (in this case Belle Vale, Garston, Hale Wood, Speke, Woolton – Liverpool locality). In seeking to ensure that pharmaceutical services are provided on such days and at such times as are necessary to meet the needs of people in its area or other likely users of the pharmacy premises, in this case to ensure sufficient cover arrangements are in place on Christmas Day NHS Cheshire & Merseyside ICB has followed its processes (as described above) accordingly by directing pharmacies to open.
- 4.31 For the reasons provided above, NHS Cheshire & Merseyside ICB maintains its decision to issue this direction to St Helens and requests that the appeal be rejected.
- 4.32 I have attached for your information:
 - 4.32.1 Email sent to all contractors asking for volunteers to open on Bank Holidays.
 - 4.32.2 Email containing a letter advising contractors that they were being considered for direction on Christmas Day and inviting them to submit representation.
 - 4.32.3 Email containing a letter directing the contractor to open on Christmas Day 2024 and notifying them of their right of appeal.
 - 4.32.4 Map containing the location of pharmacies in the Belle Vale, Garston, Hale Wood, Speke, Woolton – Liverpool locality, highlighting the areas of high health deprivation and the location of the two pharmacies directed to open on Christmas Day 2024."

5 Observations

In a letter to NHS Resolution dated 22 November 2024 the Appellant stated:

- 5.1 "I note the NHS Cheshire and Merseyside ICB (NHS ICB) have said that we did not make any initial representations or comments. This was because on the posted rota (previously supplied) the NHS ICB have used the incorrect company name / contractor name for our pharmacy and so we were initially unaware of the direction. In no correspondence previous to the email dated 13-11-2024 have the NHS ICB used our company name but instead used incorrect information to this point.
- 5.2 I note that the NHS ICB have stated that they spoke to the LPC and the LPC have advised certain things (e.g 4 hours of service required) but have provided no data or information to back up what the LPC have said. If the LPC say something it should be their duty to provide data and statistics to back up, what is their opinion and should be the duty of the NHS ICB to scrutinize what they are saying.

- 5.3 I note that the NHS ICB also state “we do not believe that their [sic] will be sufficient pharmaceutical cover” [on this day]. Again this appears to be an opinion without any data or statistics to back it up.
- 5.4 The NHS have also stated that they have used forms submitted by contractors who have previously opened to determine the level of cover required but then provided no information as to what these responses contained.
- 5.5 Maps submitted have no source and can only be interpreted at most as a map of South Liverpool.”

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 I note that the Commissioner states that pharmacies are directed as agreed with the Local Pharmaceutical Committee ("LPC"). I have not been provided with a copy of the consultation with the LPC. I note that a letter proposing to direct the pharmacy to open was sent to the pharmacy on 24 August 2024 and the pharmacy was provided with 30 days to provide representations with regard to the proposal. In their representations on the appeal, the Commissioner states that the pharmacy did not respond.
- 6.6 The Appellant on appeal states: *"This was because on the posted rota (previously supplied) the NHS ICB have used the incorrect company name / contractor name for our pharmacy and so we were initially unaware of the direction.* I have been provided with a copy of the 24 August 2024 letter and note that the Appellant has otherwise not sought to dispute the content of this letter.
- 6.7 I note that the direction letter of 27 September 2024 states *"I enclose an updated version of the directed rota service for Christmas Day- Wednesday 25th December 2024. Please ensure that you check the attached sheet for the details of your direction."* It may be that this was the point that the Appellant became aware of the direction and was able to subsequently appeal to NHS Resolution.
- 6.8 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.
- 6.9 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.
- 6.10 I note that in the direction letter the Commissioner states that the reasons for directing the pharmacy to open are *"...we have not received a volunteer within your locality. Where it is deemed necessary to direct a rota due to a lack of volunteers, pharmacies are directed in rotation for each bank holiday within localities as agreed with the Local Pharmaceutical Committee (LPC)."* The letter goes on to state *"The consideration as to whether to direct a pharmacy to open on Christmas Day - Wednesday 25th December 2024. involved a review of services available to patients on this date in this locality."* The Commissioner goes on to state that they considered the Pharmaceutical Needs Assessment (PNA) as well as the availability of other health care services, GP primary care provision and out of hours, at the time of the directed rota but I note there is little supporting information in this regard.
- 6.11 The direction letter concluded:
- 6.11.1 *"NHS Cheshire & Merseyside has assessed the need in your locality for the provision of pharmaceutical services. This assessment included:*
- *Location and opening times of pharmacies in your locality*
 - *Pharmaceutical Needs Assessment (PNA) for your locality*
 - *Responses to consultation from the LPCs*
 - *Representations submitted during the 30 days since issuing the initial direction letter*

- Details of the times at which pharmacies in your locality were busiest during previously directed Bank/Public Holidays
- The geographical location of your pharmacy within your locality and the distance to the nearest pharmacy that will be open on Christmas Day-Wednesday 25th December 2024.
- Availability of public transport on Christmas Day - Wednesday 25th December 2024.
- Patient deprivation indices.

As a result of this assessment, it is determined that direction is required to provide adequate pharmaceutical services at the times stated in the attached directed rota.”

- 6.12 I note that in their representations on appeal the Commissioner has expanded upon the reasoning for the direction and the assessment that was carried out. The Commissioner indicates that the LPC had agreed that a minimum of 4 hours cover was required at Belle Vale, Garston, Hale Wood, Speke, Woolton - Liverpool locality. The Commissioner also indicates that it reviewed the claim forms submitted by contractors who have previously opened on Christmas Day (25 December) within the Belle Vale, Garston, Hale Wood, Speke, Woolton – Liverpool locality and determined the level of cover required from the information provided regarding the number of patients accessing pharmaceutical services, the number of prescriptions dispensed and the number of patients requesting advice from a pharmacist. The Commissioner states that the timing of the hours that it is asking pharmacies to open is based on a review of directed rota claim forms submitted by contractors, which indicated the level of demand for services at various times of the day on Christmas Day in previous years within the within the Belle Vale, Garston, Hale Wood, Speke, Woolton – Liverpool locality. It would have been helpful to have seen the data rather than simply the methodology and conclusion but I am satisfied that an assessment was undertaken.
- 6.13 I further note the comments from the Commissioner that in previous years it would have directed pharmacies that were near to the source of prescriptions, i.e. GP out of hours services as well as A&E, however following the introduction of Pharmacy First the Commissioner was mindful that those requiring pharmaceutical services will require them in the vicinity of where they live. As a result of this the Commissioner also considers the geographical location of pharmacies across the whole of the locality.
- 6.14 The Commissioner determined that there is sufficient demand for pharmaceutical services to require a minimum of four hours pharmaceutical cover on Christmas Day. This cover is spread between two pharmacies, each opening for 2 hours, to ensure that patients have access to pharmaceutical services on a day where public transport is not as easily accessible. I note the Commissioner's further comments when responding to the appeal that its map (provided) shows areas highlighted in red which are those identified by the Commissioner as areas with the highest levels of health deprivation. The Commissioner therefore surmised that patients residing in or visiting these areas are likely to have an increased need to access pharmaceutical services on a day when other health care providers will be closed. The Appellant challenges the source of the map and whilst I agree that it is not referenced, the Appellant does not argue that the pharmacy location is not in or near an area of high deprivation.
- 6.15 It is regrettable that the detail of its assessment was omitted from the direction letter. I further note that the Commissioner is of the view that the rotation of pharmacies to open to “ensure equitability” is a “secondary reason for a direction.” I am of the view that if the Appellant's pharmacy is best placed to provide pharmaceutical services at the specified times, then this should have been explained in the direction letter.
- 6.16 I note that the Appellant, in their appeal and in subsequent representations, remains of the view that the direction does not meet the requirements of the Regulations as the Commissioner has not provided a detailed analysis and has only provided “general

details and no specific outcomes of a consultation or assessment there is no specific reasons behind the direction of our pharmacy ...”.

- 6.17 I am of the view that, given the extensive explanation of the Commissioner’s assessment in its representations on this appeal I have been provided with sufficient information to substantiate the view as to why the Appellant’s pharmacy will be best placed in terms of access and geography to meet the envisaged demand for services.
- 6.18 I am satisfied with the Commissioner’s assessment and I consider that the Commissioner has provided sufficient information to support the conclusion reached.
- 6.19 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.
- 6.20 On the basis of the information available to me and for the reasons given above, I am satisfied that the Commissioner has demonstrated 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 such that it is appropriate to issue a direction requiring the Appellant’s pharmacy to open on the day and time indicated in the direction.

7 Determination

- 7.1 I confirm the action of the Commissioner to issue the direction.

**Head of Appeals
NHS Resolution**