15 January 2025

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FILE REF: **SHA/ 26353**

DECISION MAKING BODY: **NHS CHESHIRE AND MERSEYSIDE ICB ("the Commissioner")**

PHARMACIST: **PONDA'S CHEMIST LIMITED ("the Applicant")**

PREMISES: **14 HILLCREST ROAD PRESTWICH MANCHESTER M25 9UD**

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 Based on the information provided, I am satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises.

1.2 Therefore I substitute the decision of the Commissioner to reject the change of hours application with the decision to grant the change of hours application, without a direction.

A copy of this decision is being sent to:

Pharmacy, Sales and Consultancy on behalf of Ponda's Chemist Limited
NHS Cheshire and Merseyside ICB

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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 days and times at which it is obliged to provide pharmaceutical services at the above premises. The Applicant seeks to keep the total number of core opening hours the same while 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 19 August 2024:

2.1 "This is an application to permanently change core opening hours.

2.2 Current opening hours for these premises:

Monday	0900-1230 1400-1800
Tuesday	0900-1230 1400-1800
Wednesday	0900-1230 1400-1800
Thursday	0900-1230 1400-1800
Friday	0900-1230 1400-1800
Saturday	0900-1130

Sunday	Closed

2.3 Proposed core opening hours for these premises:

Monday	0900-1300 1400-1800
Tuesday	0900-1300 1400-1800
Wednesday	0900-1300 1400-1800
Thursday	0900-1300 1400-1800
Friday	0900-1300 1400-1800
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 21st October 2024."

Supporting information

2.5 "We act for Ponda's Chemist Limited. Our client has instructed us to submit an application to NHS England [sic] to amend the core hours for its pharmacy located at:

2.6 7 Cheviot Square
Winsford
CW7 1QS

2.7 **Regulatory context**

2.8 The introduction of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2023 in May 2023 brought in changes to the legal tests to be considered by the NHS Commissioning Board when a pharmacy contractor wishes to change core opening hours for an NHS Pharmacy.

2.9 As is often the case when there is a change to the Regulations, decision makers have interpreted these new Regulations in different ways, with some ICBs approving applications for changes of core hours when other ICBs refused applications where identical circumstances apply.

2.10 In a number of cases, where applications have been refused by individual ICBs, applicants have lodged appeals against these decisions and the application has been determined by NHS Resolution. At the time of submitting this application there have been several appeal decisions published by NHS Resolution relating to applications in accordance with paragraph 26 of Schedule 4 to the Regulations (determination of pharmacy premises core opening hours instigated by the NHS pharmacist).

2.11 This is helpful for both applicants and ICBs as the approach taken by NHS Resolution effectively sets a precedent for how future applications will be determined. It is appropriate, therefore, for ICBs who are in receipt of these applications to be mindful of other decisions made in similar circumstances. Their approach should be consistent with the approach taken by NHS Resolution to avoid unnecessary appeals.

2.12 To assist the ICB consider this application we have attached a copy of a recent approval by NHS Resolution for a change of core hours in Ormskirk (SHA/26102) and we have summarised the approach taken by NHS Resolution below.

2.13 The approach taken by the Head of Appeals at NHS Resolution in this case was to effectively consider two matters:

2.14 <u>1. Is it necessary to maintain the existing level of service provision?</u>

2.15 This is dealt with in paragraphs 2.31 to 2.43 of the Ormskirk decision.

2.16 The approach taken was to first establish what the current level of service provision by the applicant is. The Ormskirk decision report makes it clear that, when considering the current service levels, the decision maker should take into account not only at what times of day those services are provided, but also "other characteristics of the service, such as types and range of services provided, geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided".

2.17 The implication here is that it is for the applicant and other relevant parties to provide the decision maker with sufficient information to allow it to assess the current level of provision.

2.18 The Head of Appeals then went on to consider (2.36 onwards), the matter of whether "it is necessary to maintain the existing level of service provision".

2.19 In 2.43 the report states "From the information provided, it is clear that there are some people using the pharmacy at the times the Applicant wishes to close, albeit low in numbers and therefore I consider it is necessary to maintain the existing level of service provision".

2.20 Essentially what NHS Resolution is saying here is that, if there is evidence that there is any demand for pharmaceutical services at the pharmacy during the hours it proposes to close in the future, even if this demand is very low, then it is necessary to maintain service provision to these patients during those hours.

2.21 The implication of this is that if evidence was provided that there was absolutely no demand for pharmaceutical services whatsoever during the hours it is proposed to close, then it could be concluded that it is not necessary to maintain the existing level of service provision and the application could be approved.

2.22 If there is evidence of some demand then the decision maker should go on to consider other matters.

2.23 <u>2.If the applicant's pharmacy changed its core hours, are these 'necessary services' available to patients from other pharmacies during the times the pharmacy previously opened?</u>

2.24 This is dealt with in paragraphs 2.44 to 2.56 of the Ormskirk decision.

2.25 Paragraph 2.44 notes that the applicant had provided information showing that other pharmacies in the area have opening hours which cover those during which the applicant proposes to close.

2.26 Paragraph 2.45 states "If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local

area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a)."

2.27 The decision report then goes on to consider whether the information provided by the applicant satisfied NHS Resolution that this is the case i.e. are the other pharmacies providing equivalent services when the applicant proposes to close and are those pharmacies are accessible to the patients?

2.28 In paragraph 2.49, NHS Resolution noted that the focus should be on core hours provided by these alternative pharmacies. In that particular case, even though these was an alternative pharmacy (Morrisons) only 450m away, because some of the opening hours that covered the period during which the applicant proposed to close were supplementary hours, these could not be relied upon.

2.29 Importantly, in paragraph 2.50 NHS Resolution noted that even though the nearest alternative pharmacies with extended core opening hours were located more than 4 miles away, it was reasonable to assume that patients would be able to travel to these pharmacies based on the information provided by the applicant.

2.30 In paragraph 2.54 the report took note of the services that were being provided by the applicant during the hours it proposed to close and was satisfied that these services were available from the alternative pharmacies discussed above.

2.31 In 2.56 the decision maker concluded "Based on the information provided, I am therefore satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies."

2.32 The application was therefore approved.

2.33 **Our client's application**

2.34 Taking into account the decision above, we have provided information below that will enable the ICB to consider our client's application fully.

2.35 *A. What is the current level of service provision at our pharmacy during the hours we purpose to close?*

2.36 The proposal is for our client to remove its core hours on a Saturday morning (from 9am to 11.30am) and add these to the weekday core hours from Monday to Friday, with morning core hours of 9.00am to 1.00pm instead of 12.30pm making up these additional 2.5 hours during weekdays.

2.37 Ponda's Chemist is located within a highly run-down shopping parade within a residential area to the south west of Winsford town centre. Supporting trade is limited to two small convenience stores and a takeaway, which open [sic] only opens in the afternoon and evening.

2.38 The pharmacy is located at this site due to the presence of Launceston Close surgery, which is located less than 100m away. Approximately 60% of the prescription items dispensed by Ponda's originate from this medical centre.

2.39 Historically, Launceston Close surgery, in common with most medical centres in England, opened on Saturday mornings for acute appointments. Patients who attended the medical centre and required dispensed medication afterwards, were able to visit Ponda's Chemist immediately afterwards as the pharmacy remained open until the Saturday morning surgery finished.

2.40 However, the surgery is no longer open for GP appointments on Saturdays as the only weekend services now provided are physiotherapy clinics or similar which do not result in the prescribing of medication or result in a requirement for any other pharmaceutical services.

2.41 As a consequence of lack of Saturday surgery opening hours, there is no longer any demand for pharmaceutical services on Saturday mornings. Patients who require repeat medication typically either use the home delivery service or attend the pharmacy during weekdays. As the other amenities in the area are highly limited, patients have very little reason to attend this shopping parade on a Saturday morning, travelling instead into Winsford should they wish to go shopping. Patients who require simple 'over the counter' medicines are able to buy these from the convenience store should they wish.

2.42 The takeaway does not open in the morning, so passing footfall between 9am and 11.30am on a Saturday (the current core hours) is negligible.

2.43 It is clear, therefore, that the lack of medical services provision in this area has resulted in negligible demand for pharmaceutical services. Patients requiring medical services are required to travel to access the out of hours GP service and will then access pharmacies elsewhere, such as the Asda Pharmacy in the town centre which opens 7 days a week, including late opening in the evenings.

2.44 In order to check these assertions, our client has carried out a patient survey to assess demand on Saturday mornings. A copy of that survey is attached [appendix A].

2.45 The survey was carried out over four consecutive Saturdays, starting on 22nd June 2024. The outcome of the survey, for the entire 4 week period, is summarised as follows:

2.45.1 No patients attended the pharmacy with prescriptions that required dispensing that day.

2.45.2 Two patients attended over the whole 4 week period to collect prescriptions that had been dispensed previously. These were not acute prescriptions.

2.45.3 Two patients attended over the whole 4 week period to purchase OTC products.

2.45.4 One patient attended seeking advice.

2.45.5 No patients attended for any other pharmaceutical services.

2.45.6 Every patient who attended the pharmacy on Saturday mornings drove there.

2.46 The survey suggests, therefore, that the very limited demand that exists on Saturdays is limited to essential pharmacy services only. There is no demand for advanced or enhanced services.

2.47 Whilst, as we have noted, demand for pharmaceutical services on a Saturday is very limited, we are mindful of the approach taken by Primary Care Appeals who considered that any demand for any pharmaceutical services during the hours it is proposed to close means that those services are necessary.

2.48 It is the case that there is occasional demand for some of these services some of the time. Our client does not seek, therefore, to argue that it is not 'necessary to maintain the existing level of service provision'.

2.49 *B. Are the services our client provides on Saturday mornings provided by other pharmacies that are reasonably accessible to patients?*

2.50 There are four other pharmacies that are located within a mile radius of our client's pharmacy. These are shown on the map enclosed with this application [appendix B].

2.51 We have started by considering the opening hours of these pharmacies:

2.52 **Asda Pharmacy** – Dene Drive, Winsford, Cheshire, CW7 1BD

2.52.1 Open 9am to 12:30pm, 1pm to 4:30pm & 5pm to 9pm on Saturdays.

2.52.2 We understand these are core hours as the pharmacy was formerly a '100 hour' pharmacy, which has reduced its hours to 72 per week. On the basis this is the minimum number of hours it is permitted to open, all of these Saturday hours must be core.

2.53 **Well** – Winsford Health Centre, Dene Drive, Winsford, CW7 1AT

2.53.1 Closed Saturdays

2.54 **Ponda's Chemist** - Unit 2, Dingle Walk, Winsford, CW7 1BA

2.54.1 Open 9am to 1pm on Saturdays. Of these Saturday opening hours, 9am to 11.30am are core hours.

2.55 **Boots** - 5-7 Dingle Walk, Winsford, CW7 1BA

2.55.1 Open 9am to 5.30 pm on Saturdays.

2.56 We do not know whether these are core hours as that information is not in the public domain, but the ICB will have this information.

2.57 In any event, the opening hours for this Boots branch comprise 7-day opening, reflecting its location within a busy shopping centre. It is inconceivable that Boots would stop opening Saturday mornings in the foreseeable future.

2.58 It is clear, therefore, that even if the Boots hours are not core, there are pharmaceutical services provided on Saturdays within a short distance of our client's pharmacy.

2.59 The four pharmacies listed above are within or close to the town centre, where the majority of the amenities in Winsford are located. They are all within a mile of our client's pharmacy.

2.60 We are mindful that, in the Ormskirk appeal provided, NHS Resolution took the view that pharmacies more than 4 miles away were reasonably accessible. This is particularly relevant given that all the patients who attended our client's pharmacy during the survey period travelled by car, so will have no difficulties travelling to pharmacies further afield should they need to.

2.61 We have then gone on to consider the services provided by these alternative pharmacies. As discussed earlier, the services our client provides on Saturdays comprise the sale of OTC medicines, advice and the collection of dispensed prescriptions. Each of the pharmacies discussed above also provides these services, as part of their essential pharmacy services provision.

2.62 It is clear that there is **no service** that patients currently access from our client's pharmacy on a Saturday morning that is not accessible from other pharmacies very nearby.

2.63 In any event, our client's pharmacy at Unit 2, Dingle Walk provides the Advanced services currently provided at the Cheviot Square branch, namely NHS & Pharmacy First. Furthermore, the Dingle Walk branch additionally provides 'Flu Vaccinations, Hypertension Case Finding, Supervised Consumption and Needle Exchange.

2.64 Next we have considered the accessibility of these alternative pharmacies for patients who might otherwise visit our client's pharmacy on a Saturday.

2.65 It is relevant that car ownership in Winsford is higher than the national average. For the Winsford Over & Verdin ward, in which the pharmacy is located, only 19.5% of households did not have access to a car or van at the time of the 2021 census, compared to the national average of 23.5%. As discussed earlier, all patients attending the pharmacy during the survey period attended by car.

2.66 For any patient who does not have access to a car, bus route 31 runs past the pharmacy location to the town centre, with buses every hour on a Saturday. Any patient who wished to walk, and was able to do so, could walk from the pharmacy to Asda in approximately 25 minutes.

2.67 As other pharmacies are located in the town centre, accessibility is excellent. Free car parking is available at Asda for patients who wish to use that pharmacy, and there are several car parks in the town centre for patients who wish to access other town centre pharmacies on a Saturday morning.

2.68 Buses stop at the library, and the bus stop is less than 150m from Ponda's Chemist in the town centre and 200m from Asda and Boots. Anybody who uses public transport to access our client's pharmacy at present will find that these other pharmacies are equally easy to access using public transport.

2.69 **Conclusion**

2.70 In conclusion, and referring back to the legal tests and the approach taken by NHS Resolution, it is clear that whilst there is only a limited demand for services at our client's pharmacy on Saturdays, there is some demand, so the services could be deemed as necessary.

2.71 However, it is also clear that, using the view taken in the Ormskirk appeal, that there are at least three alternative pharmacies with Saturday opening hours, that provide exactly the same services as our client's pharmacy and which are very easily accessible to patients who have be accustomed to accessing that pharmacy. Also, the same services provided by the Cheviot Square pharmacy are available in the town centre.

2.72 That being the case the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.

2.73 We therefore ask the ICB to approve this application accordingly."

3. The Decision

In a letter to the Applicant dated 3 October 2024 the Commissioner decided to refuse the application. The Commissioner stated:

3.1 “Further to your application to change the core opening hours at the above address, I am writing to confirm that it has been refused.

3.2 Please see enclosed committee report and redacted minutes for full reasoning.

3.3 You have a right of appeal to the Secretary of State against this decision. Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of receiving this notice to nhsr.appeals@nhs.net or:

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

PSRC Report

3.5 “**Name and address of contractor** - Ponda’s Chemist Limited – FP677
7 Cheviot Square
Winsford
Cheshire
CW7 1QS

3.6 **Proposed amendments** - Proposal to make a permanent change to core hours to take effect 3 months from the date of approval.

3.7 **Current Core Hours:**
Monday – Friday
9:00 – 12:30, 14:00 – 18:00
Saturday
09:00 – 11:30
Sunday
No core hours

3.8 **Proposed Core Hours:**
Monday – Friday
09:00 – 13:00 & 14:00 – 18:00
Saturday
No core hours
Sunday
No core hours

3.9 **Relevant regulations and guidance –** [Regulation 24 quoted in full].

3.10 **Additional Information –** These hours [at 3.7 above] match those held on record by NHS Cheshire & Merseyside ICB.

3.11 This change would mean the pharmacy closed on Saturday and opened for an extra 30 minutes at lunchtime Monday - Friday.

3.12 The Pharmacy has no supplementary hours Mon – Fri but does have supplementary hours on Saturday 11:30 – 13:00.

3.13 Services offered by FP677:

The following services are provided at these premises and as such should be available during all core hours:

3.13.1 Pharmacy First and NMS.

3.14 *Whether the premises are subject to a condition set out in regulation 65 of the 2013 Regulations:*

3.14.1 With regard regulation 65(1):

3.14.1.1 FP677 is not a 100-hour contract with regard regulation 65 (4) and (5):

3.14.1.2 FP677 has no current direction issued regarding opening hours, other than directed rota hours for Bank Holiday opening.

3.15 **Summary –** The applicant has provided the following information and rationale for the proposed change to core opening hours: [supporting information as above at 2.5 – 2.73].

3.16 The applicant has provided a copy of the survey results and the referenced appeal. These can be found in the embedded documents at the end of this report. The applicant has also provided the following map showing the location of pharmacies within Winsford. The map is also embedded at the end of this report.

3.17 NHS Cheshire & Merseyside is obliged to ensure appropriate provisions of pharmaceutical services are available at all times according to the needs of the local population as identified in the local Pharmacy Needs Assessment.

3.18 When considering an application from a contractor who wishes to change the days on which or times at which they are obliged to provide pharmaceutical services during core opening hours, integrated care boards will need to establish the current level of pharmaceutical service provision in the area in which the contractor's premises are located. This will include identifying:

3.18.1 the location of pharmacy premises in the area noting that such premises may be in the area of neighbouring integrated care boards,

3.18.2 the provision of pharmaceutical services to those in the area of the contractor's premises by contractors who are not located in that area, for example distance selling premises, pharmacies elsewhere in the country, and dispensing appliance contractors,

3.18.3 any local hours plans that may be in place for the area,

3.18.4 the level of temporary suspensions in the provision of pharmaceutical services in the area, and

3.18.5 the findings of the pharmaceutical needs assessment for the area in which the contractor's premises are located, noting that pharmacy opening times may have changed since it was published.

3.19 NHS UK lists 4 pharmacies within 1 mile of FP677.

3.20 Of these pharmacies 3 have core opening hours on a Saturday.

3.21 There is a further 1 pharmacy within 3 miles of FP677 which opens on a Saturday; however these opening hours are supplementary hours which could be changed giving

only 5 weeks' notice, as such they cannot be relied upon, so are not considered when reviewing existing provision.

3.22 NHS UK details those pharmacies close to CW7 1QS: Pharmacies near CW7 1QS - NHS

3.23 NHS UK details the closest GP practices to CW7 1QS: GP surgeries near CW7 1QS - NHS

3.24 There are no local hours plans in operation in this locality and the number of temporary suspensions is minimal.

3.25 The Cheshire West and Chester PNA 2022 – 2025 states in relation to a patient survey: "62% of respondents used a car to get to the pharmacy and 40% walk. 2% used public transport and 2% used a bicycle. 3% of respondents selected 'other' and this was because they have their prescriptions delivered and call to speak to the pharmacist.

3.26 Respondents were asked regarding the location of the pharmacy, what is most important. 68% said that it is close to their home, 40% that it is easy to park nearby, 35% that it is close to their doctor's surgery and 34% that it is close to other shops that they use. 9% said that it is close to or in their local supermarket."

3.27 The following map taken from SHAPE mapping tool, shows the geographical spread of pharmacies across Winsford. FP677 is the pharmacy at the bottom left of the map. As can be seen from the map the pharmacy is in a built-up residential area to the south of the town of Winsford [appendix C].

3.28 The PNA concludes that Winsford is one of the most deprived localities within the Cheshire West & Chester borough, with the area in which FP677 is located being amongst the 20% most deprived areas in England as can be seen from the following map – areas highlighted red [appendix C].

3.29 Whilst the committee should note that the applicant has conducted a survey of patients accessing the pharmacy on Saturday's over a four week period and found that only 5 people accessed services within the pharmacy during that time and each of them used a car to get to the pharmacy, it should be mindful of the levels of deprivation in the area the pharmacy is located and the surrounding area. It cannot be assumed that all persons accessing pharmaceutical services in this locality will have access to a car.

3.30 Google maps shows the distance between FP766 and the nearest pharmacy with core opening hours on a Saturday to be 1.2 miles equalling a 5 minute drive or a 21 minute walk [appendix C]. Whilst this may not sound like a significant distance, the committee should also note the areas to the north and south of the pharmacy (see final map below) [appendix C] who may rely on accessing this pharmacy for pharmaceutical services and whose journey will be greater than 1.2miles to access one of the nearest pharmacies, should FP677 be permitted to remove core hours on Saturdays.

3.31 **Recommendation –**

3.32 The recommendation would be to refuse this application, as it would leave the South and North West of Winsford without access to pharmaceutical services on Saturday, thus failing to maintain the existing level of service provision for the people in that area.

3.33 The applicant has demonstrated that 5 patients accessed services on Saturdays during a four-week period, thus showing a need for provision in the locality; therefore, it can be surmised that the existing level of service provision is necessary."

PSRC minutes

3.34 “[3.5 – 3.8 repeated as above].

3.35 The committee noted that this change would mean the pharmacy closed on Saturday and opened for an extra 30 minutes at lunchtime Monday - Friday.

3.36 The Pharmacy has no supplementary hours Mon – Fri but does have supplementary hours on Saturday 11:30 – 13:00.

3.37 The committee considered the application in regard to Regulation 24 [Regulation 24(1)(a) and (b) quoted in full].

3.38 The committee noted the applicant’s reference to the recent approval by NHS Resolution for a change of core hours in Ormskirk (SHA/26102) and determined that whilst NHS Resolution deemed it to be reasonable for patients in that locality to travel more than 4 miles, it does not set a precedence for all localities. The demographic of each locality needs to be considered when reviewing the application.

3.39 The committee reviewed the location of the applicant’s pharmacy (FP766) and that of the other 3 pharmacies with core opening hours on a Saturday in Winsford. The distance between FP766 and the nearest pharmacy with core opening hours on a Saturday is 1.2 miles equalling a 5 minute drive or a 21 minute walk. Whilst this may not sound like a significant distance, the committee noted that patients living in the areas to the north and south of the pharmacy may rely on accessing this pharmacy for pharmaceutical services and whose journey will be greater than 1.2miles to access one of the nearest pharmacies.

3.40 The committee also noted that the Cheshire West and Chester PNA concludes that Winsford is one of the most deprived localities within the Cheshire West & Chester borough, with the area in which FP677 is located being amongst the 20% most deprived areas in England as can be seen from the maps provided in the committee report [appendix C].

3.41 The committee noted that the applicant had carried out a survey of patients accessing the pharmacy on Saturdays over a four week period and found that only 5 people accessed services within the pharmacy during this time and each of them used a car to get to the pharmacy; however they determined that this still shows a demand for pharmaceutical services in the locality and given the high levels of deprivation in the locality, it cannot be assumed that all patients will have access to a car.

3.42 Therefore, the committee determined that approving this application would leave the South and North West of Winsford without access to pharmaceutical services on Saturday, thus failing to maintain the existing level of service provision for the people in that area: [Regulation 24(1)(a) quoted in full].

3.43 The committee also determined that the applicant has demonstrated that 5 patients accessed services on Saturdays during a four-week period, thus showing a need for provision in the locality; therefore, it can be surmised that the existing level of service provision is necessary [Regulation 24(1)(b) quoted in full].

3.44 Decision: Refused.

3.45 Appeal rights: Applicant.”

4. The Appeal

In a letter to NHS Resolution dated 18 October 2024 the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

4.1 “We act for Ponda’s Chemist Limited and have enclosed a letter of authorisation confirming our instructions in this matter.

4.2 Our client has been notified by the Cheshire and Merseyside Pharmaceutical Services Regulations Committee (“PSRC”) that the above application has been refused. We have enclosed a copy of their decision letter and report for your information.

4.3 Our client wishes to appeal this decision and we set out the key grounds for appeal below by reference to the PSRC report dated 20th September 2024.

4.4 Page 3

4.4.1 The PRSC acknowledged that the nearest alternative pharmacy with core hours on a Saturday was only 1.2 miles away and stated *“Whilst this may not sound like a significant distance, the committee noted that patients living in the areas to the north and south of the pharmacy may rely on accessing this pharmacy for pharmaceutical services and whose journey will be greater than 1.2miles to access one of the nearest pharmacies”*. However, the committee failed to have any regard to the fact that many people living to the north and south of the pharmacy would not have significantly further to travel to the town centre, and they would be far more likely to have a reason to visit the town centre than our client’s pharmacy premises.

4.4.2 The committee considered deprivation without explaining why it felt that levels of deprivation (which we discuss in more detail later) are such that pharmaceutical services will be rendered inaccessible on a Saturday.

4.4.3 The committee failed to consider other evidence provided by our client in respect of the accessibility of pharmaceutical services for those residents who do not have access to a car.

4.5 **Regulatory context**

4.6 The Regulatory context for this application was set out in the supporting information to our client’s application (which we enclose with this appeal) [2.5 – 2.73 above], so we do not intend to repeat that in detail within this appeal letter in order to avoid repetition.

4.7 However, the matters that will be considered by Primary Care Appeals (“PCA”) are summarised as follows:

4.7.1 Is it necessary to maintain the existing level of pharmaceutical service provision for the relevant population?

4.7.2 If it is necessary to maintain the existing level of provision, are these ‘necessary services’ available to patients from other pharmacies during the times the pharmacy previously opened and are those pharmacies reasonable to access?

4.8 Is it necessary to maintain the existing level of service provision?

4.9 Our client, within its application, summarised the findings of a patient survey it carried out over four consecutive Saturday mornings, starting on 22nd June 2024. For the avoidance of doubt, these were typical Saturdays. They were not during a holiday period or at a time of poor weather when patients might be reluctant to attend a pharmacy.

4.10 The survey found that the demand for pharmaceutical services during that time was negligible, but it is acknowledged that there was some demand. Importantly, the survey found that:

4.10.1 Patients attending the pharmacy during the survey period were seeking essential pharmaceutical services only. There was no demand for advanced or enhanced pharmaceutical services.

4.10.2 All patients who attended during the survey period used their car to drive to the pharmacy.

4.11 In considering the findings of the survey, the PSRC made the following comments:

4.12 *"The committee noted that the applicant had carried out a survey of patients accessing the pharmacy on Saturdays over a four week period and found that only 5 people accessed services within the pharmacy during this time and each of them used a car to get to the pharmacy; however they determined that this still shows a demand for pharmaceutical services in the locality and given the high levels of deprivation in the locality, it cannot be assumed that all patients will have access to a car."*

4.13 *"The committee also determined that the applicant has demonstrated that 5 patients accessed services on Saturdays during a four-week period, thus showing a need for provision in the locality; therefore, it can be surmised that the existing level of service provision is necessary."*

4.14 In respect of this second point, we accept that there were some patients that attended the pharmacy during that time, so taking the approach previously adopted by PCA, we accept that these pharmaceutical services can be considered to be necessary. However, it is clear that the demand for pharmaceutical services is very small.

4.15 In respect of the first point, whilst is [sic] may be correct that it cannot be assumed that all patients will have access to a car, the evidence collected by our client suggested that all patients attending on a Saturday during the survey period did travel by car. Clearly a survey can do no more than provide a 'snapshot' over a fixed period of time, but it is the only method available to an applicant to assess the usage of its pharmacy.

4.16 It is, of course, possible that if the survey ran indefinitely, a patient might eventually attend the pharmacy on a Saturday morning on foot or using public transport. It is impossible to know. Our client can only present the evidence available to it, yet the PSRC chose to disregard this evidence. Instead they made assumptions that were backed up with no evidence at all.

4.17 Whilst this is only a hypothesis, it might be a relevant consideration that patients who choose to attend a pharmacy on a Saturday are those people who are out at work during weekdays. It is probably also reasonable to assume that these people, who are in full time work, are more likely to own a car, and are more likely to be mobile in general.

4.18 In any event, regardless of the failure of the PSCR to provide any evidence to back up its assertions, we have considered the accessibility of pharmaceutical services for residents of Winsford who do not have access to a car later in this appeal letter.

4.19 <u>If it is necessary to maintain the existing level of provision, are these 'necessary services' available to patients from other pharmacies during the times the pharmacy previously opened and are those pharmacies reasonable to access?</u>

4.20 In considering the accessibility of alternative pharmaceutical services provision during the hours our client proposes to close, using the approach adopted by PCA previously, there are three key matters to consider:

4.20.1 Do alternative pharmacies have core opening hours that cover the hours our client proposes to close the pharmacy i.e. is it guaranteed that this alternative provision will be available during those hours?

4.20.2 Are all the pharmaceutical services provided by the pharmacy that proposes to close available from these alternative pharmacies?

4.20.3 Are patients who might otherwise have accessed pharmaceutical services from our client's premises during those hours reasonably able to travel to those alternative pharmacies?

4.21 Taking each of those questions in turn:

4.22 *Do alternative pharmacies have core opening hours that cover the hours our client proposes to close the pharmacy?*

4.23 A map was provided with our client's application which showed the location of the nearest alternative pharmacies to our client's premises. We have included a copy of that map with this appeal [appendix B].

4.24 The map shows that the four nearest pharmacies are located within or close to Winsford town centre. These pharmacies are the ones that are considered most relevant to this application.

4.25 Of those four pharmacies it is acknowledged that one of them, Well at Winsford Health Centre on Dene Drive, closes on Saturday mornings so does not provide an alternative should our client's pharmacy be permitted to close.

4.26 Of the other three pharmacies:

4.27 Asda Pharmacy (Dene Drive) has core hours of 9am to 12:30pm, 1pm to 4:30pm & 5pm to 9pm on Saturdays.

4.28 Ponda's Chemist (Dingle Walk), which is also owned by our client, has core opening hours of 9am to 11.30am on Saturdays.

4.29 Boots (Dingle Walk) is open from 9am to 5.30pm on Saturdays. Whilst there is no information available in the public domain in respect of which of those hours are core opening hours, we note that the PSCR decision report states:

4.30 *"The committee reviewed the location of the applicant's pharmacy (FP766) and that of the other **3 pharmacies with core opening hours on a Saturday in Winsford**".* [Applicant's emphasis].

4.31 This statement suggests that the Boots pharmacy does indeed have Saturday core hours (as Boots is the third pharmacy in the town centre), although the PSRC report does not specify what these are.

4.32 In any event there does not seem to be any dispute that the town centre pharmacies have core opening hours on a Saturday morning when our client proposes to close i.e. between 9am and 11.30am.

4.33 *Are all the pharmaceutical services provided by the pharmacy that proposes to close available from these alternative pharmacies?*

4.34 Our client's survey showed that patients who attended the pharmacy during the 4 week survey period accessed essential pharmaceutical services only i.e. they did not seek any advanced or enhanced services.

4.35 As all pharmacies are required to [sic] essential services, it is clear that the pharmacies in Winsford town centre provide those services.

4.36 However, for completeness, we have also considered the other services that are available from our client's pharmacy which may not have been accessed during the survey period.

4.37 In addition to essential services, our client's pharmacy also provides the following *advanced* services:

4.37.1 New Medicines Service (NMS)

4.37.2 Pharmacy First

4.38 No enhanced pharmaceutical services are provided.

4.39 Both of these *advanced* services are also provided at our client's pharmacy at Unit 2, Dingle Walk in the town centre. Furthermore, that pharmacy also provides:

4.39.1 Flu vaccinations

4.39.2 Hypertension case finding

4.39.3 Supervised consumption

4.39.4 Needle exchange

4.40 In respect of the other town centre pharmacies the NHS.uk website shows the following:

4.41 Asda, Dene Drive provides:

4.41.1 NHS pharmacy contraception service

4.41.2 NMS

4.41.3 Lateral Flow test supply

4.41.4 Hypertension case finding

4.41.5 Flu vaccinations

4.42 Boots, Dingle Walk provides:

4.42.1 NMS

4.43 However, we note that Boots' own website lists many more services for this branch as follows:

4.43.1 (NHS) Emergency contraception

4.43.2 (NHS) Minor ailment service

4.43.3 (NHS) Seasonal flu vaccination service

4.43.4 (Non-NHS) Seasonal flu vaccination service (not at risk groups)

4.43.5 Body Mass Index (BMI) Machine

4.43.6 Boots Macmillan Information Pharmacist

4.43.7 COVID-19 lateral flow tests (eligible NHS patients)

4.43.8 Discharge Medicines Review

4.43.9 Electronic Prescription Service

4.43.10 Emergency Contraception

4.43.11 In Store Malaria Prevention Service

4.43.12 NHS Blood Pressure Check Service

4.43.13 NHS Pharmacy Contraception Service

4.43.14 NHS Pharmacy First Service

4.43.15 NHS Prescription Ordering

4.43.16 NHS Urgent palliative care medicines service

4.43.17 New Medicine Service

4.43.18 Pneumonia Vaccination Service

4.43.19 Prescription collection from local General Practices

4.43.20 Prescription delivery service

4.43.21 Prescriptions Direct

4.43.22 Private consultation room

4.43.23 Repeat Prescription Service

4.43.24 Winter Flu Jab Service

4.44 Within its decision report the PSRC did not comment on the extent to which other pharmacies provide pharmaceutical services currently provided by our client at 7 Cheviot Square. However, it appears to be uncontentious to suggest that there are no services being offered by our client's pharmacy that would not be available within the town centre should our client's pharmacy be closed.

4.45 *Are patients who might otherwise have accessed pharmaceutical services from our client's premises during those hours reasonably able to travel to these alternative pharmacies?*

4.46 In order to consider accessibility, we have started by considering the distance from our client's pharmacy to the alternative pharmacies in the town centre. We are also mindful of the comments made by the PSCR [sic] that patients may travel from other parts of Winsford to get to our client's pharmacy at present, so we address that point later.

4.47 The four pharmacies in the town centre (including the Well Pharmacy which does not open on Saturdays) are very close to each other as can be seen on the map below: [appendix D].

4.48 As can be seen, the distance from Asda Pharmacy to Ponda's in Dingle Walk is approximately 100m.

4.49 That being the case, the journey from my client's premises to each of these alternative pharmacies is very similar. We have therefore started by considering the journey from Cheviot Square to our client's pharmacy in the town centre, and submit that the journey to either Asda or Boots in Dingle Walk will not be materially different.

4.50 *Journey by car*

4.51 The map below shows the most direct route, by car, from our client's premises at 7 Cheviot Square to Ponda's in the town centre [appendix D].

4.52 As can be seen above, the distance by car is 1.1 -1.3 miles, depending on the route taken, with an estimated journey time of 5 minutes.

4.53 In terms of parking arrangements, there is free customer parking at the Asda store, including a number of disabled car parking spaces next to the premises. There are also several other car parks located around the town centre, with those operated by the council being free of charge. These car parks also have disabled spaces. The walk from town centre car parks to either Ponda's or Boots is less than 200m across level terrain, most of which is pedestrianised.

4.54 We have provided information in respect of car ownership later.

4.55 *Journey on foot*

4.56 For residents willing and able to travel to the town centre on foot, the journey is shown below: [appendix D].

4.57 Using the most direct route (shown by the blue dotted line), the distance on foot is 1 mile, and takes approximately 21 minutes. There are no hills that would constitute a barrier to movement and roads are easy to cross, with light controlled crossings on busier roads, and dropped kerbs with tactile pavements to cross quieter roads where necessary. There is lighting provided throughout the area and pavements are wide and in good condition.

4.58 *Journey by public transport*

4.59 The bus map below shows the bus routes that serve the western side of Winsford, including the pharmacy at 7 Cheviot Square which is marked with a green star [appendix D].

4.60 As this map shows, the area is served predominantly by route 31.

4.61 We have enclosed a timetable for route 31 [appendix E] which shows that, on Saturdays, buses run every hour, stating at around 6.50am from Crewe with return journeys until 18.16 from the town centre back to the western side of Winsford.

4.62 The journey from the current pharmacy site to the town centre takes no more than 10 minutes.

4.63 *Car ownership*

4.64 Within our client's application, information was provided showing that car ownership in the Winsford Over & Verdin ward is higher than the national average, with only 19.5% of homes having no car or van compared to the national average of 23.5%.

4.65 In refusing the application, the PSRC stated that our client's pharmacy is located within one of the 20% most deprived areas in England. The report refers to a deprivation map but we have not been provided with a copy of that.

4.66 As ward boundaries can be fairly large, and bearing in mind the PSRC comments about deprivation, we have considered car ownership level at the smaller 'lower super output area' (LSOA) level for the area for Cheshire West and Chester 040C, the boundaries of which are show [sic] on the map below, with the pharmacy marked again with a green star [appendix D].

4.67 Car ownership data for this area (from the 2021 census – source Nomis) is shown below: [appendix D].

4.68 As this shows, whilst car ownership at this smaller level is slightly lower than at ward level, it is almost exactly the same as the national average.

4.69 Regardless of the perceived deprivation levels, these do not appear to be reflected in the levels of car ownership, which would be expected to be well below the national average in areas of significant deprivation.

4.70 In terms of other demographic data, we have considered how any relative deprivation might impact on residents' health within the same LSOA level. This data is provided below: [appendix D].

4.71 Whilst this table shows that levels of bad or very bad health are slightly higher than average, they are not materially higher. This is not an area where patient health is impacted significantly by deprivation.

4.72 We have also considered the age profile of local residents. This is shown below: [appendix D].

4.73 It is clear from this data that the number of people over 65 in this area is far below the national average (7.8% compared to 18.4% nationally). So the population is relatively young, and therefore likely to be more mobile and less reliant on pharmaceutical services.

4.74 In conclusion, in terms of the demographic data, this area is unexceptional in respect of measures that might be relevant to accessing pharmaceutical services. Car ownership is average, levels of poor health are only marginally higher than average and the population is relatively young.

4.75 Wider area

4.76 Whilst the demographic data provided above focusses on the immediate area around the pharmacy, we are conscious that the PSRC gave consideration to patients living in the South and the North West of Winsford.

4.77 The satellite image below shows the western side of Winsford. Again the pharmacy location is marked with a green star [appendix D].

4.78 As this image shows, the area to the far west of the town (beyond the A54) is largely industrial in nature, so does not have a resident population.

4.79 If we consider the residents that live in the area to the north of the part of the A54 that heads east to west (the road shown in yellow), for many of these people the current pharmacy location is not materially closer than the town centre.

4.80 The images below [appendix D] show that the journey on foot from the middle of this residential area in the north-west, to our client's pharmacy location is approximately 1 mile. The journey from this same point to the town centre is 1.3 miles, so whilst the journey would be slightly further, any patient who currently walks a mile to access pharmaceutical services is unlikely to find that an additional 0.3 miles suddenly renders the pharmacy inaccessible.

4.81 It is also particularly relevant that these residents to the north-west would have no reason to travel to the pharmacy in Cheviot Square on a Saturday, given that the medical centre is closed. They will be far more likely to access the amenities in the town centre, particularly given the fact that Saturday is traditionally the busiest shopping day.

4.82 If we then consider the areas to the south of the town, a similar picture emerges.

4.83 Residents living in the School Green area to the south would face a walk of approximately 1.3 miles to access Cheviot Square and they would face a walk of 1.4 miles to reach Asda Pharmacy in the town centre [appendix D].

4.84 There is one very small area to the immediate south-west of the pharmacy (across Mount Pleasant Drive) where the distance to the town centre is 1.5 miles, but this is a modern residential development where car ownership is likely to be high. This is apparent from the images below: [appendix D].

4.85 In our opinion, therefore, it is too simplistic to form the view that people who live in the wider area around the western side of Winsford would have significantly further to travel, or would face a more difficult journey to access a pharmacy on a Saturday than those people who live near Cheviot Square. For many of these residents of the wider area the distance to access a pharmacy on a Saturday morning would be broadly the same.

4.86 **Conclusion**

4.87 In conclusion, and referring back to the legal tests and the approach taken previously by NHS Resolution, it is clear that whilst there is only a limited demand for services at our client's pharmacy on Saturdays, there is some demand, so the services could be deemed as necessary.

4.88 However, it is also clear that there are several alternative pharmacies with Saturday core hours that provide exactly the same services as our client's pharmacy and which are accessible to patients who have be accustomed to accessing that pharmacy.

4.89 That being the case the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.

4.90 We therefore ask the Primary Care Appeals to approve this application accordingly."

5. **Representations**

In a letter to NHS Resolution dated 20 November 2024 the Commissioner stated:

5.1 "Thank you for your letter dated 22nd October 2024 notifying us of the appeal submitted by Ponda's Chemist Limited – FP677.

5.2 NHS Cheshire & Merseyside ICB maintains its decision to refuse this amendment to core hours application under Regulation 24(1)(a) and (b): [quoted in full].

5.3 The original application upon which NHS Cheshire & Merseyside ICB's Pharmaceutical Services Regulations Committee (PSRC) based its decision is enclosed with this response. The first three pages of the supporting information provided detail of an appeal decision taken in relation to a pharmacy in Ormskirk (SHA/26102). Whilst you will note from the enclosed committee report and redacted minutes that the PSRC did consider this information when reviewing this application, the PSRC determined that each application should be determined on its own merit and not on a decision relating to a pharmacy in a different locality with a different demographic.

5.4 The PSRC determined that whilst the applicant has provided evidence of a survey carried out over a four-week period showing limited need for pharmaceutical services on a Saturday, it did still demonstrate that patients do access the pharmacy during this time, thus reflecting that there is a need for pharmaceutical provision in this locality.

5.5 When making its decision the PSRC had before it the application and supporting documents, which included the supporting information and survey carried out by the pharmacy, the map of Winsford as supplied by the applicant and a copy of the appeal (SHA/26102). They also had the committee report, Cheshire West and Chester PNA and access to the SHAPE mapping tool, which was used when creating the committee report and looking at the levels of deprivation within the location of the pharmacy.

5.6 It is noted that in their appeal letter the appellant has stated that they were not provided with the maps demonstrating areas of deprivation. We would dispute this as the maps are clearly shown on page 12 of the committee report which was circulated to the applicant along with the decision letter and redacted minutes by email on 03/10/2024. A copy of the email is attached for reference [appendix F].

5.7 Whilst they acknowledged the low number of patients attending the pharmacy on Saturdays, the PSRC determined that there is still some demand for services, therefore the application failed to meet the requirements of Regulation 24(1)(a) as it would leave patients in one of the 20% most deprived areas of England without access to pharmaceutical services.

5.8 You will see from the maps included within the committee report that FP677 is the only pharmacy serving the patient population to the West of the town centre of Winsford. Therefore, the committee determined that removing the core opening hours on a Saturday would not maintain the existing levels of provision for patients in the area to the West of Winsford.

5.9 The PSRC also determined that the application failed to meet Regulation 24(1)(b) as the survey demonstrated that 5 patients accessed pharmaceutical services during the four-week survey period, thus demonstrating that the existing level of service provision is necessary.

5.10 The appellant has not provided any information within their appeal letter that would lead us to reach a different conclusion to that made by the PSRC on 20th September 2024. Therefore, we maintain the view that this application should be refused."

6. **Observations**

In a letter to NHS Resolution dated 11 December 2024 the Applicant stated:

6.1 "Thank you for your letter dated 10th December providing third party representations in respect of the above appeal. On behalf of the applicant, Ponda's Chemist Limited, we wish to make the following final observations.

6.2 We note that the only representations made were those from NHS Cheshire and Merseyside ICB, so our response is limited to the points raised by the ICB.

6.3 Letter from NHS Cheshire and Merseyside ICB dated 20th November 2024

6.4 We note that the ICB makes reference to the decision made within appeal SHA/26102, a copy of which was provided with our client's application.

6.5 We accept that each application must be determined on its own merits. The intention of providing a copy of that appeal was not to imply that any form of precedent had been set, but rather to illustrate to the ICB the points we believe it should take into account when considering an application for a change of core hours. These include having regard to pharmacies located in the wider area.

6.6 The ICB refer to the survey carried out by our client and point to the fact this demonstrated that there was some demand for pharmaceutical services provision during the survey period. We accept this principle and we dealt with it in detail within our client's appeal.

6.7 Where we differ from the ICB is in the assessment of how this demand is met by other pharmacies.

6.8 The ICB refer to this survey and state "it did still demonstrate that patients do access the pharmacy during this time, thus reflecting that there is a need for pharmaceutical provision **in this locality**" [Applicant's emphasis].

6.9 The ICB have not defined a specific locality which they believe is served by our client's pharmacy, so the use of this phrase is unlikely to be particularly helpful to the Primary Care Appeals committee. The regulations do not require the decision maker to define areas within which there must be provision.

6.10 However, if the ICB's position was that our client's pharmacy is within a different locality to the alternative pharmacies discussed i.e. those in the town centre, it was still required to consider whether those alternative pharmacies are reasonably accessible. In other words, whilst it may be the case that there is evidence of pharmaceutical needs for residents living in 'the locality', alternative pharmacies in other localities can meet those needs provided they are reasonable for residents to access.

6.11 We have provided extensive evidence which shows other pharmacies in Winsford are accessible.

6.12 The ICB has persisted in referring to levels of deprivation within the area around our client's pharmacy but has not explained how this led it to the conclusion that residents are unable to access the alternative pharmacies identified.

6.13 As explained within our client's appeal, car ownership is higher than average and there are bus routes that serve the area around our client's pharmacy which travel to the town centre where there is excellent alternative provision. It is also the case that some patients may choose to walk.

6.14 Amenities around our client's premises are very limited, so residents are required to travel elsewhere to access the majority of their needs. The only supermarkets in the town are Asda (where there is a pharmacy) as well as Aldi and Farmfoods, both of which are also located in the town centre. Residents in the south west of Winsford travel to the town centre to access these shops on a regular basis so it is entirely reasonable to assume they could access pharmaceutical services in the town centre should they need to.

6.15 **Conclusion**

6.16 In conclusion we disagree with the ICB's position that "removing the core opening hours on a Saturday would not maintain existing levels of provision for patients in the area to the West of Winsford".

6.17 We believe there is clear evidence that the limited number of patients who currently access pharmaceutical services during the hours it is proposed our client's pharmacy will close would be able to access alternative provision without undue difficulty.

6.18 We therefore ask the Primary Care Appeals to approve this application accordingly."

7. **Consideration**

7.1 I note the following:

7.1.1 The Applicant's core opening hours total 40 hours and the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4.

7.2 The Applicant proposes to:

7.2.1 Open until 1pm instead of closing at 12.30pm Monday to Friday.

7.2.2 Close on a Saturday rather than opening at 9am to 11.30am.

7.3 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023.

7.4 Paragraph 26(1) states:

"26.— (1) An NHS pharmacist (P) may apply to NHS England 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."

7.5 I have first considered paragraph 26(2) of Schedule 4 of the Regulations, which reads as follows:

"Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide NHS England with such information as NHS England may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1).

7.6 Paragraph 24(1) reads as follows:

"24 (1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as –

(a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or

(b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

7.7 Paragraph 24(2) states:

(2) In considering the matters mentioned in sub-paragraph (1), NHS England –

(a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and

(b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.

7.8 I will start by considering the application of paragraph 24(1)(a) and whether the proposed hours are such as to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I will then consider the application of 24(1)(b) if that is required.

7.9 To properly assess the application against paragraph 24(1)(a), I need to determine the existing level of service provision. I then need to consider whether it is necessary to maintain the existing level of service provision. If it is necessary to maintain the existing level of service provision, I need to consider whether, despite the proposed change of hours, the existing level of service provision to people in the area or other likely users would be maintained, e.g. by nearby pharmacies being open and providing the same level of service provision.

7.10 If I consider it unnecessary to maintain the existing level of service provision or that it is necessary to maintain the existing level of service provision but doing so is not a realistically achievable outcome, then I need to consider paragraph 24(1)(b) and determine whether the proposed change of hours are such that a sustainable level of adequate service provision would be maintained.

7.11 I therefore need to be provided with sufficient information to understand a range of matters, starting with the existing level of service provision. The references to days and times in paragraph 24(1) leads me to consider that the reference to "level" of service provision in paragraph 24(1)(a) is mainly focused on the days and times services are provided. I would point out that "level" of service provision could also refer to other characteristics of the service, such as types and range of services provided, geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided.

7.12 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours that pharmacies in the local area are open.

7.13 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that as the Applicant is not looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is maintained such that consideration of whether it is necessary to maintain the level of service provision is not needed.

7.14 However, the Applicant is applying to change the days and times that services are provided. Taking Saturday as an example, the level of service provision at the Applicant's premises on a Saturday is not being maintained. I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.

7.15 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.

7.16 The Applicant's representative provided to the Commissioner, with its application, the results of a survey which it carried out on four consecutive Saturday mornings in June and July 2024 to establish the number of people who visited the pharmacy at the times that the Applicant proposes to close, together with how they travelled to the pharmacy and what services they accessed.

7.17 The Commissioner, in its PSRC minutes, stated that *"The committee noted that the applicant had carried out a survey of patients accessing the pharmacy on Saturdays over a four week period and found that only 5 people accessed services within the pharmacy during this time and each of them used a car to get to the pharmacy; however they determined that this still shows a demand for pharmaceutical services in the locality and given the high levels of deprivation in the locality, it cannot be assumed that all patients will have access to a car"* and further *"The committee also determined that the applicant has demonstrated that 5 patients accessed services on Saturdays during a four-week period, thus showing a need for provision in the locality; therefore, it can be surmised that the existing level of service provision is necessary."*

7.18 In response on appeal, the Applicant's representative stated that *"In respect of this second point, we accept that there were some patients that attended the pharmacy during that time, so taking the approach previously adopted by PCA, we accept that these pharmaceutical services can be considered to be necessary. However, it is clear that the demand for pharmaceutical services is very small. In respect of the first point, whilst is* [sic] *may be correct that it cannot be assumed that all patients will have access to a car, the evidence collected by our client suggested that all patients attending on a Saturday during the survey period did travel by car. Clearly a survey can do no more than provide a 'snapshot' over a fixed period of time, but it is the only method available to an applicant to assess the usage of its pharmacy."* I further note *"For the avoidance of doubt, these were typical Saturdays. They were not during a holiday period or at a time of poor weather when patients might be reluctant to attend a pharmacy."*

7.19 From the information provided, it is clear that there are some people using the pharmacy at the times the Applicant wishes to close, albeit low in numbers and therefore I consider it is necessary to maintain the existing level of service provision.

7.20 I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision. The Applicant cannot maintain this as it is changing its hours but I note the undisputed information from the Applicant with regard to other pharmacies in the area that, between them, have opening hours during the times that

the Applicant is proposing to close, namely Asda Pharmacy, Ponda's Chemists (Dingle Walk) and Boots.

7.21 If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a).

7.22 The Applicant's representative has provided information regarding access to those pharmacies for those who currently access its own pharmacy and how they might travel to find alternative pharmaceutical services. I note from the survey results that those who accessed the Applicant's pharmacy travelled by car but I note the Applicant's representative has also provided information for access by foot and public transport in response to the Commissioner's comment that *"given the high levels of deprivation in the locality, it cannot be assumed that all patients will have access to a car."* The Applicant's representative has described the pharmacies in the area indicating how far away certain pharmacies are and whether there is parking available.

7.23 It is worth noting that the characteristics of the persons using the pharmacy might be relevant here as well as from where they start their journey to the pharmacy. I do not consider that every single individual need should be considered at length in this regard but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.

7.24 In its appeal, the Applicant's representative has provided a map of the area showing the location of the existing pharmacies. I note its comment that *"the distance from Asda Pharmacy to Ponda's in Dingle Walk is approximately 100m…That being the case, the journey from my client's premises to each of these alternative pharmacies is very similar. We have therefore started by considering the journey from Cheviot Square to our client's pharmacy in the town centre, and submit that the journey to either Asda or Boots in Dingle Walk will not be materially different."*

7.25 The Applicant's representative has also provided information to show that using the most direct route, it would take 21 minutes to walk from the pharmacy to the area of the existing pharmacies which are located approximately 1 mile away. It further states that *"There are no hills that would constitute a barrier to movement and roads are easy to cross, with light controlled crossings on busier roads, and dropped kerbs with tactile pavements to cross quieter roads where necessary. There is lighting provided throughout the area and pavements are wide and in good condition".* I do not consider that for those who are willing and able there any barriers to accessing the alternative pharmacies on foot. However for those who are less able or unwilling, I will consider the information provided for access by other means.

7.26 I note from the information provided by the Applicant's representative that the area is predominantly served by bus route 31. This bus route passes the Applicant's pharmacy approximately every hour on a Saturday and continues into the town centre, where Boots, Asda Pharmacy and Ponda's Chemist are located, with a bus stop within 200m. I note the bus takes the reverse journey on its return. From the route map provided, I note this journey would take 9 minutes. Based on the information provided, I consider that for those who currently access the Applicant's pharmacy by bus would be able to access Boots, Asda Pharmacy and Ponda's Chemist.

7.27 In terms of car ownership, the Applicant's representative has provided information to show that 76.3% of Cheshire West and Chester and 80.5% of Winsford Over & Verdin own at least one car or van. Keeping in mind that those who accessed the Applicant's pharmacy over the period when the survey was open did so by car, the most direct route to the alternative pharmacies is 1.1 miles, with a journey time of 5 minutes. There is free parking and disabled parking bays at Asda Pharmacy and for Boots and Ponda's

Chemist, the Applicant's representative states that there is free parking at council owned car parks and are within 200m. This has not been disputed by the Commissioner. Therefore, I consider that there are no barriers in accessing the alternative pharmacies by car.

7.28 The Commissioner considered that to grant the application would leave the South and North West of Winsford without pharmacy provision on a Saturday morning although I do not know the volume of patients affected. I have considered the Applicant's response including how patients are able to access other provision from the town centre and am satisfied that those living slightly further away would not be inhibited.

7.29 In the decision report, the Commissioner stated *"NHS UK lists 4 pharmacies within 1 mile of FP677. Of these pharmacies 3 have core opening hours on a Saturday."* Even though it has not confirmed which pharmacies it is referring to, I note from the map provided by the Applicant's representative that, including the Applicant's pharmacy, there are five pharmacies in Winsford with one being Well Pharmacy which the Applicant stated in its application is closed on a Saturday. The Applicant's representative states that the following pharmacies have core opening hours on Saturdays; Asda Pharmacy is open from 9am to 12.30pm, 1pm to 4.30pm and 5pm to 9pm on Saturdays, Ponda's Chemist is open from 9am to 11.30am and Boots has opening hours from 9am to 5.30pm. These hours are not disputed by the Commissioner.

7.30 In terms of the services accessed, the Applicant's representative states that *"Our client's survey showed that patients who attended the pharmacy during the 4 week survey period accessed essential pharmaceutical services only i.e. they did not seek any advanced or enhanced services. As all pharmacies are required to essential* [sic] *services, it is clear that the pharmacies in Winsford town centre provide those services."*

7.31 Despite the survey findings, the Applicant's representative has provided information on the advanced and enhanced services it provides. I note the Applicant provides the New Medicines Service (NMS) and Pharmacy First service which is confirmed by the Commissioner in its decision report. Boots, Asda Pharmacy and Ponda's Chemist all provide the NMS and Ponda's Chemist provides the Pharmacy First service. I note that the Applicant does not provided any enhanced services.

7.32 I am therefore satisfied that patients would be able to access the same services from the alternative providers if the Applicant's proposal to change its core hours were to be approved.

7.33 I note the comments from the Commissioner on deprivation and note the information provided in response by the Applicant's representative. Based on my findings above in relation to accessing the alternative pharmacies by on foot and public transport, I am not persuaded that deprivation should be a reason to refuse the application.

7.34 Based on the information provided, I am therefore satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.

7.35 Under paragraph 26(1) "*The Secretary of state may, when determining an appeal, either confirm the action taken by NHS England or take any action that the NHS England could have taken under sub-paragraph (4)".*

7.36 Paragraph 26(4) states:

(4) When it determines the application, NHS England must –

(a) issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs (4(A), (5) and (6) and which has the effect of either granting the application under this paragraph or granting it only in part;

(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 paragraph (5) and (6); 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), where this has the effect of granting the application under this paragraph or granting it only in part, or

(ii) in a case where there is no existing direction, issue no direction.

7.37 With regard to paragraph 26(4)(a) I note that a direction is not in place for the Applicant to provide 40 core hours as it was, and remains, a condition on inclusion for the Applicant to provide those hours. This is also confirmed by the Commissioner in its decision report.

7.38 For the above reasons, I am not confirming any existing direction in line with paragraph 26(4)(b).

7.39 Further, there is no direction to revoke in line with paragraph 26(4)(c).

7.40 The only option left to me is therefore to substitute the decision of the Commissioner to reject the change of hours application with the decision to grant the change of hours application, without a direction.

8. Determination

8.1 Based on the information provided, I am satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises.

8.2 Therefore I substitute the decision of the Commissioner to reject the change of hours application with the decision to grant the change of hours application, without a direction.

Head of Appeals
NHS Resolution