

15 January 2025

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10 South Colonnade
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FILE REF: SHA/26369

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DECISION MAKING BODY: NORTH EAST AND NORTH
CUMBRIA ICB
("the Commissioner")

PHARMACIST: COCKFIELD HEALTHCARE LTD
("the Applicant")

PREMISES: COCKFIELD PHARMACY
38 FRONT STREET
COCKFIELD
BISHOP AUCKLAND
COUNTY DURHAM
DL13 5DS

**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 maintaining the existing level of service provision is unnecessary but that a sustainable level of service provision is maintained for the people in the 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:

Cockfield Healthcare Ltd
North East and North Cumbria ICB

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10 South Colonnade
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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).

The Applicant's proposals

- 1.11 The Applicant in its application indicates that it currently has core opening hours totalling 40 hours per week.
- 1.12 The Applicant wishes to open between 9am and 5pm, Monday to Friday, rather than opening:
 - 1.12.1 Monday at 8.45am to 1pm and 2pm to 6.15pm;
 - 1.12.2 Tuesday to Thursday at 8.45am to 1pm and 2pm to 5.30pm; and
 - 1.12.3 Friday at 8.45am to 1pm and 2pm to 6pm as usual.

2. Application

In this case, the Applicant provided the following information in its application form and supporting information dated 8 September 2024:

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

2.2 Current opening hours for these premises:

Monday	08:45 - 13:00 14:00 - 18:15
Tuesday	08:45 - 13:00 14:00 - 17:30
Wednesday	08:45 - 13:00 14:00 - 17:30
Thursday	08:45 - 13:00 14:00 - 17:30
Friday	08:45 - 13:00 14:00 - 18:00
Saturday	NIL
Sunday	NIL

2.3 Proposed core opening hours for these premises:

Monday	9am – 5pm
Tuesday	9am – 5pm
Wednesday	9am – 5pm
Thursday	9am – 5pm
Friday	9am – 5pm
Saturday	NIL
Sunday	NIL

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

2.5 “Earliest permitted date by NHS England.”

2.6 Supporting statement:

2.7 “We have run a consultation with our customers for a 4 week period from 29th July 2024. All customers that participated in the consultation supported the change of core hours and reduction in the weekday opening hours alongside adding supplementary hours to open on Saturday. There is currently no provision of Saturday pharmacy services in vicinity of Cockfield. The reduction in core hours in the weekdays followed by an opening Saturdays supplementary hours will provide a sustainable level of adequate service provision in the area of the pharmacy and maintaining the existing level of service provision is unnecessary.

2.8 The consultation results are overwhelmingly in support of the pharmacy’s proposed change of hours. The signatures of the patients are attached to this application. There has not been a single customer that objected to our proposal, which is a clear indication that they [sic] proposal meets the needs of the customers.

2.9 The pharmacy services are not normally used by the customers after 5pm. In fact in the 4 week period 29th July 2024 to 24th August 2024, the inbound call report (attached) show zero calls. However, in the same period the inbound call report (attached) show

there is substantial number of phone calls between 1pm and 2pm which are not currently part of the core hours.”

3. The Decision

In a letter to the Applicant dated 1 November 2024, the Commissioner decided to refuse the application. The Commissioner stated:

- 3.1 “The Pharmaceutical Services Regulations Committee (PSRC), which met on **30th October 2024**, has determined its assessment of your application to change your core hours, pursuant **paragraph 26 of Schedule 4** of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 - Application to amend Core Hours:
 - 3.1.1 **Schedule 4, Part 3, Paragraph 26 (1)(b) - Change the days on which or times at which P is obliged to provide pharmaceutical services during the core opening hours at P’s pharmacy premises in a way that keeps that total number of hours the same.** Under its contractual terms, the Pharmacy currently provides 40 core hours. The proposed changes will not affect that total. The contractual requirement to provide 40 hours has therefore been met.
 - 3.1.2 **Schedule 4, Part 3, Paragraph 26 (2) and Schedule 4, Part 3, Paragraph 24 : Where Pharmacist makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of:**
 - 3.1.2.1 **24(1)(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**
 - 3.1.2.2 **24(1)(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.**
 - 3.1.2.3 The application has not met the criterion of 26(2) or 24(1)(a)&(b) – The existing level of service provision would be reduced on an evening between the hours of 17:00-18.15 on Mondays, 17:00-17:30 Tuesdays, Wednesdays and Thursdays, and 17:00-18:00 on Fridays for people in the area, or other likely users of the pharmacy.
 - 3.1.3 **Schedule 4, Part 3, Paragraph 26 (3): determination within 60 days.** The application was determined within 60 days, therefore has been met.
 - 3.1.4 **Schedule 4, Part 3, Paragraph 26 (4-11):** These regulations relate to directing pharmacy hours and is not applicable to this application.
 - 3.1.5 **Schedule 4, Part 3, Paragraph 26 (12): this paragraph deals with the date on which the pharmacy can implement the changes to the opening hours.** In view of PSRC’s decision, this is not applicable.
 - 3.1.6 **Regulation 65:** This has been considered but none of the criteria are applicable to this application.
- 3.2 PSRC considered the application and for reasons noted above your application has been **rejected**.

3.3 Your core opening hours remain therefore, as below:

Monday	08:45 - 13:00 14:00 - 18:15
Tuesday	08:45 - 13:00 14:00 - 17:30
Wednesday	08:45 - 13:00 14:00 - 17:30
Thursday	08:45 - 13:00 14:00 - 17:30
Friday	08:45 - 13:00 14:00 - 18:00
Saturday	Closed
Sunday	Closed
Total	40 Hours

3.4 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or

3.5 Primary Care Appeals
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU"

4. The Appeal

In a letter to NHS Resolution dated 2 November 2024 the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

4.1 "I write to make an appeal against the ICB's decision to refuse the change in core hours (Appendix G) at the above pharmacy as we believe the ICB has not applied the regulatory tests correctly.

4.2 **To properly assess the application against paragraph 24(1)(a),**

4.2.1 The ICB need to determine the existing level of service provision.

4.2.2 The ICB then need to consider whether it is necessary to maintain the existing level of service provision.

4.2.3 If it is necessary to maintain the existing level of service provision, the ICB 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 other pharmacies being open and providing the same level of service provision.

4.3 The ICB have failed to provide any details on how they have applied these tests and the basis of why and how they have reached the decision to reject the application.

4.4 As part of this appeal with all the data we have to the present date, we have put ourselves to the regulatory test as below.

4.5 **Test 1: The ICB need to determine the existing level of service provision.**

4.6 The applicant's current and proposed core hours are shown below as per the application made to ICB.

4.7 Please insert below the current core opening hours for these premises.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
08:45 - 13:00 14:00 - 18:15	08:45 - 13:00 14:00 - 17:30	08:45 - 13:00 14:00 - 17:30	08:45 - 13:00 14:00 - 17:30	08:45 - 13:00 14:00 - 18:00	NIL	NIL

4.8 Please insert below the proposed core opening hours for these premises.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
9am – 5pm	9am – 5pm	9am – 5pm	9am – 5pm	9am – 5pm	NIL	NIL

4.9 The following are the opening hours of the 3 closest pharmacies. It is to be noted that 2 of these are pharmacies in retail parks, which are easily accessible by both car and public transport with good, free parking facilities. Predominantly these are the pharmacies used on evenings and weekends.

Pharmacy Name	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Boots Pharmacy, 8 Bishop Auckland Shopping Park, DL14 9FA	9am – 9pm	9am – 9pm	9am – 9pm	9am – 9pm	9am – 9pm	9am – 9pm	10am – 4pm
Tesco Pharmacy, St Helen Auckland, DL14 9AB	9am – 9pm	9am – 9pm	9am – 9pm	9am – 9pm	9am – 9pm	9am – 9pm	10am – 4pm
Bishop Auckland Pharmacy	8:30am – 5:30pm	8:30am – 5:30pm	8:30am – 5:30pm	8:30am – 5:30pm	8:30am – 5:30pm	Closed	Closed

4.10 Form [sic] the information above, the current provision of service can be established alongside what the future provision would look like if this application for change in hours is approved.

- 4.11 **Test 2: The ICB then need to consider whether it is necessary to maintain the existing level of service provision.** The applicant's assessment as detailed below clearly shows that it is not necessary to maintain the existing level of service provision beyond 5pm.
- 4.11.1 The applicant has run a consultation (Appendix A) in the pharmacy for a period of 4 weeks starting 29th July 2024. Clear information in the form of a letter was made available about the proposed change to Core (Appendix D) and Supplementary hours (Appendix E) of the pharmacy and every pharmacy user was encouraged to provide their support or object to the proposal. 100% of the pharmacy users that choose to respond showed their full support for this proposal and agreed that the new core hours suit better for the community. The last page of Appendix A shows that zero users have objected to this proposed change in core hours.
- 4.11.2 Attached telephone call reports in Appendix B, clearly shows that there is a significant demand for the pharmacy service between the hours of 1pm & 2pm during weekdays. These hours are now requested to be part of our core hours.
- 4.11.3 Attached telephone call reports in Appendix C, clearly shows there is absolutely no calls to the pharmacy beyond 5pm.
- 4.11.4 For internal monitoring and business planning for a period of 4 weeks starting 2nd September 2024 we have also monitored and collated data (Appendix F) on the number of visitors to the premises between 8:45 and 9am and again after 5pm. The data suggests that 100% of the visitors in these hours are visiting [sic] the premises for post office services and therefore it can be established that there is not a need for the pharmacy services during these hours and is beneficial to redistribute them as per our core hours change application (Appendix D) when there is actual usage of the pharmacy services.
- 4.12 All the data collected by us as detailed above clearly indicates that it is not necessary to maintain the current service levels at the pharmacy. We have therefore proposed to redistribute our core hours during the weekdays and also add supplementary hours to provide pharmacy services on a Saturday, which was what 100% of participants of our consultation wanted.
- 4.13 **Test 3: If it is necessary to maintain the existing level of service provision, the ICB 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 other pharmacies being open and providing the same level of service provision.**
- 4.14 The applicant believes it is not necessary to maintain the existing the existing level of service provision, which means this test does not apply. However, if NHS Resolution was to rule that this test applies, as per the below chart the existing level of service provision would be maintained by the choice of pharmacies available. The other pharmacies are easily accessed by car which is a 12 min drive from Cockfield. For people that do not drive, there is a reliable direct bus service 6 and 85 to the long opening hour pharmacies, with a journey time of approximately 20 minutes.

Pharmacy Name	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Boots Pharmacy, 8 Bishop	9am – 9pm	9am – 9pm	9am – 9pm	9am – 9pm	9am – 9pm	9am – 9pm	10am – 4pm

Auckland Shopping Park, DL14 9FA							
Tesco Pharmacy, St Helen Auckland, DL14 9AB	9am – 9pm	9am – 9pm	9am – 9pm	9am – 9pm	9am – 9pm	9am – 9pm	10am – 4pm
Bishop Auckland Pharmacy	8:30am – 5:30pm	8:30am – 5:30pm	8:30am – 5:30pm	8:30am – 5:30pm	8:30am – 5:30pm	Closed	Closed
Cockfield Pharmacy 38 Front Street, DL13 5DS	8:45am – 5pm	8:45am – 5pm	8:45am – 5pm	8:45am – 5pm	8:45am – 5pm	9am – 2pm	Closed

4.15 I request NHS Resolution to consider this appeal and overturn the decision to refuse by the ICB and grant the change in core hours.”

5. Representations

No representations were received by NHS Resolution in response to the appeal, however the Commissioner provided a copy of the relevant paperwork as requested.

6. Consideration

6.1 I note the following:

6.1.1 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.

6.2 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.

6.3 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.”

6.4 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).

6.5 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.

6.6 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.

6.7 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.

6.8 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.

6.9 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.

6.10 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.

- 6.11 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.
- 6.12 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.
- 6.13 However, the Applicant is applying to change the times that services are provided. I note that the level of service provision at the Applicant's premises on weekdays in the early morning and late afternoon 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.
- 6.14 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.
- 6.15 The Applicant has provided the results of a 4 week consultation which began on 29 July 2024. The consultation provided information regarding the proposed change of hours to customers and requested signatures in support of the change. I note that approximately 100 signatures were obtained during the 4 week period and the Applicant highlights that no signatures were entered on the sheet provided for objecting to the proposal. Whilst this shows a certain level of support for the proposed change, patient support is not the test as set-out in the Regulations and it does not provide any evidence with regard to usage of the pharmacy on/at the days/times in question.
- 6.16 The Applicant has provided records of telephone calls to the pharmacy during the same period indicating that calls were received between 1pm and 2pm, but none had been received after 5pm. The Applicant has also provided a table indicating usage of the pharmacy in the period between 8:45am and 9am and after 5pm, which covers a 4 week period beginning 2 September 2024. I note that whilst there were visitors requiring Post Office services at the premises at those times, no visitors were recorded as visiting the premises for pharmaceutical services at those times.
- 6.17 Whilst the data provided was collected some months ago and it would have been helpful to review more recent data, it does cover a reasonable period and I am mindful that it has not been disputed by the Commissioner. I therefore consider, in relation to paragraph 24(1)(a), that the Applicant has provided sufficient information to demonstrate that it is not necessary to maintain the existing level of provision as no one is accessing pharmaceutical services at the times the Applicant is wishing to close.
- 6.18 As I have determined that maintaining the existing level of service provision is unnecessary, I next consider if, taking into account the Applicant's amended hours, the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area are such that a sustainable level of adequate service provision is maintained for the people in that area or other likely users of the pharmacy premises.

- 6.19 The Applicant is not reducing its hours and is wanting to close when no-one accesses pharmaceutical services. There is no further reduction in service provision. There is also evidence provided of other pharmacies located in the area that provide services during the hours the Applicant wishes to close. I am therefore satisfied that, taking into account the amended hours, adequate service provision is maintained. I consider it reasonable to presume that the level of service provision taking into account the amended hours are sustainable. No evidence has been provided to me that rebuts this presumption. I am therefore satisfied that, taking into account the Applicant's amended hours, the days and times at which pharmacy premises are open are such that a sustainable level of adequate service provision is maintained for the people in that area or other likely users of the pharmacy premises.
- 6.20 Under paragraph 26(10) *"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 sub-paragraph (4)"*.
- 6.21 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 [F391(4(A),] (5) and (5) 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.*
- 6.22 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.
- 6.23 For the above reasons, I am not confirming any existing direction in line with paragraph 26(4)(b).
- 6.24 Further, there is no direction to revoke in line with paragraph 26(4)(c).
- 6.25 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.

7. Determination

- 7.1 Based on the information provided, I am satisfied that maintaining the existing level of service provision is unnecessary but that a sustainable level of service provision is maintained for the people in the area or other likely users of the pharmacy premises.
- 7.2 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