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13 March 2025

FILE REF: **SHA/26410**

COMMISSIONER: **NORTH EAST LONDON ICB ("the Commissioner")**

PHARMACIST: **SHEAV CHEM LIMITED T/A PRO-CARE PHARMACY ("the Applicant")**

PREMISES: **5 WARWICK PARADE, BELMONT CIRCLE, HARROW, HA3 8SA**

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 & Consultancy (on behalf of Sheav Chem Limited t/a Pro-Care Pharmacy)
North East London ICB

NHS Resolution

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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 letter of appeal indicates that it currently has core opening hours totalling 40 hours per week.

1.12 The Applicant wishes to:

1.12.1 Change its core hours from 9am – 12pm Monday to Friday to 9am – 1 pm;

1.12.2 Change its core hours from 6pm – 9pm Monday to Friday to 4pm – 7pm (Monday to Thursday) and 3pm – 7pm on Friday;

1.12.3 Change its core hours from 9am – 12pm and 4pm – 7pm to 10am – 2pm on Saturdays;

1.12.4 No longer open for core hours on Sunday.

2. **Application**

In this case, the Applicant provided the following information in its application form and supporting information dated 4 March 2024:

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

2.2 Current opening hours for these premises:

Monday	09:00 – 12:00 18:00 – 21:00
Tuesday	09:00 – 12:00 18:00 – 21:00
Wednesday	09:00 – 12:00 18:00 – 21:00
Thursday	09:00 – 12:00 18:00 – 21:00
Friday	09:00 – 12:00 18:00 – 21:00
Saturday	09:00 – 12:00 18:00 – 21:00
Sunday	11:00 – 13:00 14:00 – 16:00

2.3 Proposed core opening hours for these premises:

Monday	09:00 – 13:00 16:00 – 19:00
Tuesday	09:00 – 13:00 16:00 – 19:00
Wednesday	09:00 – 13:00 16:00 – 19:00
Thursday	09:00 – 13:00 16:00 – 19:00
Friday	09:00 – 13:00 15:00 – 19:00
Saturday	10:00 – 14:00
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:

2.4.1 1 June 2024.

"Application to amend core opening hours at 5 Warwick Parade, Belmont Circle, Harrow, HA3 8SA

2.5 We act for Sheav Chem Limited. Our client has instructed us to submit an application to NHS England to amend the core hours for its pharmacy located at:

2.5.1 5 Warwick Parade

Belmont Circle

Harrow

HA3 8SA

Background

2.6 Our client has previously submitted an application to change the core hours of this pharmacy. The application was considered by the London Pharmaceutical Services Regulations Committee ("PSRC") and was refused. Our client was informed of the outcome of this application in September 2023.

2.7 Our client subsequently submitted an appeal to Primary Care Appeals ("PCA") at NHS Resolution but this appeal was not successful. Our client was notified of the outcome of the appeal on 7th February.

2.8 We have attached a copy of the refusal decision report with this new application.

PSRC decision letter

2.9 The reasons for refusal, as set out in the decision letter, are set out below. We respond to each of these points …:

2.9.1 PSRC looked at the current service provision in this area and have noted that whilst you noted one of the nearby pharmacies as opening from 7.30am to 10.30pm on weekdays, that this has since changed and the pharmacy is opening for less hours.

2.10 We note that the opening hours of Harrow Pharmacy have indeed changed since the application was first submitted, but for the reasons provided in our client's appeal letter, this does not materially affect the ability of that pharmacy to offer a reasonable alternative to patients accustomed to accessing our client's pharmacy for the hours it proposes to close. Harrow Pharmacy is contractually obliged to open until 9pm from Monday to Saturday and 8pm on Sunday.

2.11 Furthermore, our client understands the committee's concerns that the proposed core hours in the original application could have resulted in the pharmacy closing at 5pm on weekdays and for the whole weekend. This amended application would ensure that the pharmacy could not close any earlier than 7pm from Monday to Friday and would open for at least 4 hours on a Saturday.

2.11.1 Your application mentioned that you will be offering free prescription deliveries and installing a pharmaself 24 to allow patients to collect prescriptions from a pharmacy ATM. This is not as yet in place.

2.12 The Pharmaself 24 machine has now been installed. Furthermore the delivery service has expanded very significantly over the last 6 months.

2.12.1 It was noted that none of the nearby pharmacies opened on Sundays or past 6pm on Saturdays.

2.13 As set out in our client's appeal there is no meaningful demand for pharmaceutical services at these times.

2.13.1 The alternative pharmacy suggested is approx. 1.5 miles walking distance from this pharmacy, which at an average pace would take around half an hour to walk.

2.14 Within our client's appeal the availability of public transport to the nearby '100 hour' pharmacy was discussed in detail. Residents can travel by bus directly from our client's pharmacy to The Harrow Pharmacy through the evening and over the weekend.

2.14.1 Amending the core opening hours would not maintain the existing level of service available for patients.

2.15 This conclusion was also made by the Primary Care Appeals committee. We discuss the relevant legal tests below.

Primary Care Appeals decision letter

2.16 We have enclosed a copy of this decision letter for the benefit of the PSRC. This will allow the committee to see the evidence that was submitted to NHS Resolution. We have also included a copy of the final observations we submitted to NHS Resolution on behalf of our client so the committee can see the maps that were referred to in the report.

2.17 We note the following comments from the PCA report. Again we have responded to these comments …:

2.35 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 numbers and therefore I consider it necessary to maintain the existing level of service provision.

2.18 We note that the PCA's interpretation of the Regulations is that if there is any demand for services from the pharmacy (even one patient) during the hours that are proposed for closure then that is evidence that it is "necessary to maintain the existing level of service provision".

2.19 In our client's opinion the PCA's approach is somewhat extreme in this regard. If a pharmacy is open at any time of the day or night then it is possible that a patient may choose to come in. That is not evidence that it was 'necessary' for them to do so. It may be perfectly possible for that patient to attend earlier in the day but they have chosen to visit later simply because they are aware that the pharmacy opens late in the evening.

2.20 Equally a patient who happens to be passing the pharmacy in the evening or weekend may decide to go in when they see that the pharmacy is open, even though they may not have had any intention to do so when they set out on their journey. In that case it would be hard to argue that their visit to the pharmacy was necessary because they did not set out with the intention of accessing pharmaceutical services.

2.21 Further evidence of the fact that the existing level of service may not be necessary is that our clients were permitted by NHS England to close their pharmacy for some weekend hours from October last year to February this year for substantial refit works to be carried out. During this time our clients received no complaints whatsoever regarding these closures and is not aware that any complaints were made to the ICB. This adds to the case that it is not "necessary to maintain the existing level of service provision".

2.22 We invite the PSRC to consider whether, in this case, there is evidence that the existing opening hours are beyond those which can be considered as necessary.

2.44 I note Boots Pharmacy at 66-72 High Street has core hours on weekends from 10am to 2pm and 3pm to 5pm. Whilst not identical to the Applicant's current weekend core hours, it provides NMS, Flu, CPCS and Hypertension. On the basis of formerly

being a 100 hour pharmacy, Harrow Pharmacy appears to have core hours from 9.30am to 9pm, Monday to Friday, Saturday 4pm to 9pm and Sunday 8am to 8pm. However, I have not been told what services it provides. I shall consider this point later.

2.23 We have included a copy of page 85 of the Harrow PNA which lists the services being provided by contractors at that time. This shows that The Harrow Pharmacy provided:

2.23.1 NMS, CPCS, 'Flu Vaccinations, Covid Vaccinations, London Vaccination service, Anticipatory Medicines, Supervised Consumption.

2.24 Information is also provided for other pharmacies in the area.

2.25 It is likely, of course, that there will have been some changes in the intervening time. The ICB will have access to this information so will be able to assess it accordingly.

2.47 I have considered the information provided by the Applicant stating that a drive from the Applicant's pharmacy to Harrow Pharmacy would take in the region of 5 – 10 minutes and that there is pay & display parking "almost immediately outside", or that there is an alternative pharmacy to this "less than 100m from Harrow Pharmacy" with a large customer car park located at Tesco Pharmacy.

2.48 When considering whether patients would be able to access an alternative pharmacy via public transport, I have before me the information provided by the Applicant with regard to the bus route 186. Although I have not been provided with a copy of the complete bus timetable or route, I note the Applicant's undisputed comment that these buses run every 10 – 15 minutes Monday to Saturday and every 20 minutes on Sunday, and that the route from the Belmont Circle (where the Applicant's pharmacy is located) to the bus stop closest to Harrow Pharmacy, being approximately 250m away on both sides of the road. I further note the comment that a bus journey from Belmont Circle to Harrow Pharmacy would take no more than 12 minutes, dependant on traffic.

2.50 From the information provided, I note that Belmont and Boots pharmacies do not currently provide supervised consumption, nor do I have the information before me as to the services provided by Harrow Pharmacy. Therefore I am unable to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies as depicted in paragraph 24(1)(a).

2.51 I have therefore decided that it is necessary to maintain the current service provision but, due to the effect of a lack of information about the service being provided by all alternative pharmacies during the hours the Applicant is proposing to close, I am not satisfied that there will be maintenance of the existing level of service provision, by virtue of other pharmacies in the area.

2.26 It is noteworthy that PCA did not find that other pharmacies were located too far away to be considered reasonable alternatives. Instead they reached their conclusion based on the lack of information they had access to regarding services provided by these alternative pharmacies.

2.27 In fact, the PCA has very recently approved an application (SHA\26102) where the nearest alternative pharmacy offering the same services and core hours was more than 4 miles away. The committee accepted that it was reasonable for patients to travel this distance to access alternative providers. We have included a copy of that appeal decision with the following paragraphs highlighted – 2.44, 2.46, 2.50, 2.55.

2.28 We invite the ICB to review its own records in respect of the services being provided by alternative pharmacies (mindful of the fact PCA did not consider these to be too far

away) and to consider whether, as per paragraph 2.37 of the PCA report, that if they "*consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open that means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy*" they are able to grant the application under paragraph 24(1)(a).

2.29 *2.52 I therefore next consider if I need to have regard to paragraph 24(1)(b) which states that I must seek to ensure that the changed hours are such as 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".*

2.57 The wording of paragraph 24(1)(b) is such that maintaining existing service levels must not be realistically achievable before considering a sustainable level of adequate provision. I consider that this sets a fairly high bar as to the level of difficultly that the Applicant must find themselves in. I do not consider that sufficient evidence has been provided to indicate that the economic and practical viability of the current opening hours has been compromised. I therefore consider that maintaining the existing level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).

2.30 Our client provided information to PCA in respect of the challenges securing locum cover at fair rates for extended hours. However, PCA determined that there was insufficient evidence in respect of the financial implications for our client. The report stated "*I have not been provided with any information to demonstrate that the pharmacy has suffered unforeseen closures as a result of not obtaining pharmacist, locum or otherwise, cover during its core opening hours"*

2.31 The implication of this comment is that if our client had concluded that the financial burden of these additional pharmacist costs was unsustainable and decided to close the pharmacy occasionally the PCA may have been more sympathetic.

2.32 It appears, therefore, that our client has been penalised for making exceptional efforts to ensure the pharmacy remains open despite the fact the business is running at a substantial loss. We discuss the financial position of the business below.

2.33 It is also relevant that one of the challenges our client has faced securing pharmacist cover is the threat (or perceived threat) to staff safety when opening late in the evening. This is a very real concern given the regular threats faced by pharmacy contractors leaving pharmacists and other employees feeling particularly vulnerable late in the evening.

2.34 We believe that this is an important factor for the ICB to take into account when considering whether maintaining the current opening hours is a "realistically achievable outcome". However, we feel that the financial case here is even more compelling so the remainder of this document focusses on the financial position of this business.

Financial information

2.35 Our client has authorised us to provide the attached 'profit and loss' report for this pharmacy to NHS England in confidence.

2.36 This document has been produced by our client's accountant and provides a summary of the current financial status of this pharmacy.

2.37 We would point out that this document covers only the 6 month period from July to December 2023, the latest month for which an NHS payment schedule has been received.

2.38 Key points to note are as follows:

2.38.1 The combined costs of all payroll for this 6 month period (including pensions, national insurance, gross wages and locums) is **[redacted by NHS Resolution]**.

2.38.2 **[redacted by NHS Resolution]**

2.38.3 Rent and rates amount to **[redacted by NHS Resolution]** for this 6 month period.

2.39 As can be seen from the 'net operating income' line, the business made a **loss** of over **[redacted by NHS Resolution]** for this six month period. Clearly this is not a sustainable position for any pharmacy owner.

2.40 Our client has also produced an analysis of the potential cost savings that could be achieved through reduced opening hours. We have attached a spreadsheet which estimates costs savings of **[redacted by NHS Resolution]** per annum a result of reducing hours.

2.41 Whilst these savings alone are not sufficient to turn around the current level of loss, our client believes that these savings, in combination with business growth and other business efficiencies will be sufficient to ensure that the business becomes viable in the longer term.

2.42 Without a reduction in opening hours, the bank loan cannot be serviced and it is inevitable that the pharmacy will have to close.

2.43 Going back to paragraph 24(1)(b) of Schedule 4 to the Regulations, the decision maker is asked to consider whether "maintaining the existing level of service provision is … not a realistically achievable outcome".

2.44 In our client's opinion the picture could not be more clear. Maintaining the current situation, where the pharmacy business **[redacted by NHS Resolution]**. That being the case, maintaining existing service levels is very clearly not realistically achievable.

2.45 In our opinion, therefore, the ICB is able to rely on paragraph 24(1)(b) when determining this application and should approve the application accordingly.

Conclusion

2.46 In summary, therefore, we ask the ICB to reconsider its previous decision based on the additional evidence our client has provided on the following grounds:

2.46.1 There is evidence that the current level of pharmaceutical services provision is not necessary.

2.46.2 We believe that other pharmacies, that provide the same services that our client will no longer be providing during the proposed hours of closure, provide reasonable alternatives for patients.

2.46.3 Given the concerns about staff safety, and the unsustainable financial situation, maintaining existing service levels is not realistically achievable.

2.47 Even if the PSRC finds that only one of these tests is met it may approve the application.

2.48 For these reasons we urge the PSRC to grant this application."

2.49 **[Financial account details redacted by NHS Resolution]**

3. **The Decision**

In a letter to the Applicant dated 8 November 2024 the Commissioner decided to refuse the application. The Commissioner stated:

3.1 "I am writing in regard to your request to amend your core hours.

3.2 Your application to change core hours has been presented to the London Pharmaceutical Regulations Committee, who have considered your application.

3.3 The Committee have refused your request to change your hours for the following reason:

3.4 The PSRC considered any information that you have provided in your application.

3.5 Our records show that the pharmacy has:

3.5.1 Core opening hours between Monday and Friday – 9am to Midday & 6pm to 9pm, Saturday – 9am to Midday & 4pm to 7pm and Sunday – 11am to 1pm & 2pm to 4pm.

3.5.2 Supplementary opening hours from Monday and Friday – Midday to 6pm, Saturday – Midday to 4pm and Sunday 1pm to 2pm.

3.6 As regards the requested changes to core hours your application has been considered by the London Pharmaceutical Services Regulations Committee. The Committee has **refused** your application.

3.7 Sheav Chem Ltd have requested to change the following core hours within their pharmacy, to amend the hours on weekdays by reducing the core hours break in the middle of the day and closing earlier, by reducing the hours on a Saturday and closing completely on Sundays. These hours are different to the core hours that have been previously requested and do provide a service later on weekdays and Saturdays as part of Core hours.

3.8 It is also noted that a previous application this [sic] has been refused and at appeal NHS Resolution also refused the application, it was refused only that there was not sufficient data to determine the request.

3.9 This new application has been provided with more information and a change in the core hours that have been requested.

3.10 Whilst more information has been provided, 24(1)(a) has still been assessed as necessary to maintain the current service provision.

3.11 Therefore, the application relies on reg 24(1)(b) whether the proposed change of hours are such that a sustainable level of adequate service provision would be maintained.

3.12 NHS Resolution noted that there was no information to demonstrate that the pharmacy has suffered unforeseen closures as a result of not obtaining a pharmacist cover during core hours which might suggest that maintaining the current service provision during the relevant hours is not realistically achievable. The applicant has noted that it was given permission to close whilst work was completed but this was a curtesy as the work could not be completed any other way, this was not due to not obtaining cover.

3.13 The applicant has provided more information to substantiate that they believe that maintaining existing service levels is very clearly not realistically achievable, however the ICB does not feel that this is sufficient to comply with reg 24(1)(b).

3.14 You have a right of appeal to the Secretary of State against this decision. Should you choose to appeal, you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to:

3.15 NHS Resolution, Primary Care Appeals, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU or email nhsr.appeals@nhs.net"

4. **The Appeal**

In a letter to NHS Resolution dated 4 December 2024 the Applicant, represented by Pharmacy Sales & Consultancy, appealed against the Commissioner's decision. The grounds of appeal are:

4.1 "We act for Sheav Chem Limited and have enclosed a letter of authorisation (appendix 1) confirming our instructions in this matter.

4.2 Our client has been notified by the London Pharmaceutical Regulations Committee ("PSRC") that the above application has been refused. We have enclosed a copy of their decision letter of your information (appendix 2).

4.3 Our client wishes to appeal this decision and we set out the key grounds for appeal below by reference to the PSRC letter dated 8th November 2024.

4.4 The PSRC acknowledged that a previous application and appeal (discussed further below) had only been refused due to a lack of information. However, the PSRC failed to take into account all of the additional information provided by our client in this second application.

4.5 The PSRC stated "*Whilst more information has been provided, 24(1)(a) has still been assessed as necessary to maintain the current service provision*". Our client provided additional information to show that other pharmacies in the area were open at the time it proposes to close and provide the same services as our client. However, there is no explanation in the PSRC report as to why they disregarded this evidence.

4.6 The PSRC report states "*the application relies on reg 24(1)(b) [sic] whether the proposed change of hours are such that a sustainable level of adequate service provision would be maintained*". We do not accept this conclusion, as we submit the test in paragraph 24(1)(a) of Schedule 4 has also been met so the application was not solely reliant on this point.

4.7 Our client provided detailed evidence explaining why the test set in paragraph 24(1)(b) of Schedule 4 had been met. However, the PSRC disregarded this evidence without explaining why it disagreed that *maintaining the existing level of service provision is… not a realistically achievable outcome*.

Background

4.8 Our client submitted an application to Harrow ICB in 2023 to amend its core opening hours. This application was considered by the PSRC and refused. Our client was informed of this refusal in a letter dated 28th September 2023.

4.9 An appeal was submitted to Primary Care Appeals ("PCA") who considered this matter in February 2024. The application was refused by PCA (SHA/26100). We have included a copy of that appeal decision with this new appeal (appendix 3).

4.10 In its second application to Harrow ICB, our client referenced various paragraphs from the PCA decision letter. We have provided these extracts below, where the PCA comments are provided in [italics] and our client's original responses to those are provided …. Our further comments, where appropriate to this new appeal, are provided ….

2.35 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 numbers and therefore I consider it necessary to maintain the existing level of service provision.

4.11 We note that the PCA's interpretation of the Regulations is that if there is *any* demand for services from the pharmacy (even one patient) during the hours that are proposed for closure then it is evidence that it is "necessary to maintain the existing level of service provision".

4.12 In our client's opinion the PCA's approach is somewhat extreme in this regard. If a pharmacy is open at any time of the day or night then it is possible that a patient may choose to come in. That is not evidence that it was 'necessary' for them to do so. It may be perfectly possible for that patient to attend earlier in the day but they have chosen to visit later simply because they are aware that the pharmacy opens late in the evening.

4.13 Equally a patient who happens to be passing the pharmacy in the evening or weekend may decide to go in when they see that the pharmacy is open, even though they may not have had any intention to do so when they set out on their journey. In that case it would be hard to argue that their visit to the pharmacy was necessary because they did not set out with the intention of accessing pharmaceutical services.

4.14 Further evidence of the fact that the existing level of service may not be necessary is that our clients were permitted by NHS England to close their pharmacy for some weekend hours from October last year to February this year for substantial refit works to be carried out. During this time our clients received no complaints whatsoever regarding these closures and is not aware that any complaints were made to the ICB.

4.15 This adds to the case that it is not "necessary to maintain the existing level of service provision".

4.16 We invite the PSRC to consider whether, in this case, there is evidence that the existing opening hours are beyond those which can be considered as necessary.

4.17 We note that PCA has been consistent in its findings that *any* demand for *any* pharmaceutical services during the time a pharmacy proposes to close would lead to the conclusion that those services are *necessary*. We ask PCA to note our comments in respect of this interpretation. However we also accept that the evidence provided in our client's original application showed that there were *some* patients attending the pharmacy during the hours our client proposes to close.

4.18 This being the case our client has not provided any new evidence in respect of the number of patients visiting the pharmacy as it cannot show there is **no** demand for the reasons discussed above.

2.44 I note Boots Pharmacy at 66-72 High Street has core hours on weekends from 10am to 2pm and 3pm to 5pm. Whilst not identical to the Applicant's current weekend core hours, it provides NMS, Flu, CPCS and Hypertension. On the basis of formerly being a 100 hours pharmacy, Harrow Pharmacy appears to have core hours from 9.30am to 9pm, Monday to Friday, Saturday 4pm to 9pm and Sunday 8am to 8pm. However, I have not been told what services it provides. I shall consider this point later.

4.19 We have included a copy of page 85 of the Harrow PNA which lists the services being provided by contractors at that time. This shows that The Harrow Pharmacy provided: NMS, CPCS, 'Flu Vaccinations, Covid Vaccinations, London Vaccination service, Anticipatory Medicines, Supervised Consumption. Information is also provided for other pharmacies in the area.

4.20 It is likely, of course, that there will have been some changes in the intervening time. The ICB will have access to this information so will be able to access it accordingly.

4.21 We have enclosed a copy of the PNA page (appendix 4) with this appeal letter. Whilst there is no information in the recent decision report from the PSRC to show they considered the *current* services being provided by The Harrow Pharmacy, we have carried out our research in this respect. This is discussed further below.

2.47 I have considered the information provided by the Applicant stating that a drive from the Applicant's pharmacy to Harrow Pharmacy would take in the region of 5 – 10 minutes and that there is pay & display parking "almost immediately outside", or that there is an alternative pharmacy to this "less than 100m from Harrow Pharmacy" with a large customer car park located at Tesco Pharmacy.

2.48 When considering whether patients would be able to access an alternative pharmacy via public transport, I have before me the information provided by the Applicant with regard to the bus route 186. Although I have not been provided with a copy of the complete bus timetable or route, I note the Applicant's undisputed comment that these buses run every 10 – 15 minutes Monday to Saturday and every 20 minutes on Sunday, and the route from the Belmont Circle (where the Applicant's pharmacy is located) to the bus stop closet to Harrow Pharmacy, being approximately 250m away on both sides of the road. I further note the comment that a bus journey from Belmont Circle to Harrow Pharmacy would take no more than 12 minutes, dependant on traffic.

2.50 From the information provided, I note that Belmont and Boots pharmacies do not currently provide supervised consumption, nor do I have the information before me as to the services provided by Harrow Pharmacy. Therefore I am unable to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies as depicted in paragraph 24(1)(a).

2.51 I have therefore decided that it is necessary to maintain the current service provision but, due to the effect of a lack of information about the service being provided by all alternative pharmacies during the hours the Applicant is proposing to close, I am not satisfied that there will be maintenance of the existing level of service provision, by virtue of other pharmacies in the area.

4.22 It is noteworthy that PCA did not find that other pharmacies were located too far away to be considered reasonable alternatives. Instead they reached their conclusion based on the lack of information they had access to regarding services provided by these alternative pharmacies.

4.23 In fact, the PCA has very recently approved an application (SHA/26102) where the nearest alternative pharmacy offering the same services and core hours was more than 4 miles away. The committee accepted that it was reasonable for patients to travel this distance to access alternative providers. We have included a copy of that appeal decision with the following paragraphs highlighted – 2.44, 2.46, 2.50, 2.55.

4.24 We invite the ICB to review its own records in respect of the services being provided by alternative pharmacies (mindful of the fact PCA did not consider these to be too far away) and to consider whether, as per paragraph 2.37 of the PCA report, that if they "consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open that means the level of service provision is maintained for people in the local area or other likely users of the pharmacy" they are able to grant the application under paragraph 24(1)(a).

4.25 Again, the PSRC report provides no information to suggest that it did consider the services being provided by alternative pharmacies, in particular The Harrow Pharmacy. As discussed earlier, we have provided more information in this respect below.

4.26 Whilst we acknowledge that the case referenced above (SHA/26102) does not set any precedent in respect of what might be considered a reasonable distance for patients to travel to an alternative pharmacy, this information was provided to demonstrate that it is appropriate to consider pharmacies in the wider area when determining whether these provide a reasonable alternative.

2.52 I therefore next consider if I need to have regard to paragraph 24(1)(b) which states that I must seek to ensure that the changed hours are such as 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".

2.57 The wording of paragraph 24(1)(b) is such that maintaining existing service levels must not be realistically achievable before considering a sustainable provision. I consider that this sets a fairly high bar as to the level of difficulty that the Applicant must find themselves in. I do not consider that sufficient evidence has been provided to me to indicate that the economic and practical viability of the current opening hours has been compromised. I therefore consider that maintaining the existing level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).

4.27 Our client provided information to PCA in respect of the challenges securing locum cover at fair rates for extended hours. However, PCA determined that there was insufficient evidence in respect of the financial implications for our client. The report stated "*I have not been provided with any information to demonstrate that the pharmacy has suffered unforeseen closures as a result of not obtaining pharmacist, locum or otherwise, cover during its core opening hours".*

4.28 The implication of the comment is that if our client had concluded that the financial burden of these additional pharmacist costs was unsustainable and decided to close the pharmacy the PCA may have been more sympathetic.

4.29 It appears, therefore, that our client has been penalised for making exceptional efforts to ensure the pharmacy remains open despite the fact the business is running at a substantial loss. We discuss the financial position of the business below.

4.30 It is also relevant that one of the challenges our client has faced securing pharmacist cover is the threat (or perceived threat) to staff safety when opening late in the evening. This is a very real concern given the regular threats faced by pharmacy contractors

leaving, pharmacists and other employees feeling particularly vulnerable late in the evening.

4.31 We believe that this is an important factor for the ICB to take into account when considering whether maintaining the current opening hours is a "*realistically achievable outcome*". However, feel that the financial case here is even more compelling so the remainder of this document focusses on the financial position of this business.

4.32 Our client provided financial information within its recent application to support its case that *maintaining the existing level of service is **not** a realistically achievable outcome*. We discuss this matter further below, and have provided updated information from our client accordingly.

Regulatory context

4.33 As Primary Care Appeals are aware, when considering an application for a change of core hours, it will have regard to paragraph 24 of Schedule 4 to the National Health Service (Pharmaceutical Services and Local Pharmaceutical Services) Regulations 2013 (as amended).

4.34 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 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."*

4.35 This appeal seeks to address the matters dealt with in both 24(1)(a) & (b).

24(1)(a)

4.36 In considering whether granting this application will "*maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises*" the approach usually taken by PCA is to first determine whether the services being provided during the hours it is proposed to close as necessary. We have commented on this matter already.

4.37 The second question asked by PCA when considering 24(1)(a) is: *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?*

4.38 We seek to address this question by considering the services provided by alternative pharmacies which we deem to be 'reasonably accessible' to patients who might otherwise attend our client's pharmacy. Whilst some of this information has been provided previously, we have included it again for simplicity and to bring this information up to date.

Proposed change to core opening hours

4.39 The application to which this appeal relates is different to that considered in SHA/26100 in that the proposed reduction in hours is smaller than in the previous application.

4.40 The current core hours are:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 12:00 18:00 – 21:00	09:00 – 12:00 18:00 – 21:00	09:00 – 12:00 18:00 – 21:00	09:00 – 12:00 18:00 – 21:00	09:00 – 12:00 18:00 – 21:00	09:00 – 12:00 16:00 – 19:00	11:00 – 13:00 14:00 – 16:00	40

4.41 The proposed core hours are:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 13:00 16:00 – 19:00	09:00 – 13:00 16:00 – 19:00	09:00 – 13:00 16:00 – 19:00	09:00 – 13:00 16:00 – 19:00	09:00 – 13:00 15:00 – 19:00	10:00 – 14:00	Nil	40

4.42 The hours for which core hours will be reduced, therefore, are follows:

4.42.1 Monday to Friday – 19:00 – 21:00

4.42.2 Saturday – 09:00 – 10:00 & 16:00 – 19:00

4.42.3 Sunday – 11:00 – 13:00 and 14:00 – 16:00.

4.43 We have therefore focussed on those pharmacies within the area that have core hours during the hours our client's pharmacy would no longer be open.

Core hours of nearby pharmacies

4.44 We note that it was clarified at the time of the previous appeal that the nearest alterative to our client's pharmacy, namely Belmont Pharmacy, has core hours from 9am to 1pm and 2pm to 6pm from Monday to Friday only. That being the case it is clear that this pharmacy does not have core opening hours at the times our client proposes to close. For this reason we have not considered this pharmacy as an alternative to our client's pharmacy for the purpose of this latest appeal.

4.45 The nearest alternative pharmacy where there is some overlap in core hours with our client's pharmacy is Boots at 66-72 High Street, Wealdstone, Middlesex, HA3 7AF. It was confirmed in SHA/26100 (para 2.44) that this pharmacy has core hours from 10am to 2pm on 3pm to 5pm on Saturdays. We therefore consider this pharmacy in greater detail below.

4.46 The nearest alternative pharmacy that has extended hours in the evening and on Sundays is The Harrow Pharmacy, 73 Station Rd, Harrow HA1 2TY. This is a former '100 hour' pharmacy which now has core hours of 10am to 9pm, Monday to Friday, Saturday 4pm to 9pm and Sunday 8am to 8pm. This pharmacy was discussed in the previous appeal and within our client's most recent application. We provide further information in respect of this pharmacy below.

4.47 Finally, in respect of hours, we note that neither of the two pharmacies discussed above have core hours from 9am to 10am on Saturday mornings. Whilst it is anticipated that our client will open between these times as supplementary hours, we are mindful that PCA will focus on core hours.

4.48 Given that the proposed core hours by our client include 10am to 2pm on Saturday, the reality is that, in the unlikely event our client was not open between 9am and 10am, the vast majority of patients would simply wait until 10am. If they were unable to do so there are very many pharmacies in the wider area that are open on Saturday mornings, including Belmont Pharmacy 100m away. Whilst we do not have access to information in respect of core hours for most of these pharmacies we submit that no patient will be significantly inconvenienced if our client's pharmacy was not open until 10am.

Services provided

4.49 At the time of our client's original application, it carried out a survey of the services being accessed in the evenings and at weekends. This showed that on the whole, the pharmaceutical services provided were limited to essential services i.e. those that would be provided by any NHS pharmacy.

4.50 The only exception to this was vaccinations for Covid 19 and 'flu vaccinations.

4.51 Whilst the services that were demanded during the survey period were limited, we have provided below a list of all NHS advanced and enhanced pharmaceutical services provided by our client at present. These are:

4.51.1 Pharmacy First service.

4.51.2 Flu Vaccinations

4.51.3 Covid 19 vaccinations

4.51.4 Pharmacy Contraception Service (PCS)

4.51.5 Hypertension case-finding service.

4.51.6 New Medicine Service (NMS)

4.51.7 Smoking Cessation Service

4.52 We have then considered the services being provided by Boots at 66-72 High Street, Wealdstone and The Harrow Pharmacy, 73 Station Rd.

Boots

4.53 The NHS website (nhs.uk) lists the following advanced services as being provided by Boots.

4.53.1 NHS pharmacy contraception service

4.53.2 New medicine service

4.53.3 COVID-19 lateral flow tests

4.53.4 NHS blood pressure check service

4.53.5 Flu vaccination service

4.54 Whilst not listed on this website, publicly available information shows that the Pharmacy First Service is also provided by this Boots Pharmacy.

4.55 Boots own website lists the following services as being provided:

4.55.1 (NHS) Seasonal flu vaccination service

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

4.55.3 Body Mass Index (BMI) machine

4.55.4 Boots Macmillan Information Pharmacist

4.55.5 COVID-19 lateral flow test (eligible NHS patients)

4.55.6 Electronic Prescription Service

4.55.7 Emergency Contraception

4.55.8 Hypertension Case Finding Service / Blood Pressure Checks

4.55.9 In Store Malaria Prevention Service

4.55.10 Medicines Check Up

4.55.11 NHS Blood Pressure Check Service

4.55.12 NHS Pharmacy Contraception Service

4.55.13 NHS Pharmacy First Service

4.55.14 NHS Prescription Ordering

4.55.15 NHS Urgent palliative care medicines service

4.55.16 New Medicine Service

4.55.17 Pharmacy First

4.55.18 Pneumonia Vaccination Service

4.55.19 Prescription delivery service

4.55.20 Prescriptions Direct

4.55.21 Private consultation room

4.55.22 Repeat Prescription Service

4.55.23 Winter Flu Jab Service

The Harrow Pharmacy

4.56 The NHS website (nhs.uk) lists the following advanced services as being provided by The Harrow Pharmacy.

4.56.1 NHS contraception service

4.56.2 New medicine service

4.56.3 Flu vaccination service

4.57 Again, there is also publicly available evidence that the Pharmacy First service is also provided.

4.58 The pharmacy's website also states that it provides blood pressure monitoring (i.e. hypertension case finding) and smoking cessation services.

4.59 We also note the extract from the PNA provided with our client's most recent application. If the services provided by The Harrow Pharmacy are compared to those provided by our client's pharmacy (formerly Lloyds in Belmont Circle) it can be seen that these are identical, with the exception of Stoma Appliance Customisation (SAC) which had previously been provided by Lloyds. This service has not been provided by our client since it acquired the pharmacy.

4.60 Whilst neither of the pharmacies discussed above currently provide Covid-19 vaccinations, we are conscious this is a seasonal service, commissioned on a case by case by the ICB. By the time this application is determined, the current round of Covid vaccinations will be complete and our client will no longer be providing them. Should the ICB wish to commission our client to provide this service again in the future our client would be happy to discuss offering Covid clinics outside its core hours as required.

4.61 It is also relevant that our client currently does not offer Covid vaccination appointments on Sundays.

4.62 It is clear, therefore, that will be no pharmaceutical service currently being provided by our client that is not also provided by Boots and The Harrow Pharmacy.

4.63 Having established that Boots and The Harrow Pharmacy have core hours that encompass the hours proposed by our client (partially in the case of Boots and wholly in the case The Harrow Pharmacy) and that they provide the same services as our client, we have gone on to consider the accessibility of each of these pharmacies.

Profile of local residents

4.64 In terms of the local demographic profile, key data from the 2021 census (for the Kenton West ward in which the existing premises are located) is as follows:

4.65 (i) Car ownership is significantly higher than average with only 13.7% of homes having no car compared to the national average of 23.5%. This is highly unusual for London.

4.66 (ii) The number of residents over the age of 65 is 18.5% compared to the national average of 18.1%.

4.67 (iii) The number of residents under the age of 16 is also close to the national average at 17.6% compared to the average of 18.5%.

4.68 (iv) The area has significantly lower than average levels of people whose mobility is limited by illness or disability, being 11.4% compared to the national average of 17.3%

4.69 In respect of deprivation measures, the Index of Multiple Deprivation for 2019, published by the Ministry of Housing, Communities and Local Government, shows that the lower super output area ('LSOA') in which the pharmacy is located was ranked 20,015 out of 33,284 where 1 is the most deprived i.e. it is in the 40% least deprived parts of the country.

4.70 Evidence of this demographic data is provided as appendices 5 & 6.

4.71 This is clearly an area where the demographic profile of residents has no meaningful impact on the accessibility of pharmaceutical services. Car ownership is unusually high for London and levels of disability are relatively low, so the vast majority of patients have no difficulty travelling around the area. As the area is not deprived on any measure there are no barriers to residents in respect of the affordability of public transport or taxis if required.

Journey to alternative pharmacies

4.72 Patients attending our client's pharmacy at present travel on foot, by car or by public transport. We have therefore considered the journey to these alternative pharmacies using each method of travel. Whilst patients may not start their journey at our client's premises, this provides an indication of the accessibility of alternative provision.

Boots

4.73 The route for pedestrians travelling between our client's premises and Boots at 66-72 High Street, Wealdstone is shown below.

4.74 As can be seen on this map, the distance is 0.9 miles and the walking time is approximately 21 minutes.

4.75 The topographical map below, where our client's pharmacy is marked with a blue star and Boots with a red star, shows that the area is flat.

4.76 The journey is very straightforward, in that most of the walk is along a straight road (Locket Road) which is well paved and benefits from street lighting and dropped kerbs with tactile pavement at all road crossings. The nature of Locket Road can be seen in the image below.

4.77 The western part of this walk, where Locket Road meets High Street, is a bustling shopping area where light-controlled crossings are provided at major road junctions. There are no barriers to movement to pedestrians across the whole area.

4.78 For motorists who wish to access this Boots Pharmacy, the journey by car would take no more than a few minutes. Parking is available on side roads off the High Street (pay and display), including on Gordon Road which is almost directly opposite Boots. There is also a car park at the Asda supermarket on the other side of High Street from Boots.

4.79 Spaces are available within 100m of this Boots pharmacy and there is also a loading bay immediately outside where passengers can be dropped off or picked up if necessary. There are also dedicated disabled parking spaces on High Street less than 100m away from Boots.

4.80 For residents who wish to use public transport, bus route 186 connects the two locations. There is a stop almost directly outside our client's pharmacy and one within 100m of Boots. The journey time is approximately 7 minutes and buses run at least every 20 minutes apart 7 days a week, with the last bus being after midnight every day. The price of a single ticket is £1.75 although the vast majority of London residents who rely on public transport have travel cards which significantly reduce the costs of travel. We have enclosed a copy of the bus timetables and route map as appendices 7-10 to this appeal.

<u>The Harrow Pharmacy</u>

4.81 The routes for pedestrians travelling between our client's premises and The Harrow Pharmacy at 73 Station Rd, Harrow are shown below.

4.82 The map shows several possible routes, all of which are approximately 1.5 miles and take 32-35 minutes on foot. For any pedestrians who do wish to walk to The Harrow Pharmacy, the route they take is likely to depend on there they live. Residents of the area immediately to the south of our client's pharmacy would be likely to use the route shown with the blue dotted line.

4.83 Those living further to the west might use one of the other routes shown with the pale blue lines. These routes are similar to that described above for Boots in that pedestrians would walk along Locket Road to Wealdstone High Street. They would then continue south past Boots along the A409 to The Harrow Pharmacy. Again this route is flat, has wide pavements and street lighting throughout.

4.84 The route shown with the dotted line is also flat. Again this is confirmed with the topographical map. Once more, our client's pharmacy is marked with a blue star. The Harrow Pharmacy is marked with a red star.

4.85 The majority of the route shown with the blue dotted line is along Kenmore Avenue, which runs north / south through the residential area to the south of our client's pharmacy. As with all routes through the area, there are pavements on both sides of the road, street lighting is provided and there are dropped kerbs at road junctions.

4.86 The nature of Kenmore Avenue can be seen in the image below.

4.87 For motorists who wish to access The Harrow Pharmacy, the journey by car would take approximately 6 minutes, as shown on the map below.

4.88 Parking is available almost directly outside The Harrow Pharmacy (pay and display) as can be seen in the image below.

4.89 There is also a large car part at the Tesco supermarket which is located immediately to the south of the pharmacy. This car park is approximately 100m away.

4.90 For residents who wish to use public transport, once again bus route 186 connects the two locations. There is a stop almost directly outside our client's pharmacy and one within 180m of The Harrow Pharmacy. Again the price of a single fare is £1.75 and there are at least 3 buses per hour, 7 days a week until after midnight.

4.91 In summary, therefore, in respect of the accessibility of these two alternative pharmacies we submit that this is straightforward.

4.92 For those patients who may choose to walk to these alternative pharmacies (particularly those who live in between our client's pharmacy and the alternatives discussed) there are suitable routes available. We have provided information earlier to

show that levels of disability in the area are significantly lower than average, so residents are relatively mobile.

4.93 For residents who choose to drive to alternative pharmacies, journey times are short and there is parking available within a short distance of the pharmacies discussed. The demographic data provided shows that fewer than 14% of homes in the area do not have access to a private vehicle, significantly lower than the national average.

4.94 We have also shown that for patients who wish to use public transport there is excellent provision in the area, with buses available at least every 20 minutes that travel directly between our client's pharmacy and these alternative providers.

4.95 We have also provided data to show that the area is not deprived, so it is clear that any patient who had an urgent requirement to access pharmaceutical services outside the hours our client's pharmacy opens, who did not have a car and who did not wish to access public transport, would be able to use a taxi if required.

4.96 For these reasons we say that the test set out in paragraph 24(1)(a) is met i.e. the existing level of service provision for the people in that area or other likely users of the pharmacy premises will be maintained if this application is granted.

24(1)(b)

4.97 We now go on to consider paragraph 24(1)(b) of Schedule 4 to the Regulations i.e. is granting the application necessary *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.*

4.98 The matter of whether maintaining the existing level of service provision is necessary has been dealt with already.

4.99 We have therefore considered the question of whether *maintaining the existing level of service provision is not a realistically achievable outcome*.

4.100 Our client provided evidence within its most recent application to the ICB that the business is under very significant financial strain. It is clear that the extended trading hours are adding significantly to the running costs of the business and these are contributing to the loss making position of the pharmacy.

4.101 As some time has passed since the application was made, our client has asked its accountant to prepare an updated financial summary of the business for the 12 months to the end of September 2024. That document is included as appendix 11 to this appeal.

4.102 We ask PCA to note the following matters from this document:

4.102.1 The figures show a net income of **[redacted by NHS Resolution]** for this 12-month period. This includes depreciation, which is typically excluded when assessing profitability. The adjusted loss figure is **[redacted by NHS Resolution]**.

4.102.2 **[redacted by NHS Resolution]** of the costs for the business comprise 'Locum Service' despite the fact one of the directors of the company is a pharmacist. This exceptionally high locum cost reflects the impact on the business of maintaining pharmacist cover during extended opening hours.

4.102.3 Gross wages comprise **[redacted by NHS Resolution]** reflective, in part, of the costs of employing staff late into the evening and on Sundays.

4.103 In our opinion, it is very clear that this position is unsustainable. The pharmacy simply cannot continue to trade in the medium term with losses of this scale.

4.104 Whilst our client is doing everything within its abilities to improve profitability, the single biggest measure that would reduce the scale of the loss is a reduction in the locum and payroll costs. This can only be achieved through a significant reduction in the pharmacy opening hours through a change in the core hours obligations for the business.

4.105 We submit that continuing with the current position is *not a realistically achievable outcome*. If the costs cannot be reduced our clients will simply run out of money and be unable to service their loan. At that stage the administrators will be brought in by the banks but they will be unable to find a buyer for the business because of the very clear loss making position. The only logical outcome therefore is that the pharmacy will close.

4.106 The point was made within our client's recent application that PCA had commented in SHA/26100 (para. 2.56) as follows:

4.107 "*I have not been provided with any information to demonstrate that the pharmacy has suffered unforeseen closures as a result of not obtaining pharmacist, locum or otherwise, cover during its core opening hours which might suggest that maintaining the current service provision during the relevant hours is not realistically achievable".*

4.108 The reality is that, rather than simply closing the pharmacy because the cost of securing locum cover was unsustainable, our client felt it had no choice but to pay the extortionate rates being demanded. It is clear that this is a situation that cannot continue.

4.109 For this reason we say there is clear evidence that *maintaining the existing level of service provision is not a realistically achievable outcome* because the logical outcome is that the pharmacy will close.

4.110 For this reason we say that the test in para. 24(1)(b) of Schedule 4 is met.

Conclusion

4.111 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 during the hours it proposes to close, there is some demand, so the services could be deemed as necessary.

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

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

4.114 It is also clear that our client's pharmacy is in a precarious financial position, brought about largely by the burden of opening extended hours in the evenings and at weekends. It is not a realistically achievable outcome to maintain the current level of service provision.

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

5. **Representations**

In a letter to NHS Resolution dated 8 January 2025 the Commissioner stated:

5.1 "I am writing in response to the above appeal.

5.2 The decision letter sent to the applicant has detailed the decision of the London Region PSRC, but we recognise that some of the information as to how this was reached was not included.

Background

5.3 The contractor purchased the pharmacy in June 2023, this was previously a Lloyds Pharmacy. The contractor requested to amend core hours which was refused in September 2023. This was appealed SHA/26100 and refused at appeal.

5.4 The premises were in a state of some disrepair which needed urgently repairing and the contractor wished to instal a unit that could dispense out of hours (Pharmaself 24). Due to the core hours request being refused and the core hours remaining, there were some difficulty in being able to access the premises to complete the works, therefore rather than shutting the pharmacy for a period of time to complete these, it was agreed that the pharmacy could close for a number of weekends, in late 2023, providing the building team with a longer time of access to complete the works. This was only for a defined period of time after which the pharmacy would revert to their original hours. This was a curtesy provided to the pharmacy in order to alleviate an issue so that they could complete the building and safety works.

5.5 In February 2024 the contractor requested for a temporary suspension for the same hours until September, which was refused.

Paragraph 24(1)(a)

5.6 With this appeal we have provided a full list of pharmacies nearby, their core and supplementary hours and the services which we have them listed as providing, i.e. the ones that they are signed up to provide. There are times when these differ from websites as they may not have signed up for the services correctly. We can only make our determination against the evidence that we have.

5.7 Reviewing the core hours, most of these listed pharmacies core hours are only until 5pm on weekdays, on Saturdays only Boots and Harrow Pharmacy have core hours and on Sundays only Harrow Pharmacy.

5.8 Unfortunately, the pharmacies that are open later and have core hours at the weekends, do not provide the same services as Pro-Care.

5.9 The applicant had suggested that as they were allowed to close, and no patients had complained, this proved that services were not in demand. However, the circumstances surrounding this were different. These have been detailed above.

5.10 Therefore, London Region determined that services were necessary to maintain the current service provision.

Paragraph 24(1)(b)

5.11 The London Region PSRC determined that the applicant was therefore relying on 24(1)(b) that maintaining the existing level of service provision is not a realistically achievable outcome.

5.12 This was considered in the earlier appeal but was noted that insufficient information had been provided to determine this. The applicant has provided further information in this second application. There is also additional information that has been provided at appeal which was not available at the time of the determination, regarding the financial position of the contractor. However, the wording of the regulations sets a very high bar on the level of difficulty that a contractor is in before this can be considered. Given that this is at appeal, it is for NHS Resolution to determine if this additional information reaches that level of difficulty.

5.13 Within the original application there was also no information to demonstrate unforeseen closures as a result of not obtaining cover during core hours. The contractor did request a temporary suspension for a number of months covering weekends in advance, however this was refused as it was for a long period of time and did not show that the pharmacy was trying to obtain cover, just that the cost of providing cover was expensive due to "unreasonably high rates to secure a locum". The appeal mentions that the contractor felt it had no choice but to pay the extortionate rates being demanded and have therefore used this as their evidence that they cannot maintain the existing level of service provision.

5.14 When making its determination the London Region PSRC felt that there was still insufficient information to determine this, therefore the application was refused. Hopefully the additional information provided at appeal may enable NHS Resolution to make a determination."

6. Observations

In a letter to NHS Resolution dated 22 January 2025 the Applicant stated:

6.1 "Thank you for providing third-party comments in respect of this appeal.

6.2 We continue to act for the applicant, Sheav Chem Limited, and wish to make the following final observations.

6.3 We are conscious that any information submitted at this stage must be limited to rebuttal of comments received in respect of our client's appeal. We therefore refer to the letter dated 8th January 2025 from the London Dentistry, Optometry and Pharmacy Commissioning Hub (on behalf of the relevant ICB) and respond the comments in that letter accordingly.

Background

6.4 The ICB correctly summarises the background to this application in respect of our client's acquisition of this pharmacy in June 2023, the earlier application for a change of core hours and the refused appeal SHA/26100.

6.5 Whilst the acquisition of the pharmacy in 2023 is not strictly speaking relevant to this appeal, my client wishes to point out that, like many of the pharmacies sold by Lloyds Pharmacy, the financial performance of this business post-acquisition is substantially worse than the trading information provided by Lloyds at the time of the sale. Our client acquired the pharmacy with the full knowledge of the core opening hours but without the expectation that the business would make a substantial trading loss.

6.6 It is correct that the ICB permitted our client to close for a number of weekends in late 2023 to facilitate building work. It is also noteworthy that our client did not receive a single complaint from any patient or prescriber regarding those closures. All patients which might have otherwise visited during these hours were content to attend the pharmacy during the temporarily revised opening hours instead.

Paragraph 24(1)(a)

6.7 We note that the ICB has provided a list of pharmacies it considers to be nearby for the purpose of this appeal. It has also provided the core and total opening hours of these pharmacies and the pharmacy services they are listed as providing according to the ICB records.

6.8 Whilst we note that the ICB also provides a list of the services provided by our client, they provide no information on the uptake of these services. So whilst it is correct to say that our client is registered to provide services that do not appear to be offered by The Harrow Pharmacy (the nearest Sunday opening pharmacy that was discussed extensively in our client's appeal), this is not evidence that there is a demand for these services.

6.9 Our client has confirmed that, over the last month, it has not provided a single consultation for:

6.9.1 Hypertension Case Finding

6.9.2 Stop Smoking

6.9.3 Pharmacy Contraception Service

6.9.4 Covid-19 vaccinations.

6.10 during the core hours it proposes to close i.e. 7pm to 9pm Monday to Friday, 4pm to 7pm on Saturday and on Sundays.

6.11 Our client has also taken the opportunity to extract data from Pharmoutcomes in respect of GP / NHS111 / Hospital referrals received from October 2024 to date for Pharmacy First, Hypertension Case Finding, Stop Smoking and Pharmacy Contraception Service.

6.12 We include a summary of that data with this letter.

6.13 This shows that, during the 4 month period, not a single referral was received for Hypertension Case Finding, Stop Smoking or the Pharmacy Contraception service.

6.14 Over that same period, 15 referrals were received for Pharmacy First consultations. Notably not a single one of these referrals was received after 7pm on weekday, 2pm on a Saturday or on a Sunday.

6.15 It is also relevant that the current NHS Covid-19 vaccination walk-in service ceases on 31st January 2025, so no pharmacy contactors will be providing the service after that date in any event. This service is therefore irrelevant when considering the services provided by our client, as this service will no longer be provided at the point NHS Resolution determines this application.

6.16 Our client provided information on the services it provided at the time of the first appeal (summarised on pages 10-12 of SHA/26100). This showed that the services demanded during the hours it proposed to close comprised:

6.16.1 Prescription dispensing

6.16.2 Prescription collection

6.16.3 Advice / signposting.

6.16.4 CPCS (subsequently replaced by Pharmacy First)

6.16.5 Covid / Flu vaccinations

6.16.6 Supervised consumption

6.16.7 OTC / retail sales.

6.17 Of these services, both dispensing and advice / signposting are essential pharmaceutical services provided by all contractors, including The Harrow Pharmacy. Furthermore, both Pharmacy First and Flu vaccinations are also provided by The Harrow Pharmacy as confirmed by the ICB in their decision report.

6.18 Supervised consumption is a locally commissioned (local authority) service, so is not a pharmaceutical service and is therefore outside the scope of the relevant regulations. Finally, as discussed above, the current Covid vaccination service will end very shortly.

6.19 It is our client's case, therefore, that the ICB has erred by considering the services our client is commissioned to provide, rather than those actually being demanded by patients during the core hours it proposes to cease operating. If it had considered the services actually being provided (and taking into account the imminent cessation of the Covid 19 vaccination service) it would have found that all of these are provided at The Harrow Pharmacy which, for the reasons we have provided in our client's appeal, is accessible for patients.

6.20 If the approach being taken by the ICB i.e. to consider all services the applicant is signed up to provide, was taken to be correct, then this provides a disincentive for contractors to sign up for commissioned services for fear that this may prevent them from changing their core hours in the future.

6.21 Perversely, it would better for our client to withdraw its provision of all advanced and enhanced services with immediate effect, as the income lost from this service provision is significantly less than the savings that would be achieved if our client was permitted to reduce its hours. This cannot be the best outcome for patients. In fact, we would ask NHS Resolution to consider where it is appropriate to consider commissioned services beyond essential services at all, given that pharmacy contractors can withdraw these services at any time.

6.22 The ICB go on to say, in their letter of 8th January "unfortunately, the pharmacies that are open later and have core hours at the weekends, do not provide the same services as Pro-Care". For the reasons provided above, we believe the ICB has applied the test incorrectly.

6.23 We note the comment made by the ICB that "The applicant had suggested that as they were allowed to close, and no patients had complained, this proved that services were not in demand. However, the circumstances surrounding this were different".

6.24 Whilst the circumstances behind that closure were different, in our opinion the impact on patients is the same. If patients had suffered as result of these closures they would have complained regardless of the reasons for those closures.

<u>Paragraph 24(1)(b)</u>

6.25 We note that the ICB does not offer an opinion on the compelling evidence provided by our client in respect of the unsustainable financial position of the business.

6.26 When considering the matter of obtaining pharmacist cover, the ICB distinguishes between being unable to obtain cover and the unreasonably high costs of doing so.

6.27 We say these matters are entirely connected. If the effect of securing pharmacist cover is to pay unacceptably high locum costs which renders the business substantially loss-making. It must be the case that, using the wording set out in the Regulations, that is not a "realistically achievable outcome".

6.28 We have nothing further to add at this stage but should Primary Care Appeals decide to hold an oral hearing I can confirm that our client would wish to be represented."

Data extract from PHARMAOUTCOMES – OCT 2024 – JAN 2025: ProCare Pharmacy – Belmont Circle Branch

Pharmacy First (Minor Ailments / Urgent Supply) referrals by GP / NHS 111							
Oct 2024		Nov 2024		Dec 2024		Jan 2025	
01 Oct 2024	0956am	21 Nov 2024	1344pm	09 Dec 2024	0926am	03 Jan 2025	1101am
02 Oct 2024	1052am	26 Nov 2024	0905am	17 Dec 2024	1313pm	06 Jan 2025	1046am
10 Oct 2024	1413pm	27 Nov 2024	1205pm	27 Dec 2024	0859am	11 Jan 2025	1301pm
12 Oct 2024	1015am	30 Nov 2024	1219pm			16 Jan 2025	0946am

Service	Referred by	Oct 2024	Nov 2024	Dec 2024	Jan 2025
Hypertension Case Finding Service	GP Referrals	0	0	0	0
Contraceptive	GP Referrals	0	0	0	0
Stop Smoking Service	GP / Hospital Referrals	0	0	0	0

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 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.

7.3 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."

7.4 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).

7.5 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.

7.6 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.

7.7 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.

7.8 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.

7.9 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.

7.10 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.

7.11 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 and the services these pharmacies provide.

7.12 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.

7.13 However, the Applicant is applying to change the days and times that services are provided. Taking the weekend as an example, the level of service provision at the Applicant's premises on a Saturday and Sunday, the latter in particular, 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.

7.14 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.

7.15 The Applicant has provided PharmOutcomes data to demonstrate the numbers of patients referred to the pharmacy (either from their GP or NHS 111) to access certain services during the period from October 2024 – January 2025. I note that during this period there had been zero referrals from either sources for Hypertension Case Finding Service, Contraception or the Stop Smoking Service. I further note that there had been referrals during this period to access Pharmacy First, Minor Ailments and Urgent Supply, and it is apparent that none of the referrals were received during hours that the Applicant has proposed to close in its application.

7.16 I note that the Applicant states, in its appeal, that "*we also accept that the evidence provided in [our client's] original application showed that there were some patients attending the pharmacy during the hours our client proposes to close. This being the case our client has not provided any new evidence in respect of the number of patients visiting the pharmacy as it cannot show there is* ***no*** *demand"*. Whilst the Appellant has not provided data on this occasion relating to the demand for services during the hours in which they propose to close, I am satisfied that, as per the Applicant's own admission, there is some demand however limited for services during this time.

7.17 Whilst I have not been provided with information in relation to the footfall at the pharmacy not directly related to the GP and NHS 111 referrals, as mentioned above, I note that the Applicant has not provided any new information due to the finding in its previous appeal that there is some demand, however limited, for essential services during the hours it proposes to close. Therefore, I consider it necessary to maintain the existing level of service provision.

7.18 Having determined that it is reasonable to assume that maintaining the existing level of service provision is necessary, 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 Boots and The Harrow Pharmacy.

7.19 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).

7.20 I note that the Applicant has not considered the nearby pharmacy in Belmont Circle, 100m away from the Applicant's premises, as a potential alternative service provider due to it having different core opening hours than that of the Applicant.

7.21 The Applicant has provided information regarding access to pharmacies for those who currently access its own pharmacy and how they might travel to find alternative pharmaceutical services.

7.22 It is worth noting that the characteristics of the persons using the pharmacy might be relevant here as well as 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.

7.23 In its appeal, the Applicant has provided various maps of the area, including topographical and road maps, showing the location of existing pharmacies. From the information before me, I am able to see that the distance from the Applicant's pharmacy to Boots at 66 – 72 High Street, Wealdstone is 0.9 miles and would take approximately 21 minutes, to travel by foot over flat terrain. From the pictures provided, it appears that the footpaths are well maintained, along residential streets and are serviced by street lighting. I am also able to observe that the distance between the Applicant's pharmacy and The Harrow Pharmacy is approximately 1.5 miles (dependant on the route taken) and would take approximately 32 – 35 minutes by foot. The supporting evidence provided highlights that the topography of the area is again flat and the walk, regardless of route, would be through well maintained residential streets with street lighting. I do not consider that for those who are willing and able to walk that there are 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.

7.24 I note from the undisputed information within the appeal that the area is serviced by the 186 bus route with a bus stop "*almost directly outside*" the Applicant's pharmacy. From the bus timetables included with the appeal, I note that this bus service runs approximately every twenty minutes, 7 days a week, with the last bus running after midnight. I note from the Applicant's appeal that a bus stop is "*within 100m of Boots*" and would take approximately 7 minutes to travel to (with the starting destination being the Applicant's pharmacy), and that there is a bus stop "*within 180m of The Harrow Pharmacy*". It is noted that the cost of a single fare is £1.75. Based on the information

provided, I consider that for those who currently access the Applicant's pharmacy by bus there would be no barriers to accessing alternative pharmaceutical providers, namely Boots and The Harrow Pharmacy.

7.25 In terms of car ownership, the Applicant has highlighted that the car ownership in the area surrounding the pharmacy is higher than average (only 13.7% of homes having no access to a car compared to 23.5% nationally), especially compared with the typical car ownership trends seen in big cities. The Applicant has provided detailed information to demonstrate the parking facilities available at alternative pharmacies in the area i.e., Boots at 66 – 72 High Street (pay and display directly opposite the store plus a car park at the Asda supermarket opposite) and The Harrow Pharmacy at 73 Station Road (pay and display directly opposite the store plus a large car park 100m away at a large Tesco supermarket). I note the undisputed comments that a car journey would take "*a few minutes*" to Boots and "*approximately 6 minutes*" to The Harrow Pharmacy. Therefore, I consider that there are no barriers to accessing the alternative pharmacies by car.

7.26 When considering the opening hours of alternative pharmacies, Boots has core opening hours of 10am – 2pm and 3pm to 5pm Monday to Saturday. I note that The Harrow Pharmacy has core opening hours of 10am to 9pm, Monday to Friday, 4.00pm to 9pm on a Saturday and 8am to 8pm on a Sunday. This would mean there is a one hour gap between 9am and 10am on a Saturday.

7.27 In terms of the services provided, the Applicant's representative states that "*At the time of our client's original application, it carried out a survey of the services being accessed in the evenings and weekends. This showed that on the whole, the pharmaceutical services provided were limited to essential services i.e., those that would be provided at any NHS pharmacy. The only exception to this was vaccinations for Covid 19 and 'flu vaccinations*". Whilst the extract from the PNA as provided lists the Applicant's pharmacy under Lloyds Pharmacy, the previous owner, the Applicant has helpfully provided a breakdown of the services currently offered at its premises including, but not limited to, Pharmacy First, Flu and Covid Vaccinations and NMS. When comparing the list of services provided by the Applicant to the information detailed in the PNA, I find the following:

7.27.1 Pharmacy First Service – provided by both Boots and The Harrow Pharmacy;

7.27.2 Flu Vaccination – provided by both Boots and The Harrow Pharmacy;

7.27.3 Covid 19 Vaccination – provided by both Boots and The Harrow Pharmacy;

7.27.4 Pharmacy Contraception Service – provided by both Boots and The Harrow Pharmacy;

7.27.5 Hypertension Case-Finding Service – not shown as provided;

7.27.6 New Medical Service (NMS) – provided by both Boots and The Harrow Pharmacy; and

7.27.7 Smoking Cessation Service – not shown as provided.

7.28 Whilst the PNA extract does not show that Boots at 66 – 72 High Street provides the Hypertension Case Finding Service, the table within the Commissioner's decision indicates that it does and I note the Applicant's claim that both the Boots website and The Harrow Pharmacy website show that this service is offered at the pharmacy. The Applicant has also made the comment that The Harrow Pharmacy publicly states on its website that it offers the Smoking Cessation Service. In any event, the Applicant has confirmed and as noted at 7.15 that during the time it proposes to close, both

Hypertension Case Finding and Smoking Cessation, along with the Contraception Service, are not being utilised by patients.

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

7.30 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)*".

7.31 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.

7.32 With regard to paragraph 26(2) 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 Application to provide those hours. For the above reasons, I am not confirming any existing direction in line with paragraph 26(4)(b).

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

7.34 The only option left for 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