

5 March 2025

REF: SHA/26421

**APPEAL AGAINST NHS BEDFORDSHIRE, LUTON AND
MILTON KEYNES ICB DECISION REGARDING A
BREACH NOTICE AT BISCOT PHARMACY, 157A
BISCOT ROAD, LUTON, BEDFORDSHIRE, LU3 1AW**

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

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

1 Outcome

1.1 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations, I substitute the decision to issue a breach notice stating:

1.1.1 Failure of the Body Corporate under Terms of Service Schedule 4, Part 4, Regulation 31(h)(i) to inform Bedfordshire, Luton & Milton Keynes Integrated Care Board (ICB), in writing within 7 days of the matter arising, of the warning imposed on Biscot Pharmacy Ltd by the GPhC effective from 23 September 2024 for a period of 12 months.

with a decision to issue a breach notice stating:

1.1.2 Failure of Biscot Pharmacy Ltd and/or [FS] to notify Bedfordshire, Luton & Milton Keynes Integrated Care Board (ICB) under paragraph 31(1)(h), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 in writing within 7 days of the matter arising, of the warning imposed on [FS] by the GPhC effective from 23 September 2024 for a period of 12 months.

A copy of this decision is being sent to:

Temple Bright LLP, on behalf of Biscot Pharmacy Ltd
NHS Hertfordshire and West Essex ICB, on behalf of NHS Bedfordshire, Luton and Milton Keynes ICB

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1 The Breach Notice

A Breach Notice dated 28 November 2024 was sent to Biscot Pharmacy Ltd (“the Appellant”) in respect of Biscot Pharmacy, 157a Biscot Road, Luton, Bedfordshire, LU3 1AW.

1.1 “Breach Notice

1.2 **Name of contractor: Biscot Pharmacy Ltd, t/a Biscot Pharmacy (FQQ05)**

1.3 **Address of premises: 157a Biscot Road, Luton, Bedfordshire, LU3 1AW**

1.4 **Date of inclusion in the pharmaceutical list for the area of Luton Health and Wellbeing Board: 1st August 2015**

1.5 **This is a breach notice issued under Regulation 71 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.**

1.6 **Nature of the breach:**

1.7 Failure of the Body Corporate under Terms of Service Schedule 4, Part 4, Regulation 31(h)(i) to inform Bedfordshire, Luton & Milton Keynes Integrated Care Board (ICB), in writing within 7 days of the matter arising, of the warning imposed on Biscot Pharmacy Ltd by the GPhC effective from 23 September 2024 for a period of 12 months.

1.8 Since 1 April 2024, NHS England has delegated the commissioning of pharmaceutical services to ICBs.

1.9 The six ICBs in the East of England have formed a Pharmaceutical Services Regulations Committee (PSRC) under section 65Z5 of the 2006 Act. By virtue of NHS England’s Pharmacy Manual this Committee is responsible for making decisions required by the 2013 regulations. For the avoidance of doubt, this includes use of the fitness powers set out in the 2006 Act and the 2013 regulations. The PSRC is hosted by Hertfordshire and West Essex (HWE) ICB on behalf of the six ICBs.

1.10 HWE ICB contacted [FS] on 22 October 2024 and asked him to confirm whether or not he had sent a notification to Bedfordshire, Luton & Milton Keynes ICB and if so, provide a copy. If no notification was sent, [FS] was asked for an explanation as to why.

- 1.11 A response was received from [FS] on 22 October 2024, summarising that his legal team were managing the GPhC case, and he assumed his legal representative would send a notification to the ICB. [FS] has apologised for the oversight:
- 1.12 PSRC considered the above and is satisfied that Biscot Pharmacy Ltd:
- 1.12.1 Have failed to notify the ICB, in writing within 7 days of the matter arising, of the warning imposed on Biscot Pharmacy Ltd by the GPhC on 23 September 2024.
- 1.13 As the regulatory 7 days have passed, Biscot Pharmacy Ltd cannot remedy this breach and therefore PSRC has decided that it is appropriate to issue this breach notice.
- 1.14 Biscot Pharmacy Ltd are required not to repeat the breach again.
- 1.15 **Appeals:**
- 1.16 You have a right of appeal to the Secretary of State against the issuing of this breach notice. Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this notice to nhsr.appeals@nhs.net or:
- 1.17 Primary Care Appeals
NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU
- 1.18 Please note that should you fail to comply with the requirements of this breach notice we reserve the right to exercise our powers to take further action in relation to your inclusion in the pharmaceutical list in respect of the above named premises. This may include removal of the premises from the relevant pharmaceutical list under regulation 73 of the 2013 regulations.”

2 The Appeal

In a letter dated 16 December 2024 addressed to NHS Resolution, the Appellant, through its representative Temple Bright LLP, appealed against NHS Bedfordshire, Luton and Milton Keynes ICB (“the Commissioner”) decision. The grounds of appeal are:

- 2.1 I act for Biscot Pharmacy Limited. On behalf of my client I write to appeal a breach notice issued by Bedfordshire, Luton & Milton Keynes Integrated Care Board on 28th November 2024. A copy of the breach notice is attached.
- 2.2 My client’s ground of appeal is that the factual basis upon which the breach notice was issued is incorrect, such that the breach notice is materially flawed.
- 2.3 The breach notice describes the “nature of the breach” as follows:
- 2.3.1 *“Failure of the Body Corporate under Terms of Service Schedule 4, Part 4, Regulation 31(h)(i) to inform Bedfordshire, Luton & Milton Keynes Integrated Care Board (ICB), in writing within 7 days of the matter arising, of the warning imposed on Biscot Pharmacy Ltd by the GPhC effective from 23 September 2024 for a period of 12 months.”*

- 2.4 The assertion by the ICB in the breach notice that the General Pharmaceutical Council imposed a warning “on Biscot Pharmacy Limited” is factually incorrect. No “warning” (or any other regulatory sanction) has been issued by the GPhC against Biscot Pharmacy Limited itself as a body corporate.
- 2.5 Whilst it is not clear, it may be that the ICB is referring to a warning that was issued by the GPhC to [FS] on 23rd September 2024. [FS] is a director and the superintendent pharmacist of Biscot Pharmacy Limited. [FS] accepts that the warning issued to him by the GPhC was not notified to the ICB in accordance with the terms of service and has apologised to the ICB for this oversight. However, as a matter of fact, the GPhC warning was personal to [FS] and was not issued to Biscot Pharmacy Limited.
- 2.6 Since the basis upon which the breach notice was issued is therefore factually incorrect, it is submitted on behalf of my client that the breach notice itself was unlawfully issued. My client therefore appeals the breach notice and invites NHS Resolution to set it aside.
- 2.7 I look forward to hearing from you.”

3 Summary of Representations

This is a summary of representations received on the appeal.

3.1 THE COMMISSIONER

- 3.1.1 “Please note that from the 01 April 2023, community pharmacy contracting and commissioning has been delegated to Integrated Care Boards (ICBs). Hertfordshire and West Essex (HWE) ICB are hosting the function on behalf of the six East of England ICBs.
- 3.1.2 Please find below information we wish to be considered in relation to Biscot Pharmacy Ltd T/A Biscot Pharmacy. Having reviewed the grounds of the appeal and the information provided by Temple Bright LLP on behalf of Biscot Pharmacy Ltd T/A Biscot Pharmacy (the Appellant), we remain of the opinion that the issuing of a breach notice was correct.
- 3.1.3 The grounds for the appeal appear to be focused on the wording included in the breach notice, particularly referencing Biscot Pharmacy Ltd rather than the superintendent [FS]. The Appellant states:
- 3.1.4 “...the ICB is referring to a warning that was issued by the GPhC to [FS] on 23rd September 2024. [FS] is a director and the superintendent pharmacist of Biscot Pharmacy Limited. [FS] accepts that the warning issued to him by the GPhC was not notified to the ICB in accordance with the terms of service and has apologised to the ICB for this oversight. However, as a matter of fact, the GPhC warning was personal to [FS] and was not issued to Biscot Pharmacy Limited.” (Letter of appeal, page 1).
- 3.1.5 As the superintendent is not included in the relevant pharmaceutical list, the breach notice can only be issued to the body corporate, Biscot Pharmacy Ltd.
- 3.1.6 There appears to be no dispute that a breach of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (the Regulations) has taken place. [FS] as the superintendent, or Biscot Pharmacy Ltd as the body corporate on the pharmaceutical list, should have notified the ICB within 7 days of the warning being issued to [FS] by the GPhC.

- 3.1.7 As part of dispute resolution, [FS] was contacted and asked to confirm whether he had notified the ICB of the GPhC's warning. He replied saying "*he had assumed his legal representative would have done that.*" This email exchange can be viewed within the Committee Report presented to the Pharmaceutical Services Regulations Committee (PSRC) and enclosed with these representations.
- 3.1.8 It is unknown why [FS] would make this assumption noting that a breach notice was issued for failure to inform the commissioner of a warning issued by the GPhC on 7 July 2022. The breach notice outlined the requirement not to repeat the breach. Again, the breach notice relating to the warning issued in July 2022 is enclosed within the Committee Report.
- 3.1.9 The ICB does acknowledge that the breach notice issued in November 2024 should have stated the warning was imposed on [FS] and not Biscot Pharmacy Ltd. However, this does not alter the fact that there has been a breach of paragraph 31(1)(h), Schedule 4.
- 3.1.10 We also recognise that there is an incorrect term of service referenced - "Regulation 31(h)(i)". We note this should state paragraph 31(1)(i), Schedule 4 (where a pharmacist is notified of an investigation into their professional conduct by any licensing, regulatory or other body) and paragraph 31(1)(h), Schedule 4 (where they are notified of the outcome of any investigation into their professional conduct, and there is a finding against them).
- 3.1.11 In summary, the breach notice should have said:
- 3.1.12 "Failure of Biscot Pharmacy Ltd and/or [FS] to notify Bedfordshire, Luton & Milton Keynes Integrated Care Board (ICB) under paragraph 31(1)(h), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 in writing within 7 days of the matter arising, of the warning imposed on [FS] by the GPhC effective from 23 September 2024 for a period of 12 months."
- 3.1.13 The ICB remains of the opinion that there has been a breach of paragraph 31(1)(h), Schedule 4. The ICB were correct in issuing the breach notice."

4 Observations

No observations were received by NHS Resolution in response to the representations received on appeal.

5 Consideration

- 5.1 Under Regulation 71(1) "Breaches of terms of service: breach notices" of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), a Breach Notice may be issued:

71. (1) Where an NHS chemist (C) breaches a term of service and the breach is not capable of remedy, NHS England may by a notice ("a breach notice") require C not to repeat the breach.

- 5.2 I note that in the Regulations an NHS Chemist means "*an NHS appliance contractor or an NHS pharmacist*". An NHS pharmacist is defined as "*a person included in a pharmaceutical list of the type referred to in regulation 10(2)(a);*". Regulation 10(2)(a) states:

10(2) “Those lists (which are pharmaceutical lists) are

(a) a list of persons who undertake to provide pharmaceutical services in particular by way of the provision of drugs;”

- 5.3 The Regulations contain no definition as to what constitutes a breach of terms of service which is not capable of remedy.
- 5.4 I note that the pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.
- 5.5 The Breach Notice was issued pursuant to Regulation 71(1) and is compliant with the requirements of a breach notice as it includes the nature of the breach and an explanation of the Appellant's right of appeal under Regulation 77(1)(c).
- 5.6 The Breach Notice states:

“Nature of the breach:

Failure of the Body Corporate under Terms of Service Schedule 4, Part 4, Regulation 31(h)(i) to inform Bedfordshire, Luton & Milton Keynes Integrated Care Board (ICB), in writing within 7 days of the matter arising, of the warning imposed on Biscot Pharmacy Ltd by the GPhC effective from 23 September 2024 for a period of 12 months.

....

HWE ICB contacted [FS] on 22 October 2024 and asked him to confirm whether or not he had sent a notification to Bedfordshire, Luton & Milton Keynes ICB and if so, provide a copy. If no notification was sent, [FS] was asked for an explanation as to why.

A response was received from [FS] on 22 October 2024, summarising that his legal team were managing the GPhC case, and he assumed his legal representative would send a notification to the ICB. [FS] has apologised for the oversight:

PSRC considered the above and is satisfied that Biscot Pharmacy Ltd:

- Have failed to notify the ICB, in writing within 7 days of the matter arising, of the warning imposed on Biscot Pharmacy Ltd by the GPhC on 23 September 2024

As the regulatory 7 days have passed, Biscot Pharmacy Ltd cannot remedy this breach and therefore PSRC has decided that it is appropriate to issue this breach notice.

Biscot Pharmacy Ltd are required not to repeat the breach again.”

- 5.7 I note that the Commissioner contacted the Appellant to enquire whether he had sent a notification regarding the warning and, if so, to provide a copy. The Commissioner received a response and subsequently issued the Breach Notice. I am therefore of the view that the Appellant had the opportunity to enter into local dispute resolution with the Commissioner. Given that there is no dispute raised by either party that the local dispute resolution procedure has not been exhausted, I am content that I can deal with this matter.
- 5.8 I note the Appellant appeals against the issuing of the Breach Notice on the grounds that it included a reference that the GPhC had imposed a warning “on Biscot Pharmacy

Ltd” which is factually incorrect and that no warning on any other regulatory sanction has been issued by the GPhC against Biscot Pharmacy Ltd as a body corporate.

- 5.9 The Appellant comments that a warning was issued by the GPhC to [FS] on 23 September 2024, [FS] being a director and the superintendent pharmacist of Biscot Pharmacy Ltd. I further note the Appellant states that this warning was not notified to the Commissioner in accordance with the Terms of Service and that [FS] has apologised to the Commissioner for this oversight. The Appellant emphasises that the warning was “*personal to [FS], and not issued to Biscot Pharmacy Ltd*”.
- 5.10 Schedule 4, Part 4, Regulation 31(h) states:

Duty to provide information about fitness matters as they arise

31.—(1) *An NHS pharmacist (P) and, where P is a body corporate, every director and superintendent of P must, within 7 days of its occurrence, inform NHS England in writing if they—*

...

(h) are notified by any licensing, regulatory or other body of the outcome of any investigation into their professional conduct, and there is a finding against them;

...

and must give details of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately when that investigation or those proceedings took place or are to take place, and any outcome.

- 5.11 Based on the above, the duty to inform the Commissioner therefore applies to every director and superintendent, where the NHS Pharmacist is a body corporate.
- 5.12 In its representations the Commissioner responds that it remains of the view that the issuing of a breach notice was correct and that the grounds for the appeal appear to be focussed on the wording included in the Breach Notice. The Commissioner states that “*As the superintendent is not included in the relevant pharmaceutical list, the breach notice can only be issued to the body corporate, Biscot Pharmacy Ltd.*” I note the Commissioner acknowledges that the Breach Notice was incorrect in referring to a warning being imposed on Biscot Pharmacy Ltd, rather than [FS].
- 5.13 The Commissioner also comments that an incorrect term of service is referenced in the Breach Notice, that is “*Regulation 31(1)(h)(i)*”, and states that the Breach Notice should have said:
- 5.13.1 “*Failure of Biscot Pharmacy Ltd and/or [FS] to notify Bedfordshire, Luton & Milton Keynes Integrated Care Board (ICB) under paragraph 31(1)(h), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 in writing within 7 days of the matter arising, of the warning imposed on [FS] by the GPhC effective from 23 September 2024 for a period of 12 months.*”
- 5.14 I note that the Appellant has not responded to dispute the Commissioner’s representations as set-out in paragraph 5.12. The Appellant has acknowledged in the appeal that a warning was issued to the superintendent pharmacist of Biscot Pharmacy

Ltd and that it failed to notify the Commissioner within 7 days of its occurrence as required by the Regulations. I am therefore satisfied that it was appropriate for the Commissioner to issue a breach notice to Biscot Pharmacy Ltd.

6 Decision

6.1 I am of the view that under NHS Resolution's powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of the Commissioner or substitute for that decision any decision that the Commissioner could have taken when it took that decision.

6.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations, I substitute the decision to issue a breach notice stating:

6.2.1 Failure of the Body Corporate under Terms of Service Schedule 4, Part 4, Regulation 31(h)(i) to inform Bedfordshire, Luton & Milton Keynes Integrated Care Board (ICB), in writing within 7 days of the matter arising, of the warning imposed on Biscot Pharmacy Ltd by the GPhC effective from 23 September 2024 for a period of 12 months.

with a decision to issue a breach notice stating:

6.2.2 Failure of Biscot Pharmacy Ltd and/or [FS] to notify Bedfordshire, Luton & Milton Keynes Integrated Care Board (ICB) under paragraph 31(1)(h), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 in writing within 7 days of the matter arising, of the warning imposed on [FS] by the GPhC effective from 23 September 2024 for a period of 12 months.

**Head of Appeals
NHS Resolution**