

3 March 2025

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

FILE REF: SHA/26449

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

COMMISSIONER: NHS Derby and Derbyshire ICB

PHARMACIST: PCT Healthcare Ltd
("the Appellant")

PREMISES: Peak Pharmacy
Bridge Street
Clay Cross
Derbyshire
S45 9NG

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL
SERVICES) REGULATIONS 2013**

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

1 Outcome

- 1.1 The appeal is granted and, pursuant to paragraph 25(3)(c)(ii), no direction is issued.

A copy of this decision is being sent to:

PCT Healthcare Ltd
East Midlands Primary Care Team on behalf of Derby and Derbyshire ICB

FILE REF: SHA/26449

COMMISSIONER: NHS Derby and Derbyshire ICB

PHARMACIST: PCT Healthcare Ltd
("the Appellant")

PREMISES: Peak Pharmacy
Bridge Street
Clay Cross
Derbyshire
S45 9NG

THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL SERVICES) REGULATIONS 2013 ["THE REGULATIONS"]

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

DIRECTION OF ADDITIONAL CORE OPENING HOURS

1 Introduction

- 1.1 Relying on Paragraph 25 of Schedule 4, the Commissioner has requested that the Appellant open from 2pm to 4pm on Sunday 20 April 2025.
- 1.2 The Appellant seeks to appeal to NHS Resolution.

Rights of appeal

- 1.3 Where the Commissioner has directed a pharmacist to provide pharmaceutical services for its premises at set times and on set days in accordance with paragraph 25 of Schedule 4 of the Regulations, paragraph 25(7) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").
- 1.4 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 1.5 A pharmacy's opening hours may be categorised as:

- 1.5.1 'core' opening hours (days on and times at which the pharmacy is obliged to be open), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours; or
- 1.5.2 'supplementary' opening hours (other days on and times at which the pharmacy undertakes to provide pharmaceutical services, as notified to the Commissioner).

Alteration of 'core' (including 'directed') opening hours

- 1.6 In accordance with paragraph 1(7)(c) of Schedule 2 to the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list, the proposed core opening hours in respect of the premises during which it will be obliged to provide pharmaceutical services under paragraph 23(1) of Schedule 4 to the Regulations. These may be subject to a direction under paragraph 23(1)(c), (d) or (e).

Alteration of 'supplementary' opening hours

- 1.7 Other days or times at which services are to be provided (as set out in the original application for entry in the pharmaceutical list pursuant to paragraph 23(3) of Schedule 4 as "supplementary hours") may be altered by giving notice to the Commissioner, in accordance with paragraph 23(6)(a) without the need to make an application.
- 1.8 Notices under paragraph 23(6)(a) are not subject to review by NHS Resolution.

The Commissioner's Request

- 1.9 The Commissioner wishes the Appellant to open from 2pm to 4pm on Sunday 20 April 2025 (Easter Sunday), a day on which it would otherwise be closed.

2 The Direction

In a letter to the Appellant dated 20 December 2024, the Commissioner stated:

- 2.1 "We have concluded our assessment as to whether to issue a direction pursuant to paragraph 25(1) of Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended and have issued the enclosed direction.
- 2.2 Your core opening hours on Sunday 20th April 2025 are therefore: 14:00 – 16:00.
- 2.3 The reasons for directing the above pharmacy to open are:
 - 2.3.1 There has been no voluntary offer of pharmacy provision in the Chesterfield area to meet the needs of people living in the area on 20th April 2025. We have reviewed which pharmacies have opened on previous bank holidays to ensure that directing pharmacies to open has taken place on a fair share basis.
- 2.4 Please be advised that the level of remuneration for Easter Sunday – 20th April 2025, will be £350.00 per hour for a maximum of 2 hours. This should be claimed through Pharm Outcomes within 28 days of the directed day. If this is not claimed within 28 days, assurance will be sought, and you will have to a maximum of 45 days from the directed day to claim.
- 2.5 Please ensure that you update the directory of service (DOS) and NHS UK using profile manager with the hours that you are being directed to open.

- 2.6 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: nhsr.appeals@nhs.net or
- 2.7 Primary Care Appeals Case Manager, NHS Resolution, 8th Floor 10 South Colonnade, Canary Wharf, London, E14 4PU.”

3 The Appeal

In a letter to NHS Resolution dated 7 January 2025 the Appellant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 “Further to a direction of core opening hours received by email dated 20th November 2024 for the above pharmacy to open on 20th April 2025 (Easter Sunday) at 14:00 until 16:00, PCT Healthcare Limited writes to appeal to the Primary Care Appeals Unit. (emails attached)
- 3.2 PCT Healthcare Limited appealed this direction to NHS Derby and Derbyshire ICB within the initial 30-day appeal period, via email on 9th December 2024. (email attached).
- 3.3 No response was received to the written representations submitted by PCT Healthcare Limited and the next correspondence from NHS Derby and Derbyshire ICB was a full direction dated 20th December 2024.
- 3.4 Failure to consider the written representations submitted in time to england.eastmidsparmacy@nhs.net is contrary to Schedule 4 Paragraph 25(2)(b) NHS Pharmaceutical and LPS Regulations.
- 3.5 Firstly, we are aware of the need for adequate pharmaceutical services provision. However, we feel that this particular direction has not been based on adequate research and reasoning by NHS Derby and Derbyshire ICB. There is no detail within the letter of direction as this is a generic letter, to indicate the reasons as to how or why this direction supports an assessment which concluded the pharmaceutical needs of the relevant persons will not be met on this day that we are required to open our pharmacy, FHA96 in Clay Cross, Chesterfield.
- 3.6 Under Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS Regulations NHS England must include with the notification a statement of “the reasons for the change”. We note that the Regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation, which should conclude with the needs of the local population and likely users of our pharmacy not being met on this day such that we are required to open from 14:00 to 16:00 on 20th April 2025.
- 3.7 Neither letter contains the outcome of minutes of a meeting between the ICB and Community Pharmacy Derby and Derbyshire (previously LPC) regarding the Directions for Easter 2025.
- 3.8 In particular, the letters dated 20th November 2024 and 20th December 2024 make no reference to any specific results linking our pharmacy to any lack of service provision on 20th April 2025. Furthermore, there is no actual details of the findings of a consultation or assessment, and therefore no reasons behind the direction which is contrary to paragraph 25(1) and 25(6) of Schedule 4.

3.9 The first communication from NHS England was in the email dated 18th November 2024 entitled Directed Rota 25/26.

3.10 The body of the email indicated:

Dear colleague,

Please find attached the directed rota for 25/26 for your reference.

These Direction of opening hours are from Easter 2025 until New Years Day 2026. They are based on a rotational basis:

25/26:

	Good Friday 2025	Easter Sunday 2025	Easter Monday 2025	Early May Bank Holiday 2025	Spring Bank Holiday 2025	Summer Bank Holiday 2025	Christmas Day 2025
Focus Area:	18 th April FX816 Brimington Pharmacy	20 th April FHA96 Peak Pharmacy	21 st April FV039 Peak Pharmacy	5 th May FLQ42 Boots Pharmacy	26 th May FX816 Boots Pharmacy	25 th August FAH32 Dents of Chesterfield	25 th December FCP63 Peak Pharmacy
Chesterfield 2	S43 1JG	S45 9NG	S42 5ED	S42 5RB	S40 1PB	S41 8DU	S41 9JT
Boxing Day 2025 6 th December FR077 Peak Pharmacy	S43 3TL		New Years Day 2026 1 st January FJ769 Cohens Chemist				
			S40 2HP				

3.11 PCT Healthcare Limited t/a Peak Pharmacy believe that it is not a robust enough argument to direct our pharmacy based “on a fair share basis” (as stated in the letter dated 20th December 2024), especially without any evidence from the assessment being shared which specifically identifies our pharmacy FHA96 as being required to open on Easter Sunday.

3.12 In conclusion, our pharmacy has received this direction, however for the reasons discussed above we do not feel it has been made clear as to why our pharmacy, in particular, has been chosen to open at 14:00 to 16:00 on 20th April 2025, as opposed to another pharmacy in Clay Cross, Chesterfield.”

4 Representations

Whilst no representations were made by the Commissioner in response to the appeal, the papers received from the Commissioner were circulated by NHS Resolution to the Appellant for information only. Contained within these papers was a letter dated 3 February 2025 from the Commissioner to the Appellant confirming the direction and setting out a further right of appeal.

The letter dated 3 February 2025, from the Commissioner to the Appellant stated:

4.1 “Thank you for your representation regarding the proposal to direct of your pharmacy operating on **20 April 2025**. [sic]

4.2 The Pharmaceutical Services Regulations Committee (PSRC) convened on 21 January 2025 and resolved to maintain the proposal to direct for your pharmacy to open on the bank holiday to be held on 20 April 2025, the outcome is as follows:

4.2.1 Whilst the pharmacy was within its rights to provide representation against the proposed instruction to open for the Easter weekend period, there is no clear

justification noted within the representation to justify a change to the planned instruction. The instructions were given after due consideration by the task and finish group and based on an identified need for provision in this area. The Committee believes there is sufficient time for your pharmacy to arrange the necessary staffing.

- 4.3 Should you wish to appeal this decision, you have the right to do so. Please submit a detailed and reasoned appeal to the Secretary of State within 30 days from the date of this letter by emailing it to nhsr.appeals@nhs.net
- 4.4 Or by post: NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.”

5 Assessment

- 5.1 I have considered paragraph 25 of Schedule 4 (Determination of pharmacy premises core opening hours instigated by NHS England), which reads as follows:
1. *Where it appears to NHS England, after consultation with or having considered the matter at the request of the Local Pharmaceutical Committee for the area in which the premises are situated, that the days on which or times at which pharmacy premises are or are to be open for the provision of pharmaceutical services will not, or no longer, meet the needs of—*
 - (a) *people in its area; or*
 - (b) *other likely users of the pharmacy premises,**for the pharmaceutical services available at or from those premises, it must carry out an assessment as to whether to issue a direction requiring the NHS pharmacist (P) whose premises they are to provide pharmaceutical services at the pharmacy premises at set times and on set days (which may include Christmas Day, Good Friday and bank holidays).*
 2. *Before concluding the assessment under sub-paragraph (1) NHS England must—*
 - (a) *give notice to P of any proposed changes to the days on which or times at which the pharmacy premises are to be open; and*
 - (b) *allow P 30 days within which to make written representations to NHS England about the proposed changes.*
 3. *When it determines the outcome of its assessment, NHS England must—*
 - (a) *issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs (4) and (5);*
 - (b) *confirm any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises, provided that the existing direction (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub-paragraphs (4) and (5); or*
 - (c) *either—*
 - (i) *revoke, without replacing it, any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations), or*
 - (ii) *in a case where there is no existing direction, issue no direction,*

in which case, by virtue of whichever of paragraph 23(1)(a) or (b) applies, the pharmacy will need to be open for 40 hours each week or for at least 100 hours each week.

4. *Where NHS England issues a direction under sub-paragraph (3) in respect of pharmacy premises that are to be required to be open—*
 - (a) *for more than 40 hours each week, it must set out in that direction—*
 - (i) *the total number of hours each week for which P must provide pharmaceutical services at the pharmacy, and*
 - (ii) *as regards the additional opening hours, the days on which and the times at which P is required to provide those services during those hours,*
but it must not set out in that direction the days on which or times at which P is to provide pharmaceutical services during hours which are not additional opening hours; or
 - (b) *for less than 40 hours each week, it shall set out in that direction the days on which and times at which pharmaceutical services are to be provided at the pharmacy premises.*
5. *NHS England must not issue a direction under sub-paragraph (3) that has the effect simply of requiring pharmacy premises to be open for 40 hours each week on set days and at set times (that is, the direction must have the effect of requiring pharmacy premises to be open for either more or less than 40 hours each week).*
6. *NHS England must notify P of any direction issued or any other action taken under sub-paragraph (3), and where it sets new days on which or times at which P is to provide pharmaceutical services at pharmacy premises, it must include with the notification a statement of—*
 - (a) *the reasons for the change; and*
 - (b) *P's right of appeal under paragraph (7).*
7. *P may, within 30 days of receiving notification under sub-paragraph (6), appeal in writing to the Secretary of State against any direction issued or any other action taken under sub-paragraph (3) which sets new days on which or times at which P is to provide pharmaceutical services.*
8. *The Secretary of State may, when determining an appeal, either confirm the action taken by NHS England or take any action that NHS England could have taken under paragraph (3).*
9. *The Secretary of State shall notify P of the determination and shall in every case include with the notification a statement of the reasons for the determination.*
10. *If the days on which or times at which P is to provide pharmaceutical services at pharmacy premises have been changed in accordance with this paragraph, P must introduce the changes—*
 - (a) *if P has not appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (6);*
or
 - (b) *if P has appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (9).*
11. *This paragraph does not apply where regulation 65(5) to (7) applies.*

5.2 I am mindful that paragraph 23(12) of Schedule 4 states:

For the purposes of calculating the number of hours that a pharmacy premises are open during a week that includes Christmas Day, Good Friday, Easter Sunday or a bank holiday, it is to be deemed that the pharmacy premises were open on that day at the times at which they would ordinarily have been open on that day of the week.

5.3 I am of the view that the pharmacy would normally be closed on Easter Sunday and that this would be in accordance with the Regulations.

5.4 I am conscious that paragraphs 25(1) and (2) require that before any direction is made, an assessment must be undertaken and that, before the assessment is concluded, the pharmacist providing services from the premises must be given notice of the proposed changes and given 30 days to make written representations about the proposed changes. Although I have not been provided with a copy of the consultation with the LPC, I note in its email of 20 November 2024, the Commissioner states *“Following the publication of the rota for 24/25 and 25/26 in conjunction with the ICB and LPC. We are proposing to direct your pharmacy to open on Easter Sunday to provide pharmaceutical services to the local population”*. Further I note the letter dated 20 November 2024 provided the Appellant the opportunity to make representations within 30 days and that the Appellant exercised their right to do so.

5.5 From the information before me I am of the view that the Commissioner carried out some form of assessment in line with the Regulations.

5.6 I am mindful that the Commissioner is required by paragraph 25(6) of Schedule 4 to provide reasons for its decision. In my view, these reasons should set out the basis of any determination that the days and times of opening will no longer be such as will meet the pharmaceutical needs of relevant persons and (if they are, such that a direction *may* be made) the assessment that led to the direction, taking into account any written representations from the pharmacist.

5.7 I have not been provided with any information as to how the assessment was carried out or which pharmacies have been identified as potentially suitable for direction. An assessment based on *“voluntary offer of pharmacy provision in the Chesterfield area”* and reviewing *“which pharmacies have opened on previous bank holidays to ensure that directing pharmacies to open has taken place on a fair share basis”* is not what was envisaged by the Regulations.

5.8 I am of the view that I have not been provided with any information to substantiate the view as to why the Appellant's pharmacy is the best placed in terms of access, geography or any other factor to meet any demand for services. I have not been provided with any information as to what pharmaceutical cover may be required or why the hours of 2pm to 4pm on Sunday 20 April 2025 will provide this cover, beyond the Commissioner's comment in its letter dated 20 November 2024, that *“we consider that current core opening hours may not meet the needs of people in the area or other likely users of the pharmacy premises”*. I am of the view that there is no information from the Commissioner as to how directing pharmacies, taking into account those which have opened previously, provides a robust assessment of the need for pharmaceutical provision in terms of providing services to patients.

5.9 I am not satisfied with the Commissioner's approach in this regard and the Commissioner has provided no information to support the conclusion reached. Further, the Commissioner has not set out details of a robust assessment that lies behind the direction to this particular pharmacy, which is a requirement of the Regulations.

- 5.10 I also note that what appears to be a second direction letter has been issued to the Appellant. I am of the view that issuing a second letter of direction, setting out that they have considered the representations made by the Appellant within the relevant period, is not helpful. Given the appeal was received within 30 days from the date of the original direction letter, as issued by the Commissioner, I am of the view that the appeal is within time and I have proceeded on this basis. I note that the second letter of direction, whilst acknowledging the representations from the Appellant, still does not provide reasons for its decision.
- 5.11 On appeal, I may (in accordance with paragraph 25(8) of Schedule 4) either confirm the action of the Commissioner or take such action as it could have taken.
- 5.12 Neither the original direction letter of 20 December 2024 nor the subsequent direction letter of 3 February 2025 provide me with information which I consider sufficient to provide reasons on the basis of which I can confirm the decision, nor information upon which I might rely to make a direction for alternative reasons.
- 5.13 On the basis of the information available to me, I am not satisfied that the Commissioner has demonstrated that the needs of people in its area or other likely users of the pharmacy for pharmaceutical services will not be met on Sunday 20 April 2025.

6 **Determination**

- 6.1 The appeal is granted and, pursuant to paragraph 25(3)(c)(ii), no direction is issued.

Head of Appeals
NHS Resolution