

13 March 2025

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FILE REF: SHA/26453

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COMMISSIONER: LEICESTER, LEICESTERSHIRE AND
RUTLAND INTEGRATED CARE BOARD
("the Commissioner")

PHARMACIST: RIVERSIDE PHARMACY (FW134)
("the Appellant")

PREMISES: 112 – 114 BARROW ROAD,
SILEBY,
LEICESTERSHIRE,
LE12 7LP

**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:

Riverside Pharmacy
Leicester, Leicestershire and Rutland ICB

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10 South Colonnade
Canary Wharf
London
E14 4PU

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**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 2.00pm to 4.00pm on Sunday 20 April 2025 (Easter Sunday).
- 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 2.00pm to 4.00pm 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 20 April 2025** are therefore: **14:00 – 16:00**.
- 2.3 The reasons for directing the above pharmacy to open are:
- 2.4 There has been no voluntary offer of pharmacy provision in the Leicester LE2 – Oadby UCC area to meet the needs of people living in the area on 20 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.
- 2.5 Please be advised that the level of remuneration for Easter Sunday – 20 April 2025, will be £350 per hour for a maximum of 2 hours. This should be claimed through PharmOutcomes 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.
- 2.6 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.

- 2.7 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
- 2.8 Primary Care Appeals Case Manager, NHS Resolution, 8th Floor 10 South Colonnade, Canary Wharf, London, E14 4PU.
- 2.9 If you have any questions, please do not hesitate to contact me.”

3 The Appeal

In an email to NHS Resolution dated 9 January 2025 the Appellant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 “Thank you for considering our Riverside Sileby branch (FW134) for Easter Sunday opening. We would have liked to do so, but because this branch is based inside a supermarket whose building will not be open due to bank holiday legislation we cannot physically do it. Please confirm receipt.”

4 Representations

In a letter to NHS Resolution dated 17 January 2025 the Commissioner stated:

- 4.1 “Thank you for your letter dated 15 January 2025; the East Midlands Primary Care Team on behalf of Leicestershire Integrated Care Board (ICB) would like to make the following representations.
- 4.2 The process that the East Midlands primary care team follow for directing all bank holidays on behalf of Leicestershire ICB is as follows:
- 4.2.1 A communication is sent out to all pharmacies in the Health and Wellbeing Board (HWB) twice a year requesting the proposed opening days and times for all bank and public holidays, and Easter Sunday pursuant to paragraph 35(4) of Schedule 4 (pharmacy contractors) or paragraph 25(3), Schedule 5 (dispensing appliance contractors) to the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended.
- 4.2.2 Once it is known when the pharmacies in a HWB area will be open, an assessment will be made as to whether a contractor is to open on a particular day or days. Part of the assessment includes engagement with the Local Pharmaceutical Committee (LPC).
- 4.2.3 Following the assessment and engagement, if it is felt that the pharmaceutical provision within any area would not meet the needs of the local population, then a proposal to direct will be issued. As part of the proposal to direct, notice is given to the contractor of the proposed changes to the days on which, or times at which, the premises are to be open. As part of that notice the contractor is advised that it may make written representations about the proposed changes within 30 days.
- 4.2.4 At the end of the 30 days, should representations be received these will be reviewed by the Pharmaceutical Services Regulations Committee who will decide whether a direction is to be issued regarding the contractor's opening hours. If the decision is to issue the direction, a 30 day period is given to the contractor in which they can appeal the direction with NHS Resolution.

- 4.3 Following the assessment of the returns from the Northampton NN4 area and engagement with the Local Pharmaceutical Committee a proposal to direct letter was sent to Riverside Pharmacy on 20 December 2024.
- 4.4 This decision was based on the fact that assurance could not be given, that other pharmacies in the area would be open for the period detailed within the direction.
- 4.5 The pharmacy states being located in a supermarket and the supermarket being closed as a reason to prevent them from opening on Christmas Day [sic], the Sunday trading laws state that pharmacies are exempt from the rule that shops over 280 square metres: must close on Easter Sunday and on Christmas Day.
- 4.6 I would like to take this opportunity to respond to any further representations provided by Riverside Pharmacy, 112 – 114 Barrow Road, Sileby, Leicestershire, LE12 7LP.”

5 Observations

In an email to NHS Resolution dated 17 February 2025 the Appellant stated:

- 5.1 “Thanks for this correspondence [NHS Resolution]. Please can it be made clear that the pharmacy is entirely within the supermarket that will be closed on 20th April and has no separate access for staff or patients.”

6 Assessment

- 6.1 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.*

6.2 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.

6.3 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.

6.4 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 letter of 20 December 2024, the Commissioner states “*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*”. Further, the letter from the Commissioner dated 17 January 2025 details the assessment that was undertaken, including providing the Contractor with 30 days to provide any representations regarding the proposal to direct.

6.5 From the information provided, which has not been disputed, I am of the view that the Commissioner carried out some form of assessment in line with the Regulations.

6.6 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 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.

6.7 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 Leicester LE2 – Oadby UCC 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.

6.8 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 – 4pm on Sunday 20 April 2025 will provide this cover, beyond the

Commissioner's comments in its letter dated 17 January 2025, that "*assurance could not be given, that other pharmacies in the area would be open for the period detailed within the direction*". 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.

- 6.9 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.
- 6.10 On appeal, I may (in accordance with paragraph 25(8) of Schedule 4) either confirm the action of the Commissioner or take such other action as it could have taken.
- 6.11 The letters dated 20 December 2024 and 17 January 2025 provide me with no 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. The letters explain the process which has taken place and the conclusions reached, but not the reasoning that lies behind the direction.
- 6.12 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.

7 Determination

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

Head of Appeals
NHS Resolution