

14 March 2025

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FILE REF: SHA/26460

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COMMISSIONER: DERBY AND DERBYSHIRE ICB
("the Commissioner")

PHARMACIST: PCT HEALTHCARE LTD T/A B PAYNE
("the Appellant")

PREMISES: 24 MARKET PLACE
WIRKSWORTH
DERBYSHIRE
DE4 4ET

**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

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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 14:00 to 16:00 on Monday 21 April 2025 (Easter Monday).
- 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 14:00 to 16:00 on Monday 21 April 2025 (Easter Monday), a day on which it would otherwise be closed.

2 The Direction

In a letter to the Appellant dated 23 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 **Monday 21st 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 Wirksworth area to meet the needs of people living in the area on 21st 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 Monday – 21st April 2025, will be £275.00 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.
- 2.6 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 a letter to NHS Resolution dated 14 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 21 November 2024 for the above pharmacy to open on 21 April 2025 (Easter Monday) 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.
- 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 23 December 2024.
- 3.4 PCT Healthcare Limited reiterated our written representations on 31 December 2024, to date we have received no response from the ICB.
- 3.5 Failure to consider the written representations submitted in time to england.eastmidspharmacy@nhs.net is contrary to Schedule 4 Paragraph 25(2)(b) NHS Pharmaceutical and LPS Regulations.
- 3.6 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, FH698 in Wirksworth.
- 3.7 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 21 April 2025.
- 3.8 In particular, the letters dated 21 November 2024 and 23 December 2024 make no reference to any specific results linking our pharmacy to any lack of service provision on 21 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 18 November 2024 entitled Directed Rota 25/26.

3.10 The body of the email indicated:

3.10.1 *Dear colleague,*

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

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

3.12 **25/26:**

<u>Focus Area:</u>	<u>Good Friday 2025 18th April</u>	<u>Easter Monday 2025 21st April [sic]</u>	<u>Easter Monday 2025 21st April</u>	<u>Early May Bank Holiday 2025 5th May</u>	<u>Spring Bank Holiday 2025 26th May</u>	<u>Summer Bank Holiday 2025 25th August</u>
Matlock UCC/Bakewell, Wirksworth/Darley Dale	FLA25 Boots Pharmacy DE4 3AR	FQ277 Peak Pharmacy DE4 3NF	FH698 B Payne & Son Ltd DE4 4ET	FLA25 Boots Pharmacy DE4 3AR	FQ277 Peak Pharmacy DE4 3NF	FH698 B Payne & Son Ltd DE4 4ET

<u>Christmas Day 2025 25th December</u>	<u>Boxing Day 2025 26th December</u>	<u>New Years Day 2026 1st January</u>
FLA25 Boots Pharmacy DE4 3AR	FQ277 Peak Pharmacy DE4 3NF	FH698 B Payne & Son Ltd DE4 4ET

3.13 This email failed to include all contractors within the Matlock UCC/Bakewell, Wirksworth & Darley Dale locality.

3.14 Peak Pharmacy operate three pharmacies within the above locations:

3.14.1 Peak Pharmacy, 12 Bank Road, Matlock DE4 3NF (FQ277)

3.14.2 Peak Pharmacy, Darley Dale MC, Dale Road South, Darley Dale DE4 2EU (FK921)

3.14.3 PCT Healthcare Ltd t/a Payne & Son Ltd, Market Place, Wirksworth DE4 4ET (FH698)

3.15 The pharmacy FK921 is omitted from the above circulated details by NHSE.

- 3.16 The ICB Focus area indicates Matlock UCC/Bakewell, Wirksworth/Darley Dale, within Bakewell there are another two pharmacies.
- 3.17 Bakewell is 8.1 miles from Matlock.
- 3.18 The pharmacies here are omitted by the ICB. [Screenshot provided]
- 3.19 In addition, there is another pharmacy at Crich which is only 6.7 miles from Matlock.
- 3.20 The pharmacy here was omitted by the ICB. [Screenshot provided]
- 3.21 How can an assessment be concluded by NHS Derby and Derbyshire ICB where they fail to consider all contractors within a locality before circulating the direction to our pharmacy for Easter Monday?
- 3.22 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 23 December 2024), especially without any evidence from the assessment being shared which specifically identifies our pharmacy FH698 as being required to open on Easter Monday.
- 3.23 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 21st April 2025, as opposed to another pharmacy in the Matlock UCC/Bakewell, Wirksworth & Darley Dale locality.”

Email of 21 November 2024 from the Commissioner to the Appellant

- 3.24 “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 Monday to provide pharmaceutical services to the local population.
- 3.25 This will be for 2 hours only and full details are on the letter provided.
- 3.26 The rate of commission for this service is £275 per hour for a maximum of 2 hours and can be claimed via pharmoutcomes, up to 28 days after the directed day.
- 3.27 Should you not claim within this time period, assurance of the opening will be sought, and you will have up to 45 days from the directed day in which to make a final claim.”

Letter of 21 November 2024 from the Commissioner to the Appellant

- 3.28 **“Your current core opening hours are**
- 3.29 Monday – Friday 09:00 – 13:00 14:00 – 17:30
- 3.30 Saturday 09:00 – 11:30
- 3.31 **The total opening hours (core & supplementary) of the above pharmacy premises are:**
- 3.32 Monday – Friday 09:00 – 13:00 14:00 – 17:30
- 3.33 Saturday 09:00 – 13:00
- 3.34 We consider that the current core opening hours may not meet the needs of people in the area or other likely users of the pharmacy premises for the following reasons:

- 3.35 There is no pharmacy provision in the Wirksworth, Derbyshire area on Monday, 21st April 2025 following requests for a pharmacy to volunteer.
- 3.36 We are carrying out an 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 requiring you to provide pharmaceutical services on the following date and time:
- 3.37 **Easter Monday, 21st April 2025**
- 3.38 **Time 14:00 – 16:00**
- 3.39 If you wish to make written representations about the proposed direction, they should be sent to england.eastmidsparmacy@nhs.net within 30 days of the date of this letter, i.e. by 21st December 2024.
- 3.40 If you have any questions, please do not hesitate to contact me.”

Email of 9 December 2024 from the Appellant to the Commissioner

- 3.41 “Further to your email & letter dated 21/11/24.
- 3.42 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 & Derbyshire ICB. There is no detail within the letter of direction to indicate the reasons as to how or why this direction concluded the pharmaceutical needs of the relevant persons will not be met on this day that we are required to open our pharmacy, FH698.
- 3.43 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 14:000 – 16:00 on 21st April 2024.
- 3.44 We are unable to see within the letter dated 21st November 2024 any details of the consultation held with CPE Derby & Derbyshire regarding the Direction for Easter 2025 in Wirksworth.”

Email of 24 December 2024 from the Commissioner to the Appellant

- 3.45 “Following the publication of the rota for 24/25 and 25/26 in conjunction with the ICB and LPC, and recent proposal to direct letter.
- 3.46 The ICB have not received any representations regarding this proposal and are now directing your pharmacy to open to provide pharmaceutical services to the local population.
- 3.47 This will be for 2 hours only, and full details are on the letter provided which also includes the rate of pay.
- 3.48 To claim for opening on Good Friday/Easter Sunday/Easter Monday 2025 you will do so on Pharmoutcomes, no later than 28 days after the directed day. If you fail to claim in this period, assurance will be sought, and you will have up to 45 days from the date of direction in which to make a final claim.”

4 Representations

No representations were made by the Commissioner in response to the appeal, however the Commissioner provided relevant paperwork as requested. The paperwork included a letter dated 3 February 2025 from the Commissioner to the Appellant:

- 4.1 “Thank you for your representation regarding the proposal to direct of your pharmacy operating on **21 April 2025**.”
- 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 21 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:
- 4.5 NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU”

[A copy of the letters referred to at 2.1 to 2.9 and 3.28 to 3.40 were also enclosed].

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 Monday 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 21 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 Monday to provide pharmaceutical services to the local population*”. Further I note the letter dated 21 November 2024 provided the Appellant the opportunity to make representations within 30 days and that the Appellant exercised their right to do so. However from the information provided, there appears to have been an administrative error whereby those representations were not considered by the PSRC prior to issuing the direction letter.

5.5 I also note what appears to be a second direction letter dated 3 February 2025 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.

5.6 Further in its appeal, the Appellant contends that an email from the Commissioner dated 18 November 2024, failed to take into account all contractors within the Matlock

UCC/Bakewell, Wirksworth & Darley Dale locality and states *“How can an assessment be concluded by NHS Derby and Derbyshire ICB where they fail to consider all contractors within a locality before circulating the direction to our pharmacy for Easter Monday?”*. I note the Commissioner chose not to respond to this point.

- 5.7 From the information before me I am of the view that the Commissioner carried out some form of assessment in line with the Regulations.
- 5.8 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.
- 5.9 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 Wirksworth 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.
- 5.10 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 Monday 21 April 2025 will provide this cover, beyond the Commissioner’s comments in its letter dated 21 November 2024, that *“We consider that the current core opening hours may not meet the needs of people in the area or other likely users of the pharmacy premises for the following reasons: There is no pharmacy provision in the Wirksworth, Derbyshire area on Monday, 21st April 2025 following requests for a pharmacy to volunteer.”* 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.
- 5.11 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.
- 5.12 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.
- 5.13 Neither the letter of 21 November 2024, original direction letter of 23 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.
- 5.14 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 Monday 21 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