

18 March 2025

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FILE REF: SHA/26495

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COMMISSIONER: NOTTINGHAM AND NOTTINGHAMSHIRE ICB
("the Commissioner")

PHARMACIST: PCT HEALTHCARE LTD
("the Appellant")

PREMISES: PEAK PHARMACY (FRL99)
127 SUTTON ROAD,
HUTHWAITE,
SUTTON-IN-ASHFIELD,
NG17 2NF

**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 Nottingham and Nottinghamshire ICB

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10 South Colonnade
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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 2pm to 4pm on Good Friday, 18 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 Good Friday, 18 April 2025, a day on which it would otherwise be closed.

2 The Direction

In a letter to the Appellant dated 28 January 2025, 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 Friday 18th 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 Sutton-in-Ashfield area to meet the needs of people living in the area on 18 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 Good Friday – 18th 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 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 3 February 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 18 April 2025 (Easter Sunday) [sic] 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 Nottingham and Nottinghamshire ICB within the initial 30-day appeal period, via email on 9th December 2024. (email attached)
- 3.3 PCT Healthcare Limited emailed NHS England as no reply to the written representations was sent, nor a proposal to direct.
- 3.4 NHSE sent a proposal to direct FRL99 for 18 April 2025 on 28th January 2025 at 15:20. The details of the Pharmaceutical Services Regulations Committee (PSRC) meeting were not sent to PCT Head Office or to PCT Healthcare Limited until 29 January 2025 at 9.33 after a chase email from PCT Healthcare Limited.
- 3.5 PCT Healthcare Limited submit that a direction cannot be sent to a contractor when they are not yet aware of the outcome of their written representations.
- 3.6 The appeal was considered by the Pharmaceutical Services Regulations Committee (PSRC) on 21 January 2025. The subsequent letter from the PSRC failed to provide any evidence as to why a direction is in place for our pharmacy FRL99 specifically to open on 18 April 2025. Nor does the letter dated 29 January 2025 contain any details or evidence from the assessment conducted by the ICB.
- 3.7 Failure to consider the written representations submitted by PCT Healthcare Limited, fully is contrary to Schedule 4 Paragraph 25(2)(b) NHS Pharmaceutical and LPS Regulations.
- 3.8 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 Nottingham and Nottinghamshire 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, FRL99, Huthwaite, Sutton-in-Ashfield.
- 3.9 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 18 April 2025.

- 3.10 Neither letter contains the outcome of minutes of a meeting between the ICB and Community Pharmacy Nottingham and Nottinghamshire (previously LPC) regarding the Directions for Easter 2025.
- 3.11 In particular, the letters dated 18 November 2024, 28 January 2025 and 29 January 2024 (incorrectly dated should be 2025) make no reference to any specific results linking our pharmacy to any lack of service provision on 18 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.
- 3.12 The first communication from NHS England was in the email dated 18th November 2024 entitled Directed Rota 25/26.
- 3.13 The body of the email indicated:
- "Dear colleague,*
- Please find attached the directed rota for 25/26 for your reference."*
- 3.14 These Direction of opening hours are from Easter 2025 until New Years Day 2026. They are based on a rotational basis:
- 3.15 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 28 January 2025), especially without any evidence from the assessment being shared which specifically identifies our pharmacy FRL99 as being required to open on Good Friday.
- 3.16 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 Good Friday 18 April 2025, as opposed to another pharmacy in Sutton-in-Ashfield."

The Appellant included with their letter of appeal a copy of the letter from the Commissioner of 18 November 2024 which stated:

- 3.17 "Your current core opening hours are:
- 3.18 Monday - Friday 09:00 to 13:00 and 14:00 to 18:00
- 3.19 The total opening hours (core & supplementary) of the above pharmacy premises are:
- 3.20 Monday – Friday 13:45 to 14:00
- 3.21 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:
- 3.22 There is no pharmacy provision in the Sutton-in-Ashfield (NG17) area on Good Friday 18th April 2025, following requests for a pharmacy to volunteer.
- 3.23 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:
- 3.24 Good Friday 18th April 2025

- 3.25 Time 14:00 to 16:00
- 3.26 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 18th December 2024.
- 3.27 If you have any questions, please do not hesitate to contact me.”

The Appellant included a copy of their representations made to the Commissioner by email of 9 December 2024:

- 3.28 “Further to your email & letter dated 18/11/24.
- 3.29 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 Nottingham & Nottinghamshire 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, FRL99 in Huthwaite.
- 3.30 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 18th April 2024.
- 3.31 We are unable to see within the letter dated 18th November 2024 any details of the consultation held with CPE Nottingham & Nottinghamshire regarding the Direction for Easter 2025 in Huthwaite.”

Included with the letter of appeal, as well as a copy of the original decision letter as set out above in section 2, was a copy of the letter from the Commissioner of 29 January 2024 [sic] which stated:

- 3.32 “Thank you for your representation regarding the proposal to direct of your pharmacy operating on **18 April 2025**.
- 3.33 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 18 April 2025, the outcome is as follows:
- 3.33.1 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.
- 3.34 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.
- 3.35 Or by post: NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.”

Representations

In a letter to NHS Resolution dated 24 February 2025 the Commissioner stated:

- 4.1 “Thank you for your letter dated 4 February 2025. The East Midlands Primary Care Team on behalf of Nottingham and Nottinghamshire Integrated Care Board would like to make the following representations with respect to the aforementioned appeal.
- 4.2 The process that the East Midlands primary care team follow for directing for all bank holidays on behalf of Nottingham and Nottinghamshire ICB is as follows;
 - 4.2.1 A formal request 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 The information provided by pharmacies regarding their bank holiday opening hours is collated and reviewed to assess the adequacy of service provision. As part of this assessment, engagement takes place with the LPC and the relevant ICB to identify key areas of focus.
 - 4.2.3 Following the assessment and engagement, if the pharmaceutical provision within any of the identified key areas is not adequate to meet the needs of the people or other likely users in the area 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 committee determine that a direction is to be issued, 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 Nottingham and Nottinghamshire HWB area and engagement with the LPC a proposal to direct letter was sent to PCT Healthcare Peak Pharmacy (FRL99) on 18 November 2024. Representations against this proposal were subsequently received on 9 December 2024.
- 4.4 The representation was reviewed by the PSRC on 21 January 2025 and the decision was made to continue with the issue of the direction. 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 and the pharmacy had not included within their written representations any mitigating reasons why they should not complete the direction.
- 4.5 I would like to take this opportunity to respond to any further representations provided by PCT Healthcare Limited T/A Peak Pharmacy, 127 Sutton Road, Huthwaite, Sutton-In-Ashfield, NG17 2NF.”

5 Observations

No observations were made by the Appellant in response to the representations from the Commissioner.

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 Good Friday 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 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 Good Friday 18th April 2025 to provide pharmaceutical services to the local population.”* [sic] Further I note the letter dated 18 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 administration error whereby those representations were not considered by the PSRC prior to issuing the direction letter.
- 6.5 From the information before me, I am of the view that the Commissioner carried out some form of assessment in line with the Regulations.
- 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 note the Appellant’s comments that *“the letters dated 18 November 2024, 28 January 2025 and 29 January 2024 (incorrectly dated should be 2025) make no reference to any specific results linking our pharmacy to any lack of service provision on 18 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.”*
- 6.8 I have not been provided with sufficient 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 Sutton-in-Ashfield 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.
- 6.9 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 pharmaceutical services. I have not been provided with any information as to why pharmaceutical cover may be required or why the hours of 2pm to 4pm on Friday 18 April 2025 will provide this cover. The letter of 18 November 2024 from the Commissioner states *“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 Sutton-in-Ashfield (NG17) area on Good Friday 18th April 2025, following requests for a pharmacy to volunteer.”* I am of the view however 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.

- 6.10 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.
- 6.11 I also note that what appears to be a second direction letter, dated 29 January 2024 [sic], 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 direction letter, whilst acknowledging the representations from the Appellant, still does not provide reasons for its decision.
- 6.12 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.
- 6.13 The letters dated 20 November 2024, 28 January 2025 and 29 January 2024 [sic] do not 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. The letters explain the process which has taken place and the conclusions reached, but not the reasoning that lies behind the direction.
- 6.14 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 Good Friday, 18 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