

15 April 2025

REF: SHA/ 26439

**APPEAL AGAINST KENT AND MEDWAY ICB DECISION
REGARDING A BREACH NOTICE AT 142 NORTHDOWN
ROAD, MARGATE, KENT, CT9 2QN IN RELATION TO
TEMPORARY SUSPENSION OF SERVICES**

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

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

REF: SHA/ 26440

**APPEAL AGAINST KENT AND MEDWAY ICB DECISION
REGARDING A BREACH NOTICE AT 142 NORTHDOWN
ROAD, MARGATE, KENT, CT9 2QN IN RELATION TO
CONTRACTED HOURS**

REF: SHA/ 26441

**APPEAL AGAINST KENT AND MEDWAY ICB DECISION
REGARDING A BREACH NOTICE AT 142 NORTHDOWN
ROAD, MARGATE, KENT, CT9 2QN IN RELATION TO
100 HOUR OPENING**

1 Outcome

- 1.1 I am of the view that under NHS Resolution's powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of the Commissioner or substitute for that decision any decision that the Commissioner could have taken when it took that decision.
- 1.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations, I confirm the decision of the Commissioner to issue the Breach Notices in relation to SHA/ 26440 and SHA/ 26441 and pursuant to paragraph 9(5)(b) of Schedule 3 to the Regulations, I substitute the decision of the Commissioner to issue the Breach Notice in respect of SHA/ 26439 with a breach notice stating that the Appellant is in breach of paragraph 23(7) of Schedule 4 of the Regulations.

A copy of this decision is being sent to:
Pharma Plus Medical Ltd t/a Central Pharmacy
Kent and Medway ICB

REF: SHA/ 26439

**APPEAL AGAINST KENT AND MEDWAY ICB DECISION
REGARDING A BREACH NOTICE AT 142 NORTHDOWN
ROAD, MARGATE, KENT, CT9 2QN IN RELATION TO
TEMPORARY SUSPENSION OF SERVICES**

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**APPEAL AGAINST KENT AND MEDWAY ICB DECISION
REGARDING A BREACH NOTICE AT 142 NORTHDOWN
ROAD, MARGATE, KENT, CT9 2QN IN RELATION TO
CONTRACTED HOURS**

REF: SHA/ 26441

**APPEAL AGAINST KENT AND MEDWAY ICB DECISION
REGARDING A BREACH NOTICE AT 142 NORTHDOWN
ROAD, MARGATE, KENT, CT9 2QN IN RELATION TO
100 HOUR OPENING**

1 The Breach Notice in relation to SHA/ 26439

A Breach Notice dated 3 December 2024 was sent to Pharma Plus Medical Ltd t/a Central Pharmacy ("the Appellant") in respect of 142 Northdown Road, Margate, Kent, CT9 2QN

- 1.1 **"Name of contractor: Pharma Plus Medical Ltd t/a Central Pharmacy (FH385)**
- 1.2 **Address of premises:** 142 Northdown Road, Margate, Kent CT9 2QN
- 1.3 **Date of inclusion in the pharmaceutical list for the area of Kent Health and Wellbeing Board:** 10 May 2011.
- 1.4 This is a breach notice issued under regulation 71 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 1.5 **Nature of the breach:**
- 1.6 Pharma Plus Medical Ltd t/a Central Pharmacy (FH385) 142 Northdown Road, Margate, Kent CT9 2QN notified Kent and Medway ICB by way of an email on the 5th September 2024 that it would be closing at 19:30 daily and that this would be reviewed on the 4th October 2024. This temporary suspension of services was not notified in the approved manner. Following correspondence from the Commissioner, on the 2nd October 2024 a temporary suspension of services notice was submitted in the approved manner stating that the pharmacy would close from 19:30 to 21:00 each evening from 5th September 2024 until the 4th January 2025. The notice did not refer to the period from 7:30 to 9:00 in the morning or the period from 21:00 to 22:00 in the evenings.

- 1.7 The contractual hours for the pharmacy are 7:30 to 22:00 Monday to Sunday.
- 1.8 Schedule 4 Paragraph 23(10) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended sets out the requirements relating to a temporary suspension of services for a reason beyond the control of the contractor:
- 1.9 Paragraph 23(10)
- 10) Where there is a temporary suspension in the provision of pharmaceutical services by P because of illness or another reason beyond the control of P, P is not in breach of sub-paragraphs (1) and (7), or of paragraph 23A(5)(a), provided that—*
- (a)P notifies the NHSCB [sic] of that suspension as soon as practicable, in the manner required by paragraph 29D(2)(a) and wherever possible before the start of the suspension;*
- (aa)P uses all reasonable endeavours to implement the business continuity plan that P is required to have by virtue of paragraph 29D; and*
- (b)P uses all reasonable endeavours to resume provision of pharmaceutical services as soon as is practicable.*
- 1.10 Since the 5th September 2024, the pharmacy has been closing at 19:30. Temporary suspension notices in the approved manner have not been submitted for the following times:
- 1.10.1 7.30 to 9.00 and 21:00 to 22:00
- 1.11 This is in breach of Schedule 4 Paragraph 23 (10) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
- 1.12 You are required to not repeat the breach again.
- 1.13 You have the right to appeal to the Secretary of State against this breach notice. Should you choose to appeal, then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of receiving this notice to: nhsr.appeals@nhs.net or write to:
- 1.14 NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU
- 1.15 Please note that should you fail to comply with the requirements of this breach notice, we may take further action in relation to the inclusion in the Pharmaceutical List in respect of the above-named premises. This may include removal of the premises from the pharmaceutical list under regulation 73 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.”

The Breach Notice in relation to SHA/ 26440

A Breach Notice dated 3 December 2024 was sent to Pharma Plus Medical Ltd t/a Central Pharmacy (“the Appellant”) in respect of 142 Northdown Road, Margate, Kent, CT9 2QN.

- 1.16 **“Name of contractor: Pharma Plus Medical Ltd t/a Central Pharmacy (FH385)**
- 1.17 **Address of premises:** 142 Northdown Road, Margate, Kent CT9 2QN
- 1.18 **Date of inclusion in the pharmaceutical list for the area of the Kent Health and Wellbeing Board:** 10 May 2011
- 1.19 **This is a breach notice issued under regulation 71 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.**

1.20 **Nature of the breach:**

1.21 Pharma Plus Medical Ltd t/a Central Pharmacy (FH385) 142 Northdown Road, Margate, Kent CT9 2QN has not provided pharmaceutical services at the premises since for all its contracted hours in breach of Schedule 4 Paragraph 23 (1)(b) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

1.22 Schedule 4 Paragraph 23(1)(b) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended sets out the requirements for pharmacy opening hours.

1.23 **Paragraph 23(1)(b)**

23.—(1) Subject to paragraph 23A, an NHS pharmacist (P) must ensure that pharmaceutical services are provided at P's pharmacy premises—

(b) for not less than 100 hours each week, in the case of premises in respect of which a 100 hours condition applies;

1.24 Central Pharmacy is a 100-hour pharmacy. The pharmacy's contracted hours during which the pharmacy must be open to provide pharmaceutical services are:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
07:30 – 22:00	07:30 – 22:00	07:30 – 22:00	07:30 – 22:00	07:30 – 22:00	07:30 – 22:00	07:30 – 22:00

1.25 However, the pharmacy has not been open for these hours. Until the 5 September 2024, the pharmacy has been open for the following hours instead:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00

1.26 The reason given by Pharma Plus Medical Ltd for the reduced opening hours is that the pharmacy has previously had approval to open at the changed core hours. There

are no records of the approval to change the hours. Pharma Plus Medical Ltd has not adduced evidence of the approval to change the core hours.

- 1.27 Since 5 September 2024, the pharmacy has been closing at 19:30. On 2nd October 2024, a temporary suspension of services notice was submitted stating that the pharmacy would close from 19:30 to 21:00 each evening from 5th September 2024 until the 4th January 2025. The notice did not refer to the period from 7:30 to 9:00 in the morning or the period from 21:00 to 22:00 in the evenings.
- 1.28 Pharma Plus Medical Ltd is required to not repeat the breach again.
- 1.29 You have the right to appeal to the Secretary of State against this breach notice. Should you choose to appeal, then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of receiving this notice to: nhsr.appeals@nhs.net or write to:

1.30 NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU
- 1.31 Please note that should you fail to comply with the requirements of this breach notice, we may take further action in relation to the inclusion in the Pharmaceutical List in respect of the above named premises. This may include removal of the premises from the pharmaceutical list under regulation 73 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.”

The Breach Notice in relation to SHA/ 26441

A Breach Notice dated 3 December 2024 was sent to Pharma Plus Medical Ltd t/a Central Pharmacy (“the Appellant”) in respect of 142 Northdown Road, Margate, Kent, CT9 2QN

- 1.32 **“Name of contractor:** Pharma Plus Medical Ltd t/a Central Pharmacy (FH385)
- 1.33 **Address of premises:** 142 Northdown Road, Margate, Kent CT9 2QN
- 1.34 **Date of inclusion in the pharmaceutical list for the area of the Kent Health and Wellbeing Board:** 10 May 2011.
- 1.35 This is a breach notice issued under regulation 71 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 1.36 **Nature of the breach:**
- 1.37 Pharma Plus Medical Ltd t/a Central Pharmacy (FH385) 142 Northdown Road, Margate, Kent CT9 2QN has not been opening for 100 hours per week in accordance with Regulation 65(1)(2) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
- 1.38 **Regulation 65(1)(2)**
- 1.39 *65.—(1) If an application to which regulation 13(1)(b) of the 2005 Regulations (exemption from the necessary or expedient test) applied was granted, the inclusion in the pharmaceutical list of the person listed in relation to—*

(a)the premises that were listed as a consequence of that application; or

(b)if there has been a relocation of the retail pharmacy business or appliance contractor business at those premises to other premises, those other premises,

is subject to the condition set out in paragraph (2) (“the 100 hours condition”).`

(2) The condition is that the premises must be kept open for at least 100 hours per week for the provision of pharmaceutical services.

- 1.40 The reasons given by Pharma Plus Medical Ltd for not being open for 100 hours is that the pharmacy had approval to reduce its' contractual hours during the time of the Covid pandemic. Pharma Plus Medical Ltd has not provided evidence of the approval to reduce the pharmacy's opening hours. There were no regulatory provisions at that time that allowed 100-hour pharmacies to reduce their core opening hours.
- 1.41 Pharma Plus Medical Ltd is required to not repeat the breach again.
- 1.42 You have the right to appeal to the Secretary of State against this breach notice. Should you choose to appeal, then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of receiving this notice to: nhsr.appeals@nhs.net or write to:
- 1.43 NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU
- 1.44 Please note that should you fail to comply with the requirements of this breach notice, we may take further action in relation to the inclusion in the Pharmaceutical List in respect of the above named premises. This may include removal of the premises from the pharmaceutical list under regulation 73 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.”

Letter of 3 December 2024 enclosing the Breach Notices

- 1.45 “Kent and Medway ICB Pharmaceutical Services Regulations Committee considered the matters relating to the opening hours for Pharma Plus Medical Ltd t/a Central Pharmacy (FH385) 142 Northdown Road, Margate, Kent CT9 2QN at its meeting of 14 November 2024. The Committee also considered and approved the request of the permanent closure of Pharma Plus Medical Ltd /ta Central Pharmacy 142 Northdown Road, Margate, Kent CT9 2QN set for 1 February 2025, with less than six months' notice. Whilst the Committee approved the request for the pharmacy to close with less than six months' notice, it considered that whilst the pharmacy remains on the Pharmaceutical List, matters of compliance with the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended are still relevant.
- 1.46 The committee noted that Central Pharmacy wrote to the Pharmacy Team on 5 September 2024 to notify of a temporary suspension of provision of pharmaceutical services. The pharmacy would be open from Monday to Sunday 09:00 – 19.30.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday

09:00 – 19:30	09:00 – 19:30	09:00 – 19:30	09:00 – 19:30	09:00 – 19:30	09:00 – 19:30	09:00 – 19:30
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- 1.47 The reason for this temporary suspension was due to ongoing security incidents in the last 2 months. The pharmacy reported
- 1.48 *“the incidents involved threats and violence in the pharmacy by certain patients and members of public. These persistent threats have resulted in considerable damage to the pharmacy, the pharmacy staff have been threatened to be killed and the pharmacy premises to be burnt down. This has become untenable. The local police are fully involved in providing security and investigating responsible individuals and Central Pharmacy have taken advice from police in this regard.”*
- 1.49 The pharmacy said it was actively working with police, patients and staff to ensure a safe and sustainable resolution to this ongoing law and order situation. The situation was to be reviewed on an ongoing basis and that the pharmacy would advise on the situation towards the end of September 2024.
- 1.50 Central Pharmacy is a 100-hour pharmacy. The pharmacy’s contracted hours during which the pharmacy must be open to provide pharmaceutical services are:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
07:30 – 22:00	07:30 – 22:00	07:30 – 22:00	07:30 – 22:00	07:30 – 22:00	07:30 – 22:00	07:30 – 22:00

- 1.51 From the information you have provided the pharmacy has been opening for the following hours, a total of 84hours and not the contracted 100hours:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00

- 1.52 Central Pharmacy has not been compliant with [Regulation 65](#) which sets out core opening hours provision for pharmacies that were granted under exemptions to the necessary or expedient test of the 2005 Regulations.
- 1.53 Furthermore, no application had been approved to reduce opening hours in accordance with the regulation introduced in May 2023.
- 1.54 Central Pharmacy has also not been open for all of its contracted opening hours and so is in breach of Schedule 4 Paragraph 23(1)(b) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

- 1.55 Notices of temporary suspensions were not submitted in the manner required by [Schedule 4 Paragraph 29D\(2\)\(a\)](#) and the associated [Approved particulars](#).
- 1.56 The committee agreed to issue three breach notices to Pharma Plus Medical Ltd t/a Central Pharmacy (FH385):
- 1.56.1 Not keeping the pharmacy premises open for at least 100 per week for the provision of pharmaceutical services, in breach of regulation 65(1)(2)
- 1.56.2 Not providing pharmaceutical services for all of its contracted hours, in breach of Schedule 4 Paragraph 23(1)(b)
- 1.56.3 Not notifying of temporary suspension in the provision of pharmaceutical services and not using all reasonable endeavours to resume provision of pharmaceutical services as soon as practicable in breach of Schedule 4 Paragraph 23 (10) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
- 1.57 Please acknowledge receipt of this letter and the associated breach notices.”

2 The Appeal

In a letter dated 1 January 2025, received 2 January 2025 addressed to NHS Resolution, the Appellant appealed against Kent and Medway ICB’s (“the Commissioner”) decision. The grounds of appeal are:

- 2.1 **“Appeal against the decision of the Kent and Medway ICB Pharmaceutical Services Regulations Committee to serve three breach notices to Pharma Plus Medical Ltd. (FH385) T/A Central Pharmacy on 3 December 2024:**
- 2.2 **Not keeping the pharmacy premises open for at least 100 per week for the provision of pharmaceutical services, in breach of regulation 65(1)(2).**
- 2.3 **Not providing pharmaceutical services for all of its contracted hours, in breach of Schedule 4 Paragraph 23(1)(b).**
- 2.4 **Not notifying of temporary suspension in the provision of pharmaceutical services and not using all reasonable endeavours to resume provision of pharmaceutical services as soon as practicable in breach of Schedule 4.**
- 2.5 Further to the above three notices served upon us on 3 December 2024 I am requesting an opportunity to consider the relevant matters regarding the pharmacy opening hours and the context how this matter has been decided by the ICB Pharmaceutical Services Regulations Committee.
- 2.6 The pharmacy has been operating as 100 hours pharmacy since 2011. The hours of operation been 7:30 – 22:00 7 days a week (101.5 hrs a week).
- 2.7 Sometimes in the year 2020 during the COVID19 pandemic the pharmacy hours were changed from 7:30 – 22:00 to 9:00 – 21:00 (84 hrs a week). The pharmacy was sold by sale of shares to the new owner Health Hut Professionals Ltd. in the December 2020. There was a change of Superintendent Pharmacist, however the existing owner pharmacist had carried on working as manager whilst the pharmacy continued to operate with these hours. The pharmacy experienced several operational and financial incidents in 2024. These incidents involved the superintendent pharmacist, staff and patients. We lost the superintendent pharmacist and the manager, and four members

of staff since August 2024. There has been assault incidents by residents and patient that resulted with injuries to staff and damaged the pharmacy interiors and equipment. These matters prevented any locum staff to come and work to help us continue our business and services.

- 2.8 The pharmacy started to operate within limited hours of 9:00 – 19:30 and it was notified to the local NHS via an email on 5 September 2024. This was sent after taking advice from the Community Pharmacy England (CPE). In the following days and weeks, we were chased by the local ICB representative to send the notification using the dedicated form (Appendix 18) instead as the email was not acceptable. The form was sent on 3 October and sent again as amended on 8th October 2024. The ICB was also sent a form to request change of core opening hours to help us manage the situation at hand.
- 2.9 The pharmacy business continuity plan required us to reduce the opening hours or close temporarily until it was safe to operate. We took advice from the Police, the GPhC and the CPE. We decided to bring locum pharmacist and support staff from nationwide pool even at a very high cost to cover the reduced opening hours so that the patients would continue to access full range of services in the busy period going into winter. Vaccination clinics were planned and we decided to support the service in the area with extra resources. A security firm was consulted for providing safety cover for staff during the late hours and the weekends.
- 2.10 In continuing to provide full range of essential, advanced, enhanced and locally commissioned services our priority was to work towards providing safe and sustainable service for our patients and our staff. However, our request to consider the challenging situation faced by the pharmacy was turned down by the ICB. We were informed on 18 October 2024 that we must open pharmacy between the contracted hours of 7:30 – 22:00. I discussed this matter with local police and the GPhC and both had advised me to take necessary action as it deems fit for the safety of our staff and patients.
- 2.11 Central Pharmacy has provided ongoing service 7 days a week over the years. With the recent incidents, and due to difficulty of maintaining enough staffing levels in a town like Margate it is not safe to operate long hours. With the decision of the ICB to force us to comply with these hours it left us with no choice but to close the pharmacy. We informed the ICB of our decision to close the NHS contract for pharmaceutical services on 1st of February 2025. It is very heart breaking that we had offered to continue provision of service in the hours of 9:00 – 19:30 for 7 days a week, and the local ICB did not engage with us for supporting this long-term sustainable service model. In the final few weeks, we have been rewarded with the breach notices by the ICB that has not helped us in focusing our energy on the service provision and staff welfare but forced us to deal with the organisation contractual matters.
- 2.12 We sincerely request you to look at the set of events that propelled us in this situation. We had hoped that the temporary suspension provision was specifically designed to provide an escape hatch for contractors to help them recover and find a solution for business continuity. We care about our service for the community, and we care about the safety of our staff. We only reached out to the NHS in a bid to seek help, so we are doing this once again through this appeal."

Letter of 18 October 2024 from the Commissioner to the Appellant

- 2.13 **"Application to change core hours – Pharma Plus Medical Ltd t/a Central Pharmacy (FH385) 142 Northdown Road, Margate, Kent CT9 2QN**
- 2.14 Thank you for your application of 5 October 2024 to change the Core hours at Central Pharmacy (FH385), 142 Northdown Road, Margate, Kent CT9 2QN.

- 2.15 According to our records Central Pharmacy is a 100-hour pharmacy. The pharmacy's contracted hours during which the pharmacy must be open to provide pharmaceutical services are:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
07:30 – 22:00	07:30 – 22:00	07:30 – 22:00	07:30 – 22:00	07:30 – 22:00	07:30 – 22:00	07:30 – 22:00

- 2.16 The proposed core opening hours presented in the application are:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
09:00 – 19:30	09:00 – 19:30	09:00 – 19:30	09:00 – 19:30	09:00 – 19:30	09:00 – 19:30	09:00 – 19:30

- 2.17 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the 2013 regulations) were amended from 25 May 2023 to allow 100-hour pharmacies to change reduce their hours to a minimum of 72 hours, if they meet the criteria set out in the regulations. These criteria are:

2.17.1 core opening hours must be maintained on a Monday to Saturday between 17:00 and 21:00;

2.17.2 any core opening hours on a Sunday between 11:00 and 16:00 cannot be changed, other than by way of the inclusion of, or a change to, a rest break which:

2.17.2.1 is no longer than one hour, and

2.17.2.2 starts at least three hours after the start of the pharmacy's opening hours and ends at least three hours before the end of the pharmacy's opening hours on that day; and

2.17.3 the total number of core opening hours on a Sunday cannot be reduced (paragraph 26(2A), Schedule 4).

- 2.18 [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) \(Amendment\) Regulations 2023](#)

- 2.19 The application to change core opening hours has been assessed against the regulations and it does not meet the criteria. The application also does not reflect the current contractual hours of the pharmacy.

- 2.20 In earlier correspondence you indicated that the pharmacy's opening hours were changed under the Covid 19 emergency regulations, to the following:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00

- 2.21 The pharmacy is now open for 84 total weekly hours and not the 101.5 total weekly hours as contracted.
- 2.22 Under the Covid 19 emergency regulations, pharmacies were able to work behind closed doors for up to 2.5 hours per day (subject to parameters about the timing). There were no provisions for a pharmacy to change its core opening hours. The emergency regulations expired in January 2022 and all pharmacies were required to revert to their original working patterns. From the information provided and the hours listed in the application to change core hours, Central Pharmacy appears to have failed to be opening in accordance with its contractual hours since the time of the Covid-19 pandemic.
- 2.23 Please note [Regulation 65](#) which sets out core opening hours provision for pharmacies that were granted under exemptions to the necessary or expedient test under the 2005 Regulations.
- 2.24 **Unless an application to reduce opening, hours is approved in accordance with the Regulation introduced in May 2023, the pharmacy is required to be open for all its contracted hours (7:30-22:00 Monday to Sunday).**
- 2.25 **Temporary suspension of services**
- 2.26 The NHS Terms of Service require that pharmacies open in accordance with their contractual hours. However, the Regulations do allow for temporary suspensions in the provision of pharmaceutical services during core and/or supplementary opening hours where certain requirements are met.
- 2.27 [Paragraph 23\(10\), Schedule 4](#)
- 2.28 *“(10) Where there is a temporary suspension in the provision of pharmaceutical services by P because of illness or another reason beyond the control of P, P is not in breach of sub-paragraphs (1) and (7), or of paragraph 23A(5)(a), provided that—*
- (a) P notifies NHS England [the Commissioner] of that suspension as soon as practicable, in the manner required by paragraph 29D(2)(a) and wherever possible before the start of the suspension;*
- (aa) P uses all reasonable endeavours to implement the business continuity plan that P is required to have by virtue of paragraph 29D; and*
- (b) P uses all reasonable endeavours to resume provision of pharmaceutical services as soon as is practicable.”*
- 2.29 You have submitted a notification of a temporary suspension of services for the following times: Monday – Sunday 19:30 -21:00, to be in place until 5 January 2025.

- 2.30 This notice does not correctly reflect all the hours that the pharmacy is not open in accordance with its contractual hours.
- 2.31 The provisions of Paragraph 23(10), Schedule 4 are intended to cover short periods of time, and all reasonable endeavours must be made to resume provision of pharmaceutical services as soon as practicable.
- 2.32 We are unable to accept a notice of temporary suspension for an extended period of time until 5 January 2025.
- 2.33 **As a minimum and to ensure that the situation is kept under review, we cannot accept temporary suspension notices for more than a week at a time. They must be fully complete and in the approved format.**
- 2.34 As referred to above, pharmacy contractors must take action to resume normal opening hours as soon as possible. In that light, please can you provide:
- 2.34.1 the latest police assessment of the threat to the pharmacy
- 2.34.2 the provisions of your business continuity plan and what you are doing to resume services for the full contractual opening hours of the pharmacy.
- 2.35 I am happy to arrange a call with you if you would like to discuss the content of this letter.”

Email of 5 September 2024 from the Appellant addressed to the Commissioner

- 2.36 “Please note for the Pharma Plus Medical Ltd.
- 2.37 T/A Central Pharmacy, 142 Northdown Rd, Margate, Kent, CT9 2QN.
- 2.38 ODS Code: FH385
- 2.39 This is a notification of temporary suspension of pharmaceutical services during the hours of 19:30 - 21:00 with effect from 5th September 2024 until 4th October 2024. The new operating hours for this pharmacy will be Monday - Sunday 9:00am - 19:30 until the next review by 4th October 2024.
- 2.40 The reason for this temporary suspension is due to the ongoing security incidents in the last 2 months. The incidents involved threats and violence in the pharmacy by certain patients and members of public. These persistent threats have resulted in considerable damage to the pharmacy, the pharmacy staff have been threatened to be killed and the pharmacy premises to be burnt down. The staff cars parked outside have been damaged and sprayed over. In the recent two days the pharmacy staff and other attending patients have been subjected to disorderly and threatening behaviour by this mob who is based in this neighbourhood and the square opposite the pharmacy. This has become untenable. The local police is fully involved in providing security and investigating responsible individuals and we have taken advice from police in this regard.
- 2.41 We are concerned about the ongoing adverse incidents, especially during late hours of the pharmacy operation. Hence the hours are being reduced to monitor the situation immediately.
- 2.42 When taking this decision to suspend the pharmaceutical services during 19:30 - 21:00 [sic] we have considered the impact on the current service users and

stakeholders. We have spoken to the General Pharmaceutical Council (GPhC) and the Community Pharmacy England (CPE) on this urgent matter as well.

- 2.43 The following actions have been taken to limit the impact of this reduction in opening hours:
- 2.43.1 The regular daily service users for the substance misuse service have already been managed during the hours of 10am - 6pm.
 - 2.43.2 Patients and service users have been advised to contact the pharmacy staff for any issues if they are not able to access the service during the opening hours. This is done via phone announcement, poster display inside the pharmacy as well outside the pharmacy after the closing times. The information is also updated on the NHS profile and social media accounts.
 - 2.43.3 The local surgeries, pharmacies and the GP out of hour teams have also been advised of this change of pharmacy opening hours.
 - 2.43.4 We are actively working with police, our patients and staff to ensure a safe and sustainable resolution to this ongoing law and order situation. We will be reviewing the situation on an ongoing basis and get back to you towards the end of September 2024.”
- 2.44 [Application to change core opening hours dated 7 October 2024 also enclosed – appendix A].

3 **Regulation 23(7)**

- 3.1 On receipt of the appeal, NHS Resolution noted that the requirement to be open during contractual hours relates to two provisions of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”). These provisions are:
- 3.1.1 the total number of hours to be open per week pursuant to paragraph 23(1) of Schedule 4 of the Regulations; and
 - 3.1.2 the set days and times the pharmacy is required to be open pursuant to paragraph 23(7) of Schedule 4 of the Regulations.
- 3.2 In addition, it was noted that the Breach Notice in relation to SHA/ 26439 did not refer to paragraph 23(7) of Schedule 4 of the Regulations.
- 3.3 NHS Resolution therefore invited the parties to provide comments and/or evidence in relation to paragraph 23(7) of Schedule 4 of the Regulations.

4 **Summary of Representations**

This is a summary of representations received on the appeal and in relation to Regulation 23(7).

- 4.1 The Commissioner
- 4.1.1 “Thank you for your letter of the 13 January 2025 advising us that an appeal has been lodged in relation to the above breach notices.
 - 4.1.2 You have asked specifically about Schedule 4, paragraph 23(7) because it follows that a failure to open for the specified number of hours means that the

pharmacy has not opened on the days and times as notified to the Commissioner.

- 4.1.3 On reflection, a breach notice should have been considered in relation to that paragraph, because the pharmacy was not open on the days and times as notified to the Commissioner. There were no records of any agreement to change opening hours, and the pharmacy was not able to provide evidence that there was any such notification.
- 4.1.4 I have included a copy of the paper that was presented to the PSRC for reference.
- 4.1.5 I have also included in Appendix A, a copy of the log of calls made to the pharmacy by a member of our team.”
- 4.1.6 “Appendix A

Date	Notes
18 /09/ 2024	Spoke to Team leader on the discrepancy of opening hours between what the pharmacy had as its opening hours and records on pharmaceutical list. Advised on expected next actions • pharmacy to provide evidence of approved changes to hours or • submit an application to change hours
25/09/2024	Called pharmacy as neither of the above actions had been actioned. Advised that this was being attended to by one of the pharmacy Directors (N S).
01/10/2024	Called the pharmacy again to follow up as they [sic] had been no response to earlier calls. Reminder that revised application to change hours had to be submitted by 7 October 2024. Also reminded that temporary suspension notices must be submitted in the approved format.
08/10/2024	Called again to follow up telephone call from the 1 st of October 2024“

Copy of paper enclosed:

- 4.1.7 “Background
- 4.1.8 Central Pharmacy wrote to the Pharmacy Team on 5 September 2024 to notify of a temporary change of opening hours. The pharmacy would be open from Monday to Sunday 09:00 – 19.30.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00	09:00 – 21:00

4.1.16 The application to change core opening hours was assessed against the regulations and it did not meet the criteria. The application also did not reflect the current contractual hours of the pharmacy.

4.1.17 This was communicated to the pharmacy on 18 October 2024 (**Appendix C**)

4.1.18 The pharmacy was also reminded that it must take action to resume normal opening hours as soon as possible and to provide:

4.1.18.1 the latest police assessment of the threat to the pharmacy

4.1.18.2 the provisions of your business continuity plan and what you are doing to resume services for the full contractual opening hours of the pharmacy

4.1.19 An offer was extended to the pharmacy to discuss these matters further if required.

4.1.20 In response the pharmacy expressed disappointment with the decision on the application. The pharmacy was open to discussing the matters further.

4.1.21 No revised application has been submitted. The pharmacy has not submitted revised notices of suspension, a police report of the assessment of the threat to the pharmacy or its business continuity plans. Though the pharmacy accepted the offer to discuss these matters it has not taken up the offer despite several offers from the pharmacy commissioning team to agree a meeting date.

4.1.22 The pharmacy has subsequently submitted a request to close with less than 6 months' notice – which is a separate matter to be considered.

4.1.23 **Regulations and assessment**

4.1.24 **100 Hour condition**

4.1.25 [Regulation 65\(1\)](#)

4.1.26 Core opening hours conditions

4.1.27 65.—(1) If an application to which regulation 13(1)(b) of the 2005 Regulations (exemption from the necessary or expedient test) applied was granted, the inclusion in the pharmaceutical list of the person listed in relation to—

(a) the premises that were listed as a consequence of that application;
or

(b) if there has been a relocation of the retail pharmacy business or appliance contractor business at those premises to other premises, those other premises,

is subject to the condition set out in paragraph (2) ("the 100 hours condition").

(2) The condition is that the premises must be kept open for at least 100 hours per week for the provision of pharmaceutical services.

4.1.28 Central Pharmacy has not been open for 100 hours but 84 instead. The pharmacy is therefore in breach of Regulation 65(2).

4.1.29 **Opening hours**

4.1.30 Pharmacy opening hours: general

4.1.31 [Paragraph 23\(1\)](#) Subject to paragraph 23A, an NHS pharmacist (P) must ensure that pharmaceutical services are provided at P's pharmacy premises—

(b) for not less than 100 hours each week, in the case of premises in respect of which a 100 hours condition applies;

4.1.32 The contractor is in breach of paragraph Schedule 4 Paragraph 23(1) (b) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, which sets out the requirements for pharmacy opening hours. Pharmacies must not change their contractual (core and supplementary) hours without following due process.

4.1.33 **Temporary suspension of services.**

4.1.34 [Paragraph 23\(10\)](#) sets out the requirements relating to a temporary suspension of services for a reason beyond the control of the contractor:

4.1.35 10) Where there is a temporary suspension in the provision of pharmaceutical services by P because of illness or another reason beyond the control of P, P is not in breach of sub-paragraphs (1) and (7), or of paragraph 23A(5)(a), provided that—

(a) P notifies the NHSCB of that suspension as soon as practicable, in the manner required by paragraph 29D(2)(a) and wherever possible before the start of the suspension;

(aa) P uses all reasonable endeavours to implement the business continuity plan that P is required to have by virtue of paragraph 29D; and

(b) P uses all reasonable endeavours to resume provision of pharmaceutical services as soon as is practicable.

4.1.36 The contractor is also in breach of paragraph Schedule 4 Paragraph 23(10) which sets out the requirements for pharmacy opening hours. Pharmacies must not change their contractual (core and supplementary) hours without following due process. The pharmacy has not submitted notices for the temporary suspensions of services that relate to all the hours it is closed.

4.1.37 If there is no good cause established the contractor is in breach of paragraph 23(1)(a), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, as they are not ensuring the provision of pharmaceutical services at the premises that are included in the pharmaceutical list.

4.1.38 Recommendations

4.1.39 To issue three breach notices

4.1.39.1 Breach notice for not opening for 100 hours in breach of regulation 65(2)

4.1.39.2 Breach notice for not opening for its contracted hours in breach of paragraph Schedule 4 Paragraph 23(1) (b)

4.1.39.3 Breach notice for not notifying the commissioner about the closures as soon as practicable and not using all reasonable endeavours to commence provision of pharmaceutical services as soon as is practicable.”

Appendix A – Email dated 5 September 2024 from the Appellant to the Commissioner [see 2.36 – 2.43.4 above].

Appendix B – Email dated 18 September 2024 from the Commissioner to the Appellant

4.1.40 “Thank you for speaking to me this afternoon about the temporary changes to the opening hours at Central Pharmacy FH 385. As mentioned on the call , the Pharmacy Commissioning team is here to support you as much as possible.

4.1.41 As mentioned in our call , our records indicate that Central Pharmacy is listed on the pharmaceutical list to be open Monday to Sunday 07:30 – 22:00. However, you are of the understanding that this was the case pre Covid and that post covid the opening hours changed to 09:00 – 21:00. Changes to core hours , as in the case for Central Pharmacy will have needed approval from the Pharmaceutical Services Regulations Committee for the South East (Kent ICB). To help resolve this discrepancy could you please:

4.1.41.1 Provide evidence of the approval notification for the changes in the core hours at Central Pharmacy. In the absence of that evidence, you will have to make an application to make the changes.

4.1.41.2 To make an application to change the hours you will need to complete the attached form (appendix 2).

4.1.42 During the call we discussed the temporary suspension of services at Central Pharmacy between the hours of 19.30 and 21.30 from the 5th of September with a review date of 5th of October. You mentioned on the call that you had permission from GPHc for the suspension of services. Unfortunately, temporary suspension of pharmaceutical services provision can only be approved by the Commissioner , in the case NHS Kent ICB. As mentioned on the call GPHc is not the commissioner but only concerned with pharmacist professional standards. I have also noted that the circumstances relating to the physical and personal threats to the pharmacy and pharmacy staff have been reported to the police under reference number CAD -04-0620

4.1.43 While it is greatly appreciated that you notified the Pharmacy Commissioning team in the email of 5 September 2024 of the temporary suspension of services between the hours of 19.30 and 21.30 from the 5th of September with a review date of 5th of October . This was not in the format and form required for this purpose. You are now required to

4.1.43.1 Submit the notification using the attached form (appendix18).

4.1.44 Please complete the actions highlighted above by Monday 23 September 2024.”

[Appendix C – Letter of 18 October 2024 from the Commissioner to the Appellant – see 2.13 – 2.35 above].

5 Observations

5.1 The Appellant

5.1.1 “Thank you for your letter dated 17th February 2025. In addition to our previous submission, I would like to provide further clarification regarding the letter from the other party and address any observations related to our engagement with the ICB.

5.1.2 Our communications with the ICB—including emails, phone calls, and letters, as well as discussions between my staff and the ICB—have consistently outlined the challenges we faced starting in early September 2024. My primary concern has always been the safe and effective delivery of services to our patients. As a result, I had to make critical decisions, including the suspension and dismissal of key members of the pharmacy team. Additionally, I experienced incidents of verbal and physical aggression from patients towards my staff and myself, which led me to take necessary steps to ensure safety, following the advice of the police, the GPhC, and the Community Pharmacy England. In light of these circumstances, I adjusted our service delivery while ensuring that we remained open daily.

5.1.3 On a personal level, I required emergency medical attention for the injuries I sustained at the pharmacy in December 2024 (7,9,21,23) and on 7 January 2025 while simultaneously managing professional, business, and health-related challenges. I had previously requested additional time from the ICB in my notifications for temporary suspension of service to address these urgent priorities before responding to matters related to changes in opening hours. In the phone calls received from the ICB the emphasis was more about the compliance with regulations to send the notice to the ICB than the opportunity to understand the challenges we were facing. The breach notices were issued before I had the opportunity to fully recover and stabilize operations. Unfortunately, this left me with no viable option but to close a well-established and busy business because of the breach notices.

5.1.4 It is a sad outcome that the community has lost the service provision whilst ICB is satisfied with the compliance and regulatory function enforced on the providing contractor.”

6 Consideration

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

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

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

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

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

- 6.3 The Regulations contain no definition as to what constitutes a breach of terms of service which is not capable of remedy.

- 6.4 I note that the pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.

- 6.5 I note that three Breach Notices were issued pursuant to Regulation 71(1) and are compliant with the requirements of a breach notice as each include the nature of the breach and an explanation of the Appellant’s right of appeal under Regulation 77(1)(c).

- 6.6 Under Regulation 69(1), before issuing a breach notice, the Commissioner must:

6.6.1 *“make every reasonable effort to communicate and co-operate with an NHS Chemist (C) with a view to resolving any dispute between [the chemist] and NHS England relating to [the chemist’s] compliance with [the chemist’s] terms of service.”*

- 6.7 The Regulations contain no definition of what constitutes “reasonable effort to communicate and co-operate”. I note there was communication between the Commissioner and the Appellant during the period of the closures and that there was correspondence between parties, which I have been provided with. I note that the Appellant has not referred to any lack of local dispute resolution in its appeal. I therefore determine that there is no failure with regard to Regulation 69.

- 6.8 The Appellant seeks to appeal against the decision of the Commissioner to issue the Breach Notices. I will now consider the Breach Notices and the Appellant’s grounds of appeal.

Breach Notice 1 (SHA/ 26439)

- 6.9 The Breach Notice alleges a breach of paragraph 23(10) of Schedule 4 of the Regulations.

- 6.10 Schedule 4, part 3, paragraph 23(10) states:

(10) Where there is a temporary suspension in the provision of pharmaceutical services by P [because of illness or another reason] beyond the control of P, P is not in breach of sub-paragraphs(1) and (7), [or of paragraph 23A(5)(a),] provided that—

(a) *P notifies [NHS England] of that suspension as soon [as practicable, in the manner required by paragraph 29D(2)(a) and wherever possible before the start of the suspension;]*

[(aa) P uses all reasonable endeavours to implement the business continuity plan that P is required to have by virtue of paragraph 29D; and]

(b) *P uses all reasonable endeavours to resume provision of pharmaceutical services as soon as is practicable.*

6.11 I note that paragraph 23(1) of Schedule 4 states:

(1) [Subject to paragraph 23A,] an NHS pharmacist (P) must ensure that pharmaceutical services are provided at P's pharmacy premises—

(a) for 40 hours each week;

(b) for not less than 100 hours each week, in the case of premises in respect of which a 100hours condition applies;

(c) if NHS England or a Primary Care Trust, or on appeal the Secretary of State, has directed that pharmaceutical services are to be provided at the premises for fewer than 40 hours per week, provided that the person listed in relation to them provides those services at set times and on set days, at the times and on the days so set;

(d) if a Primary Care Trust, or on appeal the Secretary of State, has (under previous Regulations) directed that pharmaceutical services are to be provided at the premises for more than 40 hours per week, and at set times and on set days, at the times and on the days so set, subject to any variation in respect of a rest break in accordance with sub-paragraph (7)(bd); or

(e) if NHS England or a Primary Care Trust, or on appeal the Secretary of State, has directed that pharmaceutical services are to be provided at the premises for more than 40 hours each week, but only on set times and on set days as regards the additional opening hours, or the core opening hours where paragraph 26(4A) applied to the issuing of the direction—

(i) for the total number of hours each week required by virtue of that direction, and

(ii) as regards the additional opening hours for which the person listed in relation to the premises is required to provide pharmaceutical services by virtue of that direction, at the days on which and times at which that person is required to provide pharmaceutical services during those additional opening hours,

but [NHS England] may, in appropriate circumstances, agree a temporary suspension of services for a set period, where it has received 3 months notice of the proposed suspension.

6.12 I further note paragraph 23(7) of Schedule 4 states:

(7) Where P has notified to NHS England (or, before the appointed day, a Primary Care Trust) the days on which and times at which pharmaceutical services are to be provided

at P's pharmacy premises (for example, in a return under sub-paragraph (5) or (6) or in an application for inclusion in a pharmaceutical list)—

(a) P must ensure that pharmaceutical services are provided at the premises to which the notification relates on the days and at the times set out in the notification (unless the notification has been superseded by a return, or a further return, under sub-paragraph (6)); and

(ba) P must not change the days on which or the times at which pharmaceutical services are to be provided at those premises during core opening hours, except for making a change that –

(i) amounts to the inclusion of a rest break which is no longer than one hour, or a change to such a rest break—

(aa) on a Monday to Saturday, which starts at least 3 hours after the start of the pharmacy's opening hours and ends at least 3 hours before the end of the pharmacy's opening hours, or

(bb) on a Sunday, and

(ii) does not change the total number of P's core opening hours on a particular day,

otherwise than as provided for, and in accordance with the procedures set out in, paragraphs 25 and 26;

(bb) P must not change P's supplementary opening hours in a way that reduces the time for which P's pharmacy is open before or after a rest break on a Monday to Saturday to less than 3 hours (if P wants to change the supplementary opening hours affected by this requirement, P must also change the time of the rest break);

(bc) P must not change—

(i) the total number of P's supplementary opening hours in a way that either reduces or leaves the same the total number of P's supplementary opening hours, or

(ii) unless the change relates to an increase of the total number of supplementary opening hours, the days on which or the times at which pharmaceutical services are to be provided at P's premises during supplementary opening hours,

for a period of at least 5 weeks after the day on which that notification was received by NHS England, unless NHS England agrees otherwise; and

(bd) P must not change the days on which or the times at which pharmaceutical services are to be provided at those premises during core opening hours, in the case of making a change that—

(i) amounts to the inclusion of a rest break which is no longer than one hour, or a change to such a rest break—

(aa) on a Monday to Saturday, which starts at least 3 hours after the start of the pharmacy's opening hours and ends at least 3 hours before the end of the pharmacy's opening hours, or

(bb) on a Sunday, and

(ii) does not change the total number of P's core opening hours on a particular day,

for a period of at least 5 weeks after the day on which that notification was received by NHS England, unless NHS England agrees otherwise.]

- 6.13 The parties were invited to provide comments regarding Regulation 23(7). I note that comments were received from the Commissioner only which accepts an omission in the first Breach Notice.
- 6.14 In considering the days on which and times at which pharmaceutical services are to be provided at the pharmacy, I have had regard to the evidence before me. In its appeal, the Appellant states that, *"the pharmacy has been operating as 100 hours pharmacy since 2011. The hours of operation been 7:30 – 22:00 7 days a week (101.5 hrs a week)"*, the Appellant further states that *"during the COVID19 pandemic the pharmacy hours were changed from 7:30 – 22:00 to 9:00 – 21:00 (84 hrs a week)"* and goes on to state that *"The pharmacy started to operate within [sic] limited hours of 9:00 – 19:30 and it was notified to the local NHS via an email on 5 September 2024"*. I note that in its application to amend its core opening hours dated 7 October 2024, provided with its appeal, the Appellant outlined its core opening hours as 7.30am to 10pm. In contrast, I note that the Commissioner in its representations states that, *"the application included the following opening hours [9am to 9pm], a total of 84 hours and not the contracted 100hours"* and that its records indicate that the Appellant *"is listed on the pharmaceutical list to be open Monday to Sunday 07:30 – 22:00"*. The Commissioner also states that *"Under the Covid 19 emergency regulations, pharmacies were able to work behind closed doors for up to 2.5 hours per day (subject to parameters about the timing). There were no provisions for a pharmacy to change its core opening hours. The emergency regulations expired in January 2022 and all pharmacies were required to revert to their original working patterns"*. I note that the Appellant was asked by the Commissioner to provide evidence of the approval for the change of core hours and that this has not been provided nor has the Appellant submitted an application to reduce its core hours to not less than 72 hours per week. Without evidence to the contrary, I must consider that the Appellant's core opening hours are 7.30am to 10pm Monday to Sunday, totalling 101.5 hours per week.
- 6.15 I note that there is no dispute that the Appellant did not open for some of its core hours as set out in the Breach Notice.
- 6.16 I consider that a failure to provide services during core hours amounts to a temporary suspension of services. Temporary suspension of services does not necessarily mean that the Appellant was in breach of paragraph 23(7)(a). The Regulations permit temporary suspension of services in certain circumstances without attracting a breach, e.g. where sufficient advance notice has been provided of an intended suspension of services (pursuant to paragraph 23(1) or to cater for situations which are, for example, outside of the Contractor's control.
- 6.17 The latter is set out in paragraph 23(10) of Schedule 4 of the Regulations, which sets out certain conditions which, if satisfied, would mean that the Appellant would not be in

breach of paragraphs 23(7) and 23(1) of Schedule 4 of the Regulations. I return to this further below.

- 6.18 Before I consider whether the Appellant has satisfied the conditions set out in paragraph 23(10) in relation to breach of paragraph 23(7), I shall consider whether the Appellant's temporary suspension of services amount to a breach of paragraph 23(1), which also relates to temporary suspension of services and to which the conditions set out in paragraph 23(10) also apply.
- 6.19 Given my finding above at 6.14, I consider that the Appellant was, at the time the incidents which led to the Breach Notices being issued, included in the pharmaceutical list to be open for at least 100 hours per week.
- 6.20 Paragraph 23(1)(b) does not require the Appellant to be open at specific times and days but instead requires the Appellant to be open for not less than 100 hours each week.
- 6.21 I note that there is no dispute that the Appellant did not open for at least 100 hours during the relevant period in question.
- 6.22 As indicated at paragraph 6.17 above, the Appellant would not be in breach of paragraphs 23(7) and/or 23(1) of the Regulations if it meets the conditions of paragraph 23(10). I therefore next consider these conditions and the representations provided to me.
- 6.23 I consider that paragraph 23(10) sets out five conditions or tests, which need to be met in order for the Appellant to not be in breach of its terms of services. These are:
- 6.23.1 Establishing that there has been a temporary suspension of pharmaceutical services;
 - 6.23.2 The temporary suspension of pharmaceutical services arose for reasons beyond the control of the Appellant;
 - 6.23.3 The Appellant notified the ICB of the temporary suspension as soon as practicable;
 - 6.23.4 The Appellant implemented its business continuity plan; and
 - 6.23.5 The Appellant has used all reasonable endeavours to resume the provision of pharmaceutical services as soon as practicable.
- 6.24 I consider that all five conditions must be met in order for paragraph 23(10) to apply and therefore for the Appellant not to be in breach.
- 6.25 In respect of the first condition, there is no dispute between the parties that a temporary suspension of pharmaceutical services occurred at the pharmacy during the period in question. The first condition is satisfied.
- 6.26 I will next consider whether the temporary suspension was for reasons beyond the Appellant's control. I note that the Appellant, in its appeal, states that "*The pharmacy experienced several operational and financial incidents in 2024*". I have had regard to the documents provided to me. I note in the email to the Commissioner dated 5 September 2024, the Appellant states that "*The reason for this temporary suspension is due to the ongoing security incidents in the last 2 months. The incidents involved threats and violence in the pharmacy by certain patients and members of public. These*

persistent threats have resulted in considerable damage to the pharmacy, the pharmacy staff have been threatened to be killed and the pharmacy premises to be burnt down. The staff cars parked outside have been damaged and sprayed over. In the recent two days the pharmacy staff and other attending patients have been subjected to disorderly and threatening behaviour by this mob who is based in this neighbourhood and the square opposite the pharmacy. This has become untenable. The local police is fully involved in providing security and investigating responsible individuals and we have taken advice from police in this regard. We are concerned about the ongoing adverse incidents, especially during late hours of the pharmacy operation. Hence the hours are being reduced to monitor the situation immediately.” I also note that the Appellant reported two incidents which occurred at the pharmacy to the police on 17 October 2024 and 4 December 2024.

- 6.27 I consider that the issues faced by the Appellant are extraordinary and should have been considered as an exceptional mitigating factor. From the information before me, I am of the view that the reasons given for the temporary suspension of pharmaceutical services during the period in question was beyond the Appellant’s control.
- 6.28 I next consider condition three. I note that the Appellant initially notified the Commissioner by way of email dated 5 September 2024. In response, the Commissioner stated that *“While it is greatly appreciated that you notified the Pharmacy Commissioning team in the email of 5 September 2024 of the temporary suspension of services between the hours of 19.30 and 21.30 from the 5th of September with a review date of 5th of October. This was not in the format and form required for this purpose. You are now required to submit the notification using the attached form”*. Whilst I have not been provided with a copy of the completed form, I note that Commissioner has confirmed that *“submitted was a notice of temporary suspension of services from 19:00 to 21.00 from Monday to Sunday to be in place until 5 January 2025”*. I further note the Commissioner states that *“The pharmacy has not submitted notices for the temporary suspensions of services that relate to all the hours it is closed”*. As outlined previously, I consider that the Appellant’s core hours are 7.30am to 10pm and it is evident that the notice provided to the Commissioner did not relate to all the core hours provided by the Appellant. Notwithstanding this, it is apparent that the notice was not provided in the manner required by paragraph 29D(2)(a). I therefore consider that condition three is not satisfied.
- 6.29 With regard to condition four and the Appellant’s business continuity plan, I note the Appellant states that *“The following actions have been taken to limit the impact of this reduction in opening hours:*
- 6.29.1 *The regular daily service users for the substance misuse service have already been managed during the hours of 10am - 6pm.*
- 6.29.2 *Patients and service users have been advised to contact the pharmacy staff for any issues if they are not able to access the service during the opening hours. This is done via phone announcement, poster display inside the pharmacy as well outside the pharmacy after the closing times. The information is also updated on the NHS profile and social media accounts.*
- 6.29.3 *The local surgeries, pharmacies and the GP out of hour teams have also been advised of this change of pharmacy opening hours.*
- 6.29.4 *We are actively working with police, our patients and staff to ensure a safe and sustainable.”*

- 6.30 The Appellant also comments in its appeal that *“The pharmacy business continuity plan required us to reduce the opening hours or close temporarily until it was safe to operate”*. The Appellant also states that *“We took advice from the Police, the GPhC and the CPE. We decided to bring locum pharmacist and support staff from nationwide pool even at a very high cost to cover the reduced opening hours so that the patients would continue to access full range of services in the busy period going into winter. Vaccination clinics were planned and we decided to support the service in the area with extra resources. A security firm was consulted for providing safety cover for staff during the late hours and the weekends”*. Whilst it is evident that the Appellant put arrangements in place to reduce the impact to patients, I note that I have not been provided with a copy of the Appellant’s business continuity plan which makes it difficult to ascertain whether the Appellant can be afforded relief under the Regulations. Similarly, regarding condition five, it is difficult to conclude whether the Appellant used all reasonable endeavours to resume the provision of pharmaceutical services as soon as practicable as the information I have been provided with is limited. However given that I have determined that the Appellant has not satisfied at least one of the conditions set out in paragraph 23(10), I consider that the Appellant cannot rely on paragraph 23(10) of the Regulations to show that it is not in breach of paragraph 23(7) of Schedule 4 of the Regulations.
- 6.31 I am therefore of the view that the Appellant is in breach of paragraph 23(7) of Schedule 4 of the Regulations.
- Breach Notice 2 (SHA/ 26440)
- 6.32 I note that Schedule 4, Paragraph 23 states:
- (1) [Subject to paragraph 23A,] an NHS pharmacist (P) must ensure that pharmaceutical services are provided at P’s pharmacy premises—*
- ...
- (b) for not less than 100 hours each week, in the case of premises in respect of which a 100hours condition applies;*
- 6.33 Given my finding above at 6.14, I consider that at the time of the incidents that led to the Breach Notices being issued, the Appellant was included in the pharmaceutical list to be open for at least 100 hours a week.
- 6.34 There is no dispute between the parties with respect to the temporary suspension of services taking place.
- 6.35 The Appellant has not provided me with any information to support a position that it was open for at least 100 hours in each given week in question.
- 6.36 I note in the Breach Notice, the Commissioner stated that *“Since 5 September 2024, the pharmacy has been closing at 19:30. On 2nd October 2024, a temporary suspension of services notice was submitted stating that the pharmacy would close from 19:30 to 21:00 each evening from 5th September 2024 until the 4th January 2025. The notice did not refer to the period from 7:30 to 9:00 in the morning or the period from 21:00 to 22:00 in the evenings.”*
- 6.37 I consider, in light of the above, that the Appellant failed to ensure that pharmaceutical services were provided for not less than 100 hours in each relevant week as required by paragraph 23(1)(b).

6.38 I am, therefore, of the view that the Appellant is in breach of paragraph 23(1)(b) of the Regulations.

Breach Notice 3 (SHA/ 26441)

6.39 I note that Regulation 65 states:

(1) If an application to which regulation 13(1)(b) of the 2005 Regulations (exemption from the necessary or expedient test) applied was granted, the inclusion in the pharmaceutical list of the person listed in relation to—

...

(2) The condition is that the premises must be kept open for at least 100 hours per week for the provision of pharmaceutical services.

6.40 As outlined above at 6.14, I consider that, at the time that the incidents leading to the Breach Notices being issued, that the Appellant was included in the pharmaceutical list to be open for at least 100 hours a week. I note that the Appellant applied to reduce its core opening hours but this was refused by the Commissioner.

6.41 I note that there is no dispute between the parties with respect to the unplanned closures taking place.

6.42 The information provided to me demonstrates that the Appellant has not been providing pharmaceutical services for at least 100 hours a week but has instead been providing 84 hours a week since the start of the Covid-19 pandemic. I therefore consider that it is more than reasonable to conclude that in failing to open between the Appellant's contracted hours of 7.30am to 9am and 9pm to 10pm that the Appellant failed to ensure that the pharmaceutical services were provided for no less than 100 hours in each relevant week as described in Regulation 65(2).

6.43 I am of the view that the Appellant is in breach of Regulation 65(2).

6.44 I note the Commissioner has stated that *"The pharmacy has subsequently submitted a request to close with less than 6 months' notice – which is a separate matter to be considered"*. I affirm the Commissioner's view and subsequently have not considered this point further.

7 Decision

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

7.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations, I confirm the decision of the Commissioner to issue the Breach Notices in relation to SHA/ 26440 and SHA/ 26441 and pursuant to paragraph 9(5)(b) of Schedule 3 to the Regulations, I substitute the decision of the Commissioner to issue the Breach Notice in respect of SHA/ 26439 with a breach notice stating that the Appellant is in breach of paragraph 23(7) of Schedule 4 of the Regulations.

**Head of Appeals
NHS Resolution**