

18 June 2025

REF: SHA/26594

**APPEAL AGAINST SUSSEX ICB DECISION
REGARDING A BREACH NOTICE AT ABRA
HEALTHCARE LTD T/A WELLCARE PHARMACY
(FDR15), 68 MALVERN WAY, ORE VALLEY, HASTINGS,
TN34 3PX**

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

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

1 Outcome

- 1.1 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I confirm the decision of the Commissioner to issue the Breach Notice.

A copy of this decision is being sent to:

Abra Healthcare Ltd T/A Wellcare Pharmacy
Sussex ICB

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1 The Breach Notice

A Breach Notice dated 16 April 2025 was sent to Abra Healthcare Ltd T/A Wellcare Pharmacy ("the Appellant") in respect of 68 Malvern Way, Ore Valley, Hastings, TN34 3PX.

1.1 **"Re: Failure to open when directed to on 25th December 2024 between 14:00-17:00.**

1.2 Following an assessment of the need for the provision of pharmaceutical services on Christmas Day 25th December 2024, and taking into account which pharmacies would be open on that day, NHS Sussex (ICB) directed Abra Healthcare Ltd t/a Wellcare Pharmacy (FDR15), 68 Malvern Way, Ore Valley, Hastings, TN34 3PX (the contractor) to open the above-mentioned pharmacy between 14:00-17:00 on 25th December 2024. No appeal was made against the decision to issue the direction.

26.09.2024	Intention to direct letter sent to the pharmacy via email, delivery receipt was received.
30.10.2024	Final direction letter sent to the pharmacy via email, delivery receipt was received. No appeal was made against the decision to issue the direction
20.12.2024	Abra Healthcare Ltd emailed to say <i>"It has just been brought to my attention that our pharmacy (Wellcare Pharmacy, TN34 3PX) has been put down as open on the 25th of December. I've had no information on this previously, and there has been no plans put in place from our end. On our NHS profile, we are put down as closed on that day. Could you please correct this information on the posters."</i>
20.12.2024	Commissioning Hub replied confirming that the pharmacy needed to open as per the direction and a breach notice would be issued if the pharmacy fails to open as per the direction. A copy of the direction letters and delivery receipts were attached to the response.
22.01.2025	Email sent chasing for claim form to be submitted.
30.01.2025	Second email chaser sent requesting submission of the claim form
10.02.2025	Phoned pharmacy, who said they would pass the message on to the owner and provided alternative email address – chasing email then sent to this email after the phone call

25.02.2025	Phoned pharmacy again and requested pharmacy manager to call the ICB
01.03.2025	ICB phoned the contractor to establish why the claim form had not been submitted. The Contractor confirmed that the pharmacy had not opened, as he only found out about the direction a couple of days before they were due to open and he emailed us to let us know he didn't have any plans in place to staff the pharmacy on Christmas day
03.03.2025	Email sent to contractor asking why the pharmacy did not open as per the direction with a two-week deadline to reply. No response was received
19.03.2025	Email sent to contractor noting a response had not been received and the issue would be escalated to PSRC if a response was not received within 7 days

- 1.3 This failure to ensure the pharmacy premises were open for the provision of pharmaceutical services between 14:00-17:00 on 25th December 2024, was referred to the NHS Sussex ICB Pharmaceutical Services Regulations Committee (PSRC) on 10th April 2025. Having taken into account the reasons why the pharmacy did not open on the specified day, the PSRC was of the opinion that there was no good cause. The Committee was satisfied that Wellcare Pharmacy (FDR15) breached paragraph 23(1)(e), Schedule 4 on 25th December 2024.
- 1.4 A breach notice has been issued and is attached for the failure to open when directed on 25th December 2024 between 14:00-17:00.
- 1.5 You are required not to repeat this breach in the future if your pharmacy is directed to open.
- 1.6 Please acknowledge receipt of this letter and the breach notice by 30th April 2025.
- 1.7 **BREACH NOTICE**
- 1.8 **Name of contractor:** Abra Healthcare Ltd t/a Wellcare Pharmacy (FDR15),
- 1.9 **Address of premises:** 68 Malvern Way, Ore Valley, Hastings, TN34 3PX
- 1.10 **Date of inclusion in the pharmaceutical list for the area of East Sussex Health Wellbeing Board:** 02.02.2018
- 1.11 This is a breach notice issued under Regulation 71 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 1.12 **Nature of the breach:**
- 1.13 Abra Healthcare Ltd t/a Wellcare Pharmacy (FDR15), 68 Malvern Way, Ore Valley, Hastings, TN34 3PX failed to open when directed to on 25th December 2024 between 14:00-17:00 in accordance with Schedule 4 Part 3 Paragraph 25 of the NHS (Pharmaceutical and Local Pharmaceutical) Regulations 2013.

1.14 The contractual hours for the pharmacy are:

Day	Total opening hours	Core opening hours
Monday to Friday	08:45 – 18:00	08:45 – 12:00; 13:00 – 18:00
Saturday	09:00 – 13:00	None
Sunday	Closed	Closed

1.15 **Schedule 4 Part 3 Paragraph 23 (1)(e) requires that**

1.16 **1(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—

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

1.16.2 (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, as set out in that direction, subject to any variation in respect of a rest break in accordance with sub-paragraph (7)(bd),

1.17 The pharmacy failed to open and no notification of a temporary suspension of services for reasons beyond the control of the contractor was received in accordance with Schedule 4 Part 3 Paragraph 23 (10).

1.18 This was therefore a breach of Schedule 4 Part 3 Paragraph 23(1)(e).

1.19 You are required to not repeat the breach again.

1.20 The pharmacy did not make a claim for payment and therefore there are no payments to withhold.

1.21 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:

1.22 NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.

1.23 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.”

2 The Appeal

In a letter dated 17 April 2025 addressed to NHS Resolution, the Appellant appealed against Sussex ICB ("the Commissioner") decision. The grounds of appeal are:

- 2.1 "I am writing to formally appeal the breach decision issued against our pharmacy concerning the requirement to open on 25th December 2024.
- 2.2 At the time the initial communications regarding this matter were sent, I was on leave due to family commitments, including the recent birth of our child in late July. During this period, we had locum pharmacists covering the pharmacy, and I was not routinely checking emails due to numerous hospital appointments and urgent care responsibilities.
- 2.3 Unfortunately, I only became aware of the emails and phone calls related to this matter after being informed by a member of staff. Upon learning of this, I responded to the relevant correspondence.
- 2.4 However, subsequent follow-up communications were again missed during a period when I was still managing critical family care issues.
- 2.5 I fully acknowledge the importance of maintaining communication with the NHS and ensuring compliance with service requirements. This situation was not due to negligence but was a result of exceptional personal circumstances that temporarily affected my ability to respond in a timely manner.
- 2.6 I respectfully request reconsideration of the breach decision, taking into account the context and challenges faced during this period. I remain fully committed to our contractual obligations and to providing the best possible service to our patients and the NHS.
- 2.7 Please let me know if any further information or clarification is required."

3 **Summary of Representations**

This is a summary of representations received on the appeal.

3.1 THE COMMISSIONER

- 3.1.1 "Thank you for your letter of the 22 April 2025 advising us that an appeal has been lodged in relation to the above breach notice.
- 3.1.2 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. Given that in this instance the pharmacy did not open for the time it was directed to open by the Commissioner, rather than on days and times notified to the Commissioner, paragraph 23(7) was not considered in relation to the breach.
- 3.1.3 In relation to the contractor's explanation that they did not see the emails that had been sent because they "*had locum pharmacists covering the pharmacy, and I was not routinely checking emails due to numerous hospital appointments and urgent care responsibilities*".
- 3.1.4 All correspondence was sent to the pharmacy's premises specific NHSmail email address: pharmacy.fdr15@nhs.net.

- 3.1.5 Schedule 4, paragraph 29C sets out the requirement for staff at the pharmacy, including locums, to have access to, and be able to send and receive NHSmail from their premises specific email account. It also sets out that the pharmacy must monitor the premises specific email account with sufficient frequency to ensure the safe and effective supply of medicinal products.
- 3.1.6 **Contact via NHSmail, pharmacy profiles and the Central Alerting System**
- 3.1.7 29C.—(1) *An NHS pharmacist (P) must ensure that pharmacy staff at pharmacy premises (including locums) have access to, and are able to send and receive NHSmail from, a premises specific NHSmail account.*
- 3.1.8 (2) *P must ensure that at least two members of the pharmacy staff have live, linked NHSmail accounts to the premises specific NHSmail account (unless fewer than two members of the pharmacy staff are engaged in the provision of NHS services).*
- 3.1.9 (3) *P must ensure that there is a comprehensive and accurate pharmacy profile in respect of P's pharmacy premises in the [NHS England directory of services], and P must verify and where necessary update the information contained in that profile at least once each quarter of the financial year.*
- 3.1.10 (4) *P must ensure that there is a comprehensive and accurate pharmacy profile in respect of P's pharmacy premises on the NHS.uk website, and P must verify and where necessary update the information contained in that profile at least once each quarter of the financial year.*
- 3.1.11 (5) *As regards the Central Alerting System (CAS) operated by the Medicines and Healthcare products Regulatory Agency (MHRA)—*
- 3.1.12 (a) *P must register P's premises specific NHSmail address with MHRA as an address at which P is content to accept notifications as part of the CAS (unless they are content with the address already in the system);*
- 3.1.13 (b) *if P changes P's premises specific NHSmail address, P must immediately notify MHRA of P's new premises specific NHSmail address, in accordance with paragraph (a); and*
- 3.1.14 (c) *P must monitor P's premises specific NHSmail account with sufficient frequency to ensure the safe and effective supply of medicinal products at or from P's pharmacy premises, and must act on the alerts P receives as part of the CAS, as appropriate.]*
- 3.1.15 I have included a copy of the paper that was presented to the PSRC for reference:
- 3.1.16 **Sussex ICB PSRC 10 April 2025**
- 3.1.17 **Abra Healthcare Ltd t/a Wellcare Pharmacy (FDR15), 68 Malvern Way, Ore Valley, Hastings, TN34 3PX**
- 3.1.18 Background
- 3.1.19 Following an assessment of the need for the provision of pharmaceutical services on Christmas Day 25th December 2024, and taking into account which pharmacies would be open on that day, Sussex (ICB) directed Abra

Healthcare Ltd t/a Wellcare Pharmacy (FDR15), 68 Malvern Way, Ore Valley, Hastings, TN34 3PX (the contractor) to open the above-mentioned pharmacy between 14:00-17:00 on 25th December 2024. The pharmacy confirmed it did not open on 25th December 2024.

3.1.20 Table – See 1.2 above.

3.1.21 **Schedule 4 Part 3 Paragraph 23 (1)(e) requires that**

3.1.22 **1(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—

3.1.23 for the total number of hours each week required by virtue of that direction, and

3.1.24 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, as set out in that direction, subject to any variation in respect of a rest break in accordance with sub-paragraph (7)(bd),

3.1.25 The pharmacy failed to open and no notification of a temporary suspension of services for reasons beyond the control of the contractor was received in accordance with Schedule 4 Part 3 Paragraph 23 (10).

3.1.26 Recommendation

3.1.27 To issue a breach notice under regulation 71 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 for failing to open when directed to open on Christmas Day 25th December 2024 between 14:00-17:00.”

4 Observations

No observations were received by NHS Resolution in response to the representations received on appeal.

5 Consideration

5.1 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.

5.2 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;"

- 5.3 The Regulations contain no definition as to what constitutes a breach of terms of service which is not capable of remedy.
- 5.4 I note that the pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.
- 5.5 I note that the Breach Notice was issued pursuant to Regulation 71(1) and is compliant with the requirements of a breach notice as it includes the nature of the breach and an explanation of the Appellant's right of appeal under Regulation 77(1)(c).
- 5.6 The Breach Notice states:
- 5.6.1 *"Following an assessment of the need for the provision of pharmaceutical services on Christmas Day 25th December 2024, and taking into account which pharmacies would be open on that day, NHS Sussex (ICB) directed Abra Healthcare Ltd t/a Wellcare Pharmacy (FDR15), 68 Malvern Way, Ore Valley, Hastings, TN34 3PX (the contractor) to open the above-mentioned pharmacy between 14:00-17:00 on 25th December 2024. No appeal was made against the decision to issue the direction."*
- 5.7 The Breach Notice gives a record of 10 dates where the Commissioner contacted the pharmacy and one date where the pharmacy contacted the Commissioner. (As listed in paragraph 1.2 above). The Breach Notice continues:
- 5.7.1 *"Having taken into account the reasons why the pharmacy did not open on the specified day, the PSRC was of the opinion that there was no good cause. The Committee was satisfied that Wellcare Pharmacy (FDR15) breached paragraph 23(1)(e), Schedule 4 on 25th December 2024."*
- 5.8 I note that the Appellant states it was on leave due to family commitments and locum pharmacists covered the pharmacy. The Appellant acknowledged *"I was not routinely checking emails due to numerous hospital appointments and urgent care responsibilities."* The Appellant has not disputed that the emails were not sent or not received and indeed confirms *"I only became aware of the emails and phone calls related to this matter after being informed by a member of staff. Upon learning of this, I responded to the relevant correspondence."* The Appellant further states that *"subsequent follow-up communications were again missed during a period when I was still managing critical family care issues."* There is no suggestion that the Appellant did not receive the Commissioner's attempts to contact it either by telephone or by email. I am therefore of the view that the Appellant had the opportunity to enter into local dispute resolution with the Commissioner but did not do so. Given that there is no dispute raised by either party that the local dispute resolution process has not been exhausted, I am content that I can deal with this matter.
- 5.9 I note that the Appellant seeks to appeal against the decision of the Commissioner to issue the Breach Notice for its failure to open for directed hours between 14:00 and 17:00 on 25 December 2024.
- 5.10 The Breach Notice alleges a breach of paragraph 23(1)(e) of Schedule 4 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the "Regulations") for *"failure to ensure the pharmacy premises were open for the provision of pharmaceutical services between 14:00-17:00 on 25th December 2024"*.

5.11 Paragraph 23(1)(e) states:

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

(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, as set out in that direction, subject to any variation in respect of a rest break in accordance with sub-paragraph (7)(bd),

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.

- 5.12 There is no dispute that the Appellant did not open for the directed hours on 25 December 2024. With regard to the delay in communicating its intentions, the Appellant states *"This situation was not due to negligence but was a result of exceptional personal circumstances that temporarily affected my ability to respond in a timely manner."*
- 5.13 The Commissioner states in its representations that *"Following an assessment of the need for the provision of pharmaceutical services on Christmas Day 25th December 2024, and taking into account which pharmacies would be open on that day, Sussex (ICB) directed Abra Healthcare Ltd t/a Wellcare Pharmacy (FDR15), 68 Malvern Way, Ore Valley, Hastings, TN34 3PX (the contractor) to open the above-mentioned pharmacy between 14:00-17:00 on 25th December 2024. The pharmacy confirmed it did not open on 25th December 2024."*
- 5.14 I note that the Appellant states *"I was on leave due to family commitments, including the recent birth of our child in late July. During this period, we had locum pharmacists covering the pharmacy, and I was not routinely checking emails due to numerous hospital appointments and urgent care responsibilities. Unfortunately, I only became aware of the emails and phone calls related to this matter after being informed by a member of staff. Upon learning of this, I responded to the relevant correspondence. However, subsequent follow-up communications were again missed during a period when I was still managing critical family care issues."*
- 5.15 I note that the final direction letter was sent on 30 October 2024 and no appeal was made against the decision to issue the direction. The Appellant emailed the Commissioner on 20 December 2024 stating *"I've had no information on this previously, and there has been no plans put in place from our end."* The Commissioner responded with a copy of the direction letters and delivery receipts and reminder that a breach notice would be issued if the pharmacy failed to open.

- 5.16 The Commissioner refers to paragraph 23(10) in the Breach Notice stating that “*no notification of a temporary suspension of services for reasons beyond the control of the contractor was received. ...*” I am mindful that the Appellant would not be in breach of paragraph 23(1)(e) of Schedule 4 of the Regulations if it meets the conditions of paragraph 23(10).
- 5.17 Paragraph 23(10) states:
- “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.”*
- 5.18 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 paragraph 23(1)(e).
- 5.18.1 Establishing that there has been a temporary suspension of pharmaceutical services;
- 5.18.2 The temporary suspension of pharmaceutical services arose for reasons beyond the control of the Appellant;
- 5.18.3 The Appellant notified the Commissioner of the temporary suspension as soon as practicable;
- 5.18.4 The Appellant implemented its business continuity plan; and
- 5.18.5 The Appellant has used all reasonable endeavours to resume the provision of pharmaceutical services as soon as practicable.
- 5.19 I consider that all five conditions must be met in order for paragraph 23(10) to apply and therefore for the Appellant to be deemed not in breach of paragraph 23(1)(e).
- 5.20 I note that the Appellant has not provided any information to indicate that it had submitted such a notification. I am of the view that the Appellant was responsible for ensuring that its staffing arrangements were such as to ensure adequate continuity. This responsibility includes checking emails sent to the pharmacy’s NHSmail account. The Appellant did not invoke a temporary suspension of pharmaceutical services at any point other than emailing the Commissioner on the 20 December 2024 to say it had no plans in place. Therefore the responsibility for missing the emails sent prior to and after the 25 December 2024 remains with the Appellant.
- 5.21 I have not been provided with any other reason why the Appellant was unable to open on 25 December 2024. I am of the view that the Appellant’s failure to open between 14:00 and 17:00 on 25 December 2024 is a breach of paragraph 23(1)(e) of Schedule 4 of the Regulations.

6 Decision

- 6.1 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.
- 6.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I confirm the decision of the Commissioner to issue the Breach Notice.

**Head of Appeals
NHS Resolution**