

25 June 2025

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FILE REF: **SHA/ 26595**

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COMMISSIONER: **DERBY AND DERBYSHIRE INTEGRATED
CARE BOARD
("the Commissioner")**

PHARMACIST: **PCT HEALTHCARE LIMITED T/A B PAYNE &
SON LTD (FH698)
("the Appellant")**

PREMISES: **24 MARKET PLACE, COHEN, WIRKSWORTH,
DERBYSHIRE, DE4 4ET**

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL
SERVICES) REGULATIONS 2013**

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

1 Outcome

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

A copy of this decision is being sent to:
PCT Healthcare Limited t/a B Payne & Son LTD (FH698)
Derby and Derbyshire ICB

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**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL
SERVICES) REGULATIONS 2013 ["THE REGULATIONS"]**

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

DIRECTION OF ADDITIONAL CORE OPENING HOURS

1 Introduction

- 1.1 Relying on Paragraph 25 of Schedule 4, the Commissioner has requested that the Appellant opens from 2pm to 4pm on Summer Bank Holiday, Monday 25 August 2025.
- 1.2 The Appellant seeks to appeal to NHS Resolution.

Rights of appeal

- 1.3 Where the Commissioner has directed a pharmacist to provide pharmaceutical services for its premises at set times and on set days in accordance with paragraph 25 of Schedule 4 of the Regulations, paragraph 25(7) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").
- 1.4 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 1.5 A pharmacy's opening hours may be categorised as:

1.5.1 'core' opening hours (days on and times at which the pharmacy is obliged to be open), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours; or

1.5.2 'supplementary' opening hours (other days on and times at which the pharmacy undertakes to provide pharmaceutical services, as notified to the Commissioner).

Alteration of 'core' (including 'directed') opening hours

1.6 In accordance with paragraph 1(7)(c) of Schedule 2 to the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list, the proposed core opening hours in respect of the premises during which it will be obliged to provide pharmaceutical services under paragraph 23(1) of Schedule 4 to the Regulations. These may be subject to a direction under paragraph 23(1)(c), (d) or (e).

Alteration of 'supplementary' opening hours

1.7 Other days or times at which services are to be provided (as set out in the original application for entry in the pharmaceutical list pursuant to paragraph 23(3) of Schedule 4 as "supplementary hours") may be altered by giving notice to the Commissioner, in accordance with paragraph 23(6)(a) without the need to make an application.

1.8 Notices under paragraph 23(6)(a) are not subject to review by NHS Resolution.

The Commissioner's Request

1.9 The Commissioner wishes the Appellant to open from 2pm to 4pm on Summer Bank Holiday, Monday 25 August 2025, a day on which it would otherwise be closed.

2 The Direction

In a letter to the Appellant dated 27 March 2025, the Commissioner stated:

2.1 "We have concluded our assessment as to whether to issue a direction pursuant to paragraph 25(1) of Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended and have issued the enclosed direction.

2.2 Your core opening hours on **Monday 25th August 2025** are therefore: **14:00 – 16:00**

2.3 The reasons for directing the above pharmacy to open are:

2.4 There has been no voluntary offer of pharmacy provision in the Wirksworth area to meet the needs of people living in the area on **Monday 25th August 2025**. We have reviewed which pharmacies have opened on previous bank holidays to ensure that directing pharmacies to open has taken place on a fair share basis.

2.5 Please be advised that the level of remuneration for Summer Bank Holiday – 25th August 2025, will be £275.00 per hour for a maximum of 2 hours. This should be claimed through Pharm Outcomes within 28 days of the directed day. If this is not claimed within 28 days, assurance will be sought, and you will have to a maximum of 45 days from the directed day to claim.

2.6 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: nhsr.appeals@nhs.net or

2.7 Primary Care Appeals Case Manager
NHS Resolution
8th Floor 10 South Colonnade,
Canary Wharf,
London,
E14 4PU

2.8 If you have any questions, please do not hesitate to contact me.”

3 The Appeal

In a letter to NHS Resolution dated 23 April 2025, the Appellant appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “Further to a direction of core opening hours received in a full direction letter dated 27 March 2025 for the above pharmacy to open on 25 August 2025 (Summer Bank Holiday) at 14:00 until 16:00, PCT Healthcare Limited writes to appeal to the Primary Care Appeals Unit.
- 3.2 PCT Healthcare Limited are aware of the need for adequate pharmaceutical services provision. However, we feel that this particular direction has not been based on adequate research and reasoning by NHS Derby and Derbyshire ICB. There is no detail within the letters from the ICB, as they are generic letters, to indicate the reasons as to how or why this direction supports an assessment which concluded the pharmaceutical needs of the relevant persons (our patients) will not be met on this day that we are required to open our pharmacy, FH698 in Wirksworth area.
- 3.3 Under Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS Regulations NHS England must include with the notification a statement of “the reasons for the change”. We note that the Regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation, which should conclude with the needs of the local population and likely users of our pharmacy not being met on this day such that we are required to open from 14:00 to 16:00 on 25 August 2025.
- 3.4 In particular, the letter received make no reference to any specific results linking our pharmacy to any lack of service provision on 25 August 2025. Furthermore, there is no actual details of the findings of a consultation or assessment, and therefore no reasons behind the direction which is contrary to paragraph 25(1) and 25(6) of Schedule 4.
- 3.5 With regards to the assessment mentioned where are the results of this assessment, why have they not been shared with contractors in our locality, and in particular our pharmacy FH698.
- 3.6 In addition where are the minutes of the engagement with Community Pharmacy Derby and Derbyshire and the ICB with reference to pharmaceutical provision on 25 August 2025.
- 3.7 The first communication from NHS England was in the email dated 18th November 2024 entitled Directed Rota 25/26. The body of the email indicated:
- 3.8 *Dear colleague,*
- 3.9 *Please find attached the directed rota for 25/26 for your reference.*
- 3.10 *These Direction of opening hours are from Easter 2025 until New Years Day 2026. They are based on a rotational basis:*

25/26									
Focus Area	Good Friday 2025 18 th April	Easter Sunday 2025 20 th April	Easter Monday 2025 21 st April 2025	Early May Bank Holiday 2025 5 th May	Spring Bank Holiday 2025 26 th May	Summer Bank Holiday 2025 25 th August	Christmas Day 2025 25 th December	Boxing Day 2025 26 th December	New Years Day 2026 1 st January
Matlock UCC/, Bakewell, Wirksworth h/Darley Dale	FLA25 Boots Pharmacy DE4 3AR	FQ277 Peak Pharmacy DE4 3NF	FH698 B Payne & Son Ltd DE4 4ET	FLA25 Boots Pharmacy DE4 3AR	FQ277 Peak Pharmacy DE4 3NF	FH698 B Payne & Son Ltd DE4 4ET	FLA25 Boots Pharmacy DE4 3AR	FQ277 Peak Pharmacy DE4 3NF	FH698 B Payne & Son Ltd DE4 4ET

3.11 This email failed to include all contractors within Matlock UCC/Bakewell, Wirksworth & Darley Dale localities.

3.12 Peak Pharmacy operate three pharmacies within the above locations:

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

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

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

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

3.14 PCT Healthcare Limited t/a Peak Pharmacy believe that it is not a robust enough argument to direct our pharmacy based “on a fair share basis” especially without any evidence from the assessment being shared which specifically identifies our pharmacy FH698 as being required to open on Summer Bank Holiday.

3.15 In conclusion, our pharmacy has received this direction, however for the reasons discussed above we do not feel it has been made clear as to why our pharmacy, in particular, has been chosen to open at 14:00 to 16:00 on 25th August 2025, as opposed to another pharmacy in the Wirksworth area.”

4 Representations

In a letter to NHS Resolution dated 27 May 2025 the Commissioner stated:

4.1 “Thank you for your letter dated 25th April 2025 notifying us that PCT Healthcare T/A B Payne & Son (FH698) has appealed against Derby and Derbyshire Integrated Care Board’s decision to direct their pharmacy to open on Summer Bank Holiday 25th August 2025.

4.2 Derby and Derbyshire Integrated Care Board under Schedule 4, Part 3, paragraph 25(2)(b) of the NHS (Pharmaceutical Services and Local Pharmaceutical Services) Regulations 2013 (as amended) has the ability to direct a pharmacy to open where a need is determined. The Regulations state:-

- 4.2.1 *“(6) The NHSCB must notify P of any direction issued or any other action taken under subparagraph (3), and where it sets new days on which or times at which P is to provide pharmaceutical services at Pharmacy premises, it must include with the notification a statement of-*
- 4.2.1.1 *(a) the reasons for the change; and*
- 4.2.1.2 *(b) P’s right of appeal under paragraph (7).”*
- 4.3 As you will be aware, pharmacies are not required by their terms of service to open on Christmas Day, Good Friday, Easter Sunday or on a bank holiday, although they may choose to do so. I can confirm that we have not been notified of any pharmacies that will be open in Belper [sic], Derbyshire area on Summer Bank Holiday (25th August 2025) this year. As you will also be aware, under section 126 of the NHS Act 2006 (Arrangements for pharmaceutical services), Derby and Derbyshire Integrated Care Board must make arrangements for the provision, to persons who are in England, of:
- 4.3.1 *(a) “proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health Service, the Northern Ireland health service or the armed forces of the Crown,*
- 4.3.2 *(b) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of-*
- 4.3.2.1 *(i) his functions in the health service, the Scottish health service or the Northern Ireland health service (other than functions exercised in pursuance of the provision of services mentioned in paragraph (c)), or*
- 4.3.2.2 *(ii) his functions in the armed forces of the Crown,*
- 4.3.3 *(c) listed drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of the provision of primary dental services or equivalent service in the Scottish health service or the Northern Ireland health service,*
- 4.3.4 *(d) such drugs and medicines and such listed appliances as may be determined by the Secretary of State for the purposes of this paragraph and which are ordered for those persons by a prescribed description of person in accordance with such conditions, if any, as may be prescribed, in pursuance of functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown, and*
- 4.3.5 *(e) such other services as may be prescribed.”*
- 4.4 East Midlands Primary Care Team on behalf of Derby and Derbyshire Integrated Care Board has therefore considered what arrangements need to be put in place on Summer Bank holiday (25th August 2025) in order to discharge this duty. We are of the opinion that whilst demand for the full range of pharmaceutical services may be lower on this day compared to a Monday that is not a bank holiday, there will still be a need for pharmaceutical services by people who live within Derby and Derbyshire or are visiting the area for this bank holiday. Whilst GP practices will be closed on Summer Bank holiday (25th August 2025), other providers of NHS services will be open such as the GP out of hours service and A&E departments.
- 4.5 We believe that, as a minimum, the services for which there will be a need on Summer Bank holiday (25th August 2025) are as follows.

- 4.5.1 The dispensing service for prescriptions issued by a NHS service provider that is open on that day or for prescriptions that have been issued on a previous day but which a person has not been able to have dispensed due, for example, being at work
- 4.5.2 The community pharmacist consultation service for both the provision of drugs and also of advice following referral from NHS 111. As GP practices will be closed on Summer Bank Holiday, people seeking advice on the management of low acuity/minor illnesses will turn to, or be referred to, pharmacies.
- 4.6 Of course, some people may wish to access other essential and advanced services. As stated above, we are not aware of any pharmacies that will be open on Summer Bank holiday (25th August 2025) and therefore at present Derby and Derbyshire Integrated Care Board is unable to discharge its duty as set out in section 126 of the NHS Act 2006.
- 4.7 The process that the East Midlands primary care team, on behalf of Derby and Derbyshire ICB, follow by which we could discharge our duty and ensure that all pharmacies are treated as equally as possible in relation to the public and bank holidays and Easter Sunday is as follows;
 - 4.7.1 A formal request is sent out to all pharmacies in the Health and Wellbeing Board (HWB) twice a year requesting the proposed opening days and times for all bank and public holidays, and Easter Sunday Pursuant to paragraph 35(4) of Schedule 4 (pharmacy contractors) or paragraph 25(3), Schedule 5 (dispensing appliance contractors) to the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended.
 - 4.7.2 The information provided by pharmacies regarding their bank holiday opening hours is collated and reviewed to assess the adequacy of service provision. As part of this assessment, engagement takes place with the LPC and the relevant ICB to identify key areas of focus.
 - 4.7.3 Following the assessment and engagement, if the pharmaceutical provision within any of the identified key areas is not adequate to meet the needs of the people or other likely users in the area then a proposal to direct will be issued. As part of the proposal to direct, notice is given to the contractor of the proposed changes to the days on which, or times at which, the premises are to be open. As part of that notice the contractor is advised that it may make written representations about the proposed changes within 30 days.
 - 4.7.4 At the end of the 30 days, should representations be received these will be reviewed by the Pharmaceutical Services Regulations Committee who will decide whether a direction is to be issued regarding the contractor's opening hours. If the committee determine that a direction is to be issued, a 30 day period is given to the contractor in which they can appeal the direction with NHS Resolution.
- 4.8 Following the assessment of the returns from the Derby and Derbyshire HWB area and engagement with the LPC a proposal to direct letter was sent to PCT healthcare t/a B Payne (FH698) on 27th March 2025. Representations against this proposal were subsequently received on 23rd April 2025.
- 4.9 The consideration as to whether to direct a pharmacy to open on Summer Bank Holiday (25th August 2025) involved contractors included in the relevant pharmaceutical list in the locality (in this case Belper [sic], Derbyshire). In seeking to ensure that pharmaceutical services are provided on such days and at such times as are necessary

to meet the needs of people in its area or other likely users of the pharmacy premises, in this case to ensure sufficient cover arrangements are in place on Summer Bank Holiday (25th August 2025) East Midlands Primary Care team on behalf Derby and Derbyshire Integrated Care Board has followed its processes (as described above) accordingly by directing pharmacies to open.

- 4.10 The decision was made to continue with the issue of the direction based on the fact that assurance could not be given that other pharmacies in the area would be open for the period detailed within the direction and the pharmacy had not included within their written representations any mitigating reasons why they should not complete the direction. For these reasons provided above, Derby and Derbyshire Integrated Care Board maintains its decision to issue this direction to PCT Healthcare t/a B Payne & Son, and requests that the appeal be rejected.
- 4.11 I have attached for your information:-
- 4.11.1 Email containing a letter advising contractors that they were being considered for direction on Summer Bank Holiday (25th August 2025) and inviting them to submit representation.
- 4.11.2 Email containing a letter directing them to open on Summer Bank holiday (25th August 2025) and notifying them of their right of appeal.” [see 2.1 to 2.8 above]

Letter dated 25 February 2025 from the Commissioner to the Contractor

- 4.12 **“Re: Proposal to Direct of opening hours on Summer Bank Holiday 25th August 2025 at B Payne and Son Ltd, 24 Market Place, Cohen, Wirksworth, Derbyshire, DE4 4ET - FH698**
- 4.13 **Your current core opening hours are**
- 4.14 Monday to Friday 09:00 – 13:00 & 14:00 – 17:30
- 4.15 Saturday 09:00 – 11:30
- 4.16 Sunday Closed
- 4.17 **The total opening hours (core & supplementary) of the above pharmacy premises are:**
- 4.18 Monday to Friday 09:00 – 17:30
- 4.19 Saturday 09:00 – 13:00
- 4.20 Sunday Closed
- 4.21 We consider that the current core opening hours may not meet the needs of people in the area or other likely users of the pharmacy premises for the following reasons:
- 4.22 There is no pharmacy provision in the Derbyshire area on Summer Bank Holiday 25th August 2025 following requests for a pharmacy to volunteer.
- 4.23 We are carrying out an assessment as to whether to issue a direction pursuant to paragraph 25(1) of Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 requiring you to provide pharmaceutical services on the following date and time:

- 4.24 Summer Bank Holiday 25th August 2025 14:00 – 16:00
- 4.25 If you wish to make written representations about the proposed direction, they should be sent to england.eastmidsparmacy@nhs.net within 30 days of the date of this letter, i.e. by 25th March 2025.
- 4.26 If you have any questions, please do not hesitate to contact me.”

5 Observations

In a letter to NHS Resolution dated 10 June 2025 the Appellant stated:

- 5.1 “Thank you for your email including the representations from Derby and Derbyshire ICB dated 27 May 2025.
- 5.2 We note that the letter states that Derby and Derbyshire ICB “have not been notified of any pharmacies that will be open in the Belper, Derbyshire area on Summer Bank Holiday (25th August 2025) this year”. We do not see the relevance of this when considering an appeal relating to a pharmacy in the Matlock / Bakewell / Wirksworth / Darley Dale area, particularly when Derby and Derbyshire ICB have directed one of our pharmacies in Belper itself (FXW83) to open on this date.
- 5.3 PCT Healthcare Limited shall consider each of the other points within the letter in turn.
- 5.4 **Point 1.**
- 5.5 PCT Healthcare Limited completes the communication regarding which pharmacies shall open on Bank Holidays and Public holidays and returns this as requested to the ICB. This is submitted centrally on a spreadsheet by [LF], as is permitted, rather than individually by each pharmacy.
- 5.6 **Point 2.**
- 5.7 With regards to the assessment mentioned within point 2 where can the results of this assessment be found? Why have they not been shared with contractors in the Derby and Derbyshire locality and, in particular, our pharmacy FH698?
- 5.8 In addition, where are the minutes of the engagement with Community Pharmacy Derbyshire and the ICB with reference to pharmaceutical provision in Derbyshire on the Summer Bank Holiday – 25 August 2025?
- 5.9 **Point 3.**
- 5.10 There is no detail within the letter from Derby and Derbyshire ICB, to indicate the reasons as to how or why this direction supports an assessment which concluded the pharmaceutical needs of the relevant persons in Belper will not be met on this day that we are required to open our pharmacy, FH698 in Wirksworth – some 8 miles away - rather than any other pharmacy being required to open in the locality. No evidence of an assessment has been provided.
- 5.11 **Point 4.**
- 5.12 This is a summary of the procedure laid out in the NHS Regulations and once again does not explain why PCT Healthcare Limited are required to open our pharmacy, FH698 in Wirksworth, rather than any other pharmacy being required to open in the locality.

- 5.13 PCT Healthcare Limited t/a B Payne and Son / Peak Pharmacy believe that Derby and Derbyshire ICB have failed to provide a sufficiently robust argument to direct our pharmacy specifically to open on 25 August 2025, especially without any evidence from the assessment being shared which specifically identifies our pharmacy FH698 in Wirksworth as being required to open on 25 August to fulfil a perceived gap in pharmaceutical provision in Belper.
- 5.14 In conclusion, our pharmacy has received this direction, however for the reasons discussed above we do not feel it has been made clear as to why our pharmacy, in particular, has been chosen to open from 14:00 to 16:00 on 25 August 2025, as opposed to another pharmacy closer to the area identified (in this case, Belper, Derbyshire)."

6 Assessment

- 6.1 I have considered paragraph 25 of Schedule 4 (Determination of pharmacy premises core opening hours instigated by NHS England), which reads as follows:
1. *Where it appears to NHS England, after consultation with or having considered the matter at the request of the Local Pharmaceutical Committee for the area in which the premises are situated, that the days on which or times at which pharmacy premises are or are to be open for the provision of pharmaceutical services will not, or no longer, meet the needs of—*
 - (a) *people in its area; or*
 - (b) *other likely users of the pharmacy premises,**for the pharmaceutical services available at or from those premises, it must carry out an assessment as to whether to issue a direction requiring the NHS pharmacist (P) whose premises they are to provide pharmaceutical services at the pharmacy premises at set times and on set days (which may include Christmas Day, Good Friday and bank holidays).*
 2. *Before concluding the assessment under sub-paragraph (1) NHS England must—*
 - (a) *give notice to P of any proposed changes to the days on which or times at which the pharmacy premises are to be open; and*
 - (b) *allow P 30 days within which to make written representations to NHS England about the proposed changes.*
 3. *When it determines the outcome of its assessment, NHS England must—*
 - (a) *issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs (4) and (5);*
 - (b) *confirm any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises, provided that the existing direction (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub-paragraphs (4) and (5); or*
 - (c) *either—*
 - (i) *revoke, without replacing it, any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations), or*
 - (ii) *in a case where there is no existing direction, issue no direction,*

in which case, by virtue of whichever of paragraph 23(1)(a) or (b) applies, the pharmacy will need to be open for 40 hours each week or for at least 100 hours each week.

4. *Where NHS England issues a direction under sub-paragraph (3) in respect of pharmacy premises that are to be required to be open—*
 - (a) *for more than 40 hours each week, it must set out in that direction—*
 - (i) *the total number of hours each week for which P must provide pharmaceutical services at the pharmacy, and*
 - (ii) *as regards the additional opening hours, the days on which and the times at which P is required to provide those services during those hours,*
but it must not set out in that direction the days on which or times at which P is to provide pharmaceutical services during hours which are not additional opening hours; or
 - (b) *for less than 40 hours each week, it shall set out in that direction the days on which and times at which pharmaceutical services are to be provided at the pharmacy premises.*
5. *NHS England must not issue a direction under sub-paragraph (3) that has the effect simply of requiring pharmacy premises to be open for 40 hours each week on set days and at set times (that is, the direction must have the effect of requiring pharmacy premises to be open for either more or less than 40 hours each week).*
6. *NHS England must notify P of any direction issued or any other action taken under sub-paragraph (3), and where it sets new days on which or times at which P is to provide pharmaceutical services at pharmacy premises, it must include with the notification a statement of—*
 - (a) *the reasons for the change; and*
 - (b) *P's right of appeal under paragraph (7).*
7. *P may, within 30 days of receiving notification under sub-paragraph (6), appeal in writing to the Secretary of State against any direction issued or any other action taken under sub-paragraph (3) which sets new days on which or times at which P is to provide pharmaceutical services.*
8. *The Secretary of State may, when determining an appeal, either confirm the action taken by NHS England or take any action that NHS England could have taken under paragraph (3).*
9. *The Secretary of State shall notify P of the determination and shall in every case include with the notification a statement of the reasons for the determination.*
10. *If the days on which or times at which P is to provide pharmaceutical services at pharmacy premises have been changed in accordance with this paragraph, P must introduce the changes—*
 - (a) *if P has not appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (6);*
or
 - (b) *if P has appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (9).*
11. *This paragraph does not apply where regulation 65(5) to (7) applies.*

6.2 I am mindful that paragraph 23(12) of Schedule 4 states:

For the purposes of calculating the number of hours that a pharmacy premises are open during a week that includes Christmas Day, Good Friday, Easter Sunday or a bank holiday, it is to be deemed that the pharmacy premises were open on that day at the times at which they would ordinarily have been open on that day of the week.

6.3 I am of the view that the pharmacy would normally be closed on Summer Bank Holiday Monday and that this would be in accordance with the Regulations.

6.4 I am conscious that paragraphs 25(1) and (2) require that before any direction is made, an assessment must be undertaken and that, before the assessment is concluded, the pharmacist providing services from the premises must be given notice of the proposed changes and given 30 days to make written representations about the proposed changes. Although I have not been provided with a copy of the consultation with the LPC, I note in its letter of 25 February 2025 the Commissioner states *“We are carrying out an assessment as to whether to issue a direction pursuant to paragraph 25(1) of Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 requiring you to provide pharmaceutical services on the following date and time: Summer Bank Holiday 25th August 2025. 14:00 – 16:00”*. Further I note the letter, provided the Appellant with the opportunity to make representations within 30 days. I note that the Commissioner received representations from the Appellant on 23 April 2025.

6.5 From the information before me, I am of the view that the Commissioner carried out some form of assessment in line with the Regulations.

6.6 I am mindful that the Commissioner is required by paragraph 25(6) of Schedule 4 to provide reasons for its decision. In my view, these reasons should set out the basis of any determination that days and times of opening will no longer be such as will meet the pharmaceutical needs of relevant persons and (if they are, such that a direction may be made) the assessment that led to the direction, taking into account any written representations from the pharmacist.

6.7 I note the Appellant's comments that *“the letter received make no reference to any specific results linking our pharmacy to any lack of service provision on 25 August 2025. Furthermore, there is no actual details of the findings of a consultation or assessment, and therefore no reasons behind the direction which is contrary to paragraph 25(1) and 25(6) of Schedule 4”*.

6.8 In its representations on the appeal, the Commissioner provides its assessment that, on this Bank Holiday, as a minimum, dispensing services are required and that, due to GP practices being closed, patients will turn, or be referred, to community pharmacies. However, I am of the view that I have not been provided with any information to substantiate the view as to why the Appellant's pharmacy is the best placed in terms of access, geography or any other factor to meet any demand for pharmaceutical services. I have not been provided with any information as to why pharmaceutical cover may be required or why the hours of 2pm to 4pm on Monday 25 August 2025 will provide this cover. The letter of 25 February 2025 from the Commissioner states *“We consider that the current core opening hours may not meet the needs of people in the area or other likely users of the pharmacy premises for the following reasons: There is no pharmacy provision in the Derbyshire area on Summer Bank Holiday 25th August 2025 following requests for a pharmacy to volunteer.”* I am of the view however that there is no information from the Commissioner as to how directing pharmacies, taking into account those which have opened previously, provides a robust assessment of the need for pharmaceutical provision in terms of providing services to patients.

- 6.9 I am not satisfied with the Commissioner's approach in this regard and the Commissioner has provided no information to support the conclusion reached. Further, the Commissioner has not set out details of a robust assessment that lies behind the direction to this particular pharmacy, which is a requirement of the Regulations.
- 6.10 On appeal, I may (in accordance with paragraph 25(8) of Schedule 4) either confirm the action of the Commissioner or take such other action as it could have taken.
- 6.11 The letters dated 25 February 2025, 27 March 2025 and 27 May 2025 provide me with no information which I consider sufficient to provide reasons on the basis of which I can confirm the decision, nor information upon which I might rely to make a direction for alternative reasons. The letters explain the process which has taken place and the conclusions reached, but not the reasoning that lies behind the direction.
- 6.12 On the basis of the information available to me, I am not satisfied that the Commissioner has demonstrated that the needs of people in its area or other likely users of the pharmacy for pharmaceutical services will not be met on the Summer Bank Holiday, Monday 25 August 2025.

7 Determination

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

**Head of Appeals
NHS Resolution**