

3 June 2025

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

FILE REF: **SHA/26598**

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

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

PHARMACIST: **PCT HEALTHCARE LTD**
("the Appellant")

PREMISES: **PEAK PHARMACY (FV678)**
BLUEBELL WOOD WAY
ASHFIELD PARK
SUTTON-IN-ASHFIELD
NOTTINGHAMSHIRE
NG17 1JW

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

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

1 Outcome

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

A copy of this decision is being sent to:

PCT Healthcare Ltd
East Midlands Primary Care Team, on behalf of Nottingham and Nottinghamshire ICB

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

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

FILE REF: **SHA/26598**

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

PHARMACIST: **PCT HEALTHCARE LTD
("the Appellant")**

PREMISES: **PEAK PHARMACY (FV678)
BLUEBELL WOOD WAY
ASHFIELD PARK
SUTTON-IN-ASHFIELD
NOTTINGHAMSHIRE
NG17 1JW**

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

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

DIRECTION OF ADDITIONAL CORE OPENING HOURS

1 Introduction

- 1.1 Relying on Paragraph 25 of Schedule 4, the Commissioner has requested that the Appellant open from 14:00 to 16:00 on 25 August 2025 (Summer Bank Holiday).
- 1.2 The Appellant seeks to appeal to NHS Resolution.

Rights of appeal

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

Opening hours

- 1.5 A pharmacy's opening hours may be categorised as:
- 1.5.1 'core' opening hours (days on and times at which the pharmacy is obliged to be open), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours; or
 - 1.5.2 'supplementary' opening hours (other days on and times at which the pharmacy undertakes to provide pharmaceutical services, as notified to the Commissioner).

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

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

Alteration of 'supplementary' opening hours

- 1.7 Other days or times at which services are to be provided (as set out in the original application for entry in the pharmaceutical list pursuant to paragraph 23(3) of Schedule 4 as "supplementary hours") may be altered by giving notice to the Commissioner, in accordance with paragraph 23(6)(a) without the need to make an application.
- 1.8 Notices under paragraph 23(6)(a) are not subject to review by NHS Resolution.

The Commissioner's Request

- 1.9 The Commissioner wishes the Appellant to open from 14:00 to 16:00 on 25 August 2025 (Summer Bank Holiday), 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 **Summer Bank Holiday, 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 Sutton-in-Ashfield area to meet the needs of people living in the area on 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 PharmOutcomes within 28 days of the directed day. If this is not claimed within 28 days, assurance will be sought, and you will have to a maximum of 45 days from the directed day to claim.

- 2.6 Please ensure that you update the directory of service (DOS) and NHS UK using profile manager with the hours that you are being directed to open.
- 2.7 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: nhsr.appeals@nhs.net or
- 2.8 Primary Care Appeals Case Manager
NHS Resolution
8th Floor 10 South Colonnade,
Canary Wharf,
London,
E14 4PU
- 2.9 If you have any questions, please do not hesitate to contact me.”

3 The Appeal

In a letter to NHS Resolution dated 23 April 2024 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 Nottingham and Nottinghamshire 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, FV678 in Sutton-in-Ashfield.
- 3.3 PCT Healthcare Limited emailed written representations regarding this direction when we received the proposal to direct, to the ICB on 20 March 2025, these representations were never acknowledged or replied to which is contrary to the NHS Pharmaceutical and LPS Regulations NHS England.
- 3.4 Under Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS Regulations NHS England [sic] the direction letter 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.
- 3.5 In particular, the letter received make no [sic] 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.
- 3.6 With regards [sic] 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 FV678.

3.7 In addition where are the minutes of the engagement with Community Pharmacy Nottingham and Nottinghamshire and the ICB with reference to pharmaceutical provision on 25 August 2025.

3.8 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:

3.8.1 “Dear colleague,

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

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

3.9 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 FV678 as being required to open on the Summer Bank Holiday.

3.10 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 on 25 August 2025, as opposed to another pharmacy in the Sutton-in-Ashfield area.”

Email to Commissioner dated 20 March 2025

3.11 “Further to your recent email & letter regarding the proposed direction for the above pharmacy on Summer Bank Holiday, 25th August 2025.

3.12 Firstly, we are aware of the need for adequate pharmaceutical services provision. However, we feel that this particular direction has not been based on adequate research and reasoning by NHS Nottingham & Nottinghamshire ICB. There is no detail within the letter of direction to indicate the reasons as to how or why this direction concluded the pharmaceutical needs of the relevant persons will not be met [sic] on this day that we are required to open our pharmacy, FV678.

3.13 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 [sic] on 25 August 2025.

3.14 We are unable to see within the letter any details of the consultation held with CPE Nottingham & Nottinghamshire regarding the Direction for the Summer Bank Holiday in August 2025 within the Sutton-in-Ashfield locality.”

4 Representations

In a letter to NHS Resolution dated 29 April 2025 the Commissioner stated:

4.1 “Thank you for your letter dated 28 April 2025. The East Midlands Primary Care Team on behalf of Nottingham and Nottinghamshire Integrated Care Board would like to make the following representations with respect to the aforementioned appeal.

- 4.2 The process that the East Midlands primary care team follow for directing for all bank holidays on behalf of Nottingham and Nottinghamshire ICB is as follows;
- 4.2.1 A formal request is sent out to all pharmacies in the Health and Wellbeing Board (HWB) twice a year requesting the proposed opening days and times for all bank and public holidays, and Easter Sunday Pursuant to paragraph 35(4) of Schedule 4 (pharmacy contractors) or paragraph 25(3), Schedule 5 (dispensing appliance contractors) to the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended.
 - 4.2.2 The information provided by pharmacies regarding their bank holiday opening hours is collated and reviewed to assess the adequacy of service provision. As part of this assessment, engagement takes place with the LPC and the relevant ICB to identify key areas of focus.
 - 4.2.3 Following the assessment and engagement, if the pharmaceutical provision within any of the identified key areas is not adequate to meet the needs of the people or other likely users in the area then a proposal to direct will be issued. As part of the proposal to direct, notice is given to the contractor of the proposed changes to the days on which, or times at which, the premises are to be open.
 - 4.2.4 As part of that notice the contractor is advised that it may make written representations about the proposed changes within 30 days.
 - 4.2.5 At the end of the 30 days, should representations be received these will be reviewed by the Pharmaceutical Services Regulations Committee who will decide whether a direction is to be issued regarding the contractor's opening hours. If the committee determine that a direction is to be issued, a 30 day period is given to the contractor in which they can appeal the direction with NHS Resolution.
- 4.3 Following the assessment of the returns from the Nottingham and Nottinghamshire HWB area and engagement with the LPC a proposal to direct letter was sent to PCT Healthcare Peak Pharmacy (FV678) on 25 February 2025. Representations against this proposal were subsequently received on 20 March 2025.
- 4.4 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.
- 4.5 I would like to take this opportunity to respond to any further representations provided by PCT Healthcare Limited T/A Peak Pharmacy, Bluebell Wood Way, Sutton-in-Ashfield, Nottinghamshire, NG17 1JW."

5 Observations

In a letter to NHS Resolution dated 13 May 2025 the Appellant stated:

- 5.1 "Thank you for your email and the included representations from The East Midlands Primary Care Team on behalf of Nottingham and Nottinghamshire ICB.
- 5.2 PCT Healthcare Limited shall consider each of the points within the letter in turn.
- 5.3 **Point 1.**

- 5.4 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.
- 5.5 **Point 2.**
- 5.6 With regards [sic] to the assessment mentioned within point 2 where are the results of this assessment, why have they not been shared with contractors in the Nottingham locality, and in particular our pharmacy FV678.
- 5.7 In addition, where are the minutes of the engagement with Community Pharmacy Nottingham and Nottinghamshire and the ICB with reference to pharmaceutical provision in Sutton-in-Ashfield on 25 August 2025.
- 5.8 **Point 3.**
- 5.9 There is no detail within the letter from Nottingham and Nottinghamshire ICB, to indicate the reasons as to how or why this direction supports an assessment which concluded the pharmaceutical needs of the relevant persons will not be met on this day that we are required to open our pharmacy, FV678 in Sutton-in-Ashfield rather than any other pharmacy being required to open in Sutton-in-Ashfield. No evidence of an assessment is provided to us as the contractor which is contrary to the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 5.10 **Point 4.**
- 5.11 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, FV678 in Sutton-in-Ashfield, rather than any other pharmacy being required to open in Sutton-in-Ashfield.
- 5.12 PCT Healthcare Limited t/a Peak Pharmacy believe that Nottingham and Nottinghamshire ICB have failed to provide a robust enough 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 FV678 as being required to open on this day.
- 5.13 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 25 August 2025, as opposed to another pharmacy in Sutton-in-Ashfield.”

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 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. I note the Commissioner in its representations states that “*As part of this assessment, engagement takes place with the LPC...*”, although I have not been provided with any details regarding the consultation with the LPC. I note the Commissioner first contacted the Appellant regarding the rota for directed hours by email dated 18 November 2024. A proposal to direct letter was sent to the Appellant on 25 February 2025 and the Appellant submitted representations by email dated 20 March 2025, although it states that these were not acknowledged or replied to. The Commissioner made the decision to continue with the issue of the direction.
- 6.5 From the limited 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 comment 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 I have not been provided with sufficient information as to how the assessment was carried out or which pharmacies have been identified as potentially suitable for direction. An assessment based on "*voluntary offer of pharmacy provision in the Sutton-in-Ashfield area*" and reviewing "*which pharmacies have opened on previous bank holidays to ensure that directing pharmacies to open has taken place on a fair share basis*" is not what was envisaged by the Regulations.
- 6.9 I am of the view that I have not been provided with any information to substantiate the view as to why the Appellant's pharmacy is the best placed in terms of access, geography or any other factor to meet any demand for services. I have not been provided with any information as to what pharmaceutical cover may be required or why the hours of 14:00 to 16:00 on Monday 25 August 2025 will provide this cover, beyond the Commissioner's explanation that "*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.*" I am of the view that there is no information from the Commissioner as to how directing pharmacies, taking into account those which have opened previously, provides a robust assessment of the need for pharmaceutical provision in terms of providing services to patients.
- 6.10 I am not satisfied with the Commissioner's approach in this regard and the Commissioner's representations provide no information to suggest that there has been a robust assessment behind the direction to this particular pharmacy, which is a requirement of the Regulations.
- 6.11 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.
- 6.12 The direction letter of 27 March 2025 does not provide me with information which I consider sufficient to provide reasons on the basis of which I can confirm the decision, nor information upon which I might rely to make a direction for alternative reasons.
- 6.13 On the basis of the information available to me, I am not satisfied that the Commissioner has demonstrated that the needs of people in its area or other likely users of the pharmacy for pharmaceutical services will not be met on Monday 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