

26 June 2025

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

FILE REF: **SHA/ 26599**

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

COMMISSIONER: **LEICESTER, LEICESTERSHIRE AND
RUTLAND INTEGRATED CARE BOARD
("the Commissioner")**

PHARMACIST: **PCT HEALTHCARE LIMITED T/A PEAK
PHARMACY (FA409) ("the Appellant")**

PREMISES: **65 LEICESTER ROAD NARBOROUGH,
LEICESTERSHIRE, LE19 2DU**

**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 Peak Pharmacy (FA409)
Leicester, Leicestershire and Rutland ICB

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**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL
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**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 10am to 12pm 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 10am to 12pm 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 25 August 2025** are therefore: **10:00 – 12:00**

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 Narborough area to meet the needs of people living in the area on **Monday 25 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 Spring Bank Holiday – 25 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 will be sought, and you will have to a maximum of 45 days from the directed day to claim [sic].

- 2.7 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.
- 2.8 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
- 2.9 Primary Care Appeals Case Manager
NHS Resolution
8th Floor 10 South Colonnade,
Canary Wharf,
London,
E14 4PU
- 2.10 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 10:00 until 12:00, 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 Leicester and Leicestershire ICB.
- 3.3 Having checked this pharmacy NHS email there does not seem be a proposal to direct letter sent from the ICB.
- 3.4 There is no detail within the letter from the ICB, as it is generic, 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, FA409 in the Narborough area.
- 3.5 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 10:00 to 12:00 on 25 August 2025.
- 3.6 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.
- 3.7 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 FA409.

- 3.8 In addition where are the minutes of the engagement with Community Pharmacy Leicester and Leicestershire and the ICB with reference to pharmaceutical provision on 25 August 2025.
- 3.9 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:
- 3.10 *Dear colleague,*
- 3.11 *Please find attached the directed rota for 25/26 for your reference.*
- 3.12 *These Direction of opening hours are from Easter 2025 until New Years Day 2026. They are based on a rotational basis"*
- 3.13 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 FA409 as being required to open on the Summer Bank Holiday.
- 3.14 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 at 10:00 to 12:00 on 25 August 2025, as opposed to another pharmacy in the Narborough area."

4 Representations

In a letter to NHS Resolution dated 22 May 2025 the Commissioner stated:

- 4.1 "Thank you for your letter dated 24th April 2025. The East Midlands Primary Care Team on behalf of Leicestershire & Rutland Integrated Care Board would like to make the following representations.
- 4.2 The process that the East Midlands primary care team follow for directing for all bank holidays on behalf of Leicester, Leicestershire & Rutland Integrated Care Board (ICB) is as follows.
 - 4.2.1 A communication 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, pursuant to paragraph 35(4) of Schedule 4, part 3, paragraph 29C(1) of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013 \(legislation.gov.uk\)](#) an NHS pharmacist must ensure that pharmacy staff at the pharmacy premises (including locums) have access to, and are able to send and receive NHS mail from, a premises specific NHS mail account.
 - 4.2.2 Once it is known when the pharmacies in a HWB area will be open, an assessment will be made as to whether a contractor is to open on a particular day or days. Part of the assessment includes engagement with the Local Pharmaceutical Committee (LPC).
 - 4.2.3 Following the assessment and engagement, if it is felt that the pharmaceutical provision within any area would not meet the needs of the local population, then a proposal to direct will be issued. As part of the proposal to direct, notice is given to the contractor of the proposed changes to the days on which, or times at which, the premises are to be open. As part of that notice the

contractor is advised that it may make written representations about the proposed changes within 30 days.

- 4.2.4 At the end of the 30 days, should representations be received these will be reviewed by the Pharmaceutical Services Regulations Committee who will decide whether a direction is to be issued regarding the contractor's opening hours. If the decision is to issue the direction, a 30-day period is given to the contractor in which they can appeal the direction with NHS Resolution.

- 4.3 Please note that the Appellant's usual core opening hours are:

- 4.3.1 Monday – Friday 08:45 –12:00 –13:15 -18:00

- 4.3.2 Saturday CLOSED

- 4.3.3 Sunday CLOSED

- 4.4 Following the assessment of the returns from Leicester, Leicestershire & Rutland and engagement with the Local Pharmaceutical Committee, according to our records a proposal to direct letter was to PCT Healthcare Limited T/A Peak Pharmacy, 65 Leicester Road, Narborough, Leicester on 25th February 2025. The contractor did not provide any representations against the proposal to direct and therefore a direction to open on 25th August 2025 was issued on 27th March 2025. The direction was for the core opening hours: 10:00am-12:00pm.

- 4.5 The process that the East Midlands primary care team follow for directing for all bank holidays on behalf of Leicester, Leicestershire & Rutland ICB is as follows, the Bank Holiday rota is shared on a fair share basis.

- 4.6 I would like to take this opportunity to respond to any further representations provided by PCT Healthcare Limited T/A Peak Pharmacy, 65 Leicester Road, Narborough, Leicester, LE19 2DU."

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 the East Midlands Primary Care Team on behalf of Leicester, Leicestershire and Rutland 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. This is submitted centrally on a spreadsheet by [LF] as is permitted, rather than individually by each pharmacy.

- 5.5 All PCT Healthcare Limited pharmacies have an NHS shared mailbox which can be accessed by the pharmacy team and Head Office personnel.

- 5.6 **Point 2.**

- 5.7 With regards [sic] 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 Leicester, Leicestershire and Rutland locality and, in particular, our pharmacy FA409.

- 5.8 In addition, where are the minutes of the engagement with Community Pharmacy LLR and the ICB with reference to pharmaceutical provision in Leicester on the Summer Bank Holiday – 25 August 2025?
- 5.9 **Point 3.**
- 5.10 There is no detail within the letter from East Midlands Primary Care Team on behalf of Leicester, Leicestershire and Rutland 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, FA409 in Narborough 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, FA409 in Narborough rather than any other pharmacy being required to open in the locality.
- 5.13 PCT Healthcare Limited t/a Peak Pharmacy believe that Leicester, Leicestershire and Rutland 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 FA409 as being required to open on 25 August.
- 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 10:00 to 12 noon on 25 August 2025, as opposed to another pharmacy in the locality.”

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 the Commissioner in its representations states *“Following the assessment of the returns from Leicester, Leicestershire & Rutland and engagement with the Local Pharmaceutical Committee...”*. I note the Commissioner first contacted the Appellant regarding the rota for directed hours by email dated 18 November 2024. I note the Appellant states that *“Having checked this pharmacy NHS email there does not seem be a proposal to direct letter sent from the ICB”* and in response, the Commissioner states that a proposal to direct letter was sent to the Appellant on 25 February 2025. Whilst the Appellant has not responded to this point in its observations, I have not been provided with a copy of the email that was sent to the Appellant enclosing the proposal to direct letter nor the proposal to direct letter itself and given that the Appellant does not believe the letter was sent, this information would have been helpful. This makes it difficult for me to form a view on whether the Commissioner allowed the Appellant 30 days to make written representations about the proposed direction before concluding the assessment in line with the Regulations.

6.5 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.

- 6.6 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."*
- 6.7 On the basis of the information before me, including the Commissioner's response to the appeal, 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 Narborough 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.
- 6.8 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 10am to 12pm on Monday 25 August 2025 will provide this cover. The letter of 27 March 2025 from the Commissioner states *"There has been no voluntary offer of pharmacy provision in the Narborough area to meet the needs of people living in the area on Monday 25 August 2025."* 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 nor am I satisfied that a proposal to direct letter was sent to the Appellant.
- 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 27 March 2025 and 22 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**