

19 August 2025

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

FILE REF: SHA/26653

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

COMMISSIONER: NORTHAMPTONSHIRE ICB
("the Commissioner")

PHARMACIST: SUPERDRUG STORES PLC
("the Appellant")

PREMISES: SUPERDRUG PHARMACY
9 – 11 WOOD STREET
GROSVENOR CENTRE
NORTHAMPTON
NORTHAMPTONSHIRE
NN1 2ED

**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:

Superdrug Stores Plc
East Midlands Primary Care Team on behalf of Northamptonshire 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 open from 2pm to 4pm on Thursday 25 December 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 Thursday 25 December 2025, Christmas Day, a day on which it would otherwise be closed.

2 The Direction

In a letter to the Appellant dated 23 June 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 **Thursday 25 December 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 Northampton NN1 area to meet the needs of people living in the area on 25 December 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 Christmas Day – 25 December 2025, will be £350.00 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 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 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 1 July 2025 the Appellant appealed against the Commissioner’s decision. The grounds of appeal are:

3.1 “Superdrug Pharmacy at 9 – 11 Wood Street, Grosvenor Centre, Northampton, Northamptonshire, NN1 2ED received the above direction from Northamptonshire ICB on 23rd June 2025 to open on Thursday 25 December 2025: 14:00 – 16:00

3.2 Whilst we fully understand the need for such directions, to ensure there are sufficient levels of pharmaceutical provisions on bank holidays, on almost all occasions all Superdrug Pharmacies have complied with such directions, as well as voluntarily offered to open on bank holidays.

3.3 Therefore, we respectfully request the right to contest this direction for the following reasons:

3.3.1 Superdrug Pharmacy Northampton this year were directed and complied to open on Easter Sunday 20th April 2025 14:00 – 16:00

3.3.2 They voluntarily opened all day Good Friday 18th April 2025

3.3.3 In 2024 they were directed and complied to open on

3.3.3.1 New Year’s Day, 1st January 2024 14:00 – 16:00

3.3.3.2 August Bank Holiday, 26th August 2024 14:00 – 16:00

3.3.4 In 2024 they voluntarily opened all day Good Friday 29th March 2024

3.4 Could I kindly request the justification for directing to open on Christmas Day given that we have already opened as per direction on Sunday 20th April 2025 plus confirmation that all other pharmacies within Northampton have already covered rotas in 2025.

3.5 The pharmacy has co-operated with the directions over the past 2 years as well as voluntarily opened their full operating hours on 2 other occasions on national bank holidays.

3.6 We would ask the ICB to consider asking another pharmacy contractor who have yet to serve their directions or yet to cover a Rota in 2025 to open on Thursday 25th December 2025 14:00 – 16:00.”

4 Representations

Whilst no representations were made by the Commissioner in response to the appeal, the papers received from the Commissioner, which consisted of the initial proposal to direct letter and the final direction letter, were circulated by NHS Resolution to the Appellant for information only.

Letter dated 15 May 2025 from the Commissioner to the Appellant

- 4.1 **“Re: Proposal to Direct for Christmas Day 2025 Bank Holiday at FDF79, Superdrug Pharmacy, 9-11 Wood Street, Grosvenor Centre, Northampton, Northamptonshire, NN1 2ED.**
- 4.2 **Your current core opening hours are**
- 4.2.1 Monday to Friday: 09:00 – 13:00 15:00 – 17:30
- 4.2.2 Saturday: 09:00 – 13:00 15:00 – 17:30
- 4.2.3 Sunday: Closed
- 4.3 **The total opening hours (core & supplementary) of the above pharmacy premises are:**
- 4.3.1 Monday – Thursday: 08:30 – 17:30
- 4.3.2 Friday: 08:00 – 18:00
- 4.3.3 Saturday: 08:00 – 18:00
- 4.3.4 Sunday: Closed
- 4.4 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:
- 4.5 There is no pharmacy provision in the Northamptonshire NN1 area on Christmas Day, 25th December 2025 following requests for a pharmacy to volunteer.
- 4.6 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:
- 4.6.1 **Christmas Day, 25th December 2025**
- 4.6.2 **14:00 – 16:00**
- 4.7 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 15th June 2025.
- 4.8 If you have any questions, please do not hesitate to contact me.”

5 **Assessment**

- 5.1 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.*

5.2 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.

- 5.3 I am of the view that the pharmacy would normally be closed on Christmas Day and that this would be in accordance with the Regulations.
- 5.4 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 that the letter dated 15 May 2025 advised the Appellant that the Commissioner was “*carrying out an assessment as to whether to issue a direction*” and provided the Appellant the opportunity to make representations within 30 days.
- 5.5 From the information before me, I am of the view that the Commissioner carried out some form of assessment in line with the Regulations.

- 5.6 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.
- 5.7 I have not been provided with any 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 Northampton NN1 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.
- 5.8 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 services. I have not been provided with any information as to what pharmaceutical cover may be required or why the hours of 2pm to 4pm on Thursday 25 December 2025 will provide this cover, beyond the Commissioner’s comment in its letter dated 15 May 2025 that “*we consider that current core opening hours may not meet the needs of people in the area or other likely users of the pharmacy premises*”. 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.
- 5.9 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.
- 5.10 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.
- 5.11 The letters dated 15 May 2025 and 23 June 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.
- 5.12 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 Thursday 25 December 2025.

6 Determination

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

**Head of Appeals
NHS Resolution**