

2 October 2025

8th Floor
10 South Colonnade
Canary Wharf
London
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FILE REF: **SHA/26682**

Tel: 020 3928 2000
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COMMISSIONER: **NOTTINGHAM AND
NOTTINGHAMSHIRE ICB
("the Commissioner")**

PHARMACIST: **TESCO STORES LTD
("the Appellant")**

PREMISES: **TESCO INSTORE PHARMACY
OAKTREE LANE SHOPPING CENTRE
JUBILEE WAY SOUTH
MANSFIELD
NOTTINGHAMSHIRE
NG18 3RT**

**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 I confirm the action of the Commissioner to issue the direction.

A copy of this decision is being sent to:

Tesco Stores Ltd
East Midlands Primary Care Team, on behalf of Nottingham and Nottinghamshire ICB

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10 South Colonnade
Canary Wharf
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**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL
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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 open from 14:00 to 16:00 on 25 December 2025 (Christmas Day).
- 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 December 2025 (Christmas Day), a day on which it would otherwise be closed.

2 The Direction

In a letter to the Appellant dated 23 July 2025, the Commissioner stated:

- 2.1 "In our letter of 5 June 2025, we provided information as to why it was necessary to direct one or more pharmacies to open on 25 December 2025, the agreement that had been reached with Community Pharmacy Nottingham on the matter of directing, and why the above-named pharmacy was deemed the most appropriate to direct to open.
- 2.2 Thank you for your representations regarding the proposal to issue a direction requiring the above-named pharmacy to open and provide pharmaceutical services on 25 December 2025.

- 2.3 The East Midlands Pharmaceutical Services Regulations Committee (PSRC) is responsible for determining whether directions are to be issued to pharmacy contractors in the East Midlands. It has been established under section 65Z5 of the NHS Act 2006 by the following integrated care boards (ICBs).
- 2.3.1 Derbyshire and Nottinghamshire ICB
 - 2.3.2 Leicester, Leicestershire and Rutland ICB
 - 2.3.3 Lincolnshire ICB
 - 2.3.4 Northamptonshire ICB
 - 2.3.5 Nottingham and Nottinghamshire ICB.
- 2.4 The PSRC is hosted by Nottingham and Nottinghamshire ICB who manage this function on behalf of the four other ICBs.
- 2.5 The PSRC met on 15 July 2025 and considered your representations. It noted that you stated that:
- 2.5.1 opening on 25 December 2025 would be “significantly more challenging” when compared to a day that is not a public holiday, facilitating access to the pharmacy poses potential security and safety risks due to the public having access to the whole store,
 - 2.5.2 there appeared to have been misinterpretation of your previous email and Tesco Pharmacy has been open “every day on all other bank holidays apart from Easter Sunday”,
 - 2.5.3 the pharmacy opened on 26 May 2025, and
 - 2.5.4 there are six other pharmacies located in the vicinity and more in the surrounding areas.
- 2.6 Whilst the PSRC was sympathetic to the challenges the pharmacy would face as it is located in the store rather than on the edge with its own access, it was not persuaded that of itself that [sic] is sufficient reason not to issue a direction. The PSRC had previously noted that when this matter has been raised on appeal, NHS Resolution is of the view that it is a matter for contractors to arrange appropriate access in the event that they are required to open their pharmacy outside of its usual core and supplementary opening hours. The PSRC noted that it is giving you nearly five months’ notice and is of the opinion that this is sufficient time to prepare accordingly.
- 2.7 In issuing a direction the PSRC noted the flexibility in the [premises approved particulars](#) issued by NHS England for the door to the store to remain locked and for a member of staff to be posted immediately inside the door. It was of the opinion that this would largely address the concerns regarding the public having access to the entire store.
- 2.8 The PSRC was of the opinion that there had been no misinterpretation of your previous emails. It noted that you had previously stated that the pharmacy

would not be opening on “Christmas, Boxing and New Years Day”, and that this is permitted by the terms of service. As no other pharmacy in the area will be open on 25 December 2025 it is therefore necessary for the PSRC to direct one or more pharmacies to open. It noted that you have chosen to open the pharmacy on other bank holidays, but that is not a material factor when considering whether or not a pharmacy to open. The needs of patients or other users of a pharmacy for pharmaceutical services on 25 December 2025 is a material factor, along with the pharmacy that is, or pharmacies that are, best placed to meet those needs.

2.9 Taking into account the assessment, the results of consulting with Community Pharmacy Nottingham and your representations, the PSRC was satisfied that:

2.9.1 it is necessary to direct a pharmacy to open 14:00 – 16:00 on 25 December 2025 as there will be no pharmacies open on that day, and

2.9.2 the above-named pharmacy is the most appropriate to direct for the reasons set out in our letter dated 5 June 2025.

2.10 You have a right of appeal to the Secretary of State against the issuing of this direction. Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of receiving this notice to nhsr.appeals@nhs.net or:

2.11 Primary Care Appeals
NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

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

3 The Appeal

In a letter to NHS Resolution dated 25 July 2025 the Appellant appealed against the Commissioner’s decision. The grounds of appeal are:

3.1 “I am writing to formally appeal the proposal for FWJ86– Tesco In-Store Pharmacy, Jubilee Way, Mansfield, NG18 3RT to open on Christmas Day 2025 from 14:00 to 16:00. We believe this mandate places an unreasonable strain on our pharmacy operations and resources for several critical reasons:

3.1.1 Operational Challenges within a Superstore: The store will be closed on Christmas day. Operating an in-store pharmacy presents unique logistical complexities compared to standalone locations. Opening specifically requires the presence of additional store personnel, including a store manager and security, solely to facilitate access to the premises. Arranging this necessary support, especially on a public holiday when the main store is closed, is significantly more challenging.

- 3.1.2 **Security and Safety Concerns:** Facilitating access solely for the pharmacy within a closed superstore environment inherently poses potential security and safety risks by potentially allowing public access to the entire premises as patients would need to walk through the main store to access the pharmacy which is located at the back of the store.
- 3.1.3 **Misinterpretation of Communication:** Our understanding of the previous email communication was that pharmacies were specifically asked to respond if they had any intentions in opening on bank holidays. We responded that we were not going to open on Christmas, Boxing and New Years Day and we believe it is inequitable to infer acceptance or unilaterally select our pharmacy based on this. Also, Tesco Pharmacy has been open every day on all other bank holidays apart from Easter Sunday.
- 3.1.4 **Previous Opening and Local Alternatives:** Our pharmacy previously fulfilled a requirement by opening on May 26th Bank Holiday this year 2025. Furthermore, there are approximately six other pharmacies located within the vicinity and more in the surrounding areas.
- 3.2 Given the substantial operational challenges, the inability to secure necessary staffing, the procedural fairness issues, and the availability of alternative pharmacies in the area, we respectfully request that the proposal for our pharmacy to open on Christmas Day 2025 be rescinded.”

4 Representations

In a letter to NHS Resolution dated 5 September 2025, the Commissioner stated:

- 4.1 “Thank you for your letter dated 11 August 2025 notifying us that Tesco In-Store Pharmacy (FWJ86) has appealed against NHS Nottingham and Nottinghamshire Integrated Care Boards (ICBs) decision to direct their pharmacy (FWJ86) to open on Christmas Day 25 December 2025
- 4.2 We note that Tesco Pharmacy (FWJ86) are appealing this direction for the reasons listed below;
 - 4.2.1 *Operational Challenges within a Superstore: The store will be closed on Christmas day. Operating an in-store pharmacy presents unique logistical complexities compared to standalone locations. Opening specifically requires the presence of additional store personnel, including a store manager and security, solely to facilitate access to the premises. Arranging this necessary support, especially on a public holiday when the main store is closed, is significantly more challenging.*
 - 4.2.2 *Misinterpretation of Communication: Our understanding of the previous email communication was that pharmacies were specifically asked to respond if they had any intentions in opening on bank holidays. We responded that we were not going to open on Christmas, Boxing and New Years Day and we believe it is inequitable to infer acceptance or unilaterally select our pharmacy based on this. Also, Tesco Pharmacy has been open every day on all other bank holidays apart from Easter Sunday.*

4.2.3 *Previous Opening and Local Alternatives: Our pharmacy previously fulfilled a requirement by opening on May 26th Bank Holiday this year 2025. Furthermore, there are approximately six other pharmacies located within the vicinity and more in the surrounding areas.*

4.3 The East Midlands Primary Care Team on behalf of NHS Nottingham and Nottinghamshire ICB would like to make the following representations:

4.4 NHS Nottingham and Nottinghamshire ICB 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.

4.5 The regulations state;

“(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 –

(a) the reasons for the change and

(b) P’s right of appeal under paragraph (7).”

4.6 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.

4.7 NHS Nottingham and Nottinghamshire ICB have not been notified of any pharmacies that will be open in the Mansfield area on Christmas Day 25 December 2025 and no pharmacies have volunteered to open on this day. Under section 126 of the NHS Act 2006 (Arrangement for pharmaceutical services), NHS England (now delegated to the ICBS) must make arrangements for the provision, to person’s [sic] who are in England of;

(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,

(b) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of—

(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

(ii) his functions in the armed forces of the Crown,

(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 services in the Scottish health service or the Northern Ireland health service,

(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

(e) such other services as may be prescribed.”

- 4.8 In light of the fact no pharmacies will be open on Christmas Day 25 December 2025 NHS Nottingham and Nottinghamshire ICB is of the opinion that the needs of people in its area or other likely users of pharmacy premises for pharmaceutical services will not be met on this day.
- 4.9 NHS Nottingham and Nottinghamshire ICB has considered what arrangements need to be put in place on Christmas Day 25 December 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 Thursday that is not a public holiday, there will still be a need for pharmaceutical services by people who live within Mansfield and surrounding areas or are visiting during the festive period. Whilst GP practices will be closed on Christmas Day 25 December 2025, other providers of NHS services will be open such as the out of hours services and A&E departments.
- 4.10 We believe that, as a minimum, the services for which there will be a need on Christmas Day 25 December 2025 are as follows.
- 4.10.1 *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 and pharmacies reducing their supplementary opening hours on Christmas Eve.*
- 4.10.2 *The Pharmacy First service for the urgent supply of repeat medicines, referrals from NHS11 [sic] for low acuity, minor illnesses or under one of the clinical pathways.*
- 4.10.3 *The NHS pharmacy contraception advanced service, particularly as it is being expanded to include the provision of emergency contraception from October 2025.*
- 4.11 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 Christmas Day 25 December 2025 and therefore at present NHS Nottingham and Nottinghamshire ICB is unable to discharge the duty as set out in section 126 of the NHS Act 2006.
- 4.12 NHS Nottingham and Nottinghamshire ICB emailed out to all contractors on 21 March 2025 to request that pharmacy contractors complete a Microsoft Form to inform us of their intentions over the bank holiday periods during 2025-26 and return the completed form to england.eastmidpharmacy@nhs.net by 18 April 2025. This form enables NHS Nottingham and Nottinghamshire ICB to identify whether any pharmacies intend to open voluntarily. NHS Nottingham

and Nottinghamshire ICB did not receive any volunteers within the area. As set out above, NHS England (now delegated to the ICBS) must make arrangements for the provision of pharmaceutical care, and in the absence of this provision, look to issue a direction.

- 4.13 An initial assessment undertaken by the East Midlands Primary Care Team, drawing on the Pharmaceutical Needs Assessment (PNA), levels of deprivation within Nottinghamshire, and the distribution of urgent care centres and emergency departments, identified a requirement for pharmaceutical provision in the area. Tesco Pharmacy (FWJ86) has been determined to meet the needs of the Mansfield population for the following reasons:

4.13.1 *There is a need to provide pharmaceutical services in Mansfield where there is currently no provision on Christmas Day 25 December 2025.*

4.13.2 *There has been no voluntary offer of pharmacy provision in the Mansfield area to meet the needs of people living in the area on Christmas Day 25 December 2025.*

4.13.3 *Your pharmacy is also identified as being located within, or close to, a Middle Layer Super Output Area (MSOA) within Nottingham & Nottinghamshire ICB which has been identified as deprived, based on its Index of Multiple Deprivation (IMD) decile. This Direction ensures that there is coverage of pharmaceutical services in an area of deprivation, which is a priority for Nottingham & Nottinghamshire ICB to improve access to healthcare for vulnerable groups and reduce health inequalities. Areas of high deprivation are also likely to have more patients with long-term conditions requiring management, and this direction would ensure provision of dispensing for these patients.*

4.13.4 *Consultations are held regularly with the Local Pharmaceutical Committee for pharmaceutical provision of upcoming public or bank holidays. On this occasion a meeting was held on 21 May 2025 with a representative of the LPC to discuss the proposed pharmacies for direction, and no rationale was provided to oppose the direction of Tesco Pharmacy (FWJ86) on Christmas Day 25 December 2025.*

- 4.14 As a result of NHS Nottingham and Nottinghamshire ICB assessment, it has been determined that direction is required to provide adequate pharmaceutical services. Tesco In-Store Pharmacy (FWJ86) was directed to open for the hours of 14:00-16:00 as the pharmacy satisfies the above assessment criteria, The pharmacy will receive £350.00 per hour for up to a maximum of 2 hours for opening as directed.

- 4.15 In response to:

- 4.16 (a) *Misinterpretation of Communication: Our understanding of the previous email communication was that pharmacies were specifically asked to respond if they had any intentions in opening on bank holidays. We believe it is inequitable to infer acceptance or unilaterally select our pharmacy based on this. Also Tesco Pharmacy has been open every day on all other bank holidays apart from Easter Sunday.*

- 4.17 NHS Nottingham and Nottinghamshire ICB emailed out to all contractors on 21 March 2025 to request that pharmacy contractors complete a Microsoft Form to inform us of their intentions over the bank holiday periods during 2025-26 and return the completed form to england.eastmidsparmacy@nhs.net by 18 April 2025. This form enables NHS Nottingham and Nottinghamshire ICB to identify whether any pharmacies intend to open voluntarily. NHS Nottingham and Nottinghamshire ICB did not receive any volunteers within the Mansfield area. As set out above, NHS England (now delegated to the ICBS) must make arrangements for the provision of pharmaceutical care, and in the absence of this provision, look to issue a direction.
- 4.18 Tesco In-Store Pharmacy (FWJ86) pharmacy was not 'unilaterally' selected to open. A diligent assessment was undertaken, as set out above, with the pharmacy being identified as meeting this assessment criteria and subsequently being issued with a direction. An explanation as to why the pharmacy was issued with a direction was provided to them in their direction letter, sent to the pharmacy on 31 July 2025.
- 4.19 Whilst NHS Nottingham and Nottinghamshire ICB appreciates that the pharmacy has opened voluntarily on some previous bank and public holidays, this does not negate the need for this direction as NHS Nottingham and Nottinghamshire ICB must ensure adequate pharmaceutical services are provided on Christmas Day 25 December 2025. As no pharmacies had opened voluntarily to meet local need, a direction was issued to Tesco In-Store Pharmacy (FWJ86) 14:00-16:00 following our assessment.
- 4.20 In response to:
- 4.21 *(a) Previous Opening and Local Alternatives: Our pharmacy previously fulfilled a requirement by opening on May 26th Bank Holiday this year 2025. Furthermore, there are approximately six other pharmacies located within the vicinity and more in the surrounding areas.*
- 4.22 Tesco In-Store Pharmacy (FWJ86) most recently received a formal direction from NHS Nottingham and Nottinghamshire ICB to open on Spring Bank Holiday, 26 May 2025. No other directions have been issued to the pharmacy during 2025. Whilst the ICB seeks to rotate directions between contractors to promote fairness, this is regarded as a secondary consideration in determining the need for a direction.
- 4.23 As previously stated, Tesco In-Store Pharmacy (FWJ86) was issued with a direction following NHS Nottingham and Nottinghamshire ICBs diligent assessment process. Other pharmacies were considered for direction as part of the process but, following assessment, the geographical location of a pharmacy within an agreed locality and in the case of the Mansfield area, the pharmacy was selected to ensure there is equitable access for patients or likely users of the service. As set out in the direction letter, Tesco In-Store Pharmacy (FWJ86) is identified as being located within, or in proximity to, a deprived area. This Direction secures pharmaceutical service provision within a designated area of deprivation, aligning with Nottingham & Nottinghamshire ICB's statutory responsibility to improve access to healthcare and address health inequalities. Deprived areas typically present higher prevalence of long-term conditions

requiring consistent management, and the Direction ensures appropriate dispensing provision to meet these population health needs.

- 4.24 It is also worth noting that NHS Nottingham and Nottinghamshire ICB contacted Tesco In-Store Pharmacy (FWJ86) on sent on 6 June 2025 by email to pharmacy.fwj86@nhs.net to issue a proposal to direct letter advising that the pharmacy was being considered for a direction. This letter invited the pharmacy to submit representations to NHS Nottingham and Nottinghamshire ICB within 30 days receipt of the proposal to direct letter. Any representations received are then taken by NHS Nottingham and Nottinghamshire ICB to the East Midlands Pharmacy Services Regulatory Committee (PSRC) for review and to consider whether the proposed direction should proceed. Tesco In-Store Pharmacy (FWJ86) submitted written representations on 20 June 2025. These representations were subsequently considered by the PRSC at its July meeting in order to determine whether it remained appropriate to proceed with the issue of a formal direction. The Committee noted that NHS Nottingham and Nottinghamshire ICB had afforded Tesco In-Store Pharmacy (FWJ86) a period of six months from the date of the proposal-to-direct letter to be notified of the potential requirement to open, and a period of five months' notice following the issue of the final direction. This was to ensure that the contractor was provided with adequate time to prepare and to make the necessary arrangements to enable compliance with the direction. The Committee determined that the direction should remain in effect, irrespective of the pharmacy's location within a supermarket.
- 4.25 Pharmacies situated within a supermarket are subject to the same regulatory framework as stand-alone pharmacies. The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 do not provide for any special dispensation or exemption on the basis of location. Where an Integrated Care Board issues a direction to open, including on bank holidays, such pharmacies are expected to comply on the same basis as any other contractor.
- 4.26 I would like to take this opportunity to respond to any further representations provided by Tesco In-Store Pharmacy (FWJ86), Jubilee Way, Mansfield, Nottingham, NG18 3RT."

5 Observations

No observations were made by the Appellant in response to the representations from the Commissioner.

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 Christmas Day and that this would be in accordance with the Regulations.
- 6.4 I note the Commissioner wrote to all contractors on 21 March 2025 to request that they complete a Microsoft Form to inform the Commissioner of their intentions for the bank holidays during 2025-2026. This enabled it to identify whether any pharmacies would be opening voluntarily. I note that no pharmacies in the area had volunteered to open on the bank holidays for 2025-26. The Commissioner states that it went on to undertake an initial assessment, *“drawing on the Pharmaceutical Needs Assessment (PNA), levels of deprivation within Nottinghamshire, and the distribution of urgent care centres and emergency departments, identified a requirement for pharmaceutical provision in the area”*.
- 6.5 The Commissioner states that:
- 6.5.1 *“Consultations are held regularly with the Local Pharmaceutical Committee for pharmaceutical provision of upcoming public or bank holidays. On this occasion a meeting was held on 21 May 2025 with a representative of the LPC to discuss the proposed pharmacies for direction, and no rationale was provided to oppose the direction of Tesco Pharmacy (FWJ86) on Christmas Day 25 December 2025.”*
- 6.6 The Commissioner sent a proposal to direct letter to the Appellant by email on 6 June 2025 advising that the pharmacy was being considered for a direction. The letter invited the Appellant to submit representations and I note that it did so on 20 June 2025. I have not been provided with a copy of the proposal to direct letter or the Appellant’s representations. However, I note that the Appellant’s representations were considered by the Commissioner at a meeting in July and it was determined to proceed with the issuing of a formal direction.
- 6.7 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 am satisfied that this appears to have been adhered to in this case and I note that the Appellant has not disputed that this process has taken place.
- 6.8 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.
- 6.9 The Commissioner considers that there will be a need for dispensing services, the Pharmacy First service and the NHS pharmacy contraception advanced service.
- 6.10 I note the Appellant’s comment’s that *“Our pharmacy previously fulfilled a requirement by opening on May 26th Bank Holiday this year 2025.*

Furthermore, there are approximately six other pharmacies located within the vicinity and more in the surrounding areas."

- 6.11 The Commissioner's reasons for selecting the Appellant's pharmacy to open on Christmas Day include the following:

6.11.1 *"Your pharmacy is also identified as being located within, or close to, a Middle Layer Super Output Area (MSOA) within Nottingham & Nottinghamshire ICB which has been identified as deprived, based on its Index of Multiple Deprivation (IMD) decile. This Direction ensures that there is coverage of pharmaceutical services in an area of deprivation, which is a priority for Nottingham & Nottinghamshire ICB to improve access to healthcare for vulnerable groups and reduce health inequalities. Areas of high deprivation are also likely to have more patients with long-term conditions requiring management, and this direction would ensure provision of dispensing for these patients."*

- 6.12 The Commissioner further comments in its representations that *"Other pharmacies were considered for direction as part of the process but, following assessment, the geographical location of a pharmacy within an agreed locality and in the case of the Mansfield area, the pharmacy was selected to ensure there is equitable access for patients or likely users of the service. ...Tesco In-Store Pharmacy (FWJ86) is identified as being located within, or in proximity to, a deprived area. This Direction secures pharmaceutical service provision within a designated area of deprivation, aligning with Nottingham & Nottinghamshire ICB's statutory responsibility to improve access to healthcare and address health inequalities. Deprived areas typically present higher prevalence of long-term conditions requiring consistent management, and the Direction ensures appropriate dispensing provision to meet these population health needs."*

- 6.13 The Appellant has concerns that there are operational challenges in opening an in-store pharmacy on Christmas Day, requiring the presence of a store manager and security staff to facilitate access to the premises. The Appellant also refers to potential security and safety risks from patients needing to walk through the store to the pharmacy at the back of the store. Whilst I sympathise with the Appellant regarding these challenges, I am of the view that it is a matter for the Appellant to arrange appropriate access to the pharmacy in the event that it is required to open the pharmacy outside of its usual core and supplementary hours.

- 6.14 The Commissioner states in the direction letter that *"...the PSRC noted the flexibility in the premises approved particulars issued by NHS England for the door to the store to remain locked and for a member of staff to be posted immediately inside the door. It was of the opinion that this would largely address the concerns regarding the public having access to the entire store."* I also note that the Commissioner has provided sufficient notice for such arrangements to be made.

- 6.15 I am of the view that the Commissioner has provided sufficient reasoning to substantiate its view that the Applicant is best placed to meet any demand for services on Christmas Day. Whilst it is unfortunate that the full reasoning was not contained within the direction letter, I note that the Appellant has not

disputed the Commissioner's representations regarding the selection of its pharmacy due to its geographic location and the deprivation in the area. Further, the Commissioner has set out details of its assessment of the need for pharmaceutical services in terms of providing services to patients.

- 6.16 I note the Appellant's comments regarding misinterpretation of communication and the Commissioner's response that it had emailed pharmacies in order to identify whether any pharmacies intended to open voluntarily on bank holidays during 2025-25. I do not consider that this point has any bearing on the outcome of the appeal.
- 6.17 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.
- 6.18 On the basis of the information available to me, I am 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 25 December 2025 (Christmas Day) such that it is appropriate to issue a direction requiring the Appellant's pharmacy to open on the days and times indicated in the direction.

7 Determination

- 7.1 I confirm the action of the Commissioner to issue the direction.

Head of Appeals
NHS Resolution