

7 October 2025

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

FILE REF: **SHA/26704**

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

COMMISSIONER: **Birmingham and Solihull ICB**
("the Commissioner")

PHARMACIST: **Sirchem Ltd**
("the Applicant")

PREMISES: **Castle Pharmacy (FKL90)**
335 Chester Road
Castle Bromwich
B36 0JG

**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]**

Outcome

- 1.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I am satisfied that maintaining the current level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 1.2 The action taken by the Commissioner to refuse the application is confirmed.

A copy of this decision is being sent to:

Sirchem Ltd
Office of the West Midlands, on behalf of Birmingham and Solihull ICB

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

1 Introduction

- 1.1 The Applicant has applied to the Commissioner to change the times at which it is obliged to provide pharmaceutical services at the above premises. The Applicant seeks to keep the total number of core opening hours the same while offering a different distribution of these hours during the week.
- 1.2 The Commissioner has refused the application. The Applicant seeks to appeal to NHS Resolution.

Rights of appeal

- 1.3 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) 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” (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours and at set times and days; or
- 1.5.2 “supplementary” opening hours (other hours during which the pharmacy premises are open which are in addition to the core hours), pursuant to paragraph 23(3) of Schedule 4 of the Regulations.

Alteration of core opening hours

- 1.6 In accordance with paragraphs 1(7)(c) and 1(7)(d) of Schedule 2 of the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list:
 - 1.6.1 the proposed core opening hours in respect of the premises; and
 - 1.6.2 the total proposed opening hours for the premises (having regard to both the proposed core opening hours and any supplementary opening hours).
- 1.7 The Commissioner maintains pharmaceutical lists that include the days on which and times at which, at those premises, the listed person is to provide those services during the core opening hours and any supplementary opening hours of the premises.
- 1.8 The days on which or times at which a pharmacy is obliged to provide pharmaceutical services at the premises may only be altered by the pharmacy on application under paragraph 26(1) of Schedule 4 of the Regulations, so long as the effect of that application is to reduce the total number of hours for which a pharmacy is obliged to provide, or keep the total number of hours the same.

Alteration of supplementary opening hours

- 1.9 Supplementary opening hours may be altered by the pharmacy giving notice to the Commissioner, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations, without the need to make an application to the Commissioner.
- 1.10 There is no specific right of appeal to NHS Resolution in respect of notices given under paragraph 23(6)(a).

The Applicant's proposals

- 1.11 The Applicant in its application form indicates that it currently has core opening hours totalling 40 hours per week.
- 1.12 The Applicant wishes to:
 - 1.12.1 Open on Monday to Friday between 09:00 – 12:30 and 14:30 – 18:00, instead of 09:00 – 12:30 and 15:30 – 19:00 as usual.
 - 1.12.2 Open on Saturdays between 09:00 and 11:30 and 15:00 – 17:30 as usual.

1.12.3 Close on Sundays as usual.

2. Application

In this case, the Applicant provided the following information in its application form and supporting information dated 8 May 2025:

2.1 “This is an application to permanently change core opening hours.

2.2 Current opening hours for these premises:

Monday	9:00-12:30	15:30-19:00
Tuesday	9:00-12:30	15:30-19:00
Wednesday	9:00-12:30	15:30-19:00
Thursday	9:00-12:30	15:30-19:00
Friday	9:00-12:30	15:30-19:00
Saturday	9:00-11:30	15:00-17:30
Sunday	Nil	

2.3 Proposed core opening hours for these premises:

Monday	9:00-12:30	14:30-18:00
Tuesday	9:00-12:30	14:30-18:00
Wednesday	9:00-12:30	14:30-18:00
Thursday	9:00-12:30	14:30-18:00
Friday	9:00-12:30	14:30-18:00
Saturday	9:00-11:30	15:00-17:30
Sunday	Nil	

2.4 If this is a permanent change, please state below the date from which you would like the change to take effect:

2.5 04/08/2025

2.6 Please provide information that demonstrates that your proposed core opening hours will:

- either maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or
- maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

2.7 “By closing an hour earlier, we will be maintaining the existing level of service provision as the last hour tends to be quiet compared to our other opening hours. Our neighbouring pharmacy is open until 7pm so any emergency prescriptions can be directed to that pharmacy.

- 2.8 Over a sustained period, we have observed consistently low patient footfall and minimal prescription activity in the last hour. This period is rarely used for essential pharmacy services, and continuing to staff the pharmacy during this time is not an effective use of resources.”

3. The Decision

In a letter to the Applicant dated 1 August 2025 the Commissioner decided to refuse the application. The Commissioner stated:

- 3.1 “Further to your application to change the core opening hours at the above address, I am writing to confirm that it has been refused.
- 3.2 Pharmacy Services Regulation Committee refused the application as failing to meet paragraph 24(1)a and 24(1)b of The National Health Services (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 3.3 It was not demonstrated how a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises could be provided as there are few pharmacies within a mile that are open after 6:30pm and only one pharmacy that is open until 7pm on a Tuesday.
- 3.4 In considering the two specific matters set out in paragraph 24(1), Schedule 4 of the 2013 regulations:
- 3.5 24.—(1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as—
- (a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises;
- 3.6 **Not met -The existing level of core hours service provision would not be maintained**
- (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 3.7 **Not met - A sustainable level of service provision would not be maintained.**
- 3.8 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:
- 3.9 Primary Care Appeals
NHS Resolution

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

4. **The Appeal**

In an undated letter to NHS Resolution received by email dated 30 August 2025 the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 4.1 “We are writing to formally appeal the decision dated 1 August 2025 from the West Midlands Integrated Care Boards to refuse our application to change core opening hours at Castle Pharmacy, 335 Chester Road, Castle Bromwich, B36 0JG.
- 4.2 The refusal was based on the conclusion that the application did not meet the requirements of paragraph 24(1)(a) and 24(1)(b) of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. We respectfully submit that this conclusion does not take full account of the service context, local patient needs, and alternative provision in the area.
- 4.3 **Maintaining the existing level of service provision – Paragraph 24(1)(a)**
 - 4.3.1 The proposed amendment to our hours will not result in a material reduction in access to pharmaceutical services in our locality.
 - 4.3.2 Within a one-mile radius, there are multiple pharmacies operating extended evening hours. Importantly, **Buchans Pharmacy, 2 Hawthorne Road, Castle Bromwich, B36 0HH**, part of our own pharmacy group, is located nearby and remains open until 7 pm on weekdays, including Tuesdays, ensuring continued access to pharmaceutical services after 6:30 pm.
 - 4.3.3 Our dispensing and footfall records for the past 12 months show consistently low patient attendance after 6:30 pm, indicating that the current late hours are not significantly utilised.
- 4.4 **Maintaining a sustainable level of adequate service provision – Paragraph 24(1)(b)**
 - 4.4.1 Retaining the current extended hours places a disproportionate strain on operational sustainability, impacting our ability to allocate resources efficiently and maintain high-quality services during core demand periods.
 - 4.4.2 The proposed change will allow us to reinvest resources into enhancing clinical services, such as blood pressure checks, cholesterol testing, and vaccination clinics, and to strengthen staffing during peak times, directly improving patient care.
- 4.5 **Adequate Service Provision After 6:30 pm**

- 4.6 We have carefully assessed the availability of pharmaceutical services in the area after 6:30 pm and can confirm:
- 4.6.1 **Buchans Pharmacy, 2 Hawthorne Road, Castle Bromwich, B36 0HH** remains open until 7 pm on weekdays, including Tuesdays, providing immediate continuity of access for local residents.
 - 4.6.2 Several other pharmacies within a short distance operate beyond 6:30 pm, and their locations and opening times will be signposted in our premises and on our website.
 - 4.6.3 For patients requiring urgent medication after 6:30 pm, our team will maintain delivery arrangements and ensure that urgent needs can be met through NHS 111 or referral to the nearest open pharmacy.
 - 4.6.4 Vulnerable patient groups, including those receiving compliance aids or regular deliveries, will experience no disruption.
- 4.7 **Patient and Community Feedback**
- 4.7.1 Informal consultation with patients has shown strong support for reallocating resources to busier periods rather than maintaining underused late evening hours.
 - 4.7.2 Patients have expressed confidence in their ability to access services at nearby locations if needed after 6:30 pm.
- 4.8 In conclusion, the proposed change strikes an appropriate balance between maintaining patient access and ensuring the long-term sustainability of our pharmacy services. The measures outlined above will ensure continued adequate provision of pharmaceutical services in our locality. We therefore request that the refusal decision be reconsidered and our application to change the core opening hours be approved.”

5. Representations

No representations were provided in response to the appeal, however the Commissioner provided its paperwork regarding the application, which was circulated to the Applicant for information.

6. Consideration

- 6.1 I note the following:
- 6.1.1 The Applicant's core opening hours total 40 hours and the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4.
- 6.2 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023. Further amendments to paragraph 26, Schedule 4, Part 3 of the Regulations came into force on 23 June 2025.

6.3 Paragraph 26(1) states:

26.— (1) An NHS pharmacist (P) may apply to NHS England for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P's pharmacy premises in a way that—

(a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week ...; or

(b) keeps that total number of hours the same.

6.4 I have first considered paragraph 26(2ZA) of Schedule 4 of the Regulations, which reads as follows:

Where P makes an application under sub-paragraph (1)(b), as part of that application P must provide NHS England with such information as NHS England may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to sub-paragraph (2ZB) or paragraph 24(1) (depending on the basis of the application).

6.5 I note the application is dated 8 May 2025 and therefore the requirement for a Contractor to state whether it wishes its application to be determined on the basis of paragraph 24(1) or paragraph 26(2ZB) does not apply. Therefore I will determine the application on the basis of paragraph 24(1).

6.6 Paragraph 24(1) reads as follows:

24 (1) Subject to paragraph 26(2A) and except where paragraph 26(2ZB) applies, where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as –

(a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or

(b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

6.7 Paragraph 24(2) states:

(2) In considering the matters mentioned in sub-paragraph (1), NHS England –

(a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and

(b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.

- 6.8 I will start by considering the application of paragraph 24(1)(a) and whether the proposed hours are such as to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I will then consider the application of 24(1)(b) if that is required.
- 6.9 To properly assess the application against paragraph 24(1)(a), I need to determine the existing level of service provision. I then need to consider whether it is necessary to maintain the existing level of service provision. If it is necessary to maintain the existing level of service provision, I need to consider whether, despite the proposed change of hours, the existing level of service provision to people in the area or other likely users would be maintained, e.g. by nearby pharmacies being open and providing the same level of service provision.
- 6.10 If I consider it unnecessary to maintain the existing level of service provision or that it is necessary to maintain the existing level of service provision but doing so is not a realistically achievable outcome, then I need to consider paragraph 24(1)(b) and determine whether the proposed change of hours are such that a sustainable level of adequate service provision would be maintained.
- 6.11 I therefore need to be provided with sufficient information to understand a range of matters, starting with the existing level of service provision. The references to days and times in paragraph 24(1) leads me to consider that the reference to "level" of service provision in paragraph 24(1)(a) is mainly focused on the days and times services are provided. I would point out that "level" of service provision could also refer to other characteristics of the service, such as types and range of services provided, geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided.
- 6.12 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours that pharmacies in the local area are open. The Applicant states that *"Within a one-mile radius, there are multiple pharmacies operating extended evening hours. Importantly, **Buchans Pharmacy, 2 Hawthorne Road, Castle Bromwich, B36 0HH**, part of our own pharmacy group, is located nearby and remains open until 7 pm on weekdays, including Tuesdays, ensuring continued access to pharmaceutical services after 6:30 pm."* [Applicant's emphasis]
- 6.13 I note that in its report for the Pharmaceutical Services Regulations Committee, the Commissioner has provided a table showing the core opening hours of six pharmacies located within 1 mile of the Applicant's premises. The table indicates that Buchan Chemist (Buchans Pharmacy as referred to by the Applicant) is the nearest pharmacy and has core hours 09:00 to 13:00 and 14:00 to 18:00 on weekdays. The other pharmacies listed have closing times ranging between 17:00 and 18:30 on weekdays. The report notes that *"Whilst those providers may have supplementary opening hours given that they can be*

reduced or changed with five weeks' notice core opening hours only are included below".

- 6.14 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that as the Applicant is not looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is maintained such that consideration of whether it is necessary to maintain the level of service provision is not needed.
- 6.15 However, the Applicant is applying to change the times that services are provided. The level of service provision at the Applicant's premises on weekday evenings is not being maintained. I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.
- 6.16 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.
- 6.17 I note the Applicant's comments that
- 6.17.1 *"Our dispensing and footfall records for the past 12 months show consistently low patient attendance after 6:30 pm, indicating that the current late hours are not significantly utilised."*;
- 6.17.2 *"Informal consultation with patients has shown strong support for reallocating resources to busier periods rather than maintaining underused late evening hours."*; and
- 6.17.3 *"Patients have expressed confidence in their ability to access services at nearby locations if needed after 6:30 pm."*
- 6.18 I have not been provided with any relevant figures or the results of any consultation undertaken by the Applicant. Whilst the Applicant refers to *"low patient attendance after 6.30pm"* and the late hours not being *"significantly utilised"*, this does not indicate that the pharmacy is not being utilised at this time of the evening.
- 6.19 It is clear that there are people using the pharmacy at the times the Applicant wishes to close. I consider that it is relevant to have information as to why persons are using the pharmacy at these times. It is difficult to draw conclusions about the necessity of maintaining the existing level of service provision if there is no information on what specific services, if any, are being provided at those times.
- 6.20 Without this information it is difficult to make an assessment of whether it is necessary to maintain the existing level of service provision and this in turn makes it difficult to apply paragraph 24(1)(a). I consider it reasonable to take

the position that unless I am provided with evidence to the contrary, I should consider that it is necessary to maintain the existing level of service provision.

- 6.21 Having determined that it is reasonable to assume that maintaining the existing level of service provision is necessary, I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision. The Applicant cannot maintain this as it is changing its hours. I note the Applicant's comment that Buchans Pharmacy remains open until 7pm on weekdays, however the Commissioner has advised that the core hours for that pharmacy end at 6pm and that there are no other pharmacies nearby with core hours that cover the hours that the Applicant is proposing to close. I am mindful that supplementary hours may be altered with 5 weeks' notice.
- 6.22 If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a).
- 6.23 It is worth noting that characteristics of the persons using the pharmacy might be relevant here as well as from where they start their journey to the pharmacy. I do not consider that every single individual need should be considered at length in this regard but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.
- 6.24 Whilst I note the distances to nearby pharmacies, no information has been provided regarding access to those pharmacies for those who currently access the Applicant's own pharmacy and how they might travel to find alternative pharmaceutical services. There are likely to be a mix of people who drive to the Applicant's pharmacy and those use public transport or walk. No information has been provided as to whether there is parking available, the availability of public transport, or regarding the terrain, lighting and availability of pedestrian crossings for those on foot.
- 6.25 I am therefore struggling to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 6.26 I have decided that it is necessary to maintain the current service provision but, due to the cumulative effect of:
- 6.26.1 a lack of information regarding the current use of the pharmacy;
 - 6.26.2 a lack of information about the accessibility of the services being provided during the hours the Applicant is proposing to close; and
 - 6.26.3 a lack of information regarding access to the existing pharmacies;
- I am not satisfied that there will be maintenance of the existing level of service provision, whether by virtue of other pharmacies in the area or by the Applicant swapping hours to earlier in the day.

- 6.27 I therefore next consider if I need to have regard to paragraph 24(1)(b) which states that I must seek to ensure that the changed hours are such as to:
- “maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome”.*
- 6.28 I have already determined that it is necessary to maintain the existing level of service provision so reference in paragraph 24(1)(b) to *“in circumstances where maintaining the existing level of service provision is ... unnecessary”* is not relevant.
- 6.29 I note that the Applicant has stated *“Retaining the current extended hours places a disproportionate strain on operational sustainability, impacting our ability to allocate resources efficiently and maintain high-quality services during core demand periods.”* I consider that the Applicant is effectively relying on the second part of paragraph 24(1)(b), that maintaining the existing level of service provision is not a realistically achievable outcome. I consider that I need to determine if it is or is not a realistically achievable outcome and if I determine that it is, then I need to consider if the amended hours are such as to maintain a sustainable level of service provision.
- 6.30 The Applicant further comments that *“The proposed change will allow us to reinvest resources into enhancing clinical services, such as blood pressure checks, cholesterol testing, and vaccination clinics, and to strengthen staffing during peak times, directly improving patient care.”* Whilst this is a laudable aim, I do not consider it relevant to the consideration of whether maintaining the existing level of service provision is a realistically achievable outcome
- 6.31 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, I consider that no explanation or evidence has been put forward to support the Applicant's view.
- 6.32 The wording of paragraph 24(1)(b) is such that maintaining existing service levels must not be realistically achievable before considering a sustainable level of adequate provision. I consider that this sets a fairly high bar as to the level of difficulty that the Applicant must find themselves in. I do not consider that any evidence has been provided to indicate that the economic and practical viability of the current opening hours has been compromised. The use of the word *“strain”* by the Applicant suggests that it has been achievable, but difficult. I therefore consider that maintaining the existing level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 6.33 I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions and that maintaining a level of service provision includes all services that the pharmacy may offer, including additional enhanced and advanced services that may be commissioned. I am of the view that I have not been provided with sufficient information to demonstrate how the proposed change of hours would maintain, as necessary, the existing levels of service provision.

7. Determination

- 7.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I am satisfied that maintaining the current level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 7.2 The action taken by the Commissioner to refuse the application is confirmed.

Head of Appeals
NHS Resolution