

3 November 2025

8th Floor
10 South Colonnade
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London
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FILE REF: SHA/ 26699

COMMISSIONER: DERBY AND DERBYSHIRE ICB
("the Commissioner")

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

PHARMACIST: TESCO PHARMACY (FXX72)
("the Appellant")

PREMISES: BRIDGE STREET
CLAY CROSS
DERBYSHIRE
S45 9NU

**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:
Tesco Pharmacy (FXX72)
Derby and Derbyshire ICB

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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 10:00 to 12:00 on 1 January 2026 (New Year's 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.

2 The Direction

In a letter to the Appellant dated 31 July 2025, the Commissioner stated:

- 2.1 "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. I can confirm that we have not been notified of any pharmacies that will be open in Clay Cross, Derbyshire on New Years Day, 1st January 2026 and no pharmacies meeting our population health needs have volunteered to open on this day.
- 2.2 Under section 126 of the NHS Act 2006 (Arrangements for pharmaceutical services), NHS England (now delegated to the ICBs) must make arrangements for the provision, to persons 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.”

2.3 In light of the fact no pharmacies will be open on New Years Day 1st January 2026, NHS Derby & Derbyshire 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.

2.4 NHS Derby & Derbyshire ICB has therefore considered what arrangements need to be put in place on New Years Day 1st January 2026 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 day that is not a bank or public holiday, there will still be a need for pharmaceutical services by people who live within Clay Cross, Derby or are visiting the area. Whilst GP practices will be closed on New Years Day 1st January 2026 other providers of NHS services will be open to treat patients, such as the GP out of hours service and A&E departments.

2.5 We believe that, as a minimum, the services for which there will be a need on New Years Day 1st January 2026 are as follows:

2.5.1 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.

2.5.2 The Pharmacy First service for the urgent supply of repeat medicines, referrals from NHS111 for low acuity, minor illnesses or under one of the clinical pathways.

2.5.3 The NHS pharmacy contraception advanced service, particularly as it is being expanded to include the provision of emergency contraception from October 2025.

- 2.6 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 New Years Day 1st January 2026 and therefore at present the ICB is unable to discharge the duty as set out in section 126 of the NHS Act 2006.
- 2.7 We have consulted with Community Pharmacy Derbyshire representatives and made them aware of our intentions to issue this direction, and the rationale behind the proposal. Community Pharmacy Derbyshire are in support of the need to ensure adequate pharmaceutical provision on New Years Day 1st January 2026 and are willing to provide guidance to contractors on this direction. The contact email address of Community Pharmacy Derbyshire should you wish to contact them is info@cpderbyshire.org.uk.
- 2.8 We informed your pharmacy that our team was conducting 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, as amended. The pharmacy was issued with a proposal to direct letter which was sent on 9th June 2025 to the email address we have on file for your pharmacy, pharmacy.fxx72@nhs.net.
- 2.9 This assessment has now concluded, and we are aware that representations were submitted to Derby and Derbyshire ICB in response to the direction. These representations were as follows:
- 2.9.1 *I am appealing as we will be unble [sic] to open on New Year Day 2026 as our main Tesco store will be closed on that day.*
- 2.10 In response to these representations, Derby and Derbyshire ICB have considered the representation and a paper was taken to the East Midlands Pharmacy Services Regulatory Committee (PSRC) for discussion. The East Midlands Pharmacy Services Regulatory Committee (PSRC) concluded that:
- 2.10.1 being located within a supermarket/shopping centre does not exclude a pharmacy from being issued with a direction, NHS Resolution has found in the favour of ICBs in cases such as this, as provisions can be made to enable the pharmacy to open.
- 2.11 Derby and Derbyshire ICB will therefore be proceeding with issuing the pharmacy with the enclosed direction following the recommendation of the East Midlands Pharmacy Services Regulatory Committee (PSRC).
- 2.12 Your core opening hours on New Years Day 1st January 2026 are therefore:
- 2.12.1 10:00 – 12:00
- 2.13 The reasons for directing the above pharmacy to open are:
- 2.13.1 There is a need to provide pharmaceutical services in Clay Cross, Derbyshire where there is currently no provision on New Years Day 1st January 2026.

- 2.13.2 There has been no voluntary offer of pharmacy provision in Clay Cross, Derbyshire to meet the needs of people living in the area on New Years Day 1st January 2026.
- 2.13.3 Your pharmacy is also identified as being located within, or close to, a Middle Layer Super Output Area (MSOA) within Derby and Derbyshire 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 Derby and Derbyshire 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.
- 2.14 The level of remuneration for New Years Day 1st January 2026, will be £350.00 per hour for a maximum of 2 hours. Please ensure that you submit a claim for opening through PharmOutcomes within 28 calendar days of the directed day. If this is not claimed within 28 calendar days, our team will issue a final reminder, and you will have a further 17 calendar days to submit a claim (within 45 calendar days of the directed day). Please note that claims submitted outside of this 45-calendar day deadline will not be paid. If you anticipate any difficulties in submitting the claim, please contact our team via england.eastmidsparmacy@nhs.net at your earliest convenience. If no claim is made, this will be investigated by NHS Derby & Derbyshire ICB in order to establish whether or not there has been a breach of the terms of service.
- 2.15 Please ensure that you update the pharmacy's profile on the NHS England directory of service (DOS) and NHS.UK using profile manager with the hours that you are being directed to open.
- 2.16 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
- 2.17 Primary Care Appeals Case Manager
NHS Resolution
8th Floor 10 South Colonnade,
Canary Wharf,
London,
E14 4PU
- 2.18 If you have any questions, please do not hesitate to contact me."

3 The Appeal

In an email to NHS Resolution dated 28 August 2025 the Appellant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "I am writing to make an appeal against the decision in directing the opening of Tesco Pharmacy FXX72 on New Year Day 01/01/2026. Please find the reasons of appeal as follow:

- 3.1.1 1. The proposal to direct letter sent to us on 09/06/2025 was confusing. The body of the email indicated that we have been proposed to open on New Year Day 2025 , unlike the letter indicating Year 2026. At the end of the letter (the last second paragraph), it mentioned there is a need to ensure pharmaceutical provision on Christmas Day 25/12/2025, which confuses as to which date was required. The letter seems to be a generic letter with incorrect date included.
- 3.1.2 2. The letter attached in the email did not have our correct opening hours. It stated that our current core opening hours on Saturday is 9am -12 noon, whilst the core and supplementary opening hours on Saturday is 10am-4pm. These hours are incorrect as the correct opening for Tesco Pharmacy FXX72 is 9am -9pm on Saturday. The stated opening hours in the letter has initially led us to believe that the letter was meant to be sent to one of the local small independent chain pharmacies because of their similar opening time on Saturdays.
- 3.1.3 3. The letter did not demonstrate to us which assessment it was based on for the decision of this direction and no evidence was given to show us the reason for our pharmacy to remain opened [sic] on New Year Day.
- 3.1.4 4. One reason given in the letter was no voluntary offer of pharmacy provision in Clay Cross, which does not support any assessment. We have exercised our part to ensure that patients' need was met by staying opened [sic] for all other Bank Holidays.
- 3.1.5 5. The letter has included an appeal reference of SHA/24664 (from 15/12/2021) which we do not understand the background and details of this case. Furthermore, the reference was from 2021 (4 years ago), which has made it so difficult to search.
- 3.1.6 6. Although our pharmacy is identified as being located within, or close to a Middle Layer Super Output Area (MSOA), we have other pharmacies within walking or short drive distance. Based on this, it does not show to us that we are required to be opened [sic] on New Year Day.
- 3.1.7 7. The nearest Urgent Care Treatment centre from our pharmacy is Whitworth Hospital, which is 9.3miles (21 minutes drive away). This distance is not ideal considering the pharmacy is only opened [sic] for 2 hours and a pharmacy nearer to the urgent care treatment centre should be made preferable.
- 3.1.8 8. The location of the pharmacy is at the end of the main store. Patient can only access the pharmacy service by being chaperoned into the store. Only limited amount of patients can access during the 2 hours period and it will pose great challenge to ensure the health and safety of patients whilst in a big store which is not opened. This will pose great logistical challenge and cost implication.
- 3.2 Please consider all the above points as an appeal to oppose the direction to open on New Year Day 2026.”

4 Representations

In a letter received by NHS Resolution on 11 October 2025, the Commissioner stated:

- 4.1 “Thank you for your letter dated 12 September 2025 notifying us that Tesco Pharmacy (FXX72) has appealed against NHSD Derby and Derbyshire Integrated Care Board (ICB) decision to direct their pharmacy (FXX72) to open on New Years Day 1 January 2026.
- 4.2 We note that Tesco Pharmacy (FXX72) is appealing this direction for the reasons listed below, followed by NHS Derby and Derbyshire ICB response:-
 - 4.2.1 *(1) The proposal to direct letter included errors which was confusing.*
 - 4.2.2 **Response** - NHS Derby and Derbyshire ICB acknowledge that the proposal to direct letter and email did contain errors due to an administrative oversight. However, these were corrected prior to the issue of the final direction letter. This was an administrative error only and had no bearing on the substantive decision to issue the direction.
 - 4.2.3 *(2) Incorrect opening hours*
 - 4.2.4 **Response** – NHS Derby and Derbyshire ICB were not notified during the consultation period that the draft proposal to direct letter contained an error in the stated Saturday opening hours. Representations were received from Tesco Pharmacy in response to the proposal to direct letter, but this specific issue was not raised at that stage. Upon subsequent review, the ICB acknowledges that the Saturday opening hours in the proposal to direct letter were incorrect due to a clerical oversight. This error was confined to the draft document only and was fully corrected in the final direction issued on 31 July 2025. The administrative inaccuracy had no material effect on the assessment, rationale, or outcome of the decision. The ICB’s determination to issue the direction was based solely on considerations of patient need, equitable service distribution, and compliance with statutory duties — all of which remain valid and unaffected by this minor administrative error.
 - 4.2.5 *(3) The letter did not demonstrate to us which assessment it was based on for the decision of this direction and no evidence was given to show us the reason for our pharmacy to remain opened on New Year Day*
 - 4.2.6 **Response** – NHS Derby and Derbyshire ICB undertook a comprehensive assessment of local need and accessibility to determine the most appropriate location for directed opening.
 - 4.2.7 This included a detailed review of the Index of Multiple Deprivation (IMD) deciles at Middle Layer Super Output Area (MSOA) level, which identified the pharmacy’s catchment area as one of high deprivation. Ensuring pharmaceutical service coverage in areas of deprivation is a core strategic priority for the ICB, reflecting its duty to improve access for vulnerable populations and reduce health inequalities in line with national policy and statutory obligations.

- 4.2.8 The ICB also considered the pharmacy's locality in relation to Urgent Treatment Centres (UTCs), recognising that patients accessing urgent care services are more likely to require timely dispensing of medicines. Directing a pharmacy in close proximity to a UTC ensures that patients can access essential medicines quickly and safely, without the need to travel long distances — a consideration that is particularly critical on public holidays, when public transport options are limited and other NHS services may be operating at reduced capacity.
- 4.2.9 The full rationale for the direction was clearly set out in the formal direction letter issued to the pharmacy by email on 31 July 2025, which explained the basis on which the ICB determined that the direction was necessary, proportionate, and in the best interests of patient access.
- 4.2.10 *(4) One reason given in the letter was no voluntary offer of pharmacy provision in Clay Cross, which does not support any assessment. We have exercised our part to ensure that patients' need was met by staying opened for all other Bank Holidays.*
- 4.2.11 **Response** – NHS Derby and Derbyshire ICB issued a system-wide communication on 21 March 2025 to all pharmacy contractors across the Derbyshire Health and Wellbeing Board area, requesting completion of a Microsoft Form confirming their intended opening hours for all 2025–26 bank holidays. Contractors were asked to return this information by 18 April 2025 to england.eastmidsparmacy@nhs.net. This process is a standard and transparent mechanism used to identify voluntary openings and minimise the need for formal directions wherever possible.
- 4.2.12 Despite this opportunity, no pharmacies within the Clay Cross locality offered to open voluntarily on New Year's Day 2026. This left a complete absence of pharmaceutical cover for that day. While the ICB recognises and appreciates that Tesco Pharmacy and other local contractors have previously opened voluntarily on certain bank or public holidays, this historic goodwill does not provide a sustainable or guaranteed mechanism for ensuring service continuity across all designated public holidays.
- 4.2.13 The ICB has a statutory obligation under Section 126 of the NHS Act 2006 to ensure the proper and sufficient provision of pharmaceutical services for its population. When voluntary provision is not secured, the ICB is legally required to act to safeguard public access. The issuing of a direction in these circumstances is not punitive but a necessary and proportionate measure to discharge the ICB's statutory duty and to maintain safe and equitable access for patients.
- 4.2.14 In summary, the ICB's decision to issue a direction to Tesco Pharmacy (FXX72) was an evidence-based and legally compliant response to the absence of voluntary provision. It ensured continuity of essential pharmaceutical care for patients in the Clay Cross area, thereby fulfilling both the ICB's statutory and public interest obligations.

- 4.2.15 (5) *The letter has included an appeal reference of SHA/24664 (from 15/12/2021) which we do not understand the background and details of this case. Furthermore, the reference was from 2021 (4 years ago), which has made it so difficult to search.*
- 4.2.16 **Response** – NHS Derby and Derbyshire ICB included reference to appeal SHA/24664 (2021) to demonstrate established precedent in interpreting 26 December (Boxing Day) and 1 January (New Year's Day) as ordinary public holidays for pharmaceutical service provision. This reference was not intended to imply reliance on that case for the current determination but to illustrate a consistent national regulatory approach to ensuring adequate access to pharmacy services on key public holidays.
- 4.2.17 The cited case provides relevant context confirming that, from a commissioning and patient-access perspective, public holidays such as 26 December and 1 January are treated as standard service days requiring planned pharmaceutical availability. NHS Resolution has previously upheld that such days do not constitute exceptional circumstances exempting contractors from directions but rather form part of the annual planning cycle for equitable service distribution.
- 4.2.18 Accordingly, the inclusion of this reference reinforces that the ICB's approach aligns with both historical precedent and NHS England's interpretation of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, under which ICBs are empowered to issue directions to maintain continuity of service on these dates. This evidences consistency, transparency, and compliance with national policy expectations.
- 4.2.19 (6) *Although our pharmacy is identified as being located within, or close to a Middle Layer Super Output Area (MSOA), we have other pharmacies within walking or short drive distance. Based on this, it does not show to us that we are required to be opened on New Year Day.*
- 4.2.20 **Response** – NHS Derby and Derbyshire ICB acknowledges that a number of pharmacies within the Clay Cross and surrounding areas are of comparable standing within the Index of Multiple Deprivation (IMD) and Middle Layer Super Output Area (MSOA) prioritisation framework. Several neighbouring pharmacies are also located within high-need, high-deprivation localities and were therefore actively reviewed as part of the direction assessment process.
- 4.2.21 To ensure objectivity and fairness, the ICB conducted a structured comparison of all potential contractors within the catchment area, assessing them against consistent criteria including:
- 4.2.21.1 IMD ranking and associated population health inequalities;
 - 4.2.21.2 Proximity to urgent care and primary care access points;
 - 4.2.21.3 Travel times and transport accessibility; and

4.2.21.4 Previous directions or voluntary openings during the same festive period.

4.2.22 This comparative assessment confirmed that while multiple pharmacies met the deprivation and accessibility thresholds, several had already been directed to open on other public holidays such as Christmas Day or Boxing Day. To prevent duplication and ensure that the service burden was distributed equitably across providers, the ICB adopted a balanced and proportionate approach, rotating directions across the network to maintain fairness.

4.2.23 In reaching its decision, the ICB applied the principles of equity, proportionality, and transparency. It sought to ensure that no individual contractor was unduly impacted by multiple obligations within the same seasonal period while maintaining continuity of access for patients in high-need areas.

4.2.24 Accordingly, after full consideration of the alternatives and considering both population need and system equity, the ICB determined that directing Tesco Pharmacy (FXX72) to open on New Year's Day 2026 represented the most appropriate, reasonable, and justified course of action to secure uninterrupted patient access to essential pharmaceutical services.

4.2.25 *(7) The nearest Urgent Care Treatment centre from our pharmacy is Whitworth Hospital, which is 9.3miles (21 minutes drive away). This distance is not ideal considering the pharmacy is only opened for 2 hours and a pharmacy nearer to the urgent care treatment centre should be made preferable.*

4.2.26 **Response** – NHS Derby and Derbyshire ICB carefully considers the locality of pharmacies in relation to Urgent Treatment Centres (UTCs) and other key NHS access points as part of the assessment process when determining which pharmacy to direct to open. The relationship between a pharmacy's geographical position and urgent care facilities is an important factor, but it must be weighed alongside other statutory and strategic considerations, including deprivation levels, accessibility, and equity across the wider system.

4.2.27 In this case, the pharmacies identified for potential direction were assessed not solely on their proximity to UTCs but on their overall capacity to provide accessible, high-impact coverage for populations with the greatest need. While Clay Cross does not sit adjacent to a UTC, it serves a highly deprived population (IMD decile 2) with a significant number of patients managing long-term conditions who rely on community pharmacy as their first point of access for medicines and advice.

4.2.28 It is also recognised that UTCs are not the only source of urgent clinical activity generating pharmaceutical need. Patients accessing 111 services, out-of-hours GPs, and emergency dental or minor injury units often require timely access to medication within their local community. Ensuring the availability of pharmaceutical care in such localities is

therefore critical to maintaining system flow and avoiding unnecessary travel, particularly on public holidays when transport options are limited.

- 4.2.29 As detailed in the response at paragraph 3, the ICB undertook a comprehensive, evidence-based assessment of local need and accessibility to determine the most appropriate location for directed opening. This included a review of Index of Multiple Deprivation (IMD) deciles at Middle Layer Super Output Area (MSOA) level, which identified the Clay Cross catchment area as one of high deprivation and strategic importance for ensuring equitable access to essential healthcare.
- 4.2.30 Balancing proximity to urgent care, deprivation, transport accessibility, and system equity, the ICB concluded that directing Tesco Pharmacy (FXX72) in Clay Cross was the most effective and proportionate means of safeguarding continuity of pharmaceutical services across the Derbyshire system on New Year's Day 2026.
- 4.2.31 *(8) The location of the pharmacy is at the end of the main store. Patient can only access the pharmacy service by being chaperoned into the store. Only limited amount of patients can access during the 2 hours period and it will pose great challenge to ensure the health and safety of patients whilst in a big store which is not opened. This will pose great logistical challenge and cost implication.*
- 4.2.32 **Response** – Pharmacies situated within supermarket premises are subject to the same statutory and contractual obligations as all other NHS pharmacy contractors. The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 make no provision for exemptions or special dispensation based on premises type, ownership model, or co-location within a retail environment. Accordingly, where an Integrated Care Board (ICB) lawfully issues a direction to open, including on public or bank holidays, that direction applies equally to all contractors regardless of their setting.
- 4.2.33 The ICB fully acknowledges the operational considerations associated with supermarket-based pharmacies, such as access controls, staffing, and store security when the wider retail area is closed. However, these logistical matters fall within the contractor's responsibility to manage safely and effectively under its terms of service and standard operating procedures (SOPs). Pharmacies of this type have routinely fulfilled directed opening requirements across Derbyshire and other ICB areas without incident, demonstrating that such arrangements are practical and manageable with appropriate planning.
- 4.2.34 Furthermore, the ICB's duty under Section 126 of the NHS Act 2006 to secure the proper and sufficient provision of pharmaceutical services extends uniformly across all types of contractor premises. Consistent application of this regulatory principle ensures fairness, transparency, and equitable access to patients, preventing the creation of unintended disparities in service provision based solely on premises location.

- 4.2.35 For these reasons, the ICB maintains that Tesco Pharmacy (FXX72), as an NHS-contracted provider located within a supermarket, is subject to the same legal and operational expectations as any stand-alone pharmacy and is therefore required to comply fully with the direction issued for New Year's Day 2026.
- 4.2.36 NHS Derby and Derbyshire Integrated Care Board ("the ICB") submits the following formal representations in response to the appeal lodged by Tesco Pharmacy (FXX72) in relation to the direction issued requiring the pharmacy to open on New Year's Day 2026. These representations set out the statutory basis, evidence of need, and rationale underpinning the ICB's decision, and demonstrate why the direction was lawful, necessary, proportionate, and in the best interests of patients and the local population.
- 4.2.37 NHS Derby and Derbyshire 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.
- 4.2.38 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)."*
- 4.2.39 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.
- 4.2.40 NHS Derby and Derbyshire ICB did not receive notification of any pharmacies intending to open in the Clay Cross area on New Year's Day 2026, and no contractors volunteered to provide pharmaceutical services on this day. Considering the complete absence of voluntary provision, the ICB determined that it was necessary to issue a direction to discharge its statutory duty under section 126 of the NHS Act 2006 (Arrangement for pharmaceutical services).
- 4.2.41 Under this duty, NHS England (now delegated to ICBs) is required to plan for the proper and sufficient provision of drugs, medicines, listed appliances, and other prescribed services to persons in England. Where voluntary opening is not secured, the ICB must take appropriate action to ensure adequate service provision, which in this case necessitated the issuing of a direction. ICBs must plan for the provision to person's 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.”

4.2.42 NHS Derby and Derbyshire ICB is of the clear view that, although overall demand for the full range of pharmaceutical services may be lower on New Year’s Day than on a typical weekday, there remains a demonstrable and ongoing need for pharmaceutical provision for both residents and visitors to the Clay Cross area during the festive period.

4.2.43 While GP practices will be closed on New Year’s Day, other NHS services—including GP out-of-hours services and Accident & Emergency departments—will continue to operate. These services generate a continued requirement for pharmaceutical support to ensure patients can access essential medicines promptly, avoid unnecessary delays in treatment, and reduce pressure on urgent and emergency care pathways.

4.2.44 At a minimum, the ICB anticipates a clear need for the following services on New Year’s Day:-

4.2.44.1 Dispensing services for prescriptions issued by NHS service providers open on the day, as well as for prescriptions issued

previously that patients have been unable to collect earlier (e.g., due to work commitments or reduced supplementary hours over the Christmas period).

4.2.44.2 Pharmacy First services, including the urgent supply of repeat medicines and the management of low-acuity conditions via NHS 111 referrals or established clinical pathways.

4.2.44.3 The NHS Pharmacy Contraception Advanced Service, particularly considering the service expansion from October 2025, which includes the provision of emergency contraception.

4.2.45 Ensuring the availability of these core services on New Year's Day is essential to maintaining safe, equitable, and uninterrupted access to pharmaceutical care for the population of Clay Cross and its surrounding communities.

4.2.46 On 21 March 2025, NHS Derby and Derbyshire ICB issued a communication to all pharmacy contractors requesting that they complete a Microsoft Form to inform the ICB of their intended opening hours over the 2025–26 bank holiday periods. Contractors were asked to return the completed forms to england.eastmidpharmacy@nhs.net by 18 April 2025. This process is a standard and transparent mechanism used to identify any pharmacies willing to volunteer to open on bank holidays, enabling the ICB to plan provision and avoid the need for formal directions where possible.

4.2.47 Despite this opportunity, no contractors in the Clay Cross area indicated a willingness to open on New Year's Day 2026. In the absence of voluntary provision, the ICB is required under Section 126 of the NHS Act 2006, delegated to ICBs by NHS England, to plan for the provision of pharmaceutical services to ensure proper and sufficient access for the local population. Where voluntary opening is not secured, this responsibility is met through the issuing of directions.

4.2.48 Following this, the ICB undertook an initial assessment to identify the most appropriate pharmacy to direct. This assessment was informed by the Pharmaceutical Needs Assessment (PNA), which was used to establish local need and assess geographical coverage, accessibility, and deprivation levels. Based on this structured analysis, Tesco Pharmacy (FXX72) was identified as the most appropriate pharmacy to meet the needs of people in the Clay Cross area for the following reasons:

4.2.48.1 *There is a need to provide pharmaceutical services in Clay Cross where there is currently no provision on New Year's Day 2026.*

4.2.48.2 *The pharmacy is also identified as being located within, or close to, a Middle Layer Super Output Area (MSOA) within Derby and Derbyshire ICB, which has been identified as deprived, based on its Index of Multiple Deprivation (IMD) decile. This proposal ensures that there is coverage of*

pharmaceutical services in an area of deprivation, which is a priority for NHS Derby and Derbyshire 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 proposed direction would ensure provision of dispensing for these patients.

4.2.48.3 Sufficient availability of public transport and car parking accessibility.

4.2.48.4 Consultations are held regularly with the Local Pharmaceutical Committee for pharmaceutical provision of upcoming public or bank holidays. On this occasion, the proposed pharmacies for direction on New Year's Day 2026 were sent via email to LPCs on 16 May 2025, where no rationale was provided to oppose the direction of Tesco Pharmacy (FXX72) on New Year's Day 2026.

4.2.49 As a result of this assessment, it has been determined that direction is required to provide adequate pharmaceutical. Tesco Pharmacy (FXX72) was directed to open for the hours of 10:00-12:00 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.

4.2.50 Following the assessment of the bank holiday opening returns from the Derby and Derbyshire HWB area and engagement with the LPC a proposal to direct letter was issued to Tesco Pharmacy (FXX72) on 09 June 2025.

4.2.51 Representations against this proposal were subsequently received on 27 June 2025. These were carefully considered by the ICB. However, the decision was made to proceed with the issue of the direction, as no assurances were provided that alternative pharmacies in the area would be open during the period covered by the direction, and the contractor's written representations did not provide any substantive or mitigating reasons as to why they should not comply with the direction.

4.2.52 For the reasons set out above, NHS Derby and Derbyshire ICB has lawfully and appropriately issued the direction, which is both necessary to discharge its statutory duties and fully compliant with the relevant regulations. The ICB, therefore, respectfully requests that the appeal be dismissed.

4.2.53 NHS Derby and Derbyshire ICB remains willing to respond to any further representations provided by Tesco Pharmacy, Bridge Street, Clay Cross, Derbyshire. S45 9NU."

Email of 9 June 2025 to the Appellant from the Commissioner

4.2.54 "Following the publication of the rota for 24/25 and 25/26 in conjunction with the ICB and LPC. We are proposing to direct your pharmacy to

open on New Years Day 2025 to provide pharmaceutical services to the local population.

- 4.2.55 This will be for 2 hours only and full details are on the letter provided.
- 4.2.56 The rate of commission for this service is £275 per hour for a maximum of 2 hours and can be claimed via Pharmoutcomes, up to 28 days after the directed day.
- 4.2.57 Should you not claim within this time period, assurance of the opening will be sought, and you will have up to 45 days from the directed day in which to make a final claim.”

Proposal to direct letter dated 9 June 2025 to the Appellant

4.2.58 **“Re: Proposal to direct the above-named pharmacy to open on New Years Day 1st January 2026**

4.2.59 **The pharmacy’s current core opening hours are:**

4.2.59.1 Monday – Friday : 09:00 – 21:00

4.2.59.2 Saturday : 09:00 – 12:00

4.2.59.3 Sunday : 10:00 – 16:00

4.2.60 **The total opening hours (core & supplementary) are:**

4.2.60.1 Monday – Friday : 09:00 – 21:00

4.2.60.2 Saturday : 10:00 – 16:00

4.2.60.3 Sunday : 10:00 – 16:00

- 4.2.61 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. I can confirm that we have not been notified of any pharmacies that will be open in Derbyshire on New Years Day 1st January 2026, and no pharmacies have volunteered to open on this day. Under section 126 of the NHS Act 2006 (Arrangements for pharmaceutical services), NHS England (now delegated to the ICBs) must make arrangements for the provision, to persons 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.”

4.2.62 In light of the fact no pharmacies will be open on New Years Day 1st January 2026, NHS Derby and Derbyshire 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.

4.2.63 NHS Derby and Derbyshire ICB has therefore considered what arrangements need to be put in place on New Years Day 1st January 2026 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 day that is not a bank or public holiday, there will still be a need for pharmaceutical services by people who live within Derbyshire or are visiting the area. Whilst GP practices will be closed on (insert day and date), other providers of NHS services will be open to treat patients, such as the GP out of hours service and A&E departments.

4.2.64 We note that in SHA/24664 (issued on 15 December 2021) the head of operations, Primary Care Appeals, stated that they were of the view that the days in question (Sunday 26 December 2021 and Saturday 1 January 2022) are, in relation to pharmaceutical services, no different from any other day and that they had seen no information in that appeal which indicated a change of attitude towards those particular days (from a pharmaceutical services perspective).

4.2.65 We believe that, as a minimum, the services for which there will be a need on New Years Day are as follows:

4.2.65.1 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.

4.2.65.2 The Pharmacy First service for the urgent supply of repeat medicines, referrals from NHS11 for low acuity, minor illnesses or under one of the clinical pathways.

4.2.65.3 The NHS pharmacy contraception advanced service, particularly as it is being expanded to include the provision of emergency contraception from October 2025.

4.2.66 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 New Years Day 1st January 2026 and therefore at present the ICB is unable to discharge the duty as set out in section 126 of the NHS Act 2006.

4.2.67 Following an initial assessment by our team, your pharmacy has been identified as meeting the needs of people in Derbyshire for the following reasons:

4.2.67.1 There is a need to provide pharmaceutical services in Clay Cross S45 area where there is currently no provision on New Years Day 1st January 2026.

4.2.67.2 Your pharmacy is also identified as being located within, or close to, a Middle Layer Super Output Area (MSOA) within Insert ICB Name which has been identified as deprived, based on its Index of Multiple Deprivation (IMD) decile. This proposal ensures that there is coverage of pharmaceutical services in an area of deprivation, which is a priority for Derby and Derbyshire 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 proposed direction would ensure provision of dispensing for these patients.

4.2.68 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:

4.2.68.1 New Years Day 1st January 2026

4.2.68.2 10:00 – 12:00

4.2.69 Please note that we have consulted with Community Pharmacy Derbyshire representatives and made them aware of our intentions to propose this direction, and the rationale behind the proposal. Community Pharmacy Derbyshire are in support of the need to ensure adequate pharmaceutical provision on Christmas Day 25th December

2025 and are willing to provide guidance to contractors on this proposed direction. The contact email address of Community Pharmacy Derbyshire should you wish to contact them is nhunter@cpderbyshire.org.uk.

4.2.70 If you wish to make written representations to assist us in our assessment as to whether or not to issue a direction and/or about the proposed direction, they should be sent to england.eastmidspharmacy@nhs.net within 30 days of the date of this letter, i.e. by 09/07/2025.

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

4.2.72 [A copy of the direction letter was also enclosed].

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 or from 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 or from 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 or from 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 or from 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 or from 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 or from 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 or from 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 New Year's Day 2026 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 at or from the premises must be given notice of the proposed changes and given 30 days to make written representations about the proposed changes.
- 6.5 I note the Commissioner states that it wrote to all contractors on 21 March 2025 to request them to complete a Microsoft Form to indicate their intended opening hours on the bank holidays during 2025/2026. Whilst I have not been provided with a copy of this email, I note the Appellant does not dispute that this happened. The Commissioner confirms that no pharmacies in the area volunteered to open on New Year's Day.
- 6.6 Although I have not been provided with a copy of the consultation with the LPC, the Commissioner, in its direction letter and subsequent representations on the appeal, confirms that a consultation took place, which I note is not disputed by

the Appellant. Further, the proposal to direct letter provided the Appellant with the opportunity to make representations within 30 days. I note that the Appellant made representations to the Commissioner, as outlined above at paragraph 2.9.1.

- 6.7 From the information before me, I am of the view that the Commissioner carried out some form of assessment in line with the Regulations.
- 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 Appellant states that *“The letter did not demonstrate to us which assessment it was based on for the decision of this direction and no evidence was given to show us the reason for our pharmacy to remain opened on New Year Day.”*
- 6.10 In the direction letter, the Commissioner states that the reasons for directing the Appellant to open are:
- 6.10.1 *“There is a need to provide pharmaceutical services in Clay Cross, Derbyshire where there is currently no provision on New Years Day 1st January 2026.*
- 6.10.2 *There has been no voluntary offer of pharmacy provision in Clay Cross, Derbyshire to meet the needs of people living in the area on New Years Day 1st January 2026.*
- 6.10.3 *Your pharmacy is also identified as being located within, or close to, a Middle Layer Super Output Area (MSOA) within Derby and Derbyshire 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 Derby and Derbyshire 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.”*
- 6.11 In its representations on the appeal, the Commissioner states that *“At a minimum, the ICB anticipates a clear need for the following services on New Year’s Day:-*
- 6.11.1 *Dispensing services for prescriptions issued by NHS service providers open on the day, as well as for prescriptions issued previously that patients have been unable to collect earlier (e.g., due to work commitments or reduced supplementary hours over the Christmas period).*

6.11.2 *Pharmacy First services, including the urgent supply of repeat medicines and the management of low-acuity conditions via NHS 111 referrals or established clinical pathways.*

6.11.3 *The NHS Pharmacy Contraception Advanced Service, particularly considering the service expansion from October 2025, which includes the provision of emergency contraception.”*

6.12 The Commissioner further states:

6.12.1 *“the ICB undertook an initial assessment to identify the most appropriate pharmacy to direct. This assessment was informed by the Pharmaceutical Needs Assessment (PNA), which was used to establish local need and assess geographical coverage, accessibility, and deprivation levels. Based on this structured analysis, Tesco Pharmacy (FXX72) was identified as the most appropriate pharmacy to meet the needs of people in the Clay Cross area for the following reasons:*

6.12.1.1 *There is a need to provide pharmaceutical services in Clay Cross where there is currently no provision on New Year's Day 2026.*

6.12.1.2 *The pharmacy is also identified as being located within, or close to, a Middle Layer Super Output Area (MSOA) within Derby and Derbyshire ICB, which has been identified as deprived, based on its Index of Multiple Deprivation (IMD) decile. This proposal ensures that there is coverage of pharmaceutical services in an area of deprivation, which is a priority for NHS Derby and Derbyshire 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 proposed direction would ensure provision of dispensing for these patients.*

6.12.1.3 *Sufficient availability of public transport and car parking accessibility.*

6.12.1.4 *Consultations are held regularly with the Local Pharmaceutical Committee for pharmaceutical provision of upcoming public or bank holidays. On this occasion, the proposed pharmacies for direction on New Year's Day 2026 were sent via email to LPCs on 16 May 2025, where no rationale was provided to oppose the direction of Tesco Pharmacy (FXX72) on New Year's Day 2026.”*

6.13 Whilst I note the Appellant does not dispute that it is *“located within, or close to a Middle Layer Super Output Area (MSOA)”*, it contends that *“other pharmacies [of its own are] within walking or short drive distance”* so concludes that this *“does not show to us that we are required to be opened on New Year Day”*. In response to this point, the Commissioner states that it *“conducted a structured comparison of all potential contractors within the catchment area, assessing them against consistent criteria including: IMD ranking and associated population health inequalities; Proximity to urgent care and primary care access*

points; Travel times and transport accessibility; and Previous directions or voluntary openings during the same festive period.” The Commissioner expands upon this point further and states that *“This comparative assessment confirmed that while multiple pharmacies met the deprivation and accessibility thresholds, several had already been directed to open on other public holidays such as Christmas Day or Boxing Day. To prevent duplication and ensure that the service burden was distributed equitably across providers, the ICB adopted a balanced and proportionate approach, rotating directions across the network to maintain fairness”*. I can only agree with this approach if the initial assessment of the need for pharmaceutical provision in terms of securing access to services to patients is sufficiently coherent and robust. For the reasons set-out below, I do not consider this to be the case.

- 6.14 In relation to the comments from the Commissioner that public transport was considered alongside access by car, in reality, given the lack of public transport on bank holidays, patients will likely drive meaning that the location of other pharmacies could be as, or more, suitable than the Appellant’s pharmacy and I note that I have been provided with no information to demonstrate why the Appellant’s pharmacy is best placed in terms of accessibility.
- 6.15 The Appellant states that *“The nearest Urgent Care Treatment centre from our pharmacy is Whitworth Hospital, which is 9.3 miles (21 minutes drive away). This distance is not ideal considering the pharmacy is only opened [sic] for 2 hours and a pharmacy nearer to the urgent care treatment centre should be made preferable”*. In response, the Commissioner states *“The relationship between a pharmacy’s geographical position and urgent care facilities is an important factor, but it must be weighed alongside other statutory and strategic considerations, including deprivation levels, accessibility, and equity across the wider system. In this case the pharmacies identified for potential direction were assessed not solely on their proximity to UTCs but on their overall capacity to provide accessible, high-impact coverage for populations with the greatest need. While Clay Cross does not sit adjacent to a UTC, it serves a highly deprived population (IMD decile 2) with a significant number of patients managing long-term conditions who rely on community pharmacy as their first point of access for medicines and advice”*. However, I note that the Commissioner previously stated that *“a number of pharmacies within the Clay Cross and surrounding areas are of comparable standing within the Index of Multiple Deprivation (IMD) and Middle Layer Super Output Area (MSOA) prioritisation framework”*. I do not consider that this reasoning provides a clear explanation as to why the Appellant’s pharmacy in particular is the best placed when there are other pharmacies located within similar IMD deciles.
- 6.16 The Commissioner goes on to state *“It is also recognised that UTCs are not the only source of urgent clinical activity generating pharmaceutical need. Patients accessing 111 services, out-of-hours GPs, and emergency dental or minor injury units often require timely access to medication within their local community. Ensuring the availability of pharmaceutical care in such localities is therefore critical to maintaining system flow and avoiding unnecessary travel, particularly on public holidays when transport options are limited.”* I further note, in response to point three of the Appellant’s appeal, the Commissioner states *“Directing a pharmacy in close proximity to a UTC ensures that patients can access essential medicines quickly and safely, without the need to travel long*

distances — a consideration that is particularly critical on public holidays, when public transport options are limited and other NHS services may be operating at reduced capacity". However the Appellant contends that its pharmacy is 9.3 miles away from the Urgent Treatment Centre (UTC), which I note has not been disputed by the Commissioner and whilst I am of the view that distance is only one factor when directing pharmacies to open, I do not consider the Appellant's pharmacy to be "*in close proximity*" to the UTC which leads me to question the robustness of the assessment.

- 6.17 Whilst not disputed by the Appellant, I note that the Commissioner has not provided an explanation nor has it provided data which supports a finding that there is a need for a pharmacy to open from 10:00 to 12:00 on New Year's Day in the Clay Cross area.
- 6.18 In relation to the Appellant's comment in regard to its location, whilst acknowledging the operational considerations the Appellant would face in respect of opening on a public holiday, I agree with the Commissioner's comment "*Pharmacies situated within supermarket premises are subject to the same statutory and contractual obligations as all other NHS pharmacy contractors*".
- 6.19 With regard to the errors in the proposal to direct letter, I note the Commissioner acknowledges that the Saturday opening hours listed for the Appellant's pharmacy were incorrect and that the references to Christmas Day and New Year's Day 2025 were due to an administrative error but that these were rectified in the direction letter. As stated by the Appellant, I consider that errors like this may cause confusion for contractors.
- 6.20 In my view, the assessment and decision to direct should be based on patient needs taking into account, amongst other things, where people live, means of access, if they have any specific needs and the location of medical services. One factor may outweigh others or it might be the totality of factors of equal weighting that support a conclusion as to whether to direct.
- 6.21 Based on the information before me, I am not satisfied with the Commissioner's assessment or the reasoning that lies behind the direction which does not clearly demonstrate why this pharmacy should open. I consider that the Commissioner has not provided coherent and sufficient information to support the conclusion reached.
- 6.22 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.
- 6.23 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 New Year's Day 2026.

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