

10 November 2025

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

FILE REF: **SHA/26700**

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

COMMISSIONER: **Derby and Derbyshire ICB**
("the Commissioner")

PHARMACIST: **PCT Healthcare Ltd**
("the Appellant")

PREMISES: **Peak Pharmacy (FR077)**
18 High Street
Staveley
Chesterfield
S43 3UX

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL
PHARMACEUTICAL SERVICES) REGULATIONS 2013**

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

1 Outcome

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

A copy of this decision is being sent to:

PCT Healthcare Ltd
East Midlands Primary Care Team, on behalf of Derby and Derbyshire ICB

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**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL
PHARMACEUTICAL SERVICES) REGULATIONS 2013 ["THE REGULATIONS"]**

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

DIRECTION OF ADDITIONAL CORE OPENING HOURS

1 Introduction

- 1.1 Relying on Paragraph 25 of Schedule 4, the Commissioner has requested that the Appellant open from 10am to 12pm on 25 December 2025 (Christmas Day).
- 1.2 The Appellant seeks to appeal to NHS Resolution.

Rights of appeal

- 1.3 Where the Commissioner has directed a pharmacist to provide pharmaceutical services for its premises at set times and on set days in accordance with paragraph 25 of Schedule 4 of the Regulations, paragraph 25(7) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").

- 1.4 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 1.5 A pharmacy's opening hours may be categorised as:
- 1.5.1 'core' opening hours (days on and times at which the pharmacy is obliged to be open), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours; or
 - 1.5.2 'supplementary' opening hours (other days on and times at which the pharmacy undertakes to provide pharmaceutical services, as notified to the Commissioner).

Alteration of 'core' (including 'directed') opening hours

- 1.6 In accordance with paragraph 1(7)(c) of Schedule 2 to the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list, the proposed core opening hours in respect of the premises during which it will be obliged to provide pharmaceutical services under paragraph 23(1) of Schedule 4 to the Regulations. These may be subject to a direction under paragraph 23(1)(c), (d) or (e).

Alteration of 'supplementary' opening hours

- 1.7 Other days or times at which services are to be provided (as set out in the original application for entry in the pharmaceutical list pursuant to paragraph 23(3) of Schedule 4 as "supplementary hours") may be altered by giving notice to the Commissioner, in accordance with paragraph 23(6)(a) without the need to make an application.
- 1.8 Notices under paragraph 23(6)(a) are not subject to review by NHS Resolution.

The Commissioner's Request

- 1.9 The Commissioner wishes the Appellant to open from 10am to 12pm on 25 December 2025 (Christmas Day), a day on which it would otherwise be closed.

2 The Direction

In a letter to the Appellant dated 30 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 Derbyshire on Christmas Day 25th December 2025, and no pharmacies 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 Christmas Day 25th December 2025, 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.
- 2.4 NHS Derby and Derbyshire ICB have therefore considered what arrangements need to be put in place on Christmas Day 25th December 2025 in order to discharge this duty. We are of the opinion that whilst demand for the full range of pharmaceutical services may be lower on this day compared to a day that is not a bank or public holiday, there will still be a need for pharmaceutical services by people who live within Chesterfield, Derbyshire or are visiting the area. Whilst GP practices will be closed on Christmas Day 25th December 2025, 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 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).
- 2.6 We believe that, as a minimum, the services for which there will be a need on Christmas Day 25th December 2025 are as follows.

- 2.6.1 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.
- 2.6.2 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.
- 2.6.3 The NHS pharmacy contraception advanced service, particularly as it is being expanded to include the provision of emergency contraception from October 2025.
- 2.7 Of course, some people may wish to access other essential and advanced services. As stated above, we are not aware of any pharmacies that will be open on Christmas Day 25th December 2025 and therefore at present the ICB is unable to discharge the duty as set out in section 126 of the NHS Act 2006.
- 2.8 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 Christmas Day 25th December 2025 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
- 2.9 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 dated 5th June 2025 which was sent on 6th June 2025 to the email address we have on file for your pharmacy, pharmacy.fr077@nhs.net.
- 2.10 This assessment has now concluded, and our team have not received any representations on your behalf, therefore we are now issuing the pharmacy with the enclosed direction.
- 2.11 Your core opening hours on **Christmas Day 25th December 2025** are therefore: **10:00 – 12:00**
- 2.12 The reasons for directing the above pharmacy to open are:
 - 2.12.1 There is a need to provide pharmaceutical services in Derbyshire where there is currently no provision on Christmas Day 25th December 2025.
 - 2.12.2 There has been no voluntary offer of pharmacy provision in the Derbyshire to meet the needs of people living in the area on Christmas Day 25th December 2025.
 - 2.12.3 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 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.

- 2.13 The level of remuneration for Christmas Day 25th December 2025, 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.eastmidspharmacy@nhs.net at your earliest convenience. If no claim is made, this will be investigated by NHS Derby and Derbyshire ICB in order to establish whether or not there has been a breach of the terms of service.
- 2.14 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.
- 2.15 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: nhsr.appeals@nhs.net or

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

- 2.16 If you have any questions, please do not hesitate to contact me."

3 The Appeal

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

- 3.1 "Further to a direction of core opening hours received in a full direction letter for the above pharmacy to open on 25 December 2025 at 10:00 until 12:00, PCT Healthcare Limited writes to appeal to the Primary Care Appeals Unit.
- 3.2 PCT Healthcare Limited appealed this direction to NHS Derby and Derbyshire ICB within the initial 30-day appeal period, via email on 3 July 2025. (email attached)
- 3.3 No response was received to the written representations submitted by PCT Healthcare Limited and the next correspondence from NHS Derby and Derbyshire ICB was a full direction letter dated 30 July 2025.

- 3.4 Failure to consider the written representations submitted in time to england.eastmidspharmacy@nhs.net is contrary to Schedule 4 Paragraph 25(2)(b) NHS Pharmaceutical and LPS Regulations.
- 3.5 PCT Healthcare Limited are aware of the need for adequate pharmaceutical services provision. However, we feel that this particular direction has not been based on adequate research and reasoning by East Midlands Primary Care Team (EMPCT).
- 3.6 There is no detail within the letter from the EMPCT, as it is generic, to indicate the reasons as to how or why this direction supports an assessment which concluded the pharmaceutical needs of the relevant persons (our patients) will not be met on this day that we are required to open our pharmacy, FR077 in the Chesterfield area.
- 3.7 Under Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS Regulations NHS England must include with the notification a statement of “the reasons for the change”. We note that the Regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation, which should conclude with the needs of the local population and likely users of our pharmacy not being met on this day such that we are required to open from 10:00 to 12:00 on 25 December 2025.
- 3.8 In particular, the letter received makes no reference to any specific results linking our pharmacy to any lack of service provision on 25 December 2025. Furthermore, there is no actual details of the findings of a consultation or assessment, and therefore no reasons behind the direction which is contrary to paragraph 25(1) and 25(6) of Schedule 4.
- 3.9 With regards to the assessment mentioned where are the results of this assessment, why have they not been shared with contractors in our locality, and in particular our pharmacy FR077.
- 3.10 In addition where are the minutes of the engagement with Community Pharmacy Derbyshire and the ICB with reference to pharmaceutical provision on 25 December 2025.
- 3.11 Hospitals & Urgent treatment centres
- 3.12 PCT Healthcare Limited has reviewed pharmacies close to the A&E department in Chesterfield and the Urgent Care Centre in Chesterfield where patients are advised to access healthcare on Bank Holidays when their GP Surgeries are closed.
- 3.13 With regards to our pharmacy location within Chesterfield there are 22 community pharmacies located closer to the Urgent Treatment Centre at DHU Healthcare CIC, Ashgate Medical Practice, Ashgate Road Chesterfield S40 4AA in Chesterfield according to NHS.uk. [Find a pharmacy - NHS](#) (details below)

	Name	Distance from UCC (miles)	Postcode
	Urgent Treatment Centre	0	S40 4AA
1	Peak Pharmacy	0	S40 4AA
2	Peak Pharmacy	0.2	S40 1LG
3	Dents of Chesterfield	0.2	S40 1LE
4	Peak @ Wheatbridge	0.3	S40 2AB
5	Boots	0.4	S40 1PB
6	Peak Pharmacy	0.5	S40 1PJ
7	Tesco Instore Pharmacy	1.2	S41 7JB
8	Peak Pharmacy	1.2	S41 8QW
9	Peak Pharmacy	1.3	S40 3JX
10	Cohens Chemist	1.3	S40 2HP
11	Dents of Chesterfield	1.3	S41 8DU
12	Holme Hall Pharmacy	1.4	S40 4SL
13	Peak Pharmacy	1.5	S41 8LX
14	Hasland Pharmacy	1.8	S41 0LJ
15	Calow Pharmacy	2.1	S44 5AH
16	Peak Pharmacy	2.2	S41 9JT
17	Brimington Pharmacy	2.2	S43 1JG
18	Peak Pharmacy	2.6	S42 6PX
19	Peak Pharmacy	2.9	S43 2AN
20	Peak Pharmacy	3	S43 3ST
21	Peak Pharmacy	3.1	S42 5ED
22	Tuption Pharmacy	3.6	S42 6BH
23	FR077 - Peak Pharmacy	4.1	S43 3UX

- 3.14 With regards to our pharmacy location within Chesterfield there are 18 community pharmacies located closer or equidistant to the A&E Department of Chesterfield Royal Hospital, Chesterfield Road, Chesterfield S44 5BL according to NHS.uk. [Find a pharmacy - NHS](#) (details below)

Name	Distance from Hospital A&E (miles)	Postcode
Chesterfield A&E	0	S44 5BL
Calow Pharmacy	0.3	S44 5AH
Hasland Pharmacy	1.2	S41 0LJ
Peak Pharmacy	1.4	S40 1PJ
Brimington Pharmacy	1.5	S43 1JG
Boots	1.5	S40 1PB
Tesco Instore Pharmacy	1.6	S41 7JB
Dents of Chesterfield	1.6	S40 1LE
Peak Pharmacy	1.6	S43 3ST
Peak Pharmacy	1.6	S40 1LG
Peak Pharmacy	1.8	S40 4AA
Peak @ Wheatbridge	1.9	S40 1AB
Cohens Chemist	2.1	S40 2HP
Peak Pharmacy	2.2	S41 8LX
Peak Pharmacy	2.4	S42 5ED
Peak Pharmacy	2.6	S41 8QW
Peak Pharmacy	2.6	S41 9JT
Dents of Chesterfield	2.7	S41 8DU
Peak Pharmacy	2.8	S43 2AN
Peak Pharmacy – FR077	2.8	S43 3UX

- 3.15 Public transport on Christmas Day

- 3.16 PCT Healthcare Limited reviewed previous public transport provision on Christmas Day 2024 information from Trent Barton website:
- 3.17 [Christmas and New Year buses - trent barton](#) in 24/25.
- 3.18 The bus operator on their website published what services were offered over the festive and New Year Period for 24/25 which is a good indicator of the service provision for Christmas Day 2025.
- 3.19 [Screenshot provided]
- 3.20 There were no bus services offered by any bus operators on Christmas Day 2024, this is a good indicator that there shall be no services operating Christmas Day 2025. Our pharmacy FR077 is not the closest pharmacy to either the Chesterfield A&E department or the UCC Centre in Chesterfield, hence any patients requiring care would pass a number of pharmacies which are located closer to these out of hours service providers before accessing FR077.
- 3.21 Moving on to consider the section beginning:
- 3.22 *"The reasons for directing the above pharmacy to open are:"*
- 3.23 (located at the bottom of page 2 of the direction letter dated 30 July 2025 and the top of page 3. [Quotes paragraphs 2.12.1 – 2.12.3])
- 3.24 PCT Healthcare Limited believes that a proposal to direct based on "Derbyshire" as a whole does not meet the requirements of Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS Regulations NHS England.
- 3.25 According to the current Derby & Derbyshire PNA: [PNA 2022](#)
- 3.26 "Derby and Derbyshire Pharmaceutical Needs Assessment 2022-2025"
- There were an estimated 21 pharmacies to every 100,000 population in England.
 - The 205 community pharmacies across Derby and Derbyshire represented a rate of 19 per 100,000.
 - In Derby City there were 54 pharmacies, at 21 per 100,000, whilst in Derbyshire there are 151, at 19 per 100,000.
 - At a District level, the rate varied from 23 (High Peak) to 13 pharmacies per 100,000 (South Derbyshire)"
- 3.27 PCT Healthcare Limited fails to see how this proposal letter gives sufficient evidence to meet the requirements of Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS Regulations NHS England, that our pharmacy FR077 is required to open on Christmas Day 2025 rather than any of the other pharmacies within Derbyshire.
- 3.28 Deprivation details for pharmacies in Chesterfield

- 3.29 PCT Healthcare Limited has completed a review of the pharmacies located close to the Chesterfield Urgent Treatment Centre, Ashgate Road, Chesterfield S40 4AA regarding the IMD for their postcodes.
- 3.30 The details provided in the table below, are from the Ministry of Housing Communities & Local Government – English indices of deprivation. [English indices of deprivation 2019: Postcode Lookup](#)
- 3.31 The shaded pharmacies [sic] of which there are three in column H of the table are all in LSOA areas with a similar overall Index of Multiple Deprivation (IMD) to our pharmacy FR077, all of these pharmacies are closer to the Urgent Care Centre in Chesterfield than our pharmacy.
- 3.32 Additionally, considering column J, the Health and Disability Rank there are 10 pharmacies which are located in areas with a similar Health and Disability Ranking compared to our pharmacy located at 18 High Street, Staveley (FR077), all of these pharmacies are closer to the Urgent Care Centre in Chesterfield than our pharmacy.
- 3.33 PCT Healthcare Limited has proved that FR077, compared to other nearby pharmacies, is not located in a more deprived area neither by Index of Multiple Deprivation (IMD) nor the Health and Disability Ranking as provided from the Ministry of Housing Communities & Local Government – English indices of deprivation.

	Name	...from UCC [sic]	Postcode	LSOA code	LSOA Name	... Multiple [sic]	Multiple Deprivation	... and Disability Rank [sic]	... and Disability [sic]
	Urgent Treatment Centre	0	S40 4AA	E01019538	Chesterfield 010A E01019538	12760	4	4328	2
1	Peak Pharmacy	0	S40 4AA	E01019538	Chesterfield 010A E01019538	12760	4	4328	2
2	Peak Pharmacy	0.2	S40 1LG	E01019538	Chesterfield 010A E01019538	12760	4	4328	2
3	Dents of Chesterfield	0.2	S40 1LE	E01019538	Chesterfield 010A E01019538	12760	4	4328	2
4	Peak @ Wheatbridge	0.3	S40 2AB	E01019556	Chesterfield 010C E01019556	4574	2	1042	1
5	Boots	0.4	S40 1PB	E01033387	Chesterfield 010F	16005	5	10410	4
6	Peak Pharmacy	0.5	S40 1PJ	E01033387	Chesterfield 010F	16005	5	10410	4

7	Tesco Instore Pharmacy	1.2	S41 7JB	E01019569	Chesterfield 007B E01019569	7791	3	2736	1
8	Peak Pharmacy	1.2	S41 8QW	E01019571	Chesterfield 004E	5506	2	2000	1
9	Peak Pharmacy	1.3	S40 3JX	E01019591	Chesterfield 009E	27370	9	11007	4
10	Cohens Chemist	1.3	S40 2HP	E01019578	Chesterfield 013D E01019578	499	1	160	1
11	Dents of Chesterfield	1.3	S41 8DU	E01019544	Chesterfield 004D E01019544	11660	4	4658	2
12	Holme Hall Pharmacy	1.4	S40 4SL	E01019561	Chesterfield 008E	1377	1	93	1
13	Peak Pharmacy	1.5	S41 8LX	E01019542	Chesterfield 004B E01019542	3827	2	858	1
14	Hasland Pharmacy	1.8	S41 0LJ	E01019547	Chesterfield 012C E01019547	6382	2	1546	1
15	Calow Pharmacy	2.1	S44 5AH	E01019821	North East Derbyshire 007B	19825	7	9813	3
16	Peak Pharmacy	2.2	S41 9JT	E01019574	Chesterfield 001E	12235	4	4396	2
17	Brimington Pharmacy	2.2	S43 1JG	E01019531	Chesterfield 003D E01019531	7188	3	3474	2
18	Peak Pharmacy	2.6	S42 6PX	E01019829	North East Derbyshire 008D	29405	9	19713	7
19	Peak Pharmacy	2.9	S43 2AN	E01019527	Chesterfield 003A E01019527	2538	1	1031	1
20	Peak Pharmacy	3	S43 3ST	E01019552	Chesterfield 006D E01019552	8968	3	2097	1
21	Peak Pharmacy	3.1	S42 5ED	E01019798	North East Derbyshire 007A	16654	6	13230	5
22	Tupton Pharmacy	3.6	S42 6BH	E01019826	North East Derbyshire 009F	6173	2	3034	1

23	FR077 - Peak Pharmacy	4.1	S43 3UX	E01019566	Chesterfield 002D E01019566	2678	1	582	1
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- 3.34 In conclusion, our pharmacy has received this direction, however for the reasons discussed above we do not feel it has been made clear as to why our pharmacy, in particular, has been chosen to open on 25 December 2025, as opposed to another pharmacy in the Derbyshire area.”

Email to East Midlands Primary Care Team dated 3 July 2025

- 3.35 “Further to the proposal to direct email as sent to FR077 on 5-6-25. (as attached for information)

3.36 **Re: Proposal to Direct in Chesterfield area on 25-12-25 (FR077)**

- 3.37 Further to a Proposal to direct of core opening hours received in an email on 5/6/25, please accept the following representations from PCT Healthcare Limited.

- 3.38 As per the proposal letter:

- 3.39 If you wish to make written representations to assist us in our assessment as to whet [sic] to issue a direction and/or about the proposed direction, they should be [sic] england.eastmidpharmacy@nhs.net within 30 days of the date of this letter, i.e. by 05 [sic]

- 3.40 PCT Healthcare Limited are aware of the need for adequate pharmaceutical services provision. However, we feel that this particular proposal has not been based on adequate research and reasoning by the ICB.

- 3.41 There is no detail within the email from the ICB, as it is generic letter, to indicate the reasons as to how or why this proposal supports an assessment which concluded the pharmaceutical needs of the relevant persons (our patients) will not be met on this day that we are required to open our pharmacy, FR077 in the Chesterfield area.

- 3.42 Under Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS Regulations NHS England must include with the proposal notification a statement of “the reasons for the change”. We note that the Regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation, which should conclude with the needs of the local population and likely users of our pharmacy not being met on this day such that we are required to open on 25-12-25.

- 3.43 In particular, the letter received make no reference to any specific results linking our pharmacy to any lack of service provision on 25-12-25. Furthermore, there is no actual details of the findings of a consultation or assessment, and therefore no reasons behind the proposal which is contrary to paragraph 25(1) and 25(6) of Schedule 4.

- 3.44 In conclusion, our pharmacy has received this proposal, however for the reasons discussed above we do not feel it has been made clear as to why our pharmacy, in particular, has been chosen to open on 25-12-25, as opposed to another pharmacy in the Chesterfield area.”

4 Representations

In a letter to NHS Resolution dated 26 September 2025 the Commissioner stated:

- 4.1 “Thank you for your letter dated 29 August 2025 notifying us that PCT Healthcare Ltd T/A Peak Pharmacy (FR077) has appealed against Derby and Derbyshire Integrated Care Boards (ICBs) decision to direct their pharmacy (FR077) to open on Christmas Day 2025
- 4.2 We note that Peak Pharmacy (FR077) are appealing this direction for the reasons listed below:
- 4.2.1 *No response was received to the written representations submitted by PCT Healthcare Limited and the next correspondence from East Midlands primary Care Team (EMPCT) was a full direction letter dated 30 July 2025.*
- 4.2.2 *PCT Healthcare Limited are aware of the need for adequate pharmaceutical services provision. However, we feel that this particular direction has not been based on adequate research and reasoning by East Midlands Primary Care Team (EMPCT).*
- 4.2.3 *There is no detail within the letter from the EMPCT, as it is generic, to indicate the reasons as to how or why this direction supports an assessment which concluded the pharmaceutical needs of the relevant persons (our patients) will not be met on this day that we are required to open our pharmacy, FR077 in the Chesterfield area.*
- 4.2.4 *Under Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS Regulations NHS England must include with the notification a statement of “the reasons for the change”. We note that the Regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation, which should conclude with the needs of the local population and likely users of our pharmacy not being met on this day such that we are required to open from 10:00 to 12:00 on 25th December 2025.*
- 4.2.5 *In particular, the letter received makes no reference to any specific results linking our pharmacy to any lack of service provision on 25th December 2025. Furthermore, there is no actual details of the findings of a consultation or assessment, and therefore no reasons behind the direction which is contrary to paragraph 25(1) and 25(6) of Schedule 4.*
- 4.2.6 *PCT Healthcare Limited has reviewed pharmacies close to the A&E department in Chesterfield and the Urgent Care Centre in Chesterfield where patients are advised to access healthcare on Bank Holidays when their GP Surgeries are closed.*

- 4.2.7 *PCT Healthcare Limited reviewed previous public transport provision on Christmas Day 2024 information from Trent Barton website: There were no bus services offered by any bus operators on Christmas Day 2024, this is a good indicator that there shall be no services operating Christmas Day 2025.*
- 4.2.8 *PCT Healthcare Limited has completed a review of the pharmacies located close to the Chesterfield Urgent Treatment Centre, Ashgate Road, Chesterfield S40 4AA regarding the IMD for their postcodes. And believe they have proved that FR077, compared to other nearby pharmacies is not located in a more deprived area neither by Indice of Multiple Deprivation (IMD) nor the Health and Disability Ranking as provided from the Ministry of Housing Communities & Local Government – English indices of deprivation.*
- 4.3 The East Midlands Primary Care Team on behalf of Derby and Derbyshire Integrated Care Board would like to make the following representations with respect to the aforementioned appeal.
- 4.4 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.
- 4.5 The regulations state:
- “(6) The NHSCB must notify P of any direction issued or any other action taken under subparagraph(3), and where it sets new days on which or times at which P is to provide pharmaceutical services at pharmacy premises, it must include with the notification a statement of -*
- (a)the reasons for the change and*
- (b)P’s right of appeal under paragraph (7).”*
- 4.6 As you will be aware, pharmacies are not required by their terms of service to open on Christmas Day, Good Friday, Easter Sunday or on a bank holiday, although they may choose to do so.
- 4.7 NHS Derby and Derbyshire ICB have not been notified of any pharmacies that will be open in the Chesterfield area on Christmas Day 2025 and no pharmacies have volunteered to open on this day. Under section 126 of the NHS Act 2006 (Arrangement for pharmaceutical services), NHS England (now delegated to the ICBS) must make arrangements for the provision, to person’s [sic] who are in England of:
- (a) “proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown,*
- (b) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of—*

(i) his functions in the health service, the Scottish health service or the Northern Ireland health service (other than functions exercised in pursuance of the provision of services mentioned in paragraph (c)), or

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

(c) listed drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of the provision of primary dental services or equivalent services in the Scottish health service or the Northern Ireland health service,

(d) such drugs and medicines and such listed appliances as may be determined by the Secretary of State for the purposes of this paragraph and which are ordered for those persons by a prescribed description of person in accordance with such conditions, if any, as may be prescribed, in pursuance of functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown, and

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

4.8 In light of the fact no pharmacies will be open on Christmas Day 2025, 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.

4.9 NHS Derby and Derbyshire ICB has considered what arrangements need to be put in place on Christmas Day 2025 in order to discharge this duty. We are of the opinion that whilst demand for the full range of pharmaceutical services may be lower on this day compared to a day that is not a public holiday, there will still be need for pharmaceutical services by people who live within Chesterfield and surrounding areas or are visiting during the festive period. Whilst GP practices will be closed on Christmas Day, other providers of NHS services will be open such as the GP out of hours service and A&E departments.

4.10 We believe that, as a minimum, the services for which there will be a need on Christmas Day are as follows:-

4.10.1 *The dispensing service for prescriptions issued by a NHS service provider that is open on that day or for prescriptions that have been issued on a previous day but which a person has not been able to have dispensed due, for example, being at work and pharmacies reducing their supplementary opening hours on Christmas Eve.*

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

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

- 4.11 Of course, some people may wish to access other essential and advanced services. As stated above, we are not aware of any pharmacies that will be open on Christmas Day 2025 and therefore at present the ICB is unable to discharge the duty as set out in section 126 of the NHS Act 2006.
- 4.12 NHS Derby and Derbyshire ICB emailed out to all contractors on 21 March 2025 to request that pharmacy contractors complete a Microsoft Form to inform us of their intentions over the bank holiday periods during 2025-26 and return the completed form to england.eastmidspharmacy@nhs.net by 18 April 2025. This form enables NHS Derby and Derbyshire ICB to identify whether any pharmacies intend to open voluntarily. NHS Derby and Derbyshire ICB did not receive any volunteers within the Chesterfield area. As set out above, NHS England (now delegated to the ICBS) must make arrangements for the provision of pharmaceutical care, and in the absence of this provision, look to issue a direction.
- 4.13 Following an initial assessment by the East Midlands Primary Care Team, where the Pharmaceutical Needs Assessment (PNA) was utilised to establish the need for pharmaceutical provision in Chesterfield, Peak Pharmacy (FR077) has been identified as meeting the needs of people in the Chesterfield area for the following reasons:
- 4.13.1 *There is a need to provide pharmaceutical services in Chesterfield where there is currently no provision on Christmas Day 2025.*
- 4.13.2 *Your pharmacy is located in proximity to an urgent treatment centre. This proposed direction would bring benefits for patients as those attending the urgent treatment centre would not have to travel long distances to collect essential medications, especially on a public holiday when public transport is limited. This proposed direction would also benefit the local health system, as patients requiring advice as part of Pharmacy First can be directed or referred to your pharmacy, reducing unnecessary attendance at the urgent treatment centre and enabling focus on patients with the most urgent need.*
- 4.13.3 *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 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.*
- 4.13.4 *Sufficient availability of public transport and car parking accessibility.*
- 4.13.5 *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 Christmas Day 2025 were sent via email to LPCs on 16 May 2025,*

where no rationale was provided to oppose the direction of Peak Pharmacy (FR077) on Christmas Day 2025.

- 4.14 As a result of this assessment, it has been determined that direction is required to provide adequate pharmaceutical. Peak Pharmacy (FR077) 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.
- 4.15 In response to Peak Pharmacy appeal to the direction we comment as per below:-
- 4.15.1 (1) East Midlands Primary Care Team on behalf of Derby and Derbyshire ICB acknowledge that this was an administrative error, and the direction letter was sent out prior to their appeal going to the Governance meeting for review.
- 4.15.2 (2) East Midlands Primary Care Team on behalf of Derby and Derbyshire ICB assessed the Index of Multiple Deprivation (IMD) decile to ensure 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. It also took into account the locality of pharmacies located to urgent treatment centres as this would bring benefits for patients not having to travel long distances to collect essential medications, especially on a public holiday when public transport is limited. An explanation as to why the pharmacy was issued with a direction was provided to them in their direction letter, sent to the pharmacy via email 30th July 2025.
- 4.15.3 (3) East Midlands Primary Care Team on behalf of 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, so in order to discharge this duty, following the diligent assessment process, arrangements are put in place to ensure cover, albeit at a reduced level.
- 4.15.4 Other pharmacies in the Chesterfield area were considered as part of this process and taking into account the geographical location of pharmacies within the agreed locality, the proximity to an urgent care centre and the proximity to a deprived MSOA, Peak Pharmacy (FR077) was informed that they had been directed to ensure equitable access for patients and likely users of the service.
- 4.15.5 As set out in the direction letter, Peak Pharmacy (FR077) is located within a deprived area. This direction secures pharmaceutical service provision within a designated area of deprivation, supporting the ICB's statutory responsibility to improve access to healthcare and address health inequalities. Deprived areas typically show higher prevalence of long-term conditions that require consistent management, and the direction ensures appropriate dispensing provision to meet these population health needs.

- 4.15.6 While other pharmacies were considered, the ICB is mindful of fairness in the application of directions and seeks to avoid disproportionately impacting the same contractors. On this occasion, FR077 was identified as the most appropriate pharmacy to secure service provision and maintain equity across providers.
- 4.15.7 (4) The list provided by Peak Pharmacy (FR077) of other pharmacies within the proximity of the Urgent Treatment Centre/hospital includes some pharmacies located within the MOSA list, but were not originally included due to their differing ranking status on the MOSA list, as well as some pharmacies which have also been [sic] directed on other bank holidays over the festive period.
- 4.15.8 (5) Derby and Derbyshire ICB is aware of the limited availability of public transport over the festive period, therefore consideration is taken into account of directing pharmacies near to the urgent care centres, to minimise travel distances for those patients requiring pharmaceutical services.
- 4.15.9 (6) Derby and Derbyshire ICB is aware that the pharmacies are with a similar ranking and some are within the same deprived area and have been considered for being directed, but as described in our response for (4) other pharmacies have also been directed for other days over the festive period and the ICB is mindful of fairness in the application of directions and seeks to avoid disproportionately impacting the same contractors over the same festive period.
- 4.16 Following the assessment of the returns from the Derby and Derbyshire HWB area and engagement with the LPC a proposal to direct letter was sent to PCT Healthcare Peak Pharmacy (FR077) on 9th June 2025. Representations against this proposal were subsequently received on 3rd July 2025
- 4.17 The decision was made to continue with the issue of the direction based on the fact that assurance could not be given that other pharmacies in the area would be open for the period detailed within the direction and the pharmacy had not included within their written representations any mitigating reasons why they should not complete the direction.
- 4.18 I would like to take this opportunity to respond to any further representations provided by PCT Healthcare Limited T/A Peak Pharmacy, 18 High Street, Staveley, Chesterfield S43 3UX."

The Commissioner also provided a copy of its proposal to direct letter dated 5 June 2025, which states:

- 4.19 **"The pharmacy's current core opening hours are**
- 4.20 Monday - Friday 09:00 – 13:00 & 14:00 – 18:00
- 4.21 Saturday & Sunday Closed
- 4.22 **The total opening hours (core & supplementary) are:**

4.23 Monday – Friday 09:00 – 18:00

4.24 Saturday 09:00 – 13:00

4.25 Sunday Closed

4.26 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 Chesterfield on Christmas Day 25th December 2025, 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.”

4.27 In light of the fact no pharmacies will be open on Christmas Day 25th December 2025, 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.

- 4.28 NHS Derby and Derbyshire ICB has therefore considered what arrangements need to be put in place on Christmas Day 25th December 2025 in order to discharge this duty. We are of the opinion that whilst demand for the full range of pharmaceutical services may be lower on this day compared to a day that is not a bank or public holiday, there will still be a need for pharmaceutical services by people who live within Chesterfield 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.
- 4.29 We believe that, as a minimum, the services for which there will be a need on Christmas Day are as follows.
- 4.29.1 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.
- 4.29.2 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.
- 4.29.3 The NHS pharmacy contraception advanced service, particularly as it is being expanded to include the provision of emergency contraception from October 2025.
- 4.30 Of course, some people may wish to access other essential and advanced services. As stated above, we are not aware of any pharmacies that will be open on Christmas Day 25th December 2025 and therefore at present the ICB is unable to discharge the duty as set out in section 126 of the NHS Act 2006.
- 4.31 Following an initial assessment by our team, your pharmacy has been identified as meeting the needs of people in the Chesterfield for the following reasons:
- 4.31.1 There is a need to provide pharmaceutical services in S43 area where there is currently no provision on Christmas Day 25th December 2025.
- 4.31.2 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.
- 4.32 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:

4.33 **Christmas Day 25th December 2025**

4.34 **10:00 – 12:00**

4.35 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.

4.36 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 05/07/2025.

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

5 **Observations**

In a letter to NHS Resolution dated 16 October 2025 the Appellant stated:

5.1 “Thank you for your email including the representations from Derby & Derbyshire Integrated Care Boards (ICBs) dated 26 September 2025.

5.2 PCT Healthcare Limited shall consider each of the points raised within the letter in turn.

5.3 **On page 3,**

5.4 *“The Pharmacy First service...”*

5.5 What are the numbers of Pharmacy First provisions during a previous Bank Holiday in Chesterfield this detail was not included in the direction to FR077?

5.6 **On page 5, paragraph (3):**

5.7 With regards to the *“diligent assessment”* mentioned within this paragraph where are the results of this assessment, why have they not been shared with contractors in the Chesterfield locality, and in particular our pharmacy FR077.

5.8 **On page 5, paragraph (3):**

5.9 *“Other pharmacies in the Chesterfield...”*

5.10 Regarding this point we wish to respectfully refer NHS Resolution to our previous appeal letter and distances from NHS.uk from pharmacies in Chesterfield to the Chesterfield Hospital (Urgent Care Centre).

5.11 **On page 5, paragraph (3):**

- 5.12 ***“...Peak Pharmacy (FR077) is located within a deprived area.”***
- 5.13 As PCT Healthcare Limited included in our appeal letter of 28 August 2025.
- 5.14 The details provided in the table below, are from the Ministry of Housing Communities & Local Government – English indices of deprivation. [English indices of deprivation 2019: Postcode Lookup](#)
- 5.15 The shaded pharmacies of which there are three in column H of the table are all in LSOA areas with a similar overall Index of Multiple Deprivation Decile (IMD) to our pharmacy FR077, all of these pharmacies are closer to the Urgent Care Centre in Chesterfield than our pharmacy.
- 5.16 Additionally, considering column J, the Health and Disability Rank there are 10 pharmacies which are located in areas with a similar Health and Disability Ranking compared to our pharmacy located at 18 High Street, Staveley (FR077), all of these pharmacies are closer to the Urgent Care Centre in Chesterfield than our pharmacy.
- 5.17 PCT Healthcare Limited has proved that FR077, compared to other nearby pharmacies, is not located in a more deprived area neither by Indices of Multiple Deprivation (IMD) nor the Health and Disability Ranking as provided from the Ministry of Housing Communities & Local Government – English indices of deprivation.
- 5.18 FR077 is located within a similarly deprived area (as indicated by the Index of Multiple Deprivation) as well as other pharmacies in Chesterfield and those pharmacies are located closer to the Urgent Care Centre in Chesterfield which will be open for patients on Christmas Day.
- 5.19 To ensure patients can access pharmaceutical provision it makes sense to direct a pharmacy closer to the Urgent Care Centre our pharmacy FR077 is located 4.1 miles from the Urgent Care Centre in Chesterfield.
- 5.20 The representation letter does not explain why FR077 was directed for 25 December 2025 by the ICB.
- 5.21 [See table at 3.33 above]
- 5.22 ***On page 5, paragraph (3): “...The list provided by Peak Pharmacy (FR077)...as well as some pharmacies which have also been directed on other bank holidays over the festive period”.***
- 5.23 PCT Healthcare Limited t/a Peak Pharmacy respectfully submit to NHS Resolution that this is not a robust enough argument to direct our pharmacy.
- 5.24 As shown by the table below there are twenty-three pharmacies within Chesterfield (including FR077), there are not twenty-three exceptional Bank Holidays requiring pharmaceutical cover over the festive and New Year period in 2025-2026.
- 5.25 **On page 6, paragraph (6):**

- 5.26 PCT Healthcare Limited t/a Peak Pharmacy respectfully submit to NHS Resolution that it is not a robust enough argument to direct our pharmacy based on the fact that:
- 5.27 *“other pharmacies have also been directed for other days over the festive period...”*
- 5.28 Especially without any evidence from the assessment being shared which specifically identifies our pharmacy FR077 as being required to open on 25 December 2025.
- 5.29 With regards to pharmacies within Chesterfield there are twenty-two community pharmacies located closer to the Urgent Treatment Centre at DHU Healthcare CIC, Ashgate Medical Practice, Ashgate Road Chesterfield S40 4AA in Chesterfield according to NHS.uk. [Find a pharmacy - NHS](#) (details below).
- 5.30 As shown by the table below there are twenty-three pharmacies within Chesterfield (including FR077), there are not twenty-three exceptional Bank Holidays requiring pharmaceutical cover over the festive and New Year period in 2025-2026.
- 5.31 [See table at 3.13 above]
- 5.32 **On page 6: “Following the assessment...”**
- 5.33 Where are the minutes of the meeting held between the LPC and the ICB?
- 5.34 Under Schedule 4 paragraph (25)(6)(a) of the NHS Pharmaceutical and LPS Regulations NHS England the direction must include with the notification a statement of “the reasons for the change”. We note that the Regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation, which should conclude with the needs of the local population and likely users of our pharmacy not being met on this day such that we are required to open from 10:00 to 12:00 on 25 December 2025.
- 5.35 In particular, these representations make no reference to any specific results linking our pharmacy to any lack of service provision on 25 December 2025. Furthermore, there is no actual details of the findings of a consultation or assessment, and therefore no reasons behind the direction which is contrary to paragraph 25(1) and 25(6) of Schedule 4.
- 5.36 With regards to the assessment mentioned where are the results of this assessment, why have they not been shared with contractors in our locality, and in particular our pharmacy FR077?
- 5.37 In conclusion, our pharmacy has received this direction, however for the reasons discussed above we do not feel it has been made clear as to why our pharmacy, in particular, has been chosen to open on 25 December 2025, as opposed to another pharmacy in Chesterfield.”

6 Assessment

6.1 I have considered paragraph 25 of Schedule 4 (Determination of pharmacy premises core opening hours instigated by NHS England), which reads as follows:

1. *Where it appears to NHS England, after consultation with or having considered the matter at the request of the Local Pharmaceutical Committee for the area in which the premises are situated, that the days on which or times at which pharmacy premises are or are to be open for the provision of pharmaceutical services will not, or no longer, meet the needs of—*
 - (a) *people in its area; or*
 - (b) *other likely users of the pharmacy premises,**for the pharmaceutical services available at or from those premises, it must carry out an assessment as to whether to issue a direction requiring the NHS pharmacist (P) whose premises they are to provide pharmaceutical services at the pharmacy premises at set times and on set days (which may include Christmas Day, Good Friday and bank holidays).*
2. *Before concluding the assessment under sub-paragraph (1) NHS England must—*
 - (a) *give notice to P of any proposed changes to the days on which or times at which the pharmacy premises are to be open; and*
 - (b) *allow P 30 days within which to make written representations to NHS England about the proposed changes.*
3. *When it determines the outcome of its assessment, NHS England must—*
 - (a) *issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs (4) and (5);*
 - (b) *confirm any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises, provided that the existing direction (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub-paragraphs (4) and (5); or*
 - (c) *either—*
 - (i) *revoke, without replacing it, any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations), or*
 - (ii) *in a case where there is no existing direction, issue no direction,**in which case, by virtue of whichever of paragraph 23(1)(a) or (b) applies, the pharmacy will need to be open for 40 hours each week or for at least 100 hours each week.*

4. *Where NHS England issues a direction under sub-paragraph (3) in respect of pharmacy premises that are to be required to be open—*
 - (a) *for more than 40 hours each week, it must set out in that direction—*
 - (i) *the total number of hours each week for which P must provide pharmaceutical services at the pharmacy, and*
 - (ii) *as regards the additional opening hours, the days on which and the times at which P is required to provide those services during those hours,*
but it must not set out in that direction the days on which or times at which P is to provide pharmaceutical services during hours which are not additional opening hours; or
 - (b) *for less than 40 hours each week, it shall set out in that direction the days on which and times at which pharmaceutical services are to be provided at the pharmacy premises.*
5. *NHS England must not issue a direction under sub-paragraph (3) that has the effect simply of requiring pharmacy premises to be open for 40 hours each week on set days and at set times (that is, the direction must have the effect of requiring pharmacy premises to be open for either more or less than 40 hours each week).*
6. *NHS England must notify P of any direction issued or any other action taken under sub-paragraph (3), and where it sets new days on which or times at which P is to provide pharmaceutical services at pharmacy premises, it must include with the notification a statement of—*
 - (a) *the reasons for the change; and*
 - (b) *P's right of appeal under paragraph (7).*
7. *P may, within 30 days of receiving notification under sub-paragraph (6), appeal in writing to the Secretary of State against any direction issued or any other action taken under sub-paragraph (3) which sets new days on which or times at which P is to provide pharmaceutical services.*
8. *The Secretary of State may, when determining an appeal, either confirm the action taken by NHS England or take any action that NHS England could have taken under paragraph (3).*
9. *The Secretary of State shall notify P of the determination and shall in every case include with the notification a statement of the reasons for the determination.*
10. *If the days on which or times at which P is to provide pharmaceutical services at pharmacy premises have been changed in accordance with this paragraph, P must introduce the changes—*
 - (a) *if P has not appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (6); or*
 - (b) *if P has appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (9).*

11. *This paragraph does not apply where regulation 65(5) to (7) applies.*

6.2 I am mindful that paragraph 23(12) of Schedule 4 states:

For the purposes of calculating the number of hours that a pharmacy premises are open during a week that includes Christmas Day, Good Friday, Easter Sunday or a bank holiday, it is to be deemed that the pharmacy premises were open on that day at the times at which they would ordinarily have been open on that day of the week.

6.3 I am of the view that the pharmacy would normally be closed on Christmas Day and that this would be in accordance with the Regulations.

6.4 I am conscious that paragraphs 25(1) and (2) require that before any direction is made, an assessment must be undertaken and that, before the assessment is concluded, the pharmacist providing services from the premises must be given notice of the proposed changes and given 30 days to make written representations about the proposed changes. The Commissioner has provided a copy of the proposal to direct letter which it sent to the Appellant on 5 June 2025. The letter stated that it had not been notified of any pharmacies that would be open on 25 December 2025, and no pharmacies had volunteered to open on this day. The letter identified services for which the Commissioner considers there will be a need on Christmas Day and provided reasons for having identified the Appellant's pharmacy to meeting the needs of people in Chesterfield on this day. The Commissioner stated that it had consulted with Community Pharmacy Derbyshire and invited the Appellant to provide representations if it so wished.

6.5 The Appellant submitted representations to the Commissioner by email dated 3 July 2025 and has provided a copy. The Appellant has also provided a copy of an email dated 30 July 2025 that it received from the Commissioner, stating that *"The ICB have not received any representations regarding this proposal and are now directing your pharmacy to open to provide pharmaceutical services to the local population."* The direction letter dated 30 July 2025 was attached to the email. I note that on appeal the Appellant states *"Failure to consider the written representations submitted in time ... is contrary to Schedule 4 Paragraph 25(2)(b)..."*. In response, the Commissioner states that it *"...acknowledge[s] that this was an administrative error, and the direction letter was sent out prior to their appeal going to the Governance meeting for review."* Whilst it is unfortunate that the Commissioner did not consider the Appellant's representations, I consider that the Appellant has now had, by way of appeal, the opportunity to make its case and therefore I will proceed to consider the direction.

6.6 I am mindful that the Commissioner is required by paragraph 25(6) of Schedule 4 to provide reasons for its decision. In my view, these reasons should set out the basis of any determination that days and times of opening will no longer be such as will meet the pharmaceutical needs of relevant persons and (if they are, such that a direction *may* be made) the assessment that led to the direction, taking into account any written representations from the pharmacist.

- 6.7 I note that the direction letter stated *“There has been no voluntary offer of pharmacy provision in the Derbyshire [sic] to meet the needs of people living in the area on Christmas Day 25th December 2025.”* The direction letter goes on to state:
- 6.7.1 *“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 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.”*
- 6.8 The Appellant states that *“There is no detail within the letter from the EMPCT, as it is generic, to indicate the reasons as to how or why this direction supports an assessment which concluded the pharmaceutical needs of the relevant persons (our patients) will not be met on this day that we are required to open our pharmacy, FR077 in the Chesterfield area.”*
- 6.9 In its representations, the Commissioner goes on to explain further the reasoning behind the direction and the assessment that was carried out. The Commissioner considers that there will be a need for dispensing services, the Pharmacy First service and the NHS pharmacy contraception advanced service. The Commissioner states that the Appellant’s pharmacy *“...has been identified as meeting the needs of people in the Chesterfield area...”* due to its *“proximity to an urgent treatment centre”*, that it has been *“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”*, and *“Sufficient availability of public transport and car parking accessibility.”*
- 6.10 In response, the Appellant has reviewed pharmacies located close to the A&E department in Chesterfield and the Urgent Care Centre in Chesterfield. The tables provided by the Appellant identify 22 pharmacies which are closer to the Urgent Treatment Centre and 18 pharmacies which are closer or equidistant to the A&E department at Chesterfield Royal Hospital.
- 6.11 In response, the Commissioner states
- 6.11.1 *“Other pharmacies in the Chesterfield area were considered as part of this process and taking into account the geographical location of pharmacies within the agreed locality, the proximity to an urgent care centre and the proximity to a deprived MSOA, Peak Pharmacy (FR077) was informed that they had been directed to ensure equitable access for patients and likely users of the service.”*
- 6.11.2 *“While other pharmacies were considered, the ICB is mindful of fairness in the application of directions and seeks to avoid disproportionately impacting the same contractors. On this occasion, FR077 was identified*

as the most appropriate pharmacy to secure service provision and maintain equity across providers.”

- 6.12 Whilst I am of the view that distance is only one factor which the Commissioner should take into account when determining which pharmacies to open, it does seem odd that the Commissioner should direct a pharmacy which is 4.1 miles and 2.8 miles away from the key sources of prescriptions on Christmas Day.
- 6.13 The Appellant has also reviewed deprivation rankings for 23 pharmacies located nearby the Chesterfield Urgent Treatment Centre, including its own, and states that:
- 6.13.1 *“The shaded pharmaces [sic] of which there are three ... are all in LSOA areas with a similar overall Index of Multile [sic] Deprivation Decile (IMD) to our pharmacy FR077, all of these pharmacies are closer to the Urgent Care Centre in Chesterfield than our pharmacy.”*
- 6.13.2 *“...there are 10 pharmacies which are located in areas with a similar Health and Disability Ranking compared to our pharmacy..., all of these pharmacies are closer to the Urgent Care Centre in Chesterfield than our pharmacy.”*
- 6.13.3 *“... FR077, compared to other nearby pharmacies, is not located in a more deprived area neither by Indices [sic] of Multiple Deprivation (IMD) nor the Health and Disability Ranking as provided from the Ministry of Housing Communities & Local Government – English indices of deprivation.”*
- 6.14 In response, the Commissioner states:
- 6.14.1 *“The list provided by Peak Pharmacy (FR077) of other pharmacies within the proximity of the Urgent Treatment Centre/hospital includes some pharmacies located within the MOSA list, but were not originally included due to their differing ranking status on the MOSA list, as well as some pharmacies which have also been directed on other bank holidays over the festive period.”*
- 6.15 Whilst I agree that the Appellant’s pharmacy is located in an area of deprivation, there are other pharmacies in areas of deprivation which are located closer to the sources of prescriptions and therefore this would appear at odds with the Commissioner’s rationale for issuing the direction. I am therefore, of the view that the Commissioner has relied on rationale which is not supported by the evidence.
- 6.16 The Appellant states that no bus services were available on Christmas Day 2024 which it considers a good indicator that none will be offered in 2025, commenting that any patients requiring care after accessing the Urgent Care Treatment Centre or the A&E department would pass a number of other pharmacies before reaching its own pharmacy. I note the Commissioner’s response that it is *“...aware of the limited availability of public transport over the festive period, therefore consideration is taken into account of directing pharmacies near to the urgent care centres, to minimise travel distances for those patients requiring pharmaceutical services.”* If location near to urgent

care centres was an important factor in the Commissioner's decision, then the Appellant is not best placed geographically.

- 6.17 It is a matter for the Commissioner, based on all of the information which it has before it, to determine which pharmacies are best placed to open to ensure that there are pharmaceutical services available to meet the needs of those in the area. However, I am of the view that the explanation of the Commissioner's assessment in its representations on this appeal, in particular the rationale which appears unsupported by the evidence, does not provide me with sufficient information to substantiate the view as to why the Appellant's pharmacy will be best placed in terms of access and geography to meet the envisaged demand for services.
- 6.18 I am not satisfied with the Commissioner's assessment and I consider that the Commissioner has not provided sufficient information to support the conclusion reached.
- 6.19 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.
- 6.20 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 25 December 2025 such that it is not appropriate to issue a direction requiring the Appellant's pharmacy to open on the days and times indicated in the direction.

7 Determination

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

**Head of Appeals
NHS Resolution**