

9 December 2025

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

FILE REF: **SHA/26697**

COMMISSIONER: **HAMPSHIRE AND ISLE OF
WIGHT ICB
("the Commissioner")**

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

PHARMACIST: **PHARM HT LTD
("the Applicant")**

PREMISES: **SOLENT PHARMACY
9 ST JAMES ROAD
SHIRLEY
SOUTHAMPTON
SO15 5FB**

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

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

Outcome

- 1.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours are likely to benefit the people who are accustomed to accessing pharmaceutical services at the pharmacy premises such that they would be more likely to access services during the proposed hours.
- 1.2 I substitute the decision of the Commissioner with a decision to refuse the application on the grounds that the application has not met the requirements set out in paragraph 26(2ZB) of Schedule 4 of the Regulations.

A copy of this decision is being sent to:

Pharm HT Ltd
South East Commissioning Hub, on behalf of Hampshire and Isle of Wight ICB

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

1 Introduction

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

Rights of appeal

- 1.3 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").
- 1.4 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 1.5 A pharmacy's opening hours may be categorised as:
- 1.5.1 “core opening hours” (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours and at set times and days; or
 - 1.5.2 “supplementary” opening hours (other hours during which the pharmacy premises are open which are in addition to the core hours), pursuant to paragraph 23(3) of Schedule 4 of the Regulations.

Alteration of core opening hours

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

Alteration of supplementary opening hours

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

The Applicant's proposals

- 1.11 The Applicant in its letter of appeal indicates that it currently has core opening hours totalling 40 hours per week.
- 1.12 The Applicant wishes to:
- 1.12.1 open from 10:00 to 15:00 and 16:00 to 18:30 on Monday to Friday, instead of opening from 10:00 to 14:30 and 16:00 to 19:00; and

1.12.2 open as usual on Saturday from 09:30 to 12:00.

2. Application

In this case, the Applicant provided the following information in its application form:

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

2.2 Current opening hours for these premises:

Monday	10:00 to 14:30 16:00 to 19:00
Tuesday	10:00 to 14:30 16:00 to 19:00
Wednesday	10:00 to 14:30 16:00 to 19:00
Thursday	10:00 to 14:30 16:00 to 19:00
Friday	10:00 to 14:30 16:00 to 19:00
Saturday	09:30 to 12:00
Sunday	Closed

2.3 Proposed core opening hours for these premises:

Monday	10:00 to 15:00 16:00 to 18:30
Tuesday	10:00 to 15:00 16:00 to 18:30
Wednesday	10:00 to 15:00 16:00 to 18:30
Thursday	10:00 to 15:00 16:00 to 18:30
Friday	10:00 to 15:00 16:00 to 18:30
Saturday	09:30 to 12:00
Sunday	Closed

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

2.5 31 August 2025

2.6 I wish this application to be determined on the basis of:

2.7 Paragraph 26(2ZB), Schedule 4

2.8 Please provide the information that demonstrates that your proposed core opening hours will ensure that the people who are accustomed to accessing pharmaceutical services at the pharmacy premises listed above are likely to benefit from the changes because, overall, they would be more likely to access those services at the pharmacy premises during the proposed core opening hours than during the existing core opening hours.

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

2.9.1 either maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or

- 2.9.2 maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 2.10 Please refer to the document titled “Solent Pharmacy supporting information” which gives the information relating to the other local pharmacies, the advanced and enhanced services they provide and the hours that they are open including their core hours.
- 2.11 In relation to Monday – Friday, the application effectively seeks for an amendment to core hours in the middle of the day and an earlier closing time of 6.30 pm. As can be seen from the supporting document, there are other pharmacies that are open after 6.30 pm and so there is provision available and granting the application would still mean that the existing level of service provision for people in the area of the pharmacy or other likely users of the pharmacy premises will be maintained. The pharmacy has a very low uptake after 6pm. After 6:30pm, however, it is economically unviable to keep the pharmacy open due to no demand for service provision or very low uptake and our services show this on Pharmoutcomes as well. A survey is in hand and the information will be shared as soon as possible to allow the committee to make a decision with that information.”

3. **The Decision**

In a letter to the Applicant dated 13 August 2025 the Commissioner decided to refuse the application. The Commissioner stated:

- 3.1 “I write with reference to your application to permanently change the Core hours for Pharm HT Ltd t/a Solent Pharmacy, 9 St James Road, Shirley, Southampton, Hampshire, SO15 5FB received on 01 July 2025.
- 3.2 Hampshire and Isle of Wight Integrated Care Board (ICB), has considered the above application and I am writing to confirm that it has been refused.
- 3.3 **REASON FOR THE DECISION**
- 3.4 Your application has been refused on the grounds that you have not met the requirements set out in paragraph 24, Schedule 4 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 3.5 Schedule 4, Part 3, Regulation 26 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, state that a pharmacist must introduce the changes not earlier than 30 days after the date on which the pharmacy receives notification of the decision.
- 3.6 Schedule 4, Paragraph 26(2ZB) to ensure that the people who are accustomed to accessing pharmaceutical services at the pharmacy premises listed above are likely to benefit from the changes because, overall, they would be more likely to access those services at the pharmacy premises during the proposed core opening hours than during the existing core opening hours.

- 3.7 The Committee first considered the existing core hours and what information had been provided to describe access to the pharmacy during the time that would change – i.e. for 14:30-15:00 and 18:30-19:00 Monday to Friday. There was some audit information provided during 18:30-19:30, but not about any other times that patients might access pharmaceutical services.
- 3.8 Given that there was very limited information about access to the pharmacy during the existing core opening hours that would change, the Committee was not able to consider whether patients would be more likely to access the pharmacy services during the proposed core opening hours.
- 3.9 The Committee was in agreement that the Applicant had not demonstrated people accustomed to accessing pharmaceutical services are likely to benefit from the proposed changes.
- 3.10 Following the refusal of the core hours application, the supplementary hours notification will be recorded as withdrawn.
- 3.11 **RIGHT OF APPEAL**
- 3.12 You have a right of appeal to the Secretary of State against the decision of Hampshire and Isle of Wight Integrated Care Board (ICB). Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to:
- 3.13 NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU
- 3.14 or email: nhsr.appeals@nhs.net.”

4. **The Appeal**

In a letter to NHS Resolution dated 26 August 2025 the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 4.1 **“GROUNDS OF APPEAL**
- 4.2 This appeal is made under Schedule 4, paragraph 26(9) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 against the decision of Hampshire and Isle of Wight Integrated Care Board (“the ICB”) to refuse the application dated 1 July 2025 to permanently redistribute core opening hours. The Appellant respectfully submits that the ICB’s decision was wrong in law, procedurally unfair, and unsupported by the evidence, for the following reasons:
- 4.3 Ground 1: Misapplication of Legal Test under Paragraph 26(2ZB)
- 4.4 The application was explicitly made under paragraph 26(2ZB). The ICB’s decision letter wrongly referred to paragraph 24 of Schedule 4. This error demonstrates that the incorrect statutory test was applied. The correct test requires the ICB to consider whether people accustomed to using the pharmacy are likely to benefit from the change because, overall, they would be

more likely to access services during the proposed hours than the existing hours. That test was not applied.

4.5 Ground 2: Failure to Consider Relevant Evidence

4.6 The Appellant provided evidence of very low uptake after 18:30, supported by PharmOutcomes data and observations of footfall, together with confirmation of alternative provision from nearby pharmacies open later. The application also stated a patient survey was being conducted and would be provided. The ICB did not take proper account of this evidence.

4.7 Ground 3: Procedural Unfairness

4.8 The ICB refused the application on the basis that there was "very limited information" about access during the times in question. However, it failed to request the additional survey evidence that was promised in the application, nor did it request the PharmOutcomes data referred to. The regulations allow the ICB to request further information as it may reasonably require. Its failure to do so, and instead proceeding straight to refusal, was procedurally unfair.

4.9 Ground 4: Misinterpretation of Evidence Requirements

4.10 The ICB's insistence on detailed audit information for each 30-minute segment misconstrued the intention of paragraph 26(2ZB). The test is comparative and prospective: would patients overall be more likely to access services during the proposed hours? It does not require minute-by-minute audit data, but rather a reasonable assessment of patient behaviour and needs.

4.11 **DETAILED SUBMISSIONS**

4.12 **Legal Framework**

4.13 The 2025 amendments to the PLPS Regulations introduced paragraph 26(2ZB) to give contractors greater flexibility to redistribute hours where the total remains unchanged, provided that patients accustomed to accessing services are more likely to benefit. This is precisely the type of case intended by the amendment.

4.14 **Evidence Supporting the Application**

4.15 The evidence supports the proposed redistribution:

4.15.1 Survey results (May–June 2025) show patients mainly use the pharmacy between 09:00–15:00 and do not generally attend after 18:30.

4.15.2 Saturday usage was negligible, confirming low evening/weekend demand (35†source). [sic]

4.15.3 A majority of patients indicated they would not have difficulty accessing another pharmacy if needed.

4.15.4 PharmOutcomes data confirms minimal uptake after 18:30.

4.15.5 Alternative local pharmacies provide access beyond 18:30, ensuring continued provision.

4.16 **The Proposed Changes**

4.17 Current Hours:

4.18 Mon–Fri: 10:00–14:30, 16:00–19:00

4.19 Sat: 09:30–12:00

4.20 Sun: Closed

4.21 Proposed Hours:

4.22 Mon–Fri: 10:00–15:00, 16:00–18:30

4.23 Sat: 09:30–12:00

4.24 Sun: Closed

4.25 The total weekly hours remain at 40. The change adds continuous service between 14:30 and 15:00, a period when patients are more likely to attend, while removing the little used 18:30–19:00 slot.

4.26 **Why Patients Would Benefit**

4.27 Extending 14:30–15:00 covers lunchtime and school collection times, improving accessibility.

4.28 Earlier closure at 18:30 reflects very low demand, as confirmed by survey and usage data.

4.29 Alternative pharmacies remain available after 18:30, ensuring continuity of access.

4.30 Concentrating staffing resources into busier times improves efficiency and sustainability.

4.31 **RELIEF SOUGHT**

4.32 The Appellant respectfully requests that NHS Resolution:

4.32.1 ALLOW this appeal;

4.32.2 QUASH the ICB's refusal decision dated 13 August 2025; and

4.32.3 DIRECT that the application under paragraph 26(2ZB) be granted.

4.33 Alternatively, remit the matter to the ICB with a direction to determine the application correctly under paragraph 26(2ZB), having regard to the survey results and other evidence now provided.

4.34 **CONCLUSION**

- 4.35 The ICB's refusal was based on a misapplication of the law, a failure to request or consider available evidence, and an unduly narrow approach to the statutory test. The evidence demonstrates that patients would, overall, be more likely to access services during the proposed hours, particularly 14:30–15:00, while the removal of 18:30–19:00 would cause no detriment given the low usage and alternative provision. The appeal should therefore be allowed.”

5. **Representations**

In a letter to NHS Resolution dated 7 October 2025 the Commissioner stated:

- 5.1 “Thank you for your letter of the 9 September 2025 advising us that an appeal has been made against the decision to refuse the application made by Pharm HT Limited T/A Solent Pharmacy (FW416) to change core opening hours.
- 5.2 The application was made under paragraph 26(2ZB) of Schedule 4 to the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 5.3 Unfortunately, there was an administration error and the decision letter referred to both paragraph 24 Schedule 4 and paragraph 26(2ZB) of Schedule 4.
- 5.4 We would like to apologise for this error.
- 5.5 However, I can confirm that the decision made by the PSRC for Hampshire and Isle of Wight ICB on 23 July 2025 was based on paragraph 26(2ZB) of Schedule 4.
- 5.6 The PSRC considered that the information provided as part of the application did not describe how people who are accustomed to accessing pharmaceutical services at the pharmacy premises listed above are likely to benefit from the changes because, overall, they would be more likely to access those services at the pharmacy premises during the proposed core opening hours than during the existing core opening hours.
- 5.7 The PSRC for Hampshire and Isle of Wight ICB respectfully request that the decision to refuse the application to change core hours is confirmed.”

6. **Observations**

In an email to NHS Resolution dated 15 October 2025 the Applicant stated:

- 6.1 “Further to your email and a copy of the representations, we respectfully submit that the appeal we have made should be allowed because the decision maker should have asked for further information to help it make a fair decision instead of refusing it because as it claims information was missing.”

7. **Consideration**

- 7.1 I note the following:

- 7.1.1 The Applicant's core opening hours total 40 hours and the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4.
- 7.2 The Applicant proposes to:
- 7.2.1 open from 10:00 to 15:00 and 16:00 to 18:30 on Monday to Friday, instead of opening from 10:00 to 14:30 and 16:00 to 19:00; and
- 7.2.2 open as usual on Saturday from 09:30 to 12:00.
- 7.3 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023. Further amendments to paragraph 26, Schedule 4, Part 3 of the Regulations came into force on 23 June 2025.
- 7.4 Paragraph 26(1) states:
- “26.— (1) An NHS pharmacist (P) may apply to NHS England for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at or from P's pharmacy premises in a way that—*
- (a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at or from those premises each week ...; or*
- (b) keeps that total number of hours the same.”*
- 7.5 I have first considered paragraph 26(2ZA) of Schedule 4 of the Regulations, which reads as follows:
- Where P makes an application under sub-paragraph (1)(b), as part of that application P must provide NHS England with such information as NHS England may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to sub-paragraph (2ZB) or paragraph 24(1) (depending on the basis of the application).*
- 7.6 I note the Applicant indicated that it wanted its application to be determined on the basis of Paragraph 26(2ZB), Schedule 4.
- 7.7 Paragraph 26(2ZB) reads as follows:
- In the case of an application under sub-paragraph (1)(b) which is based on the matters that NHS England must seek to ensure pursuant to this sub-paragraph, where NHS England—*
- issues a direction under sub-paragraph (4) for setting any days or times for opening hours; or*
- determines the application under sub-paragraph (4) without issuing a direction,*

it must in doing so seek to ensure that the people who are accustomed to accessing pharmaceutical services at the pharmacy premises are likely to benefit from the changes because, overall, they would be more likely to access those services at those premises during the proposed core opening hours than during the existing core opening hours.

- 7.8 I will consider the application of paragraph 26(2ZB) and whether the proposed hours are likely to benefit the people who are accustomed to accessing pharmaceutical services at the pharmacy premises, such that they would be more likely to access those services during the proposed opening hours.
- 7.9 To properly assess the application against paragraph 26(2ZB), I need to determine the level of demand for pharmaceutical services at the pharmacy premises. I then need to consider whether patients accustomed to accessing those services would be more likely to access services at the pharmacy premises during the proposed opening hours rather than the existing opening hours.
- 7.10 I therefore need to be provided with sufficient information to understand a range of matters. I consider a core question to be the benefit created because of increased availability to existing users. This can be broken down into three key elements: the first being that the change must be beneficial; the second being that the new hours are more accessible, and the last, which unpins both aspects, is that this must be measured by the impact on people who are accustomed to accessing the pharmacy, not new users.
- 7.11 As a starting point I note that the language of paragraph 26(2ZB) relates to why a change in hours is being requested. The reason for the change must at the very least include that those individuals who already use the pharmacy will be more likely to do so during the changed hours. The Regulations do not explain how this should be established but I consider that it must form at least part of the explanation and evidence provided by the Applicant.
- 7.12 Having reviewed the application and the appeal I note that part of the Applicant's motivation for the change appears to be financial, referring to the pharmacy's viability. Whilst I consider that this reason is important to the pharmacy, it is not relevant to paragraph 26(2ZB). I note that paragraph 26(2ZB) is concerned with a situation whereby hours are being redistributed for the benefit of pharmacy users, rather than the pharmacy itself.
- 7.13 I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that those accustomed to accessing pharmaceutical services would be more likely to access those services during the proposed opening hours.
- 7.14 I note the Applicant states that it "*...provided evidence of very low uptake after 18:30, supported by PharmOutcomes data and observations of footfall, together with confirmation of alternative provision from nearby pharmacies open later. The application also stated a patient survey was being conducted and would be provided. The ICB did not take proper account of this evidence.*".

- 7.15 The Applicant comments that the Commissioner “...*failed to request the additional survey evidence that was promised in the application, nor did it request the PharmOutcomes data referred to. The regulations allow the ICB to request further information...*”.
- 7.16 I note that Schedule 4 paragraph 26(2ZA) states:
- Where P makes an application under sub-paragraph (1)(b), as part of that application P must provide NHS England with such information as NHS England may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to sub-paragraph (2ZB) or paragraph or paragraph 24(1) (depending on the basis of the application).*
- 7.17 Whilst this indicates that the Commissioner may make a request for information regarding the application, it is not obliged to do so. I consider that it was the responsibility of the Applicant to provide any supporting information that it wished to be taken into account. I note that I have not been provided with a copy of the PharmOutcomes data referred to.
- 7.18 I note that on appeal, the Applicant has provided details of existing pharmacies and GP surgeries from NHS Choices and details of opening hours and Advanced/Enhanced services provided by nearby pharmacies. The Applicant has also provided copies of responses to a survey titled ‘Solent Pharmacy – Hours Survey May 2025’. I note that the majority of patients indicated that they use the pharmacy between 9am and 6pm, there were also a number of responses indicating that they use the pharmacy between 6pm and 6.30pm, with others indicating that they may use the pharmacy at any time. I note that the survey does not enable respondents to indicate at question 5 that they prefer to access the pharmacy between 6.30pm and 7pm which is when the Applicant proposes to close. I consider this to be a significant omission resulting in answers which may have been skewed. Also, I note that question 15 refers to the pharmacy shutting at 6pm, rather than 6.30pm. Without robust data regarding the relevant time period, I consider that it is difficult to draw conclusions regarding the demand for services.
- 7.19 Given that insufficient data has been provided to persuade me otherwise, I therefore consider it reasonable to take the position that there is a demand for pharmaceutical services on weekdays between 6.30pm and 7pm.
- 7.20 I now need to consider if the changes to hours are likely to be beneficial for those accustomed to accessing pharmaceutical services at the pharmacy premises because they are more likely to access services at those times. It is worth noting that evidence to demonstrate the actual level of demand might be relevant here.
- 7.21 The Applicant states “*The change adds continuous service between 14:30 and 15:00, a period when patients are more likely to attend, while removing the little used 18:30–19:00 slot... Extending 14:30–15:00 covers lunchtime and school collection times, improving accessibility.... Earlier closure at 18:30 reflects very low demand, as confirmed by survey and usage data.*” However, other than the survey responses, no further evidence has been provided to support this view.

- 7.22 I consider that evidence of demand would only form one part of the overall picture required to be established under paragraph 26(2ZB). I am mindful of the use of the phrase "*people who are accustomed*" in the Regulations. I consider such language to be indicative of the fact that if there is demand, no matter how small, and if those individuals are likely to cease to use the pharmacy as a result of the changes, then this would be strongly indicative that the requirements of paragraph 26(2ZB) would not be met.
- 7.23 I note that no information has been produced by the Applicant which explains what will become of the patients who previously accessed the pharmacy between 6.30pm and 7pm Monday to Friday. It is unclear from both the application and the appeal whether the new hours will benefit these people in any meaningful way. I have not been provided with information on why patients are using the pharmacy at this time, which would assist an understanding of why they may use the new hours earlier in the day.
- 7.24 I consider that without such information the base assumption must be that this change is not likely to benefit those who are accustomed to accessing the pharmacy, and, if anything, it would appear to be to their detriment.
- 7.25 I note that the Applicant has stated that "*Alternative pharmacies remain available after 18:30, ensuring continuity of access*". I note that this information is more relevant to the considerations under paragraph 24(1), which the Applicant has opted not to rely on. I consider that in the context of paragraph 26(2ZB), however, such information is detrimental to the Applicant. When read contextually, the inclusion of this information suggests that the proposal is not aimed at providing better access to services at the pharmacy for those that are accustomed to using the pharmacy during the hours which it is proposing to close and instead, the intention appears to be that they will seek the provision of services elsewhere.
- 7.26 I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions and includes all services that the pharmacy may offer, including additional enhanced and advanced services that may be commissioned. I am of the view that I have not been provided with sufficient information to demonstrate how the proposed opening hours are likely to benefit those accustomed to accessing pharmaceutical services at the pharmacy premises.
- 7.27 I note the Applicant's comment that "*The application was explicitly made under paragraph 26(2ZB). The ICB's decision letter wrongly referred to paragraph 24 of Schedule 4.*" In response, the Commissioner states "*Unfortunately, there was an administration error and the decision letter referred to both paragraph 24 Schedule 4 and paragraph 26(2ZB) of Schedule 4.*"
- 7.28 I note that the decision letter states "*Your application has been refused on the grounds that you have not met the requirements set out in paragraph 24, Schedule 4 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.*"
- 7.29 Schedule 5, paragraph 26(10) states:

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 sub-paragraph (4).

- 7.30 I therefore consider that I may substitute the Commissioner's decision with a decision to refuse the application on the basis that insufficient information has been provided to demonstrate that the application has met the requirements set out in paragraph 26(2ZB) of Schedule 4 of the Regulations.

8. Determination

- 8.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours are likely to benefit the people who are accustomed to accessing pharmaceutical services at the pharmacy premises such that they would be more likely to access services during the proposed hours.
- 8.2 I substitute the decision of the Commissioner with a decision to refuse the application on the grounds that the application has not met the requirements set out in paragraph 26(2ZB) of Schedule 4 of the Regulations.

**Head of Appeals
NHS Resolution**