

5 January 2026

REF: SHA/26724

**APPEAL AGAINST SOMERSET ICB DECISION
REGARDING A BREACH NOTICE AT ASDA
PHARMACY, WARMINSTER ROAD, FROME, BA11
5LA**

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

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

1 Outcome

- 1.1 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I confirm the decision of the Commissioner to issue the Breach Notice.

A copy of this decision is being sent to:

Asda Pharmacy (FPM71)
South West Collaborative Commissioning Hub on behalf of Somerset ICB

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FROME, BA11 5LA**

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1 The Breach Notice

A Breach Notice dated 19 September 2025 was sent to Asda Pharmacy (FPM71) (“the Appellant”) in respect of Warminster Road, Frome, BA11 5LA.

- 1.1 “BREACH NOTICE
- 1.2 FPM71: Asda Pharmacy, Warminster Road, Frome, BA11 5LA (the Contractor)
- 1.3 This is a Breach Notice issued by NHS South West Collaborative Commissioning Hub, referred to as the Commissioner in this breach notice, on behalf of Somerset Integrated Care Board (Somerset ICB) under regulation 71 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. Issue of this Notice has been approved by the NHS South West Pharmaceutical Services Regulations Committee (“the SW Committee”).

Nature of the Breach

- 1.4 Contrary to paragraph 23(1) and 23(7) of the Terms of Service for NHS Pharmacists, the Contractor did not provide pharmaceutical services for its contracted hours on Saturday, 12 July 2025, 19:15 to 21:00 (1.75 hours).

Statement of Reasons

- 1.5 On Saturday, 12 July 2025, the Contractor had Core opening hours from 09:00 to 12:30, 13:00 to 16:30, 17:00 to 21:00. No supplementary hours were in place.
- 1.6 On Saturday, 12 July 2025, the Contractor notified the commissioner that pharmaceutical services would not be provided between 19:15 to 21:00 (1.75 hours) on Saturday, 12 July 2025, because:
 - 1.6.1 *IT Issues*
- 1.7 The contractor did not confirm on the Notification of a Temporary Suspension of Service Form received by the commissioner on Saturday, 12 July 2025, they had completed all actions on their business continuity plan for Saturday, 12

July 2025. The contractor did not confirm the Directory of Service (DoS) had been updated on the day of closure.

- 1.8 The commissioner contacted the contractor via email on 15 July 2025 requesting confirmation DoS has been updated as this was not evident on the Temporary Suspension Notification Form.
- 1.9 The contractor replied on 15 July 2025 confirming DoS was not updated during the closure.
- 1.10 The proposed breach on Saturday, 12 July 2025, was submitted to the SW Committee on Monday 8 September 2025, for a decision. The SW Committee noted the contractor had not updated the Directory of Service on Saturday, 12 July 2025, and was therefore in breach of their terms of service.
- 1.11 The SW Committee noted NHS pharmaceutical services were not provided during the period concerned, therefore, the Contractor was considered to be 'closed' for the purpose of the Terms of Service.
- 1.12 The SW Committee considered on Monday, 8 September 2025, whether or not the contractor:
 - a) Notified the commissioner of the suspension as soon as practical.
 - b) Used all reasonable endeavours to implement the business continuity plan required by paragraph 29D, Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, and
 - c) Used all reasonable endeavours to resume the provision of pharmaceutical services as soon as is practicable. (Paragraph 23(10), Schedule 4, of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 1.13 This was discussed with reference to the South West Community Pharmacy Local Policy for Temporary Suspension of Service ('the policy'), which the SW Committee had adopted on 1 November 2022 and revised 1 April 2025. It was noted the policy had been circulated to all Community Pharmacy providers and Community Pharmacy Locals in the South West.
- 1.14 The SW committee noted the closure had been properly reported to the commissioner.
- 1.15 However, the Directory of Service had not been updated as part of the implementation of the business continuity plan required by paragraph 29D, Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and therefore not provided assurance the contractor had:
 - a) Used all reasonable endeavours to implement the business continuity plan that they are required by paragraph 29D, Schedule 4 to have for the pharmacy premises.

- 1.16 The SW Committee was agreed updating of the Directory of Service was within the control of the Contractor and was not convinced there were any extenuating circumstances.
- 1.17 The SW Committee went on to consider whether it was reasonable and proportionate to issue a breach notice in this case.
- 1.18 The SW Committee considered that the loss of 1.75 hours service provision did justify the issue of a breach notice.

Action Required

- 1.19 The Contractor is required not to repeat the breach.

Community Pharmacy Local

- 1.20 Should you require any additional support and assistance separate from the commissioner regarding this breach notice please contact your Community Pharmacy Local (CPL); details of your local CPL can be found [here](#).

Right of Appeal

- 1.21 You have a right of appeal to the Secretary of State against the issuing of this breach notice and any related payment withholding. Should you choose to appeal, you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: Primary Care Appeals, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.
- 1.22 Email: nhsr.appeals@nhs.net

2 The Appeal

In an email of 24 September 2025 addressed to NHS Resolution, the Appellant appealed against Somerset ICB's ("the Commissioner") decision. The grounds of appeal are:

- 2.1 "This closure was incorrectly logged by a member of the store management team.
- 2.2 The Pharmacy Practice Manager has confirmed that the department remained open throughout their contracted hours.
- 2.3 This fact was confirmed by the Practice Manager with our internal reporting team, City.
- 2.4 There was a computer issue within the department, but the Pharmacy stayed open to make sure patients were [sic] provided with services and appropriate signposting following our SOPs.
- 2.5 DoS was not updated as there was no closure."

3 Summary of Representations

This is a summary of representations received on the appeal.

3.1 THE COMMISSIONER

- 3.1.1 “Thank you for your letter dated 26 September 2025 inviting representation in response to the appeal received against the decision made by the South West Pharmaceutical Services Regulations Committee (the Committee) on behalf of NHS Somerset ICB (the Commissioner), to issue a breach notice to Asda Pharmacy (FPM71) referred to in the breach as the ‘Contractor’.
- 3.1.2 Please can I ask you to treat the attached as part of the Commissioners representations on this appeal:
 - 3.1.2.1 Appendix A - Notification of closure from the contractor
 - 3.1.2.2 Appendix B – Request from Commissioner for Business Continuity Plans
 - 3.1.2.3 Appendix C - Update on notification from Contractor
 - 3.1.2.4 Appendix D – Response to Commissioner from Contractor
 - 3.1.2.5 Appendix E - Final SW Temporary Suspension Policy (April 2024)
 - 3.1.2.6 Appendix F - SW Pharmaceutical Regulations Committee Temporary Suspension report and final decision (8 September 2025 Committee Meeting).
 - 3.1.2.7 Appendix G - Appeal Letter from contractor
- 3.1.3 The Contractor has the following pharmacy opening hours: Monday to Saturday - Core opening hours 09:00-12:30, 13:00-16:30, 17:00-21:00. Sunday – Core opening 10:00-16:00. There are no Supplementary opening hours.
- 3.1.4 On Sunday 13 July 2025 at 20:25 the Contractor notified the ICB that pharmaceutical services were not provided between 19:15 and 21:00 (1.75 hours) on Saturday 12 July 2025.
- 3.1.5 The reason given for the temporary suspension of services stated: ASDA Pharmacy has closed at the earlier time of 19:15 instead of 21:00, due to the Cegedim computer system not working and the Pharmacy are unable to access or dispense prescriptions. The site has contacted the helpdesk, who advised that assistance could not be provided until Monday from 06:30am. The ASDA Pharmacy is scheduled to open at 09:00 on 14/07/2025.
- 3.1.6 The temporary suspension notification received by the Commissioner on Sunday 13 July 2025 at 20:25 from the Contractor did not confirm

the Directory of Service (DoS) had been updated for the duration of the closure. (Appendix A).

- 3.1.7 On Monday 14 July 2025 at 14:08 the Commissioner sent an email to the contractor requesting confirmation of the Directory of Services (DoS) profile was updated via Profile Manager to reflect the temporary suspension of service; with a deadline to respond by 25 July 2025. (Appendix B).
- 3.1.8 On Monday 14 July 2025 at 09:20 the Commissioner received a further email from the Contractor with an update confirming the following: ****UPDATE - The Pharmacy has been open and trading since the 13.07.2025 at 14:00 **** (Appendix C).
- 3.1.9 On Tuesday 15 July 2025 at 14:08 the Commissioner received an email from the Contractor confirming DoS was not updated for the duration of the closure due to an oversight on the Contractor's part. (Appendix D).
- 3.1.10 The Commissioner considered the temporary suspension of service for a breach of the terms of services in accordance with the SW Temporary Suspension Policy April 2025 v4 (Appendix E). Section 5, 5.1.7 Process, Reporting an Unplanned Temporary Suspension of Service states:

5.1.7 The Contractor's response will be considered against the following regulations:

- (a) you use all reasonable endeavours to implement the business continuity plan required by paragraph 29D, Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013,*
and
 - (b) you use all reasonable endeavours to resume the provision of pharmaceutical services as soon as is practicable. (Paragraph 23(10), Schedule 4, of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013).*
- 3.1.11 Paragraph 29D (2) (b), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 requires the Contractor have a suitable Business Continuity Plan and a specified component of this includes making arrangements to update the pharmacy profile:
 - (b) arrangements for updating the pharmacy profile mentioned in paragraph 29C(3) about the suspension, including in due course about the resumption of the provision of pharmaceutical services at the pharmacy premises.*
 - 3.1.12 Paragraph 29D (4, Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 requires the Contractor to use reasonable endeavours to implement the plan.

(4) In the event of the temporary suspension, or the likely temporary suspension, of pharmaceutical services provision at or from P's pharmacy premises, P must use all reasonable endeavours to implement P's business continuity plan, and in the case of a likely temporary suspension, in a manner proportionate to that likelihood."

- 3.1.13 On the 8 September 2025 the temporary suspension of service for Saturday 12 July 2025 was presented to the Committee for consideration of a breach under paragraph 29D, Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The decision of the Committee was to issue a Breach Notice to the Contractor. (Appendix F)
- 3.1.14 In response to the Contractor's appeal (Appendix G) the Commissioner's issued a breach notice on the 19 September 2025 regarding the failure to update the Directory of Service on 12 July 2025 at the time of the temporary suspension, as set out in the requirements of the Terms of Service. The Commissioner had been advised by the Contractor that their services were temporarily suspended, therefore, the Contractor was expected to update the pharmacy profile to show this. Failure to update the DoS profile promptly, may result in patients being referred to services that are unavailable, undermining trust in the NHS 111 service and diminishing Health Advisors (HAs) confidence in the DoS (profile). This may result in reduced referrals to all pharmacies, not just Asda pharmacies, putting added pressures on primary / urgent care providers across the system.
- 3.1.15 A formal notification of a temporary suspension in service was received by the Commissioner from the Contractor on 13 July 2025. The notification clearly states the date and time of closure (Saturday 12 July 2025; 19:15 to 21:00) and the reason for the temporary suspension in service.
- 3.1.16 When the commissioner requested additional information on Monday 14 July 2025, to confirm that all business continuity plans had been actioned, the Contractor confirmed that due to an oversight the Contractor did not update DoS when the temporary suspension occurred. In their appeal letter the Contractor indicates though services were suspended, staff did remain on site to support and signpost patients, which is an important part of their Business Continuity Plan, but does not mean they were open and able to meet their terms of service.
- 3.1.17 Following the information provided by the Contractor on the 14 July 2025, no evidence has been provided to the Commissioner e.g. Resident Pharmacist (RP) Log for the period concerned, to confirm the pharmacy was open between Saturday 12 July 2025 between 19:15 and 21:00.

- 3.1.18 Based on the evidence provided to the Commissioner at the time of the temporary suspension and following the updates and information received from the Contractor, the Commissioner maintains the decision to issue this breach notice to the Contractor was justified and necessary and requests the appeal be rejected.”

4 Observations

No observations were received by NHS Resolution in response to the representations received on appeal.

5 Consideration

- 5.1 Under Regulation 71(1) “Breaches of terms of service: breach notices” of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”), a Breach Notice may be issued:

71. (1) Where an NHS chemist (C) breaches a term of service and the breach is not capable of remedy, NHS England may by a notice (“a breach notice”) require C not to repeat the breach.

- 5.2 In the Regulations an NHS Chemist means “*an NHS appliance contractor or an NHS pharmacist*”. An NHS pharmacist is defined as “*a person included in a pharmaceutical list of the type referred to in regulation 10(2)(a);*”. Regulation 10(2)(a) states:

10(2) “Those lists (which are pharmaceutical lists) are

(a) a list of persons who undertake to provide pharmaceutical services in particular by way of the provision of drugs;”

- 5.3 The Regulations contain no definition as to what constitutes a breach of terms of service which is not capable of remedy.
- 5.4 I note that the pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.
- 5.5 The Commissioner is of the view that the pharmacy was not open during its core hours on Saturday 12 July 2025 between 7:15pm to 9pm. The Appellant has sought to appeal the breach notice as “*this closure was incorrectly logged by a member of the store management team*”.
- 5.6 The Commissioner is of the view that as a result of the closure and following receipt of the “Notification of a Temporary Suspension form” (“the Notification”) as submitted by the Appellant, the Appellant was in breach of:
- 5.6.1 Schedule 4, part 3, paragraph 23(1) and 23(7) for failure to open during contracted hours.
- 5.7 There is no dispute between parties that the closure had been properly reported to the Commissioner, however the Commissioner is of the view that, as a result of the Directory of Services not being updated as part of the implementation of

the business continuity plan, it had not been provided with assurance that *“the Contractor had used all reasonable endeavours to implement the business continuity plan that they are required by paragraph 29D of Schedule 4 to have for the pharmacy premises”*.

5.8 On appeal, the Appellant stated that the *“closure was incorrectly logged”* and *“the Pharmacy Practice Manager has confirmed that the department remained open throughout their contracted hours”* and further that *“DoS was not updated as there was no closure”*.

5.9 Under Regulation 69(1), before issuing a breach notice, the Commissioner must:

5.9.1 *“make every reasonable effort to communicate and co-operate with an NHS Chemist (c) with a view to resolving any dispute between [the chemist] and NHS England relating to [the chemist’s] compliance with [the chemist’s] terms of service”*.

5.10 The Regulations contain no definition of what constitutes *“reasonable effort to communicate and co-operate”*. I note however that, following the closure, there has been correspondence between the parties, which I have been provided with. I note that the Appellant has not referred to any lack of local dispute resolution in its appeal. I therefore determine that there is no breach of Regulation 69 in this respect.

5.11 I shall now consider the breach in the Breach Notice and the Appellant’s grounds of appeal.

5.12 Schedule 4, part 3, paragraph 23(1) states:

“(1) [Subject to paragraph 23A,] an NHS pharmacist (P) must ensure that pharmaceutical services are provided at P’s pharmacy premises –

(a) for 40 hours each week;

(b) for not less than 100 hours each week; in the case of premises of which a 100 hours condition applies;

...

but NHS England may, in appropriate circumstances, agree a temporary suspension of services for a set period, where it has received 3 months notice of the proposed suspension.

5.13 Schedule 4, part 3, paragraph 23(7) states:

“(7) Where P has notified to NHS England (or, before the appointed day, a Primary Care Trust) the days on which and times at which pharmaceutical services are to be provided at P’s pharmacy premises (for example, in a return under sub-paragraph (5) or (6) or in an application for inclusion in a pharmaceutical list)—

(a) P must ensure that pharmaceutical services are provided at the premises to which the notification relates on the days and at the times set out in the notification (unless the notification has been superseded by a return, or a further return, under sub-paragraph (6)); and

(ba) P must not change the days on which or the times at which pharmaceutical services are to be provided at those premises during core opening hours, except for making a change that –

(i) amounts to the inclusion of a rest break which is no longer than one hour, or a change to such a rest break—

(aa) on a Monday to Saturday, which starts at least 3 hours after the start of the pharmacy's opening hours and ends at least 3 hours before the end of the pharmacy's opening hours, or

(bb) on a Sunday, and

(ii) does not change the total number of P's core opening hours on a particular day,

otherwise than as provided for, and in accordance with the procedures set out in, paragraphs 25 and 26;

(bb) P must not change P's supplementary opening hours in a way that reduces the time for which P's pharmacy is open before or after a rest break on a Monday to Saturday to less than 3 hours (if P wants to change the supplementary opening hours affected by this requirement, P must also change the time of the rest break);

(bc) P must not change—

the total number of P's supplementary opening hours in a way that either reduces or leaves the same the total number of P's supplementary opening hours, or

unless the change relates to an increase of the total number of supplementary opening hours, the days on which or the times at which pharmaceutical services are to be provided at P's premises during supplementary opening hours,

for a period of at least 5 weeks after the day on which that notification was received by NHS England, unless NHS England agrees otherwise; and

(bd) P must not change the days on which or the times at which pharmaceutical services are to be provided at those premises during core opening hours, in the case of making a change that—

(i) amounts to the inclusion of a rest break which is no longer than one hour, or a change to such a rest break—

(aa) on a Monday to Saturday, which starts at least 3 hours after the start of the pharmacy's opening hours and ends at least 3 hours before the end of the pharmacy's opening hours, or

(bb) on a Sunday, and

(i) does not change the total number of P's core opening hours on a particular day,

for a period of at least 5 weeks after the day on which that notification was received by NHS England, unless NHS England agrees otherwise.]”

- 5.14 There is no dispute between the parties with regard to the days on which and times at which pharmaceutical services are to be provided at the pharmacy.
- 5.15 I note, however, that on appeal the Appellant has sought to argue that there was no closure, the department remained open throughout the contracted hours and that, as there was no closure, the DoS was not updated. The Appellant confirms, on appeal, that there was a computer issue within the department but that the pharmacy stayed open.
- 5.16 I note that I have not been provided with any information from the Appellant to support the view that there was no closure, however I have been provided by the Commissioner with a copy of the Notification as well as emails between the Appellant and the Commissioner confirming the closure and providing an update with regard to the reopening of the pharmacy.
- 5.17 In an email to the Appellant from the Commissioner of 14 July 2025 which acknowledges the temporary suspension of services, it states:
- 5.17.1 *“At this stage, we kindly ask you to confirm whether:*
- 1. The Directory of Services (DoS) profile was updated via Profile Manager to reflect the temporary suspension of services.”*
- 5.18 I note in an email of 15 July 2026 in response, the Appellant states:
- 5.18.1 *“Unfortunately, this task was not completed due to an oversight on our part, and we sincerely apologise for the inconvenience caused.”*
- 5.19 The Appellant is now seeking to dispute that the pharmacy was closed and states *“this closure was incorrectly logged by a member of the store management team”*.
- 5.20 Whilst the Appellant seeks to argue that the pharmacy remained open, there is no dispute that there was an issue with the IT system and further that *“the Pharmacy stayed open to make sure patients were provided with services and appropriate signposting following our SOPs”*. I note that I have not been provided with any information to dispute the original statement in the

Notification that “... *due to the Cegedim computer system not working and the Pharmacy are unable access or dispense prescriptions...*”.

- 5.21 I consider that a failure to provide services during contracted hours amounts to a temporary suspension of services. Temporary suspension of services does not necessarily mean that the Appellant was in breach of paragraph 23(7)(a). The Regulations permit temporary suspension of services in certain circumstances without attracting a breach notice, e.g. where sufficient advance notice has been provided of an intended suspension of services (pursuant to paragraph 23(1)) or to cater for situations which are, for example, outside of the contractor’s control.
- 5.22 The latter is set out in paragraph 23(10) of Schedule 4 which sets out certain conditions which, if satisfied, would mean the Appellant would not be in breach of paragraphs 23(7) and 23(1) of Schedule 4 of the Regulations.
- 5.23 Before I consider whether the Appellant has satisfied the conditions set out in paragraph 23(10) in relation to a breach of paragraph 23(7), I shall consider whether the Appellant’s temporary suspension of services amounts to a breach of paragraph 23(1), which also relates to temporary suspension of services to which the conditions set out in paragraph 23(10) also apply.
- 5.24 Paragraph 23(1) requires the Appellant to provide pharmaceutical services during its core opening hours. The Commissioner states the core opening hours of the pharmacy as set out above and this has not been disputed by the Appellant.
- 5.25 I note the comments from the Appellant that there was a pharmacist on duty during the period of the temporary suspension and that “*There was a computer issue within the department, but the Pharmacy stayed open to make sure patients were provided with services and appropriate signposting following our SOPs.*” I am mindful that as the Appellant did not provide pharmaceutical services during the period 7:15pm to 9pm, as set out in the Notification, it did not ensure that a full range of pharmaceutical services were provided during its core hours and so the Appellant has breached paragraph 23(1).
- 5.26 As indicated at 5.22 above, the Appellant would not be in breach of paragraphs 23(1) or 23(7) of the Regulations if it meets the conditions of paragraph 23(10). I therefore next consider these conditions and representations before me.
- 5.27 Paragraph 23(10) states:
- “Where there is a temporary suspension in the provision of pharmaceutical services by P [because of illness or another reason] beyond the control of P, P is not in breach of sub-paragraphs(1) and (7), [or of paragraph 23A(5)(a),] provided that—*
- (a) P notifies [NHS England] of that suspension as soon [as practicable, in the manner required by paragraph 29D(2)(a) and wherever possible before the start of the suspension;]*

[(aa) P uses all reasonable endeavours to implement the business continuity plan that P is required to have by virtue of paragraph 29D; and]

(b) P uses all reasonable endeavours to resume provision of pharmaceutical services as soon as is practicable.”

5.28 I consider that paragraph 23(10) sets out five conditions or tests, which need to be met in order for the Appellant to not be in breach of paragraphs 23(1) and 23(7). These are:

5.28.1 Establishing that there has been a temporary suspension of pharmaceutical services;

5.28.2 The temporary suspension of pharmaceutical services arose for reasons beyond the control of the Appellant;

5.28.3 The Appellant notified the Commissioner of the temporary suspension as soon as practicable;

5.28.4 The Appellant implemented its business continuity plan; and

5.28.5 The Appellant has used all reasonable endeavours to resume the provision of pharmaceutical services as soon as practicable.

5.29 I consider that all five conditions must be met in order for paragraph 23(10) to apply and therefore for the Appellant to be deemed not in breach of paragraph 23(7).

5.30 In respect of the first condition, I note that the Notification states that “... *the pharmacy are unable to access [or] dispense prescriptions ...*” and as such, there was a temporary suspension of services on Saturday 12 July 2025 between 7.15pm and 9pm.

5.31 I have also had regard to other documents provided by the Commissioner which include the “NHS England South West – Community Pharmacy Local Policy for Temporary Suspension of Service” (“the Local Policy”).

5.32 I next consider whether the temporary suspension was for reasons beyond the Appellant’s control. I have had regard to the documents provided by the Commissioner, which include correspondence between the parties prior to the Breach Notice being issued. I note that there is no dispute between parties that there was an “IT issue” which has not been expanded upon on appeal, other than for the Appellant to confirm that “*there was a computer issue*”.

5.33 I have no further information before me as to what the “IT issue” entailed and which specific pharmaceutical services were affected. The Appellant has confirmed that the pharmacy stayed open, but the full range of pharmaceutical services were not available to patients which is evidenced by the Appellant providing “*appropriate signposting following our SOPs*”.

5.34 I note that the Appellant seeks to dispute the closure of the pharmacy however, I have not been provided with any information to support the view that there was not a temporary suspension of pharmaceutical services, during the period 7:15pm to 9pm on Saturday 12 July 2025.

5.35 I am therefore of the view that the Notification by the Appellant stands and that there was a temporary suspension of pharmaceutical services on the date in question.

5.36 There is no dispute between the parties that the temporary suspension of pharmaceutical services arose for reasons beyond the control of the Appellant.

5.37 Regarding the other conditions, I note that the Breach Notice was issued as the Commissioner was of the view that:

5.37.1 *“... the Directory of Service had not been updated as part of the implementation of the business continuity plan required by paragraph 29D, Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and therefore not provided assurance the contractor had:*

a) Used all reasonable endeavours to implement the business continuity plan that they are required by paragraph 29D, Schedule 4 to have for the pharmacy premises.”

5.38 I note that paragraph 29D, and in particular 29D(2)(b), states:

“Business continuity plans to deal with temporary suspensions

29D.—(1) An NHS Pharmacist (P) must have at all times an up to date business continuity plan for P’s pharmacy premises, which is available at those premises, to deal with the temporary suspension because of illness or another reason beyond the control of P of the provision of pharmaceutical services at or from those premises that—

...

(2) The components are—

...

(b) arrangements for updating the pharmacy profile mentioned in paragraph 29C(3) about the suspension, including in due course about the resumption of the provision of pharmaceutical services at the pharmacy premises;

...”

5.39 The Appellant does not agree with the Directory of Services not being updated as it is of the view that there was no closure, as it had been incorrectly logged.

- 5.40 In the subsequent correspondence between the Commissioner and the Appellant in the days following the submission of the Notification on 12 July 2025 there was no reference to the Notification being submitted in error and there being no closure. In fact, I note the email from the Appellant of 15 July 2025 in which they acknowledge that, in reference to the updating of the DoS *“this task was not completed due to an oversight on our part...”*.
- 5.41 With regard to the Appellant’s business continuity plan, there is no dispute between the parties that the *“Pharmacy stayed open to make sure patients where [sic] provided with services and appropriate signposting following our SOPs”*. I note that I have not been provided with a copy of the Appellant’s business continuity plan. Whilst I accept that pharmacy colleagues did what they were able to manage the situation, I do not consider this on its own is enough to relieve the Appellant of the requirement to comply with paragraph 23(10) of the Regulations and in particular to provide assurances that paragraph 29D(2)(b) was complied with in respect of the Directory of Services being updated.
- 5.42 I now turn to the Appellant using reasonable endeavours to resume provision of pharmaceutical services as soon as practicable. I note that on the original Notification it states *“tried other stores and helpdesk for assistance”* and further that *“the site have contacted the helpdesk who advised that assistance could not be provided until Monday from 06:30am”*. I note that on the updated Notification, sent to the Commissioner on 14 July 2025, it is confirmed that *“the pharmacy has been open and trading since the 13.07.025 at 14:00 [sic]”* and that there is no dispute between the parties as to when the provision of pharmaceutical services recommenced. Whilst the Appellant was able to resume the provision of pharmaceutical services the next day, there was a period of temporary suspension for 1.75 hours. I am of the view that I have not been provided with any evidence to demonstrate that the pharmacist used reasonable endeavours to resume provision of pharmaceutical services as soon as practicable.
- 5.43 I am of the view that the reasons given for the temporary suspension of pharmaceutical services on Saturday 12 July 2025 were beyond the Appellant’s control and I acknowledge that the Appellant reported the closure as soon as possible.
- 5.44 However, I am of the view that I have not been provided with information sufficient to demonstrate that paragraph 29D(2)(b) has been met and therefore at least one of the conditions set out in paragraph 23(10) has not been met, I consider that the Appellant cannot rely on paragraph 23(10) of the Regulations to show that it is not in breach of paragraph 23(7) of Schedule 4 of the Regulations.
- 5.45 I am of the view that the Appellant is in breach of paragraphs 23(1) and 23(7) of Schedule 4 of the Regulations.

6 Decision

- 6.1 I am of the view that under NHS Resolution's powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of the Commissioner or substitute that decision for any decision that the Commissioner could have taken when it took that decision.
- 6.2 Pursuant to paragraph 9(5)(a) of Schedule 3 to the Regulations I confirm the decision of the Commissioner to issue the Breach Notice.

Head of Appeals
NHS Resolution