

19 January 2026

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

FILE REF: **SHA/26743**

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

COMMISSIONER: **Humber and North
Yorkshire ICB
("the Commissioner")**

PHARMACIST: **Sharief Healthcare 2 Limited
("the Applicant")**

PREMISES: **Allied Pharmacy (FTH66)
Rievaulx Road
Whitby
YO21 1SD**

**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, therefore the Applicant cannot rely on paragraph 26(2ZB).
- 1.2 The action taken by the Commissioner to refuse the application is confirmed.

A copy of this decision is being sent to:
Temple Bright on behalf of Sharief Healthcare 2 Limited
Humber and North Yorkshire ICB

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10 South Colonnade
Canary Wharf
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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).

2. Application

In this case, the Applicant provided the following information in its application form and supporting information dated 15 September 2025:

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

2.2 Current opening hours for these premises:

Monday	08:30 – 12:30 16:00 – 18:00
Tuesday	08:30 – 12:30 14:00 – 18:00
Wednesday	08:30 – 12:30 16:00 – 18:00
Thursday	08:30 – 12:30 14:00 – 18:00
Friday	08:30 – 12:30 16:00 – 18:00
Saturday	Nil
Sunday	10:00 – 16:00

2.3 Proposed core opening hours for these premises:

Monday	08:30 – 12:30 14:00 – 18:00
Tuesday	08:30 – 12:30 14:00 – 18:00
Wednesday	08:30 – 12:30 14:00 – 18:00
Thursday	08:30 – 12:30 14:00 – 18:00
Friday	08:30 – 12:30 14:00 – 18:00
Saturday	Nil
Sunday	Nil

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

2.4.1 As soon as possible.

2.5 The Applicant confirmed that it wished its application to be determined on the basis of Paragraph 26(2ZB), Schedule 4.

2.6 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.

- 2.7 The Pharmacy is located on Rievaulx Road in Whitby and is co-located with the Whitby Group Practice. The pharmacy dispenses an average of approximately 13,000 items per month on 6,500 prescription forms, with around 95% of those originating from Whitby Group Practice. Whitby Group Practice is open from 8am to 6pm Monday to Friday and is closed on Saturday and Sunday.
- 2.8 The Pharmacy is located in a mainly residential area to the west of Whitby town centre. It is therefore not located in the main shopping centre of Whitby and has little “passing trade”.
- 2.9 The general location of the Pharmacy is shown on the google streetview image below: (see Appendix A)
- 2.10 As a result of its co-location with the Whitby Group Practice and its relatively quiet location, the great majority of the pharmacy’s patients access the pharmacy during the opening hours of the surgery (i.e. after they have seen their GP or visited the surgery for some other reason). Consequently, the Pharmacy has very few patients who access the Pharmacy outside of the surgery times and, in particular, on Sundays.
- 2.11 We therefore apply to NHS England to re-distribute the Pharmacy’s core hours to increase the core opening hours during the working week and to remove the hours on a Sunday to take into account the pattern of usage of the Pharmacy by its patients.
- 2.12 In order to support our application, we carried out a survey of the Pharmacy’s usage on a Sunday. A copy of the survey results is attached to this application. (see Appendix B) The survey showed that, during the 21 weeks of the survey period, on average, only 23 people in total used the pharmacy each Sunday in order to access dispensing services or obtain advice.
- 2.13 In relation to additional pharmaceutical services, we ran a further survey over 6 weeks in June and July 2025. A copy of those survey results is attached to this application. It can be seen [sic] that the provision of advanced services on a Sunday is very limited.
- 2.14 We repeated the survey between 2pm and 4pm from Monday to Friday during the week commencing 1st September. Again we attach the survey form. As can be seen, during the survey period, an average of 76 patients a day attended the pharmacy between 2pm and 4pm Monday to Friday in order to access dispensing services or obtain advice.
- 2.15 As stated above, the Pharmacy dispenses an average of 6,500 prescription forms per month. This equates to an average of around 300 forms per day during the working week. In contrast, the pharmacy saw an average of only around 20 forms per week on a Sunday. Put another way, the number of prescriptions dispensed on a Sunday represented only around 1% of the total number of prescriptions dispensed by the Pharmacy during the survey period.
- 2.16 In relation specifically to the core hours that we are applying to remove from Sunday and include between 2pm and 4pm from Monday to Friday, the

pharmacy was visited by more than 3 times more patients during the weekdays compared to Sunday (76 on average each weekday between 2pm and 4pm compared to only 23 on average between 10am and 4pm on a Sunday).

- 2.17 Given the low volume of NHS pharmaceutical service activity on Sundays compared to the working week, we believe 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.
- 2.18 We also believe that granting our application would better meet patient needs, by ensuring core hours provision during the working week (when the GP surgery is open and the pharmacy is much busier) rather than on a Sunday when the GP surgery is closed and the pharmacy is very quiet.
- 2.19 For the sake of completeness, we note additionally that there is another pharmacy in Whitby which is open from 11am to 3pm on Sundays: Boots Pharmacy at 64-66 Baxtergate, Whitby, YO21 1BL.
- 2.20 Boots Pharmacy is located only 750 metres from the Pharmacy, or a 12-minute walk as shown on the google maps image below (see Appendix A). This is a short walk along level terrain with no barriers for pedestrian access.
- 2.21 Boots Pharmacy is located within Whitby town centre, and is therefore easily accessible by foot, car or public transport both from our Pharmacy and for people travelling around Whitby generally.
- 2.22 In terms of service provision, Boots Pharmacy provides a full range of pharmaceutical services, including those advanced services which were accessed by patients on a Sunday during the survey period (Pharmacy First/Minor Ailments and emergency supply).
- 2.23 In conclusion, therefore, we believe 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 the pharmacy premises during the proposed core opening hours than during the existing core opening hours. The Pharmacy is relatively little used on a Sunday compared to during the week and that use could easily be accommodated during the proposed, amended opening times and by Boots Pharmacy locally which is easily accessible to patients who may require access to pharmaceutical services during Sunday hours.
- 2.24 For the reasons given above, we therefore request that NHS England grants our application to vary the Pharmacy's core hours."

3. The Decision

In a letter to the Applicant dated 25 September 2025 the Commissioner decided to refuse the application. The Commissioner stated:

- 3.1 “Your application to amend the core opening hours at FTH66 was discussed at the Yorkshire & Humber Pharmaceutical Services Regulation Committee (PSRC) on 24 September 2025.
- 3.2 The PSRC has considered the above application that was to be determined based on paragraph 26(2ZB) and I am writing to inform you that it has been refused for the following reasons:
- 3.3 The Committee considered the application and supporting information. It felt that there was:
- 3.3.1 evidence to show that there was still sufficient activity on a Sunday during the hours that the pharmacy was proposing to close.
- 3.3.2 insufficient information to support that patients would be happy to attend the pharmacy at other hours.
- 3.4 Therefore, they were not assured that “the 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”.
- 3.5 The pharmacy does have a right to appeal this decision. You have a right of appeal to the Secretary of State against NHS England’s decision. Should you choose to appeal then either complete the online form available on the NHS Resolution website or send 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, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.”

4. **The Appeal**

In a letter to NHS Resolution dated 8 October 2025 Temple Bright on behalf of the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 4.1 “I act for Sharief Healthcare 2 Limited, trading as Allied Pharmacy, Rievaulx Road, Whitby, YO21 1SD (“the Pharmacy”).
- 4.2 On behalf of my client I write to appeal a decision of Humber and North Yorkshire ICB on behalf of NHS England to refuse my client’s application for a change of core hours of the Pharmacy. The decision was notified to my client by letter dated 25th September 2025.
- 4.3 My client’s ground of appeal is that NHS England failed to apply the correct legal test in its determination of this application. In particular, in its decision letter, NHS England stated:

“The Committee considered the application and supporting information. It felt that there was:

- *evidence to show that there was still sufficient activity on a Sunday during the hours that the pharmacy was proposing to close.*
- *insufficient information to support that patients would be happy to attend the pharmacy at other hours.”*

4.4 My client asserts that NHS England failed to apply the correct legal test to my client’s application in that it was not necessary for my client to show that patients “would be happy to attend the pharmacy at other hours”, or that there was no use of the Pharmacy during the core hours to be removed, but, instead, that patients, overall, would be more likely to benefit from the changes.

4.5 As NHS Resolution will be aware, an application to change core hours is determined having regard to the matters set out in paragraph 24 of schedule 3 to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. Paragraph 24 relevantly provides as follows:

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

...

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

...

(2ZA) 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).

(2ZB) 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—

(a) issues a direction under sub-paragraph (4) for setting any days or times for opening hours; or

(b) 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.

4.6 By application dated 15th September 2025 (a copy of which is attached to this letter of appeal [see section 2 above]), my client submitted an application to NHS England to change its core hours as follows:

4.7 Current core hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
08:30 – 12:30 / 16:00 – 18:00	08:30 – 12:30 / 14:00 – 18:00	08:30 – 12:30 / 16:00 – 18:00	08:30 – 12:30 / 14:00 – 18:00	08:30 – 12:30 / 16:00 – 18:00	Nil	10:00 – 16:00

4.8 Proposed, amended core hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
08:30 – 12:30 / 14:00 – 18:00	08:30 – 12:30 / 14:00 – 18:00	08:30 – 12:30 / 14:00 – 18:00	08:30 – 12:30 / 14:00 – 18:00	08:30 – 12:30 / 14:00 – 18:00	Nil	Nil

- 4.9 As care [sic] be seen from the above, in essence my client's application sought to remove the core hours on a Sunday and include these as core hours during the early afternoons from Monday to Friday.
- 4.10 In support of its application, my client asserted that granting its application would be likely to benefit patients accustomed to accessing pharmaceutical services from the Pharmacy as patients would, overall, be more likely to access the Pharmacy during weekday afternoons than on a Sunday.
- 4.11 The Pharmacy is located on Rievaulx Road in Whitby and is co-located within the Whitby Group Practice. The pharmacy dispenses an average of approximately 13,000 items per month on 6,500 prescription forms, with around 95% of those originating from Whitby Group Practice.
- 4.12 Whitby Group Practice is open from 8am to 6pm Monday to Friday and is closed on Saturday and Sunday.
- 4.13 The Pharmacy is located in a mainly residential area to the west of Whitby town centre. It is therefore not located in the main shopping centre of Whitby and has little "passing trade".
- 4.14 The general location of the Pharmacy in relation to Whitby is shown on the google maps image below. (see Appendix C)
- 4.15 The Google streetview image below (see Appendix A) shows the Pharmacy and its location adjacent to (but on the same site as) the GP surgery. The Pharmacy unit is the building in the foreground to the right of the image and the GP surgery is to the left of it.
- 4.16 As a result of its co-location with the Whitby Group Practice and its relatively quiet, residential, location, the great majority of the pharmacy's patients access

the pharmacy during the opening hours of the surgery (i.e. after they have seen their GP or visited the surgery for some other reason). Consequently, the Pharmacy has very few patients who access the Pharmacy outside of the surgery times and, in particular, on Sundays.

- 4.17 My client therefore applied to NHS England to re-distribute the Pharmacy's core hours to increase the core opening hours during the working week (when the surgery is open and the Pharmacy is busy) and to remove the hours on a Sunday (when the Surgery is closed and the Pharmacy is quiet) to take into account the pattern of usage of the Pharmacy by its patients.
- 4.18 In order to support its application, the Pharmacy carried out a survey of the Pharmacy's usage. A copy of the survey results (which are summarised below) is attached to the application.[see Appendix B]
- 4.19 The survey showed that, during the 21 weeks of the survey period, on average, only 23 people in total used the pharmacy each Sunday in order to access dispensing services or obtain advice. In relation to additional pharmaceutical services, the Pharmacy ran a further survey over 6 weeks in June and July 2025. It can be seen that the provision of advanced services on a Sunday is very limited.
- 4.20 The Pharmacy repeated the survey between 2pm and 4pm from Monday to Friday during the week commencing 1st September. As can be seen, during the survey period, an average of 76 patients a day attended the pharmacy between 2pm and 4pm Monday to Friday in order to access dispensing services or obtain advice.
- 4.21 As stated above, the Pharmacy dispenses an average of 6,500 prescription forms per month. This equates to an average of around 300 forms per day during the working week. In contrast, the pharmacy saw an average of only around 20 forms per week on a Sunday. Put another way, the number of prescriptions dispensed on a Sunday represented only around 1% of the total number of prescriptions dispensed by the Pharmacy during the survey period.
- 4.22 In relation specifically to the core hours that the Pharmacy applies to remove from Sunday and include between 2pm and 4pm from Monday to Friday, the pharmacy was visited by more than 3 times more patients during the weekdays compared to Sunday (76 on average each weekday between 2pm and 4pm compared to only 23 on average between 10am and 4pm on a Sunday).
- 4.23 Given the low volume of NHS pharmaceutical service activity on Sundays compared to the working week, my client asserts that the people who are accustomed to accessing pharmaceutical services at the Pharmacy 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. My client also believes that granting its application would better meet patient needs, by ensuring core hours provision during the working week (when the GP surgery is open and the pharmacy is much busier) rather than on a Sunday when the GP surgery is closed and the pharmacy is very quiet.

- 4.24 For the sake of completeness, in its application form my client additionally noted that there is another pharmacy in Whitby which is open from 11am to 3pm on Sundays: Boots Pharmacy at 64-66 Baxtergate, Whitby, YO21 1BL.
- 4.25 Boots Pharmacy is located only 750 metres from the Pharmacy, or a 12-minute walk as shown on the google maps image below (see Appendix A). This is a short walk along level terrain with no barriers for pedestrian access.
- 4.26 Boots Pharmacy is located within Whitby town centre, and is therefore easily accessible by foot, car or public transport both from our Pharmacy and for people travelling around Whitby generally.
- 4.27 In terms of service provision, Boots Pharmacy provides a full range of pharmaceutical services, including those advanced services which were accessed by patients on a Sunday during the survey period (Pharmacy First/Minor Ailments and emergency supply).
- 4.28 In conclusion, therefore, my client believes 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 the Pharmacy during the proposed core opening hours than during the existing core opening hours. The Pharmacy is relatively little used on a Sunday compared to during the week and that use could easily be accommodated during the proposed, amended opening times and by Boots Pharmacy locally which is easily accessible to patients who may require access to pharmaceutical services during Sunday hours.
- 4.29 For the reasons given above, and on behalf of my client, I therefore request that NHS Resolution upholds this appeal and grants my client's application to vary the Pharmacy's core hours."

5. Representations

In a letter to NHS Resolution dated 3 November 2025 the Commissioner stated:

- 5.1 "Thank you for your letter dated 16th October 2025 in relation to the above appeal.
- 5.2 Following the amendments to paragraph 26, Schedule 4, Part 3 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), the above application was to be determined based on paragraph 26(2ZB).
- 5.3 To support of this application, the applicant must provide the information that demonstrates that the 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.*
- 5.4 The Pharmacy Services Regulations Committee (PSRC) considered this application and supporting information at its meeting in September 2025

(Appendix 1 – Committee Report) [Appendix D]. The PSRC felt that the supporting information in relation to Sunday activity between February and July 2025 (Appendix 2) showed that there was sufficient activity on a Sunday during the hours that the pharmacy was proposing to close. There was no evidence submitted to show whether patients would be happy to attend the pharmacy within the proposed core hours.

- 5.5 Although the supporting information in relation to activity during the proposed core hours (Appendix 3) showed significant activity within those hours, the PSRC would have been more assured if this was supported by evidence which showed whether patients would be happy to attend the pharmacy within the proposed core hours. The increase in activity may not necessarily be the same patients who attend the pharmacy on a Sunday.
- 5.6 As a result of the above, PSRC did not support the application (Appendix 4 - redacted minutes pages 18 & 19) as they were not assured that "the 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".

6. Observations

In a letter to NHS Resolution dated 21 November 2025 Temple Bright on behalf of the Applicant stated:

- 6.1 "I write further to your letter of 19th November 2025 and in order to respond to representations made by the ICB on my client's appeal.
- 6.2 In its response to the appeal, I note that the Humber and North Yorkshire ICB has provided a copy of its application report to the PSRC and minutes of the meeting of the PSRC where my client's application was considered.
- 6.3 In relation to the ICB's application report, my client notes that the recommendation made to the PSRC was to grant the application on the basis that "the evidence submitted supports paragraph 26(2ZB)".
- 6.4 Notwithstanding this recommendation, PSRC decided to refuse my client's application.
- 6.5 However, in its decision to refuse, it is clear that the PSRC failed to correctly apply the relevant regulatory test. In particular, the regulations required PSRC to consider whether:

"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."
- 6.6 The regulatory test is not, therefore (as the PSRC asserted) whether there was "sufficient activity on a Sunday" or whether there was evidence "to support that

patients would be happy to attend the pharmacy at other hours” but whether patients overall would be likely to benefit from the proposed changes.

- 6.7 In determining my client’s application, PSRC therefore erred in considering whether there was evidence from individual patients that they would “be happy to attend the pharmacy at other hours” rather than considering the effect of the proposed changes on patients overall.
- 6.8 For the reasons given in my client’s application form and those given in my client’s appeal, on behalf of my client it is submitted that there is ample evidence that patients overall would benefit from the proposed changes, since there is clear evidence that patients overall would be more likely to access services from the pharmacy during the proposed core hours during weekdays rather than during the existing hours on a Sunday.
- 6.9 On behalf of my client, I therefore invite NHS Resolution to uphold this appeal and to grant the application.”

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 between 2pm and 4pm on a Monday, Wednesday and Friday; and
 - 7.2.2 Close on a Sunday instead of opening from 10am to 4pm.
- 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 P’s pharmacy premises in a way that—

 - (a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week ...; or*
 - (b) keeps that total number of hours the same.*
- 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 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.
- 7.13 I note that the Applicant carried out a survey showing the usage of the pharmacy during the period 9 February 2025 to 13 July 2025 and carried out a further survey, in relation to additional pharmaceutical services, from 15 June 2025 to 20 July 2025. The Applicant states that they repeated the survey between 2pm and 4pm from Monday to Friday during the week of 1 September 2025.
- 7.14 I note that I have not been provided with any information as to how the survey was carried out e.g. whether every interaction was captured. Further, I am mindful that the Applicant already has core opening hours on a Tuesday and Thursday between 2pm and 4pm.
- 7.15 The Applicant states that there is *“low volume of NHS pharmaceutical service activity on a Sunday compared to the working week”* and further that *“the pharmacy saw an average of only around 20 forms per week on a Sunday. Put another way, the number of prescriptions dispensed on a Sunday represented only around 1% of the total number of prescriptions dispensed by the Pharmacy during the survey period.”* I am aware that pharmaceutical services consist of both dispensing and non-dispensing activity and I have been provided with a tally chart showing various reasons for visits to the pharmacy as well as a list of additional services used for a six week period.
- 7.16 Based on the Applicant’s comments as well as the information provided to me, I consider it reasonable to take the position that there is demand for pharmaceutical services on a Sunday between 10am and 4pm.
- 7.17 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.
- 7.18 I note that the Applicant has also provided information to demonstrate the usage of the pharmacy on a Monday to Friday between 2pm and 4pm for a week in September 2025.
- 7.19 I am mindful however that the Applicant is already open and providing services on a Tuesday and Thursday between 2pm and 4pm as part of its existing core hours and that these hours are not changing as part of this application.
- 7.20 Further, whilst I note that the Applicant is proposing to open on a Monday, Wednesday and Friday between 2pm and 4pm they are already open during

this period, albeit as supplementary hours. Given that patients of the pharmacy already have the option and ability to attend the pharmacy during the period in which the Applicant is seeking to open as “core hours” I am unsure how those who access services on a Sunday would benefit from the proposed weekday opening hours. Whilst I note that there is a demand for services during the week and in particular between 2pm and 4pm on a Monday, Wednesday and Friday, without robust data regarding this period compared to the position as it is now, it is difficult to draw conclusions regarding the demand for services.

- 7.21 In summary, if those who do access services on a Sunday were able to access the pharmacy during the week, these hours are already being provided and therefore I am unsure of what the actual effect of the change would be for those who are accustomed to accessing services on a Sunday.
- 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 on a Sunday. 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 on a Sunday, which would assist an understanding of why they may use the new hours on other days.
- 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 there are other pharmacies open during its proposed closed hours that pharmacy users could instead visit. 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 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.

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, therefore the Applicant cannot rely on paragraph 26(2ZB).
- 8.2 The action taken by the Commissioner to refuse the application is confirmed.

Head of Appeals
NHS Resolution