

26 February 2026

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

FILE REF: SHA/26793

COMMISSIONER: NHS BIRMINGHAM
AND SOLIHULL ICB
("the Commissioner")

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

PHARMACIST: SEDGLEY PHARMACY (FQ647)
("the Applicant")

PREMISES: SEDGLEY PHARMACY
24 – 28 DUDLEY STREET
SEDGLEY
DY3 1SB

**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:
Sedgley Pharmacy
West Midlands ICB

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

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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 1 October 2025:

- 2.1 “This is an application to permanently change core opening hours
- 2.2 Current opening hours for these premises:

Monday	09:00 – 11:00 13:00 – 18:00
Tuesday	09:00 – 11:00

	13:00 – 18:00
Wednesday	09:00 – 11:00 13:00 – 18:00
Thursday	09:00 – 11:00 13:00 – 18:00
Friday	09:00 – 11:00 13:00 – 18:00
Saturday	09:00 – 10:00 13:00 – 17:00
Sunday	

Proposed core opening hours for these premises:

Monday	09:00 – 13:00 13:30 – 17:30
Tuesday	09:00 – 13:00 13:30 – 17:30
Wednesday	09:00 – 13:00 13:30 – 17:30
Thursday	09:00 – 13:00 13:30 – 17:30
Friday	09:00 – 13:00 13:30 – 17:30
Saturday	
Sunday	

- 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 1 February 2026
- 2.6 The Applicant confirmed that it wished its application to be determined on the basis of Paragraph 26(2ZB), Schedule 4.
- 2.7 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.
- 2.8 We seek to demonstrate that patients accustomed to accessing services at Sedgley Pharmacy on Saturdays will benefit from the change, because overall, they will be more likely to access pharmaceutical services at these premises during the proposed core hours than during the existing core hours.
- 2.9 **Patient Consultation and Survey Evidence**
- 2.10 A four-week patient survey was conducted (including Saturdays). Patients were asked to compare the existing and proposed hours:
- 2.10.1 98 patients indicated the proposed new hours would be more beneficial.

- 2.10.2 0 patients preferred the current hours.
- 2.11 In a separate survey focused on Saturday users:
 - 2.11.1 95% stated they would re-access services during weekday opening if Saturdays were unavailable.
 - 2.11.2 5% indicated they would use alternative local pharmacies open on Saturdays.
 - 2.11.3 None reported they would be unable to access pharmacy services if the proposed change took effect.
- 2.12 **Prescription Demand and Surgery Alignment**
 - 2.12.1 Sedgley Pharmacy dispenses on average 11,500 items/month, with 50% aligned directly with GP surgery opening times.
 - 2.12.2 Call volume analysis confirms Saturday call volume is <10% of weekday levels.
 - 2.12.3 Illustrative Data Table:
 - 2.12.4 Monday – ~22%,
 - 2.12.5 Tuesday – ~21%,
 - 2.12.6 Wednesday – ~20%,
 - 2.12.7 Thursday – ~21%,
 - 2.12.8 Friday – ~19%,
 - 2.12.9 Saturday – ~4%
- 2.13 **Annex B – Patient Survey Results**
- 2.14 Method: 4-week survey, including Saturdays.
- 2.15 Results:
 - 2.15.1 98 patients preferred proposed hours
 - 2.15.2 0 patients preferred existing hours
 - 2.15.3 Saturday-specific survey:
 - 2.15.4 95% would re-access services on weekdays
 - 2.15.5 5% would use alternative pharmacies
 - 2.15.6 0% unable to access services

2.16 **Annex C – Comparative Core Opening Hours**

2.17 Current Hours (40 total):

Mon–Fri: 09:00–11:00, 13:00–18:00

Sat: 09:00–10:00, 13:00–17:00

Sun: Closed

2.18 Proposed Hours (40 total):

Mon–Fri: 09:00–13:00, 13:30–17:30

Sat: Closed

Sun: Closed

2.19 **Annex D – Local Pharmacy Provision**

2.20 Alternative Saturday provision within 10–12 minutes:

2.2.1 Tesco Burntree Island (DY1 4RP) – Sat 9am–5pm

2.2.2 Dudley Road Pharmacy (WV2 3AH) – Sat 9am–1pm

2.2.3 Other local pharmacies aligned to GP hours

2.21 **Annex E – Summary of Patient Benefits**

2.21.1 Alignment with GP surgeries benefits acute and routine prescription access.

2.21.2 Delivery patients benefit from weekday-aligned hours.

2.21.3 Saturday demand is very low (footfall, call, OTC sales).

2.21.4 Alternative Saturday provision ensures no loss of access.

2.21.5 Patient survey overwhelmingly supports proposed hours.

2.22 Conclusion: Patients are more likely to access services under proposed weekday-focused hours.

2.23 **Response to Previous NHS England Rejection Grounds**

2.24 This reapplication directly addresses the points raised in NHS England's previous decision to reject the core hours change request. We have strengthened the evidence base and provided robust reasoning for why the proposed redistribution of core hours will benefit patients.

2.25 **Saturday Users Will Benefit Overall**

2.26 Survey evidence shows that 95% of Saturday users would re-access services during weekday openings, while 5% would use nearby alternatives. None reported being unable to access services if Saturdays were unavailable. Saturday usage represents less than 5% of weekly prescriptions and less than 10% of call/footfall volumes. Furthermore, Saturday service is constrained by limited wholesaler deliveries. Patients will benefit more by accessing services during extended weekday hours that are better staffed, fully supplied, and aligned to GP opening times. Therefore, Saturday users are more likely to benefit overall under the proposed hours.

2.27 **Alternative Saturday Provision and Travel**

2.28 The previous decision suggested insufficient Saturday provision after 2pm. However, Tesco Burntree Island (DY1 4RP), located 12 minutes from Sedgley, remains open until 5pm on Saturdays and is accessible via frequent public transport. Dudley Road Pharmacy (WV2 3AH) is open until 1pm on Saturdays, also accessible within 10 minutes by car or regular bus routes. When surveyed, 5% of Saturday users indicated they would use these alternatives. Thus, patients who wish to access services on Saturdays retain realistic, local options.

2.29 **Business Need**

2.30 The sustainability of service provision requires consideration of staffing, logistics, and financial viability. Current split-shift hours and Saturday opening demand inefficient staffing patterns, contributing to increased costs despite very low demand (<5% of dispensing volume). By consolidating hours into continuous weekday sessions, the pharmacy can provide improved service quality, including uninterrupted pharmacist presence, dedicated slots for clinical services (e.g., NMS, CPCS, vaccinations), and better alignment with wholesaler delivery cycles. Saturday wholesaler limitations reduce the pharmacy's ability to meet urgent patient need, further supporting weekday consolidation. Reallocation ensures resources are directed where demand is highest, safeguarding long-term sustainability and patient access.

2.31 **Conclusion**

2.32 This reapplication provides clear evidence that Saturday users will benefit more from extended weekday availability, that alternative local provision ensures no patient is left without access, and that there is a strong business need to redistribute hours. The proposed change therefore satisfies the statutory requirement under Paragraph 26(2ZB), Schedule 4."

3 **The Decision**

In a letter to the Applicant dated 19 November 2025 the Commissioner decided to refuse the application. The Commissioner stated:

3.1 "Further to your application to change the core opening hours at the above address, I am writing to confirm that it has been **refused**.

- 3.2 Committee agreed to refuse the application as it doesn't meet Paragraph 26 (2ZB, Schedule 4 of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
- 3.3 Matters to be considered when issuing directions in respect of pharmacy premises core opening hours
- 3.4 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).
- 3.5 (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,
- 3.6 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.”;
- 3.7 In considering the matters mentioned in sub-paragraph (1), the NHSCB—
- 3.7.1 must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided; and
- 3.7.2 may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.
- 3.8 (3) The NHSCB may only direct that an NHS pharmacist (P) may provide pharmaceutical services at premises for less than 40 hours in any week if it is satisfied that the provision of pharmaceutical services in its area is likely to be adequate to meet the need for such services at times when P is not providing pharmaceutical services.
- 3.9 (4) Except in the case of premises that have (at any time) been subject to a direction under regulation 65 or regulation 65 of the 2012 Regulations (core opening hours conditions), the NHSCB may only direct that P must provide pharmaceutical services at premises for more than 40 hours in any week where it is satisfied that P is to receive reasonable remuneration in respect of the additional opening hours for which P is required to provide pharmaceutical services (and any additional remuneration payable in accordance with a determination made as mentioned in regulation 91(6) in respect of those hours is “reasonable remuneration” for these purposes).

- 3.10 (5) Sub-paragraph (4) does not apply in circumstances where the direction is in respect of any premises in respect of which a 100 hours condition applies or has ever applied, or in respect of which a direction that replaced (at any distance in succession) a 100 hours condition applies.”
- 3.11 Not met – The applicant has not demonstrated how the people who are accustomed to accessing pharmaceutical services at the pharmacy premises on a Saturday 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.
- 3.12 The applicant has not demonstrated how the people who are accustomed to accessing pharmaceutical services at the pharmacy premises on a Saturday are likely to benefit from the changes. The nearest pharmacies open on a Saturday 2.3 miles and 3 miles and neither of those pharmacies are open opened [sic] after 2pm on a Saturday.
- 3.13 You have a right of appeal to the Secretary of State against the issuing of this direction. Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of receiving this notice to nhsr.appeals@nhs.net or:

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

4 The Appeal

In a letter to NHS Resolution dated 22 November 2026 the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 4.1 “Statement of Grounds for Appeal against the Decision to Refuse Application to Redistribute Core Opening Hours (FQ647)
- 4.2 Contractor: SYNC Chem Ltd t/a Sedgley Pharmacy
- 4.3 ODS Code (F Code): FQ647
- 4.4 Premises Address: 24-28 Dudley Street, Sedgley, DY3 1SB
- 4.5 Date of Decision Letter: 19th November 2025
- 4.6 Date of Application: 01/10/2025 (Re-application)
- 4.7 **Introduction and Factual Background**
- 4.8 This is an appeal against the decision of the Office of the West Midlands Partnership of Integrated Care Boards (the ICB) dated 19th November 2025, to refuse the application to permanently redistribute the core opening hours of

Sedgley Pharmacy (FQ647). The decision is appealable on the grounds of being **unlawful, procedurally unfair, and irrational**.

- 4.9 The application sought to maintain the mandatory 40 core opening hours per week while shifting those hours from a current split-shift pattern that included a limited Saturday opening to a consolidated, continuous weekday opening pattern (Monday to Friday: 09:00-13:00 & 13:30-17:30, with Saturday closure).
- 4.10 The application was made and requested determination under **Paragraph 26(2ZB), Schedule 4 of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended**.
- 4.11 **Grounds for Appeal: Misdirection in Law and Irrationality**
- 4.12 The ICB refused the application on the sole ground that the applicant failed to meet Paragraph 26(2ZB) by stating: *"The applicant has not demonstrated how the people who are accustomed to accessing pharmaceutical services at the pharmacy premises on a Saturday 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."*
- 4.13 This conclusion constitutes a fundamental error of law and fact, as detailed below:
- 4.14 **Misinterpretation and Misapplication of the "Overall" Test**
 - 4.14.1 The Committee has misdirected itself in law as to the proper interpretation of **Paragraph 26(2ZB)**. The legislation expressly uses the language **"overall"** and **"more likely."** The ICB focused narrowly on the theoretical loss of access for a small, low-volume minority of Saturday users while entirely disregarding the demonstrable benefit to the **overall** patient population.
 - 4.14.2 The test is focused on the **majority benefit**: The ICB failed to give appropriate weight to the fact that the **90%+ of weekly prescription volume** is collected Monday-Friday, and that **95% of the small number of existing Saturday users** indicated they would gain *better* access via the proposed extended weekday hours.
 - 4.14.3 The Committee has unlawfully elevated the hypothetical interests of a tiny, low-volume minority above the clear, evidenced needs of the vast bulk of the patient population, which is contrary to the intent and language of the "overall" test.
- 4.15 **Irrationality and Wednesbury Unreasonableness**
- 4.16 The Committee's conclusion that the applicant "has not demonstrated how the people who are accustomed to accessing... on a Saturday are likely to benefit" is **Wednesbury unreasonable** in light of the overwhelming and specific patient evidence provided. No reasonable authority, properly directing itself on the material before it (which showed **98 patients supported the change and 0**

preferred the existing hours), could have rationally reached the decision to refuse.

4.17 **Detailed Evidence Demonstrating Compliance with Paragraph 26(2ZB)**

4.18 The evidence clearly demonstrates that the proposed hours meet the statutory requirement because the redistribution will result in customers, *overall*, being more likely to access the services.

4.19 **Overwhelming Patient Preference and Usage Data (Annex A & B)**

Evidence Category	Findings from Application (Annex B)	Conclusion
General Survey	98 patients indicated the proposed new weekday hours would be more beneficial; 0 preferred the current hours.	Overwhelming majority of the patient base prefers the proposed weekday consolidation.
Saturday User Intent	95% of Saturday users stated they would re-access services during the proposed extended weekday opening hours.	95% intend to benefit from the weekday hours, confirming the "overall" benefit.
Inability to Access	0% of Saturday users reported they would be unable to access pharmacy services if the proposed change took effect.	No detriment to patient access is anticipated by the patients themselves.
Demand Data (Annex A)	Saturday demand represents less than 5% of weekly prescriptions and less than 10% of weekly call/footfall volumes.	The existing Saturday core hours are demonstrably under-utilised.

4.20 **Improved Alignment, Quality of Access, and Business Sustainability**

4.21 The proposed change does not merely move hours; it makes them more effective and sustainable for the vast majority of patients:

4.21.1 **GP Surgery Alignment:** The proposed hours are explicitly aligned with the main feeder surgery (The Ridgeway Surgery), which is **closed on Saturdays**. This alignment improves access for acute prescription collection at the point of need for the majority of prescription patients.

4.21.2 **Clinical Service Capacity:** Consolidating core hours on weekdays allows for **uninterrupted pharmacist presence** and improves capacity for dedicated clinical services (NMS, CPCS, **Pharmacy First, vaccinations**).

4.21.3 **Logistics and Efficiency:** **50% of the pharmacy's 11,500 monthly items are nursing home or home-delivery patients, all of whom can only be serviced Mon-Fri.** Furthermore, **Saturday wholesaler deliveries are severely restricted**, meaning the pharmacy frequently cannot meet urgent need on Saturdays in any event. The weekday

consolidation ensures a fully stocked, fully staffed service when it is most needed.

4.22 **Material Error of Fact Regarding Alternative Provision.**

- 4.23 The ICB refusal states that nearest pharmacies are 2.3 and 3 miles away and are **not open after 2 pm on Saturday**. This finding is a **material error of fact** that vitiates the decision:

Alternative Pharmacy (Annex D)	Distance from FQ647	Saturday Closing Time (Confirmed DoS Oct 2025)
Tesco Burntree Island (DY1 4RP)	Approx. 2.3 miles (12 mins by car/frequent bus)	5:00 PM
Dudley Road Pharmacy (WV2 3AH)	Approx. 3 miles (10 mins by car/regular bus)	1:00 PM

- 4.24 The ICB's reliance on the false statement that no pharmacy is open after 2:00 PM fundamentally misrepresents local provision and suggests a failure to verify data. Tesco Burntree Island (DY1 4RP) is open until 5:00 PM, ensuring patients who require Saturday access retain a realistic, local, and late-afternoon option.

4.25 **Procedural Unfairness and Failure to Consider Evidence**

- 4.26 The refusal letter is procedurally unfair because it appears to rely on a template from a previous refusal.

4.26.1 The letter contains the same specific distances ("2.3 miles and 3 miles") and the same erroneous assertion about closing times, **despite the October 2025 re-application providing strengthened, direct evidence (including the specific 5:00 PM closing time of Tesco)** designed to explicitly address these previous objections.

4.26.2 This suggests that the Committee failed to give genuine and individual consideration to the new material submitted with the re-application and simply recycled an earlier decision, which amounts to a failure to follow fair procedure.

4.27 **Conclusion and Appeal Request**

- 4.28 The ICB's decision is flawed on multiple grounds: misdirection in law, irrationality in assessing the "overall" patient benefit, reliance on a material error of fact, and procedural unfairness.

- 4.29 The proposed redistribution of core hours satisfies the statutory test on an **overall** basis by aligning service provision with peak patient demand, clinical need, and logistics, thereby maximising the likelihood of patient access.

- 4.30 **The appellant therefore requests that the Secretary of State:**

4.30.1 **Quash** the decision of 19th November 2025; and

4.30.2 **Direct** NHS England West Midlands to grant the application to vary the core hours with effect from **1st February 2026** (or the earliest practicable date).

4.31 *(Note: The simultaneous notification to redistribute supplementary hours ensures that total opening hours will remain substantially unchanged (lunchtime supplementary hours moved to 17:30-18:00 Mon-Fri and Saturday 09:00-14:00 supplementary retained if required).)*

5 Representations

No representations were received by NHS Resolution in response to the appeal, however the Commissioner provided its paperwork regarding the application, which was circulated to the Applicant for information.

6 Consideration

6.1 I note the following:

6.1.1 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.

6.2 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.

6.3 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.

6.4 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).

6.5 I note the Applicant indicated that it wanted its application to be determined on the basis of Paragraph 26(2ZB), Schedule 4.

6.6 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.

6.7 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.

6.8 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.

6.9 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.

6.10 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.

6.11 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.

- 6.12 In its appeal, the Applicant states that it conducted a four-week patient survey, including Saturdays, to compare views on the existing and proposed opening hours. The survey results indicated that 98 patients considered the proposed hours to be more beneficial, while none preferred the current hours. A separate survey of Saturday users found that 95% would access services during weekday opening hours if Saturday opening ceased, and 5% would use alternative local pharmacies. No respondents indicated that they would be unable to access pharmacy services if the proposed changes were implemented.
- 6.13 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 do not know details of who responded to the survey and whether those who were asked were habitual users or whether they were one-off users. In this regard I must be mindful that paragraph 26(2ZB) refers to those who are accustomed to accessing services at the pharmacy premises.
- 6.14 The Applicant states that “90%+ of weekly prescription volume is collected Monday-Friday” and that “Saturday demand represents less than 5% of weekly prescriptions and less than 10% of weekly call/footfall volumes.” However, no supporting evidence has been provided to substantiate these figures or to explain the method used to obtain this data. Without this information it is difficult to make an assessment of the level of demand for pharmaceutical services.
- 6.15 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 Saturday between 9am and 5pm.
- 6.16 I note the Applicant proposes opening hours of 9am to 5:30pm Monday to Friday; however, no evidence has been provided to demonstrate that individuals who currently use the pharmacy would be more likely to do so during these hours than under the existing arrangements. I note that the Applicant states in their appeal that “*The simultaneous notification to redistribute supplementary hours ensures that total opening hours will remain substantially unchanged (lunchtime supplementary hours moved to 17:30-18:00 Mon-Fri and Saturday 09:00-14:00 supplementary retained if required)*” however, these hours are supplementary and as such may be altered by the Applicant 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.
- 6.17 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.
- 6.18 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”, namely between 9am to 1pm Monday to Friday, I am unsure how those who access services on a Saturday would benefit from the proposed weekday opening hours. Whilst I note that there is a demand for services during the week, without robust data regarding the above period compared to the

position as it is now, it is difficult to draw conclusions regarding the demand for services.

- 6.19 In summary, if those who do access services on a Saturday 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 Saturday.
- 6.20 I consider that evidence of demand would only form one part of the overall picture required to be established under paragraph 26(2ZB). Again, 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.
- 6.21 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 Saturday. 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 Saturday, which would assist an understanding of why they may use the new hours on other days.
- 6.22 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.
- 6.23 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.
- 6.24 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 Determination

- 7.1 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).
- 7.2 The action taken by the Commissioner to refuse the application is confirmed.

Head of Appeals
NHS Resolution