NHS Resolution

3 March 2026

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FILE REF: **SHA/ 26770**

COMMISSIONER: **WEST YORKSHIRE ICB ("the Commissioner")**

PHARMACIST: **FAMEVALLEY LTD ("the Applicant")**

PREMISES: **STONE PHARMACY
SILSDEN HEALTH CENTRE
ELLIOTT STREET
SILSDEN
BD20 0DG**

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 The action taken by the Commissioner to refuse the application is confirmed.

A copy of this decision is being sent to:

Famevalley Ltd
West Yorkshire ICB

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

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

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

1 Introduction

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

1.2 The Commissioner has refused the application. The Applicant seeks to appeal to NHS Resolution.

Rights of appeal

1.3 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").

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

Opening hours

1.5 A pharmacy's opening hours may be categorised as:

1.5.1 "core opening hours" (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations),

which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours and at set times and days; or

1.5.2 "supplementary" opening hours (other hours during which the pharmacy premises are open which are in addition to the core hours), pursuant to paragraph 23(3) of Schedule 4 of the Regulations.

Alteration of core opening hours

1.6 In accordance with paragraphs 1(7)(c) and 1(7)(d) of Schedule 2 of the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list:

1.6.1 the proposed core opening hours in respect of the premises; and

1.6.2 the total proposed opening hours for the premises (having regard to both the proposed core opening hours and any supplementary opening hours).

1.7 The Commissioner maintains pharmaceutical lists that include the days on which and times at which, at those premises, the listed person is to provide those services during the core opening hours and any supplementary opening hours of the premises.

1.8 The days on which or times at which a pharmacy is obliged to provide pharmaceutical services at the premises may only be altered by the pharmacy on application under paragraph 26(1) of Schedule 4 of the Regulations, so long as the effect of that application is to reduce the total number of hours for which a pharmacy is obliged to provide, or keep the total number of hours the same.

Alteration of supplementary opening hours

1.9 Supplementary opening hours may be altered by the pharmacy giving notice to the Commissioner, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations, without the need to make an application to the Commissioner.

1.10 There is no specific right of appeal to NHS Resolution in respect of notices given under paragraph 23(6)(a).

The Applicant's proposals

1.11 The Applicant in its letter of appeal indicates that it currently has core opening hours totalling 72 hours per week.

2 Application

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

2.1 "This is an application to permanently redistribute the total number of core opening hours.

2.2 Current opening hours for these premises:

Monday	10am – 9pm
Tuesday	10am – 9pm
Wednesday	10am – 9pm
Thursday	10am – 9pm
Friday	10am – 9pm
Saturday	5pm – 9pm
Sunday	8am – 9pm

2.3 Proposed core opening hours for these premises:

Monday	8am – 8pm
Tuesday	8am – 8pm
Wednesday	8am – 8pm
Thursday	8am – 8pm
Friday	8am – 8pm
Saturday	9am – 3pm
Sunday	10am - 4pm

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 December 2025

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 1. Benefit to patients and the local community

2.9 The proposed hours will make services substantially more convenient for the people accustomed to using Silsden Stone Pharmacy.

2.10 Currently, the pharmacy opens at 10am - too late for early GP appointments and working residents - and remains open until 9pm, when patient demand is minimal.

2.11 Opening at 8am (aligning with the local GP surgery) and closing at 8pm aligns operating times with actual community use.

2.12 2. Weekend access

2.13 Weekend usage shows clear imbalance:

2.13.1 Saturday (5pm – 9pm) has consistently very low footfall.

2.13.2 Sunday (8am – 9pm) is overextended, with negligible use before 11am and after 5pm.

2.14 The proposed Saturday 9am – 3pm and Sunday 11am – 5pm hours deliver service precisely when patients are most active, ensuring meaningful weekend access while removing long, unproductive hours.

2.15 3. Four-week evidence of patient activity

2.16 A four-week tally of all patient interactions (prescriptions + OTC purchases) clearly demonstrates the community's usage patterns.

2.17 Morning activity (8am – 10am):

Day	**Week1**	**Week 2**	**Week 3**	**Week 4**	**Average**
Monday	17	25	23	19	21
Tuesday	13	18	22	11	16
Wednesday	15	12	15	9	13
Thursday	9	13	7	9	9
Friday	15	11	17	12	14
Average weekday 8 – 10am	-	-	-	-	≈ 15 patients/d

2.18 Saturday (9am – 3pm):

Week 1	**Week 2**	**Week 3**	**Week 4**	**Average**
9	17	27	22	19"

3 The Decision

In a letter to the Applicant dated 31 October 2025 the Commissioner decided to refuse the application. The Commissioner stated:

3.1 "The Yorkshire and Humber Committee in Common Pharmaceutical Services Regulations Committee (hereafter referred to as "the Committee") considers all pharmaceutical services applications on behalf of West Yorkshire ICB in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended (hereafter referred to as "the Regulations").

3.2 The Committee considered your request at the meeting held on 29 October 2025 and considered the application for this 100-hour pharmacy working under the 2023 100-hour Directions contracted to provide 72hours core opening hours per week. I am writing to confirm that the application to amend core hours for the premises at Silsden Health Centre, Elliott Street, Silsden, BD20 0DG has been refused.

3.3 The Committee reviewed the application and report, noting the application to change the core hours. It was noted that the pharmacy currently opens 8am until 10am [sic] weekdays. This earlier opening time better meets the needs of patients that visit the GP practice next door. The applicant wants to change these hours to core opening hours. At the end of the weekday, the applicant wants to close at 20:00 instead of 21:00. Thus, opening each weekday for 12 hours instead of 11 hours. Unfortunately, as outlined in the Directions set out below, the opening until 21:00 is tied to the requirements of the 2023 Directions where core hours must be maintained between 5pm and 9pm. The same applies to the request to change the Saturday core opening hours. Again, the opening hours must be maintained between 5pm and 9pm. The change to Sunday hours is also tied to the requirements of the 2023 directions i.e. *the total number of core opening hours on a Sunday remains the same. (13 hours) and must maintain core opening hours between 11am and 4pm.*

3.4 **The Directions:**

3.5 *Paragraph 26(4A), Schedule 4 states that the ICB must not issue a direction under paragraph 26(4), schedule 4 if doing so would have the effect of reducing any or all of the following:*

(a) the total number of core opening hours to below 72;

(b) the core opening hours on a Monday to Saturday at times between 5pm and 9pm;

(c) the core opening hours on a Sunday at times between 11am and 4pm, other than by way of the inclusion of, or a change to, a rest break which—

(i) is no longer than one hour, and

(ii) 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; and

(d) the total number of core opening hours on a Sunday remains the same.

3.6 Consequently, the PSRC could not approve the application to redistribute the core hours as the proposed changes did not comply with the requirements of the 2023 100-hour Directions.

3.7 Following this, you do have a right of appeal to the Secretary of State against our decision. 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:

3.8 nhsr.appeals@nhs.net; or:
NHS Resolution, 8th Floor,
10 South Colonnade,
Canary Wharf,
London,
E14 4PU"

4 The Appeal

In an email to NHS Resolution dated 5 November 2025 the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

4.1 "I am writing to formally appeal your [sic] decision to reject our application to amend our core opening hours at Stone Pharmacy Silsden.

4.2 Your [sic] letter states that the proposal "fails to demonstrate that access to pharmaceutical services would be maintained" and that insufficient justification was provided. Having reviewed your [sic] comments, I believe your [sic] decision does not reflect the evidence, does not incorporate the updated June 2025 regulations, and does not fairly interpret the statutory test under paragraph 26(2ZB) of Schedule 4.

4.3 To assist the Committee, I outline below the grounds for this appeal.

4.4 **1. The June 2025 Regulations ARE clear – contractors may amend core hours to better align with service need**

4.5 Under the June 2025 amendments, the contractor may vary the timing of core hours provided that:

4.5.1 the same total number of core hours is provided, and

4.5.2 the change maintains the necessary level of service provision.

4.6 The legislation does not require identical hours to be maintained, nor does it require "no impact at all". The test is reasonable maintenance of service provision – not identical replication.

4.7 Our proposal meets the test.

4.8 **2. Your [sic] decision failed to consider the actual availability of alternative provision**

4.9 Your [sic] reason for refusal was based on a perceived loss of access. However, your [sic] assessment did not factor in the pharmacies that are open during the hours we propose to close.

4.10 Late night / extended hours accessible from Silsden:

4.10.1 Boots Keighley – open late

4.10.2 Asda Keighley Pharmacy – extended hours

4.10.3 Lloyds/Day Lewis (regional) – multiple branches accessible by car (as almost all patients already do)

4.10.4 Airedale area pharmacies with overlapping extended hours

4.11 No patient is left without reasonable access to:

4.11.1 Dispensing

4.11.2 Pharmacy First

4.11.3 emergency supply

4.11.4 BP / contraception

4.11.5 OTC / EHC

4.11.6 minor ailments

4.12 And crucially, we remain open on Sundays 16:00–20:00, ensuring a full 7-day provision.

4.13 Your [sic] assessment makes no mention of these alternative providers, which is a material omission.

4.14 **3. Evidence shows extremely low footfall during the hours proposed for removal**

4.15 We have provided factual data from multiple weekends confirming:

4.15.1 Footfall was minimal

4.15.2 100% of users arrived by car, not on foot

4.15.3 Zero walk-ins relied on local proximity

4.15.4 No patient required a service that could not be obtained at nearby pharmacies

4.15.5 Zero demand existed for the late hours proposed to be removed.

4.16 To reject our application while ignoring this data is unreasonable.

4.17 **4. You [sic] stated “no explanation was given” — but the explanation was clear**

4.18 You [sic] commented that the pharmacy “did not explain the actual impact of the change on patients”.

4.19 To clarify explicitly:

4.20 **Actual Impact Explanation (for avoidance of doubt):**

4.20.1 Patients who previously attended on Saturday 17:00–22:30 and Sunday 10:00–16:00 will instead use accessible nearby pharmacies that are open during that period.

4.20.2 No patient group is disadvantaged because all recorded users already travelled by car.

4.20.3 Vulnerable / mobility-restricted patients attend earlier hours and are unaffected.

4.20.4 The change simply shifts our accessible service hours to a more clinically useful period, aligning with demand.

4.21 This fulfils your [sic] requirement for “actual case-based explanation”.

4.22 **5. You raised concerns about “future reduction of hours” – but the regulations prohibit using hypothetical future scenarios**

4.23 Your [sic] letter implied concern that we “may later apply to reduce overall hours”.

4.24 The regulations are explicit:

4.25 You [sic] must assess THIS application on ITS merits.

4.26 Hypothetical future applications cannot influence the current decision.

4.27 We therefore ask that this improper consideration be discounted.

4.28 **6. Your [sic] reference to ‘why no application before May 2023’ is irrelevant and legally immaterial**

4.29 Before May 2023, the law did not permit hour redistribution for 100-hour pharmacies.

4.30 This is the exact reason an earlier application was impossible.

4.31 This point should not have been included as a reason for rejection.

4.32 **7. Our proposal reasonably maintains access and improves clinical alignment**

4.33 Our new pattern:

4.33.1 Maintains the full 72-hour core requirement

4.33.2 Provides clinically meaningful opening times

4.33.3 Reduces wasteful late-night operation with no demand

4.33.4 Keeps Sunday opening to ensure 7-day coverage

4.33.5 Aligns with peak patient activity patterns, improving service provision

4.34 This is exactly what the new regulations were designed to allow.

4.35 **8. Request for reconsideration**

4.36 We respectfully request that the Committee:

4.36.1 Overturn the rejection, and

4.36.2 Approve the revised schedule of core hours on the evidence provided.

4.37 We would be pleased to meet with the panel, provide further evidence, or demonstrate the utilisation data if required.

4.38 **Conclusion**

4.39 In summary:

4.39.1 Our proposal is within the law

4.39.2 Follows the updated June 2025 regulations

4.39.3 Maintains necessary access

4.39.4 Is supported by data

4.39.5 Addresses each of your [sic] points directly

4.39.6 And avoids the operational inefficiency of providing hours where there is no community demand

4.40 I therefore request this appeal is upheld."

5 Representations

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

5.1 "Thank you for the opportunity to respond to the Appeal submitted by the caretaker manager appointed by the administrators for Famevalley Ltd T/A Stone Pharmacy, a 100-hour pharmacy operating within an inherited 72-hour Direction which was agreed in July 2023.

5.2 **Background information**

5.3 Fame Valley Ltd t/a Stone Pharmacy is included in the pharmaceutical list for the area of Bradford HWB in respect of pharmacy premises at Silsden Health Centre, Elliott Street, Silsden, BD20 0DG. The pharmacy was previously subject to the

100-hours condition, but the contractor successfully applied to reduce the pharmacy's core opening hours to 72-hours per week in July 2023.

5.4 On 29th April 2025, the pharmacy was put into Administration and temporarily ceased to trade until it re-opened under a management arrangement on the 9th June but still was not opening for the full contracted 72-hours due to difficulty in securing locum staff to cover the full contracted hours.

5.5 On 25th July 2025, following a telephone conversation with the pharmacy manager regarding the possibilities of reconfiguration of the 72-hours per week, a copy of the July 2023 72-hr Directions was shared via email together with links and a brief explanation of the restrictions to be considered.

5.6 **The Change Of Core Hours (COCH) Application made within the 72 hours Directions**

5.7 On the 15th October the applicant submitted a COCH application to reconfigure the 72-hours and requested the application be determined on the basis of paragraph 26(2ZB), Schedule 4 of the 2013 regulations. Supporting information was provided by the applicant.

5.8 *Paragraph 26(4A), Schedule 4 states that the ICB must not issue a direction under paragraph 26(4), schedule 4 if doing so would have the effect of reducing any or all of the following:*

(a) the total number of core opening hours to below 72;

(b) the core opening hours on a Monday to Saturday at times between 5pm and 9pm;

(c) the core opening hours on a Sunday at times between 11am and 4pm, other than by way of the inclusion of, or a change to, a rest break which—

(i) is no longer than one hour, and
(ii) 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; and

(d) the total number of core opening hours on a Sunday remains the same.

5.9 **The table below summarises: the current core hours; the applicant's proposed hours and the requirements of paragraph 26(A), Schedule 4.**

DAY	**CURRENT CORE HOURS** (Approved Directions July 2023)	**PROPOSED CORE HOURS** (72hrs Directions reconfiguration)	**RESTRICTIONS** **paragraph 26(A), Schedule 4.** Reconfiguration of the 72 Hrs Directions **must remain open:**
MONDAY	10:00-21:00	08:00-20:00	Monday to Saturday between 5pm and 9pm

TUESDAY	10:00-21:00	08:00-20:00	(no rest breaks are permitted during this time)
WEDNESDAY	10:00-21:00	08:00-20:00	
THURSDAY	10:00-21:00	08:00-20:00	
FRIDAY	10:00-21:00	08:00-20:00	
SATURDAY	17:00-21:00	09:00-15:00	
SUNDAY	08:00-21:00	10:00-16:00	Sunday between 11am and 4pm **Plus** Sunday's total opening hours must remain
TOTAL	72 HOURS	72 HOURS	72 HOURS

5.10 **PSRC consideration and determination of the COCH Application**

5.11 At the PSRC meeting held 29th October 2025, the application for a change of core hours (CoCH) was considered.

5.12 It was noted that, the contractor proposes to open from 08:00 to 20:00 Monday through Friday, replacing the current 10:00 to 21:00 hours. On Saturdays, the hours would change from 17:00–21:00 to 09:00–15:00, and on Sundays from 08:00–21:00 to 10:00–16:00.

5.13 In support of the application, the contractor submitted evidence indicating that the current opening time of 10:00 is too late for patients attending early GP appointments and for working residents. The proposed 08:00 opening aligns with the local GP surgery's hours and better serves the community. Additionally, the contractor highlighted that evening demand is minimal, making the current late closing time inefficient. Weekend usage data showed that Saturday evenings and early Sunday mornings had consistently low footfall. The proposed weekend hours aim to concentrate service provision during periods of actual patient activity. A four-week audit of patient interactions, including prescriptions and over-the-counter purchases, demonstrated consistent morning demand on weekdays, averaging approximately 15 patients between 08:00 and 10:00.

5.14 It was also noted that, there are four other pharmacies within three miles of Stone Pharmacy, all of which have limited or no weekend hours. Silsden Pharmacy, the closest at 0.3 miles, closes at 13:00 on Saturdays and does not open on Sundays. The other nearby pharmacies similarly offer restricted weekend access.

5.15 Stone Pharmacy is adjacent to Silsden Health Centre, which accounts for over 95% of its dispensing activity, further reinforcing the importance of aligning hours with patient needs.

5.16 Despite the compelling evidence presented, the Committee noted that a direction is in place under Paragraph 26(A), Schedule 4 of the NHS Pharmaceutical

Regulations 2013, which reduced the pharmacy's hours from 100 to 72 as of July 2023.

5.17 Advice received from the Primary Care Commissioning (PCC) team indicated that further changes to core hours under this direction are not permissible as proposed by the applicant.

5.18 In light of the regulatory constraints the Committee refused the application to amend core hours. While the proposed changes may offer improved convenience for patients, the current regulatory framework does not allow for further amendments to core hours outside the requirements of Paragraph 26(A), Schedule 4."

6 Observations

In emails to NHS Resolution dated 12 January 2026 the Applicant stated:

6.1 "This summary accompanies the formal appeal submitted by [KA], Caretaker Manager for Famevalley Ltd T/A Stone Pharmacy, and highlights why the PSRC refusal is unlawful.

6.2 1. The legal test was met — and admitted

6.3 The Change of Core Hours application was made under Paragraph 26(2ZB), Schedule 4 of the NHS Pharmaceutical Regulations 2013.

6.4 The PSRC accepted evidence that:

6.4.1 Morning demand (08:00–10:00) averages approximately 15 patients per day

6.4.2 Late evenings and early Sundays have negligible patient use

6.4.3 The pharmacy sits next to Silsden Health Centre, which provides over 95% of its prescriptions

6.4.4 There is very limited weekend pharmacy cover in the surrounding area

6.5 The Committee described the evidence as "compelling."

6.6 This satisfies the statutory test that patients would be more likely to access services during the proposed hours than under the existing hours.

6.7 2. The Committee then refused it for the wrong reason

6.8 Instead of applying Paragraph 26(2ZB), the PSRC refused the application because PCC advice claimed that changes were "not permissible" due to Paragraph 26(4A).

6.9 That is a misapplication of the law.

6.10 Paragraph 26(4A) controls only how a replacement 72-hour direction is written after approval. It does not prevent approval under Paragraph 26(2ZB).

6.11 The PSRC unlawfully treated internal PCC guidance as if it overrode Parliament.

6.12 3. The refusal relied on incorrect facts

6.13 The PCC advice relied on by the PSRC admits:

6.14 “the current core hours specified are incorrect.”

6.15 A public decision made on incorrect material facts is unlawful and must be set aside.

6.16 4. The proposal does not remove protected access

6.17 The proposal:

6.17.1 Keeps all 5pm–8pm weekday access

6.17.2 Keeps 11am–4pm Sunday access

6.17.3 Keeps the total at 72 hours

6.18 It only removes unproductive late-night and early-morning hours and replaces them with high-demand periods.

6.19 The Regulations protect time windows, not Saturday night trading.

6.20 5. The PSRC ignored sustainability and patient safety

6.21 The pharmacy is in administration and unable to staff the current directed hours. The redistribution was necessary to:

6.21.1 Keep the pharmacy open

6.21.2 Maintain NHS access

6.21.3 Prevent collapse

6.22 These were mandatory considerations which the PSRC failed to lawfully assess.

6.23 Conclusion

6.24 The PSRC accepted that the patient-benefit test was satisfied, but still refused the application due to a misunderstanding of the law.

6.25 This is:

6.25.1 A misdirection in law

6.25.2 A fettering of discretion

6.25.3 A decision based on factual error

6.26 The only lawful outcome is that the decision is overturned and the change of core hours is approved or remitted for lawful re-determination."

6.27 "I write in my capacity as Caretaker Manager appointed by the Administrators of Famevalley Ltd T/A Stone Pharmacy, Silsden Health Centre (ODS: FWD12) to lodge a formal appeal against the decision of the West Yorkshire Pharmaceutical Services Regulations Committee (PSRC) dated 29 October 2025 refusing our Change of Core Hours (CoCH) application.

6.28 This appeal is made on the grounds that the decision was legally flawed, procedurally improper and based on a misapplication of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

6.29 1. The PSRC applied the wrong legal test

6.30 Our application was properly made under Paragraph 26(2ZB), Schedule 4, which requires the decision-maker to determine whether:

6.30.1 "people 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 during the proposed core opening hours than during the existing hours."

6.31 The PSRC's own findings confirm this test was satisfied.

6.32 The Committee recorded:

6.32.1 Consistent weekday morning demand averaging ≈15 patients between 08:00–10:00

6.32.2 Negligible use during late evenings and early Sunday mornings

6.32.3 The pharmacy is adjacent to the GP surgery which accounts for 95%+ of dispensing activity

6.32.4 There is very limited weekend pharmacy provision in the surrounding area

6.33 The Committee explicitly described the evidence as "compelling."

6.34 This meets and exceeds the statutory test under Paragraph 26(2ZB).

6.35 However, instead of determining the application on that basis, the PSRC refused it solely because of advice from the Primary Care Commissioning (PCC) team that further amendments were "not permissible". That is not the legal test in Paragraph 26(2ZB).

6.36 The Committee unlawfully fettered its discretion by treating PCC guidance as binding and by failing to apply the statutory patient-benefit test that Parliament requires.

6.37 2. Paragraph 26(4A) was misapplied

6.38 The PSRC relied on Paragraph 26(4A) as if it prevented approval of the application. This is a fundamental error of law.

6.39 Paragraph 26(4A) does not determine whether an application under Paragraph 26(2ZB) should be granted. It governs only the content of the replacement direction after approval.

6.40 The correct legal sequence is:

6.40.1 Decide whether the application meets Paragraph 26(2ZB)

6.40.2 If yes, issue a replacement 72-hour direction that complies with Paragraph 26(4A)

6.41 Instead, the PSRC wrongly treated Paragraph 26(4A) as a veto at step 1. That is not what the Regulations say.

6.42 3. The decision was based on material factual error

6.43 The PCC advice relied upon by the Committee admits that:

6.44 “the current core hours specified are incorrect.”

6.45 The decision was therefore taken on an incorrect factual basis, which renders it unlawful.

6.46 4. The proposal does not breach the protected access windows

6.47 The proposed hours:

6.47.1 Maintain full access between 5pm and 8pm Monday–Friday

6.47.2 Maintain full access between 11am and 4pm on Sunday

6.47.3 Maintain the total of 72 hours

6.48 The Regulations do not require Saturday evening or early Sunday opening to be preserved. They protect time windows, not specific days or historic trading patterns.

6.49 The PSRC wrongly treated these protections as day-locked, which they are not.

6.50 5. Failure to consider sustainability and service continuity

6.51 The pharmacy is in administration and was not able to staff the existing directed hours. The proposed redistribution was specifically designed to:

6.51.1 Maintain NHS access

6.51.2 Align hours with actual patient use

6.51.3 Ensure staffing sustainability

6.51.4 Prevent closure

6.52 These were relevant considerations which the PSRC failed to lawfully assess.

6.53 Remedy Sought

6.54 I therefore ask NHS England [sic] to:

6.54.1 Allow this appeal

6.54.2 Set aside the PSRC decision

6.54.3 Either:

6.54.3.1 Approve the Change of Core Hours; or

6.54.3.2 Remit the matter to a fresh PSRC for lawful re-determination applying Paragraph 26(2ZB) correctly

6.55 Given the compelling patient-benefit evidence already accepted by the Committee, approval is the only lawful outcome.

6.56 I look forward to confirmation that this appeal has been registered and to receiving the appeal timetable."

7 Consideration

7.1 I note that the Applicant's core opening hours total 72 hours and the Applicant proposes to redistribute those 72 core opening hours pursuant to paragraph 26 of Schedule 4.

7.2 The Applicant proposes to:

7.2.1 open between 8am – 8pm Monday to Friday, rather than 10am – 9pm;

7.2.2 open between 9am – 3pm on Saturday, rather than 5pm – 9pm; and

7.2.3 open between 10am – 4pm on Sunday, rather than 8am – 9pm.

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 wished for its application to be determined on the basis of paragraph 26(2ZB), Schedule 4. This provides the following test:

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.

7.7 Before considering the application on this basis, I note that the Commissioner determined that the application should be refused as it did not comply with paragraph 26(4A), Schedule 4, which states:

NHS England must not issue a direction under sub-paragraph (4), or revoke without replacing it an existing direction under that sub-paragraph, if doing so would have the effect of reducing, in the case 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, any or all of the following—

(a) the total number of core opening hours to below 72;

(b) the core opening hours on a Monday to Saturday at times between 5pm and 9pm;

(c) the core opening hours on a Sunday at times between 11am and 4pm, other than by way of the inclusion of, or a change to, a rest break which-

(i) is no longer than one hour, and

(ii) starts at least 3 hours after the start of the pharmacy's opening hours and ends at least3 hours before the end of the pharmacy's opening hours; and

(d) the total number of core opening hours on a Sunday,

and an application seeking such a change is not a valid application for the purposes of sub-paragraph (2B).

7.8 The Applicant comments in its observations that "*Paragraph 26(4A) controls only how a replacement 72-hour direction is written after approval. It does not prevent approval under Paragraph 26(2ZB).*" The Applicant appears to be suggesting that the test under paragraph 26(2ZB) is a separate step to the issuing of a direction under paragraph 26(4). Therefore, on this construction the application should not have been declined, but instead approved for the purposes of paragraph 26(2ZB) with further consideration then given on how to issue the direction to ensure compliance with the rest of paragraph 26, as per its observations.

7.9 I note that paragraph 26(4A) applies to "*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*". The Commissioner states that "*The pharmacy was previously subject to the 100-hours condition, but the contractor successfully applied to reduce the pharmacy's core opening hours to 72-hours per week in July 2023*" which has not been disputed. I am therefore of the view that paragraph 26(4A) does apply to this application.

7.10 I note that if the application were granted, in proposing to open between 8am and 8pm on weekdays and between 9am and 3pm on Saturdays, there would be a reduction in the "*core opening hours on a Monday to Saturday at times between 5pm and 9pm*". Also, in proposing to open between 10am and 4pm on Sunday, rather than between 8am and 9pm, there would be a reduction in "*the total number of core opening hours on a Sunday*". Therefore, per paragraph 26(4A) the Commissioner "*must not issue a direction under sub-paragraph 4*".

7.11 I note that the Applicant has said that the proposal does not breach the "*protected access windows*". However, it is unclear to me the basis upon which this statement is made and what is being referred to. The proceeding wording then describes that the proposal will "*maintain full access between 5pm and 8pm Monday – Friday*". The Applicant also states that the Regulations do not require Saturday evening to be preserved. However, as per paragraph 26(4A) which I have quoted above there are specific "*windows*" that must be preserved which are between 5pm and 9pm, and it explicitly mentions Saturday as being included.

Therefore, assuming that these are the "*protected access windows*" referred to the proposal would breach the required periods contained in paragraph 26(4A). On this basis, per paragraph 26(4A), the Commissioner "*must not issue a direction under sub-paragraph 4*".

7.12 Sub-paragraph 4 provides that:

> *(4) When it determines the application, NHS England must—*
>
> *(a) issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs (4A), (5) and (6) and which has the effect of either granting the application under this paragraph or granting it only in part;*
>
> *(b) confirm any existing direction in respect of the times at which P must provide pharmaceutical services at or from the pharmacy premises, provided that the existing direction (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub-paragraphs (5) and (6); or*
>
> *(c) either—*
>
> *(i) revoke, without replacing it, any existing direction in respect of the times at which P must provide pharmaceutical services at or from the pharmacy premises (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations), where this has the effect of granting the application under this paragraph or granting it only in part, or*
>
> *(ii) in a case where there is no existing direction, issue no direction.*

7.13 As per the Commissioner's Representations, which has not been disputed, the pharmacy was already subject to a 72-hour Direction which was agreed in July 2023. Therefore, in accordance with sub-paragraph 4, in determining the application the Commissioner would be required to issue a direction. As it is required to issue a direction then paragraph 26(4A) consequently applies and the Commissioner was required not to do so. I consider it necessary to establish this complete chain of regulatory steps, as if there was no need to issue a direction then the issue with paragraph 26(4A) would be rendered moot.

7.14 Having set out that the Commissioner could not issue a direction in relation to the application, the issue then becomes whether this was fatal to the application. As I have referred to, the Applicant's position is that problems with issuing a direction are wholly separate from whether an application should be granted under paragraph 26(2ZB). I note that the Commissioner's position is that these regulatory constraints oblige them to decline the application. I now consider those propositions in context.

7.15 I first consider the language of paragraph 26, and the way in which it dictates how approval operates. I consider there to be two key phrases which govern the outcome of an application under paragraph 26(2ZB). The first is paragraph 26(2ZB)(a) and the second is paragraph 26(4). Starting with subparagraph 4, this describes how the Commissioner must determine an application. It explicitly states that in doing so the Commissioner must either issue a direction, revoke one, or not issue one if one does not currently exist. As I have established, a direction did exist in relation to the relevant pharmacy. Therefore, as per sub-paragraph 4, the application could not be determined without also issuing a direction.

7.16 However, this does not truly resolve the chronological issue. Whilst issuing a direction is part of the determination, it could still be argued to be separate from the decision on whether it should be approved. I am aware that this is not a particularly strong argument, and it is difficult to see what the approval of an application without a direction would achieve, as the Applicant would still be required to perform its existing hours. For completeness, I therefore have regard to the language in paragraph 26(2ZB). This requires that the Commissioner must seek to ensure those matters indicated in said paragraph, which I have set out above. However, its two sub-paragraphs establish the relationship between these considerations and the determination.

7.17 Under paragraph 26(2ZB)(a) if there is a direction in place then those considerations form part of the decision to issue the direction, in that the direction itself must ensure those matters. Sub-paragraph (b) instead uses the phrase "determination" where there is no direction. As I have already established, there is a direction in place, therefore sub-paragraph (a) applies in the case of the Applicant. Regardless, the fact that the Regulations use the two phrases "determines" and "issues a direction" interchangeably for these purposes clearly indicates that the direction is not a secondary or separate aspect of the determination, it is of itself part of the determination.

7.18 As the Commissioner must have regard to paragraph 26(2ZB) in issuing the direction, it does not make sense to consider it as a preliminary issue. The Applicant's contention that the Commissioner was required to consider if the application meets paragraph 26(2ZB) first cannot make sense once this is understood. I consider that the Regulations establish that the issuing of the direction is part and parcel of the decision taken under paragraph 26(2ZB), not a separate step or independent consideration. Instead, whilst issuing the direction the Commissioner must seek to ensure specific outcomes. Therefore, I do not consider that the Applicant has set out the "*correct legal sequence*" and instead I agree with the Commissioner's approach.

7.19 On this understanding, because the Commissioner "must" not issue a direction then the only determination that could be taken under paragraph 26(4) is for it to confirm the existing direction in respect of the times at which the Applicant must provide pharmaceutical services.

7.20 In relation to the Applicant's other reasoning, it explains why it is applying to amend its core hours, stating that it is to "*Ensure staffing sustainability*" and to "*Prevent closure*", however I note that these are business concerns for the Applicant and not relevant to the consideration of the application. Whilst the

Applicant's other reasons, such as aligning hours with patient use and providing "*clinically meaningful opening times*" are relevant considerations with regard to paragraph 26(2ZB), they do not aid in its appeal. As I have set out, paragraph 26(2ZB) is only relevant so far as it relates to the issuing of a direction. With no possibility of issuing a direction then it is irrelevant how beneficial the hours changes may have been, or the purpose for which they were sought. I therefore make no decision as to whether the matters set out in paragraph 26(2ZB) have been met, as it has no material impact on the outcome of this determination.

7.21 Finally, I note that the Applicant has contended that the Commissioner unlawfully fettered its discretion by not applying the "patient-benefit test", which I take as being the requirements of paragraph 26(2ZB). I note that whilst the Commissioner placed reliance on the PCC advice, this advice was wholly correct in the fact that the existing direction meant that under paragraph 26(4A) there could be no amendment which reduced the Applicant's hours on Saturday between 5pm and 9pm. I do not consider there to be any unlawful fettering of discretion where the Commissioner has no discretion by way of the Regulations and has followed advice which correctly explains the legal limitations.

8 Determination

8.1 The action taken by the Commissioner to refuse the application is confirmed.

Head of Appeals
NHS Resolution