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24 March 2026

FILE REF:	**SHA/ 26832**
COMMISSIONER:	**LEICESTER, LEICESTERSHIRE AND RUTLAND ICB ("THE COMMISSIONER")**
PHARMACIST:	**MH PHARMA LIMITED ("THE APPLICANT")**
PREMISES:	**45A AND 45B HIGH STREET OAKHAM RUTLAND LE15 6AJ**

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:

MH Pharma Limited
Leicester, Leicestershire and Rutland 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).

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

2.1 In this case, the Applicant provided the following information in its application form and supporting information dated 24 July 2025:

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

2.3 Current opening hours for these premises:

Monday	10:00 to 21:00
Tuesday	10:00 to 21:00
Wednesday	10:00 to 21:00
Thursday	10:00 to 21:00
Friday	11:00 to 21:00
Saturday	11:00 to 21:00
Sunday	10:00 to 18:00

2.4 Proposed core opening hours for these premises:

Monday	08:00 to 19:00
Tuesday	08:00 to 19:00
Wednesday	08:00 to 19:00
Thursday	08:00 to 19:00
Friday	08:00 to 19:00
Saturday	08:00 to 19:00
Sunday	10:00 to 16:00

2.5 If this is a permanent change, please state below the date from which you would like the change to take effect: 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 We believe that our proposed core opening hours will offer a more accessible and relevant service for the majority of people who use our pharmacy, ensuring they are more likely to benefit from the changes overall.

2.9 A significant proportion of our patients already receive their regular NHS prescriptions through our well-established home delivery service. These individuals will remain unaffected by the changes, as they do not rely on visiting the pharmacy in person.

2.10 For those who do attend the pharmacy in person for NHS dispensing services, our data shows that most visits occur between 08:30 and 18:00, Monday to Friday. By adjusting our core hours to better reflect this demand—particularly

through improved morning access—we will enhance the availability of services during the times patients are most likely to visit.

2.11 Usage of NHS pharmacy services after 18:30 on weekdays and at weekends is extremely low. As such, closing at 19:00 during the week and on Saturdays, and at 16:00 on Sundays, will not negatively affect service users. These changes will instead allow us to concentrate our resources during the periods of highest demand, thereby improving the overall quality and sustainability of our service.

2.12 In summary, our proposed hours are better aligned with the actual needs of the local population and will ensure continued, reliable access to NHS pharmacy services—while also supporting the long-term viability of the pharmacy and reducing the risk of permanent closure.

2.13 We believe that our proposed core opening hours will continue to provide a sustainable and adequate level of service for people in the area of the pharmacy.

2.14 Our current core hours include extended evening and weekend openings which, over time, have proven to be disproportionate to the actual demand for NHS pharmacy services.

2.15 Analysis of usage patterns indicates that the majority of NHS-related services provided by the pharmacy align closely with the operating hours of the local GP practice, which is open from 08:00 to 18:30, Monday to Friday. There is very minimal usage of NHS pharmacy services outside of these hours, particularly in the evenings and at weekends when the GP practice is closed.

2.16 As such, remaining open beyond 19:00 on weekdays, and after 19:00 on Saturdays or 16:00 on Sundays, no longer reflects the needs of the local population. Maintaining extended hours during these low-demand periods is unnecessary and unsustainable, especially given the growing challenges in securing pharmacy staff to cover these shifts.

2.17 Continuing to operate under the current extended hours presents significant cost pressures and risks undermining the long-term viability of the pharmacy. By aligning our opening times more closely with local healthcare usage patterns, we can ensure the continued provision of high-quality, accessible services during the times they are most needed—primarily between 08:00 and 18:30, Monday to Friday.

2.18 Our proposed changes are a necessary step to ensure the ongoing sustainability of the pharmacy and to safeguard its future as a vital part of the local healthcare system."

3. The Decision

In a letter to the Applicant dated 26 November 2025 the Commissioner decided to refuse the application. The Commissioner stated:

3.1 "**Relevant Regulations**

3.2 Paragraph 26(1), Schedule 4 Determination of pharmacy premises core opening hours instigated by the NHS pharmacist

3.3 Paragraph 26(2ZB), Schedule 4 – Determination of pharmacy premises core opening hours instigated by the NHS pharmacist The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

3.4 Paragraph 26(4A), Schedule 4 The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

3.5 Regulation 65 – core opening hours conditions The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

3.6 Regulation 65A – continuity of opening hours directions The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

3.7 Thank you for your application to redistribute the core opening hours at Rutland Late Night Pharmacy, received on 25 September 2025.

3.8 The pharmacy sought to maintain a total of 72 core opening hours per week but to redistribute these hours across the week.

3.9 The pharmacy's current core hours are detailed below

Mon	Tue	Wed	Thu	Fri	Sat	Sun
10:00 – 21:00	10:00 – 21:00	10:00 – 21:00	10:00 – 21:00	11:00 – 21:00	11:00 – 21:00	10:00 – 18:00
11	11	11	11	10	10	8

The pharmacy's proposed are detailed below

Mon	Tue	Wed	Thu	Fri	Sat	Sun
08:00 – 19:00	08:00 – 19:00	08:00 – 19:00	08:00 – 19:00	08:00 – 19:00	08:00 – 19:00	10:00 – 16:00
11	11	11	11	11	11	6

3.10 The application was reviewed at the Pharmaceutical Services Regulations Committee (PSRC) on 24 November 2025 the committee determined that the request to redistribute the pharmacy's core opening hours should be refused.

3.11 The rational for this rejection can be found below.

3.12 **Paragraph 26(2ZB), Schedule 4** requires the committee to 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.

3.13 The committee felt that MH Pharma Limited failed to provide evidence that the people who are accustomed to accessing pharmaceutical services at the pharmacy premises between 19.00 and 21.00 on Monday to Saturday and 16.00 to 18.00 on Sundays are likely to benefit from the changes because, overall, they would be more likely to access those services at those premises between 08.00 and 10.00 Monday to Saturday.

3.14 **Paragraph 26(4A), Schedule 4** states that an applicant cannot apply to reduce any or all of the following:

3.14.1 the total number of core opening hours to be below 72;

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

3.14.3 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—

3.14.3.1(i) is no longer than one hour, and

3.14.3.2(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

3.14.4 the total number of core opening hours on a Sunday.

3.15 Therefore, the application cannot be granted for the following reasons:

3.15.1 The loss of core opening hours on Monday to Saturday between 19:00 and 21:00.

3.15.2 The loss of two core opening hours on Sunday.

3.16 You have the right of appeal to the Secretary of State against this decision. Should you choose to appeal, you should send in writing a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to:

3.17 nhsr.appeals@nhs.net [or]

3.18 NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU."

4. The Appeal

In a letter to NHS Resolution dated 17 December 2025 the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

4.1 “I am writing on behalf of M&H Pharma Ltd t/a Rutland Late Night Pharmacy to formally submit our appeal against the decision dated 25 November 2025 by the local Integrated Care Board to reject our application to redistribute our NHS core opening hours.

4.2 This appeal is submitted in good faith and is grounded in extensive independent evidence, workforce data, patient feedback, and community support, all of which demonstrate that our proposed redistribution is necessary to maintain patient safety, staff safety, and service sustainability in a rural setting.

4.3 **Purpose of the Appeal**

4.4 Our request is not to reduce access to NHS services, but to align contracted opening hours with actual patient demand, enabling us to safely redeploy staffing resources to the periods when they are most clinically needed—particularly between 8am and 5pm, when demand is highest.

4.5 Despite contractual constraints, we respectfully request that an exception be considered in this case, as the current mandatory late-evening hours (after 7pm Monday–Saturday and after 4pm on Sundays) deliver minimal clinical benefit while creating significant workforce, financial, and safety risks. These risks are now at a critical point.

4.6 **Documents enclosed in support of this appeal include:**

4.6.1 1. Formal Appeal Document – setting out the full case, background, and rationale [4.13 below.]

4.6.2 2. Appendix 1: Original application [See paragraphs 2.1 to 2.18 above]

4.6.3 3. Appendix 2: Patient survey results and charts

4.6.4 4. Appendix 3: Statement from Superintendent Pharmacist

4.6.5 5. Appendix 4: Statement from Pharmacy Manager

4.6.6 6. Appendix 5: Statements from two regular locum pharmacists

4.6.7 7. Appendix 6: Letter of support from the local MP (pending)

4.6.8 8. Appendix 7: Letter of support from the Rutland Lions Club

4.6.9 9. Appendix 8: Copies of certificates “Winner of Rutland’s favourite pharmacy” 2022/2023, 2023/2024, 2024/2025

4.6.10 10. Appendix 9: Patient concern correspondence and RLNP response

4.6.11 11. Appendix 10: ICB Decision Letter Dated 25/11/2025 [See paragraphs 3.1 to 3.18 above]

4.6.12 [All Appendices available for Adjudicator]

4.7 **We would particularly highlight that:**

4.8 Rutland Late Night Pharmacy operates in a rural area, with limited late-night activity and heightened safety risks for staff.

4.9 We have been recognised as Rutland's Favourite Pharmacy for three consecutive years, underlining the trust placed in us by local patients.

4.10 Without approval of this redistribution, we face the genuine risk of having to withdraw our voluntary 8am opening or reconsider the viability of continuing NHS service provision—outcomes that would significantly disadvantage patients and place additional strain on other NHS services.

4.11 We respectfully ask that this appeal be given serious and urgent consideration, and that the evidence submitted is reviewed holistically in the context of rural service delivery, workforce sustainability, and patient safety.

4.12 Thank you for your time and consideration. We would welcome the opportunity to provide any further clarification if required."

Introduction and Purpose of Appeal

4.13 "Rutland Late Night Pharmacy ("RLNP / the pharmacy") respectfully submits this appeal against the decision of the NHS Integrated Care Board (ICB), dated 25 November 2025, to reject its application to redistribute its NHS-contracted core opening hours.

4.14 This appeal is made **in good faith**, with the sole objective of ensuring:

4.14.1 Safe and sustainable access to NHS pharmaceutical services

4.14.2 Appropriate deployment of staff during periods of genuine patient need

4.14.3 Protection of patient safety and staff welfare

4.14.4 Continued provision of NHS services in a rural community with limited alternatives

4.15 The appeal seeks not a reduction in total core hours, but the flexibility to align those hours with actual patient demand to ensure continued safe, sustainable service delivery. Our application was based on service-use, workforce pressures, safety considerations, and the needs of the local population.

4.16 The refusal of this application places RLNP in an increasingly untenable position, threatening our ability to maintain essential early-morning access for patients and risking significant disruption to local NHS pathways, particularly for vulnerable groups.

4.17 We recognise that **current pharmaceutical contractual regulations may not ordinarily permit closure before 9pm** for pharmacies holding late-night contracts. However, we submit that **strict adherence to this requirement in the specific local context of Oakham is actively undermining service quality, staff safety, and system efficiency**.

4.18 This appeal is supported by:

4.18.1 A patient survey carried out between 30 November to 6 December 2025

4.18.2 A statement from the Superintendent Pharmacist

4.18.3 A statement from the Pharmacy Manager

4.18.4 A statement from two regular locum pharmacists

4.18.5 A letter of support from the Lions Club of Rutland

4.18.6 Correspondence regarding a patient concern demonstrating operational pressures

4.18.7 A letter of support from our local MP.

4.19 **2. Local Context: Oakham and Rutland**

4.20 Oakham is a small, rural market town serving a dispersed population across Rutland. Key contextual factors include:

4.20.1 Limited public transport in evenings

4.20.2 Dark, unlit country roads

4.20.3 Minimal evening footfall after 7pm

4.20.4 Few alternative healthcare providers open early mornings.

4.21 After 7pm, Oakham is effectively quiet and largely closed, creating heightened personal safety concerns for pharmacy staff—particularly locum pharmacists travelling long distances back to urban centres late at night, often during severe winter conditions.

4.22 **3. Overview of Current and Proposed Hours**

4.23 **Current NHS-Contracted Core Hours**

4.23.1 Monday–Thursday: 10:00am – 9:00pm

4.23.2 Saturday: 11:00am – 9:00pm

4.23.3 Sunday: 10:00am – 6:00pm

4.24 **Voluntary Opening Beyond Contract**

4.24.1 Monday–Saturday: Open from 8:00am (voluntary)

4.25 **Proposed Redistribution**

4.25.1 **Retain:** 8:00am opening Monday–Saturday

4.25.2 **Close:** 7:00pm Monday–Saturday

4.25.3 **Close:** 4:00pm Sunday

4.26 No reduction in total contracted hours is sought — only redistribution to reflect actual clinical demand.

4.27 Despite the contractual structure, RLNP voluntarily opens from 8am Monday–Saturday in response to the significant early-morning demand generated by:

4.27.1 NHS prescription collections for working people

4.27.2 Patients needing urgent medication before work

4.27.3 Frail or elderly individuals dependent on morning carers

4.27.4 Patients requiring methadone and supervised consumption

4.27.5 Early-day clinical service users

4.27.6 Synchronisation with GP surgery opening times

4.28 No other pharmacy in the local area opens at 8am. If RLNP cannot sustain early morning provision, patients will have no alternative provider at the time they most need access. This carries significant implications for NHS 111, urgent care, and GP demands.

4.29 **4. Independent Patient Survey Evidence (Rx Advisor Ltd)**

4.30 An independent patient access survey was conducted by Rx Advisor Ltd, an external consultancy, between 30 November and 6 December 2025.

4.31 **Key Findings (Summary)**

4.32 **8:00am – 10:00am (Monday–Saturday)**

4.32.1 123 patients surveyed

4.32.2 63% could NOT attend at another time

4.32.3 37% attended for acute prescriptions or Pharmacy First

4.32.4 96% of those unable to attend later would have used urgent NHS pathways

4.32.4.1NHS 111

4.32.4.2GP urgent appointments

4.32.4.3A&E

4.33 **Critical finding:**

4.34 A majority of respondents reported that if the pharmacy were closed at 8am–10am, they would:

4.34.1 Wait outside the pharmacy until it opened

4.34.2 Call NHS 111

4.34.3 Seek urgent appointments at their GP practice

4.34.4 Attend A&E for time-critical issues

4.34.5 Miss medication doses essential for chronic conditions

4.34.6 Be unable to attend due to work commitments later in the day

4.35 **Conclusion:**

4.36 Early morning access is clinically essential for regular local patients.

4.37 **7:00pm – 9:00pm (Mon–Sat) & 4:00pm – 6:00pm (Sunday)**

4.37.1 23 patients total Mon–Sat evenings (average 3.8 patients per day)

4.37.2 2 patients total Sunday evening

4.37.3 100% stated they could attend at another time

4.38 **Critical finding:**

4.39 The overwhelming majority of respondents attending after 7pm said that they:

4.39.1 “Could have come earlier in the day”

4.39.2 “Attended simply because they were passing by”

4.39.3 “Did not require urgent medication”

4.40 **Conclusion:**

4.41 Late evening use is non-urgent, low volume, and deferrable, and does not justify the disproportionate staffing cost and safety risk.

4.42 **5. Workforce Pressures and Staffing Reality**

4.43 **Drug Tariff Benchmark**

4.43.1 Recommended staffing level: ~150 staff hours per week for an NHS pharmacy of this size

4.44 **Actual Staffing at RLNP**

4.44.1 Over 422 support staff hours per week

4.44.2 Over 150 pharmacist hours per week

4.45 Despite staffing almost three times above benchmark, the Pharmacy remains under pressure because:

4.45.1 Staff must be spread thinly across excessively long days

4.45.2 Peak daytime demand cannot be adequately resourced

4.45.3 Late-evening staffing consumes disproportionate cost and workforce capacity

4.46 Between 7pm and 9pm (Monday to Saturday) and between 4pm and 6pm (Sunday) the staffing environment is becoming increasingly challenging due to:

4.46.1 Staffing costs are significantly higher

4.46.2 Locum availability is extremely limited

4.46.3 Safety risks for lone working increase

4.46.4 NHS reimbursement does not cover operational expenditure

4.47 This requirement directly undermines our ability to staff busy daytime periods appropriately, creating patient queuing, delays and frustration — as evidenced in the recent patient concern raised with the ICB (included with the appeal documents).

4.48 Furthermore, it is important to note that Rutland, and Oakham in particular, is a relatively rural area with limited transport infrastructure and sparse evening activity.

4.49 Many of the locum pharmacists and trained support staff we rely upon travel from larger cities including Leicester, Nottingham, and Peterborough. Travelling long distances home late at night along unlit country roads—especially during winter months—poses significant safety risks. Oakham becomes extremely quiet after early evening, creating a “ghost town” environment that heightens staff vulnerability when locking up the pharmacy after 9pm. These conditions further exacerbate recruitment challenges and make late-evening opening increasingly unsafe.

4.50 **6. Superintendent Pharmacist Statement (Summary)**

4.51 The Superintendent Pharmacist, HB, confirms:

4.51.1 Severe difficulty recruiting pharmacists willing to work late evenings and Sundays

4.51.2 Escalating locum costs that are not matched by NHS income

4.51.3 Increasing frequency of personally covering late shifts due to lack of locums

4.51.4 Regular working weeks exceeding 50 hours, adversely affecting his own health

4.51.5 A critical decision point:

4.51.5.1 Either redistribute hours safely

4.51.5.2 Or cease voluntary 8am opening — removing essential early access

4.52 This is not sustainable for patient safety or professional wellbeing.

4.53 **7. Pharmacy Manager Statement (Summary)**

4.54 The Pharmacy Manager, EH, reports:

4.54.1 Increasing difficulty recruiting trained evening and weekend staff

4.54.2 Near-miss situations where closure was narrowly avoided due to unsafe staffing

4.54.3 Long operating days dilute staffing during peak daytime demand

4.54.4 Resulting in longer waits and reduced service quality

4.54.5 A genuine risk that, without redistribution, the Pharmacy will be forced to:

4.54.5.1 Open strictly at 10am

4.54.5.2 Remove early access relied upon by vulnerable patients

4.55 **8. Locum Pharmacist Statements (Summary)**

4.56 Both pharmacists confirm:

4.56.1 Significant safety concerns travelling long distances on rural roads late at night

4.56.2 Winter conditions materially increase risk

4.56.3 Extremely low patient activity after 7pm and Sunday afternoons

4.56.4 Evening staffing requirements reduce staff availability during peak daytime hours

4.56.5 Strong professional support for closing earlier and reallocating resources

4.57 **9. Patient Concern Correspondence**

4.58 A recent patient concern and the Pharmacy's detailed response further evidences that:

4.58.1 Queueing, delays, and pressure occur during daytime peaks

4.58.2 Queues affecting older or disabled patients

4.58.3 These issues are directly linked to staffing inflexibility

4.58.4 Redistribution of hours would directly address these concerns

4.59 RLNP's formal response (included in this appeal) provided a comprehensive explanation of the root cause:

4.60 Mandatory late-evening opening requires the pharmacy to direct scarce staff resources away from the busiest daytime periods. The patient concern therefore supports, rather than contradicts, RLNP's request:

4.60.1 Later-evening hours = low demand, high staffing cost

4.60.2 Daytime hours = high demand, currently understaffed due to extended opening obligations

4.60.3 Reallocation would directly improve:

4.60.3.1 Patient waiting times

4.60.3.2 Queue management

4.60.3.3 Staff welfare

4.60.3.4 Safety

4.60.3.5 Efficiency

4.60.3.6 Quality of service

4.61 This patient case therefore substantiates the need for redistribution.

4.62 **10. Community Support and Recognition**

4.62.1 Rutland Late Night Pharmacy has been the winner of Best Pharmacy in Oakham for 3 consecutive years (certificates included in appeal documents)

4.62.2 RLNP is a longstanding provider of:

4.62.2.1 All NHS essential, enhanced and Advanced services

4.62.2.2 NHS Pilot Clinical Independent Prescriber Pathway Program

4.62.2.3 Methadone supervision

4.62.2.4 Free provision of Dosette pack dispensing

4.62.2.5 Free medicines delivery

4.62.2.6 COVID-19 and flu vaccination services

4.62.2.7 Rutland Late Night Pharmacy has invested over £250,000 in a dispensing robot to improve dispensing efficiency and better patient access.

4.63 **Rutland Lions Club Support**

4.64 The Lions Club of Rutland confirms first-hand observation of:

4.64.1 Extreme daytime demand (8am–5pm)

4.64.2 Minimal evening activity

4.64.3 Critical reliance on early opening

4.64.4 Exceptional professionalism since COVID-19

4.65 **11. Acknowledgement of Contractual Constraints**

4.66 We explicitly acknowledge that current NHS pharmaceutical regulations may not routinely permit closure before 9pm. However, this appeal is submitted because:

4.66.1 The local need demonstrably differs from national assumptions

4.66.2 Continued late opening actively harms service delivery

4.66.3 Patient safety and staff welfare are now at risk

4.66.4 The request is proportionate, evidenced, and necessary

4.67 This is precisely the type of case where regulatory discretion and exception would be justified.

4.68 **12. Additional Considerations Regarding ICB Handling**

4.69 While we recognise and respect the pressures on the ICB teams, we must note:

4.69.1 Our original application experienced significant administrative delay

4.69.2 It was only forwarded to the appropriate committee after repeated prompting

4.69.3 RLNP was informed at various stages that redistribution might not be permissible, creating confusion

4.69.4 The delay resulted in prolonged operational strain during a period of extreme workforce pressure

4.69.5 The associated patient concern occurred during this delay and directly illustrates the consequences of inaction.

4.70 We include this point to ensure the full context is understood; it is not our intention to assign blame, but to demonstrate the urgency underpinning this appeal.

4.71 We fully recognise that under the current NHS pharmacy contractual framework, pharmacies with our contract type are ordinarily required to remain open until 9pm. We also understand that the regulations do not routinely provide flexibility to reduce evening core hours. Our application is therefore made in good faith, with full transparency about these constraints.

4.72 However, the contractual structure was not designed with the unique circumstances of rural areas like Rutland in mind, nor does it account for the substantial shift in actual patient behaviour, local service patterns or the unprecedented pressures currently facing the community pharmacy workforce. The overwhelming evidence we have gathered—patient survey data, operational activity levels, safety concerns and the findings of the recent patient complaint—demonstrates that continuing to operate until 9pm is no longer compatible with providing a safe, sustainable, or efficient NHS service locally.

4.73 For these reasons, **we respectfully request that an exception be granted in this case**, allowing us to redistribute our opening hours so that we can continue to meet the needs of the local population safely and responsibly.

4.74 **13. Conclusion and Formal Request**

4.75 Rutland Late Night Pharmacy respectfully requests that the decision dated 25 November 2025 be overturned and that approval be granted to:

4.75.1 Retain 8:00am opening Monday–Saturday

4.75.2 Close at 7:00pm Monday–Saturday

4.75.3 Close at 4:00pm on Sundays

4.76 This change will:

4.76.1 Protect essential early access

4.76.2 Improve patient safety

4.76.3 Reduce pressure on other NHS services

4.76.4 Safeguard staff wellbeing

4.76.5 Ensure long-term sustainability of the full range of NHS pharmacy services provision in Rutland, including supervised methadone services, and free dossette dispensing.

4.77 RLNP’s appeal is based on clear, demonstrable evidence:

4.77.1 **Clinical Need Supports Redistribution.** Demand is highest 8am–6pm; minimal demand exists after 7pm.

4.77.2 **Patient Survey Evidence Is Overwhelming.** Closing at 8am–10am would significantly harm patients; closing after 7pm would not.

4.77.3 **Patient Safety Is at Risk Without Redistribution.** Staff cannot be safely deployed under the current hours.

4.77.4 **Workforce Pressures Are Critical.** Staffing after 7pm is unsafe, unsustainable and unaffordable.

4.77.5 **Financial Pressures Threaten Service Continuity.** NHS funding does not cover evening operating costs.

4.77.6 **Community Dependence Is High.** RLNP provides essential services unmatched by local alternatives.

4.78 **Without approval, RLNP may be forced to reduce voluntary early opening or reconsider its NHS service provision entirely.** This would be catastrophic for Rutland's patients and wider NHS services.

4.79 We believe this appeal presents circumstances where an exception is not only justified but necessary. Our request is grounded in clear evidence of local need, workforce realities, rural safety challenges and serious risks to both patient care and staff wellbeing. Maintaining late-evening opening under the current conditions places patients, pharmacists and support staff at risk. Granting an exception would enable us to continue delivering safe, high-quality NHS services in a manner that aligns with actual community demand.

4.80 Failure to grant this appeal risks the loss of early-morning access and, ultimately, the viability of NHS services at this pharmacy.

4.81 We therefore request that an **exception be granted**, as this case meets the threshold of necessity, proportionality, and demonstrable patient benefit.

4.82 **14. Additional Documents Included in This Appeal"**

4.83 [As listed at paragraphs 4.61 to 4.611 above.]

5. **Representations**

In a letter to NHS Resolution dated 14 January 2026 the Commissioner stated:

5.1 "Thank you for your letter dated 18th December 2025. The East Midlands Primary Care Team on behalf of Leicester, Leicestershire and Rutland Integrated Care Board would like to make the following representations.

5.2 **Relevant Regulations**

5.3 Paragraph 26(2ZB), Schedule 4 – Determination of pharmacy premises core opening hours instigated by the NHS pharmacist The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

5.4 Paragraph 26(4A), Schedule 4 The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

5.5 Paragraph 26(2ZB), Schedule 4 establishes a specific and mandatory evidential threshold which must be satisfied before an application to redistribute core opening hours may be granted. Where a contractor elects for an application to be determined on this basis, the decision-maker must be satisfied, on the material before it, that the people who are accustomed to accessing pharmaceutical services at the premises would, overall, be more likely to access those services during the proposed core opening hours than during the existing core opening hours. The provision does not permit a general balancing exercise based on convenience, operational difficulty or commercial sustainability; rather, it requires a clear, evidence-based demonstration that patient access, in aggregate, would be improved by the change. Unless that statutory threshold is met, the decision-maker is not empowered to grant the application.

5.6 Paragraph 26(4A), Schedule 4 then operates as a further and separate legal constraint in respect of premises that are, or have ever been, subject to the 100-hour condition. It removes any discretion to issue a direction which would reduce core opening hours between 5pm and 9pm Monday to Saturday, reduce core opening hours on Sundays between 11am and 4pm (save for limited rest break arrangements), or reduce the total number of Sunday core hours. Where an application seeks changes which would have any of those effects, the Regulations provide that such an application is not capable of being granted. The decision-maker is therefore bound, irrespective of the merits advanced, to refuse an application that would require the issuing of a direction in contravention of paragraph 26(4A).

5.7 An application for a permanent redistribution of core opening hours was received from M&H Pharma Ltd on 24 July 2025. The contractor sought to retain a total of 72 core hours per week but to redistribute those hours to open earlier in the day and close earlier in the evening, as detailed below.

Current Core Hours

Mon	Tue	Wed	Thu	Fri	Sat	Sun
10:00 – 21:00	10:00 – 21:00	10:00 – 21:00	10:00 – 21:00	11:00 – 21:00	11:00 – 21:00	10:00 – 18:00
11	11	11	11	10	10	8

Proposed Core Hours

Mon	Tue	Wed	Thu	Fri	Sat	Sun
08:00 – 19:00	08:00 – 19:00	08:00 – 19:00	08:00 – 19:00	08:00 – 19:00	08:00 – 19:00	10:00 – 16:00
11	11	11	11	11	11	6

5.8 The Pharmaceutical Services Regulations Committee considered the application on 25 November 2025 and refused the request.

5.9 The applicant elected for the application to be determined under paragraph 26(2ZB), Schedule 4. Therefore, the applicant must demonstrate that people who are accustomed to accessing pharmaceutical services at the premises would, overall, be more likely to access those services during the proposed core opening hours than during the existing core opening hours. In addition, Rutland Late Night Pharmacy were previously subject to the 100-hour condition. Paragraph 26(4A) therefore applies and restricts the circumstances in which core hours may be reduced.

5.10 In support of its application, the contractor stated that most demand occurs between 08:30 and 18:00 and that usage after 18:30 and at weekends is “extremely low”. However, the PSRC noted that these were assertions rather than evidence. No data accompanied the application to substantiate those claims.

5.11 The committee further noted that the pharmacy does not hold any notified core or supplementary opening hours before 10:00. It was therefore unclear on what basis the applicant claimed activity data for the period between 08:30 and 10:00. In the absence of supporting material, the committee was not satisfied that the statutory test under paragraph 26(2ZB) had been met.

5.12 The PSRC also took account of the wider local context. Oakham Medical Practice operates until 18:30 on weekdays, and Rutland Memorial Hospital’s urgent care centre operates between 18:30 and 21:00 on weekdays, and between 09:00 and 19:00 at weekends and bank holidays. In that context, the committee considered that pharmaceutical services may continue to be required during the evening periods that the applicant sought to remove. The applicant had not demonstrated that those accustomed to accessing services between 19:00 and 21:00 on weekdays and between 16:00 and 18:00 on Sundays would, overall, be more likely to access services during the proposed earlier hours. On that basis alone, the committee was entitled to refuse the application for failure to satisfy paragraph 26(2ZB).

5.13 Paragraph 26(4A), Schedule 4 provides that NHS England must not issue a direction which would reduce, in respect of premises that are or have ever been subject to the 100-hour condition, core opening hours between 5pm and 9pm Monday to Saturday, reduce core opening hours on Sundays between 11am and 4pm, or reduce the total number of Sunday core hours. The proposed changes would remove core hours between 19:00 and 21:00 Monday to Saturday and reduce total Sunday core hours from eight to six by closing at 16:00 instead of 18:00. Granting the application would therefore require the issuing of a direction which does not comply with paragraph 26(4A).

5.14 The PSRC did not dispute that early access may be of value to some patients, nor that rurality can present particular operational challenges. However, the statutory framework does not permit the committee to determine applications on the basis of generalised assertions of convenience, workforce difficulty, or commercial sustainability alone. Where an applicant elects to proceed under paragraph 26(2ZB), the regulations require a specific evidential demonstration

that those patients who are accustomed to accessing services during the existing hours would, overall, be more likely to access services during the proposed hours. The committee found that this evidential threshold had not been met.

5.15 The committee also considered the statements provided by the Superintendent Pharmacist, the Pharmacy Manager, locum pharmacists and community representatives in support of the application. The PSRC accepted that these representations were made in good faith and reflected genuine operational and workforce pressures, as well as the high regard in which the pharmacy is held locally. However, such material is inherently qualitative and subjective in nature. While it provides important context as to the challenges faced by the contractor, it does not constitute the objective, verifiable evidence required to satisfy the statutory test under paragraph 26(2ZB). In particular, it does not demonstrate that patients who are accustomed to accessing services during the existing evening and Sunday core hours would, overall, be more likely to access services during the proposed earlier hours. The committee was therefore unable to treat this material as determinative of the statutory question it was required to resolve.

5.16 **Conclusions**

5.17 The PSRC approached the application and subsequent appeal by reference to the statutory framework governing the determination of core opening hours. The committee acknowledged the matters raised by the applicant concerning early-morning access, rurality and workforce pressures. However, those considerations cannot supplant the requirements imposed by the regulations.

5.18 Where an applicant elects to proceed under paragraph 26(2ZB), Schedule 4, the applicant must demonstrate, by reference to cogent and verifiable evidence, that persons accustomed to accessing pharmaceutical services during the existing core hours would, overall, be more likely to access those services during the proposed hours. The PSRC found that this evidential threshold had not been satisfied. Assertions regarding demand between 08:00 and 10:00 were unsupported by data, particularly in circumstances where the pharmacy holds no notified core or supplementary hours prior to 10:00. In the absence of substantiated evidence, the committee was unable to conclude that the proposed early opening would result in improved access for those patients who presently attend during the evening and Sunday periods.

5.19 Furthermore, paragraph 26(4A), Schedule 4 imposes a clear statutory prohibition on the reduction of evening and Sunday core opening hours for premises that are, or have ever been, subject to the 100-hour condition. The proposed changes would remove core opening hours between 19:00 and 21:00 on Monday to Saturday and reduce the total number of Sunday core hours from eight to six. Granting the application would therefore require the issuing of a direction that does not comply with the regulations.

5.20 I would like to take this opportunity to respond to any further representations provided by M&H Pharma Ltd.”

6. Observations

In a letter to NHS Resolution dated 6 February 2026 the Applicant stated:

6.1 “Thank you for your letter dated 3 February 2026 inviting observations on the representations submitted by the East Midlands Primary Care Team (EMPCT) in relation to our appeal.

6.2 Please find enclosed our formal response. This document addresses the representations in detail, corrects several factual and legal inaccuracies, and demonstrates—using objective evidence and relevant NHS Resolution appeal precedents—that our application satisfies the statutory test under paragraph 26(2ZB), Schedule 4.

6.3 We respectfully submit that the evidence overwhelmingly supports approval of our proposed redistribution of core opening hours. Refusal would have significant consequences for patient access, staff safety, and the sustainability of NHS pharmaceutical services in Rutland.

6.4 We trust that the Appeals Panel will give full consideration to the evidence and representations provided.

6.5 **Executive Summary**

6.6 This submission provides MH Pharma Ltd’s formal observations on the representations made by the East Midlands Primary Care Team (EMPCT). Our response demonstrates that:

6.6.1 The EMPCT’s analysis contains factual inaccuracies and misinterpretations of the statutory framework.

6.6.2 The EMPCT did not meaningfully consider the substantial evidence submitted with our appeal.

6.6.3 The statutory test under paragraph 26(2ZB) is satisfied based on objective, verifiable data.

6.6.4 The EMPCT misapplied paragraph 26(4A) and failed to recognise the Appeals Panel’s discretion in exceptional circumstances.

6.6.5 NHS Resolution appeal precedents support approval of our application.

6.6.6 Refusal would materially endanger patient access, staff safety, and the sustainability of NHS services in Rutland.

6.7 The evidence shows:

6.7.1 Extremely low, non-urgent usage after 7pm (23 patients across six weekdays; 2 on Sunday).

6.7.2 100% of evening users could attend earlier and were not “accustomed” users.

6.7.3 High, essential demand between 8am–10am, with 63% unable to attend later.

6.7.4 96% of early-morning users would require urgent NHS pathways if early access were removed.

6.7.5 Significant workforce and safety risks associated with late-evening opening.

6.7.6 Severe consequences for local NHS provision if the application is refused.

6.8 The evidence is clear: approving the redistribution of hours will improve patient access, protect staff safety, and ensure the long-term sustainability of NHS pharmaceutical services in Rutland.

6.9 **Formal Response to Representations**

6.10 **1. Introduction**

6.11 We welcome the opportunity to respond to the EMPCT's representations. While the statutory framework has been set out, the representations contain several material errors, omissions, and misapplications of the law. They also fail to engage with the substantial evidence submitted with our appeal.

6.12 Our response addresses these issues directly and draws upon relevant NHS Resolution appeal precedents that clarify how paragraph 26(2ZB) and 26(4A) should be interpreted.

6.13 **2. Response to Specific Points Raised by EMPCT**

6.14 **Point 1 – "Assertions rather than evidence"**

6.15 The EMPCT states that our original application lacked evidence. This is correct only in relation to the initial application, because:

6.15.1 At the time of the original application, no guidance was provided by the PSRC on the specific format or volume of evidence expected for a redistribution request.

6.15.2 The PSRC did not request further information, and, there was a considerable delay between submission of our application and a response form PSRC.

6.15.3 The PSRC did not pause or defer the application pending evidence.

6.16 However, all required evidence was submitted with the appeal, including:

6.16.1 Independent patient survey data (Rx Advisor Ltd).

6.16.2 Operational usage data.

6.16.3 Professional statements from pharmacists and staff.

6.16.4 Letters of support from community organisations and the local MP.

6.16.5 Evidence of workforce pressures and safety risks.

6.16.6 Patient concern correspondence illustrating daytime pressures.

6.17 **Relevant Appeal Precedent**

6.18 In NHS Resolution Case: SHA/24567 (2023), the Appeals Panel held:

6.18.1 "Where evidence is submitted at appeal stage, the Panel must consider it in full, even if it was not provided at the initial application stage".

6.19 The EMPCT's representations do not acknowledge or engage with this evidence in full.

6.20 **Point 2 – "No basis for activity data between 08:00 and 10:00"**

6.21 This statement is factually incorrect. Our supplementary hours have been publicly advertised on:

6.21.1 Our website: https://rutlandpharmacy.co.uk/

6.21.2 On Google (Search Key word: "Rutland Late Night Pharmacy")

6.21.3 On NHS.uk: https://www.nhs.uk/services/pharmacy/rutland-late-nightpharmacy/FC826/contact-details-and-opening-times

6.21.4 Patients have used the pharmacy between 8am–10am for many years.

6.22 **Evidence submitted**

6.22.1 123 patients surveyed

6.22.2 63% could not attend at another time

6.22.3 96% would have used urgent NHS pathways if early access were removed

6.23 Since opening in 2012, significant restructuring within NHS contract teams has occurred. While we were not aware of a requirement to re-notify the specific EMPCT of these long-standing voluntary hours, the demand they serve is verifiable and documented in our appeal. To dismiss this data based on a notification technicality ignores the lived reality of the local population who rely on this early-morning access. The EMPCT's position ignores this information.

6.24 **Point 3 – "Pharmaceutical services may continue to be required 19:00–21:00"**

6.25 The EMPCT relies on theoretical assumptions based on nearby service opening times. However, the actual evidence shows:

6.25.1 Only 23 patients used the pharmacy after 7pm across SIX weekdays (averaging to 3.8 patients per evening).

6.25.2 Only 2 patients used the pharmacy after 4pm on Sunday.

6.25.3 100% could have attended earlier.

6.25.4 None were regular or “accustomed” users.

6.25.5 None required urgent medication.

6.26 **Legal relevance: “Accustomed users”**

6.27 Paragraph 26(2ZB) requires consideration of:

6.27.1 “people who are accustomed to accessing pharmaceutical services at the premises.”

6.28 The EMPCT conflates:

6.28.1 Accustomed users (regular, predictable users) with

6.28.2 Opportunistic users (passing by because the pharmacy happens to be open)

6.29 **Relevant Appeal Precedent**

6.30 In SHA/23988 (2022), the Panel held:

6.30.1 “Low-volume, opportunistic evening use does not constitute evidence of ‘accustomed access.”

6.31 Our evidence aligns precisely with this principle.

6.32 Oakham is a rural market town that becomes a "ghost town" after 7:00pm. The regulation cited by EMPCT was designed to protect access in areas where it is needed; however, the EMPCT is using it to mandate opening hours during periods of zero clinical demand while simultaneously threatening the hours where demand is highest. By refusing to consider an exception based on the evidence provided, the PSRC is failing to acknowledge the "desperate need" of this specific community, which differs significantly from the urban contexts the regulation may have anticipated.

6.33 **Point 4 – Misapplication of Paragraph 26(4A)**

6.34 The EMPCT asserts that paragraph 26(4A) removes all discretion. This is incorrect. The representations argue that Paragraph 26(4A) removes all discretion from the decision-maker.

6.35 We contend that this "academic" application of the law fails to meet the NHS’s broader duty of care and sustainability.

6.36 Paragraph 26(4A) restricts the issuing of a direction by NHS England. However, the Appeals Panel is not bound in the same way.

6.37 **Legal Position**

6.38 The Appeals Panel has a broader evaluative function and may consider:

6.38.1 Local need

6.38.2 Patient safety

6.38.3 Workforce sustainability

6.38.4 Rurality

6.38.5 Risk to service continuity

6.39 **Relevant Appeal Precedent**

6.40 In SHA/23177 (2021), the Panel stated:

6.40.1 “The Appeals Panel is entitled to consider exceptional circumstances and may depart from the strict application of paragraph 26(4A) where necessary to protect patient access and service sustainability.”

6.41 Our case presents precisely the type of exceptional circumstances contemplated in that decision.

6.42 **Point 5 – “Qualitative and subjective evidence”**

6.43 The EMPCT dismisses professional statements as “subjective”. This is unreasonable and contrary to appeal precedent.

6.44 **Relevant Appeal Precedent**

6.45 In SHA/24701 (2023), the Panel held:

6.45.1 “Professional testimony from pharmacists and staff regarding safety, workforce pressures, and operational realities is relevant and must be given appropriate weight.”

6.46 The EMPCT’s refusal to consider this evidence is a material flaw.

6.47 **3. Broader Context and Consequences**

6.48 The EMPCT’s representations do not address the real-world consequences of refusing this application.

6.49 **A. Early-morning access is essential**

6.50 No other pharmacy opens at 8am. Removing early access would:

6.50.1 Increase NHS 111 demand

6.50.2 Increase GP urgent appointments

6.50.3 Increase A&E attendances

6.50.4 Cause missed medication doses

6.50.5 Disproportionately affect working patients and vulnerable groups

6.51 **B. Late-evening opening is unsafe and unsustainable**

6.52 Evidence shows:

6.52.1 Extremely low demand

6.52.2 High staffing costs

6.52.3 Rural travel risks

6.52.4 Locum shortages

6.52.5 Safety concerns for lone workers

6.53 **C. Risk to the entire NHS service provision in Rutland**

6.54 If refused, we will be forced to:

6.54.1 Cease early opening

6.54.2 Reduce staffing to minimum levels

6.54.3 Seriously consider withdrawal from the NHS contract

6.55 This would remove:

6.55.1 Provision of over 16,000 prescription items per month

6.55.2 The only local COVID vaccination service

6.55.3 One of the largest local pharmacy flu vaccination services

6.55.4 One of the largest local Pharmacy First, and other NHS advanced service providers

6.55.5 Dosette dispensing to over 250 patients

6.55.6 The only Free medicine delivery provider in the locality to vulnerable patients

6.55.7 Employment for 20+ people

6.56 **Relevant Appeal Precedent**

6.57 In SHA/24455 (2023), the Panel held:

6.57.1 “Where refusal of an application would materially endanger the sustainability of NHS pharmaceutical services in a locality this is a relevant and significant factor.”

6.58 The EMPCT's representations do not address this at all.

6.59 **4. Conclusion**

6.60 The EMPCT's response is a technical defence of a regulation that is currently operating against the best interests of patients in Oakham. The evidence clearly demonstrates that:

6.60.1 Evening usage is extremely low and non-urgent.

6.60.2 Users at those times are not "accustomed" users.

6.60.3 Early-morning access is essential and high-demand.

6.60.4 Removing early access would cause patient harm.

6.60.5 Maintaining late opening is unsafe and unsustainable.

6.60.6 The statutory test under paragraph 26(2ZB) is met.

6.60.7 The EMPCT misapplied paragraph 26(4A).

6.60.8 The EMPCT failed to consider the evidence submitted at appeal.

6.60.9 Appeal precedent supports granting an exception in this case.

6.61 We urge the Appeals Committee to use its discretion to prioritize actual patient need and service sustainability over a rigid interpretation of Paragraph 26(4A). The evidence is clear: the proposed hours provide better, safer, and more sustainable access for the people of Rutland We therefore respectfully request that the Appeals Panel:

6.61.1 Overturn the decision of 25 November 2025.

6.61.2 Approve the redistribution of core hours as proposed.

6.62 This is the only outcome that protects patient access, staff safety, and the long-term sustainability of NHS pharmaceutical services in Rutland."

7. **Consideration**

7.1 I note the following:

7.1.1 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 Monday to Saturday from 8am to 7pm instead of 10am to 9pm Monday to Thursday and 11am to 9pm Friday and Saturday; and

7.2.2 Open Sunday from 10am to 4pm instead of 10am to 6pm.

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. 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 I must begin by noting that the Applicant operates a 72 hour a week pharmacy. The application centres around removing core hours from 7pm to 9pm Monday to Saturday and reducing core hours on a Sunday. Therefore, the above paragraph must be assessed before the merits of pharmaceutical services provision and the likely benefits to 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 can be considered.

7.9 The Applicant in its appeal states "*We recognise that current pharmaceutical contractual regulations may not ordinarily permit closure before 9pm for pharmacies holding late-night contracts. However, we submit that strict adherence to this requirement in the specific local context of Oakham is actively undermining service quality, staff safety, and system efficiency*."

7.10 The Applicant in its observations refers to NHS Resolution decisions and quotes text from these cases to support its theory that "*NHS Resolution appeal precedents support approval of our application.*"

7.11 Taking each case as referenced by the Applicant.

7.11.1 "*SHA/24567 (2023)*" [at paragraph 6.18 above]

7.11.2 Upon review of this case, this was a Distance Selling application, with the decision dated 8 July 2021. The paragraph cited by the Applicant does not appear in the decision nor has it been explained why a decision under one regulatory test should be relevant to another regulatory test.

7.11.3 "*SHA/23988 (2022)"* [at paragraph 6.30 above]

7.11.4 This case number cannot be found in NHS Resolution's records. Additionally, it is improbable that this reference would appear in 2022, as case numbers are assigned sequentially and 24567 was issued in July 2021. Therefore, I am unable to authenticate the paragraph associated with this case reference.

7.11.5 "*SHA/23177 (2021)*" [at paragraph 6.40 above]

7.11.6 As with the reference above, this case number cannot be found in NHS Resolution's records. Additionally, it is improbable that this reference would appear in 2021, as case numbers are assigned sequentially and 24567 was issued in July 2021. Therefore, I am unable to authenticate the paragraph associated with this case reference.

7.11.7 "*SHA/24701 (2023)*" [at paragraph 6.45 above]

7.11.8 Upon review of this case, this was an Unforeseen Benefits application, with the decision issued on 16 September 2022. The paragraph referenced by the Applicant does not appear in the decision nor has it been explained why a decision under one regulatory test should be relevant to another regulatory test.

7.11.9 "*SHA/24455 (2023)*" [at paragraph 6.57 above]

7.11.10 This case reference pertains to a dental dispute that was withdrawn on 6 January 2021, with no decision published. The paragraph cited by the Applicant cannot be associated with this case reference.

7.12 Given the above, I am unable to confirm the accuracy or relevance of the quoted cases. The references cited do not appear to offer adequate support or reliability for the Applicant's position. Furthermore, Regulation 26(2ZB), which came into force on 23 June 2025, introduces criteria that differ substantially from those set out in Regulation 18 and Regulation 25 of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

7.13 Having set aside the case precedents as referred to by the Applicant, I have reviewed the Regulation as quoted at 7.7 above.

7.14 The Applicant acknowledges that current pharmaceutical contractual regulations typically do not allow pharmacies holding late-night contracts to close before 9pm. Nonetheless, the Applicant requests an exception for this particular application. I have not been provided with any reference in the Regulations that authorises me to disregard these criteria. I am therefore obliged to uphold the Regulations as they stand until such time as they are revised.

7.15 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 "*Rutland Late Night Pharmacy were previously subject to the 100-hour condition. Paragraph 26(4A) therefore applies and restricts the circumstances in which core hours may be reduced*."

which has not been disputed. I am therefore of the view that paragraph 26(4A) does apply to this application.

7.16 I note that if the application were granted, in proposing to open Monday to Saturday from 8am to 7pm instead of 10am to 9pm Monday to Thursday and 11am to 9pm Friday and Saturday, there would be a reduction of the core hours between 7pm to 9pm Monday to Saturday. In proposing to open between 10am to 4pm instead of 10am to 6pm on a Sunday, there would also 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.*"

7.17 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.

7.18 As per the Commissioner's decision, the pharmacy sought to maintain a total of 72 core opening hours per week but to redistribute these hours across the week. Pharmacies working over and above 40 hours a week require a direction to do so from the Commissioner. 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.

7.19 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.

7.20 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 sub-paragraph 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.

7.21 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.

7.22 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.

7.23 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 alternative 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.

7.24 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.

7.25 In relation to the Applicant’s other reasoning:

7.25.1 "*that strict adherence to this requirement in the specific local context of Oakham is actively undermining service quality, staff safety, and system efficiency*. ……

7.25.2 *Our request is grounded in clear evidence of local need, workforce realities, rural safety challenges and serious risks to both patient care and staff wellbeing. Maintaining late-evening opening under the current conditions places patients, pharmacists and support staff at risk*. ……

7.25.3 *Failure to grant this appeal risks the loss of early-morning access and, ultimately, the viability of NHS services at this pharmacy*."

7.26 And in its observations:

7.26.1 "*We contend that this "academic" application of the law fails to meet the NHS's broader duty of care and sustainability*."

7.27 Whilst these reasons 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.

7.28 Finally, I note the Applicant states that *"the EMPCT misapplied paragraph 26(4A) and failed to recognise the Appeals Panel's discretion in exceptional circumstances*" and "*Paragraph 26(4A) restricts the issuing of a direction by NHS England. However, the Appeals Panel is not bound in the same way*." As per my reasoning above I have no discretion by way of the Regulations and am unable to modify or disregard the late night opening Monday to Saturday or the Sunday opening requirements as set out in paragraph 26(4A).

8. Determination

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

Head of Appeals
NHS Resolution