

6 May 2026

**REF: SHA/26870**

**APPEAL AGAINST DERBY AND DERBYSHIRE ICB  
DECISION REGARDING A BREACH NOTICE AT  
DAY-NIGHT PHARMACY (FFR19) 691-694  
OSMASTON ROAD, DERBY, DERBYSHIRE, DE24  
8GT**

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## 1 Outcome

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

A copy of this decision is being sent to:

Day-Night Pharmacy (FFR19)  
East Midlands Primary Care Team on behalf of Derby and Derbyshire ICB

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**1 The Breach Notice**

A Breach Notice dated 30 December 2025 was sent to Day-Night Pharmacy (“the Appellant”) in respect of 691 – 694 Osmaston Road, Derby, Derbyshire, DE24 8GT.

- 1.1 “Please see the enclosed breach notice which has been issued to the above-named pharmacy.
- 1.2 Please be aware that failure to comply with breach notices may result in the implementation of formal contract sanctions, which could include the withholding of all or part of the remuneration payable to the pharmacy or termination of a contract.
- 1.3 Please contact me should you have any questions.”

**Breach Notice**

- 1.4 **“Breach notice – non-completion of CPAF Full CPAF questionnaire**
- 1.5 **Name of contractor: Day-Night Pharmacy Limited**
- 1.6 **Trading as and Address of premises: Day-Night Pharmacy, 691-694 Osmaston Road, Derby, Derbyshire DE24 8GT**
- 1.7 **Date of inclusion in the pharmaceutical list for the area of Derby City Health and Wellbeing Board: 10th December 2007**
- 1.8 **This is a breach notice issued under regulation 71 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (the 2013 regulations).**
- 1.9 **Nature of the breach**
- 1.10 Under paragraph 35(5), Schedule 4 of the 2013 regulations, where requested to do so by NHS England, pharmacy contractors are required to send by means of an electronic communication, a duly completed questionnaire, which is:

- 1.10.1 (a) in a format approved by NHS England, and
- 1.10.2 (b) for the purpose of enabling NHS England to determine whether or when it is necessary or expedient for a person authorised in writing by NHS England to undertake an inspection of a contractor's premises pursuant to paragraph 35(1), Schedule 4.
- 1.11 There are currently two such questionnaires:
  - 1.11.1 the community pharmacy assurance framework (CPAF) screening questionnaire, and
  - 1.11.2 full CPAF questionnaire.
- 1.12 Since 1 April 2023, NHS England has delegated the commissioning of pharmaceutical services to integrated care boards (ICBs) and has authorised the NHS Business Services Authority (NHSBSA) to request the completion of these questionnaires by pharmacy contractors. The NHSBSA collates responses and provides them to the ICBs who will then review completion of the screening questionnaire to decide which contractors are to be asked to complete the full CPAF questionnaire. Depending on responses, ICBs will then decide which pharmacies are to be visited.
- 1.13 Contractors who use the NHSBSA's "Manage your service" portal are required to complete the questionnaires via the portal. Those who are not yet signed up to that portal are able to complete the questionnaires online. NHS England sets the timescales within which the questionnaires are to be completed and it is not possible for contractors to complete the questionnaires outside of these timescales via either the portal or via another online option.
- 1.14 Contractors receive information and instructions on how to complete the questionnaires either via an email to their premises specific shared NHSmail email addresses or from their head office. Contractors will have a deadline by which to complete the questionnaires and the NHSBSA will send reminder emails.
- 1.15 In 2025/26 selected contractors were required to complete the full CPAF questionnaire by 31st October 2025. This was then extended until 10th November 2025.
- 1.16 The NHSBSA contacted you in respect of the completion of the full CPAF questionnaire for the premises identified above on the following dates:
  - 1.16.1 Reminder 1 06 October 2025
  - 1.16.2 Reminder 2 13 October 2025
  - 1.16.3 Reminder 3 20 October 2025
  - 1.16.4 Reminder 4 27 October 2025
  - 1.16.5 Reminder 5 29 October 2025

#### 1.16.6 Reminder 6 31 October 2025

- 1.17 Emails were sent to [pharmacy.ffr19@nhs.net](mailto:pharmacy.ffr19@nhs.net)
- 1.18 The Communication provided the pharmacy with instructions on how to complete the questionnaire either through the NHSBSA's "Manage your service" portal. If you are not signed up to MYS a link would have been sent to the pharmacy to complete the questionnaire online.
- 1.19 In addition the East Midlands Primary Care Team on behalf of Derby and Derbyshire Integrated Care Board contacted you on the following dates:
- 1.19.1 14th November 2025
- 1.20 The communication reminded the pharmacy of their contractual obligations regarding the Community Pharmacy Assurance Framework full questionnaire.
- 1.21 Emails were sent to [pharmacy.ffr19@nhs.net](mailto:pharmacy.ffr19@nhs.net)
- 1.22 The Pharmaceutical Services Regulations Committee [sic] considered the above and is satisfied that you:
- 1.22.1 have failed to complete the full CPAF questionnaire by the date set by NHS England, and
- 1.22.2 have breached paragraph 34(5), Schedule 4 of the 2013 regulations.
- 1.23 As the nationally set deadline for completion of the full CPAF questionnaire has passed, you cannot remedy this breach and therefore The Pharmaceutical Services Regulations Committee [sic] has decided that it is appropriate to issue this breach notice.
- 1.24 You are required not to repeat the breach again.
- 1.25 You have a right of appeal to the Secretary of State against the issuing of this breach notice Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this notice to [nhsr.appeals@nhs.net](mailto:nhsr.appeals@nhs.net) or: Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU
- 1.26 Please note that should you fail to comply with the requirements of this breach notice we reserve the right to exercise our powers to take further action in relation to your inclusion in the pharmaceutical list in respect of the above named premises. This may include removal of the premises from the relevant pharmaceutical list under regulation 73 of the 2013 regulations.
- 1.27 Dated: 30<sup>th</sup> December 2025"

## 2 The Appeal

In an email dated 23 January 2026 addressed to NHS Resolution, the Appellant appealed against Derby and Derbyshire ICB's ("the Commissioner") decision. The grounds of appeal are:

#### "Introduction

- 2.1 Day-Night Pharmacy Limited (FFR19) ("the Contractor") hereby appeals against the breach notice dated 30 December 2025 issued by the East Midlands Primary Care Team, on behalf of Derby and Derbyshire Integrated Care Board, relating to the alleged non-completion of the 2025/26 full Community Pharmacy Assurance Framework (CPAF) questionnaire for Day-Night Pharmacy, 691–694 Osmaston Road, Derby, DE24 8GT.
- 2.2 FFR19 genuinely missed the CPAF emails sent to [pharmacy.ffr19@nhs.net](mailto:pharmacy.ffr19@nhs.net) and sincerely apologises for this oversight. We are fully willing and ready to complete the CPAF questionnaire immediately once provided access. This appeal is submitted pursuant to paragraph 77(1)(c) and paragraph 9(5) of Schedule 3 to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), requesting the breach notice under regulation 71 be substituted with a remedial notice under regulation 70.

#### Nature of the Breach and Regulatory Framework

- 2.3 The breach notice asserts the Contractor failed to complete the full CPAF questionnaire by 31 October 2025 (extended to 10 November 2025), claiming this makes the breach "cannot be remedied," justifying regulation 71. The underlying term is paragraph 35(5) of Schedule 4 requiring a duly completed questionnaire by electronic communication.
- 2.4 Regulation 70 applies where breaches are capable of remedy; regulation 71 is for breaches not capable of remedy. NHS Resolution interprets "capable of remedy" using common-sense: if the substantive action (questionnaire completion) can still occur, the breach is remediable.
- 2.5 FFR19 Genuinely Missed Emails - MYS Portal Issues
- 2.6 FFR19 sincerely apologises - we genuinely missed the reminder emails due to:
  - 2.6.1 MYS portal access difficulties affecting CPAF access (other non-linked sites - evidence based)
  - 2.6.2 High-volume dispensing pharmacy ([pharmacy.ffr19@nhs.net](mailto:pharmacy.ffr19@nhs.net)) and staff shortages
  - 2.6.3 June/July 2025 CPAF screening WAS completed on time, proving normal compliance
- 2.7 The Breach Is Capable of Remedy
- 2.8 NHS Resolution ruled in identical cases

- 2.8.1 Medicure Pharmacy, Leicester – SHA/26077 (21 Dec 2023): "Completion even if not within time period would remedy the breach" → breach notice substituted with remedial notice
- 2.8.2 Mansfield Woodhouse Pharmacy – SHA/26176 (17 May 2024): Same ruling despite IT/NHSmal issues → breach notice substituted with remedial notice
- 2.9 Both confirm paragraph 35(5) contains no absolute time limit preventing late completion. FFR19 is ready to complete immediately once access provided.  
  
Failure to Use Remedial Notice & East Midlands Pattern
- 2.10 The PSRC skipped regulation 70 (remedial first) → straight to regulation 71.
- 2.11 Concerning pattern: Despite SHA/26077/SHA/26176 rulings that CPAF breaches ARE remediable, East Midlands continues issuing breach notices claiming "incapable of remedy". This ignores precedent, undermines appeal learning, and suggests local procedures aren't updated.
- 2.12 A remedial notice (30 days) allows completion before the planned February 2026 visit.  
  
Contractor's Position
- 2.13 FFR19:
  - 2.13.1 Accepts deadline, not deliberate non-compliance
  - 2.13.2 Sincere apology for missing [pharmacy.ffr19@nhs.net](mailto:pharmacy.ffr19@nhs.net) emails
  - 2.13.3 Completed June/July screening on time
  - 2.13.4 Ready to complete full CPAF immediately once Commissioner provides access/format
- Relief Sought
- 2.14 NHS Resolution is respectfully requested to:
  - 2.14.1 Substitute breach notice (reg 71) with remedial notice (reg 70) per SHA/26077/SHA/26176
  - 2.14.2 Direct Commissioner to provide CPAF access/format instructions immediately
  - 2.14.3 Allow minimum 30 days from that communication to remedy
  - 2.14.4 Confirm completion = breach fully remedied, no further sanctions
  - 2.14.5 FFR19 welcomes the February 2026 visit to demonstrate full compliance."

### 3 **Summary of Representations**

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

### 4 **Subsequent correspondence**

In an email of 31 March 2026 the Appellant provided a copy of a letter from the Commissioner dated 31 March 2026 which stated:

- 4.1 “Thank you for submitting all the evidence required to demonstrate that you have completed all the actions from your contact monitoring visit. We are satisfied that you are now compliant with your terms of service, and no further action is required for 2025-2026.”

Given the above the Appellant was asked if they wished to proceed with the appeal and confirmed, in an email of 31 March 2026 that:

- 4.2 “We would like the appeal to be heard as there is a breach notice which we are not happy with.”

### 5 **Consideration**

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

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

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

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

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

- 5.3 The Regulations contain no definition as to what constitutes a breach of terms of service which is not capable of remedy.
- 5.4 I note that the pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.
- 5.5 The Breach Notice was issued pursuant to Regulation 71(1) and is compliant with the requirements of a breach notice as it includes the nature of the breach and an explanation of the Appellant’s right of appeal under Regulation 77(1)(c).
- 5.6 The Breach Notice states “...NHS England has delegated the commissioning of pharmaceutical services to integrated care boards (ICBs) and has authorised

*the NHS Business Services Authority (NHSBSA) to request the completion of these questionnaires by pharmacy contractors. The NHSBSA collates responses and provides them to the ICBs who will then review completion of the screening questionnaire to decide which contractors are to be asked to complete the full CPAF questionnaire.” It goes on to state “The NHSBSA contacted you in respect of the completion of the full CPAF questionnaire for the premises identified above on the following dates: Reminder 1 06 October 2025, Reminder 2 13 October 2025, Reminder 3 20 October 2025, Reminder 4 27 October 2025, Reminder 5 29 October 2025, Reminder 6 31 October 2025” and further “In addition the East Midlands Primary Care Team on behalf of Derby and Derbyshire Integrated Care Board contacted you on the following dates: 14th November 2025.” Although I have not been provided with copies of the communication referred to above (whether this was via letter or email) the Commissioner has confirmed the email address which was used and the Appellant does not dispute that these communications were received.*

- 5.7 I am of the view that the Appellant had the opportunity to enter into local dispute resolution with the Commissioner but did not do so. There is no dispute raised by either party that the local dispute resolution process has not been exhausted. Given that both parties do not dispute that local dispute resolution has been exhausted I am content that I can deal with this matter.
- 5.8 The Appellant seeks to appeal against the decision of the Commissioner to issue the Breach Notice for its failure to complete and submit the CPAF full questionnaire and request that a remedial notice is issued in line with previous cases of the same nature.
- 5.9 I note that “Inspections and access to information” is found in Schedule 4, Part 4, ‘Other Terms of Service’ under Paragraph 35 and states:

*35. Inspections and access to information*

*(1) An NHS pharmacist (P) must allow persons authorised in writing by the NHSCB to enter and inspect P's pharmacy premises at any reasonable time, for the purposes of—*

*(a) ascertaining whether or not P is complying with the requirements of this Schedule;*

*(b) auditing, monitoring and analysing—*

*(i) the provision made by P, in the course of providing pharmaceutical services, for patient care and treatment, including any arrangement made with a person in respect of provision of appliances, and*

*(ii) the management by P of the pharmaceutical services P provides, where the conditions in sub-paragraph (2) are satisfied.*

*(2) The conditions are that—*

- (a) reasonable notice of the intended entry has been given;*
- (b) the Local Pharmaceutical Committee for the area where the pharmacy premises are situated have been invited to be present at the inspection, where this is requested by P;*
- (c) the person authorised in writing (X) carries written evidence of X's authorisation, which X produces on request; and*
- (d) X does not enter any part of the premises used solely as residential accommodation without the consent of the resident.*

*(3) P must, at the request of the NHSCB or of X, allow it or X access to any information which it or X reasonably requires—*

- (a) for the purposes mentioned in sub-paragraph (1); or*
- (b) in the case of the NHSCB, in connection with its functions that relate to pharmaceutical services.*

*(4) P must, at the request of the NHSCB, send to the NHSCB by means of an electronic communication of the type specified in the request any information to which a person authorised in writing by the NHSCB would have access during an inspection of P's pharmacy premises pursuant to sub-paragraph (1), if—*

- (a) P has that information in a form which means it may be sent by that form of electronic communication; or*
- (b) it is reasonable for the NHSCB to request that P convert that information into a form which means that it may be sent by that form of electronic communication (and the NHSCB does so request)*

*(5) P must, at the request of NHSCB or a person authorised in writing by the NHSCB to make the request, send to the NHSCB or that person by means of an electronic communication, a duly completed questionnaire, which is –*

- (a) in a format approved by the NHSCB; and*
- (b) for the purpose of enabling NHSCB, or a person authorised in writing by the NHSCB to determine whether or when it is necessary or expedient for a person authorised in writing by the NHSCB to undertake an inspection of P's premises pursuant to sub-paragraph (1).*

*(6) Before information is requested pursuant to sub-paragraph (5), the NHSCB must consult the person who is, for the time being, the person consulted under section 165(1)(a) of the 2006 Act, in respect of pharmaceutical remuneration of NHS pharmacists on the terms of the request.*

- 5.10 The Breach Notice states that the NHS BSA on behalf of the Commissioner requested completion of the questionnaire on a number of occasions as well as the Commissioner contacting the Appellant directly.

- 5.11 I note that the Appellant has not disputed that the original request for the screening questionnaire to be completed arrived at the premises specific email address and simply states that “*FFR19 Genuinely missed emails – MYS Portal Issues*” and further “*...missed reminder emails*” and provides reasons as to why this was the case. I note the comment from the Appellant that the June/July 2025 CPAF screening was completed, demonstrating normal compliance, however I am unable to comment on previous CPAF questionnaires as I am constrained to looking at the circumstances surrounding the 2025/26 full CPAF questionnaire.
- 5.12 For reasons given above, I conclude that by failure to complete the CPAF full questionnaire when requested to do so, the Appellant was in breach of paragraph 35(5), Schedule 4 of the Regulations.
- 5.13 I next consider whether the failure to complete the CPAF full questionnaire is a breach which is capable of remedy. As noted in paragraph 5.3 above, the Regulations do not contain a definition as to what constitutes a breach of terms of service which is or is not capable of remedy. A common-sense interpretation is that a breach is unable to be rectified.
- 5.14 The Appellant was required to complete the CPAF full questionnaire. Completion of the questionnaire even if not within the time period given would have remedied or rectified the breach. However, whilst I note there is no timescale set out in this provision of the Regulations to submit the full questionnaire, the Breach Notice clearly states that “As the nationally set deadline for completion of the full CPAF questionnaire has passed, you cannot remedy this breach and therefore The Pharmaceutical Services Regulations Committee [sic] has decided that it is appropriate to issue this breach notice”. As a result, I cannot determine the appeal in the way in which the Appellant desires, that meaning to substitute the Breach Notice with a remedial notice. I am of the view that under NHS Resolution’s powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of the Commissioner or substitute for that decision any decision that the Commissioner could have taken when it took that decision.
- 5.15 As a result of the comments I make above, I am of the view that:
- 5.15.1 the Appellant did not complete and submit the CPAF full questionnaire within the timeframe set by the Commissioner; and
- 5.15.2 such action constitutes a breach of the Appellant’s terms of service by virtue of Regulation 35.

## **6 Decision**

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

**Head of Appeals  
NHS Resolution**