

20 August 2026

REF: APL-4496 [SHA/27030]

**APPEAL AGAINST LINCOLNSHIRE ICB DECISION
REGARDING A BREACH NOTICE AT BOOTS
PHARMACY - 29 HIGH STREET, MABLETHORPE,
LN12 1AF**

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

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

1 Outcome

- 1.1 Pursuant to paragraph 9(5)(a) 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:

Boots UK Ltd
East Midlands Primary Care Team on behalf of Lincolnshire ICB

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1 The Breach Notice

A Breach Notice dated 7 May 2026 was sent to Boots UK Ltd ("the Appellant") in respect of 29 High Street, Mablethorpe, Lincolnshire, LN12 1AF.

- 1.1 "Name of contractor: Boots UK Limited
- 1.2 Address of premises: Boots Pharmacy, 29 High Street, Mablethorpe, Lincolnshire, LN12 1AF.
- 1.3 Date of inclusion in the pharmaceutical list for the area of Lincolnshire Health and Wellbeing Board: 01 November 1989
- 1.4 This is a breach notice issued under regulation 71 of the National Health Services (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended (the 2013 regulations).

Nature of the breach

- 1.5 In accordance with paragraph 23(1)(e), Schedule 4 of the 2013 regulations, if NHS England, or on appeal the Secretary of State, has directed that pharmaceutical services are to be provided at pharmacy premises for more than 40 hours each week, but only on set times and on set days as regards the additional opening hours, the contractor who is listed in respect of those pharmacy premises must ensure that pharmaceutical services are provided at the pharmacy premises:
 - i. for the total number of hours each week required by virtue of that direction, and
 - ii. as regards the additional opening hours for which the contractor is required to provide pharmaceutical services by virtue of that direction, at the days on which and times at which the contractor is required to provide pharmaceutical services during those additional opening hours, as set out in that direction subject to any variation in respect of a rest break in accordance with sub-paragraph (7)(bd), Schedule 4.

- 1.6 Since 1 April 2023, NHS England has delegated the commissioning of pharmaceutical services to integrated care boards (ICBs) and therefore such directions may be issued to pharmacy contractors by an ICB.
- 1.7 The DLN ICB Cluster (Derby and Derbyshire ICB, Lincolnshire ICB and Nottingham and Nottinghamshire ICB) have formed a Pharmaceutical Services Regulations Committee (PSRC) under section 65Z5 of the 2006 Act. By virtue of NHS England's Pharmacy Manual this Committee is responsible for making decisions required by the 2013 regulations. For the avoidance of doubt, this includes use of the fitness powers set out in the 2006 Act and the 2013 regulations.
- 1.8 The Directed Rota was created in conjunction with each individual East Midlands Integrated Care Board (ICB), Local Pharmaceutical Committee (LPC) and where attendance was made, the Local Medical Committee (LMC).
- 1.9 The Directed Rota was published on each individual East Midlands ICB's website in May 2025 and sent via email to all contractors, LPC's and General Practitioner contracting teams within the East Midlands footprint. Each East Midlands ICB contractor is required to update the Directory of Service website.
- 1.10 Contractors identified to take part in the Directed Rota for Christmas Day 25 December 2025 received a proposal to direct letter, sent on 29 May 2025, in which contractors are advised they have 30 days to submit written representations to contest the proposal. The proposal to direct was sent via email; pharmacy.fmq05@nhs.net and [xx]@boots.co.uk. In the email, the pharmacy was advised 'The rate of commission for this service is £350 per hour for a maximum of 2 hours and can be claimed via PharmOutcomes, up to 28 days after the directed day. Should you not claim within this period assurance of the opening will be sought, and you will have up to 45 days from the directed day in which to make a final claim.' No representations were received from Boots UK Limited within 30 days.
- 1.11 Upon completion of the 30-day representation window, a final direction letter is sent to all identified contractors to confirm they are required to provide pharmaceutical services on the day of direction. The final direction letters for Christmas Day 25 December 2025 were sent via email on 30 June 2025; pharmacy.fmq05@nhs.net and [xx]@boots.co.uk. The email stated 'To claim for opening on Christmas Day 2025 you will do so on Pharmoutcomes, no later than 28 days after the directed day. If you fail to claim in this period, assurance will be sought, and you will have up to 45 days from the date of direction in which to make a final claim.' No appeal was received by Boots UK Limited.
- 1.11.1 Boots UK Limited trading as Boots Pharmacy, 29 High Street, Mablethorpe, Lincolnshire, LN12 1AF.
- 1.11.2 Christmas Day, 25 December 2025
- 1.11.3 10:00-12:00
- 1.12 The East Midlands Primary Care Team (EMPCT) provides each contractor with a reminder to claim on the 28th day following the date on which it was directed

to open its pharmacy premises. This is sent to the contractor via the premises specific NHSmail account for the pharmacy premises or an alternative given email where the premises specific NHSmail account is not yet available. If a contractor has not submitted a claim via PharmOutcomes it is then requested to provide evidence within 7 days to demonstrate that the pharmacy premises were opened in line with the Direction. Evidence of opening may include the Responsible Pharmacist log or evidence such as receipts issued to users of the pharmacy premises during the times the pharmacy was directed to be open.

- 1.13 At its meeting on 22 April 2026, the Pharmacy Services Regulations Committee (PSRC) noted that the contractor submitted notification of temporary suspension of services on 25 December 2025 were received by the East Midlands Primary Care Team on 29 December 2025. The committee was therefore satisfied that Boots UK Limited were in breach of paragraph 23(1)(e), Schedule 4 at the above-named premises. It noted that this breach is not capable of remedy. The PSRC therefore considered it appropriate to issue a breach notice.
- 1.14 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 or:
- 1.15 Primary Care Appeals Case Manager, NHS Resolution, 8th Floor 10 South Colonnade, Canary Wharf, London, E14 4PU.
- 1.16 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 pharmaceutical list under regulation 73 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended."

2 The Appeal

In a letter dated 26 May 2026 addressed to NHS Resolution, the Appellant appealed against Lincolnshire ICB's ("the Commissioner") decision. The grounds of appeal are:

- 2.1 "Thank you for your correspondence dated 07 May 2026 regarding the breach notice issued in relation to the above pharmacy, concerning the directed opening on Christmas Day, 25 December 2025.
- 2.2 I can confirm that the pharmacy had planned to open in line with the directed rota between 10:00 and 12:00. A locum pharmacist had been booked in advance to cover the shift.
- 2.3 Upon further review of the circumstances, it has been established that the locum pharmacist did attend the pharmacy site, albeit later than the scheduled start time of 10:00.
- 2.4 On the day in question, a member of the pharmacy team attended and remained at the front entrance until approximately 10:12. As access to the

premises is not permitted without a pharmacist present, they then proceeded to check the rear entrance.

- 2.5 The locum pharmacist arrived at the front entrance at approximately 10:15, where they knocked and waited until around 10:17 before leaving the premises. During this time, the team member had moved away from the front entrance and, despite positioning themselves nearby to maintain visibility of the site, did not reconnect with the pharmacist. As a result of the pharmacist's late arrival, the pharmacy was not able to open at the required time, despite the Boots colleague being present and ready on site. The team member subsequently left the vicinity shortly before 10:40.
- 2.6 It therefore appears that the failure to open arose from a combination of the pharmacist's delayed arrival and a missed connection within a short timeframe, rather than a failure to make appropriate arrangements for the shift.
- 2.7 Please be assured that appropriate arrangements had been made to open the pharmacy; the failure to open was due to circumstances outside of our control. We take our contractual obligations seriously and regularly review contingency plans.
- 2.8 Given the closure was wholly beyond our control we would therefore request that the notice is withdrawn.
- 2.9 Please do not hesitate to contact me should you require any further clarification or additional information. I would also welcome the opportunity to discuss this matter further by phone if that would be helpful."

3 **Summary of Representations**

This is a summary of representations received on the appeal.

3.1 THE COMMISSIONER

- 3.1.1 "Thank you for your letter dated 1st June 2026. The East Midlands Primary Care Team on behalf of Lincolnshire Integrated Care Board would like to make the following representations.

Relevant Regulations

- 3.1.2 Regulation 65A - Continuity in respect of opening hours directions [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 3.1.3 Regulation 71 - Breaches of terms of service: breach notices [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)

Background

- 3.1.4 Boots Pharmacy, 29 High Street, Mablethorpe, LN12 1AF, was included in the Directed Rota for Christmas Day, 25th December 2025.

- 3.1.5 A proposal to direct letter was issued to the contractor advising that the pharmacy premises would be required to open on 25th December 2025 between 10:00 and 12:00. The contractor was given the opportunity to make representations regarding the proposed direction. Following the conclusion of the representation period, a final direction was issued confirming the requirement to open during the directed hours.
- 3.1.6 As part of the assurance process following the directed opening, the contractor was requested to provide evidence demonstrating compliance with the direction.
- 3.1.7 The matter was subsequently referred to the Pharmaceutical Services Regulations Committee (PSRC) for consideration. Having considered the available evidence, the PSRC determined that the contractor had failed to comply with the direction and issued a Breach Notice pursuant to regulation 71.

Regulation 65A

- 3.1.8 The appellant states that appropriate arrangements had been made to facilitate opening of the pharmacy, including the booking of a locum pharmacist to cover the directed opening period. The appellant further states that the pharmacy failed to open due to the late arrival of the locum pharmacist and a subsequent missed connection between the pharmacist and a member of the pharmacy team who was present at the premises.
- 3.1.9 However, the obligation imposed by the direction was for the pharmacy premises to be open and available to provide pharmaceutical services during the specified period. Whilst the explanation provided may account for the circumstances which resulted in the pharmacy not opening, it does not alter the fact that the pharmacy premises were not open during the directed hours.
- 3.1.10 The panel members were satisfied that responsibility for ensuring compliance with the direction rests with the contractor. The panel members considered that contractors are responsible for ensuring that appropriate contingency arrangements are in place to enable compliance with directed opening requirements, particularly where services are being provided on a bank holiday.

Regulation 71

- 3.1.11 Regulation 71 provides that where the relevant authority is satisfied that a contractor has failed to comply with a term of service, it may issue a breach notice.
- 3.1.12 In reviewing the contractor's representations, it is noted the assertion that appropriate arrangements had been made to open the pharmacy on 25th December 2025 and that the failure to open was due to circumstances outside the contractor's control. However, the contractor's own account confirms that:

3.1.12.1 the pharmacist did not arrive until approximately 10:15, after the required opening time of 10:00

3.1.12.2 the team member left the front entrance at 10:12, before the pharmacist arrived

3.1.12.3 the pharmacy did not open at any point during the directed opening period

3.1.13 These facts demonstrate that the pharmacy did not open in accordance with the direction and that the arrangements in place were insufficient to ensure compliance with the contractor's obligations under the terms of service. The responsibility for ensuring that the pharmacy opens at the directed time rests with the contractor, including the need to implement effective contingency measures where locum staff are used or where operational risks are foreseeable.

3.1.14 On this basis, the East Midlands Primary Care Team was satisfied that a breach of the terms of service had occurred and that the issuing of a breach notice under Regulation 71 was appropriate and justified as this was not capable of remedy.

Conclusion

3.1.15 In considering the information provided by the contractor, the East Midlands Primary Care Team noted the explanation regarding the circumstances on 25th December 2025, including the late arrival of the locum pharmacist and the movement of the team member away from the front entrance. While these details help to clarify the sequence of events, they do not alter the position that the pharmacy did not open during the directed hours.

3.1.16 The requirement to open the premises between 10:00 and 12:00 formed part of the contractor's obligations under Regulation 65A, and the arrangements in place on the day were not sufficient to ensure that this requirement was met. The responsibility for ensuring compliance with a direction rests with the contractor, including the need to plan for foreseeable operational risks associated with bank holiday openings.

3.1.17 As the pharmacy did not open at any point during the directed period, the East Midlands Primary Care Team was satisfied that a failure to comply with the terms of service had occurred. The issuing of a Breach Notice under Regulation 71 was therefore considered appropriate and proportionate.

3.1.18 I would like to take this opportunity to respond to any further representations."

4 Observations

4.1 THE APPELLANT

- 4.1.1 “Thank you for the opportunity to provide observations in response to the representations submitted by the East Midlands Primary Care Team on behalf of Lincolnshire Integrated Care Board.
- 4.1.2 Boots’ position remains that the circumstances described were clearly exceptional and beyond our control.
- 4.1.3 Whilst we acknowledge that the pharmacy did not open during the directed opening period, we do not accept that there was more that Boots could reasonably have done in the circumstances. Appropriate arrangements had been made to facilitate opening of the pharmacy, including arranging pharmacist cover and attendance by a pharmacy team member at the premises.
- 4.1.4 We therefore do not consider it reasonable or proportionate to issue a breach notice in these circumstances. In particular, we do not understand what additional actions the Primary Care Team considers Boots should have taken, nor what purpose the breach notice is intended to achieve given the exceptional nature of the events described.
- 4.1.5 We have no further observations to make.”

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 The pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.
- 5.5 I note that 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 Under Regulation 69(1), before issuing a breach notice, the Commissioner must:

5.6.1 *"make every reasonable effort to communicate and co-operate with an NHS Chemist (c) with a view to resolving any dispute between [the chemist] and NHS England relating to [the chemist's] compliance with [the chemist's] terms of service".*

5.7 The Regulations contain no definition of what constitutes *"reasonable effort to communicate and co-operate"*. I note however that, following the closure, there is reference to correspondence between the parties, although I have not been provided with this. The Appellant has also not referred to any lack of local dispute resolution in its appeal. I therefore determine that there is no failure to comply with Regulation 69 in this respect.

5.8 I shall now consider the breach in the Breach Notice and the Appellant's grounds of appeal.

5.9 The pharmacy had been directed to open between 10am to 12noon on 25 December 2025, a day on which it would have otherwise been closed.

5.10 The Breach Notice records that contractors are provided *"with a reminder to claim on the 28th day following the date on which it was directed to open its pharmacy premises"*. The Breach Notice goes on to state *"If a contractor has not submitted a claim via PharmOutcomes it is then requested to provide evidence within 7 days to demonstrate that the pharmacy premises were opened in line with the Direction."*

5.11 There is no dispute between the parties with regard to the direction. Further, there appears to be no dispute between the parties that the pharmacy did not open for the hours as directed on 25 December 2025.

5.12 The Commissioner is therefore of the view that the Appellant was in breach of paragraph 23(1)(e), Schedule 4.

5.13 The Appellant however seeks to appeal against the decision of the Commissioner to issue the Breach Notice for its failure to open for directed hours between 10am and 12noon on 25 December 2025.

5.14 Paragraph 23(1)(e) of Schedule 4 states:

(1) Subject to paragraph 23A, an NHS pharmacist (P) must ensure that pharmaceutical services are provided at P's pharmacy premises—

(e) if NHS England or a Primary Care Trust, or on appeal the Secretary of State, has directed that pharmaceutical services are to be provided at the premises for more than 40 hours each week, but only on set times and on set days as regards the additional opening hours, or the core

opening hours where paragraph 26(4A) applied to the issuing of the direction—

(i) for the total number of hours each week required by virtue of that direction, and

(ii) as regards the additional opening hours for which the person listed in relation to the premises is required to provide pharmaceutical services by virtue of that direction, at the days on which and times at which that person is required to provide pharmaceutical services during those additional opening hours, as set out in that direction, subject to any variation in respect of a rest break in accordance with sub-paragraph (7)(bd),

but NHS England may, in appropriate circumstances, agree a temporary suspension of services for a set period, where it has received 3 months notice of the proposed suspension

- 5.15 I note that the final direction letter was sent, by email, on 30 June 2025 and no appeal was made against the decision to issue the direction.
- 5.16 I note the reference to a “Notification of a Temporary Suspension form” (“the Notification”) being submitted to the Commissioner on 29 December 2025, confirming that the pharmacy was not open for the directed hours, however I have not been provided with a copy.
- 5.17 I note that, on appeal, the Appellant has sought to argue that the non-opening of the pharmacy was “*wholly beyond our control*” and “*we would therefore request that the notice is withdrawn.*”
- 5.18 The Appellant has confirmed that a locum pharmacist had been booked, however the Appellant further confirms that the pharmacist arrived late at the store and states:
- “The locum pharmacist arrived at the front entrance at approximately 10:15, where they knocked and waited until around 10:17 before leaving the premises. During this time, the team member had moved away from the front entrance and, despite positioning themselves nearby to maintain visibility of the site, did not reconnect with the pharmacist. As a result of the pharmacist’s late arrival, the pharmacy was not able to open at the required time, despite the Boots colleague being present and ready on site. The team member subsequently left the vicinity shortly before 10:40.”*
- 5.19 I am of the view that the arranging of cover, whether that be by way of the usual pharmacist employed by the Appellant or a locum to cover a shift is the responsibility of the Appellant. I am also of the view that this responsibility extends to ensuring that the relevant staff, permanent or locums, have telephone numbers as part of emergency contact under a business continuity plan.

- 5.20 Whilst I note the comments that the Appellant regularly reviews contingency plans, it appears that they did not cover the situation which arose on 25 December 2025. I have not been provided with the Appellant's business continuity plan and whilst I accept that the team member did what they were able to manage the situation I do not consider that this is sufficient. I am of the view that I have not been provided with any evidence to demonstrate that the Appellant used reasonable endeavours to provide pharmaceutical services as directed.
- 5.21 Further, I am mindful that the locum pharmacist did not arrive until "*approximately 10:15 ...*" where the direction was for pharmaceutical services to be provided between 10am and 12noon on 25 December 2025. I note that I have not been provided with any information to explain why the pharmacist was late in the first instance and what was done to contact the pharmacist.
- 5.22 I am of the view that the reasons given for the non-compliance with the direction to provide pharmaceutical services on 25 December 2025 were not beyond the Appellant's control.
- 5.23 Apart from the locum arriving late, I have not been provided with any other reason why the Appellant was unable to open on 25 December 2025. I am of the view that the Appellant's failure to open between 10am and 12noon on 25 December 2025 is a breach of paragraph 23(1)(e) of Schedule 4 of the Regulations.

6 Decision

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

**Head of Appeals
NHS Resolution**