

20 December 2018

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**DECISION MAKING BODY:** **NHS COMMISSIONING BOARD**  
**("NHS ENGLAND")**

**PHARMACIST:** **WAREMOSS LTD T/A**  
**KAMSONS PHARMACY**  
**("APPLICANT")**

**FILE REF:** **SHA/20016**

**PREMISES:** **UNIT 4, TESCO STORE**  
**1 FULBECK WAY**  
**WORTHING**  
**BN13 3FG**  
**("PREMISES")**

## Outcome

- 1.1 In light of the proposed changes and the lack of information available to me regarding changes to the needs of people in the area, or other likely users of the Premises, for pharmaceutical services, I am not satisfied that pharmaceutical services provision that would result from the Applicant's proposed hours would meet the needs of people in the NHS England area or other likely users of the pharmacy for pharmaceutical services on 24 December 2018.
- 1.2 The action taken by NHS England to refuse the application is confirmed.

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Unit 7, 2023



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**Resolution**

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**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]**

## **TEMPORARY CHANGE TO CORE HOURS**

### **1 Introduction**

- 1.1 The Applicant has applied to NHS England to change the days and times at which it is obliged to provide pharmaceutical services at the Premises on 24 December 2018.
- 1.2 NHS England has refused the application. The Applicant seeks to appeal to NHS Resolution.

### **2. Consideration**

#### Rights of appeal

- 2.1 Where NHS England 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.
- 2.2 The Secretary of State for Health and Social Care 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

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

2.3.1 "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 NHS England requiring fewer or greater than 40 hours and at set times and days; or

2.3.2 "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

2.4 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:

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

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

2.5 NHS England 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.

2.6 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

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

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

#### Assessment

2.9 I note that the Applicant submitted six forms to NHS England entitled "Application to change core opening hours" dated 5 September 2018. These forms relate to six different premises but the Applicant has only submitted an

appeal in relation to the Premises which are set out above. This determination therefore only relates to the Applicant's application in relation to the Premises.

2.10 The form in relation to the Premises states:

2.10.1 that the application is to make a one-off change on 24 December 2018;

2.10.2 that the Applicant's current core opening hours for the Premises are:

2.10.2.1 Monday: 09:00-12:00 and 16:00-19:00

2.10.2.2 Tuesday: 09:00-12:00 and 16:00-19:00

2.10.2.3 Wednesday: 09:00-12:00 and 16:00-19:00

2.10.2.4 Thursday: 09:00-12:00 and 16:00-19:00

2.10.2.5 Friday: 09:00-12:00 and 16:00-19:00

2.10.2.6 Saturday: 11:30-17:30

2.10.2.7 Sunday: 10:00-14:00

2.10.3 that the Applicant's proposed core opening hours for the Premises are:

2.10.3.1 Monday: 09:00-12:00 and 16:00-18:00

2.10.3.2 Tuesday: 09:00-12:00 and 16:00-19:00

2.10.3.3 Wednesday: 09:00-12:00 and 16:00-19:00

2.10.3.4 Thursday: 09:00-12:00 and 16:00-19:00

2.10.3.5 Friday: 09:00-12:00 and 16:00-19:00

2.10.3.6 Saturday: 11:30-17:30

2.10.3.7 Sunday: 10:00-14:00

2.10.4 In response to a heading entitled "Please provide information on the changes to the needs of people in the area of the Health and Well-being Board, or other likely users of the premises, for pharmaceutical services that have led to your application", the Applicant states:

*"The other shops in the Fulbeck Way parade will be closed by 6pm but the next door Tesco Pharmacy has a 100 hour contract and will be open until much later. It will therefore not cause any issue to allow this pharmacy to close 60 minutes early."*

2.11 I note that in a letter to the Applicant dated 4 October 2018 NHS England stated:

- 2.11.1 I write with your reference to your applications for temporary changes to the opening hours of the pharmacies named below on Monday 24 December 2018.
- 2.11.2 As regards the requested changes to core hours (so as to be closed from 18:00 on the day), your application has been considered by the South East Pharmaceutical Services Regulations Committee. The Committee has **refused** your application.
- 2.11.3 No information has been provided to show that there has been a change in the needs of local people for pharmaceutical services. In addition, given the need to ensure full access to primary health services in the pre- and post- Christmas period in order to minimise the pressure on other parts of the health system, it would not be appropriate to agree to a reduction in the opening hours of a pharmacy.
- 2.11.4 While there may be other pharmacies nearby which may still be open after 18:00 on each of those days, that would not help patients who normally use this pharmacy and whose prescriptions and/or dispensed medications may be in the pharmacy.
- 2.11.5 You have a right of appeal to the Secretary of State against this decision. Should you choose to appeal, you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to:
- 2.11.5.1 Primary Care Appeals, 1 Trevelyan Square, Boar Lane, Leeds LS1 6AE
- 2.11.5.2 or email: [appeals@resolution.nhs.uk](mailto:appeals@resolution.nhs.uk)
- 2.11.6 Finally, the Committee asked that it be made clear that if, despite its refusal of these core applications, the pharmacy is not open for the whole of its core opening hours on 24 December, then:
- 2.11.6.1 a breach notice is likely to be issued, and
- 2.11.6.2 a payment withholding is likely to be imposed and, because NHS England has made its expectations clear to the contractor in advance, any withholding is likely to be substantial.
- 2.12 I note that in a letter to NHS Resolution dated 2 November 2018 the Applicant stated:
- 2.12.1 In an application dated 5 September 2018 to NHS England (South East), I applied to close Kamsons Pharmacy in Fulbeck Way, Durrington, Worthing at 6pm rather than 7pm for one day only - 24 December 2018. For about the last ten years, NHS England (South East) has approved all applications to close 40-hour-contract pharmacies at 6pm on Christmas Eve whether for core or supplementary hours. No notification was given of a change in policy either to ourselves or to West Sussex Local Pharmaceutical Committee.

2.12.2 In my application I pointed out

2.12.2.1 The other shops in the Fulbeck Way Parade will be closed by 6pm (on Christmas Eve) but the next door Tesco Pharmacy has a 100 hour contract and will be open until much later. It will therefore not cause any issue to allow Kamsons Pharmacy to close 60 minutes early.

2.12.3 Please note that NHS England has previously approved the opening of this 100-hour contract Tesco Pharmacy literally next door to the Kamsons Pharmacy that is the subject of this application. Therefore a full pharmaceutical service will be available at basically the same site as our pharmacy. Patients using the Tesco Pharmacy park in the same car park and walk up the same path as those using the next door Kamsons Pharmacy.

2.12.4 In a letter dated 4 October 2018, ... NHS England sent a generic single response for all six requests that I submitted for early core-hours closing on Christmas Eve. Despite different reasons being given for each application, his single generic response made no mention of the different applications. It appeared that a blanket policy-decision had been made and that the individual applications had probably not even been read and the different reasons for applying had not been considered.

2.12.5 The only justification [NHS England] could make that may apply in this case was "*while there may be other pharmacies nearby which may be open after 18:00 on each of those days (please note that I only applied to close on one day), that would not help patients who normally use this pharmacy and whose prescriptions and/or dispensed medications may be in the pharmacy.*"

2.12.6 This appears to have been written by someone who has no experience of working in a pharmacy on a Christmas Eve afternoon. In my twenty five years as a pharmacist, I have never served anyone after 4.30pm on a Christmas Eve evening who was collecting a prescription that was sitting in the pharmacy. In the extremely unlikely scenario that someone should require a prescription that was sitting in Kamsons Pharmacy when it was closed, then our colleagues at the Tesco Pharmacy would provide an emergency supply until our pharmacy reopened on 27 December.

2.12.7 This is a decision that was made in accordance with a blanket policy decision and communicated by a "cut and pasted" generic letter rather than on consideration of the specific facts of this case and the individual request made.

2.12.8 I respectfully request that NHS Resolution reconsider this application, taking into account the specific facts in the application.

2.13 I note that in a letter to NHS Resolution dated 23 November 2018 NHS England stated:

2.13.1 In your letter to NHS England you request that NHS England advises NHS Resolution if "you consider this application to be *an application*

*for a temporary suspension of services, which the Board can agree under the provision of Schedule 4, Part 3 paragraph 23, or if you consider that the applicant is applying to reduce the total number of hours for which the pharmacist is obliged to provide pharmaceutical services each week in accordance with Schedule 4, Part 3, paragraph 26(1)(a).”*

2.13.2 NHS England considered the original application to be for a temporary suspension of services in accordance with Schedule 4, Part 3, paragraph 23 which states that:

2.13.3 *‘(1) An NHS pharmacist (P) must ensure that pharmaceutical services are provided at P’s pharmacy premises—*

*(a)for 40 hours each week;*

*... but the NHSCB 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’.*

2.13.4 The reason being that the Appellant in the original application submitted the application in the form titled ‘Application to change core opening hours’, which includes a section headed ‘If this is a one-off change, please enter the dates for the change below’. In his application, the Appellant had inserted, in this section, the date of 24 December 2018.

2.13.5 For ease of reading, the response from NHS England will address the issues in the same order as that used by the Appellant in the letter of Appeal dated 2 November 2018.

2.13.6 In the Letter of Appeal of the Appellant states:

2.13.7 *“I applied to close Kamsons Pharmacy in Fulbeck Way, Durrington, Worthing at 6pm rather than 7pm for one day only - 24 December 2018. For about the last ten years, NHS England (South East) has approved all applications to close 40-hour-contract pharmacies at 6pm on Christmas Eve whether for core or supplementary hours. No notification was given of a change in policy either to ourselves or to West Sussex Local Pharmaceutical Committee. In my application I pointed out -The other shops in the Fulbeck Way Parade will be closed by 6pm (on Christmas Eve) but the next door Tesco Pharmacy has a 100 hour contract and will be open until much later. It will therefore not cause any issue to allow Kamsons Pharmacy to close 60 minutes early”*

2.13.8 In reaching the decision to refuse the application NHS England looked at the application subject to this appeal and each of the other applications submitted by the Appellant under the same covering email dated 21 September 2018, containing the application dated 5 September 2018. According to the Regulation, NHS England can, in appropriate circumstances, agree a temporary suspension of services, which is a judgement which is based on the needs and expected needs at the time of the requested temporary suspension of services required in the localities covered by the application(s).

- 2.13.9 This year, due to the anticipated and increasing high pressures on the health service, NHS England took the decision that it would only allow pharmacies to close early if only their supplementary rather than their core hours would be affected, as for these hours they only have to notify NHS England of their intentions. As Christmas Eve is considered as a normal trading day, and it is a crucial time in respect of increased activities with OOHS and A&E leading up to the festive season, NHS England is trying to respond in a measured way and proactively manage the expected increase in pressure on the overall health system.
- 2.13.10 One of the ways of addressing the increased demands is to ensure that patients can access services locally such as improved access to GP services and similarly by having local pharmaceutical services available. Furthermore, NHS England is aware that a substantial number of calls to NHS 111 over this period are for repeat medicines and also for minor ailments. NHS England has, in line with other Regional Local Teams, taken the view that patients should therefore be able to access pharmaceutical services for at least the core hours provided by all contractors, unless specific circumstances justify a different approach. In reaching its decision to refuse the application, NHS England made clear that evidence for justifying the granting of the temporary suspension of the provision of core hours had not been provided.
- 2.13.11 *“As regards the requested changes to core hours (so as to be closed from 18:00 on the day), your application has been considered by the South East Pharmaceutical Services Regulations Committee. The Committee has refused your application.*
- 2.13.12 *No information has been provided to show that there has been a change in the needs of local people for pharmaceutical services. In addition, given the need to ensure full access to primary health services in the pre- and post-Christmas period in order to minimise the pressure on other parts of the health system, it would not be appropriate to agree to a reduction in the opening hours of a pharmacy.*
- 2.13.13 *While there may be other pharmacies nearby which may still be open after 18:00 on each of those days, that would not help patients who normally use this pharmacy and whose prescriptions and/or dispensed medications may be in the pharmacy.”*
- 2.13.14 Moreover, were NHS England to allow a granting of ‘blanket permission’ to all pharmacy applications nationwide for temporary closures of core hours on Christmas Eve, this would lead to a significant reduction of the provision of pharmaceutical services at a very critical time of the year.
- 2.13.15 The Appellant also argues that the different applications were not considered individually:
- 2.13.16 *‘In a letter dated 4 October 2018, ... NHS England sent a generic single response for all six requests that I submitted for early core-hours closing on Christmas Eve. Despite different reasons being given*

*for each application, his single generic response made no mention of the different applications. It appeared that a blanket policy-decision had been made and that the individual applications had probably not even been read and the different reasons for applying had not been considered. The only justification [NHS England] could make that may apply in this case was “while there may be other pharmacies nearby which may be open after 18:00 on each of those days (please note that I only applied to close on one day), that would not help patients who normally use this pharmacy and whose prescriptions and/or dispensed medications may be in the pharmacy.” .... This is a decision that was made in accordance with a blanket policy decision and communicated by a “cut and pasted” generic letter rather than on consideration of the specific facts of this case and the individual request made.’*

2.13.17 NHS England wishes to refute the assertion that in refusing this application it was making a ‘*blanket policy-decision*’ communicated by a ‘cut and pasted generic letter and that the applications had ‘*probably not even been read and the different reasons for applying had not been considered*’. In assessing whether any such appropriate circumstances exist that can justify temporarily reducing the pharmaceutical services to patients in a locality, NHS England reviewed all the applications of temporary change to the core hours in each of the localities and the reasons given for why the Appellant considered that appropriate circumstances would exist.

2.13.18 As NHS England must take into account the impact on equality, with regards to all other pharmaceutical providers, of granting a temporary change to core hours based on circumstances that affects all pharmacies e.g. Christmas Eve. Therefore, it was decided to issue a seemingly generic response notwithstanding that all applications from the Appellant and other contractors had been assessed separately.

2.13.19 Conclusion

2.13.20 In reaching its decision to refuse the Appellant’s application under Regulation Schedule 4, Part 3, paragraph 23 (1) NHS England carefully considered whether appropriate circumstances existed that would provide the justification for a temporary change to core hours and found that this was not the case for the application specifically mentioned in this appeal nor the other applications to which the appellant refers.

2.13.21 NHS England wishes to maintain its view that the application should be refused.

2.14 I note that in a letter to NHS Resolution dated 10 December 2018 the Applicant stated:

2.14.1 NHS England state (in paragraph 4 on page 2 of their response) “*NHS England has in line with other regional local teams, taken the view that patients should therefore be able to access pharmaceutical services for at least the core hours provided by all contractors, unless specific circumstances justify a different approach.*”

- 2.14.2 Yet in their penultimate paragraph, NHS England state, “... *NHS England carefully considered whether appropriate circumstances existed that would provide the justification for a temporary change to core hours and found that this was not the case for the application...*”
- 2.14.3 I am of the opinion that NHS England made a blanket policy decision to refuse all applications for a change of core hours on Christmas Eve and did not consider any extenuating circumstances because (as they state in the last paragraph on page 3 of their letter) they were more interested in “*the impact on equality, with regards to all other pharmaceutical providers..*”
- 2.14.4 Equality between pharmaceutical providers for such applications should not be their prime consideration.
- 2.14.5 Interestingly, in their response, NHS England make no mention of our extenuating circumstances and why they dismissed them in favour of maintaining “*equality between providers*”.
- 2.14.6 As you will recall, the extenuating circumstances are that NHS England has approved the opening of a 100-hour pharmacy in the Tesco supermarket which is literally next door to the Kamsons Pharmacy which is the subject of this application. This Tesco Pharmacy has core hours until 10.30pm on 24th December 2018. NHS England make no mention whether Tesco even applied to amend their core hours on Christmas Eve but as the rest of the Tesco Store will be open until at least 7pm on Christmas Eve it appears unlikely that they would have applied to close before this time.
- 2.14.7 I understand that NHS England needs to ensure that a pharmaceutical service is available for patients. I understand that there needs to be some service availability on a Christmas Eve. However, I do not consider that there has been a change of circumstances this year which would require two next-door pharmacies to remain open after 6pm on 24th December. In my 25 years experience as a community pharmacist, I have never known anyone collect a repeat prescription, which was sitting in the pharmacy, after 4.30pm on a Christmas Eve. I do not consider that NHS England has fully considered the extenuating circumstances because if they had, then common sense would have prevailed and they would have allowed the approval of our application.
- 2.14.8 I respectfully ask that their decision is reconsidered by yourselves.
- 2.15 I note the following:
- 2.15.1 I note that the current core opening hours for the Premises are listed in the Applicant's application and total 40 hours per week.
- 2.15.2 I note that I have not been provided with any details in relation to the Applicant having any supplementary opening hours. I have therefore proceeded on the basis that there are no supplementary opening hours for the Premises.

2.15.3 I note that the Applicant seeks to close on Monday 24 December 2018 between 6pm and 7pm when it is usually open. This means that, if granted, the Premises will be open for a total of 39 hours in that week.

2.16 I note that NHS England has stated that it considers the Applicant's application to have been made under paragraph 23 of Schedule 4 of the Regulations, rather than paragraph 26(1) of Schedule 4 of the Regulations.

2.17 Paragraph 23(1) of Schedule 4 of the Regulations reads as follows:

*"An NHS pharmacist (P) must ensure that pharmaceutical services are provided at P's pharmacy premises—*

*(a) for 40 hours each week;*

*(b) for not less than 100 hours each week, in the case of premises in respect of which a 100 hours condition applies;*

*(c) if the NHSCB 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 fewer than 40 hours per week, provided that the person listed in relation to them provides those services at set times and on set days, at the times and on the days so set;*

*(d) if a Primary Care Trust, or on appeal the Secretary of State, has (under previous Regulations) directed that pharmaceutical services are to be provided at the premises for more than 40 hours per week, and at set times and on set days, at the times and on the days so set; or*

*(e) if the NHSCB 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—*

*(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,*

*but the NHSCB 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."*

2.18 Paragraph 26 of Schedule 4 of the Regulations reads as follows:

*"(1) An NHS pharmacist (P) may apply to the NHSCB for it to change the days on which or times at which P is obliged to provide pharmaceutical services 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 (but not those required under any 100 hours condition); or

(b) keeps that total number of hours the same.

(2) Where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of any changes to the needs of the people in its area, or other likely users of the pharmacy, for pharmaceutical services that are material to the application."

2.19 I note that the application form completed by the Applicant is entitled "Application to change core opening hours". This application form states:

*"Please provide information on the changes to the needs of people in the area of the Health and Well-being Board, or other likely users of the premises, for pharmaceutical services that have led to your application."*

2.20 It seems clear that the application form is designed to address the test set out in paragraph 26(2) of Schedule 4 of the Regulations (i.e. whether there has been a change in needs). This test does not apply to paragraph 23(1) of Schedule 4 of the Regulations. I also note that there is no apparent restriction in the Regulations which restricts an application made under paragraph 26 to temporary or one-off changes. I therefore consider the Applicant's application to have been made under paragraph 26 of Schedule 4 of the Regulations rather than paragraph 23 of Schedule 4 of the Regulations.

2.21 I have therefore considered paragraph 26(2) of Schedule 4 of the Regulations.

2.22 As such, for the purposes of determining an application in accordance with paragraph 26, it is necessary to consider whether there have been (or will be) changes in need which would warrant a change in the days, time and number of hours in respect of which the pharmacy is obliged to provide pharmaceutical services, as proposed by the Applicant in the application.

2.23 I note that the Applicant states that there is a Tesco Pharmacy which is located next door to the Premises, which, according to the Applicant, has a 100 hours contract and will be open later than 6pm on 24 December 2018, with it having core opening hours until 10.30pm on 24 December 2018. I also note that The Applicant states that "NHS England make no mention whether Tesco even applied to amend their core hours on Christmas Eve but as the rest of the Tesco Store will be open until at least 7pm on Christmas Eve it appears unlikely that they would have applied to close before this time." I note the Applicant's comments that patients using Tesco Pharmacy park in the same car park and walk up the same path as those using its pharmacy next door. However, I consider these comments to relate to the current provision of pharmaceutical services and not changes in needs of people in the area or likely users of the Premises.

2.24 I note that NHS England has stated that no information has been provided to show that there has been a change in the needs of local people for pharmaceutical services. NHS England's continues that "while there may be other pharmacies nearby which may still be open after 18:00 ... that would

not help patients who normally use this pharmacy and whose prescriptions and/or dispensed medications may be in the pharmacy.”

- 2.25 I note the Applicant states that “In my 25 years experience as a community pharmacist, I have never known anyone collect a repeat prescription, which was sitting in the pharmacy, after 4.30pm on a Christmas Eve.” The Applicant continues that if someone should require a prescription that was sitting in its pharmacy when it was closed, then its colleagues at the Tesco Pharmacy would provide an emergency supply until its pharmacy reopened on 27 December. However I note that no information has been provided to evidence a change in the needs of the people in the area or likely users of the Premises. I am also mindful that as well as dispensing prescriptions, a pharmacy provides other essential services in accordance with its terms of service such as advice. However I have not been provided with data regarding the demand for other such services or any change in need in relation to those services.
- 2.26 I note the Applicant's argument that “For about the last ten years, NHS England ... has approved all applications to close 40-hour-contract pharmacies at 6pm on Christmas Eve whether for core or supplementary hours.” However I am of the view that each application should be considered on its own merits. Therefore I take no view on previous decisions made by NHS England in this regard.
- 2.27 I note that the Applicant contends that NHS England's decision was made without considering each individual application and the different reasons for applying for different premises. In particular, the Applicant contends that “this is a decision that was made in accordance with a blanket policy decision and communicated by a “cut and pasted” generic letter rather than on consideration of the specific facts of this case”.
- 2.28 I note that NHS England has stated that it took the decision to refuse the application due to anticipated high pressures on the health service and that therefore it would only allow pharmacies to change their supplementary opening hours rather than core opening hours. This was on the basis that it considers the festive period to be a crucial time in respect of increased activity. It had therefore taken the view that patients should be able to access pharmaceutical services for at least core opening hours provided unless specific circumstances justify a different approach. NHS England state that it reached its decision to refuse the Applicant's application on the basis that no evidence had been provided by the Applicant to justify the reduction in its core opening hours.
- 2.29 I also note that NHS England has stated that it had taken into account the impact on equality with regards to all other providers of pharmaceutical services by allowing the change to the Applicant's core opening hours.
- 2.30 In the absence of any information to the contrary (either when NHS England considered the matter or on appeal), I have proceeded on the basis that there are no changes in relation to the needs of the people in the area, or other likely users of the pharmacy, for pharmaceutical services.

### 3. Determination

- 3.1 In light of the proposed changes and the lack of information available to me regarding changes to the needs of people in the area, or other likely users of the Premises, for pharmaceutical services, I am not satisfied that pharmaceutical services provision that would result from the Applicant's proposed hours would meet the needs of people in the NHS England area or other likely users of the pharmacy for pharmaceutical services on 24 December 2018.
- 3.2 The action taken by NHS England to refuse the application is confirmed.

**Business Services Manager  
Primary Care Appeals**