

25 February 2019

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DECISION MAKING BODY: **NHS COMMISSIONING BOARD
(NORTH – CUMBRIA AND
NORTH EAST)
("NHS ENGLAND")**

PHARMACIST: **WELCOME HEALTH PHARMACIES LTD**

FILE REF: **SHA/21040**

PREMISES: **SALTBURN PHARMACY
6 STATION STREET,
SALTBURN,
TS12 1AE**

Outcome

- 1.1 In light of the proposed changes and the lack of information available to me, 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.
- 1.2 The action taken by NHS England to refuse the application is confirmed.

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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]**

REDISTRIBUTION OF CORE OPENING 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 above premises. The Applicant seeks to keep the total number of 'core' hours the same while offering a different distribution of these hours during the week.
- 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).

Welcome Health Pharmacies Ltd t/a Saltburn Pharmacy proposals

- 2.9 The Applicant in its application indicates that it currently has core opening hours totalling 40 hours per week.

2.10 The Applicant wishes to:

2.10.1 Open between 8.30am and 12pm and then 2pm and 6pm, rather than open between 8.30am and 12pm and then 3pm and 6pm as usual.

2.10.2 Close on a Sunday, rather than open between 2 pm and 6 pm as usual.

Assessment

2.11 In this case, the Applicant provided the following information in his application (dated 11 September 2018)

2.11.1 This is an application to:

2.11.1.1 Permanently change core opening hours

2.11.2 Current core opening hours for these premises

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
08:30-12:00; 15:00-18:00	08:30-12:00; 15:00-18:00	08:30-12:00; 15:00-18:00	08:30-12:00; 15:00-18:00	08:30-12:00; 15:00-18:00	09:00-12:30	14:00-18:00	40hrs

2.11.3 Proposed core opening hours for these premises

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
08:30-12:00; 15:00-18:00	08:30-12:00; 14:00-18:00	08:30-12:00; 14:00-18:00	08:30-12:00; 14:00-18:00	08:30-12:00; 14:00-18:00	09:00-12:30	CLOSED	40hrs

2.11.4 This change will not affect any pharmaceutical services provided by the pharmacy to the people in the area of the Health and Well-being Board, or other likely users of the premises. The change in core hours is requested because hardly anyone comes to the pharmacy on Sunday. Sunday core hours were applied initially because of 'Urgent Care' in Redcar Primary Care Hospital. Since Redcar Primary Care Hospital has 'Clevechem Limited' pharmacy which opens on Sunday 9am – 4pm eliminates a need of 'Saltburn Pharmacy' opening on Sunday.

2.12 I note that in a letter to the Applicant dated 15 November 2018 NHS England stated:

2.12.1 The Pharmaceutical Services Regulations Committee (PSRC) considered your application under **Schedule 4, Part 3, Paragraph 26** of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and the requirements of the pharmacy manual, at its meeting held on 8 November 2018.

2.12.2 Members of the PSRC **refused** the application to amend core hours.

2.12.3 The rationale for the refusal was that the application does not address any changes to the needs of the people in the area or other likely users of the pharmacy. This therefore does not meet requirements of Schedule 4, Part 3, Paragraph 26 (2) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

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

2.12.4.1 Family Health Services Appeal Unit, 1 Trevelyan Square,
Boar Lane, Leeds, LS1 6AE

2.13 I note that in a letter to NHS Resolution dated 11 December 2018 the Applicant stated:

2.13.1 The Applicant is appealing the decision of Members of the PSRC who refused the application to amend core hours of Saltburn Pharmacy. ...

2.13.2 When the pharmacy originally opened in 2013 there was an NHS run GP practice located within Skelton Medical Centre on Bylands Road in Skelton. The practice operated as a walk-in centre providing out of hours care for patients in East Cleveland, and also as a GP surgery offering patients an alternative option within Skelton to the already established Hillside practice. At this time no other local pharmacy offered extended opening hours on a weekend, and in order to provide pharmacy services to those accessing the out of hours service in Skelton, the decision was made to include Sunday opening in the Saltburn Pharmacy contract application, which proved to be successful. During this time the Pharmacy would receive both walk-in trade and prescriptions for dispensing during the Sunday opening hours as it was the closest open Pharmacy to the practice. However, some time in 2015 the NHS decided to close the practice as it was deemed to be no longer financially sustainable. Since this time Saltburn Pharmacy has suffered a significant decline in Sunday business, with dispensed items reduced to zero on most Sundays and very little over the counter and retail trade. This has resulted in the Pharmacy operating at a significant loss on Sundays, which has been further impacted by NHS budget cuts including category M clawbacks, and as part of this original application, prescriptions and sales data has already been submitted to the local area team highlighting this critical issue.

2.13.3 In further support of this application the Applicant would also request [NHS Resolution] to take into an account that the closest Walk-in and Urgent Care out of hours service now operates out of Redcar Primary Care Hospital, located on West Dyke Road in Redcar. On site, the hospital has attached to a 100-hour Pharmacy, which adequately serves the Pharmaceutical needs of the patients using the services, and there is also another 100-hour pharmacy located within Tesco just a few minutes away on the same road. In terms of public accessibility to Pharmacy services on a Sunday, it is therefore apparent that these

two Pharmacies more than meet the needs of the patients requiring access to services outside of normal trading hours.

2.13.4 In light of this evidence it therefore requests that [NHS Resolution] reconsider its application to amend Saltburn Pharmacy's core opening hours to include being closed on a Sunday. The current economic climate means that the operating costs for a Sunday are becoming more and more difficult to meet, and the presence of two 100-hour pharmacies, which are ideally located to serve the needs of patients whom access out of hours services at Redcar, means that reduced opening hours at Saltburn Pharmacy would not negatively impact on patient care.

2.14 I note that in an email to NHS Resolution dated 29 January 2019 NHS England stated:

2.14.1 NHS England has no comments to make on this application.

2.14.2 NHS England provided a copy of the original application form together with a copy of its report to the Pharmaceutical Services Regulations Committee. I note within the report, it contained embedded documents including dispensing figures provided by the Applicant.

Extract from NHS England's report

2.14.3 Details of the Application

2.14.4 An application has been received from **Welcome Health Pharmacies Limited** on **12 September 2018** to amend the core opening hours at 6 Station Street, Saltburn, TS12 1AE ...

2.14.5 The applicant is a 40 hour pharmacy that currently operates 4 core hours on a Sunday from 2pm till 6pm.

2.14.6 It is proposed that these core hours are removed allowing the pharmacy to close all day on a Sunday, and are redistributed throughout the week Tuesday to Friday 2pm to 3pm.

2.14.7 Advanced and Enhanced services

2.14.8 The pharmacy currently carries out the following advanced services;

2.14.8.1MUR

2.14.8.2NMS

2.14.9 NHS England do not currently commission any enhanced services at the pharmacy.

2.14.10Rationale for Application

2.14.11The applicant has requested to change core hours due to lack of footfall and trade. ...

2.14.12Assessment of the Application against the NHS Pharmaceutical regulations 2013 ...

2.14.13The pharmacy is already offering pharmaceutical services during this period of 2pm to 3pm under contracted supplementary hours. Should the application be successful these supplementary hours would be withdrawn and replaced with core hours.

2.14.14A month's dispensing figures and over the counter sales for these opening times have been provided as in the table below. ...

2.14.15**Table 1**

Day	Date	Prescriptions dispensed	OTC Sales
Sunday	5/8/2018	2	121.55
Sunday	12/8/2018	1	119.99
Sunday	19/8/2018	3	125.70
Sunday	26/8/2018	2	128.65

2.14.16The assessment of the dispensing figures concludes that both dispensing and OTC sales data demonstrate low patient numbers currently accessing the pharmacy during the times that the pharmacy is proposing to remove core hours.

2.14.17In summary, in assessment of changes to days or times of which pharmaceutical services are offered, should the application be approved there would be no change to the pharmacy weekday opening hours. Pharmaceutical provision would remain the same covered by core hours rather than the current supplementary hours, however Sunday provision would be removed.

2.14.18The lead officer's assessment of regulation 26(1) is that the proposed core hours will meet the required 40 core hours per week.

2.14.19**Schedule 4, Part 3, Paragraph 26 (2) - changes to the needs of the people in the area or other likely users of the pharmacy?**

2.14.20Where a pharmacist makes an application under regulation 26 they must provide details of any changes to the needs of the people in its area, or other likely users of the pharmacy, for pharmaceutical services.

2.14.21The applicant has not referenced any specific changes to the needs of the people in the area or other likely users of the pharmacy. Instead the application notes that *"this change will not affect any pharmaceutical services provided by the pharmacy to the people in the area of the Health and Well-being Board, or other likely users of the premises"*.

2.14.22No assessment can be made of paragraph 26 (2) as applicant has not highlighted any changes to the needs of the people in the area. ...

2.14.23**Access to Services**

2.14.24In order to consider the application any needs, improvements or better access must be considered

2.14.25 **Local Pharmacy Services**

2.14.26... There is only 1 pharmacy within a 1 mile radius of the applicant – 0.4miles.

2.14.27 This pharmacy does not offer pharmaceutical services on a Sunday.

2.14.28 The closest pharmacy that offers Sunday services is located 4 miles from the applicant, this is a 100 hour pharmacy as detailed below;

2.14.28.1 Clevechem Limited; Redcar Primary Care Hospital (Redcar PCH), West Dyke Road, Redcar, TS10 4NW

2.14.29 The applicant states in their application statement that “Redcar Primary Care Hospital has ‘Clevechem Limited’ pharmacy which opens on Sunday 9am – 4pm eliminates a need of Saltburn Pharmacy opening on Sunday”

2.14.30 The lead officer’s assessment of this statement would be that a Clevechem is 4 mile journey and close at 4pm on a Sunday. The applicant currently opens until 6pm. If the application is approved there would be no pharmaceutical services in the areas between 4pm and 6pm.

2.14.31 It is also noteworthy to mention that when the application to join the pharmaceutical list was made by the previous owner of Saltburn Pharmacy (SKZ Limited), the 100 hour pharmacy at Redcar PCH was already an active pharmacy. The application for inclusion was approved based on offering these additional Sunday hours therefore were deemed a necessary addition to the area.

2.14.32 **Local GP Surgeries**

2.14.33... There are 2 GP surgeries located within 1 mile from the applicant.

2.14.34 Neither of the GP surgeries offers appointments on a Sunday.

2.14.35 It is noteworthy that there is an out of hours service hub located at Redcar Primary Care Hospital W Dyke Rd, Redcar TS10 4NW. This offers appointments 6.30pm – 9.30pm in the evenings (Monday to Friday), and 8am - 9.30pm weekends and bank holidays.

2.14.36 **Middlesbrough Pharmaceutical Needs Assessment**

2.14.37 The Redcar and Cleveland Pharmaceutical Needs Assessment was published in April 2018. This highlights the following;

2.14.37.1 Page 8 (1.3) – Having regard to all the relevant factors (including the opening times of the GP extended hours access hubs) and future needs, it is considered that: - the general location in which the current pharmaceutical services are provided, including the days of the week and times at which these services are provided are **necessary** to meet the current and likely future pharmaceutical needs for Essential services in all localities of the Redcar and Cleveland HWB area.

2.14.37.2Page 9 (1.3) - identifies the opportunity for **improvements or better access** between 4pm and 9.30pm on a Sunday - 'there is potential for the existing contractors to provide improvement or better access to pharmaceutical services (opening hours) within the HWB area to support meeting any corresponding pharmaceutical need for patients attending the GP extended hours access hubs between 4.00pm and 9.30pm on a Sunday'.

2.14.37.3Page 76 (8.2.6) – 'Saltburn Pharmacy, approximately 3 miles from Brotton opens on Saturday between 9.00am and 5.00pm and on a Sunday between 12 noon and 6.00pm. This provision improves access and choice for resident population of the East Cleveland population and for patients accessing the Brotton GP extended access hub.'

2.14.37.4Page 132 (11.2.2.4) - The addition of a pharmacy in Saltburn in this locality since the 2011 PNA has improved access and provided additional choice to patients/public in this locality, particularly on a Sunday between 12 noon and 6pm. Taking into account all of the information presented throughout and potential future needs, there is no gap i.e. no identified need for any additional provider in this locality. Satisfactory access and choice is available often within short distances other than after 4.00pm on a Sunday when only one pharmacy is open in Saltburn and only until 6pm.

2.14.38In summary the PNA is reliant on the Sunday core hours currently offered by the applicant to meet the pharmaceutical needs and ensure no gap in provision within Redcar and Cleveland and the lead officer would endorse this position. ...

2.14.39Recommendations

2.14.40Based upon the above assessment against the 2013 Regulations, the officer recommends that the Pharmaceutical Services Regulations Committee **refuse** application.

2.14.41The rationale for this recommendation is the following;

2.14.42The application does not address any changes to the needs of the people in the area or other likely users of the pharmacy. This therefore does not meet requirements of Schedule 4, Part 3, Paragraph 26 (2) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The PNA indicates that pharmaceutical services are needed during this time with no changes to the patient needs in the area.

2.15 I note that in a letter to NHS Resolution dated 12 February 2019 the Applicant stated:

2.15.1 As it has mentioned in its previous correspondences, there are already two 100-hour pharmacies which open Sundays to cater the needs of the patients requiring access to services outside of normal trading hours in the area.

- 2.15.2 It agrees these pharmacies shut at 4pm and Saltburn Pharmacy shuts at 6pm. However, there is no footfall after 2pm in Saltburn Pharmacy. It does not get a single Prescription to dispense or Over the Counter query/sale. Please trust the Applicant on this. Therefore, it is financially impossible to run on Sundays especially after NHS funding cuts. Moreover, the situation has now gone more than worse after the latest NHS funding cuts which were started in last year Nov 2018.
- 2.15.3 It would not have any problem opening on Sundays if patients' needs are not covered and enough business is present to be proven fruitful. Because of immense funding cuts and no means to generate any revenue to support Sunday openings the company has been struggling to be opened on Sundays and facing considerable loss every week for very long time.
- 2.15.4 It will be highly obliged if [NHS Resolution] allow the Applicant to shut on Sundays. Please trust it on that the patients' needs and accessibility to the services will be not be hindered in any circumstances by Saltburn Pharmacy been shut on Sundays. It is only trying to do what NHS did in 2015 by closing the GP practice located within Skelton Medical Centre on Bylands Road in Skelton because it was not financially sustainable for NHS to run any more. This GP practice was the only reason Saltburn Pharmacy got their Sunday openings. The pharmacy still has kept their Sundays on even though the practice was shut ages ago which proves that it is there for the community however presence of no business in terms of Prescriptions and Over the Counter sales proves that the community does not really need Saltburn Pharmacy Sunday Openings any more.
- 2.15.5 In this tougher economic environment, your community pharmacy needs your support and help.
- 2.16 I note the following:
- 2.16.1 the Applicant's total core opening hours total 40 hours and the Applicant seeks to change the days on which and times at which it is obliged to provide pharmaceutical services at its pharmacy premises while keeping the total number of 'core' hours the same.
- 2.16.2 The Applicant wishes to:
- 2.16.2.1 Open between 8.30am and 12pm and then 2pm and 6pm, rather than open between 8.30am and 12pm and then 3pm and 6pm as usual.
- 2.16.2.2 Close on a Sunday, rather than open between 2 pm and 6 pm as usual.
- 2.17 I have first considered paragraph 26(2) of Schedule 4 of the Regulations, which reads as follows:
- "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."

- 2.18 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.
- 2.19 I note that NHS England has stated that the application does not address any changes to the needs of the people in the area or other likely users of the pharmacy.
- 2.20 I note the Applicants comments that when the pharmacy originally opened, there was an NHS GP practice located within Skelton Medical Centre that operated as a walk-in centre providing out of hours care for patients in East Cleveland. The Applicant contends that "This GP practice was the only reason Saltburn Pharmacy got their Sunday openings." As that GP practice has now closed, its pharmacy has suffered a significant decline in Sunday business. The Applicant also states that there is "no footfall after 2pm in Saltburn Pharmacy". However, I note from the data provided in relation to dispensing figures and OTC sales, it appears that although low in numbers, there is some need for pharmaceutical services on a Sunday when the Applicant is wishing to close. I also note that the data provided has not been broken down further into times of day at which services were provided. 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.
- 2.21 I also note in its decision report, NHS England provides information in relation to existing pharmacies in the area. NHS England states that the closest pharmacy that offers Sunday services is Clevechem which is located 4 miles from the Applicant's pharmacy and opens between 9am and 4pm. The Applicant also refers to a second 100 hour pharmacy located within Tesco just a few minutes away on the same road. From the information provided, it appears as though the Applicant is referring to the same road as Clevechem Pharmacy, which is located on West Dyke Road in Redcar. The Applicant continues that "In terms of public accessibility to Pharmacy services on a Sunday, it is therefore apparent that these two Pharmacies more than meet the needs of the patients requiring access to services outside of normal trading hours". However I consider that, apart from the hours that Clevechem Pharmacy is open and the distance to Clevechem pharmacy, the Applicant has not provided me with any information to support the contention that patients could reasonably access services there or elsewhere.
- 2.22 I note that the Applicant refers to those patients accessing the out of hours service in Skelton, however no information has been provided regarding patients from elsewhere who are in Saltburn for example, who may require services other than after a visit to the Out of Hours service.
- 2.23 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. Indeed, the

evidence suggests that there is in fact a need for pharmaceutical services during the hours which the Applicant is currently obliged to provide those services.

3. Determination

3.1 In light of the proposed changes and the lack of information available to me, 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.

3.2 The action taken by NHS England to refuse the application is confirmed.

Head of Primary Care Appeals