

4 March 2021

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**FILE REF:** SHA/24446

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

**PHARMACIST:** LLOYDS PHARMACY LTD ("the Applicant")

**PREMISES:** 40 BERRY LANE  
LONGRIDGE  
PRESTON  
PR3 3JJ

## 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]**

**AMENDMENT TO 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' opening 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 for Health and Social Care ("the Secretary of State").
- 2.2 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 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 right of appeal to NHS Resolution in respect of notices given under paragraph 23(6)(a).

Lloyds Pharmacy Ltd.’s proposals

2.9 The Applicant in its letter of appeal indicates that it currently has core opening hours totalling 40 hours per week.

2.10 The Applicant’s current core opening hours are:

<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>	<b>Saturday</b>	<b>Sunday</b>
0900-1300	0900-1300	0900-1300	0900-1300	0900-1300	0900-1030	None
1430-1800	1430-1800	1430-1800	1430-1800	1430-1800	1600-1700	

2.11 The Applicant’s proposed core opening hours are:

<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>	<b>Saturday</b>	<b>Sunday</b>

0900-1300 1430-1800	0900-1300 1430-1800	0900-1300 1430-1800	0900-1300 1430-1800	0900-1300 1500-1800	0900-1200	None
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*Assessment*

2.12 In this case, the Applicant provided the following information in its application dated 10 August 2020:

2.12.1 The Applicant's pharmacy FXP51 at Longbridge is a very small pharmacy. It has a very small sales area (approximately 27sq. metres) and as a result the Applicant has a very limited range of retail products and over the counter medicines. [Photograph provided]

2.12.2 The Pharmacy primarily serves the Berry Lane Medical Centre which is almost opposite. The Surgery does not open Saturday afternoon and closes at 12pm, although it has been closing earlier recently. The Applicant does not experience demand for pharmaceutical services after this time and due to the limited range of products (influenced by the size of the pharmacy) there is no longer a need for the pharmacy to be open all day Saturday. The Stonebridge Surgery in Longridge (where Well Pharmacy is situated) also only has appointments until 10:30.

2.12.3 On Saturday the Applicant currently has supplementary hours between 10:30 and 16:00 on Saturday. The Applicant submits the proposed change in core hours is only to remove one core hour between 16:00 and 17:00 but it will see additional core hours on Saturday from 10:30 to 12:00. These additional core hours are more relevant to the needs of patients as they relate to the normal opening hours of the Berry Lane Surgery and will ensure that patients retain access over this time.

2.13 I note that in an email to the Applicant dated 26 October 2020 NHS England stated:

2.13.1 The application for FXP51 was discussed at PSRC on 9 October and the committee unfortunately made the decision that the changes to core hours is **not approved** as they did not feel the change would meet patient needs.

2.13.2 The branch's hours will remain as below on the pharmaceutical list:

Current Opening Hours			
Day	Core Hours	Supplementary Hours	Total Opening Hours
Monday	09:00-13:00 14:30-18:00	13:00-14:30	09:00-18:00
Tuesday	09:00-13:00 14:30-18:00	13:00-14:30	09:00-18:00
Wednesday	09:00-13:00	13:00-14:30	09:00-18:00

	14:30-18:00		
Thursday	09:00-13:00 14:30-18:00	13:00-14:30	09:00-18:00
Friday	09:00-13:00 14:30-18:00	13:00-14:30	09:00-18:00
Saturday	09:00-10:30 16:00-17:00	10:30-16:00	09:00-17:00
Sunday	Closed	Closed	Closed

2.14 I note that in a letter to NHS Resolution dated 25 November 2020 the Applicant stated:

2.14.1 The only reason provided in the decision is that NHS England “made the decision that the changes to core hours is not approved as they did not feel the change would meet patient needs”. NHS England made no attempt to address the reasons the Applicant provided in the application.

2.14.2 The Applicant’s pharmacy FXP51 at Longbridge is a very small pharmacy. It has a very small sales area (approximately 27sq. metres) and as a result the Applicant has a very limited range of retail products and over the counter medicines. [Photograph provided]

2.14.3 The Pharmacy primarily serves the Berry Lane Medical Centre which is almost opposite. The Surgery does not open Saturday afternoon and closes at 12pm, although it has been closing earlier recently. [Map and screenshots of surgery opening hours and details provided]

2.14.4 The Applicant does not experience demand for pharmaceutical services after this time and due to the limited range of products (influenced by the size of the pharmacy) there is no longer a need for the pharmacy to be open all day Saturday. The Stonebridge Surgery in Longridge (where Well Pharmacy is situated) also only has appointments until 10:30. [Screenshot of Well Pharmacy details provided]

2.14.5 Well Pharmacy is only 500 metres from the Applicant’s premises and is open 09:00-13:00 on Saturday and provides no fewer services. [Map provided]

2.14.6 The nearest extended hours pharmacy is M X Pharmacy on the Longridge Road. This is 100-hour pharmacy licence and is open 7 days week. At weekends it is currently open 07:30-21:30 Saturday and Sunday. This pharmacy is approximately 4 miles from Longridge but on a direct route into the village. M X Pharmacy can be easily accessed by car and there is a direct bus route 1 every 12 minutes [timetable and route map provided]. Bus stops are close to each premises.

2.14.7 M X Pharmacy provides the same services provided by Lloyds Pharmacy (Longridge) as well as additional services as listed below from NHS.UK [Screenshots of services provided by M X Pharmacy and Lloyds Pharmacy provided]

- 2.14.8 On Saturday the Applicant currently has supplementary hours between 10:30 and 16:00 on Saturday. The Applicant submits the proposed change in core hours is only to remove one core hour between 16:00 and 17:00 but it will see additional core hours on Saturday from 10:30 to 12:00. These additional core hours are more relevant to the needs of patients as they relate to the normal opening hours of the Berry Lane Surgery and will ensure that patients retain access over this time.
- 2.14.9 In summary the Applicant proposes these core hours to reflect the change in needs of patients and it does not believe it will lead to any gaps in provision. Notwithstanding this there are other pharmacies in the vicinity that meet the requirements of any extended hours provision.
- 2.15 I note that in an email to NHS Resolution dated 11 December 2020 NHS England stated:
- 2.15.1 [NHS England] is advised that this was a request for a permanent change of hours. It was not a temporary request or lead to a reduction [sic], but a rearrangement of opening times.
- 2.15.2 [Provided] is the decision confirmation to the Applicant and below is the outline of the deliberation from the PSRC Minutes – 9 October 2020.
- 2.15.3 *“FXP51 – Lloyds Pharmacy, 40 Berry Lane, Longridge, PR3 3JJ*
- 2.15.4 *Change to Saturday hours. Change to core hours to be 9am-12pm.*
- 2.15.5 *The Committee noted there is a 100-hour contractor based 4.1 miles away; it was agreed this was a long way from the pharmacy but would be available if required urgently.*
- 2.15.6 *JF commented that the stakeholder views were very general and not specific to this particular application.*
- 2.15.7 *The Committee agreed there is a risk with the change that the contractor could remove all supplementary hours in the future, reducing services further, the consequences of which must be considered. The Committee did not feel the service would meet patient needs in that event.*
- 2.15.8 *It was also agreed that 4.1 miles to the nearest 100-hour would constitute a barrier to patients.*
- 2.15.9 ***Decision – not approved.”***
- 2.16 I note that in a letter to NHS Resolution dated 20 January 2021 the Applicant stated:
- 2.16.1 NHS England has not provided any further commentary around the content of the appeal. The Applicant notes they have provided the minutes to the original decision.
- 2.16.2 NHS England acknowledge the 100 hours pharmacy would be available if required urgently. The Applicant also provided details of how to access this pharmacy by public transport in its appeal which involves a direct bus service at a frequency of every 12 minutes it would therefore not take long to travel the 4 miles distance. It is likely however, if this was required, most would travel by car. Access to the 100-hour pharmacy is the same whether the application is approved or not. The Applicant therefore disputes NHS England’s conclusion that the distance is a barrier to access.

- 2.16.3 NHS England has concerns about future changes to supplementary hours. This is not part of the application to be considered. The pharmacy already had some supplementary hours, and these could be changed with 3-month notice.
- 2.16.4 The Applicant submits it has provided evidence in the application these core hours reflect the change in needs of patients, and it does not believe it will lead to any gaps in provision. Notwithstanding this there are other pharmacies in the vicinity that meet the requirements of any extended hours provision.
- 2.17 I note the following:
- 2.17.1 The Applicant's total core opening hours are 40 hours and the Applicant seeks to change the days on which or times at which the Applicant is obliged to provide pharmaceutical services at its pharmacy premises in a way that keeps the total number of hours for which the Applicant is obliged to provide pharmaceutical services the same.
- 2.17.2 The Applicant currently provides services for 2 ½ hours on Saturdays between 9am and 10:30am and 4pm and 5pm. It seeks to close between 4pm and 5pm on Saturdays and also 2.30pm and 3pm on Fridays and instead open between 9am and 12pm on Saturdays. The proposed core opening hours are as noted at 2.11 above.
- 2.18 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."*
- 2.19 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.
- 2.20 I note the Applicant states that its pharmacy is very small, with a small sales area and a limited range of retail products and over the counter medicines. The Applicant further states that the pharmacy primarily serves the nearby Berry Lane Medical Centre, which closes at 12pm on a Saturday, and has been closing earlier recently. I note the Applicant's comment that it does not experience demand for pharmaceutical services after this time and that there is no longer a need for the pharmacy to be open all day Saturday due to the limited range of products.
- 2.21 I note the Applicant has provided details of Well Pharmacy which it states is located 500 metres from the Applicant's pharmacy and opens 9am to 1pm on Saturdays providing no fewer services than the Applicant. The Applicant further states that M X Pharmacy on Longridge Road is a 100 hour pharmacy which is open 7:30am to 9:30pm Saturday and Sunday and is approximately 4 miles from Longridge. The Applicant states that this pharmacy can be easily accessed by car, with a direct bus route available every 12 minutes. I note that the outline of the deliberation from the PSRC Minutes dated 9 October 2020 indicated NHS England's view that *"4.1 miles to the nearest 100 hour would constitute a barrier to patients"*. Whilst noting that the Applicant disputes this view, I am mindful of the need to consider those, for example, with protected characteristics, who may indeed find such a journey a barrier.
- 2.22 I note that NHS England's decision stated that it did not feel that the change would meet patient needs. Whilst the Applicant contends that it has *"provided evidence in the application these core hours reflect the change in needs of patients"* and has

commented that it does not experience a demand for services on Saturday afternoons, I note that no supporting information has been provided in this regard. I do not consider that any information has been provided to indicate that this evidences a change in the needs of the people in the area for pharmaceutical services. 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.

2.23 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.

### 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 Operations, Primary Care Appeals**