

10 November 2022

8<sup>th</sup> Floor  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

**FILE REF:** SHA/25757

Tel: 0203 928 2000  
Email: nhsr.appeals@nhs.net

**DECISION MAKING BODY:** NHS ENGLAND  
(MIDLANDS (NORTH MIDLANDS) AREA  
TEAM)

**PHARMACIST:** ROAN HEALTHCARE LTD  
("the Appellant")

**PREMISES:** THE MEDICINE BOX  
LOUGHBOROUGH UNIVERSITY  
STUDENTS UNION  
ASHBY ROAD  
LOUGHBOROUGH  
LE11 3TT

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL  
SERVICES) REGULATIONS 2013**

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]  
PART 3 [Hours of Opening]**

**1 Outcome**

1.1 The appeal is granted and, pursuant to paragraph 25(3)(c)(ii), no direction is issued.

A copy of this decision is being sent to:

Roan Healthcare Ltd t/a The Medicine Box  
NHS England – Midlands (North Midlands) Area Team

---

**Advise / Resolve / Learn**

NHS Resolution is the operating name of NHS Litigation Authority – we were established in 1995 as a Special Health Authority and are a not-for-profit part of the NHS. Our purpose is to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care. To find out how we use personal information, please read our privacy statement at <https://resolution.nhs.uk/privacy-cookies/primary-care-appeals/>



**FILE REF:** SHA/25757

8<sup>th</sup> Floor  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

**DECISION MAKING BODY:** NHS ENGLAND  
(MIDLANDS (NORTH MIDLANDS) AREA  
TEAM)

Tel: 0203 928 2000  
Email: nhsr.appeals@nhs.net

**PHARMACIST:** ROAN HEALTHCARE LTD  
("the Appellant")

**PREMISES:** THE MEDICINE BOX  
LOUGHBOROUGH UNIVERSITY  
STUDENTS UNION  
ASHBY ROAD  
LOUGHBOROUGH  
LE11 3TT

**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]**

**DIRECTION OF ADDITIONAL CORE OPENING HOURS**

**1 Introduction**

- 1.1 Relying on Paragraph 25 of Schedule 4, NHS England has requested that the Appellant open from 10 am to 12 noon on Sunday 25 December 2022.
- 1.2 The Appellant seeks to appeal to NHS Resolution.

**2 Consideration**

***Rights of appeal***

- 2.1 Where NHS England has directed a pharmacist to provide pharmaceutical services for its premises at set times and on set days in accordance with paragraph 25 of Schedule 4 of the Regulations, paragraph 25(7) 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 (days on and times at which the pharmacy is obliged to be open), which may incorporate a direction of NHS England requiring fewer or greater than 40 hours; or
- 2.3.2 'supplementary' opening hours (other days on and times at which the pharmacy undertakes to provide pharmaceutical services, as notified to NHS England).

*Alteration of 'core' (including 'directed') opening hours*

- 2.4 In accordance with paragraph 1(7)(c) of Schedule 2 to the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list, the proposed core opening hours in respect of the premises during which it will be obliged to provide pharmaceutical services under paragraph 23(1) of Schedule 4 to the Regulations. These may be subject to a direction under paragraph 23(1)(c), (d) or (e)

*Alteration of 'supplementary' opening hours*

- 2.5 Other days or times at which services are to be provided (as set out in the original application for entry in the pharmaceutical list pursuant to paragraph 23(3) of Schedule 4 as "supplementary hours") may be altered by giving notice to NHS England, in accordance with paragraph 23(6)(a) without the need to make an application.
- 2.6 Notices under paragraph 23(6)(a) are not subject to review by NHS Resolution

*NHS England's Request*

- 2.7 NHS England wishes the Appellant to open from 10 am to 12 noon on Sunday 25 December 2022, a day on which it would otherwise be closed.

*Information provided by parties*

- 2.8 In a letter to the Appellant dated 10 August 2022, NHS England stated

"We have concluded our assessment as to whether to issue a direction pursuant to paragraph 25(1) of Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended and have issued the enclosed direction.

Your core opening hours on Sunday 25 December 2022 are therefore: 10:00 – 12:00

The reasons for directing the above pharmacy to open are:

There has been no voluntary offer of pharmacy provision in the Loughborough area to meet the needs of people living in the area on 25 December 2022. We have reviewed which pharmacies have opened on previous bank holidays to ensure that directing pharmacies to open has taken place on a fair share basis.

Please be advised that the level of remuneration for Christmas Day – 25 December 2022, will be £244.00 per hour for a maximum of 2 hours.

You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: [appeals@resolution.nhs.uk](mailto:appeals@resolution.nhs.uk) or Primary Care Appeals, 4th Floor Arena Point, Merrion Way Leeds LS2 8PA."

If you have any questions, please do not hesitate to contact me."

- 2.9 In an email to NHS Resolution dated 6 September 2022 the Appellant stated:

“We are appealing the decision to be directed to open on Christmas Day 2022 for the following reasons, (based on 35 years of retail pharmacy experience):

We are based on a University Campus and our stock reflects the prescribing requirements of our local 18–25- year- old population i.e. acne, contraception, sport injuries etc... So, on Christmas Day over a long holiday weekend, we will probably have ordinary people from the whole county expecting a complete pharmaceutical service i.e. controlled drugs, palliative care, medication for the elderly population, antibiotics for babies etc. We don't carry this stock. The cost of this stock in order to prepare would be thousands of pounds which we don't have. So, unless you are willing to provide funds in order to obtain additional stock, people are sadly not going to obtain the level of service required.

We are located on a closed University Campus complete with security gates and fences. On Bank holidays the University will be closed, the gates will only open if your number plate is registered with the security cameras. However pedestrian access is available.

If we can access our unit, we still will not have access to toilets and other facilities such as hot water since the main building will be closed. Also, if our network fails or VOIP phone lines stop the University IT staff are not available.

We have not offered to open on Bank Holidays in the past for these very reasons. We have over the last decade built up very good reputation in our local community which is reflected by our high rating in our online reviews, we cannot jeopardise our reputation by being put in a situation where we cannot provide the very best care available.”

2.10 In a letter to NHS Resolution dated 21 September 2022 NHS England stated:

“Thank you for your letter dated 8<sup>th</sup> September 2022; NHS England would like to make the following representations.

NHS England requests, under paragraph 35(3)(b), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, that pharmacies provide their Bank and public holiday opening times information.

This information is required for NHSE to plan pharmacy provision during holiday periods. The bank holiday opening hours of pharmacies are also communicated to pharmacies, Integrated Care Boards, Out of Hours medical providers and local media to enable signposting and to provide access for patients.

NHSE contacted all pharmacies within the area of Loughborough on the 23<sup>rd</sup> May 2022 requesting Expressions of Interest to ensure service provision was provided on Christmas Day 2022. Unfortunately, NHSE received no expressions of interest in the Loughborough area.

A review of pharmacies in Loughborough was undertaken and identification was made of those pharmacies who had opened on Christmas Day and Easter Sunday in previous years, alongside those that had not. This enabled NHSE to plan to direct Roan Healthcare, T/A The Medicine Box (FL473) after considering all the options available to NHSE.

As you are able to see from the map (at Appendix A), Roan Healthcare, T/A The Medicine Box (FL473) is just a short walk away from the urgent care centre and is also within a central location of Loughborough with residents able to easily find the location. It is a 4 minute drive to the contractor from the urgent care centre.

Failing to provide pharmaceutical services on Christmas Day would result in the Loughborough and surrounding populations not having access to pharmaceutical

provision on this day including those that are attending the urgent care centre within the town.

The LPC were consulted on 22<sup>nd</sup> June 2022, outlining NHSE plans for Christmas Day directions across the Leicestershire ICS footprint. During dialogue with [R O], the chief officer for LLR LPC contacted NHSE on 30<sup>th</sup> June 2022 saying that The Medicine Box (FL473) would not be able to open as the University will be closed and that they would have trouble with stock as they only stock to serve the student community, not the general public.

NHSE replied to this e-mail on the 1<sup>st</sup> July 2022 advising the LPC that there is no “special” contract for contractors that open on a university campus. That the contract is the same as any other community pharmacy contract and confirmed that arrangements would have to be made to open with the university. The LPC was advised that NHSE would go ahead with the proposal to direct.

A proposal to direct letter was sent to the contractor on 6<sup>th</sup> July 2022, the letter informed the pharmacy that NHS England had failed to secure pharmacy provision in the Loughborough area on Sunday 25<sup>th</sup> December 2022.

The contractor was given 30 days to provide representations against the proposal. The contractor did not provide representations.

A further direction letter was sent to The Medicine Box (FL473) on the 10<sup>th</sup> August, the letter informed the contractor that they had 30 days in which to appeal the direction.

In reference to the points made in the appeal from The Medicine [sic] Box (FL473) which I have included below, NHSE would like to make the following representation in relation to each point.

TMB [The Medicine Box]

*“We are based on a University Campus and our stock reflects the prescribing requirements of our local 18–25- year- old population i.e. acne, contraception, sport injuries etc... So, on Christmas Day over a long holiday weekend, we will probably have ordinary people from the whole county expecting a complete pharmaceutical service i.e. controlled drugs, palliative care, medication for the elderly population, antibiotics for babies etc. We don't carry this stock. The cost of this stock in order to prepare would be thousands of pounds which we don't have. So, unless you are willing to provide funds in order to obtain additional stock, people are sadly not going to obtain the level of service required.”*

Whilst based on a university campus and trying to stock for the immediate users of the pharmacy, this would be the same of any community pharmacy across the country with some stocking more of some product than others to ensure that the local population is able to access the prescriptions needed. NHSE do not believe this business model should exempt a contractor from being directed to open on Christmas Day and believe given the location and close proximity to the urgent care centre in Loughborough, this makes The Medicine Box (FL473) a suitable candidate for selection. NHSE dispute the comment of having people from all over the country accessing the pharmacy on Christmas Day as this is likely to be residents that find themselves in urgent need of assistance. In reference to controlled drugs and palliative care, measures should be put in place by those who have due care to ensure those that need this medication will have sufficient supplies over the Christmas period. Palliative Care is a nurse lead service in the LLR footprint for example.

I would also like to draw attention to the signed SLA document (attached at Appendix B) which is an agreement between NHSE and the contractor agreeing to the provision of supplying the emergency supply service.

This is a service that provides out of hours access to medicines should a patient run out for any reason which would suggest that stock would need to be available to be able to provide this service.

Within the SLA it states it is an out of hours service for when the GP surgery is closed and is available 6.30pm-8am Mon – Thursday and Friday 6.30pm-8am and on bank holidays. This would also suggest that there is not access issues on periods such as bank holidays.

The contractor has been signed up to this service since April 2020.

Whilst NHSE cannot advise on the contractor's delivery model and the stock they hold, NHSE can confirm that the period of opening time would be for 2 hours only which will hopefully alleviate any concern over the volume of patients.

TMB [The Medicine Box]

*"We are located on a closed University Campus complete with security gates and fences. On Bank holidays the University will be closed, the gates will only open if your number plate is registered with the security cameras. However pedestrian access is available."*

NHSE appreciate that measures will have to be put in place for the public to access the contractor's premises and NHSE believe enough time has been given for this provision to be put into action. Whilst there may be limited access to vehicles, there is ample parking on the nearby streets with no limitation on pedestrian access. NHSE have provided a map below detailing the nearby streets.

[LE11 5JY to le11 3tt](#) – Search (bing.com)  
emergency supply service until March 2023

TMB [The Medicine Box]

*"If we can access our unit, we still will not have access to toilets and other facilities such as hot water since the main building will be closed. Also, if our network fails or VOIP phone lines stop the University IT staff are not available."*

Contractors are required to be able to access the premises and should have a separate entrance to any organisation they reside in. This is part of the terms of service that all contractors abide by. NHSE cannot comment on the lack of toilet facilities within the contractor's premises, however given the contractor is based within a public accessible building, believe that toilet facilities will be available within the campus.

Regarding network failures, this may be the case for any contractor that is directed for Christmas Day opening and is beyond the gift of NHSE or the local staff.

Whilst NHSE acknowledge the representations presented by Roan Healthcare Limited T/A The Medicine Box (FL473), NHSE believe the decision to direct the contractor should be upheld.

The patients have been at the forefront of all decisions made leading up to this point and at this late stage a decision not to uphold the direction would leave a significant gap in provision for Loughborough and the surrounding areas on Christmas Day 2022 given the timelines needed for another contractor to be selected for direction (5-6months)."

- 2.11 No observations were made by the Appellant in response to the representations from NHS England.

## Assessment

2.12 I have considered paragraph 25 of Schedule 4 (Determination of pharmacy premises core opening hours instigated by the NHSCB), which reads as follows:

1. *Where it appears to the NHSCB, after consultation with or having considered the matter at the request of the Local Pharmaceutical Committee for the area in which the premises are situated, that the days on which or times at which pharmacy premises are or are to be open for the provision of pharmaceutical services will not, or no longer, meet the needs of—*

- (a) *people in its area; or*
- (b) *other likely users of the pharmacy premises,*

*for the pharmaceutical services available at or from those premises, it must carry out an assessment as to whether to issue a direction requiring the NHS pharmacist (P) whose premises they are to provide pharmaceutical services at the pharmacy premises at set times and on set days (which may include Christmas Day, Good Friday and bank holidays).*

2. *Before concluding the assessment under sub-paragraph (1) the NHSCB must—*

- (a) *give notice to P of any proposed changes to the days on which or times at which the pharmacy premises are to be open; and*
- (b) *allow P 30 days within which to make written representations to the NHSCB about the proposed changes.*

3. *When it determines the outcome of its assessment, the NHSCB must—*

- (a) *issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs (4) and (5);*
- (b) *confirm any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises, provided that the existing direction (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub-paragraphs (4) and (5); or*
- (c) *either—*
  - (i) *revoke, without replacing it, any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations), or*
  - (ii) *in a case where there is no existing direction, issue no direction,*

*in which case, by virtue of whichever of paragraph 23(1)(a) or (b) applies, the pharmacy will need to be open for 40 hours each week or for at least 100 hours each week.*

4. *Where the NHSCB issues a direction under sub-paragraph (3) in respect of pharmacy premises that are to be required to be open—*

- (a) *for more than 40 hours each week, it must set out in that direction—*
  - (i) *the total number of hours each week for which P must provide pharmaceutical services at the pharmacy, and*
  - (ii) *as regards the additional opening hours, the days on which and the times at which P is required to provide those services during those hours,*

*but it must not set out in that direction the days on which or times at which P is to provide pharmaceutical services during hours which are not additional opening hours; or*

- (b) *for less than 40 hours each week, it shall set out in that direction the days on which and times at which pharmaceutical services are to be provided at the pharmacy premises.*

5. *The NHSCB must not issue a direction under sub-paragraph (3) that has the effect simply of requiring pharmacy premises to be open for 40 hours each week on set days and at set times (that is, the direction must have the effect of requiring pharmacy premises to be open for either more or less than 40 hours each week).*
6. *The NHSCB must notify P of any direction issued or any other action taken under sub-paragraph (3), and where it sets new days on which or times at which P is to provide pharmaceutical services at pharmacy premises, it must include with the notification a statement of—*
  - (a) *the reasons for the change; and*
  - (b) *P's right of appeal under paragraph (7).*
7. *P may, within 30 days of receiving notification under sub-paragraph (6), appeal in writing to the Secretary of State against any direction issued or any other action taken under sub-paragraph (3) which sets new days on which or times at which P is to provide pharmaceutical services.*
8. *The Secretary of State may, when determining an appeal, either confirm the action taken by the NHSCB or take any action that the NHSCB could have taken under paragraph (3).*
9. *The Secretary of State shall notify P of the determination and shall in every case include with the notification a statement of the reasons for the determination*
10. *If the days on which or times at which P is to provide pharmaceutical services at pharmacy premises have been changed in accordance with this paragraph, P must introduce the changes—*
  - a. *if P has not appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (6); or*
  - b. *if P has appealed under sub-paragraph (7), not later than 8 weeks after the date on which P receives notification under sub-paragraph (9).*
11. *This paragraph does not apply where regulation 65(5) to (7) applies*

2.13 I am mindful that paragraph 23(12) of Schedule 4 states:

*For the purposes of calculating the number of hours that a pharmacy premises are open during a week that includes Christmas Day, Good Friday, Easter Sunday or a bank holiday, it is to be deemed that the pharmacy premises were open on that day at the times at which they would ordinarily have been open on that day of the week.*

- 2.14 I am of the view that the pharmacy would normally be closed on 25 December, Christmas Day, and that this would be in accordance with the Regulations.
- 2.15 I am conscious that paragraphs 25(1) and (2) require that before any direction is made, an assessment must be undertaken and that, before the assessment is concluded, the pharmacist providing services from the premises must be given notice of the proposed changes and given 30 days to make written representations about the proposed changes.
- 2.16 I note that the LPC were consulted in a letter dated 22 June 2022 and that they responded to NHS England on 30 June 2022 advising that *"The Medicine Box would not be able to open as the University will be closed and that they would have trouble with stock as they only stock to serve the student community, not the general public"*. I note that a "proposal to direct" letter was sent to the pharmacy on 6 July 2022 and the pharmacy was provided with 30 days to provide representations against the proposal. I note in their representations, NHS England state that the pharmacy did not respond.
- 2.17 I note that the letter of 10 August 2022 states that NHS England have *"concluded our assessment as to whether to issue a direction ..."*

- 2.18 I have not been provided with copies of the original letter to the LPC or the “proposal to direct” letter, however I note that the Appellant has not sought to dispute the content of the 6 July 2022 letter nor that they did not receive this letter or that they did not reply to this letter.
- 2.19 I am of the view that NHS England has undertaken a consultation process as set out in the Regulations and that there is no dispute from the Appellant in this regard.
- 2.20 I am mindful that NHS England is required by paragraph 25(6) of Schedule 4 to provide reasons for its decision. In my view, these reasons should set out the basis of any determination that days and times of opening will no longer be such as will meet the pharmaceutical needs of relevant persons and (if they are, such that a direction *may* be made) the assessment that led to the direction, taking into account any written representations from the pharmacist.
- 2.21 I note that in the decision letter NHS England state that the reasons for directing the above pharmacy to open are “*There has been no voluntary offer of pharmacy provision in the Loughborough area to meet the needs of people living in the area on 25 December 2022. We have reviewed which pharmacies have opened on previous bank holidays to ensure that directing pharmacies to open has taken place on a fair share basis.*” From the information before me, this appears to be the only “assessment” which has preceded the issuing of the direction.
- 2.22 I note that in their representations NHS England has expanded upon the reasoning for the direction and the assessment that was carried out. I note that no expressions of interest were received by NHS England for the Loughborough area. I note the comment from NHS England that a review of the pharmacies in Loughborough was undertaken and those that had opened on Christmas Day and Easter Sunday in previous years were identified along with those that had not opened.
- 2.23 I note that NHS England have provided a map showing the location of the Appellant’s pharmacy which is approximately 11 minutes’ walk from the Urgent Care Centre as well as being in a central location in Loughborough that residents will be able to easily find.
- 2.24 I note that I have not been provided with any other information as to how the assessment was carried out or which pharmacies had been identified as part of the assessment as either having opened on previous years as well as those that had not opened.
- 2.25 From the information before me, the location of the pharmacy, being a 4 minute drive or an 11 minute walk from the Urgent Care Centre, appears to be the only “assessment” which has preceded the issuing of the direction.
- 2.26 I am of the view that I have not been provided with any information to substantiate the view as to why the Appellant’s pharmacy will be best placed in terms of access, geography or any other factor to meet any demand for services. I have not been provided with any information as to what pharmaceutical cover may be required or why the hours of 10am to 12 noon will provide this cover. I am of the view that there is no information from NHS England as to how directing pharmacies, taking into account those which have opened previously, provides a robust assessment of the need for pharmaceutical provision in terms of providing services to patients.
- 2.27 I am not satisfied with NHS England’s approach in this regard and I consider that NHS England has provided limited information to support the conclusion reached. Further, NHS England has not set out details of a robust assessment that lies behind the direction to this particular pharmacy, which is a requirement of the Regulations.
- 2.28 On appeal, I may (in accordance with paragraph 25(8) of Schedule 4) either confirm the action of NHS England or take such other action as it could have taken.

- 2.29 The letters dated 10 August 2022 and 21 September 2022 provide me with no information which I consider sufficient to provide reasons on the basis of which I can confirm the decision, nor information upon which I might rely to make a direction for alternative reasons.
- 2.30 The letters explain the process which has taken place and the conclusions reached, but not the reasoning that lies behind the direction.
- 2.31 On the basis of the information available to me, I am not satisfied that NHS England has demonstrated that the needs of the people in its area or other likely users of the pharmacy for pharmaceutical services will not be met on 25 December 2022.

### **3 Determination**

- 3.1 The appeal is granted and, pursuant to paragraph 25(3)(c)(ii), no direction is issued.

**Head of Appeals  
NHS Resolution**