

28 November 2022

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**FILE REF:** SHA/25769

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**DECISION MAKING BODY:** NHS ENGLAND  
(NORTH WEST (CHESHIRE &  
MERSEYSIDE) AREA TEAM)

**PHARMACIST:** SUTTON PHARMACY (“the Appellant”)

**PREMISES:** 335 CHESTER ROAD  
ELLESMERE PORT  
CH66 3RF

**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:

Sutton Pharmacy  
NHS England – North West (Cheshire & Merseyside)

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**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/>



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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]**

**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 2pm to 4pm 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 2pm to 4pm 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 23 September 2022, NHS England stated

“Further to the letter of 9<sup>th</sup> August 2022 I enclose an updated version of the directed rota service for Christmas Day 2022. Please ensure that you check the attached sheet for the details of your direction.

NHS England North West (Cheshire & Merseyside) acknowledges that your pharmacy is directed to open on a Bank Holiday. NHS England North West (Cheshire & Merseyside) is obliged to provide a directed rota service in order to ensure adequate pharmaceutical provision is provided in a given area on days when many contractors will choose to close.

NHS England North West (Cheshire & Merseyside) does write out to all contractors before producing a directed rota to ask whether anyone would like to volunteer, as we would much rather direct a contractor who wants to open where we have the option. Unfortunately, we have not received a volunteer within your locality. Where it is deemed necessary to direct a rota due to a lack of volunteers, pharmacies are directed in rotation for each bank holiday within localities as agreed with the Local Pharmaceutical Committee (LPC).

In seeking to ensure that pharmaceutical services are provided on such days and at such times as are necessary to meet the needs of people in its area or other likely users of the pharmacy premises, NHS England North West (Cheshire & Merseyside) has followed the Regulations accordingly by directing pharmacies to open. The consideration as to whether to direct a pharmacy to open on Christmas Day 2022 involved a review of services available to patients on this date in this locality.

NHS England North West (Cheshire & Merseyside) considered the local Pharmaceutical Needs Assessment (PNA) to understand the needs of the local population and has taken into consideration the provision and availability of other health care services e.g. GP primary care provision and Out of Hours at the time of the directed rota. The PNAs reference that if NHS England consider there is a need for pharmacy services in an area on any specific day, that we can direct a rota, as such it is established that the Health and Wellbeing Board expects rota provision to be enacted by NHS England North West (Cheshire & Merseyside) at times where it has been established that there is not adequate provision of pharmaceutical services identified. Some commissioned pharmaceutical services for example Community Pharmacy Consultation Service are of their nature a time bound services, which does not take in to account a lack of provision over bank holidays.

NHS England North West (Cheshire & Merseyside) has assessed the need in your locality for the provision of pharmaceutical services. NHS England North West (Cheshire & Merseyside) had regard to location and opening of pharmacies in your locality, the pharmacy needs assessment and responses to consultation from the LPCs. As a result of this assessment it was determined that direction is required to provide adequate pharmaceutical services at the times stated in the attached directed rota. The directed rota is organised using a fair mechanism ensuring that all pharmacies take a turn.

Your pharmacy is directed in line with NHS Pharmaceutical and Local Pharmaceutical services Regulations (2013) (as amended), Schedule 4, Part 3, Regulation 24, to open as detailed on the attached sheet.

You will receive £240 per hour. You will be requested to either submit your responsible pharmacist log or complete a claim form within 28 days of fulfilling your rota duties, to claim your payment.

Your opening hours will be shared with other NHS organisations such as CCGs, NHS 111, hospitals and GPs for signposting patients. It is really important that NHS 111 has this information in order to direct patients to pharmaceutical services, so please can you ensure that you update your DoS profile using the DoS correction tool. Updating your NHS Choices profile is also advised.

This notification can be appealed, within 30 days of the date above. This is in accordance with Schedule 4, Part 3, Regulation 25(7) the NHS (Pharmaceutical Services & Local Pharmaceutical Services) Regulations 2013 (as amended). The appeal must be sent in writing to:

NHS Resolution, Primary Care Appeals service, 1 Trevelyan Square, Boar Lane, Leeds, LS1 6AE, Tel: 0113 866 5500, Fax: 020 7821 0029 Email: [appeals@resolution.nhs.uk](mailto:appeals@resolution.nhs.uk)

A copy of this letter has been sent via 1st class post and via email.”

2.9 In a letter to NHS Resolution dated 6 October 2022 the Appellant stated:

“This letter is an appeal against a decision made by the Pharmacy Team NHS England and NHS Improvement – North West (Cheshire & Merseyside). I refer to the letter received from NHS England on 23<sup>rd</sup> September 2022 (2<sup>nd</sup> letter) and the first letter received on the 9<sup>th</sup> of August 2022 (1<sup>st</sup> letter) regarding our direction to fulfil a rota service on Christmas Day 2022 from 2pm to 4pm. I have attached both letters and the proposed and directed rota timetables (Appendix A) for this day, for your convenience.

First and foremost, I am conscious of the need for adequate pharmaceutical service provision. However, I feel that this decision has not been based on adequate research by NHS England to action the direction. There is nothing in our correspondence to indicate how or why this direction supports a decision from an assessment that

concluded the pharmaceutical needs of relevant persons will not be met on this day such that I am required to open.

I am of the opinion that NHS England is required by paragraph 25(6) of Schedule 4 of the NHS Pharmaceutical and LPS Regulation (2013) to provide reasons for its decision. I note the regulations envisage the reasons for the direction should be based on the results of an assessment, which followed a consultation, which should conclude that the needs of the local population and likely users of my pharmacy would not be met on this day such that I am required to open from 2pm to 4pm on 25th December 2022. Neither of the letters make reference to any specific results linking my pharmacy to any lack of service provision on this day.

In addition to the above paragraph, the letters do not contain anything which personally links our pharmacy to the letter itself. There is no mention of the name of our pharmacy nor the times which our pharmacy has been directed. On top of this, the letter is not actually addressed to Sutton Pharmacy. I am of the opinion that all directed contractors in the area have received the exact same identical letter – and are required to simply locate themselves on the attached timetable as per the first paragraph on the 2<sup>nd</sup> letter dated 23<sup>rd</sup> September 2022. If my opinion is correct, I do not feel that sending identical copy letters to all directed contractors can provide any assurance that the results of an investigation are specifically highlighting our pharmacy as one which should be required to open on the relevant day at the times specified on the timetable.

In both letters from the NHS, I have been given a sentence or two informing me an assessment has taken place, and a sentence stating the final decision reached, but there has been no reasoning given behind the direction. In particular, what regard was had to the specific day and time of opening and how these will no longer be such to meet the pharmaceutical needs of the patients and that as a result we would be required to open from 2 till 4pm on Christmas Day 2022. Furthermore, there are only general details and no specific outcomes of a consultation or assessment, and therefore no specific reasons behind the direction of our pharmacy which is contrary to paragraph 25(1) and 25(6) of Schedule 4.

I do not believe the letters provide any evidence that an assessment took place. Both letters make reference to the PNA and the regulations. Within the PNA and the regulations it states that the NHS [sic] has the power [if required] to issue a directed rota, however both letters do not explain why this power has been used specifically on our pharmacy at the specific date and time. I do not think this is correct, I think the PNA and regulations are simply reiterating the need for a full a proper assessment of the specific day in question to conclude where directions are required. I do not believe that vague comments regarding the contents of the regulations and the PNA constitute evidence especially without any reference to their contents linking my pharmacy to any lack of service provision on the 25th December 2022 from 2pm to 4pm.

The 2<sup>nd</sup> letter simply states the NHS [sic] has '*assessed the need*' in my locality, and in the next sentence provides the result; "*As a result of this assessment, it was determined that direction is required*". This sentence has been provided alone with no backing, method, or results. I am unsure as to how [sic] have come to any conclusion with them providing no proper results of its assessment, especially one which links my pharmacy to any lack of pharmaceutical needs such that we are required to open on 25<sup>th</sup> December 2022 from 2pm to 4pm, in accordance with the regulations.

Furthermore, both letters state, "*pharmacies are directed in rotation for each bank holiday within localities*" and "*the directed rota is organised using a fair mechanism ensuring that all pharmacies take a turn*" respectively. I have noted above that there should have been an assessment of the local pharmaceutical needs on this day, which should pinpoint pharmacies which, if they were not open, would create a need in the local area such that they are required to open. I do not believe '*choosing a pharmacy based on taking turns*' and '*choosing a pharmacy based on results of an assessment*'

can go hand in hand, as for one to be true, the other cannot. NHS [sic] have stated many times that their mechanism is simply *'taking turns'*.

In conclusion, my pharmacy has been directed, however for the reasons discussed above, I do not feel it has been made clear as to why this pharmacy, in particular, has been chosen to open on this time and date, as opposed to other pharmacies in the area. There is no evidence to suggest the 'conclusions' from the 'assessment' link our pharmacy to any reduction in pharmaceutical services such that the needs of the patients will no longer be met by not opening, nor as previously stated, any evidence that a full and proper assessment even took place and therefore I am appealing against the NHS decision for the reasons discussed above."

2.10 In a letter to NHS Resolution dated 27 October 2022 NHS England stated:

"Thank you for your email notifying us that Sutton Pharmacy has appealed against NHS England's decision to direct their pharmacy to open on Christmas Day 2022 (25th December 2022).

We note that Sutton Pharmacy are appealing this direction on the basis that NHS England North West (Cheshire & Merseyside) have not defined the assessment we carry out and not because they don't believe a direction is required in the Ellesmere Port locality. NHS England under Schedule 4, Part 3, paragraph 25(2)(b) of the NHS (Pharmaceutical Services and Local Pharmaceutical Services) Regulations 2013 (as amended) has the ability to direct a pharmacy to open where a need is determined. The Regulations state:

*"(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)."*

As you will be aware, pharmacies are not required by their terms of service to open on Christmas Day, Good Friday, Easter Sunday or on a bank holiday, although they may choose to do so. I can confirm that we have not been notified of any pharmacies that will be open in Cheshire and Merseyside on Christmas Day this year. As you will also be aware, under section 126 of the NHS Act 2006 (Arrangements for pharmaceutical services), NHS England must make arrangements for the provision, to persons who are in England, of:

*(a) "proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown,*

*(b) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of—*

*(i) his functions in the health service, the Scottish health service or the Northern Ireland health service (other than functions exercised in pursuance of the provision of services mentioned in paragraph (c)), or*

*(ii) his functions in the armed forces of the Crown,*

*(c) listed drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of the provision of primary*

*dental services or equivalent services in the Scottish health service or the Northern Ireland health service,*

*(d) such drugs and medicines and such listed appliances as may be determined by the Secretary of State for the purposes of this paragraph and which are ordered for those persons by a prescribed description of person in accordance with such conditions, if any, as may be prescribed, in pursuance of functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown, and*

*(e) such other services as may be prescribed.”*

NHS England North West (Cheshire & Merseyside) has therefore considered what arrangements need to be put in place on Christmas Day in order to discharge this duty. We are of the opinion that whilst demand for the full range of pharmaceutical services may be lower on this day compared to a Sunday that is not a public holiday, there will still be a need for pharmaceutical services by people who live within Cheshire and Merseyside or are visiting the area for the festive period. Whilst GP practices will be closed on Christmas Day, other providers of NHS services will be open such as the GP out of hours service and A&E departments.

We note that in SHA/24664 (issued on 15 December 2021) the head of operations, Primary Care Appeals, stated that they were of the view that the days in question (Sunday 26 December 2021 and Saturday 1 January 2022) are, in relation to pharmaceutical services, no different from any other day and that they had seen no information in that appeal which indicated a change of attitude towards those particular days (from a pharmaceutical services perspective).

We believe that, as a minimum, the services for which there will be a need on Christmas Day are as follows.

- The dispensing service for prescriptions issued by a NHS service provider that is open on that day or for prescriptions that have been issued on a previous day but which a person has not been able to have dispensed due, for example, being at work and pharmacies reducing their supplementary opening hours on Christmas Eve.
- The community pharmacist consultation service for both the provision of drugs and also of advice following referral from NHS 111. As GP practices will be closed on Christmas Day, people seeking advice on the management of low acuity/minor illnesses will turn to, or be referred to, pharmacies.

Of course, some people may wish to access other essential and advanced services. As stated above, we are not aware of any pharmacies that will be open on Christmas Day and therefore at present NHS England is unable to discharge its duty as set out in section 126 of the NHS Act 2006.

In the past, the approach would have been to direct pharmacies that were close to where prescriptions would be generated, for example near to the GP out of hours service and A&E departments, as people would be travelling to those locations and then seeking a pharmacy nearby.

However, the advent of the community pharmacist consultation service, and before it the NHS urgent medicines supply advanced service, means that those requiring pharmaceutical services will need to access a pharmacy near to where they live. As a result we need to ensure that there is a good spread of pharmacies that are open on Christmas Day across our area.

In 2015 we worked with the LPCs in our area in order to develop a process by which we could discharge our duty and ensure that all pharmacies are treated equally in

relation to the public and bank holidays and Easter Sunday. It was agreed with the LPCs that we would jointly work on a locality basis when identifying whether or not a pharmacy needs to be directed to open on such a day, rather than reviewing each pharmacy individually. Localities were based on patient footfall, patient usage of services and ease of access. These localities were defined in collaboration with the LPC to determine the most effective distribution of and access to available services. This approach was agreed by all parties as it ensures NHS England North West (Cheshire & Merseyside) can discharge its duty in a way that is fair to all pharmacies.

This pharmacy falls within the Ellesmere Port locality which covers Ellesmere Port town centre, Great Sutton, Little Sutton and Whitby. Within this locality there are 14 pharmacies, none of which have indicated that they will be open for all or part of their usual opening hours on Christmas Day.

The process followed for Christmas Day is as follows. NHS England North West (Cheshire & Merseyside) wrote out to all contractors to ask whether anyone would like to volunteer to provide pharmaceutical services on Christmas Day. This would allow us to direct a contractor who wants to open where we have this option or for an SLA to be used to support extended opening where appropriate. NHS England North West did not receive any volunteers within the Ellesmere Port locality for Christmas Day.

The requirement for pharmaceutical service provision on Christmas Day was reviewed with the LPCs and a determination made as to what cover we jointly feel is required. Contractors within a locality were reviewed and we identified which pharmacies have been directed to open in the past and then identified which could be directed to be open on a rolling basis. The LPCs also had sight of which pharmacies were selected for direction within the localities so that they can offer advice on whether the spread of contractors is sufficient and fair. We then wrote to contractors advising that they are being considered for a direction and inviting them to submit representations to NHS England North West (Cheshire & Merseyside) within 30 days of the date of our initial letter (this year that was by 8<sup>th</sup> September 2022). Sutton Pharmacy did not submit any representation during this period; therefore, NHS England North West (Cheshire & Merseyside) moved to issuing a direction on 23<sup>rd</sup> September 2022.

NHS England North West (Cheshire & Merseyside) has chosen to give Sutton Pharmacy over four months' notice of the potential requirement to open on this date, and just over three months' notice when the direction was finally issued, in order that the contractor has sufficient time to prepare accordingly. NHS England North West (Cheshire & Merseyside) had regard to all representations received including information as to whether other pharmacies may or may not be able to provide cover before moving to issuing a direction. NHS England North West (Cheshire & Merseyside) was not in a position to be assured that adequate levels of pharmaceutical service provision, as agreed with the LPCs with regard to the needs of the population, would be in place in this locality without issuing directions.

We believe we meet the requirements of the Regulations under the following two paragraphs in the letter dated 23<sup>rd</sup> September 2022:

*“NHS England North West (Cheshire & Merseyside) considered the local Pharmaceutical Needs Assessment (PNA) to understand the needs of the local population and has taken into consideration the provision and availability of other health care services e.g. GP primary care provision and Out of Hours at the time of the directed rota. The PNAs reference that if NHS England consider there is a need for pharmacy services in an area on any specific day, that we can direct a rota, as such it is established that the Health and Wellbeing Board expects rota provision to be enacted by NHS England North West (Cheshire & Merseyside) at times where it has been established that there is not adequate provision of pharmaceutical services identified. Some commissioned pharmaceutical services for example Community Pharmacy Consultation*

*Service are of their nature a time bound services, which does not take in to account a lack of provision over bank holidays.*

*NHS England North West (Cheshire & Merseyside) has assessed the need in your locality for the provision of pharmaceutical services. NHS England North West (Cheshire & Merseyside) had regard to location and opening of pharmacies in your locality, the pharmacy needs assessment and responses to consultation from the LPCs. As a result of this assessment it was determined that direction is required to provide adequate pharmaceutical services at the times stated in the attached directed rota.”*

The consideration as to whether to direct a pharmacy to open on Christmas Day involved contractors included in the relevant pharmaceutical list in the locality (in this case Ellesmere Port). In seeking to ensure that pharmaceutical services are provided on such days and at such times as are necessary to meet the needs of people in its area or other likely users of the pharmacy premises, in this case to ensure sufficient cover arrangements are in place on Christmas Day, NHS England North West (Cheshire & Merseyside) has followed its processes (as described above) accordingly by directing pharmacies to open.

The grounds for the appeal appear to be as follows.

1. The decision to issue a direction has not been based on adequate research by NHS England.

We dispute this allegation. NHS England must ensure it meets the duty set out in Section 126 of the NHS Act 2006. At present we have not been notified of any pharmacy that will be open on Christmas Day in the Ellesmere Port locality. We are satisfied that there will be a need for pharmaceutical services on this day as set out above and currently this need cannot be met within the locality as no pharmacies have confirmed they will be open for all or part of the day.

The appellant failed to respond to the notification that NHS England North West (Cheshire & Merseyside) was minded to direct them to open on Christmas Day and therefore presented no evidence as to why it was not appropriate to do so.

2. In neither letter has NHS England provided the reasoning given behind the direction, in particular, what regard was had to the specific day and time of opening and how these will no longer be such to meet the needs of patients.

As set out above, no pharmacy in the locality has confirmed they will be open on this day. Noting that there will still be demand for pharmaceutical services it is clear that NHS England needs to direct pharmacies to be open on this day. The timing of the hours that we are asking pharmacies to open is based on a review of directed rota claim forms submitted by contractors, which indicated the level of demand for services at various times of the day on Christmas Day in previous years within the Ellesmere Port locality.

3. The appellant does not believe the letters provide any evidence that an assessment took place.

We have described above the process that NHS England North West (Cheshire & Merseyside) has put in place with the agreement of the LPCs. We have identified that no pharmacies will be open on this day, however there will still be demand for pharmaceutical services from people who live in the locality or who are visiting for the festive period.

4. “Furthermore, both letters state, “pharmacies are directed in rotation for each bank holiday within localities” and “the directed rota is organised using a fair mechanism ensuring that all pharmacies take a turn.” respectively. I have

noted above that there should have been an assessment of the local pharmaceutical needs on this day, which should pinpoint pharmacies which, if they were not open, would create a need in the local area such that they are required to open. I do not believe 'choosing a pharmacy based on taking turns' and 'choosing a pharmacy based on results of an assessment' can go hand in hand, as for one to be true, the other cannot. NHS have stated many times that their mechanism is simply 'taking turns'.

NHS England North (Cheshire & Merseyside) does not state that the mechanism is simply "taking turns". We state that "Where it is deemed necessary to direct a rota due to a lack of volunteers, pharmacies are directed in rotation for each bank holiday within localities as agreed with the Local Pharmaceutical Committee (LPC)." I have set out the process we have followed with the LPCs that led to the system that we operate. The "fair share" element is the secondary reason for directing a specific pharmacy and is to ensure the same pharmacy isn't directed year after year, but still ensuring that people are able to access pharmaceutical services.

For the reasons provided above, NHS England North West (Cheshire & Merseyside) maintains its decision to issue this direction to Sutton Pharmacy and requests that the appeal be rejected.

I have attached for your information:

- Email sent to all contractors asking for volunteers to open on Bank Holidays.
- Email containing a letter advising contractors that they were being considered for direction on Christmas Day 2022 (25th December 2022) and inviting them to submit representation.
- Email containing a letter directing the contractor to open on Christmas Day 2022 (25<sup>th</sup> December 2022) and notifying them of their right of appeal.
- Email confirming the correct contact details for NHS Resolution, as these were incorrectly listed in the original letter."

2.11 In a letter to NHS Resolution dated 17 November 2022 the Appellant stated:

"Thank you for emailing me the representations made by the NHS [sic] on the above appeal. I am of the opinion that the information presented in the representations do not provide any further information to support the decision for the direction in accordance with the relevant regulations.

I will go through the aforementioned representation letter in italics below and provide my own representations on each section.

*"We note that Sutton Pharmacy are appealing this direction on the basis that NHS England North West (Cheshire & Merseyside) have not defined the assessment we carry out and not because they don't believe a direction is required in the Ellesmere Port locality. NHS England under Schedule 4, Part 3, paragraph 25(2)(b) of the NHS (Pharmaceutical Services and Local Pharmaceutical Services) Regulations 2013 (as amended) has the ability to direct a pharmacy to open where a need is determined. The Regulations state:*

*"(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)."*

SUTTON PHARMACY: Although I agree with the statement above in terms of its general contents, I do not understand the link between the quoted section of the regulations and the appeal itself.

In the next paragraph the NHS [sic] has provided quotations from the NHS Act 2006 (Arrangements for pharmaceutical services) and although I am not familiar with its contents, I do not dispute the quotes are accurate yet see little connection between them and this appeal.

*“NHS England North West (Cheshire & Merseyside) has therefore considered what arrangements need to be put in place on Christmas Day in order to discharge this duty. We are of the opinion that whilst demand for the full range of pharmaceutical services may be lower on this day compared to a Sunday that is not a public holiday, there will still be a need for pharmaceutical services by people who live within Cheshire and Merseyside or are visiting the area for the festive period. Whilst GP practices will be closed on Christmas Day, other providers of NHS services will be open such as the GP out of hours service and A&E departments.”*

SUTTON PHARMACY: I believe the above paragraph is a generalised statement based on opinion/beliefs and again does not link Sutton Pharmacy specifically to any basis of any determination that days and times of opening will no longer be such that I (Sutton Pharmacy) am required to open on this day. There is no reasoning as to how these conclusions have been reached.

*We note that in SHA/24664 (issued on 15 December 2021) the head of operations, Primary Care Appeals, stated that they were of the view that the days in question (Sunday 26 December 2021 and Saturday 1 January 2022) are, in relation to pharmaceutical services, no different from any other day and that they had seen no information in that appeal which indicated a change of attitude towards those particular days (from a pharmaceutical services perspective).*

*We believe that, as a minimum, the services for which there will be a need on Christmas Day are as follows.*

- The dispensing service for prescriptions issued by a NHS service provider that is open on that day or for prescriptions that have been issued on a previous day but which a person has not been able to have dispensed due, for example, being at work and pharmacies reducing their supplementary opening hours on Christmas Eve.*
- The community pharmacist consultation service for both the provision of drugs and also of advice following referral from NHS 111. As GP practices will be closed on Christmas Day, people seeking advice on the management of low acuity/minor illnesses will turn to, or be referred to, pharmacies.*

*Of course, some people may wish to access other essential and advanced services. As stated above, we are not aware of any pharmacies that will be open on Christmas Day and therefore at present NHS England is unable to discharge its duty as set out in section 126 of the NHS Act 2006.*

SUTTON PHARMACY: The above provides a general belief by the NHS [sic] that some pharmaceutical services may be required on the relevant day in general, but there is no information provided above that sets out the basis of the determination that the days and times of opening will no longer be such as to meet the pharmaceutical needs of the relevant persons and the results of the assessment that led to the direction of my specific pharmacy. I believe that a direction from NHS England should be based on an assessment of whether or not the provision of pharmaceutical services will meet the needs of people in the area or other likely users of the pharmacy and concludes that a pharmacy specifically should be directed to meet these needs.

*In the past, the approach would have been to direct pharmacies that were close to where prescriptions would be generated, for example near to the GP out of hours service and A&E departments, as people would be travelling to those locations and then seeking a pharmacy nearby. However, the advent of the community pharmacist consultation service, and before it the NHS urgent medicines supply advanced service, means that those requiring pharmaceutical services will need to access a pharmacy near to where they live. As a result, we need to ensure that there is a good spread of pharmacies that are open on Christmas Day across our area.*

*In 2015 we worked with the LPCs in our area in order to develop a process by which we could discharge our duty and ensure that all pharmacies are treated equally in relation to the public and bank holidays and Easter Sunday. It was agreed with the LPCs that we would jointly work on a locality basis when identifying whether or not a pharmacy needs to be directed to open on such a day, rather than reviewing each pharmacy individually. Localities were based on patient footfall, patient usage of services and ease of access. These localities were defined in collaboration with the LPC to determine the most effective distribution of and access to available services. This approach was agreed by all parties as it ensures NHS England North West (Cheshire & Merseyside) can discharge its duty in a way that is fair to all pharmacies.*

SUTTON PHARMACY: I am of the opinion that the above is simply general information which is irrelevant to this appeal. I also believe the author of the letter has misinterpreted the services that are mentioned. I do not believe the “advent of the CPCS or NUMSAS” bares any relevance to this appeal nor past direction mechanisms, as pharmacies have always been able to provide emergency supplies of medication to patients within the law to any patient who required it.

*This pharmacy falls within the Ellesmere Port locality which covers Ellesmere Port town centre, Great Sutton, Little Sutton and Whitby. Within this locality there are 14 pharmacies, none of which have indicated that they will be open for all or part of their usual opening hours on Christmas Day. The process followed for Christmas Day is as follows. NHS England North West (Cheshire & Merseyside) wrote out to all contractors to ask whether anyone would like to volunteer to provide pharmaceutical services on Christmas Day. This would allow us to direct a contractor who wants to open where we have this option or for an SLA to be used to support extended opening where appropriate. NHS England North West did not receive any volunteers within the Ellesmere Port locality for Christmas Day.*

SUTTON PHARMACY: I do not dispute any of the above paragraph. The paragraph states “the process followed for Christmas day is as follows” – and whilst I do not dispute this process did take place it is not this particular process (i.e. after selection of the pharmacies to direct) which I am disputing has taken place. It is the process for the actual selection of the pharmacies themselves (i.e. before the selection of the pharmacies to direct) which I am disputing has not taken place in line with the regulations and can see nothing in this paragraph to suggest it has.

*The requirement for pharmaceutical service provision on Christmas Day was reviewed with the LPCs and a determination made as to what cover we jointly feel is required. Contractors within a locality were reviewed and we identified which pharmacies have been directed to open in the past and then identified which could be directed to be open on a rolling basis. The LPCs also had sight of which pharmacies were selected for direction within the localities so that they can offer advice on whether the spread of contractors is sufficient and fair. We then wrote to contractors advising that they are being considered for a direction and inviting them to submit representations to NHS England North West (Cheshire & Merseyside) within 30 days of the date of our initial letter (this year that was by 8th September 2022). Sutton Pharmacy did not submit any representation during this period; therefore, NHS England North West (Cheshire & Merseyside) moved to issuing a direction on 23rd September 2022.*

SUTTON PHARMACY: I note within the paragraph above NHS state that following a review (although providing no details of the review itself) the NHS [sic] have “identified” pharmacies which have been directed ‘the least in the past’. Again, as is the crux of this letter, I do not believe this method (or lack of) follows the regulations, as I am of the opinion there should be a proper assessment and therefore reasoning with results which reveals that my pharmacy is specifically linked to a lack of service provision for likely users thus, I am required to open on this day and time. I also do not believe that not providing representations in the first instance is a reason to choose a pharmacy to be directed to open or even at this stage be mentioned as a form of reasoning for doing so.

*NHS England North West (Cheshire & Merseyside) has chosen to give Sutton Pharmacy over four months’ notice of the potential requirement to open on this date, and just over three months’ notice when the direction was finally issued, in order that the contractor has sufficient time to prepare accordingly. NHS England North West (Cheshire & Merseyside) had regard to all representations received including information as to whether other pharmacies may or may not be able to provide cover before moving to issuing a direction. NHS England North West (Cheshire & Merseyside) was not in a position to be assured that adequate levels of pharmaceutical service provision, as agreed with the LPCs with regard to the needs of the population, would be in place in this locality without issuing directions.*

SUTTON PHARMACY: I do not believe the length of time the pharmacy has known about the potential for a direction relevant to this appeal. I also note the paragraph above states very generally about the importance of adequate levels of pharmaceutical provision yet provides no reasoning for why my pharmacy being closed or open has any impact on this.

*We believe we meet the requirements of the Regulations under the following two paragraphs in the letter dated 23rd September 2022*

*“NHS England North West (Cheshire & Merseyside) considered the local Pharmaceutical Needs Assessment (PNA) to understand the needs of the local population and has taken into consideration the provision and availability of other health care services e.g. GP primary care provision and Out of Hours at the time of the directed rota. The PNAs reference that if NHS England consider there is a need for pharmacy services in an area on any specific day, that we can direct a rota, as such it is established that the Health and Wellbeing Board expects rota provision to be enacted by NHS England North West (Cheshire & Merseyside) at times where it has been established that there is not adequate provision of pharmaceutical services identified. Some commissioned pharmaceutical services for example Community Pharmacy Consultation Service are of their nature a time bound services, which does not take in to account a lack of provision over bank holidays.*

*NHS England North West (Cheshire & Merseyside) has assessed the need in your locality for the provision of pharmaceutical services. NHS England North West (Cheshire & Merseyside) had regard to location and opening of pharmacies in your locality, the pharmacy needs assessment and responses to consultation from the LPCs. As a result of this assessment it was determined that direction is required to provide adequate pharmaceutical services at the times stated in the attached directed rota.”*

SUTTON PHARMACY: The NHS [sic] area team have described the two paragraphs above as the reason that they believe they meet the requirements of the Regulations. However, again I must reiterate my belief that the above paragraph just provides a general method and process with the decision reached but not the reasoning which lies behind the direction. There is a similar repetitive narrative to the previous paragraphs in that there is focus on what should have occurred to ensure this direction was in line with the regulations but no evidence to substantiate this.

*The consideration as to whether to direct a pharmacy to open on Christmas Day involved contractors included in the relevant pharmaceutical list in the locality (in this case Ellesmere Port). In seeking to ensure that pharmaceutical services are provided on such days and at such times as are necessary to meet the needs of people in its area or other likely users of the pharmacy premises, in this case to ensure sufficient cover arrangements are in place on Christmas Day, NHS England North West (Cheshire & Merseyside) has followed its processes (as described above) accordingly by directing pharmacies to open.*

*The grounds for the appeal appear to be as follows.*

1. *The decision to issue a direction has not been based on adequate research by NHS England.*

*We dispute this allegation. NHS England must ensure it meets the duty set out in Section 126 of the NHS Act 2006. At present we have not been notified of any pharmacy that will be open on Christmas Day in the Ellesmere Port locality. We are satisfied that there will be a need for pharmaceutical services on this day as set out above and currently this need cannot be met within the locality as no pharmacies have confirmed they will be open for all or part of the day. The appellant failed to respond to the notification that NHS England North West (Cheshire & Merseyside) was minded to direct them to open on Christmas Day and therefore presented no evidence as to why it was not appropriate to do so.*

SUTTON PHARMACY: I stand by my previous statement in that I do not believe adequate research has been carried out by NHS England to action this direction. Whilst I am conscious for the need for adequate pharmaceutical service provision, after reading this letter I am even more of this opinion. Unfortunately, this letter, which provided an opportunity to the NHS [sic] to provide the results of its assessment linking my pharmacy to any decision behind the direction and then failing to take this opportunity only bolsters my claims in my first appeals letter. There has been much discussion in this letter about regulations, but very little about how the regulations have been followed.

I believe the only results which the NHS [sic] have provided is that there were no volunteers to open on this day. I do not believe that a lack of volunteers in a given area is reason enough to direct a randomly selected pharmacy in that area. The lack of volunteers should be a reason to carry out the adequate research in order to then provide enough information which is considered sufficient to action the direction on my pharmacy and the reason for choosing my pharmacy in particular.

2. *In neither letter has NHS England provided the reasoning given behind the direction, in particular, what regard was had to the specific day and time of opening and how these will no longer be such to meet the needs of patients.*

*As set out above, no pharmacy in the locality has confirmed they will be open on this day. Noting that there will still be demand for pharmaceutical services it is clear that NHS England needs to direct pharmacies to be open on this day. The timing of the hours that we are asking pharmacies to open is based on a review of directed rota claim forms submitted by contractors, which indicated the level of demand for services at various times of the day on Christmas Day in previous years within the Ellesmere Port locality.*

SUTTON PHARMACY: I do not believe the above paragraph from NHS England provides any reasoning for the selection of my pharmacy in particular to be directed to open on the relevant day and time. The NHS have provided no information as to the reasoning behind the directions.

After reading this letter, I believe the process and method used is as follows:

1. Find out if there are any volunteers.
  2. If there are none (or a few) – work out whose [sic] been directed to open the least 'in the past'.
  3. Write to those pharmacies identified in step 2 and let them know to write back if any issues.
  4. Direct those pharmacies written to in step 3.
3. *The appellant does not believe the letters provide any evidence that an assessment took place.*

*We have described above the process that NHS England North West (Cheshire & Merseyside) has put in place with the agreement of the LPCs. We have identified that no pharmacies will be open on this day, however there will still be demand for pharmaceutical services from people who live in the locality or who are visiting for the festive period.*

SUTTON PHARMACY: As I have already stated, the process has been described and explained along with the conclusions reached but there has been little to no valid reasoning behind why my pharmacy in particular over the countless other pharmacies in the area has been selected and directed to open on the relevant day and time. As I have noted above that there should have been an assessment of the local pharmaceutical needs on this day, which should pinpoint pharmacies which, if they were not open, would create a need in the local area such that they are required to open.

4. *"Furthermore, both letters state, "pharmacies are directed in rotation for each bank holiday within localities" and "the directed rota is organised using a fair mechanism ensuring that all pharmacies take a turn." respectively. I have noted above that there should have been an assessment of the local pharmaceutical needs on this day, which should pinpoint pharmacies which, if they were not open, would create a need in the local area such that they are required to open. I do not believe 'choosing a pharmacy based on taking turns' and 'choosing a pharmacy based on results of an assessment' can go hand in hand, as for one to be true, the other cannot. NHS have stated many times that their mechanism is simply 'taking turns'."*

*NHS England North (Cheshire & Merseyside) does not state that the mechanism is simply "taking turns". We state that "Where it is deemed necessary to direct a rota due to a lack of volunteers, pharmacies are directed in rotation for each bank holiday within localities as agreed with the Local Pharmaceutical Committee (LPC)." I have set out the process we have followed with the LPCs that led to the system that we operate. The "fair share" element is the secondary reason for directing a specific pharmacy and is to ensure the same pharmacy isn't directed year after year, but still ensuring that people are able to access pharmaceutical services.*

SUTTON PHARMACY: I am of the opinion that the NHS [sic] believe taking turns is the correct approach as required by the regulations. I believe the power which the NHS [sic] hold in being able to direct a pharmacy to open on such days is likely to have originally been born from a lack of volunteers on these days. I do not believe a lack of volunteers is reason enough to randomly select a pharmacy in the area of low volunteers. By definition the power of direction would only legitimately be used in an area of low volunteers anyway and therefore a lack of volunteers should be the catalyst to carry out the full and proper research, assessment, procedure and therefore demonstrate that my pharmacy in particular is linked to a lack of service provision that the needs of the people or likely users of my pharmacy will not be met on the relevant day such that I am required to open. Whilst I believe NHS could have performed this

research prior to the direction, unfortunately I do not believe any information provided suggests they have.”

### **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 NHS England state that pharmacies are directed as agreed with the Local Pharmaceutical Committee (“the LPC”). I have not been provided with a copy of the consultation with the LPC. I note that a “proposal to direct” letter along with a proposed rota was sent to the pharmacy on 9 August 2022 and the pharmacy was provided with 30 days to provide representations with regard to the proposal. In their representations, NHS England state that the pharmacy did not respond. I have been provided with a copy of the “proposal to direct” letter and proposed rota of 9 August 2022 and I note that the Appellant has not sought to dispute the content of this letter, that they did not receive this letter or that they did not reply to this letter.
- 2.17 I note that the letter of 23 September 2022 from NHS England states “*I enclose an updated version of the directed rota services for Christmas Day 2022. Please ensure that you check the attached sheet for the details of your direction.*”
- 2.18 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.
- 2.19 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.
- 2.20 I note that in the decision letter NHS England state that the reasons for directing the pharmacy to open are “...*we have not received a volunteer within your locality. Where it is deemed necessary to direct a rota due to a lack of volunteers, pharmacies are directed in rotation for each bank holiday within localities as agreed with the LPC.*” The letter goes on to state “*The consideration as to whether to direct a pharmacy to open on Christmas Day 2022 involved a review of services available to patients on this date in this locality.*” NHS England go on to state that they consider the PNA as well as the availability of other health care services, GP Primary care provision and out of hours, at the time of the directed rota but I note there is little supporting information in this regard.
- 2.21 The direction letter concluded that “*NHS England ... has assessed the need in your locality for the provision of pharmaceutical services. NHS England ... had regard to location and opening of pharmacies in your locality, the pharmacy needs assessment and responses to consultation from the LPCs. As a result of this assessment it was determined that direction is required to provide adequate pharmaceutical services at the times stated in the attached directed rota. The directed rota is organised using a fair mechanism ensuring that all pharmacies take a turn.*”
- 2.22 From the information before me, this appears to be the only “assessment” which has preceded the issuing of the direction.
- 2.23 In their representations NHS England make reference to a previous case, however I further note that, on review, the case referenced was an appeal by a pharmacy against the decision of NHS England to not allow the pharmacy to amend their hours on the days in question. I am mindful that a pharmacy wanting to change its hours and a direction from NHS England to open are not the same issue. I have therefore considered the appeal before me with regard to the provisions of the Regulations as set out in paragraph 25 “Determination of pharmacy premises core opening hours instigated by the NHSCB”.
- 2.24 I note that NHS England state that in the past they would have directed pharmacies to open which were close to where the prescription would be generated, i.e. near to the GP out of hours service or an A&E department. I note that NHS England go on to state that in 2015 they changed this approach and, working with the LPCs, they moved to

looking at the need on a locality basis so that there would be provision across the area and potentially closer to where those accessing pharmaceutical services live.

- 2.25 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 Ellesmere Port locality (which covers Ellesmere Port town centre, Great Sutton, Little Sutton and Whitby). I note the comment from NHS England that *“Contractors within a locality were reviewed and we identified which pharmacies have been directed to open in the past and then identified which could be directed to be open on a rolling basis.”*
- 2.26 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 having been directed to open previously in rotation.
- 2.27 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 2pm to 4pm 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.
- 2.28 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.
- 2.29 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.
- 2.30 The letters dated 9 August 2022 and 23 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.
- 2.31 The letters explain the process which has taken place and the conclusions reached, but not the reasoning that lies behind the direction
- 2.32 On the basis of the information available to me, I am not satisfied that NHS England has demonstrated that the needs of people in its area or other likely users of the pharmacy for pharmaceutical services will not be met on Sunday 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**