OFFICIAL: SENSITIVE

9 September 2026

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

REF: APL-4510 [SHA/27028]

APPEAL AGAINST CENTRAL EAST ICB DECISION REGARDING A BREACH NOTICE AT ELMWOOD HEALTHCARE LIMITED (FAJ75) T/A NUFFIELD PHARMACY, NUFFIELD ROAD, CAMBRIDGE, CB4 1GL

1 Outcome

1.1 Pursuant to paragraph 9(5)(b) of Schedule 3 to the Regulations I substitute the decision of the Commissioner to issue the Breach Notice with a decision to issue a breach notice for failure to provide pharmaceutical services on the days and at the times notified to the Commissioner, in accordance with paragraph 23(7) of Schedule 4 to the Regulations.

A copy of this decision is being sent to:

Elmwood Healthcare Limited
Central East ICB

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

REF: APL-4510 [SHA/27028]

APPEAL AGAINST CENTRAL EAST ICB DECISION REGARDING A BREACH NOTICE AT ELMWOOD HEALTHCARE LIMITED (FAJ75) T/A NUFFIELD PHARMACY, NUFFIELD ROAD, CAMBRIDGE, CB4 1GL

1 The Breach Notice

A Breach Notice dated 6 May 2026 was sent to Elmwood Healthcare Limited (FAJ75) T/A Nuffield Pharmacy in respect of Nuffield Road, Cambridge, CB4 1GL.

1.1 "The six Integrated Care Boards (ICBs) in the East of England originally formed a Pharmaceutical Services Regulations Committee (PSRC) under section 65Z5 of the National Health Service Act 2006. By virtue of NHS England's Pharmacy Manual, this Committee is responsible for making decisions required by the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the 2013 Regulations).

1.2 With effect from 1 April 2026, following the reconfiguration of ICBs in the East of England, responsibility for the PSRC is now held jointly by the three ICBs covering Central East, Essex, and Norfolk and Suffolk. The PSRC is hosted by NHS Central East ICB on behalf of these three ICBs.

1.3 I am writing to inform you that the PSRC met on Wednesday 25th March 2026, where they were made aware of the failure of Elmwood Healthcare Ltd, t/a Nuffield Pharmacy to ensure that pharmaceutical services are provided at the pharmacy premises for not less than 40 hours each week in line with paragraph 23(1)(a).

1.4 The decision was made by the Committee that the attached Breach Notice be served.

1.5 "**Breach Notice**

1.6 **Name of contractor: Elmwood Healthcare Ltd, t/a Nuffield Pharmacy (FAJ75)**

1.7 **Address of premises: Nuffield Road Medical Centre, Nuffield Road, Cambridge, CB4 1GL**

1.8 **Date of inclusion in the pharmaceutical list for the area of Cambridgeshire Health and Wellbeing Board: 23rd September 2023**

1.9 **This is a breach notice issued under regulation 71 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (the 2013 regulations).**

1.10 **Breaches of Terms of Service: Breach Notices:**

1.11 *71.—(1) Where an NHS chemist (C) breaches a term of service and the breach is not capable of remedy, NHS England may by a notice ("a breach notice") require C not to repeat the breach.*

1.12 Accordingly, you are required to ensure that you do not repeat the breach detailed in this notice. Failure to do so may lead the ICB to remove the above-named premises from its Pharmaceutical List for the area of Hertfordshire Health and Wellbeing Board. Regulation 73(1)(b) states:

1.13 ***73.**—(1) NHS England may remove an NHS chemist (C) from a pharmaceutical list, or remove the listing of particular listed chemist premises in relation to C, if C—*

1.13.1 *(b)has breached C's terms of service, and—*

1.13.1.1*(i)C has repeatedly been issued with remedial notices or breach notices (or both) in relation to the relevant term of service,*

1.13.1.2*(ii)previously been issued with a remedial notice or breach notice in relation to the relevant term of service, and NHS England is satisfied that C is likely to persist in breaching the term of service without good cause, or*

1.13.1.3*(iii)C has repeatedly been issued with remedial notices or breach notices (or both) in relation to different terms of service, and NHS England is satisfied that C is likely to persist in breaching C's terms of service without good cause.*

1.14 **Nature of the Breach:**

1.15 Failure of Elmwood Healthcare Ltd, t/a Nuffield Pharmacy (FAJ75), to ensure the provision of pharmaceutical services in line with the Regulations:

1.16 Failure of Elmwood Healthcare Ltd, t/a Nuffield Pharmacy (FAJ75) to ensure that pharmaceutical services are provided at the pharmacy premises for not less than 40 hours each week:

1.17 *23.—(1) Subject to Paragraph 23A, an NHS pharmacist (P) must ensure that pharmaceutical services are provided at P's pharmacy premises—*

1.17.1 *(a) for 40 hours each week;*

1.18 **Background**

1.19 On Friday 9th January 2026, following the second Remedial Notice issued on the 10th December 2025, Elmwood Healthcare Ltd t/a Nuffield Pharmacy (FAJ75) provided the ICB with the requested Responsible Pharmacist (RP) Log. This covered dates from Monday 3rd March 2025, through to and including Wednesday 7th January 2026.

1.20 Elmwood Healthcare Ltd t/a Nuffield Pharmacy (FAJ75) provided an explanation as to why core hours were not being provided in line with those held on the Pharmaceutical List (PL):

1.20.1 *"Since March 2025, pharmacy has been operating 09:00 – 18:00. This was based on the information provided by Lloyds Pharmacy during the acquisition"*

1.20.2 *"Notification to the ICB to reflect opening hours of 09:00 – 18:00, providing 3 months' notice of confirmed opening hours"*

1.20.3 *"Reverting back to operating hours of 08:30 – 18:30 to ensure full coverage"*

1.21 The Change of Ownership (COO) application form submitted by Elmwood Healthcare Ltd, t/a Nuffield Pharmacy did include the hours that are held on the PL which are 08.30 – 18.30 Monday to Friday. The COO effective date was from the 29th September 2023.

1.22 The P&O Team received an email from [*redacted by NHS Resolution*] on Friday 3rd May 2024 requesting changes to hours. The P&O Team provided an explanation as to the correct process to follow on Friday 10th May 2024 in order for the change in hours to be considered.

1.23 Friday 5th December 2025, the DoS and www.nhs.uk was updated to reflect the contracted hours held on the PL.

1.24 On Tuesday 10th March 2026, the P&O Team emailed the contractor following a review of the RP Log previously provided in January 2026.

1.25 The email sent by the P&O team also provided a response to the contractor's explanations as to why pharmaceutical services had not been provided in line with the contracted hours held on the PL. The email stated that the RP Log provided confirms the loss of pharmaceutical hours, Monday to Friday from 08:30 – 09:00 and 18:00 – 18:30 from Monday 3rd March 2025 through to and including Thursday 4th December 2025.

1.26 The contractor was reminded that a reduction in core hours without prior approval from the ICB is a breach of Terms of Service. This email was sent to [*redacted by NHS Resolution*]@nhs.net [*redacted by NHS Resolution*]@nhs.net and [*redacted by NHS Resolution*]@hotmail.com.

1.27 Delivery receipts were received for the three email address. A Not Read receipt was received from pharmacy. [*redacted by NHS Resolution*]@nhs.net which

stated: "*was deleted without being read on Wednesday 11th March 2026 08:04".*

1.28 The table below sets out the dates whereby Elmwood Healthcare Ltd, t/a Nuffield Pharmacy (FAJ75) did not provide pharmaceutical services.

Month	Week commencing	Hours not provided	Total weekly loss of hours
March 25	Mon 3rd – Fri 7th Mon 10th – Fri 14th Mon 17th – Fri 21st Mon 24th – Fri 28th Mon 31st	08:30 – 09:00 & 18:00 – 18:00 [sic] daily	21 hrs
April 25	Tues 1st – Fri 4th Mon 7th – Fri 11th Mon 14th – Thurs 17th Tues 22nd – Fri 25th Mon 28th – Weds 30th	08:30 – 09:00 & 18:00 – 18:00 [sic] daily	20 hrs
May 25	Thurs 1st – Fri 2nd Tues 6th – Fri 9th Mon 12th – Fri 16th Mon 19th – Fri 23rd Tues 27th – Fri 30th	08:30 – 09:00 & 18:00 – 18:00 [sic] daily	20 hrs
June 25	Mon 2nd – Fri 6th Mon 9th – Fri 13th Mon 16th – Fri 20th Mon 23rd – Fri 27th Mon 30th	08:30 – 09:00 & 18:00 – 18:00 [sic] daily	21 hrs
July 25	Tues 1st – Fri 4th Mon 7th – Fri 11th Mon 14th – Fri 18th Mon 21st – Fri 25th Mon 28th – Thurs 31st	08:30 – 09:00 & 18:00 – 18:00 [sic] daily	23 hrs
August 25	Fri 1st Mon 4th – Fri 8th Mon 11th to Fri 15th Mon 18th – Fri 22nd Tues 26th – Fri 29th	08:30 – 09:00 & 18:00 – 18:00 [sic] daily	20 hrs
September 25	Mon 1st – Fri 5th Mon 8th – Fri 12th Mon 15th – Fri 19th Mon 22nd – Fri 26th Mon 29th – Tues 30th	08:30 – 09:00 & 18:00 – 18:00 [sic] daily	22 hrs
October 25	Weds 1st – Fri 3rd Mon 6th – Fri 10th Mon 13th – Fri 17th Mon 20th – Fri 24th Mon 27th to Fri 31st	08:30 – 09:00 & 18:00 – 18:00 [sic] daily	23 hrs

November 25	Mon 3rd – Fri 7th Mon 10th – Fri 14th Mon 17th – Fri 21st Mon 24th – Fri 28th	08:30 – 09:00 & 18:00 – 18:00 [sic] daily	20 hrs
December 25	Mon 1st – Thurs 4th	08:30 – 09:00 & 18:00 – 18:00 [sic] daily	4 hrs
Total			**194 hrs**

1.29 **You are required not to repeat the breach again.**

1.30 You have a right of appeal to the Secretary of State against the issuing of this breach notice.

1.31 Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this notice to nhsr.appeals@nhs.net or:

1.32 Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.

1.33 Please note that should you fail to comply with the requirements of this breach notice we reserve the right to exercise our powers to take further action in relation to your inclusion in the pharmaceutical list in respect of the above named premises. This may include removal of the premises from the relevant pharmaceutical list under regulation 73 of the 2013 regulations.

1.34 Dated: 28th April 2026."

2 The Appeal

In an undated letter received by email on 22 May 2026 addressed to NHS Resolution, the Elmwood Healthcare Limited (FAJ75) T/A Nuffield Pharmacy ("the Appellant") appealed against Central East ICB's ("the Commissioner") decision. The grounds of appeal are:

2.1 "I write on behalf of Elmwood Healthcare Ltd t/a Nuffield Pharmacy (FAJ75) to appeal the Breach Notice dated 28 April 2026 issued under Regulation 71 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

2.2 The stated basis of the alleged breach is failure to comply with paragraph 23(1)(a), namely failure to ensure that pharmaceutical services were provided "for 40 hours each week."

2.3 However, during the relevant period, the pharmacy operated Monday to Friday from 09:00 to 18:00, amounting to 45 hours per week. Accordingly, the pharmacy remained open in excess of the statutory minimum requirement of 40 hours weekly.

2.4 The evidence relied upon within the Breach Notice does not demonstrate that the pharmacy provided fewer than 40 hours of pharmaceutical services per week.

2.5 Rather, the evidence demonstrates only that the pharmacy did not open during certain periods between 08:30–09:00 and 18:00–18:30.

2.6 The Notice therefore appears to conflate: the statutory minimum weekly requirement under paragraph 23(1)(a); and the separate issue of approved "core" or contracted opening hours recorded on the Pharmaceutical List.

2.7 While there may have been an administrative issue concerning authorised core hours, that is materially different from a failure to provide pharmaceutical services for at least 40 hours weekly.

2.8 The contractor acted throughout in good faith and relied upon information inherited during the acquisition of the pharmacy from the previous operator.

2.9 The Notice itself records that: the pharmacy had been operating 09:00–18:00 since March 2025 based on information provided during acquisition; and notification was provided to the ICB regarding the revised hours.

2.10 Importantly: the pharmacy continued to provide full weekday pharmaceutical services, there was no allegation of patient harm or abandonment of services, the pharmacy remained open for 45 hours weekly, and corrective action was subsequently taken. For these reasons, the contractor respectfully submits that: the factual findings do not establish breach of paragraph 23(1)(a); the Breach Notice is based on an incorrect or misapplied regulatory provision; the decision is disproportionate in circumstances where the statutory 40-hour requirement was exceeded; and the Breach Notice should therefore be withdrawn. The wording of Regulation 23(1)(a) is clear and unambiguous.

2.11 The pharmacy was open and providing pharmaceutical services for 45 hours per week throughout the relevant period.

2.12 On the facts set out within the Breach Notice itself, there was no failure to provide pharmaceutical services for "not less than 40 hours each week".

2.13 Accordingly, the legal basis for the Breach Notice is not made out."

3 Summary of Representations

This is a summary of representations received on the appeal.

3.1 THE COMMISSIONER

3.1.1 "Please note that as of the 1st April 2026, HWE ICB merged and now forms part of Central East Integrated Care Board (CE ICB). At the time this decision was determined by the Pharmaceutical Services Regulations Committee (PSRC), HWE ICB hosted the PSRC on behalf of 6 ICBs within the East region. It is now hosted by CE ICB on behalf of 3 ICBs.

3.1.2 Thank you for your letter dated 27th May 2026 advising that Elmwood Healthcare Limited (the Appellant) has submitted an appeal against the decision to issue a breach notice issued by CE ICB.

3.1.3 Having reviewed the appeal, the main grounds for appeal are that the breach notice does not demonstrate that the pharmacy provided fewer than 40 hours of pharmaceutical services per week as per paragraph 23(1)(a) of the NHS Pharmaceutical and Local Pharmaceutical Services Regulations 2013, as amended ("the Regulations"). The ICB remain of the opinion that it was correct to issue a breach notice.

3.1.4 The breach notice was issued in relation to 23(1)(a) and the ICB agrees that paragraph 23(7) is therefore also relevant - "*it follows that a failure to open for the specified number of hours mean that you have not opened on the days and times as notified to the Commissioner."*

3.1.5 Considering Paragraph 23(7) of the Regulations, the ICB can confirm that the Appellant did fail to open for the specified number of hours, meaning that they have not opened on days and times notified to the Commissioner. This is evidenced by the papers that were presented to PSRC, the breach notice that was issued and these representations, providing further detail.

3.1.6 All papers and associated documents have been enclosed with these representations.

3.1.7 Please find below the information that the ICB wish to be considered in relation to the appeal by the Appellant. We have adopted the structure of the letter of appeal, with our corresponding comments in response:

3.1.8 The Appellant states: *"During the relevant period, the pharmacy operated Monday to Friday from 09:00 to 18:00, amounting to 45 hours per week. Accordingly, the pharmacy remained open in excess of the statutory minimum requirement of 40 hours weekly"* and "*The evidence relied upon within the Breach Notice does not demonstrate that the pharmacy provided fewer than 40 hours of pharmaceutical services per week. Rather, the evidence demonstrates only that the pharmacy did not open during certain periods between 08:30–09:00 and 18:00–18:30*." (Appeal letter, page 1).

3.1.9 The table below shows a total of 50 hours held on the pharmaceutical list for Elmwood Healthcare Limited. This consists of 40 core hours and 10 supplementary hours:

Current			40 [C] 10 [S]
	C1	S2	C2
Monday	8:30 – 12:30	12:30 – 14:30	14:30 – 18:30

Tuesday	8:30 – 12:30	12:30 – 14:30	14:30 – 18:30
Wednesday	8:30 – 12:30	12:30 – 14:30	14:30 – 18:30
Thursday	8:30 – 12:30	12:30 – 14:30	14:30 – 18:30
Friday	8:30 – 12:30	12:30 – 14:30	14:30 – 18:30
Saturday			
Sunday			

3.1.10 The Appellant confirmed that the pharmacy operated Monday to Friday from 09:00 – 18:00, which does not cover core hours from 08:30 – 09:00 and 18:00 – 18:30, Monday to Friday. The Appellant appears to be suggesting that as they were open for more than 40 hours, this is the same as providing pharmaceutical services throughout core and supplementary hours as notified to the Commissioner, which it is not.

3.1.11 The total number of hours provided by the Appellant for the period of Monday 3rd March 2025 through to and including Thursday 4th December 2025 totalled 45 hours per week, which was provided as 35 core hours and 10 hours supplementary, therefore demonstrating 5 core hours less per week as presented below:

Opening hours			35 [C] 10 [S]
	C1	S2	C2
Monday	9:00 – 12:30	12:30 – 14:30	14:30 – 18:00
Tuesday	9:00 – 12:30	12:30 – 14:30	14:30 – 18:00
Wednesday	9:00 – 12:30	12:30 – 14:30	14:30 – 18:00
Thursday	9:00 – 12:30	12:30 – 14:30	14:30 – 18:00
Friday	9:00 – 12:30	12:30 – 14:30	14:30 – 18:00
Saturday			
Sunday			

3.1.12 Furthermore, this was evidenced in the Pharmacist Log Sheet which was provided by the Appellant. A copy of this can be found in **Appendix 1.**

3.1.13 The Appellant states: "*The Notice therefore appears to conflate: the statutory minimum weekly requirement under paragraph 23(1)(a); and the separate issue of approved "core" or contracted opening hours recorded on the Pharmaceutical List. While there may have been an administrative issue concerning authorised core hours, that is materially different from a failure to provide pharmaceutical services for at least 40 hours weekly."* (Appeal letter, page1).

3.1.14 The Appellant has misinterpreted the Regulations. Paragraph 23(1)(a) of Schedule 4 relates to the pharmacy's core opening hours only, not its total opening hours. It does not include any supplementary hours, which sit outside the contractual minimum.

3.1.15 The Appellant states: "*The contractor acted throughout in good faith and relied upon information inherited during the acquisition of the pharmacy from the previous operator."* (Appeal letter, page 1).

3.1.16 The ICB can confirm that the Appellant emailed the ICB on Friday 9th January 2026, which was in response to the first Remedial Notice that was issued on Monday 13th October 2025. In summary the email from the Appellant confirmed:

3.1.17 *"Since March 2025, the pharmacy has been operating 09:00–18:00. This was based on the information provided to us by Lloyds Pharmacy during the acquisition. We were advised that the contractual hours were:*

3.1.17.1*Core hours: 09:00–13:00 and 14:00–18:00*

3.1.17.2*Supplementary hours: 08:30–09:00 and 18:00–18:30."*

3.1.18 In the response to the Appellant, the ICB included a copy of the Change of Ownership (COO) application which confirmed the contracted hours of the previous owner and that of the new owner (the Appellant). A copy of the COO is enclosed at **Appendix 2.**

3.1.19 These hours are as noted below, which were and are currently included in the pharmaceutical list.

3.1.20 The 40 core opening hours for the pharmacy are:

3.1.20.1 Monday to Friday 08:30 – 12:30 and 14:30 – 18:30

3.1.21 The 10 supplementary hours for the pharmacy are:

3.1.21.1 Monday to Friday 12:30 – 14:30

3.1.22 Furthermore, it should be noted that the COO took place as of 29th September 2023. From this date, the Appellant was providing the contracted core and supplementary hours as set out on the pharmaceutical list until they amended their opening hours via the Directory of Service (DoS) on Monday 3rd March 2025. This amendment resulted in the loss of core hours Monday to Friday 08:30 – 09:00 and 18:00 – 18:30. It would appear therefore that a clear decision was made by the Appellant, with intent on amending the contracted hours.

3.1.23 Core hours are mandatory and cannot be reduced without formal consideration in line with the Regulations. No application to amend core hours was granted by the ICB and therefore the contractor is in breach of 23(1)(a) and paragraph 23(7) of the Regulations, as the Appellant did fail to open for the specified number of hours. The Appellant has not opened on days and times notified to the Commissioner.

3.1.24 **Conclusion**

3.1.25 The ICB remain of the opinion that having reviewed the grounds of the appeal and the information provided by the Appellant, there has been a breach of the Regulations. The Appellant was providing 35 core hours for the specific dates from Monday 3rd March 2025 through to and including Thursday 4th December 2025."

3.1.26 [Enclosures:

3.1.26.1 Appendix 1 – Pharmacist Log Sheet

3.1.26.2 Appendix 2 – COO Application

3.1.26.3 Pharmaceutical Services Regulations Committee – meeting 25 March 2026

3.1.26.4 Letter from the Commissioner to the Appellant dated 13 October 2025 regarding first Remedial Notice

3.1.26.5 Letter from the Commissioner to the Appellant dated 6 January 2026 regarding second Remedial Notice

3.1.26.6 Email from Appellant to the Commissioner dated 9 January 2026

3.1.26.7 Email from Commissioner dated 10 March 2026 with copy of email trail between the Appellant and the Commissioner 30 September 2023 to 9 May 2024

3.1.26.8 Email from Commissioner to the Appellant dated 10 March 2026 (in response to Appellant email of 9 January 2026)

3.1.26.9 Read receipt email notification dated 11 March 2026 noting email of 10 March was deleted without being read.

3.1.26.10 Copy of Breach notice dated XX [sic] March 2026 from the Commissioner to the Appellant

3.1.26.11 Pharmaceutical Services Regulations Committee meeting 25 March 2026

3.1.26.12 Letter from the Commissioner to the Appellant dated 6 May 2026 with Breach Notice decision dated 28 April 2026. [See paragraphs 1.1 to 1.34 above].] [See Appendix A for Adjudicator]

4 Observations

No observations were received by NHS Resolution in response to the representations received on appeal.

5 Consideration

5.1 Under Regulation 71(1) "Breaches of terms of service: breach notices" of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), a Breach Notice may be issued:

71. *(1) Where an NHS chemist (C) breaches a term of service and the breach is not capable of remedy, NHS England may by a notice ("a breach notice") require C not to repeat the breach.*

5.2 I note that in the Regulations an NHS Chemist means "*an NHS appliance contractor or an NHS pharmacist*". An NHS pharmacist is defined as "*a person included in a pharmaceutical list of the type referred to in regulation 10(2)(a);"*. Regulation 10(2)(a) states:

10(2) "Those lists (which are pharmaceutical lists) are

(a) a list of persons who undertake to provide pharmaceutical services in particular by way of the provision of drugs;"

5.3 The Regulations contain no definition as to what constitutes a breach of terms of service which is not capable of remedy.

5.4 I note that the pharmacy is included on the pharmaceutical list and that there is no dispute between the parties with regard to this.

5.5 I note that the Breach Notice dated 6 May 2026 was issued pursuant to Regulation 71(1) and is compliant with the requirements of a breach notice as it includes the nature of the breach and an explanation of the Appellant's right of appeal under Regulation 77(1)(c).

5.6 The cover letter with the Breach Notice states:

5.6.1 "*I am writing to inform you that the PSRC met on Wednesday 25th March 2026, where they were made aware of the failure of Elmwood Healthcare Ltd, t/a Nuffield Pharmacy to ensure that pharmaceutical*

services are provided at the pharmacy premises for not less than 40 hours each week in line with paragraph 23(1)(a)."

5.7 The Breach Notice provides some background information referencing:

5.7.1 a second remedial notice sent to the Appellant on 10 December 2025;

5.7.2 the pharmacy log, provided by the Appellant on 9 January 2026;

5.7.3 the change of ownership from Lloyds to the Appellant which was effective from 29 September 2023;

5.7.4 email correspondence between the Appellant and Commissioner from May 2024 regarding the process to follow for a change of hours to be considered.

5.8 The Breach Notice continues:

5.8.1 "*The email sent by the P&O team also provided a response to the contractor's explanations as to why pharmaceutical services had not been provided in line with the contracted hours held on the PL. The email stated that the RP Log provided confirms the loss of pharmaceutical hours, Monday to Friday from 08:30 – 09:00 and 18:00 – 18:30 from Monday 3rd March 2025 through to and including Thursday 4th December 2025*."

5.9 Given the email communication between parties from 30 September 2023 through to 10 March 2026, I am content that local dispute resolution has taken place. Given that there is no dispute raised by either party that the local dispute resolution process has not been exhausted, I am content that I can deal with this matter.

5.10 I note that the Appellant seeks to appeal against the decision of the Commissioner to issue the Breach Notice for its failure to ensure that pharmaceutical services are provided at the pharmacy premises for not less than 40 hours each week between 3 March 2025 and 4 December 2025.

5.11 The Breach Notice alleges a breach of paragraph 23(1)(a) of Schedule 4 of the Regulations as a result of the Appellant's obligations "*to ensure that pharmaceutical services are provided at the pharmacy premises for not less than 40 hours each week in line with paragraph 23(1)(a)*".

5.12 Paragraph 23(1)(a) states:

(1) Subject to paragraph 23A, an NHS pharmacist (P) must ensure that pharmaceutical services are provided at P's pharmacy premises—

(a) for 40 hours each week

5.13 There is no dispute that the Appellant was open from 09:00 to 18:00 between 3 March 2025 and 4 December 2025 as stated in the appeal and as evidenced by the pharmacy log which equates to being open for 45 hours a week. Indeed, the Appellant states "*during the relevant period, the pharmacy operated Monday to Friday from 09:00 to 18:00, amounting to 45 hours per week. Accordingly, the pharmacy remained open in excess of the statutory minimum requirement of 40 hours weekly*." The Appellant goes on to state that "*the evidence demonstrates only that the pharmacy did not open during certain periods between 08:30–09:00 and 18:00–18:30*."

5.14 As part of this appeal process, NHS Resolution had invited representations from both parties stating:

5.14.1 "…*paragraph 23(7) is also relevant to our consideration because it follows that a failure to open for the specified number of hours mean that you have not opened on the days and times as notified to the Commissioner*."

5.15 Paragraph 23(7) reads:

(7) Where P has notified to NHS England (or, before the appointed day, a Primary Care Trust) the days on which and times at which pharmaceutical services are to be provided at or from P's pharmacy premises (for example, in a return under sub-paragraph (5) or (6) or in an application for inclusion in a pharmaceutical list)—

(a) P must ensure that pharmaceutical services are provided at or from the premises to which the notification relates on the days and at the times set out in the notification (unless the notification has been superseded by a return, or a further return, under sub-paragraph (6));

(ba) P must not change the days on which or the times at which pharmaceutical services are to be provided at or from those premises during core opening hours, except for making a change that—

(i) amounts to the inclusion of a rest break which is no longer than one hour, or a change to such a rest break—

(aa) on a Monday to Saturday, which starts at least 3 hours after the start of the pharmacy's opening hours and ends at least 3 hours before the end of the pharmacy's opening hours, or

(bb) on a Sunday, and

(ii) does not change the total number of P's core opening hours on a particular day,

otherwise than as provided for, and in accordance with the procedures set out in, paragraphs 25 and 26;

(bb) P must not change P's supplementary opening hours in a way that reduces the time for which P's pharmacy is open before or after a rest

break on a Monday to Saturday to less than 3 hours (if P wants to change the supplementary opening hours affected by this requirement, P must also change the time of the rest break);

(bc) P must not change—

(i) the total number of P's supplementary opening hours in a way that either reduces or leaves the same the total number of P's supplementary opening hours, or

(ii) unless the change relates to an increase of the total number of supplementary opening hours, the days on which or the times at which pharmaceutical services are to be provided at or from P's premises during supplementary opening hours, for a period of at least 5 weeks after the day on which that notification was received by NHS England, unless NHS England agrees otherwise; and

(bd) P must not change the days on which or the times at which pharmaceutical services are to be provided at or from those premises during core opening hours, in the case of making a change that—

(i) amounts to the inclusion of a rest break which is no longer than one hour, or a change to such a rest break—

(aa) on a Monday to Saturday, which starts at least 3 hours after the start of the pharmacy's opening hours and ends at least 3 hours before the end of the pharmacy's opening hours, or

(bb) on a Sunday, and

(ii) does not change the total number of P's core opening hours on a particular day,

for a period of at least 5 weeks after the day on which that notification was received by NHS England, unless NHS England agrees otherwise.

5.16 The Commissioner states in its representations that "*Considering Paragraph 23(7) of the Regulations, the ICB can confirm that the Appellant did fail to open for the specified number of hours, meaning that they have not opened on days and times notified to the Commissioner*." The Appellant did not provide any representations or rebuttal.

5.17 I note that the Commissioner has provided a copy of the Appellant's change of ownership form which is signed and dated 9 February 2023. This shows that the core hours total 40 and are from 08:30 to 12:30 and from 14:30 to 18:30 Monday to Friday with supplementary hours between 12:30 and 14:30 which provide an additional 10 hours making a total of 50 hours per week. The change of ownership came into effect on 29 September 2023.

5.18 I have also been provided with email correspondence between the Appellant and the Commissioner. The email of 30 September 2023 from the Commissioner provides a table which clearly shows the core and supplementary opening times as stated above. Further the Appellant, in response on 2 October 2023 states:

5.18.1 "*Thank you for sending me the core hours. We find that between 6-6;30pm in the stores are so quiet, and strain on the locum costs. I know they are core hours, is there any chance in changing the core hours at all?*"

5.19 A later email from the Appellant dated 3 May 2024 states:

5.19.1 "*Please find attached my form to change core hours for nuffiled*" [sic]

5.20 Whilst it is not clear what happened to this application, the Commissioner, in its representations, states that "*No application to amend core hours was granted by the ICB*."

5.21 The Commissioner further states that from 29 September 2023:

5.21.1 "*the Appellant was providing the contracted core and supplementary hours as set out on the pharmaceutical list until they amended their opening hours via the Directory of Service (DoS) on Monday 3rd March 2025. This amendment resulted in the loss of core hours Monday to Friday 08:30 – 09:00 and 18:00 – 18:30.*"

5.22 Based on the information before me which has not been disputed by the Appellant, I am of the view that the Appellant was indeed open for 45 hours a week between 3 March 2025 to 4 December 2025. However, 10 of those hours were supplementary hours and it was not providing services from 08:30 to 09:00 and 18:00 to 18:30 which were part of its core hours. Therefore, giving a deficit of 5 core hours each week.

5.23 Further, the undisputed information, indicates that the Appellant changed its core opening times without following the correct procedure. The Appellant's core hours are 08:30 to 12:30 and 14:30 to 18:30 until such time that it applies to change these hours which is granted by the Commissioner. I conclude that as the Appellant failed to provide pharmaceutical services at the notified core opening times from 3 March 2025 to 4 December 2025 it was in breach of paragraph 23(7) of Schedule 4, rather than paragraph 23(1)(a) of Schedule 4.

6 Decision

6.1 Under NHS Resolution's powers, as set out in paragraph 9(5) of Schedule 3 to the Regulations, I may either confirm the decision of the Commissioner or substitute for that decision any decision that the Commissioner could have taken when it took that decision.

6.2 Pursuant to paragraph 9(5)(b) of Schedule 3 to the Regulations I substitute the decision of the Commissioner to issue the Breach Notice with a decision to issue a breach notice for failure to provide pharmaceutical services on the days and at the times notified to the Commissioner, in accordance with paragraph 23(7) of Schedule 4 to the Regulations.

Head of Appeals
NHS Resolution