

10 December 2009

FILE REF: 15349
PRIMARY CARE TRUST: NOTTINGHAMSHIRE COUNTY
PHARMACIST: Harts Chemist
PREMISES: 106-110 Watnall Road
Hucknall,
NOTTINGHAM, NG15 7JW

THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL SERVICES) REGULATIONS
2005 (as amended)

SCHEDULE 1 [Terms of Service of Pharmacists]
PART 3 [Hours of Opening]

1 Introduction

- 1.1 The above pharmacist has applied to the above Primary Care Trust ("the PCT") to change the days and times at which it is obliged to provide pharmaceutical services with effect from 1 June 2009. It would appear that the pharmacist seeks to change the days and times at which it is obliged to provide pharmaceutical services while still remaining open for 40 hours as it is currently obliged to do.
- 1.2 The local PCT has refused the application. The pharmacist seeks to appeal to this Authority.

2 Consideration

Rights of appeal

- 2.1 Where a PCT has determined an application under paragraph 25 of the Regulations and has granted it in part only or has refused it, Regulation 25(9) provides a right of appeal to the Secretary of State
- 2.2 The Secretary of State for Health has directed the NHS Litigation Authority to determine such appeals. As an authorised officer of the NHS Litigation Authority, 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:
- 'core' opening hours (days on and times at which the pharmacy is *obliged* to be open);
 - 'directed' opening hours (days on and times at which the pharmacy is *obliged* to be open in addition to the 'core' opening hours); or

- "supplementary opening hours" (other days on and times at which the pharmacy undertakes to provide pharmaceutical services, as notified to the PCT).

Alteration of 'core' or 'directed' opening hours

- 2.4 In accordance with paragraph 3 of Schedule 4 to the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list, details of the days on and times at which it will be obliged to provide pharmaceutical services under paragraph 22(1)(a) of Schedule 1 to the Regulations. To these may be added 'directed' opening hours under paragraph 22(1)(e) if the PCT so directs. These then form part of the entry in the pharmaceutical list.
- 2.5 These days and times may only be altered on application under paragraph 25(1).

Alteration of supplementary opening hours

- 2.6 Other days or times at which services are to be provided (as set out in the original application for entry in the pharmaceutical list) may be altered by giving notice to the PCT, in accordance with paragraph 22(5)(a) of Schedule 1 to the Regulations without the need to make an application.
- 2.7 Notices under paragraph 22(5)(a) are not subject to review by this Authority.

Harts Chemist Ltd proposals

- 2.8 I understand that the pharmacy is obliged to open for 40 hours per week, by virtue of being included in the pharmaceutical list under Regulation 22(1)(a) and I have no details with regards to any "supplementary" hours which the pharmacy undertakes.
- 2.9 The pharmacist has applied for the changes to the 'core' opening hours in an application form and notified the PCT, the form is dated 6 May 2009.
- 2.10 In light of the Regulations, a change to the days on or times at which the pharmacy's 'core' opening hours would be provided would require an application. In this case, the 'core' opening hours which would normally be provided on a Saturday being provided over the course of the preceding 5 weekdays.
- 2.11 There is no indication in this case that any direction currently exists or that the PCT has issued such a direction.

Assessment

- 2.12 Applications for the alteration of 'core' opening hours should be considered in light of paragraph 25(2) of Schedule 1 to the Regulations and 'pharmaceutical need'. (Paragraph 25(2) provides that a pharmacist may be required by the PCT to provide information on "any changes to the needs of the people in the neighbourhood, or other likely users of the pharmacy, for pharmaceutical services" which are material to the application.)
- 2.13 In this case, the applicant pharmacist provided the following information in his application (expanded upon in part in his letters to this Authority dated 2 September 2009 and 16 September 2009):

- (a) Hucknall is a small town which has eight pharmacies within a 2 mile radius;
 - (b) 4 other pharmacies open on a Saturday, one of those is a 100 hour pharmacy open until 11pm;
 - (c) we do not have a minor ailments scheme in this area, which limits our effectiveness during out of hours periods.;
 - (d) revised hours include lunch time, at least 4 other pharmacies in the area do not open during this time;
 - (e) more beneficial to have a service during lunchtime than a Saturday
- 2.14 The PCT was entitled, but not obliged, to request relevant further information. In this case, it chose not to do so and I make no criticism of them for that.
- 2.15 In considering the question of pharmaceutical need I note that there are other pharmacies open on a Saturday, however the applicant has not provided any information to show that there has been a change to pharmaceutical need in Hucknall which would require the core hours of this pharmacy to be changed from a Saturday to lunchtime opening during the week.
- 2.16 I have considered whether there has been a change to the needs of the people in the neighbourhood, or other likely users of the pharmacy, for pharmaceutical services and have determined that there is not. In those circumstances, the application for a change to 'core' opening hours must be refused.

3 Determination

- 3.1 Notices for the change of 'supplementary' hours under paragraph 22(5)(a) of Schedule 1 to the Regulations are not subject to review by this Authority.
- 3.2 There is no change to the needs of the people in the neighbourhood, or other likely users of the pharmacy, for pharmaceutical services on a Saturday. The application must therefore be refused and the appeal dismissed.

Lisa Hughes
Appeals Manager