

14 January 2010

FILE REF: 15494
PRIMARY CARE TRUST: COVENTRY
PHARMACIST: Longford Chemist
PREMISES: Longford Primary Care Centre,
Longford Road,
COVENTRY, CV6 6DR

**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 at the above premises. It would appear that the pharmacist seeks to keep the total number of 'core' hours the same while offering to provide 'supplementary' hours.
- 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.

Longford Chemist 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 currently does not open for any additional hours.
- 2.9 The pharmacy wishes to:
- (a) treat its weekday opening hours of 9.00am to 6.00pm (Monday, Tuesday, Wednesday and Friday) and 9.00am to 1.00pm (Thursday) as 40 'core' opening hours rather than the usual 36 'core' opening hours (9.00am to 6.00pm each day with a lunch break of 1.00pm to 2.00pm and Thursday 9.00am to 1.00pm); and
 - (b) close on Saturdays, rather than open as usual between 9.00am and 1.00pm (4 'core' opening hours).
- 2.10 The pharmacist has applied for the changes to the 'core' opening hours with effect from 30 September 2009 in an application form and notified the PCT of changes to the supplementary opening hours in the same form, which is dated 30 June 2009.
- 2.11 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 weekdays (Monday to Friday except Thursday).
- 2.12 There is no indication in this case that any direction currently exists or that the PCT has issued such a direction.

Assessment

- 2.13 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.)

2.14 In this case, the applicant pharmacist provided the following information in his application (expanded upon in part in his letter to this Authority dated 29 October and 31 December 2009):

- (a) We have relocated to the above address on March 2007 and extended our opening hours to cover for the GP opening hours. It has eluded my attention to change the core hours as the opening hour on your record is for the old premises.
- (b) I would also like to apply to close on Saturday 26 December 2009. We don't do a lot of dispensing on Saturday as all the surgeries within our neighbourhood are closed on Saturday. We would typically dispense between 10-20 items for the morning. As Boxing Day falls on Saturday this year, it would be hard to get staff to come in to work. I would anticipate the work load to be even less than normal as most people would be celebrating with family and friend.
- (c) The pharmacy relocated from 219 Longford Road to Longford Primary Care Centre at 150 Longford Road two years ago. The move means there is a change to the pharmaceutical need of patients. We are situated within the medical centre with three GP practices and they operate a slightly different opening hours. We have extended our opening hours to accommodate these changes. We have opened at 8.30am instead of 9am, opened throughout the day without lunchtime closing, opening until 6.30pm from 6pm. On Saturday we opened from 9am to 1pm.
- (d) None of the three surgeries within the medical centre open on Saturday. We applied to change our core and supplementary hours based on the guideline from Coventry PCT; it said that the core hours should be selected to cover the busy period in the pharmacy working day. Supplementary hours should be selected from the period when the pharmacy is less busy eg Saturday.
- (e) We cannot understand why the PCT have ignored their own guidelines on this occasion.
- (f) Also enclosed is a copy of the pharmacy contractor opening hours notification form, the letter from Coventry PCT to refuse change of core and supplementary hours, last few month prescription figure to support the application to change Saturday opening hours from core to supplementary hours and guideline from Coventry PCT for pharmacy hours of service.
- (g) It is our contention that the PCT have erred fundamentally in their decision and the Family Health Service Appeal Unit should overturn the decision.
- (h) I would like to reiterate that the two nearest pharmacies operate extended opening hours over the weekend. Boots from 9am to 12 midnight and Tesco open 8am to 8pm on Saturday. There is adequate pharmaceutical cover in the neighbourhood. we applied to change the Sat opening hour (9am-0pm) from core to hour to supplementary hour. It is not our intention to close on Saturday.

2.15 The PCT was entitled, but not obliged, to request relevant further information. In this case, it chose to do so and requested evidence of a change in

pharmaceutical need, including the previous six months number of items dispensed and information on 'over the counter' medicine sales. The PCT also requested information as to how they intend to deal with enhanced services that are currently provided on a Saturday.

2.16 In considering the question of pharmaceutical need, I have proceeded on the following basis:

- (a) I have seen no evidence which indicates a change of attitude towards Saturdays or which indicates an expectation either way as to whether or not Longford Chemist would be open; I note the prescription figures provided by the applicant however these do not show that there is no demand for pharmaceutical services on a Saturday.
- (b) I note the comments from the applicant with regard to the local medical centre being closed on a Saturday, however this has been the case since the pharmacy moved there in March 2007. This closure does not appear to result in no or very few prescriptions being dispensed and given the applicant has not provided me with any prescription information prior to the move (i.e. before the surgery closed on a Saturday) no change in need has been demonstrated.
- (c) I note that the pharmacy is proposing to replace their 'core' hours with 'supplementary' hours and therefore remain open, however there is no guarantee that the pharmacy may not choose to alter these 'supplementary' hours in the future.
- (d) in light of my assessment above I see no reason to conclude that the expectation and demand of those served by the pharmacy on a Saturday will be different in the future when compared to the demand on any previous Saturday.
- (e) in light of my assessment in paragraph (a) above, the opening of other pharmacies in adjacent neighbourhoods on a Saturday is not relevant to the issue of pharmaceutical need;

2.17 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 for Saturday 26 December or any other Saturday. The application must therefore be refused and the appeal dismissed.

Lisa Hughes
Appeals Manager