

21 December 2009

FILE REF: 15375

PRIMARY CARE TRUST: EASTERN & COASTAL KENT

PHARMACIST: SAINSBURY'S SUPERMARKETS LTD

PREMISES: KINGSMEAD ROAD, CANTERBURY, KENT

**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 12 August 2009. It would appear that the pharmacist seeks to reduce the total number of opening hours while 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. I note some confusion has arisen as to what has actually been applied for as the letter of application is unclear. The PCT has made a determination in accordance with Part 5, para 22 as opposed to Part 5 para 25, the latter of which carries a right of appeal. Despite the above, I have made a determination, in accordance with my delegated authority, as if a determination had been made under para 25, in that I can make a determination that the PCT could have made in accordance with the Regulations. Although the PCT did not request further information from the applicant, as it has the right to do under the regulations, the applicant, has been provided with ample opportunity to do so at this stage, and as such, I am of the view that neither party has been disadvantaged in this regard.
- 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.

*Sainsbury's Supermarkets Ltd proposals*

- 2.8 For the week commencing 21 December 2009, the pharmacy wishes to vary their core and supplementary opening hours so that the pharmacy is open for 40 core hours throughout the week, but has reduced supplementary hours which will result in, amongst other things, closing all day on 26 December 2009.
- 2.9 There is no indication in this case that any direction currently exists or that the PCT has issued such a direction.

*Assessment*

- 2.10 The PCA on behalf of the PCT has confirmed the pharmacists core opening hours are as follows:

Core Hours

Mon	9.00 to 12.00	14:00 to 17:00
Tues	9:00 to 12:00	14:00 to 17:00
Weds	9:00 to 12:00	14:00 to 17:00
Thurs	9:00 to 12:00	14:00 to 17:00
Fri	9:00 to 12:00	14:00 to 17:00

Sat	9:00 to 12:00	14:00 to 17:00
Sun	10:00 to 12:00	14:00 to 16:00

- 2.11 In light of the Regulations, a change to the days on or times at which the pharmacy's 'supplementary' hours would be provided would require notification to the PCT in accordance with paragraph 22(5)(a) of Schedule 1 to the Regulations without the need to make an application.
- 2.12 I note notices under paragraph 22(5)(a) are not subject to review by this Authority.
- 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 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).
- 2.15 The pharmacist's letter of 12 August 2009 provided no information on any changes to the needs of the people in the neighbourhood, or other likely users of the pharmacy, for pharmaceutical services in support of their application for the alteration of their core hours on Saturday 26 August 2009. The PCT was entitled, but not obliged, to request relevant further information. In this case, it chose not to do so given the confusion referred to above, and I make no criticism of them for that.
- 2.16 In considering the question of pharmaceutical need, I have proceeded on the following basis:
- (a) that while members of the population who would usually work on a Saturday might seek to take annual leave on this day, this Saturday is, in nature, no different from any other Saturday – I have seen no evidence which indicates a change of attitude towards this particular Saturday or which indicates an expectation either way as to whether or not the Sainsbury's Supermarkets Ltd Pharmacy would be open;
  - (b) There is no suggestion that surgeries will not be open in accordance with the pattern of any other Saturday - the applicant pharmacist has provided no evidence of closures and the PCT has indicated that it has no evidence that surgeries intend to close (where they would otherwise be open);
  - (c) in light of my assessment above, I see no reason to conclude that the expectation and demand of those served by the pharmacy would be different on this Saturday when compared with any other;
- 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. The application must therefore be refused and the appeal dismissed.

**Lisa Hughes**  
**Appeals Manager**