

23 December 2009

FILE REF: 15434
PRIMARY CARE TRUST: WEST KENT
PHARMACIST: SAINSBURY'S SUPERMARKETS LTD
PREMISES: LINDEN PARK ROAD, TUNBRIDGE
WELLS

**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") (email dated 18 August 2009) to change the days and times at which it is obliged to provide pharmaceutical services.
- 1.2 The pharmacist seeks to appeal to this Authority against the PCT's decision in respect of their opening hours on 26 December 2009.
- 1.3 I note that the PCT first issued a decision letter on 1 September 2009 but did not afford the applicant a right of appeal. I note that the PCT re-issued its decision on 6 October 2009, giving the applicant a right of appeal. I note the comments from the PCT in this regard, and further note that it has no objection to the later letter being considered the decision letter of the PCT. I have taken this later letter as the decision letter of the PCT and have considered this application in accordance with the regulations that applied as at 6 October 2009.

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), except that the applicant cannot apply to reduce the total number of hours given as a condition in Regulation 13(2)(a) (premises kept open for at least 100 hours per week for the provision of pharmaceutical services).

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 The pharmacy wishes to close 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 opening hours (the applicant premises are open for at least 100 hours per week for the provision of pharmaceutical services – regulation 13(2)(a)) are as follows:

Mon 7.00 to 23.00

Tues 7:00 to 23:00

Weds 7:00 to 23:00

Thurs 7:00 to 23:00

Fri 7:00 to 23:00

Sat 7:00 to 22:00

Sun 10:00 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. The pharmacist

appears to have included such an application in their letter to the PCT dated 18 August 2009.

- 2.12 I note the PCT refused the pharmacist's proposals in respect of 26 December 2009 and that decision is the subject of the appeal to this Authority.
- 2.13 I note notices under paragraph 22(5)(a) are not subject to review by this Authority.
- 2.14 Whilst I have already dealt with the supplementary hours at paragraph 2.6 and 2.7 above, I now consider the requested change of core opening hours.
- 2.15 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.)
- 2.16 The applicant cannot apply to reduce the total number of hours given as a condition in Regulation 13(2)(a) (premises kept open for at least 100 hours per week for the provision of pharmaceutical services). I was concerned to note that the application for weeks commencing 21/12/09 and 28/12/09 appeared to indicate requested core hours of less than 100 hours which is not permitted under the regulations. As such, given the regulations do not make provision to make such an application, I was concerned whether this Authority had jurisdiction to consider the appeal. Notwithstanding however, I considered whether the applicant's proposal for 26 December, should be granted, against a background of the pharmacy still being open for 100 hours per week during the week commencing 21 December 2009.
- 2.17 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.
- 2.18 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) no information has been provided to suggest that surgeries will not be open in accordance with the pattern of any other Saturday.
 - (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;
- 2.19 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