AMENDMENT OF CORE OPENING HOURS

1 Introduction

1.1 The above Applicant pharmacist has applied to NHS England to change the days and times at which it is obliged to provide pharmaceutical services at the above premises in the week commencing 21 December 2015.

1.2 NHS England has refused the application. The Applicant seeks to appeal to the NHS Litigation Authority.
2 Consideration

Rights of appeal

2.1 Where NHS England has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has refused it, paragraph 26(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:

2.3.1 ‘core’ opening hours (days on and times at which the pharmacy is obliged to be open), which may incorporate a direction of NHS England requiring fewer or greater than 40 hours; or

2.3.2 ‘supplementary’ opening hours (other days on and times at which the pharmacy undertakes to provide pharmaceutical services, as notified to NHS England).

Alteration of ‘core’ (including ‘directed’) opening hours

2.4 In accordance with paragraph 1(7)(c) of Schedule 2 to the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list, the proposed core opening hours in respect of the premises during which it will be obliged to provide pharmaceutical services under paragraph 23(1) of Schedule 4 to the Regulations. These may be subject to a direction under paragraph 23(1)(c), (d) or (e)

2.5 The approved days and times may only be altered on application under paragraph 26(1) of Schedule 4.

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 pursuant to paragraph 23(3) of Schedule 4 as “supplementary hours”) may be altered by giving notice to NHS England, in accordance with paragraph 23(6)(a) without the need to make an application.

2.7 Notices under paragraph 23(6)(a) are not subject to review by the NHS LA.

Assessment

2.8 In this case, the Applicant provided the following information in its application form dated 16 September 2015:

2.8.1 Current and Proposed Core Hours:

<table>
<thead>
<tr>
<th>Day</th>
<th>Current Open from</th>
<th>To</th>
<th>Lunchtime Open from</th>
<th>To</th>
<th>Lunchtime</th>
</tr>
</thead>
</table>
2.8.2 Date this change is to take effect – 24 December 2015.

2.8.3 Enclosed is a copy of our till roll readings from the same date in 2014, which support our application to alter our hours.

2.8.4 We are a village community pharmacy that shares a building with a part time branch surgery, with which we share our patients. The surgery is only open in the morning of December 24th, as was the case last year. The main surgery is located 4 miles away and served by both a local community pharmacy and the dispensary in the main branch.

2.8.5 The surgery advertises their hours in advance, to ensure that all patients are aware that they are closed on the afternoon of Christmas Eve in Rendlesham, but open in Wickham Market. Any patients needing to access medical services that afternoon will have to travel to Wickham Market. Patients then assume that we will also be closed, as we share the building.

2.8.6 As can be seen from our till roll from last Christmas Eve, we had only three customers in during the course of the afternoon. Christmas gifts were bought by two (at 14.16 and 14.46) and a prescription collected (at 14.20). This shows that the service provision is not necessary for the entire afternoon, as patients do not access the service we provide. If we had advertised our hours as being closed the month before, I would not have expected even these patients/customers would have needed to visit the pharmacy.

2.8.7 The evidence clearly shows that despite the population not changing, there is a change in the needs of that population, very specifically on Christmas Eve. It shows that the population manages the need for pharmaceutical services alongside its need for medical services.

2.8.8 I hope you will grant this application to amend our core hours. We have provided the evidence to show there is no need for pharmaceutical services on the afternoon of Christmas Eve, and the reason why patients do not access the service.

2.9 I note that in a letter to the Applicant dated 27 October 2015 NHS England stated:

2.9.1 The committee considered this application in accordance with Schedule 4, part 3, paragraph 26:

_Determination of pharmacy premises core opening hours instigated by the NHS pharmacist_

26.—(1) An NHS pharmacist (P) may apply to the NHSCB for it to change the days on which or times at which P is obliged to provide pharmaceutical services at P’s pharmacy premises in a way that—

(a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week (but not those required under any 100 hours condition); or

(b) keeps that total number of hours the same.
(2) Where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of any changes to the needs of the people in its area, or other likely users of the pharmacy, for pharmaceutical services that are material to the application.

2.9.2 The committee noted that Acer Road Pharmacy have applied to reduce their core hours on 24th December 2015 and close at 14:00.

2.9.3 The application says that it is a village pharmacy that shares a building with a part time branch surgery with which they share their patients. The surgery is only open on the morning of December 24th.

2.9.4 The surgery advertises its hours in advance to ensure that all patients are aware that they are closed on the afternoon of Christmas Eve in Rendlesham but open in Wickham Market.

2.9.5 Any patients wishing to access medical services will need to travel to Wickham Market. Evidence presented from last year suggests only three customers – two buying Christmas gifts the other collecting a prescription.

2.9.6 The committee noted that in 2014 an application to amend core hours was submitted and refused. NHS Choices shows that the opening times of Rendlesham surgery on Thursdays during the year are 08:40 - 12:00, and so there does not appear to be a change in these arrangements for Christmas this year.

2.9.7 The committee noted that pharmacies are considered as significant providers of primary care services, not just dispensing, and contribute to reducing the burden on out of hour’s services and emergency services.

2.9.8 The committee concluded that there was no evidence of a change in the needs of patients for pharmaceutical services and so therefore a need for the pharmaceutical services provided by the pharmacy remained.

2.9.9 Consequently the committee came to the same conclusion as last year and refused the application as the need for the pharmaceutical services provided by the pharmacy remained for their core hours.

2.9.10 Decision: Refused.

2.9.11 The core hours will remain as:

2.9.11.1 Thursday 24 December 2015: 09:00 - 13:00 13:30 - 17:30

2.10 I note that in an email to the NHS LA received 25 November 2015 the Applicant stated:

2.10.1 We wish to appeal against the recent decision of the Pharmaceutical Services Regulations Committee (hereafter referred to as “the committee”) to refuse this recent application.

2.10.2 We applied to reduce our core hours on 24th December 2015 and close at 14:00.

2.10.3 We supplied evidence that showed the level of need for the pharmaceutical services we offered on Christmas Eve last year. The situation was very similar to this year, where the adjoining branch surgery was open till mid-day, and after that all medical services could only be accessed at the main surgery 5 miles away. The surgery advertises its hours in advance to ensure
that all patients are aware that they are closed on the afternoon of Christmas Eve in Rendlesham but open in Wickham Market. Patients associate the pharmacy with the surgery and will attend on Christmas Eve morning, assuming the hours to be the same.

2.10.4 The evidence we supplied in the way of till receipts showed clearly that there was no need for pharmaceutical services at a similar time last year. This evidence was ignored by the committee in its deliberations. There was no evidence supplied by the committee to show that the need for pharmaceutical services will be any different this year to the same period last year.

2.10.5 In the absence of any evidence to refute that supplied by ourselves, we ask that this decision be reviewed.

2.11 I note that in an email to the NHS LA received 8 December 2015 the Applicant stated:

2.11.1 It appears to me that the evidence supplied by ourselves concerning the need for pharmaceutical services has been ignored when the decision to refuse this application was made.

2.11.2 The refusal appears to be based on the fact that it is the same decision as last year, and that as there was no appeal last year then it must be the correct decision this year.

2.11.3 Last year we put in the application to amend the core hours based on our perception of the need for pharmaceutical services, and the application was refused. We consequentially opened, but collected the data submitted with our application to amend our core hours this year. This clearly shows that there was no need for pharmaceutical services at a corresponding period last year. The decision to refuse the application to amend core hours this year has been made on the same perception of the need for pharmaceutical services as was used last year. No evidence has been supplied to show that this perception is correct, or that there is a change in the need from the corresponding period last year.

2.12 I note that in a letter to the NHS LA dated 10 December 2015 2015 NHS England state:

2.12.1 NHS England considered this application in accordance with Schedule 4, Part 3, paragraph 26(1)(a) at the PSRC meeting in October.

2.12.2 However following the appeal notification the PSRC considered at its December meeting whether it would have come to a different conclusion if it had considered the application as an application for a temporary suspension of services under Schedule 4, Part 3 paragraph 23.

2.12.3 The PSRC considered that if the application was considered under either regulation the result would be the same and that it would have to refuse the application.

2.12.4 There is provision within the regulations to enable a pharmacy to amend its core hours and these are for reasons where there has been a change to the pharmaceutical needs of their patients; or where there are circumstances outside of the control of the pharmacy.

2.12.5 In this situation the PSRC did not consider that there has been a change in the pharmaceutical needs of the patients despite the nearby practice not being open. There will still be a need for essential services; perhaps even a greater need for some, e.g. signposting, support for self-care etc. with the surgery being closed.
2.12.6 The pharmacy provided evidence that there was a lack of demand for dispensing services or retail sales on Christmas Eve 2014. However this does not demonstrate that there is a change in need or that there is no need for pharmaceutical services.

2.12.7 Pharmacies are required to provide essential services other than dispensing; these are not discussed by the appellant and there is no evidence to suggest that the needs for these services will change because it is Christmas Eve.

2.12.8 Pharmacies are considered as significant providers of primary care services, not just dispensing, and contribute to reducing the burden on out of hour’s services and emergency services. In the last couple of years the NHS has been relatively fortunate that there have not been any noticeable outbreaks of flu or other contagions that lead to a marked increase in need for all pharmacy services. These are impossible to predict and so the possibility of having this occur this year, or any other year cannot be discounted.

2.12.9 To ensure that the provision of pharmaceutical services is maintained NHS England has applied the regulations fairly and consistently to ensure that pharmacies will be open for their core hours across the country. There may be occasions where this results in pharmacies opening at times when they are less busy than they would like. However this is part of the contractual obligations that pharmacy contractors take on as and when they make applications to provide pharmaceutical services.

2.12.10 NHS England would respectively submit to the Appeals Unit that the PSRC reviewed the application thoroughly and appropriately in accordance with the regulations and trust that the Appeals Unit will rule accordingly.

2.13 I note that in an email to the NHS LA received 17 December 2015 the Applicant stated:

2.13.1 It is agreed that the evidence supplied showed a lack of demand for dispensing and retail sales. There is no way to evidence that there were no pharmaceutical services provided, but there were not. The fact that the evidence shows the footfall at this period supports this.

2.13.2 Need for pharmaceutical services is indeed impossible to predict, and in no way starts and ends at the time of our contracted hours. Anecdotally I know that someone will always try the door 5 minutes after I have shut, and if I am still in the premises I will always try to help. However, I am of the opinion that the evidence we supplied supports this application by showing a lack of need at the same period last year.

2.13.3 Whilst I still wish this appeal to be considered, and although I would like the ability to close earlier, we will not be closing early on Christmas eve. There is now insufficient time for the notice we would wish to give our patients of any change in hours. It was part of our original application that we had seen no demand for services last year despite not warning our patients of any change in hours, and that if we were able to manage the situation this year then we felt there would again be no demand for services.

2.13.4 I ask you to look at the evidence supplied by this Pharmacy, the lack of evidence supplied by NHS England East Pharmaceutical Services Committee and allow this appeal.

2.14 I note the following:

2.14.1 I note that I have not been provided with details in relation to the Applicant’s current opening hours per week, either core or supplementary.
2.14.2 In relation to the week commencing 21st December 2015, the Applicant seeks;

2.14.2.1 to open from 8.30am – 2pm, instead of 9am – 1pm and 1.30pm – 5.30pm when it is usually open, on Thursday 24 December 2015.

I have first considered paragraph 26(2) of Schedule 4, which reads as follows:

"Where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of any changes to the needs of the people in its area, or other likely users of the pharmacy, for pharmaceutical services that are material to the application."

The "area" referred to is the area of NHS England (as is clear from its use in paragraphs 24 and 26, as distinct from the description of 'area' in paragraph 25). I do not consider that it is for the Applicant to make an assessment of the needs either generally of the people in England or specifically in relation to users of the pharmacy. If NHS England considers that there have been (or will be) changes in need since the Applicant's hours were set out in the pharmaceutical list, it may specify them and ask the Applicant to address such changes as part of its application (if they are relevant to it).

In the absence of any information in that regard (either when NHS England considered the matter or on appeal), I have proceeded on the basis that NHS England considered there were no changes in relation to the needs of people for pharmaceutical services which the Applicant needed to address.

In the absence of any information being requested from the Applicant regarding specific changes in need, I have approached the general question of whether the application should be granted by reference to whether, if it were, pharmaceutical services provided at the times proposed would continue to "meet the needs of ... people in its [NHS England’s] area; or ... other likely users of the pharmacy premises, for the pharmaceutical services available at or from those premises".

Those words appear in paragraph 25(1) of Schedule 4 to the Regulations, which relate to any situation in which NHS England instigates a re-determination of core hours. They are similar to the wording used in paragraph 24 (relating to directions requiring fewer or greater than 40 hours provision) and represent an appropriate touchstone for consideration of whether an application under Regulation 26 should be granted.

I note that no information has been provided detailing the pharmacy's current opening times per week, including the distribution of core hours. However I note in it's decision letter, NHS England refers to the core hours of opening, which has not been disputed. Therefore I have proceeded on the basis that the Applicant is applying to amend its core hours on the day in question.

I am of the view that the day in respect of which the changes are proposed (Thursday 24th December 2015) is, in relation to pharmaceutical services, no different from any other Thursday. I have seen no information which indicates a change of attitude towards this particular day (from a pharmaceutical perspective) or which indicates an expectation either way as to whether or not Acer Road Pharmacy would be open.

I note the Applicant’s comments regarding the early closure of the GP Surgery, and that patients will assume the pharmacy is closed as it shares the same building with the GP surgery. However I note NHS England's comments that the GP surgery's normal hours close at lunchtime on a Thursday. I am mindful that the provision of pharmaceutical services is wider than the fulfilling of prescriptions. I have seen no
information with regards to needs generally, such as the number of those seeking advice.

2.23 I note the Applicant’s comments that on Christmas Eve last year, it only had 3 customers during the course of the afternoon. The Applicant states that “this shows that the service provision is not necessary for the entire afternoon, as patients do not access the service we provide”. I also note the Applicant supplied till receipts from last year, in support of its application. I am mindful that low footfall, and any consequent reduction in the numbers of people seeking pharmaceutical services does not indicate that there is no need for pharmaceutical services during the times specified. Further I note that patients last year used the services of the pharmacy later than the proposed opening hours.

2.24 I note that I have not been provided with any information with regards to access to other pharmaceutical provision which could reasonably meet the needs of patients, during the period in question, if the Applicant were to close.

3 Determination

3.1 In light of the proposed changes and the lack of information available to me, I am not satisfied that pharmaceutical services provision involving the Applicant’s proposed hours would meet the needs of people in the NHS England area or other likely users of the pharmacy for pharmaceutical services on 24th December 2015.

3.2 The action taken by NHS England to refuse the application is confirmed.

Lisa Hughes
Head of FHSAU