



**South West Collaborative
Commissioning Hub**

LOCAL POLICY ON MONITORING OF AND
USING CONTRACTUAL SANCTIONS IN
RELATION TO TEMPORARY SUSPENSION
OF SERVICES IN COMMUNITY
PHARMACIES

Version 2.0 - Revised JULY 2023

Table of Contents

Introduction	1
Background	1
The South West Context	2
Reporting & Monitoring Temporary Closures	2
Further Investigation of Temporary Closures	3
Temporary Suspensions which do not Justify the Issue of a Breach Notice	4
Factors which may make the issue of a breach notice more likely.....	4
General Rules	4
Aggravating Factors	5
Mitigating Factors	6
Factors which are not mitigating	6
Payment withholding	6
Review	7

Introduction

This document sets out the approach to managing temporary suspension of services in Community Pharmacy across the NHS South West Integrated Commissioning Boards (ICBs). The NHS South West Collaborative Commissioning Hub (NHS SW CCHub) is responsible for administering this policy on behalf of these ICBs, who accepted delegated commissioning responsibility for community pharmacy services from 1st April 2023.

Background

NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 contain a clear contractual requirement for pharmacies to open for all their core and supplementary opening hours. Schedule 4 part 3 paragraph 23 specifies that where there is a temporary closure for a reason beyond the control of the pharmacy, the pharmacy is not in breach provided they have notified the commissioner as soon as practical and use all reasonable endeavours to reopen as soon as possible.

The updated regulations from the 31 July 2023, now states: *“Where there is a temporary suspension in the provision of pharmaceutical services because of illness or another reason beyond the contractor’s control, they are not in breach of their terms of service provided they: notify the ICB of that suspension as soon as practicable, in the manner required by paragraph 29D(2)(a), Schedule 4 and wherever possible before the start of the suspension. They must also use all reasonable endeavours to implement the business continuity plan that they are required by paragraph 29D, Schedule 4 to have for the pharmacy premises; and use all reasonable endeavours to resume the provision of pharmaceutical services as soon as practicable (paragraph 23(10), Schedule 4)”*.

The purpose of the regulation is to ensure that each pharmacy contractor has a Business Continuity Plan to deal with the temporary suspension in the provision of pharmaceutical services at or from their pharmacy premises, therefore this is increasingly important to maintain delivery of these services, including extended services such as hypertension diagnosis/monitoring, CPCS and PGDs, as these are becoming critical to local system resilience.

The Regulations allow that a breach notice can be Issued each time contractors fail to open without good cause. Before this action is taken, the NHS South West Collaborative Commissioning Hub (NHS SW CCHUB) (on behalf of the relevant South West ICB) will have first made reasonable effort to ask the pharmacy what the cause was.

The Regulations also require that local dispute resolution takes place prior to any contractual action being taken, unless the pharmacy failed to open without good cause, i.e. a cause outside the control of the contractor, such as fire or flooding. Local dispute resolution can be resource intensive; capacity to undertake this might contribute to variation in approach and decision-making. It should be noted that a failure to engage in local dispute resolution may result in NHS Resolution referring the case back for local resolution

Breaches may be used as a warning against future breaches without any withholding of remuneration or may include an amount of remuneration to be withheld. The amount to be withheld must be justifiable and proportionate, having regard to the nature and seriousness of

the breach and the reasons for it. The breach notice should include the NHS SW CCHUB or, if relevant, the specific ICB's reasons for both the decision to withhold remuneration and the amounts that are to be withheld. Repeated breaches may be addressed by other sanctions and ultimately removal from the Pharmaceutical List.

All decisions by the NHS SW CCHUB made under these circumstances are appealable by the pharmacy concerned and as such the approach undertaken by commissioning teams must be lawful, reasonable, and proportionate. The appeal process can create additional workload for the commissioner so decisions taken by commissioning team should be scrutinized during the process, to minimise variations and inconsistency.

South West Context

There is a commitment across all South West Health partners and Community Pharmacy Locals (formally LPCs) to maximise the opportunities for community pharmacy to become an integrated partner in delivering services that meet the needs to local residents. In order to achieve this, it is important that Community Pharmacy is able to demonstrate its ability to provide consistent and high-quality services to its patients. This includes provision of dispensing service and other additional and enhanced service.

For example, a significant amount of NHS England and Community Pharmacy Local's capacity has been invested in supporting community pharmacy to engage in Pharmacy Integration Fund (PIF) pilots and subsequent roll-out of services. This includes supporting community pharmacy to develop relationships with health partners, particularly general practice. Experience of implementing PIF clearly shows that poorly managed temporary closures damage the relationship between pharmacy and practice/health partners, resulting in withdrawal of engagement in PIF with that pharmacy and can impact on the professional reputation of all pharmacy in an area.

It is important, therefore, that all community pharmacies across the South West are focused on seeking to provide stable and consistent services.

Reporting and monitoring of temporary closures

Chapter 36 of the 2019 NHS England Pharmacy Manual sets out that the NHS SW CCHub will monitor reports of temporary closures and establish whether closures are for reasons beyond the control of the contractor. Where they are not, the matter may be referred for further action under performance management processes, such as the issue of a breach notice.

NB: the Pharmacy Manual has recently been updated to acknowledge that pharmacies do sometimes have temporary closures for reasons beyond their control.

This local policy sets out the approach the South West Pharmaceutical Services Regulations Committee (the Committee) takes in response to temporary suspension of services in community pharmacy.

Temporary suspension of services may be reported to the NHS South West Collaborative Commissioning Hub by:

- the contractor whose pharmacy has a temporary closure – as required by paragraph 23(10)(a)

- third parties – for example patients, other providers of health or social care services, other commissioners of community pharmacy services.

In the event of a temporary closure, all contractors should immediately complete the 'Notification of temporary suspension of service' form. This can be found at:

- [NHS England and NHS Improvement South West » South West Community Pharmacy information](#)

Where a pharmacy has a temporary closure due to a cause beyond the reasonable control of the pharmacy and:

- notifies the NHS SW CCHub as soon as practical, and
- uses all reasonable endeavours to resume the provision of pharmaceutical services as soon as practicable

There is no breach of this part of the contractor's terms of service.

The details of every closure, the number of closures at each pharmacy, plus the total number of closures and hours lost, are reported to the Pharmaceutical Services Regulations Committee (the Committee) and ICBs each month

Further investigation of temporary closures

NHS SW CCHub pharmacy team may request that a contractor provides further details regarding a closure in appropriate cases. These may include:

- closures reported to NHS SW CCHub by a third party but not by the contractor
- closures which, on the basis of information received so far, could justify the issue of a breach notice

When requesting further information about a closure, the pharmacy team will inform the contractor whether NHS SW CCHub considered the closure was beyond the reasonable control of the contractor and, if not, whether to take formal action in respect of the closure.

Requests for further information about a closure may be sent to either the contractor, addressed to the pharmacy concerned, and where the information is available or it has been agreed with the contractor, to an area manager or head office.

The contractor's response will be considered against the criteria for issuing breach notices and it will be decided whether to ask the Committee to consider whether a breach notice or sanction should be applied.

It should be noted that failing to provide the requested further information will mean that relevant information from the contractor may not be taken into account when deciding whether to issue a breach notice and may itself be a breach of paragraph 35(3)(a) of the Terms of Service (broadly, where that information could be obtained by a visit to the pharmacy premises).

Temporary suspensions which do not justify the issue of a breach notice:

Generally, contractual action will not be taken when:

- The closure is an irregular and unavoidable occurrence and contractors have demonstrated what actions they have taken in the attempt to avoid closing the pharmacy
- The contractor has put in place provisions to ensure minimal disruption to patients, including identifying another pharmacy that can meet the demand and taking reasonable steps to notify patients about the closure and their options
- Issuing a breach notice, withholdings or removal from the list are not in the best interest of the local population, for example where contractual action would leave a gap in the provision of pharmaceutical services which is unlikely to be addressed or resolved by contractual action being taken
- Where a pharmacy has a temporary closure due to a cause beyond the reasonable control of the pharmacy and it notifies the NHS SW CCHub as soon as practical and uses all reasonable endeavours to resume the provision of pharmaceutical services as soon as practicable.

Temporary Suspension of Services – factors which may make the issue of a breach notice more likely:

Each temporary closure will be considered by the Committee on the facts of the case; however, the following factors may make the issue of a breach notice more likely:

- Failure to inform the commissioner of the closure
- Failure to open once their application to change their core hours has been determined and refused (where there is no good cause for the closure)
- Failure to open once their application to change supplementary hours with less than the regulatory period of notice has been determined and refused (where there is no good cause for the closure)
- Failure to take actions to minimise disruption to patients, including effective communication with local health providers
- Failure to update their DoS profile or the NHS website
- A temporary closure without good cause/not beyond the control of the pharmacy.
- Failure to put in place contingency plans to ensure patients receive their medication, including returning prescriptions to the Spine where required
- Failure to take any actions previously agreed with the commissioner
- Repeated failure to open during their contracted hours
- The length and/or frequency of closure(s) is considered to be affecting the adequate provision of pharmaceutical services for the local population.

General rules

As a general rule, closures lasting less than 4 hours will not normally result in the issue of a breach notice.

- The threshold of 4 hours has been chosen as being roughly half a day (based on 40 core opening hours provided evenly over five weekdays). This threshold will be applied whether the pharmacy concerned has 40 or 100 core opening hours (or any other number of core opening hours), and whether or not it also has supplementary opening hours.
This 'grace' period is allowed for contractors to take action to deal with unexpected events and resume service provision.
- However, this general rule may be displaced by aggravating factors, including frequency of occurrence

Where the closure of two pharmacies are connected (for example: pharmacy A does not open because a locum pharmacist does not arrive; the pharmacist from pharmacy B closes pharmacy B in the afternoon in order to move to and open pharmacy A), The policy recognises that splitting closures across two sites reduces risk and supports patients and that in doing this the support site closure (if >4hrs) should not count towards increasing the ratchet.

Where there are both aggravating and mitigating factors, these will be weighed against each other.

Aggravating factors

Aggravating factors may include (but are not limited to):

- the reason for the closure is clearly within the control of the contractor, for example: not making arrangements for access to the premises
- closing even though permission to close has been sought and refused (and either not appealed or refusal confirmed on appeal)
- a failure to open in accordance with a specific direction to open (for example, on a bank holiday) – this is because local health partners were specifically relying on the community pharmacy being open to ensure the availability of services for patients
- a trend of suspending services temporarily during the preceding 6-12 months, either at an individual pharmacy or across a contractor's pharmacies in the area – this may include the same locum pharmacist causing numerous short closures at several of the contractor's pharmacies
- the contractor does not notify NHS SW CCHub of the closure
- a failure by the contractor to make any attempt to re-open as soon as practicable
- a failure by the contractor to take steps to mitigate the effect of the closure on patients – NHS SW CCHUB expects the contractor to advise patients presenting (or telephoning) at the pharmacy of when the pharmacy is expected to re-open, and of nearby alternative pharmacies which are open
- NHS SW CCHub receives complaints from patients regarding the closure, or evidence of patient harm resulting from the closure or a serious risk of this
- The period for which the pharmacy was closed is the whole of the pharmacy's opening hours on the day in question – particularly if the pharmacy does not open on the following day (for example, the temporary closure is for a Saturday morning, and the pharmacy is normally closed on Saturday afternoons and on Sundays) (where there is no good cause).

Mitigating factors

Mitigating factors may include (but are not limited to):

- significant health and safety issues which could not have been foreseen (for example: fire, flooding)
- police investigations preventing access to the premises
- extreme weather conditions preventing travel in general

In these circumstances the pharmacy is expected to implement business continuity plans to minimise impact on patients and local health partners.

Factors which are not mitigating factors

The following are not generally considered to be mitigating factors:

- issues with landlords preventing access to the premises.
 - NHS SW CCHub considers contractors who are tenants should ensure the arrangements they have with their landlords enable them to meet their obligations under the Terms of Service at all times. For example it is expected that:
 - contractors will not allow leases to expire without having applied for, and been granted permission to, relocate to alternative premises
 - contractors will ensure that landlords give them sufficient notice of changes which may affect a pharmacy's opening hours, to enable the contractor to give 3 months' notice to NHS SW CCHUB (as required by the Terms of Service)
 - if other parts of the premises are closed when the pharmacy is open, the pharmacy will still be able to operate, and patients will still be able to access the pharmacy.

Payment withholdings

Because a failure of a pharmacy to open means that services have not been provided, the Committee will normally consider that it is appropriate to withhold payment as part of any breach notice issued.

The Committee considers that – while being fair and proportionate – the amount that may be withheld in the event of a temporary closure needs to be sufficient to provide an incentive to the contractor to take all necessary steps to prevent or minimise the length of the closure. In this context it should be remembered that the comparison is against the costs that the contractor may need to incur in resuming service provision (e.g. paying for a last-minute locum and their travel), which may be higher than normal running costs.

CLOSURE EVENT	CONTRACTUAL ACTION
1st Closure event	Breach notice, no financial withholding
2nd - 4th Closure event	Breach notice + £50 per hour withholding
5th -7th Closure event	Breach notice + £100 per hour withholding
8th -10th Closure event	Breach notice + £150 per hour withholding
11th or more Closure event	Breach notice + £200 per hour withholding

Application of this incremental approach to financial withholding is tended to ensure pharmacies remain focused on provision of service to patients during contracted hours and staffing their service appropriately.

Where there are more than 11 breaches within a 6-month period, consideration will be given to additional financial penalties and other contractual levers available.

The count of breaches will be considered on a rolling 6-month period i.e. 1st August to 31st January, or 15th August to 14th February. The start of the 6-month period will be from the date of the 1st Breach at each pharmacy.

Review

This NHS South West policy will be kept under regular review by the Committee and the within the South West. The next formal review will be July 2024 and annually thereafter.

If revised national guidance is issued prior to the annual review, an interim review will be undertaken.