Public business

Application of the just disposal policy

Purpose

To provide a further update to the Council on the progress with the review of all fitness to practise cases inherited by the Council from the Royal Pharmaceutical Society of Great Britain (RPSGB) on 27 September 2010 (referred to as legacy cases) in accordance with the Just Disposal of Legacy Cases Policy (“the policy”) as agreed by Council on 21 July 2010.

Recommendations

The Council is asked to note this report

1. Introduction

For the first year of operations GPhC is required to produce a report at least four times in the year for Council on the implementation of the policy which is to include:

- A statistical report on the use of the policy
- A numerical report on any challenges received, either to the policy or its interpretation or implementation
- An anonymised sample which gives a fair reflection of the uses of the policy - we are developing examples (Appendix A) to coincide with publication of the CHRE report (referred to at section 5).
- A critical evaluation of the impact of the policy

This paper is the second report to update Council on the progress of these matters.

2. Statistical report

2.1 Council received the first report on the Just Disposal of Legacy Cases in December 2010. Work has continued on the review of all legacy cases under the
policy with the review of all post-Investigating Committee (IC) cases by internal case managers and external panel firms now concluded.

2.2 To ensure consistency of approach and the quality of decision making the Legacy Determination Group has also been reviewing a random sample of 20% of both pre and post IC cases where the caseworker/panel firm has recommended that the case continue.

2.3 A total of 109 post IC cases were recommended for continuance by case managers. The Legacy Determination Group considered 23 of these cases. 67 pre IC cases recommended for continuance by caseworkers have been reviewed and submitted for potential consideration by the Legacy Determination Group. A sample of these cases will be considered by the Legacy Determination Group in due course.

3. **Pre IC Legacy cases**

3.1 At the commencement of the legacy review we had approximately 395 cases in this category. It was reported in the first paper to council in December 2010 that it was anticipated that around one third of these cases would be closed under the policy.

3.2 However, as the policy is applied at the point at which a case handling decision is made (which is normally at the conclusion of an investigation but may be applied prior to an investigation being completed in certain circumstances) this has generated challenges in accurately forecasting when the pre IC legacy review will be completed. To mitigate this uncertainty and the risk of the review not being concluded in a timely manner a consolidated legacy spreadsheet has been developed which incorporates all the pre IC legacy cases. This spreadsheet has captured information regarding the estimated time that is necessary to complete the investigation together with the reason(s) / explanation for this time being taken. We are currently in the process of analysing the data to predict the likely timeframe necessary to complete the review of all pre IC cases and this will be reported in the next report to council.

3.3 As an overview 225 cases are still under investigation and have yet to be reviewed or are in the process of being reviewed by caseworkers and inspectors. Of these cases 152 have had, or do not require, the policy to be applied. This leaves 73 cases remaining that require to be reviewed against the policy.

<table>
<thead>
<tr>
<th>Total number of Pre IC Legacy Cases (as at 27 September 2010)</th>
<th>395</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of cases reviewed by caseworkers</td>
<td>181</td>
</tr>
<tr>
<td>Number recommended <em>discontinuance</em> by caseworkers and/or panel firms</td>
<td>32</td>
</tr>
<tr>
<td>Number considered by the Legacy Determination Group</td>
<td>26</td>
</tr>
</tbody>
</table>
4. **Post IC Legacy Cases**

4.1 At 27 September 2010, we had 149 cases in this category. As at 23 March 2011, all 149 have been reviewed by caseworkers and/or panel firms. It has been recommended that 40 cases should be discontinued. Of these, 39 have been considered by the Legacy Determination Group to consider closure. The Legacy Determination Group has recommended to the Registrar that 35 should be discontinued (or disposed in a manner other than at a full hearing). The Registrar has decided to formally discontinue 30 of these cases. In addition, the Legacy Determination Group has reviewed 23 cases where the recommendation from the case manager/panel firm has been to continue the case. The Legacy Determination Group adjourned one case, requesting further information before making its recommendation to the Registrar.

<table>
<thead>
<tr>
<th>Total number of Post IC Legacy Cases</th>
<th>149</th>
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</thead>
<tbody>
<tr>
<td>Number of cases reviewed by caseworkers and/or panel firms</td>
<td>149</td>
</tr>
<tr>
<td>Number recommended <strong>discontinuance</strong> by caseworkers and/or panel firms</td>
<td>40</td>
</tr>
<tr>
<td>Number considered by the Legacy Determination Group</td>
<td>62</td>
</tr>
<tr>
<td>Number recommended by the Group to the Registrar to discontinue (or be disposed in a manner other than at a full hearing)</td>
<td>35</td>
</tr>
<tr>
<td>Number of cases considered by the Group where the caseworker and/or panel firm has recommended <strong>continuance</strong></td>
<td>23</td>
</tr>
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5. **Critical Evaluation**

5.1 For a period of two weeks in January 2011, CHRE audited a sample of 50 cases that the GPhC closed without being considered by a final stage fitness to practise committee between 27 September and 21 January 2011. The overriding aim of this audit was to seek assurance that the GPhC was protecting patients and the public, maintaining the reputation of the professions and the system of regulation. Out of the 50 cases audited, 46 were legacy cases discontinued under the policy. The audit assessed whether closures under the policy complied with the policy agreed by Council and adequately protected patients and would maintain public confidence in the profession and system of regulation.

5.2 Over the relevant time frame the GPhC closed 27 cases under the policy. CHRE audited all these closures as these were considered to potentially raise the highest theoretical risk if inappropriate closure.
5.3 CHRE concluded in their findings published in March 2011 that all the cases assessed in their audit were closed appropriately under the policy and none of the decisions were unreasonable in terms of public protection and confidence. Additionally, CHRE determined that all the legacy cases that they reviewed had been closed promptly by GPhC once subject to the just disposal review processes.

5.4 The application of the policy has also garnered attention in the press with the PDA welcoming the work undertaken under the Just Disposal of Legacy Cases guidance. However, the decision of the Registrar to discontinue 3 cases under the policy against registrants who allegedly advised individuals to take homeopathic remedies to protect them against malaria has received mixed press coverage and has been criticised by Sense and Science who brought the allegations to the RPSGB’s attention following an undercover investigation.

6. Equality and diversity implications

6.1 Council has agreed an equality scheme and associated action plan which includes the development of a new staged equality impact assessment process and action plans for all areas of our work, including fitness to practise.

7. Risk implications

7.1 Failure to deal with the legacy cases in a timely and effective manner would present risks to public safety, public confidence in pharmacy professionals and impact adversely on the credibility of the GPhC as an effective regulator.

8 Statistical challenges received

8.1 No legal or other challenges have been received regarding the implementation of the policy and the guidance.

Recommendations

The Council is asked to note the report

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Appendix A

**Case Study 1**
The registrant was convicted for driving whilst disqualified. The case manager recommended that the case be discontinued. However, the Legacy Determination Group recommended that the case should continue to a full hearing due to the severity of the offence. The Registrar agreed with the recommendation that the case should continue indicating in his reasons that driving whilst disqualified is a serious matter especially so from the point of view of a regulator which operates a licensing regime, in which public safety depends upon compliance with licensing decisions.

**Case Study 2**
This case related to allegations of dispensing errors by the registrant in relation to Gabapentin capsules and Morphine Sulphate tablets prescribed for the complainant. A practice visit by an inspector raised a number of additional concerns regarding the registrant’s fitness to practise. The case manager recommended this case should continue. The Legacy Determination Group, having carefully considered the surrounding facts of the case and the issue of current impairment, recommended that the case should be rescinded back to the Investigating Committee with a recommendation for a warning to be issued to the registrant. The Registrar agreed with this course of action.

**Case Study 3**
This case related to an allegation that the registrant had dispensed a quantity of methadone without a valid prescription. The Legacy Determination Group recommended that the case should be discontinued. The Registrar agreed with this recommendation. The reasons for this decision included that there was no harm caused to the patient; it was noted that the case would not reach the GPhC’s new threshold criteria. Further the registrant had demonstrated insight into the incident, writing to the Council to express his regret and had taken remedial steps to make improvements regarding his practise as a pharmacist. There was therefore no real prospect of a finding of current impairment.