

Council meeting 12 April 2012

04.12/C/01

Public business

Review of Standard 3.4 – religious or moral beliefs interim update

Purpose

To update the Council on the internal review relating to standard 3.4 of the standards of conduct, ethics and performance.

Recommendations

The Council is asked

- i. to note the internal review work that has been carried out; and**
- ii. to agree that further consideration of policy in this area should be scheduled as part of the wider review of the standards of conduct, ethics and performance in 2013-14.**

1.0 Introduction

- 1.1 The GPhC sets standards for conduct, ethics and performance which apply to all pharmacy professionals. Standard 3.4 states:

You must make sure that if your religious or moral beliefs prevent you from providing a service, you tell the relevant people or authorities and refer patients and the public to other providers.

- 1.2 The inclusion of standard 3.4 has been discussed by the GPhC Council on three occasions. In September 2011, the Council expressed the view that to inform their decision about reviewing standard 3.4, an internal review of both the legal position as well as the operation of the current standard would be an important preliminary step. The Council also considered that the review should take into account the position of the other health professional regulators as well as any work CHRE had undertaken and any support they could give.

- 1.3 In preparing this update for Council we have considered:
- The relevant UK and European legal framework;
 - The experience and feedback we have received from registered pharmacists and pharmacy technicians as well as patients and the public on this issue;
 - The operation of this standard and related fitness to practise issues; and,
 - The current position of other regulatory bodies including the General Medical Council and the Nursing and Midwifery Council.

2.0 **European Convention on Human Rights (ECHR)¹ and the Human Rights Act 1998²**

- 2.1 The position of health professional regulators in setting out what they require in relation to matters of conscience or personal and religious belief must be consistent with the key European and UK legislative framework. This is set out in the European Convention on Human Rights (ECHR) and the Human Rights Act 1998. The ECHR is an international treaty to protect human rights and fundamental freedoms in Europe. Specific protection is set out in Article 9 (Freedom of thought, conscience and religion) and Article 14 (Prohibition on discrimination). These rights, as well as others set out in the ECHR have been adopted in UK legislation through the Human Rights Act 1998.
- 2.2 The experience across European signatories is that there are different interpretations of the freedoms protected within law. For certain procedures, such as abortion³, specific primary legislation exists which sets out requirements and freedoms,

3.0 **Current position of other UK health professional regulators**

- 3.1 A number of the regulators do not have standards which relate to the issue of personal moral or religious beliefs. The GMC and the NMC have both produced relevant guidance which sets out specific regulatory standards for each profession reflecting the specific circumstances and interpretations of what they expect from their registrant populations.

The GMC has produced guidance titled “Personal beliefs and medical practice - guidance for doctors⁴”.

- 3.2 The guidance attempts to balance doctors’ and patients’ rights – including the right to freedom of thought, conscience and religion, and the entitlement to care and treatment to meet clinical needs – and advises on what to do when those rights conflict. The GMC are currently in the process of reviewing this guidance as part of their cyclical guidance review process. The approach set out currently

¹ <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

² <http://www.legislation.gov.uk/ukpga/1998/42/contents>

³ <http://www.legislation.gov.uk/ukpga/1967/87/contents>

⁴ Personal beliefs and medical practice- guidance for doctors
(www.gmc-uk.org/guidance/ethical_guidance/personal_beliefs.asp)

in their guidance is consistent with the current standard required by us in 3.4 of Conduct, Ethics and Performance.

- 3.3 The NMC has produced guidance titled “Conscientious objection⁵”. This states that nurses and midwives only have the right to conscientiously object to having direct involvement in abortion procedures (under the Abortion Act 1967) and to technological procedures, to achieve conception and pregnancy (under the Human Fertilisation and Embryology Act 1990).
- 3.4 However, in relation to the supply of emergency hormonal contraception, the NMC has expressed the view that refusal to provide this service would contravene their ‘Code’.

4.0 Fitness to Practise and Complaints

- 4.1 Since September 2010, there have been no cases considered through our formal fitness to practise process in relation to standard 3.4.
- 4.2 The GPhC does not currently collate data in relation to complaints we receive that do not meet our threshold criteria, however we are aware that a small number of complaints are received annually on this topic.
- 4.3 The standards advisory team has received a small number of enquiries on this topic since September 2010 from registrants. These enquiries have predominantly been information gathering rather than complaints about the standards or major concerns which would now be identified through the GPhC’s complaints handling procedure.

5.0 Additional external developments

- 5.1 There have been a number of high profile court cases involving matters of conscience. In a recent case in Scotland two midwives claimed that having to supervise staff carrying out abortions breached their human rights. This case was considered by the Court of Session, which did not uphold their claim.
- 5.2 The Commission on Assisted Dying, an independent group set up with funding from Bernard Lewis and Terry Pratchett and hosted by Demos, published its final report on the 5th January 2012. The report followed over a year of public evidence sessions, consultations, international research trips and externally commissioned papers. The Commission was set up to consider whether the current legal and policy approach to assisted dying in England and Wales was fit for purpose, and was chaired by Lord Falconer. There have also been continuing debates in the Scottish Parliament about this issue with various private members bills being considered on this issue. The law remains consistent across the UK that assisting someone to commit suicide is a criminal offence.

⁵ Conscientious objection (www.nmc-uk.org/Nurses-and-midwives/Advice-by-topic/A/Advice/Conscientious-objection/)

6.0 Conclusions

6.1 Following this internal review of the operation of Standard 3.4, we are intending to consider any external feedback of this standard in the context of our planned review of our core standards for pharmacists and pharmacy technicians, Conduct, Ethics and Performance, in 2013/14. As with all our standards and guidance, we will bring this forward if either external legal developments, including case law, or our own regulatory experiences, indicate that a review is necessary.

7.0 Equality and diversity implications

7.1 There are inherent equality and diversity implications in any decision Council makes in relation to standard 3.4. The establishment of standards on this topic involves a judgement about the balance to be struck between a range of competing expectations and rights.

7.2 The review process itself must be free from discrimination and fair to all individuals and groups. It must specifically take into account the implications of any potential future change to the standard on protected characteristics.

8.0 Communications

8.1 The GPhC's position on this topic has already been significantly mis-reported on at least one recent occasion. This paper provides a useful opportunity to re-state four key points, in the interests of clarity:

- The GPhC's position is clearly set out in paragraph 3.4 of the standards of conduct, ethics and performance
- The GPhC is keeping its position under active review, as a responsible regulator is bound to do with an important, controversial and evolving policy area. This does not imply that any, or any particular, change is being prepared; there is no hidden agenda
- If any change is proposed in the future, this would be subject to public consultation.

9.0 Resource implications

9.1 The resource required to conduct an internal review have been met within existing budgets.

10.0 Risk implications

10.1 Proper and timely review of the policy in this area and effective communications are essential to managing the risks of mis-reporting of current policy and policy becoming out of date or incompatible with the legal position.

Recommendations

The Council is asked

- i. to note the internal review work that has been carried out and
- ii. to agree that further consideration of policy in this area should be scheduled as part of the wider review of the standards of conduct, ethics and performance in 2013-14.

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