Council meeting 8 December 2010

Public business

Fitness to Practise

Purpose

To update the Council on the progress of the General Pharmaceutical Council (GPhC) dealing with the review of all fitness to practise (FtP) 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 report on any statistical 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 (please see attached appendix A)
- A critical evaluation of the impact of the policy

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

2. Background

2.1 The Just Disposal of Legacy Cases guidance document which sits under the policy sets out in detail the procedure as to how the FtP division (FtP) will handle the legacy cases it has inherited from the Society. The application of Just
Disposal of Legacy Cases guidance applies a list of legacy criteria to all legacy cases, both pre Investigating Committee (IC) and post IC cases including part heard cases where the final decision has not been communicated to the pharmacy professional by the then Disciplinary or Health Committee.

2.2 The application of the legacy criteria is entirely separate from the standard GPhC FtP procedure for progressing Fitness to Practise cases as set out in the Pharmacy Order 2010 ("the 2010 Order") and the GPhC (Fitness to Practise and Disqualification etc Rules) Order of Council 2010.

3. **Statistical report**

3.1 Work is under way to review all pre and post-Investigating Committee cases, both internally and by panel firms. The Legacy Determination Group (made up of the Director of Regulatory Services, Head of FtP, Legal Adviser and interim Chief Pharmaceutical Adviser) has been scheduled to meet fortnightly up to and including December 2010.

The Legacy Determination Group will also random sample cases where the caseworker/panel firm has recommended that the case continue to ensure consistency of approach and the quality of decision making through reviewing the reasons for the decision.

3.2 If the recommendation to discontinue a case has been ratified by the Legacy Determination Group or where the Legacy Determination Group does not agree with the recommendation made by the case manager / panel firm the Legacy Determination Group will decide whether to recommend to the Registrar that further action is required in respect of the case. The recommendations of the LDG must be ratified by the Registrar. The Registrar then reviews the recommendation of the Legacy Determination Group and provides reasons for his decision.

4. **Pre IC Legacy cases**

4.1 We have approximately 411 cases in this category. It is currently estimated that approximately one third of these cases will be closed by applying the legacy criteria. It is likely that if the case remains open under the legacy criteria that it will pass the threshold criteria for referral to the IC. All of the cases proceeding to the IC will have been reviewed against the legacy criteria. IC will have considered 36 cases over the period 27 September – 31 December 2010. We will update the Council at the meeting on the number of cases that have been reviewed by caseworkers and / or panel firms against the legacy criteria. It has been recommended that 10 should be discontinued. Of these, six have been considered by the Legacy Determination Group to consider closure. The Legacy
Determination Group has recommended to the Registrar that all six of these should be discontinued.

4.2

<table>
<thead>
<tr>
<th>Total number of Pre IC Legacy Cases</th>
<th>411</th>
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</thead>
<tbody>
<tr>
<td>Number of cases reviewed by caseworkers and/or panel firms</td>
<td>tbc</td>
</tr>
<tr>
<td>Number recommended discontinuance by caseworkers and/or panel firms</td>
<td>10</td>
</tr>
<tr>
<td>Number considered by the Legacy Determination Group</td>
<td>6</td>
</tr>
<tr>
<td>Number recommended by the Group to the Registrar to discontinue</td>
<td>6</td>
</tr>
<tr>
<td>Number of Registrar’s decisions agreeing with the recommendation of LDG</td>
<td>6</td>
</tr>
<tr>
<td>Number of Registrar’s decisions against recommendation of LDG</td>
<td>0</td>
</tr>
<tr>
<td>Number of cases considered by the Group where the caseworker and/or panel firm has recommended continuance</td>
<td>0</td>
</tr>
</tbody>
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5. Post IC Legacy Cases

5.1 We have approximately 150 cases in this category. As at 23 November 2010 87 have been reviewed by caseworkers and/or panel firms. It has been recommended that 23 should be discontinued. Of these, 11 have been considered by the Legacy Determination Group to consider closure. The Legacy Determination Group has recommended to the Registrar that nine should be discontinued. In addition, the Legacy Determination Group has reviewed two cases where the recommendation from the case manager/panel firm has been to continue the case.

5.2

<table>
<thead>
<tr>
<th>Total number of Post IC Legacy Cases</th>
<th>150</th>
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<tbody>
<tr>
<td>Number of cases reviewed by caseworkers and/or panel firms</td>
<td>87</td>
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<tr>
<td>Number recommended discontinuance by caseworkers and/or panel firms</td>
<td>23</td>
</tr>
<tr>
<td>Number considered by the Legacy Determination Group</td>
<td>11</td>
</tr>
<tr>
<td>Number recommended by the Group to the Registrar to discontinue</td>
<td>9</td>
</tr>
<tr>
<td>Number of Registrar’s decisions agreeing the recommendation of LDG</td>
<td>9</td>
</tr>
<tr>
<td>Number of Registrar’s decisions against recommendation of LDG</td>
<td>0</td>
</tr>
<tr>
<td>Number of cases considered by the Group where the caseworker and/or panel firm has recommended continuance</td>
<td>2</td>
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</table>
6. **Statistical challenges received**

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

7. **Critical Evaluation**

7.1 It can take up to several weeks for a case to be formally discontinued under the legacy criteria. It is therefore at an early stage to evaluate the process at this stage as sufficient information cannot be extrapolated at this time to enable a comprehensive evaluation to be undertaken.

8. **CHRE**

8.1 During November 2010, CHRE audited a selection of cases closed by the Society in the preceding 3 month period prior to the transfer of regulatory functions to the GPhC.

8.2 GPhC has been assisting CHRE in relation to organising a suitable review of the implementation of the Just Disposal Policy. We have invited them to visit us on an agreed number of occasions over the coming months where CHRE will have the opportunity to review a selection of the decisions of the GPhC to discontinue or close a case against the legacy criteria post 27 September. This may therefore require further visits by CHRE into 2011 to review a selection of cases closed by GPhC under the new threshold criteria.

9. **Equality and diversity implications**

9.1 One of the greatest potential risks presented by the lack of effective data is our inability to report on whether our FtP processes have an adverse impact on minority groups. We will seek to rectify this through the development of the case management system which captures and analyses data. This will be in tandem with the implementation of an FtP equality impact assessment to ensure FtP policy and procedure is developed in ways that seek to eliminate adverse impact on particular equality groups.

10. **Risk implications**

10.1 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.
Recommendation

The Council is asked to note the report

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