Public business

**Operational performance report**

**Purpose**
To report to the Council on operational performance to end-January 2011.

**Recommendations**

The Council is asked to agree:

i. to comment on and note the report.

**1.0 Introduction**

1.1. The Council has requested reports on operational performance at each of its meetings. Currently, the report focuses on activity in the areas of fitness to practise (FtP) and registration. For future reports, we will look to include relevant outcomes data concerning education and quality assurance services, and monitoring and inspection services.

1.2. The challenges around the production of reliable data to support accurate and meaningful reporting on FtP cases have been well-rehearsed in previous papers. However, we are now confident that we have a reliable baseline from which to build reports, having completed a physical and electronic audit of files, cross-referenced against spreadsheets held by individual teams. Currently, the data is presented in a rather ‘raw’ state, but we will develop its presentation for future reports.

1.3. Similarly, although the registration records stored on Concept are accurate, the volumes of applications not yet processed continue to be collected manually. However, although we know the current state of the Register and numbers of outstanding applications, there is no mechanism, on the system, to run historic reports (eg. the numbers on the Register at end-November 2010). We will
overcome that problem by keeping a separate, month-end log of the state of the register and pending applications.

1.4. All of these issues will be addressed as part of the implementation of the IT strategy.

1.5. Although the report describes performance at the end of January 2011, it must be noted that the data shown was current at 27 January 2011, to enable the report to be circulated sufficiently in advance of the Council’s meeting.

2.0 Operational performance December 2010 and January 2011

Registration

The Register

2.1 At the end of January the Register was made up of:

- 43541 pharmacists
- 10215 pharmacy technicians
- 13504 pharmacy premises.

2.2 This compared with 43437 pharmacists, 9420 pharmacy technicians, and 13418 pharmacy premises when the renewals’ exercise for 2011 was closed.

Pharmacy technicians

2.3 The most significant difference is the increase in number of registered pharmacy technicians, as the team is now able to focus increasingly on tackling outstanding applications. Of the 3455 applications outstanding on 27 September 2010, we have validated for registration 2103 applications, refused 16 applications and processed a further 329 applications. Subject to the quality and completeness of applications made in the days immediately before the transfer of regulatory responsibility from the RPSGB to the GPhC, we remain on track to complete the processing of all legacy applications by the end of February 2011.

2.4 Between 27 September and 31 December 2011, we received 187 applications for registration as pharmacy technicians. We have seen a gradual increase in weekly receipts during January, so that at end-January, 403 applications are outstanding. We expect to be able to deal with those applications by the end of March 2011.

2.5 Unfortunately, following investigation of options, cost and risks, particularly to the registration database (Concept), we concluded, earlier this month that it
was not feasible to introduce any form of automation, either for the submission of all or part of the application, or for payment of fees, pending the introduction of a new database, promised for mid 2012, estimates suggest that there could be 15000 – 16000 technicians who need to apply for registration by 30 June 2011. In addition, there may be between 1000 and 2000 technician students who will complete their examinations and training in July/August and require registration. This would, of course, coincide with the influx of newly qualified pharmacists requiring registration. These applications will ‘bump into’ the start of the 2012 renewals exercise, which will commence at the end of August 2011, in accordance with the legislative timetable. To avoid overlap between completing new applications, first renewals under the rolling register and the end of year renewals’ peak, we need to ensure that the vast majority of first applications for registration are completed by the end of August 2011.

2.5 To ensure that we can deal with the predicted volumes of applications, without the benefit of technology, we are exploring the feasibility, costs and risks of outsourcing some or all of the applications’ process to an external provider, as an alternative to recruiting temporary staff to support the process. We will report on progress at the meeting.

**Rolling register**

2.6 Work continues to develop the registration database to support delivery of the rolling register. Because of the risks associated with making changes to the database and the timetable, we have decided to limit the development work to the minimum necessary to ensure that the system can support renewals of registration for those on the rolling register.

2.7 We have been advised that, as the rolling register increases in size, the risks to Concept’s ability to support both the ‘static’ and rolling registers will also increase. It will therefore be necessary to ensure that the new registration database is delivered in the early part of 2012.

**Contact centre**

2.8 We have now recruited an interim manager to establish and develop the Contact Centre. We expect to take delivery of the software and telephony needed to support the contact centre by the end of February and are in the process of recruiting temporary staff as call agents.

2.9 Initially the contact centre will handle calls and emails for the registration and education functions, although over time, we aim to extend the remit so that the contact centre would become the first point of contact for all queries into the
GPhC, including those from people wishing to make complaints about Registrants or registered premises.

Fitness to practise

General

2.10 We have now been able to complete the reconciliation of legacy cases recorded on the two cases management systems, team spreadsheets and physical files, so that we are now confident that we can report accurately on the number of cases and the manner in which they are progressed.

2.11 The work on reconciliation exposed the need to develop a taxonomy to promote a shared understanding of the classification of case-types, key stages in a case and case outcomes. That work is now underway and may result in some readjustment to numbers of cases at various stages of the process, although it should not affect the total volume of cases.

2.12 Because of our concerns about the quality of the data prior to January 2011, other than in broad terms, the performance reports will not provide comparative data for the months leading up to January 2011. However, comparisons will be shown from January 2011 onwards.

2.13 Future reports to council will cover the preceding two complete months, although the data will show performance in each month.

IT systems

2.14 Pending decisions on the future of the case management system inherited from the RPSGB, we are developing a database on which key data will be recorded, enabling performance reporting of both legacy and GPhC cases. Although this will be a robust system for reporting progress of cases, it is not a substitute for a case management system, so the development of the existing or new case management system will be taken forward as a key element of the IT strategy.

2.15 The functionality for Registrants to update their address details on line will be available at the beginning of February. Although we cannot expect 100% immediate take-up, this will reduce the need for manual processing of around 800 changes per month.

2.16 Following investigation and analysis we have been forced to conclude that, with the exception of changes required for the rolling register, it is not feasible to introduce further automation pending the development of the new registration database, planned for introduction in the early part of 2012.
Case volumes

2.17 At the end of January 2011, we held a total of 595 cases, made up of 387 legacy cases and 208 cases received since 27 September 2010 (‘GPhC cases’).

2.18 Of these, 277 legacy and 191 GPhC cases were under investigation at the pre-Investigating Committee (IC) stage. 110 legacy and 17 GPhC cases were at the post-IC stage, being prepared for hearing.

2.19 The age profile of those cases and the stage they have reached is shown in the graphs at Figure one below. It should be noted that although the GPhC began receiving cases on 27 September 2010, for ease of reporting on this occasion, all cases received in September 2010 are shown as though legacy cases. We will endeavour to separate those out for future reports.

Figure one – volume, age profile and key stage of FtP cases

2.20 While reviewing cases under the council’s just disposal policy, we are also considering how to progress cases to hearing as quickly as possible, focusing on the oldest cases as a priority.

Determination under the just disposal policy

2.21 At the end of January, case managers had reviewed 146 post-IC cases, recommending 37 for closure or disposal in a manner other than at full hearing. To date, the LDG has reviewed 32 of those cases, agreeing the recommendation in 23 cases and disagreeing the recommendation in nine cases. Of these, the Registrar determined to close 17 cases, refer three cases.
to the IC to consider issuing a warning, and decided that three cases should continue. Registrar’s decisions are awaited in a further nine cases.

2.22 A sample of 11 cases where decisions had been taken to continue to a full hearing has been reviewed. The Registrar agreed with the decision in three cases, with a further eight waiting for decision.

2.23 Within the same timeframe, case managers had reviewed 86 pre-IC cases, of which 26 were recommended for discontinuance. In one case, the Registrar considered that the case should proceed to hearing. In 21 cases, the Registrar agreed with the recommendation, with a further four waiting for decision.

2.24 We are aiming to conclude the review of all post IC legacy cases, including the random sampling of 20% of cases where decisions were made to continue the case, by end-March 2011. In relation to pre IC cases, as some of these cases are at various stages of investigation, with approximately one third with the Inspectorate, in accordance with the Just Disposal of Legacy Cases policy, this review has been “staggered”. This means that the legacy criteria is applied at the point when a case handling decision is made which is normally at the conclusion of an investigation but may be applied prior to the conclusion of the investigation in certain circumstances (for example, following an application by the registrant for voluntary removal). These factors mean that it will be more difficult to predict when the pre IC legacy review will be completed. Although the process has speeded up considerably since we began at the end of September 2010, to ensure that the review is completed in a timely manner, without compromising quality, we are forming a second legacy determination group and the Registrar has delegated decision-making to members of the Executive team, subject to appropriate training.

2.25 Under the just disposal policy, the next quarterly report analysing the decisions and learning points for the Council and Registrants will be brought to the council in April 2011. However, as council is aware some of the decisions made have caused some controversy, for example, in the cases concerning advice given on the sale of homeopathic medicines. These cases emphasised the need for the Council to be able to demonstrate that, if proved, the allegations amounted to current impairment of fitness to practise, in accordance with recent case law on this issue.

2.26 The need to establish current impairment is a relatively new concept and reinforces the High Court’s view that FtP proceedings are not aimed at punishing the Registrant, but at protecting patient and public safety and confidence in the profession. This is causing most professional health regulators to examine their FtP processes to determine whether cases could be dealt with more proportionately, fairly and quickly through ‘consensual disposal’,
for example, agreeing undertakings, warnings or advice. Through the legacy review, the GPhC has learned a good deal about proportionality in making FtP decisions and we will want to reflect this learning in our final report on the review, to help inform our model for the future.

**Investigation and FtP Committees**

2.27 During January, the IC considered a total of 11 (involving 13 registrants) cases. Five cases (involving five registrants) were reviewed for compliance with conditions, with the following outcomes:-

- three cases undertakings complied with
- one case adjourned
- one case referred to the FtPC

Six new cases (involving eight registrants were considered, with the following outcomes:-

- one case (one registrant) referred for a principal/full hearing
- one case (one registrant) postponed
- one case (one registrant) referred back to Council
- three cases (five registrants) five letters of warnings.

2.28 In the same period, the FtPC considered six cases, with the following outcomes:-

- one case was adjourned part-heard
- one case resulted in conditions
- one case resulted in a suspension and a costs order made against the Registrant
- one case resulted in removal
- one application for restoration was refused
- In one case, conditions of practise were extended for a further period.

2.29 30 cases are listed for hearing by the FtPC before 31 March 2011, of which 17 are final hearings and 13 are review hearings. We have capacity to list further cases during February for hearing by 31 March. With the benefit of case management directions, we will be much better placed to progress cases to hearing in a timely manner.

**Progressing cases to FtP hearings**

2.30 Unless a Registrant objects, we are progressing all cases under the 2010 Rules. Although these Rules are very similar to the 2007 Rules, they allow greater scope for bringing cases to hearing in a timely fashion. Although many
Registrants have not objected to this proposal, one representative organisation has objected to any cases in which they represent Registrants being dealt with under the 2010 Rules. However, although this can introduce some delay, we will take a more active role in ensuring that time limits under those Rules are met. We will also seek costs orders at the conclusion of cases in which time limits have not been met.

2.31 The Chair of the FtPC has now issued a Practice Direction setting out case management directions for cases being heard under the 2010 Rules. The Directions will apply to all cases, unless either the Council or the Registrant applies for different directions to be made. For the most part, the Directions reflect the Rules themselves, but importantly, sets out what the Committee considers to be ‘as soon as reasonably practical’ for each party to serve key documents enabling cases to progress. Assuming all parties work within the Directions issued by the Committee, it should be possible to bring cases to hearing within seven months of referral by IC.

2.32 In a recent case, the FtPC awarded costs against a Registrant who had maintained an intention to contest all of the allegations against her, resulting in the case being listed for several days and five witnesses called to give evidence. On the morning of the hearing, the Registrant accepted the allegations and impairment. Due to the costs incurred by the GPhC in consequence of the Registrant’s failure to make admissions at an earlier time, the Committee awarded costs in the sum of £3,000 against her.

Resource planning

2.33 As reported previously, we are in the process of re-tendering for legal services to present cases at hearing. There are, of course, commercial sensitivities around this project, but those bidding have been invited to offer a fixed price per case. This is likely to result in some cost-savings, without compromising quality.

2.34 When we have completed the review of legacy cases, we will be far better placed to forecast the number of legacy and GPhC cases needing to proceed to a final Hearing. We will also be able to develop a capacity plan from which to determine the timescale within which, realistically, we should aim to dispose of all legacy cases, in parallel with GPhC cases.

2.35 That work is likely to be completed during April and will be reported at the council meeting in June.
Appeals and judicial reviews

2.36 The following two cases are High Court challenges against decisions made by the RPSGB but taken over by the GPhC on 27 September 2010.

Manherlal Kerhavlal SHAH v General Pharmaceutical Council (formerly the RPSGB)

This was an appeal brought by Mr Shah (represented by Charles Russell solicitors) against the decision of the RPSGB’s Disciplinary Committee (sitting as the Statutory Committee under the Pharmacy Act 1954) on 17 November 2009 that Mr Shah was unfit to have his name on the register of pharmacists. The appeal was dismissed on all grounds and Mr Shah was ordered to pay £16,750 in costs to the GPhC. Mr Shah implemented a system of mixed storage of dispensing stock and waste products on dispensary shelves. This significantly increased the risk of dispensing errors in dispensing out of date stock. The system was allegedly implemented for monetary reasons and done for many years thus putting patients at risk for financial gain. The High Court agreed with the determination of the Disciplinary Committee that it was serious misconduct (in particular, after having taken into account his prior convictions and fitness to practise history) and accordingly Mr Shah’s name should be removed from the register.

Stephen John RYCroFT v General Pharmaceutical Council (formerly the RPSGB)

This was a judicial review brought by Mr Rycroft (represented by Charles Russell solicitors) against the decisions of the RPSGB’s Registrar (on 30 April 2009 and 26 August 2009) to refer a complaint to the Investigating Committee. It was alleged that as the former Superintendent of Gordon Davis (Chemist) Ltd, Mr Rycroft did not ensure that pharmaceutical waste was segregated from pharmacy stock and delayed its transfer to disposal containers and furthermore that he did not ensure the observance of all legal and professional requirements in relation to pharmaceutical aspects of the business contrary to the Code of Ethics and Standards. The judicial review challenge was dismissed by the High Court and Mr Rycroft was ordered to pay £58,000 in costs.

3.0 Equality and diversity implications

3.1 The Council will want to know, periodically, the make-up of the Register, by reference to gender, ethnicity, age etc. Similarly, the Council will want to know more about the extent to which the proportions of registrants with specific characteristics are in line with the proportions of registrants with those characteristics who experience FtP procedures. However, the performance report is not the appropriate mechanism for such reports.
4.0 **Communications implications**

4.1. For the purposes of transparency and openness, this report is publicly available. The communications team is working to determine how best to share information about operational performance with our staff, customers, the public and other stakeholders.

5.0 **Resource implications**

5.1. The report sets out areas where we have identified the need for additional staff resources to process the current and expected one-off large volumes of applications for registration by pharmacy technicians.

5.2. For the reasons stated in the report, we have not yet identified the full resource requirements to enable us to continue to deal concurrently with FtP legacy cases and those received after 27 September 2010. Once the legacy review has been completed, we will develop an initial forecast and resource plan through to end-December 2012.

6.0 **Risk implications**

6.1. The GPhC’s reputation as a credible regulator will be damaged if we fail to achieve our objective of dealing with legacy cases and those received since 27 September 2010 expeditiously, proportionately and efficiently. The actions identified in this report are aimed at supporting achievement of that objective.

6.2. Although we have mitigated the risks around the quality of data to the extent possible, we will continue to carry risks around the quality of our data until we have been able to implement the IT strategy.

**Recommendations**

**The Council is asked to agree:**

i. To comment on and note the report.

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