Council meeting 17 November 2010

Public business

Fitness to Practise

Purpose
To update the Council on progress in dealing with fitness to practise (FtP) cases inherited by the Council from the Royal Pharmaceutical Society of Great Britain (RPSGB) on 27 September 2010 (legacy cases).

Recommendations
The Council is asked to note this report

1.0 Introduction

1.1 Since the last report to the Council, we have been progressing against a number of key issues:-
- management information
- case management system
- review of cases under the just disposal policy
- scheduling and management of cases
- cost of Hearings.

This paper reports on progress on those issues.

2.0 Key Considerations

2.1 Management Information
As previously reported to the Council, the most significant issue affecting our ability to report accurately on the volume, age and status of legacy cases is the lack of a single system on which to record cases and progress made in each case.
To address this issue, we are compiling a single list of cases shown as open on the case management system (CaMS) and its predecessor (CommLog) together with any additional cases recorded on spreadsheets. We will cross-check the list through a physical check against all paper files held in the office and by Inspectors and amend the list as necessary. Once we have the list, we will be better able to report on the key measures of interest to managers, the Council and other stakeholders.

This is, of course, a short-term solution and is likely to rely on a considerable amount of manual input to ensure that the list is kept up to date.

2.2 Case-management system
In the medium to longer-term, we need to ensure that cases can be properly recorded and tracked through the CaMS system. Currently, although the system works well for stages up to the Investigating Committee (IC), due to overly complex engineering, users cannot readily record data relevant to cases progressing to full Hearing.

We have had early discussions with the system developers around the possibility of reverse-engineering some of the complexities to offer a more useful tool to caseworkers and managers when tracking and managing performance.

We are now scoping a project to understand our detailed requirements for the CaMS system to discuss further with the developers. Although this is likely to be a lengthy project, improvements to the system should be capable of delivery in incremental phases over the next 12 – 18 months.

2.3 Review of cases under the just disposal policy
Work is under way to review all post-Investigating Committee cases, both internally and by panel firms. We have approximately 160 cases in this category. As at 5 November 2010, 41 cases have been reviewed by caseworkers and/or panel firms. Of these, 13 have been referred to the Legacy Determination Group (made up of the Director of Regulatory Services, Head of FtP, Legal Adviser and interim Chief Pharmaceutical Adviser) to consider closure under the just disposal policy.

The Legacy Determination Group will meet fortnightly and at its first meeting, considered 6 cases. Of these, one case required further information and the remaining cases were referred to the Registrar with a recommendation to close the case. The Registrar agreed the recommendation and reasons given in each case.
The Legacy Determination Group will also random sample cases where the caseworker/panel firm has not recommended closure to ensure consistency of approach and to review reasons for the decision.

2.4 Pre-IC matters
At the last Regional Lead Inspectors’ meeting, we discussed the approach taken to investigation in pre-2010 cases where investigations had not been completed. This was a useful exercise, provoking discussion about the approach to investigations more generally. We will have further discussions around this at the full Inspectorate awaydays at the end of November following which we will consider further what improvements might be made to the investigation process.

Although our immediate focus is on pre-2010 cases, we will also track more recent legacy cases to ensure that they are progressed in a timely manner.

2.5 Scheduling and management of cases progressing to Hearing

Scheduling
A number of cases already listed for hearing have been, or are at risk of being withdrawn due to application of the just disposal policy. The Secretariat is working with the Advocacy Team to schedule ‘reserve’ cases in an effort to ensure that hearing dates are not lost. Although priority will be given to legacy cases, by age, where necessary, we will list short, more recent cases (convictions etc) rather than lose hearing days.

We have obtained committee members’ availability throughout 2011, to provide the flexibility to list as many cases as needed, subject to available resources.

As we progress through the review, we will be better able to forecast the likely volume of cases needed a full hearing, so that we can discuss affordability and appropriate mix of internal and external advocacy. These discussions will inform budget-setting discussions for the next two financial years.

Case-management
Draft generic case-management directions are with the Chair of the Fitness to Practise Committee for approval. Once these are in place, we will be much better placed to manage the progress of cases post-IC, through to final hearing.

We are meeting with the Chair and Deputy-Chairs of the FTP Committee this month to discuss a number of matters, including the draft case management directions, with a view to them being issued and used as quickly as possible.

The Chief Executive and Director of Regulatory Services recently held a very productive meeting with representatives from the Pharmacists’ Defence Association (PDA). We explained our overall approach to dealing with FtP
matters, application of the legacy criteria and the draft case management directions. The PDA was supportive of the Council’s approach and understands the importance of compliance with Directions.

In future, the Secretariat will be responsible for managing compliance with Directions by both parties and drawing to the attention of the Chair any non-compliance.

2.6 **Procurement of services from external solicitors/barristers**

We have started work on procuring services from external solicitors, probably on a capped or fixed-price basis. We expect the new contracts to be in place for the start of next year.

We also plan to explore a model whereby we instruct Counsel to present cases on our behalf, but carry out all of the preparatory work in-house.

2.7 **CHRE**

The Chief Executive held a useful meeting with the Chief Executive of the Council for Healthcare Regulatory Excellence (CHRE) towards the end of last month. Following discussions, CHRE agreed that their planned initial stages audit of the RPSGB’s FtP procedures should proceed, albeit in a reduced form, and it will be carried out from 8 to end-November. CHRE auditors have been provided with a list of files and details of procedures from which to assess the RPSGB’s initial stages.

The CHRE supported the approach to dealing with FtP matters outlined by the Chief Executive. We invited them to visit us more regularly over a set period to monitor, in real time, the implementation of our new procedures, which could provide useful learning for others and will also give us the benefit of CHRE’s early feedback on our implementation of the just disposal policy and the threshold criteria. We will work with CHRE in coming weeks to discuss how best to take this forward.

3.0 **Equality and diversity implications**

3.1 One of the greatest 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.

4.0 **Communications implications**

4.1 Staff, the Council and other stakeholders have a strong interest in tracking progress towards closure of legacy cases, either through a hearing where
required or by some other outcome under the just disposal policy. Better performance data will help us communicate more effectively to all of our stakeholders.

4.2 We aim to work towards a concrete and achievable timetable for dealing with all cases in the legacy, and metrics to plot our achievement against that timetable. We recognise and share the sense of frustration which stakeholders may well experience at our currently very limited capacity to do this.

5.0 Resource implications

5.1 Until we have absolute confidence in the volume of legacy cases and the number that will go forward to final hearing, it is not possible to indicate what the resource requirements will be. This is made more complex by the drive to bring more cases in-house, while simultaneously driving down the costs of external advocacy. As the review progresses, we will be better able to forecast the budgetary requirements for the remainder of this year and 2011/12.

6.0 Risk implications

6.1 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.

6.2 The lack of an effective case management system capable of producing reliable performance data will require management to develop basic, manual workarounds increases the risks around the ability to report accurately. However, the measures currently being put in place should mitigate this risk effectively.

Recommendations

The Council is asked to note the report

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