Counsel meeting 10 November 2011  

Public business

**GPhC prosecution policy**

**Purpose**
To consider a prosecution policy for the GPhC.

**Recommendation**

The Council is asked to agree the GPhC prosecution policy at Appendix 1.

1.0 **Introduction**

1.1 The Pharmacy Order 2010 creates a number of criminal offences, most of which relate to the register, with the remainder relating to inspection of premises.

1.2 In September 2011 the Council confirmed that its policy was that the Code for Crown Prosecutors should be applied. Council asked for further work on a GPhC-specific policy, which it was recognised would be more useful for stakeholders, whilst retaining the Code approach where relevant. This paper proposes a policy for Council to consider.

2.0 **Key considerations**

2.1 The GPhC is a public authority with express statutory powers to institute criminal proceedings under the Pharmacy Order 2010 (and has a duty of enforcement under medicines legislation). A statement of the Council’s prosecution policy is useful for the purpose of

- informing affected parties of the GPhC’s approach
- guiding decision-makers as to the approach which Council wishes them to take
• enabling prosecution decisions to be taken in a consistent, fair and accountable way.

2.2 The proposed policy substantively incorporates the Code for Crown Prosecutors, subject to an appropriate framework in the light of our regulatory role. The principles in the Code are sound prosecution principles which we are well advised to follow.

2.3 The proposed policy recognises the relevant legal differences between Scotland on one hand and England and Wales on the other. In England and Wales the Council can itself prosecute offences. For offences that take place in Scotland, the practice has to be for the GPhC to refer cases that it considers suitable for prosecution to the Scottish Crown Office and Procurator Fiscal Service. The Procurator Fiscal will apply their Prosecution Code in determining whether to begin criminal proceedings, or whether to take alternative action. The considerations in the Scottish code are similar to the considerations in the CPS Code for Crown Prosecutors in England and Wales. Thus, although the decision-making authority and process differ, substantively the same policy considerations apply.

3.0 Equality and diversity implications

3.1 Prosecution decisions always have the potential for bias. We are developing a new staged equality assessment tool, which we plan to use when it becomes available to analyse the prosecution policy, which we expect will help to identify any scope for improving the policy.

4.0 Risk implications

4.1 Having a clear prosecution policy will help to reduce the risk of inconsistency and of legal challenge to prosecution decisions.

4.0 Communications implications

4.1 The policy will be published on the GPhC website and made available under the Publication Scheme.

5.0 Resource implications

5.1 The policy will ensure that the resources required for prosecution are targeted and proportionate. The number of criminal proceedings instituted by the GPhC on an annual basis is likely to be very low.
Recommendation

The Council is asked to agree the GPhC Prosecution Policy at Appendix 1.

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Appendix 1

GPhC Prosecution Policy

1. Alternatives to prosecution

1.1 Consistent with the GPhC’s values and regulatory principles, we always aim to select the most proportionate and cost-effective approach to addressing problems. In the case of criminal matters within our remit this usually means seeking alternatives to prosecution, including securing voluntary compliance and non-criminal regulatory interventions for example fitness to practise proceedings where appropriate.

1.2 GPhC standards and regulatory proceedings are specifically designed as effective mechanisms for regulating the conduct and standards of pharmacy professionals. Where it appears that a relevant offence may have been committed by a GPhC registrant, regulatory proceedings are more likely in most cases to provide an effective and proportionate mechanism for challenging that behaviour than criminal prosecution.

1.3 Exceptions to this general approach are possible and should be considered where a registrant’s conduct demonstrates that in their particular case a regulatory intervention may not be an effective and adequate response (which could be the case for example if a registrant commits an offence by practising whilst suspended from the register, thereby demonstrating a disregard for regulatory decisions).

1.4 In the case of a relevant offence which appears to have been committed by a non-GPhC registrant, then the institution of criminal proceedings may be the only enforcement tool available to the GPhC. By definition, a person who is not registered with the GPhC is beyond the reach of GPhC regulation, including fitness to practise proceedings. This is equally true whether or not the person has ever been a registrant; a person who is removed from the register and then commits an offence by continuing to practise is just as beyond the GPhC’s reach as a person who masquerades as a registrant. In both cases the GPhC has a role in upholding the integrity of the register by challenging this behaviour and seeking to stop it. A criminal prosecution may be the only option – and therefore the right and proportionate response – in such circumstances.

2. Deciding whether to prosecute

2.1 In cases in which it appears that a criminal prosecution may be an effective and proportionate response to alleged criminal behaviour, in England and Wales we apply the Code for Crown Prosecutors, which involves a two stage test examining firstly a review of all of the relevant evidence to decide whether there is a ‘realistic prospect of conviction’ and, if there is, a second stage to determine
whether prosecution is in the public interest. In cases in which it appears that a criminal prosecution in Scotland may be an effective and proportionate response to alleged criminal behaviour we use the Scottish Prosecution Code to help us decide whether to refer a matter to the Crown Office and Procurator Fiscal Service, for them to consider whether to initiate a prosecution.

2.2 In cases in which a relevant offence appears to have been committed as part of a wider course or episode of criminality involving more serious offences, we liaise with the police and prosecution authorities to determine the best course of GPhC action in order to secure public and patient safety and to facilitate the prevention, investigation and detection of serious crime by the relevant authorities.

3. Sentencing

3.1 When acting as a prosecutor, the GPhC, has a duty to assist the court in relation to sentencing and in particular should, where possible, be in a position to provide the court will all relevant information relating to the facts of the case and the individual defendant’s personal circumstances, including (but not limited to) the following:

- The defendant's age, background, present circumstances and previous convictions
- All relevant aggravating and mitigating factors
- Any relevant statutory sentencing provisions and sentencing guidelines and/or guideline cases
- Ancillary orders, such as compensation
- The views of any victim through the Victim Personal Statement
- The impact of the offending on a community.

3.2 This policy is to be reviewed at regular intervals.

Gerard McEvilly, Head of Legal Advice and Hearings Management

Reference: [To be allocated when the policy is approved]
Effective date: [Insert date]
Review date: To be kept under continual review however formal review to take place within two years from effective date

1 An offence under the Pharmacy Order 2010 or an offence under the Medicines Act or the Poisons Act within the GPhC’s enforcement remit