Public business

Response to consultation on fitness to practise adjudication for health professionals

Purpose
Council members are asked to note the draft response to the Department of Health consultation on fitness to practise adjudication for health professionals

Recommendation
The Council is asked to note:

i. the draft response to the Department of Health consultation on fitness to practise adjudication for health professionals.

1.0 Introduction

1.1 The previous Government took forward legislation to create a new body, the Office of the Health Professions Adjudicator, which would be separate from the health regulators and adjudicate separately on fitness to practise matters. Initially these changes were to affect doctors as registrants of the General Medical Council before then being applied to those professions regulated by the General Optical Council, and with a view to applying the same approach for other health professionals over time.

The present Government has reviewed the progress towards implementation of OHPA and is consulting on whether delivery of adjudication can be delivered more proportionately through other means.

A copy of the consultation document is at http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_118460

1.2 The consultation outlines three options on how to proceed:

- Option 1: Proceed with OHPA implementation as previously planned.
- Option 2: Repeal legislative provision relating to OHPA and, in separate legislation, take forward steps to enhance independence of adjudication and modernise existing processes at the GMC (and subsequently review whether to also do so for the GOC and other health regulators). Subject to this consultation, this is the preferred option. The Government considers that it offers a way to achieve more independent adjudication that is more
proportionate than the other proposals;

- Option 3: Repeal legislative provision relating to OHPA and take no further action.

2.0 **Key Considerations**

2.1 The draft response is attached as appendix 1. The response is required to the consultation by 11 October. It rules out option 3 but provides an explanation as to why the GPhC is unable to confirm that it agrees with the preferred option (option 2). Council are asked to note this response.

3.0 **Equality and diversity implications**

3.1 No equality and diversity implications have been identified.

4.0 **Communications implications**

4.1 The response will be posted on the GPhC website.

5.0 **Resource implications**

5.1 There are no resource implications associated with this response. However, it is recognised that future development in fitness to practise adjudication which may follow from this consultation could have resource implications.

6.0 **Risk implications**

6.1 Although there is no risk with providing a response, there is risk associated with the implementation of future fitness to practise adjudication arrangements with may follow from this consultation.

**Recommendations**

The Council is asked to note:

i. the draft response to the Department of Health consultation on fitness to practise adjudication for health professionals.

*Duncan Rudkin, Chief Executive & Registrar*

*General Pharmaceutical Council*

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30 August 2010
Draft response

Consultation on Fitness to Practise Adjudication for Health Professionals: Assessing different mechanisms for delivery
Department of Health
Room 2N10
Quarry House
Quarry Hill
Leeds
LS2 7UE

Date

Dear Sir/Madam

Fitness to Practise: Adjudication for Health Professionals: Assessing different mechanisms for delivery

The General Pharmaceutical Council (GPhC) welcomes the opportunity to respond to this Department of Health consultation on fitness to practise adjudication for health professionals. The GPhC is the regulator for pharmacists, pharmacy technicians and registered pharmacy premises in Great Britain. It is our job to protect, promote and maintain the health, safety and wellbeing of patients and the public who use pharmaceutical services in England, Scotland and Wales.

Q1. Should the Government proceed with its preferred option - Option 2. Yes or No?

As a new regulatory body we had expected to take part in a discussion of the case for extending the remit of OHPA to adjudicate in pharmacy fitness to practise cases in line with the principle of full separation of adjudication from investigation and prosecution. The GPhC has not yet had that discussion or had the opportunity to consult our stakeholders on the issue, so we are not in a position to give a yes / no answer to the question as asked.

One of the key challenges which Option 2 will create, if implemented, is to ensure that the legal framework and governance arrangements within the GMC provide adequate assurance of fairness and operational independence from the "prosecution", whilst at the same time enabling the GMC Council to be accountable for the quality and performance of the adjudication function. In the likely absence of an OHPA option for the GPhC in the future, we will need to explore these issues ourselves and we have plans to do so at an early stage. We expect that the extensive preparatory work which OPHA has already done will provide a valuable resource which we hope to be able to use to inform our work on improving the adjudication process. Some of this (for example, the proposed move to a tribunal system of adjudication) may require legislative provision. We certainly agree that Option 3 (repeal OHPA provisions and take no further action) should be ruled out.
Q2. Do you have any comments on the identified benefits, costs or risks of the options that are detailed in this document and its accompanying impact assessments and are there any other considerations that the government should consider?

With the information available to us and in the time scale required, we have not been able to examine in detail the identified benefits, costs and risks of the options in the consultation document and accompanying impact assessments and can make no detailed comments. It had been our hope and expectation that once the initial set up costs of OHPA had been absorbed, their new adjudication procedures plus the critical mass achieved by the absorption of adjudication work of all the health professional regulators would have produced cost savings for each of the regulators but this has not yet been demonstrated.

Yours faithfully

Duncan Rudkin
Chief Executive and Registrar