Application of the just disposal policy

Purpose
To provide the Council with a third update on the progress with the review of all fitness to practise 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.

Recommendation

The Council is asked to note the report.

1.0 Introduction

1.1 For the first year of operations the organisation 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 numerical report on any 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 – two case studies are provided in the attached appendix 1
- A critical evaluation of the impact of the policy.

2.0 Statistical report

2.1 Council received the first report on the Just Disposal of Legacy Cases in December 2010 and the second report in April 2011. As detailed in the last
report to council, the review of all post-Investigating Committee (IC) cases by internal case managers and external panel firms has now concluded.

2.2 On 27 September 2010 the GPhC inherited 589 legacy cases. From this total there were 392 cases pre IC to which the policy had not been applied. As of 26 August 2011, there remain only 32 legacy cases to which the policy has not been applied (i.e. where the case review has yet to be submitted to the Legacy Determination Group (the LDG)). This means that 360 pre IC cases have been reviewed or otherwise disposed of, under the just disposal policy since the process commenced at the end of September 2010.

3.0 **Pre IC Legacy cases**

3.1 Of the 392 pre IC legacy cases inherited by the GPhC, 360 have now been reviewed (or do not need to be reviewed because the case has been closed with no further action or as out of jurisdiction etc). The LDG has considered 92 of these cases, recommending to the Registrar to discontinue 69. The Registrar has formally discontinued 67 cases. 166 cases have been closed before being reviewed against the just disposal policy, having been closed, for example, as no further action. 32 are yet to be reviewed; however, there are a number of cases that are awaiting further documentation such as police records and coroner reports. These cases cannot be reviewed until such documentation is received.

<table>
<thead>
<tr>
<th>Total number of Pre IC Legacy Cases (as at 27 September 2010)</th>
<th>392</th>
</tr>
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<tbody>
<tr>
<td>Number of cases reviewed by caseworkers</td>
<td>360</td>
</tr>
<tr>
<td>Number recommended <em>discontinuance</em> by caseworkers and/or panel firms</td>
<td>166</td>
</tr>
<tr>
<td>Number considered by the Legacy Determination Group</td>
<td>92</td>
</tr>
<tr>
<td>Number recommended by the Group to the Registrar to discontinue*(including, in some cases, with a letter of advice)*</td>
<td>69</td>
</tr>
<tr>
<td>Number of cases considered by the Group where the caseworker and/or panel firm has recommended <em>continuation</em> <em>(sampled for quality assurance)</em></td>
<td>22</td>
</tr>
</tbody>
</table>

4.0 **Post IC Legacy Cases**

4.1 Of the 149 post IC Legacy cases reviewed, 32 were subject to conditions imposed by the Fitness to Practise Committee (the Committee). All 32 of these cases were recommended by the case manager to continue since it is not possible to close a case where conditions have been imposed by the Committee.

4.2 In addition, one post IC case, whilst a legacy case, did not fall within the scope of the policy. This case has been reviewed by the LDG and the Registrar and has been recommended to continue to a principal hearing. In total, 116 cases reviewed under the policy were able to be selected for consideration by the Legacy Determination Group. 66 cases have been considered by the LDG and recommendations made to the Registrar. The Registrar has formally
discontinued 33 cases. In additional 4 cases were rescinded to IC and the proceedings were stayed in one other.

<table>
<thead>
<tr>
<th>Total number of Post IC Legacy Cases</th>
<th>116</th>
</tr>
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<tbody>
<tr>
<td>Number of cases reviewed by caseworkers and/or panel firms</td>
<td>116</td>
</tr>
<tr>
<td>Number recommended <strong>discontinuation</strong> by caseworkers and/or panel firms</td>
<td>42</td>
</tr>
<tr>
<td>Number considered by the Legacy Determination Group</td>
<td>66</td>
</tr>
<tr>
<td>Number recommended by the Group to the Registrar to discontinue (or be disposed in a manner other than at a full hearing)</td>
<td>40</td>
</tr>
<tr>
<td>Number of cases considered by the Group where the caseworker and/or panel firm has recommended <strong>continuation</strong> (<em>part of a sample for quality assurance purposes</em>)</td>
<td>24</td>
</tr>
</tbody>
</table>

5.0 **Critical Evaluation**

5.1 The Just Disposal Policy is unique amongst healthcare regulators, being specifically developed immediately prior to the transfer of regulatory powers from the RPSGB to the GPhC to meet the transitional provisions contained within the 2010 Pharmacy Order. A project of this size has inevitably thrown up unprecedented challenges that needed to be addressed within the GPhC’s existing resources. It has therefore been determined that a structured, focussed approach is required before long term conclusions are drawn and any learning points for the future of pharmacy regulation are identified. This will include the convening of a working group at the conclusion of the review of all the legacy cases. A separate report will then be produced for Council.

5.2 An internal audit of the application of the Just Disposal Policy was conducted by Deloitte from 15 March to 15 April 2011. The main objective of this audit was to consider the efficiency and effectiveness of the operation of the fitness to practise process for legacy cases rather than the appropriateness or integrity of the decisions made under the policy. All agreed management action points have been implemented. The report is due to be considered by the Audit and Risk Committee in September 2011.

6.0 **Equality and diversity implications**

6.1 It was reported in the last paper that Council had agreed an equality scheme and associated action plan which includes the development of a new staged equality impact assessment process and action plans for all areas of our work, including fitness to practise. The GPhC is currently consulting on the equality scheme, together with an equality work plan. The consultation runs from 30 June – 30 September 2011.
6.2 Any policy, process and/or procedural changes will need to be assessed to determine whether there is any unintended impact on equality and diversity. The group mentioned in paragraph 5.1 will consider whether there is any scope for retrospective review of the policy and its implementation in equality and diversity terms.

7.0 Risk implications

7.1 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.

8.0 Challenges received

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

Recommendation

The Council is asked to note the report.

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Appendix 1

Case Study 1

The complainant, J, was prescribed out of date ExOcin. The ExOcin was expired by three months. J submitted a formal complaint to the RPSGB concerning the out of date medication and the manner in which his complaint was dealt with at the pharmacy. The case manager recommended this case be discontinued on the basis, amongst other things, that no harm had occurred to J; the pharmacy had since revised their date checking procedures and there was no real prospect of a finding of current impairment. Deemed a customer service issue, the allegation regarding the manner in which J’s complaint was initially dealt with by the pharmacy was closed. Upon making this recommendation to discontinue the case as a proposed course of action, the case manager sought the views of the registrant in question and the complainant J.

Having considered this case, the Legacy Determination Group recommended to the Registrar this case be discontinued. It was further recommended that advice be given to the registrant regarding managing customers’ expectations when dealing with complaints. The Registrar agreed with this recommendation and the case was formally discontinued with written advice sent to the registrant.

Case Study 2

The registrant was alleged to have claimed for a number of Medicine Usage Reviews (MURs) that she had not undertaken. This was later admitted by the registrant. It was understood there was no financial gain for the registrant for claiming for the MURs. The case manager recommended this case proceed to the Investigating Committee (IC) on the grounds that the registrant had breached Principle 6 of the Code of Ethics which states that pharmacists should be honest and trustworthy.

Upon considering the case, the LDG agreed with the comments set out by the case manager. The Group recommended to the Registrar that the case continue to IC and the case proceed as a recommendation case for disposal by way of a warning. The Registrar agreed with this course of action, this being his formal decision for the case. The registrant was duly notified that the Registrar considered this case suitable for disposal with a warning by IC. The registrant consented to this action and the IC agreed with the recommendation of the GPhC at an IC meeting.