General Pharmaceutical Council

Meeting paper

Council on Thursday, 06 April 2017

Public business

Standards for pharmacy professionals: additional consultation

Purpose

To provide Council with a report on the feedback from the consultation relating to the proposed changes to the examples under Standard 1 of the new standards for pharmacy professionals

Recommendations

Council is asked to:

(1) Note the analysis of the responses to our consultation (Appendix 1);
(2) Note the analysis of the effects on equality (Appendix 2);
(3) Discuss the themes relating to the revised examples under Standard 1;
(4) Agree the wording of the revised examples under Standard 1;
(5) Agree whether the new standards for pharmacy professionals can come into force in May 2017; and
(6) Confirm that any significant change in the law, such as euthanasia or assisted suicide, would necessitate an immediate review of our standards and guidance.

1. Introduction

1.1. Between April and June 2016, we consulted on new standards for pharmacy professionals, which are due to come into effect in May 2017. There are nine standards that every pharmacy professional is accountable for meeting, and these describe how safe and effective care is delivered through 'person-centred' professionalism. Each standard is followed by examples of the types of attitudes and behaviours that pharmacy professionals should demonstrate.

1.2. Feedback from the initial standards consultation led us to conclude that the examples we gave under Standard 1 regarding religion, personal values and beliefs were not compatible with person-centred care. So, in October 2016 Council approved the new standards subject to further consultation on examples under Standard 1 as follows:

- Retain the wording "recognise their own values and beliefs but do not impose them on other people"
- Substitute the wording "tell relevant health professionals, employers or others if their own values or beliefs prevent them from providing care, and refer people to other providers" for "take responsibility for ensuring that person-centred care is not compromised because of personal values and beliefs"

1.3. At the same time, we consulted on new supporting guidance, which is intended to reflect the broad range of situations when a pharmacy professional's religion, personal values or beliefs might impact on their ability to provide services in certain circumstances and give practical information to help them make sure they make the care of the person their priority.

1.4. This paper discusses the first of two reports analysing the responses to the further consultation on Standard 1 and focuses on comments relating to the revised examples, as well as the anticipated impact of the proposed changes on pharmacy professionals, employers and users of pharmacy services.

1.5. A second report will follow in due course, which will include a more detailed analysis of comments in relation to the supporting guidance.

2. Key considerations

Consultation, analysis and reporting

2.1 The consultation was open for 12 weeks between 13 December 2017 and 7 March 2017. We received 3,450 online responses, as well as 151 postal and email responses from individuals and organisations.

2.2 The consultation attracted more responses from members of the public than GPhC consultations typically have. Whereas by far the largest number of individual responses usually come from pharmacy professionals, in this consultation there were more responses from members of the public.

2.3 The consultation report (Appendix 1) includes:

- Detailed information about the consultation process, including the policy background, engagement activity and media coverage
- An explanation about our approach to analysis and reporting
- A qualitative analysis of the responses from individuals and organisations, including online and postal responses
- A quantitative analysis of online survey responses from individuals
- Summaries of the complex issues that we have heard during the consultation, and about the anticipated impact of the proposed changes on pharmacy professionals, employers and users of pharmacy services

2.4 We have considered every response received, as well as notes from stakeholder events and one to one meetings. This has informed the development of our qualitative analysis of themes and issues raised in the consultation. Our thematic approach to analysis allows us to fairly represent the wide range of views put forward, whether they have been presented by individuals or organisations, and whether we have received them in writing, or heard them in meetings or events.

The overall approach: views, rationales and anticipated impact

2.5 The consultation report includes a detailed summary of the views on our overall approach as well as the complex rationales for supporting or opposing the proposals.

2.6 Broadly speaking, pharmacy professionals were more likely to agree with the proposals than members of the public. There was a noticeable difference in the overall stance taken by these different groups of respondents to this consultation: the proposed approach was supported by the majority of the pharmacy professionals taking part in the consultation, but objected to by the majority of respondents who identified

as members of the public. On the other hand, in our focus groups with members of the public, overwhelmingly the majority agreed with the proposed approach.

2.7 A similarly complex picture emerged in organisational responses, mirroring responses from individuals. Organisations representing the pharmacy sector tended to be in agreement with the proposals, which those whose work is focused on the interests of particular groups presented a more polarised view.

2.8 Unsurprisingly the rationales for supporting or opposing the approach were hugely varied and complex. We have decided not to summarise these in this paper at the risk of omitting key issues or misrepresenting the range of rationales presented to us within the responses. The extensive analysis is included in the appendices.

2.9 In terms of impact, there was a notable difference between how the different groups responded to the online survey, with pharmacy professionals typically viewing the likely impact on different groups as being both negative and positive, and a majority of members of the public viewing the likely impact as a negative. However, members of the public attending our focus groups believed the proposals would have a positive impact on patients, with some negative impacts on pharmacy professionals. Again, the detail of potential impact is included in the analysis.

2.10 Overall, and taking into account general views on the approach, the different rationales, and anticipated impact of the proposals, we do not believe that our fundamental approach to person-centred care is incorrect. Further, we have not identified any new or significant information through the consultation that we believe would require further consideration at this stage.

2.11 We believe that many of the issues raised by respondents – both those who agree and disagree with the approach – could be addressed more effectively through the supporting guidance; and not a change to the examples under Standard 1. This would include expanding and clarifying on key areas such as applying the standards in practice, options for referral, responsibilities of employers, and other related issues.

The legal framework

2.12 Having reflected on feedback from the initial consultation and concluded that the examples were not compatible with person-centred care, we also reviewed the relevant legal framework of equalities and human rights legislation prior to launching our additional consultation.

2.13 The current law in this area is relatively recent, based as it is on the Human Rights Act 1998 (which incorporates into domestic law the rights and liberties enshrined in the European Convention on Human Rights) and the Equality Act 2010, which consolidates multiple pieces of legislation into one single Act. The legislation seeks to protect competing rights fairly, for example the right to manifest religious belief and the rights of others not to be discriminated against. New and emerging case law has also played a vital role in shaping and clarifying our understanding of the interaction between equality and human rights law, and balancing competing rights.

2.14 Our initial review of the legal framework led us to believe that the examples we gave under Standard 1 were too weighted towards accommodating the pharmacy professional's values and beliefs, as opposed to what the law requires of them as a service-provider. We felt that a more considered approach would better balance the rights of individual pharmacy professionals, and the rights and needs of their colleagues and service users.

2.15 In our view, the revised examples strike the right balance in protecting the religious freedom of pharmacy professionals and preventing discrimination against service users. In essence, the revised approach makes

clear the onus is on pharmacy professionals to ensure that they are not in a position where refusal to provide services would result in a person not receiving the care or advice they need, or breach human rights or equality legislation.

2.16 We have received feedback on the revised examples, which includes comments on a number of legal aspects. Some respondents - both groups and individuals - have argued that the proposals could amount to discrimination against pharmacy professionals or breach their rights under Article 9 of the ECHR, namely the right to freedom of thought, conscience and religion. Conversely, others argue that the new approach is more in line with human rights and equalities legislation.

2.17 Indeed, some respondents have argued that the revised standards and guidance should go further to protect the rights of patients seeking pharmacy services. The Professional Standards Authority (PSA) have argued that there are insufficient reasons for pharmacy professionals, as part of the NHS workforce, to withhold legal, NHS-approved treatments from patients, unless their right to do so is set out in legislation. Further, the PSA argue that patients and the wider public expect to receive treatment without delay or hindrance – a principle which is enshrined in the NHS constitution.

2.18 Having considered our own legal analysis and the responses to the consultation, we have not identified anything to indicate that our approach is legally flawed or otherwise incompatible with the current framework of human rights and equality law. We have also reviewed all of the case law highlighted during the consultation process by different respondents. Of the cases not already considered by our legal team previously, we have not identified anything which raises significant concerns about our approach.

2.19 Overall, we remain of the view that the proposals are fair, justified and better reflect person-centred professionalism. Insofar as the proposals might have an adverse effect on people with protected characteristics we consider that it is a proportionate means of achieving a legitimate aim, or aims – and are therefore lawful.

Euthanasia and assisted suicide

2.20 A number of respondents, both individuals and groups, have argued that our proposals could compel pharmacy professionals to be involved in cases of euthanasia or assisted-dying. Council should note that both active euthanasia and assisted suicide are illegal under English law. In England and Wales assisting a suicide is a crime. There is no specific crime of assisting a suicide in Scotland. However, it is possible that helping a person to die could lead to prosecution for culpable homicide.

2.21 It will be for the law-makers to decide on any future change to the law in this area. It would be inappropriate for us to reference or speculate in standards or guidance about the implications of any hypothetical future legal change in this area. However, it is important to confirm that any significant change in the law, euthanasia or assisted suicide being examples, would necessitate an immediate review of our standards and guidance.

3. Equality and diversity implications

3.1 Council has previously considered a full equality impact assessment consistent with our responsibilities as set out in the Equalities Act 2010, as part of the earlier consultation on the standards.

3.2 Equality and diversity has informed this additional consultation from the outset and we conducted a full equality and diversity analysis, which is attached at Appendix 2.

3.3 The analysis includes an overview of the work we have completed to inform our understanding of the equality and diversity dimensions of the proposed changes; to identify any trends or issues that apply to people who share protected characteristics; and, to consider the potential impact on this range of equality groups.

3.4 Our equality work has also been informed by our quantitative and qualitative analysis of responses to the consultation; the available data and/or evidence relating to groups by reference to protected characteristics; and, our extensive engagement with a wide variety of stakeholders.

4. Communications

4.1 The new standards for pharmacy professionals are due to come into force in May 2017. Our communications and engagement activities to launch and implement the new standards are already underway. This includes a particular focus on digital channels and tools, such as an app, to promote the standards and enable registrants to access the standards and guidance on their electronic devices.

4.2 If Council is minded to approve the examples under Standard 1 we will produce additional communications materials, including a set of FAQs, to further summarise what the changes mean, and address some of the misconceptions raised throughout the process, prior to the launch of the full supporting guidance.

5. Resource implications

5.1 The resource implications for this work, including communication and implementation of the new standards, have been accounted for in existing budgets.

6. Risk implications

6.1 The standards underpin our regulatory work and it is important that they reflect Council's commitment to promoting a culture of professionalism and the delivery of compassionate person-centred care.

6.2 Confidence in the standards could be undermined if full consideration is not given to the responses and views we have heard. It is also important that we are able to communicate clearly why Council has made its decisions, as this will assist in communicating and explaining any changes to the standards.

6.3 It is also vital that the standards reflect our understanding of the relevant law and that this is supported by our own legal analysis and external opinion.

7. Monitoring and review

7.1 The standards will be kept under continuous review, with a full review carried out every 3-5 years.

7.2 The supporting guidance, once approved, will be reviewed as and when appropriate.

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