

# strength in numbers...

**WITH MEMBERSHIP NOW AT 12,000  
THE PDA APPLIES FOR UNION STATUS**

The PDA union - pages 6-7

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September

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# Chairman's letter

by Mark Koziol.



## Unionisation of the PDA...

The fact that the PDA signed up its 12,000th member in January 2007 is clearly a major milestone because it gives our Association greater critical mass in continuing to support the agenda of the individual pharmacist.

We have been active in supporting members in employment disciplinary meetings, securing more than £200,000 in compensation on behalf of members from employers who have treated them harshly or illegally. This has led to a number of employers consulting with PDA on ways in which to avoid employer/employee problems in the future, but this is the exception rather than the rule.

In the majority of cases, they want little or no dialogue with the PDA, they actively exclude us from employment disciplinary meetings and remind us that because we are neither a union nor a work colleague, we have no legal justification for getting involved.

The announcement that the PDA is now applying for union listing will enable the PDA to sweep away these barriers. Union listing will give us rights protected by legislation and will allow us into the very heart of employment disciplinary hearings to provide support to our members at what for them is a truly difficult time. It will also enable us to represent our members' individual and collective concerns to employers – this will be particularly helpful with the larger employers.

### And there will be much to talk to them about!

The PDA has already developed significant policies in many pharmacist employment matters, such as pay-scales, staffing levels, rest-break policies, and also reducing the incidence of violence in community pharmacy. We hope that the outcome of these discussions with employers will impact positively on many PDA members.

Clearly, this will take some time but it is a very powerful vision and one to which we are very committed. However, it is a vision that will only become a reality if PDA members get behind it.

In June, all members will be invited to join the PDA union. They will not be forced to join, because a non-union PDA membership option will continue to be provided. However, there will be no extra costs to become a union member (full details described on page 7). Elections for the executive will be held in November when we earnestly hope to secure a solid community pharmacy employee and locum pharmacist representation.

At the PDA we stand passionately behind our stated aim of supporting the needs of the individual pharmacist. We firmly believe that as a union, the PDA will provide a formidable platform from which to deliver far greater benefits for our members. We urge all members to support this important proposal.

**Mark Koziol, Chairman, The PDA**

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## Don't forget!

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# news

Find out what's happening...



## 'Pharmacist specialist' insurance policy launched...

Three years ago, a temporary agreement with underwriters was reached whereby cover for pharmacist prescribing and other "more risky" roles, was provided under the traditional Primary Care Consultant scheme until a risk assessment was undertaken.

This assessment has now been completed and as a result on 1 April 2007, the PDA launched

pharmacist prescribing (supplementary and independent), QP roles for clinical trials in a hospital, operating a clinic which involved significant invasive procedures such as collecting blood for analysis (not pin-prick) and administer injections.

This list is by no means exhaustive, indeed, many roles that will ultimately be covered by this category are not yet performed by pharmacists.

*however, that the premium for the Specialist Pharmacist scheme is £204 (£284 if also involved in prescribing) this will only be marginally more costly than the traditional Primary Care Consultant scheme of £174 (on-line premium). We have worked hard to secure a good package for our members."*

The implications for the existing primary care

**In a restructuring of the risk categories, the Primary Care Policy is now exclusively reserved for pharmacists who are involved in central PCO and G.P. surgery activity**



The more high-risk practices like prescribing will be covered by the scheme

a new 'Specialist Pharmacist' insurance policy.

The Specialist Pharmacist scheme is intended for those pharmacists in both primary and secondary care who are working at the more risky cutting edge of pharmacy practice. Although there is no exhaustive list of what would be covered, the kind of activities that would be more suitably covered by this scheme today include

According to Mark Koziol, who is responsible for securing the insurance covers with underwriters:

*"Examining claims and incidents for both doctors and pharmacists, indicates that the risk of liability from prescribing as opposed to more routine pharmacist activities is 270% greater. Pharmacists may be relieved to learn*

pharmacist scheme are that it will continue to provide cover for those working as primary care pharmacists for a Primary Care Organisation, or a GP surgery either in an employed or a self employed sessional capacity.

One implication of these changes is that the underwriters have agreed to waive the need for primary care pharmacists to send additional details of their training etc to support their application. No doubt this will be a welcome reduction in paperwork.

The new Pharmacist Specialist scheme however will still rely on these additional pieces of information as underwriters will want to understand the types of risks that they are covering in greater detail.

**Members who have queries about their specific roles and suitability of cover are urged to contact the PDA on 0121 694 7000 or enquiries@the-pda.org.**

## PDA opens membership to pharmacy students

In line with other health professions, pharmacy students now have the support of a defence association. The PDA announced this new initiative at an inaugural National Student's conference sponsored by the association at the ICC Birmingham in February. The conference attended by students from five schools of pharmacy heard a number of risk management lectures, the highlight of which was delivered by Dr. Gordon Appelbe.

At the conference students were told by Mark Pitt the PDA Membership Services Manager that their demeanour, behaviour and conduct as students and human beings will be under more scrutiny than ever before in this regulatory cul-

ture pharmacy and other health professionals are being dragged in to.

He told the conference that the PDA was keen to ensure that risk management education was introduced to potential pharmacists as early as possible and was delighted to announce free membership of the association. Students who join will be entitled to up to £5 million indemnity cover whilst for example performing vocational or other work experience in pharmacies, and £300,000 worth of legal defence costs which would cover for example any legal support for university or fitness to practice investigations. *"But the major benefit"* as Mr Pitt points out, *"is access to experienced pharmacists and*

*lawyers at the end of a phone should they need instant help support or advice"*



Students at the PDA conference

## news

## Boots slated by employment tribunal

A Boots opticians practice manager who suffered from a depressive disorder has been awarded £170,000 as a consequence of an action she made against her employer.

In a highly critical judgement of the company an employment tribunal in Exeter described Boots' behaviour as "high handed and malicious" in so much as the company "hoped that she [the claimant] would not last the course in the litigation process".

Despite the claimant's open declaration of her previous condition, the health problems that resulted in her absence from work were "not only caused but also aggravated by" the company's behaviour toward her. As a consequence of lack of

support, from senior management to change what she perceived to be a difficult culture in the workplace, her illness was affected. She became increasingly stressed, causing absence from work, and was eventually diagnosed with severe depression. The situation deteriorated and eventually the claimant was told by Boots not to return to work.

Such a news story can be an employer's worst nightmare. In tribunals that can, on balance, favour employers, the PDA believes this could be a warning shot: that there are limits to their patience should an employer's actions completely abrogate their workers legitimate employment or disability rights.

In conceding their liability at the point at which

they (Boots) did, well into the hearing, in addition to other behaviours in their handling of the situation previous to the hearing, the chairman of the tribunal was satisfied that Boots had hoped that she (the claimant) would not be able to last the course of her employment or the litigation process on the grounds of her mental health.

It is not known at the time of going to press whether or not the Company is to appeal.

PDA Director John Murphy commented: *"One of the reasons we set up the PDA was to give individuals more strength and resources to protect their rights and so that they would be able to take on larger organisations that have unlimited funds at their disposal, if necessary,"*

## Eid al-Fitr and Christmas: celebrations coincide this year

Eid al-Fitr, the Muslim religious festival, coincides with Christmas this year; celebrations will be held on 20 to 22 December inclusive. Any pharmacist who works in community knows that there is a culture among retail employers to place embargos on leave being taken by all employees at what they consider to be the most intensive and lucrative time of the year.

Already, PDA members have been in contact to clarify their position in relation to religious discrimination, should their employer refuse them leave. If you are in a similar position, the PDA recommends that you start making representations to your employer as soon as possible, to give them the opportunity to put the necessary measures in place.

Religious discrimination is a very complex piece of legislation, and not all possible scenarios have been tested. Although Christians and Jews have taken employers to tribunals for refusing to recognise their religious needs by allowing time off on their respective day's Sabbaths, some have won their action but others have lost their claim. This is because their employers had an

acceptable business aim which took precedent over their position. Employers successfully argued that they would have to make concessions to many people over 52 weeks of the year, which would be impracticable and an unreasonable constraint.



Early advice from PDA lawyers suggests that Muslims may be able to claim religious discrimination should employers refuse leave for Eid. The employers' decision, if it is as a consequence of a policy applying to all staff, could be construed as indirectly discriminatory to a particular religious group.

Their decision could be seen as unreasonable

and discriminatory from the point of view of proportionality. The employer may have difficulty in using previous lost claims for time off on the 'Sabbath' as a precedent because this is a weekly event whereas Eid will not fall at Christmas time for another 12 years.

The PDA is seeking further clarification on this and will be communicating with its members by email over the coming months. In the meantime, PDA urges members to ensure that it has your most recent email address and to make contact directly should you need urgent advice.

### more info:

The PDA is seeking further clarification on this and will be communicating with its members by email over the coming months. In the meantime, PDA urges members to ensure that it has your most recent email address and to make contact directly should you need urgent advice.

[info@the-pda.org](mailto:info@the-pda.org)

## The PDA increases the extent and limits of insurance cover.

From April 1st 2007, the limit of Professional Indemnity (PI) cover is increased to £5 million for all member policies and in addition, all PDA members will now automatically enjoy £5 million worth of Public Liability (PL) insurance.

Further enhancements for members also

include a taxation investigation protection service which is provided under the Legal Defence Costs insurance scheme. This will now automatically be extended to include protection for self-employed members. This will be a major benefit to any members who are self-employed

or who undertake odd-day locums.

*"This is great news for all our members, particularly in view of the recent case where a pharmacist was implicated in a potential £5 million claim by a patient."* said PDA Chairman Mark Koziol.

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# Locum Agency - Friend or Foe?

Locum Agencies' services are paid for by the pharmacy owners, but to fill their vacancies and to earn placement fees they need to keep a large data base of pharmacists.

They compete with other agencies to attract Locums not only by finding them more work but also by using other methods and strategies to engender loyalty.

Agencies' modus operandi is similar to that of a dating agency. During times where demand outstripped supply it had been in their commercial interests to try to act in the best interests of both their clients (locums and 'engagers') by bringing them together for a fee.

The PDA has recently detected a trend which, as a consequence of major employers consolidating and reducing the number of agencies that they are prepared to work with, agencies are succumbing to the weight of their economic power. Locums are not sufficiently organised as a workforce to react even though there is a 'shortage' of pharmacists.

The contractual relationship for services rendered is directly between the pharmacist and the user of their pharmaceutical services – not the pharmacist and the agency that has brought the two parties together. Anything that the agency agrees with the Locum, however, binds the 'engager' in contract.

So for instance, if the agency gets a pharmacist to agree to a contract and confirms that he or she can claim travel time, then the 'engager' cannot refuse to pay. Whether or not they cite reasons that "it is not company policy" or that they claim no knowledge of the contract is irrelevant. The law of contract is clear; the agency has held themselves out as the engager's agents and they are bound to honour the contract. The locum can bring an action for breach of contract if they do not.

Since the PDA has made a point of challenging employers who are in breach of contract and secured thousands of pounds for locum pharmacists as a result, the engagers, particularly but not exclusively multiples, and some agencies

**Locums are easily manipulated as individual contractors and there can be no better reason for them to consider joining the PDA union to add strength to their negotiating power. Agencies that continue to restrict locums' individual freedom to negotiate would certainly not receive our support.**

**JOHN MURPHY, PDA DIRECTOR**

have attempted to put in safeguards which considerably disadvantage the locum pharmacist.

## Fixing fees and mileage claims

There are agencies dictating, through their terms of business, that ALL contracts that they arrange with engagers will be subject to a defined fee and mileage claim (and other) restrictions. This impairs pharmacists' freedom to negotiate better terms based on supply and demand. A recent survey by the PDA showed that more than 50% of pharmacists did not use an agency for all their bookings.

## Shifting the balance of power

To protect their own commercial position and to satisfy the engagers - who pay their fees and keep them financially viable - some locum agencies are stipulating contractual terms which are balanced much more in the 'engagers' favour than that of the locum.

The PDA have become aware of clauses that indicate that any booking they [the agency] arrange with a locum is subject to termination at any time with no notice and that locums cannot terminate their contract at any time without agreement from the 'engagers'. PDA advises that locums think very carefully before entering into any such contractual terms.

## Restrictive covenants

Some agencies are binding pharmacists to a financial penalty clause should they take work from other agencies for the same employer. It has always been the case that agencies have a contractual arrangement with the engager, which protects them in the event that they (the engager) goes directly to the locum to avoid paying the agency a fee. This is equivalent to an introductory fee, but attempting to financially penalise the locum directly for taking on bookings from another agency is a new and unreasonable departure from the norm. The PDA warns its members that they should be aware of agreeing to any such agreements. Not only are they putting themselves at a potentially commercial disadvantage, but it also brings into question the employment relationship between the locum and the agent, in that they are attempting to dictate who the locum may engage with.

Commenting on these new trends John Murphy said *"Users of locum services have always tried to manage the market place so as their costs will not spiral out of control. There has been a healthy dynamic which has largely worked reasonably well. From our experience, some locum agencies, in an attempt to maintain their volumes and to protect their exclusivity arrangement with multiples are significantly loading the dice against the best interests of locums."*

## The PDA becomes principal sponsor of BPC



The PDA has announced that it will be the Principal Sponsor of the British Pharmaceutical Conference 'The medicines maze: balancing risks and benefits', which will be taking place

on Monday 10th - Wednesday 12th September 2007, at the Manchester International Conference Centre"

*"It is an important landmark for the PDA",* said John Murphy PDA director. *"We have always supported the BPC since our inauguration in 2003 but particularly as this year's conference is related to risk, an area of our expertise, we felt it was most appropriate that we associated ourselves with it in a major way".*

The PDA will be encouraging its members to

attend this year. The topics should be very useful to pharmacists who are in direct contact with patients and the session that the PDA is specifically involved in, on Monday 10th September, will be particularly relevant and full of practical strategies for minimising risk.

*"We will keep our members informed as the specifics of the conference unfolds"* said Mr Murphy.

# The PDA goes for union status...

In February 2007 the membership of the Pharmacists' Defence Association (PDA) grew **beyond the 12,000 mark.**

**With 60 per cent of members joining the PDA through word of mouth recommendations, we at the PDA know only too well that it is our focus on service that has produced such a healthy growth and that is why we constantly look at ways of improving the service to our members even further.**

One such improvement that has been considered, is the possibility of the PDA applying for union status.

The debate around union status for the PDA was commenced in earnest with the membership at the PDA annual conference in 2006. In a debate, in which officers of the PDA intentionally took no part because they wanted to hear the genuine views of members, the vast majority of delegates indicated that they would be keen for PDA to become a union if it meant better services for members. Subsequently, in the half-dozen focus-group meetings that were held with members on the subject, it was possible to explore the various advantages that could accrue. It became clear that members felt that union status would indeed be most advantageous to the organisation and ultimately to its members.

## How will union status benefit the membership?

There are a number of potential benefits to members that could accrue from union status, a list of just some of these follows:

### Attendance rights at internal disciplinary meetings

Union status will plug a major gap in the PDA operation because it will give it a legal entitlement to accompany its members to internal employment disciplinary meetings. Last year, the PDA handled more than 1,000 employment cases, but could only attend disciplinary meetings if the employers allowed this. Sadly, most employers actively sought to exclude the PDA and perhaps

this is because they would have found it more difficult to control outcomes.

Although it is true to say that sometimes, it is the inappropriate behaviour of the employee that causes the problem, and on other occasions, both sides are at fault, nevertheless, in the majority of cases, the PDA is able to reach a satisfactory outcome for its members. Already, the PDA has managed to claim more than £200,000 compensation from some employers

– even some very large companies – appear to have a policy that assumes that the PDA does not exist. Letters are ignored, and a general approach that seems to be based on fear and mistrust prevails. Bearing in mind that some of these employers have suffered big compensation payouts to employees that the PDA has supported in employment disputes, perhaps this is unsurprising. However, a big advantage of union status is that it will give the PDA certain

**It became clear that members felt that union status would indeed be most advantageous**

on behalf of its members whom they may have treated harshly or illegally.

Despite these results, we at the PDA feel that an exclusion policy puts our members at a disadvantage when they attend any internal disciplinary meetings which relate to serious, perhaps even job threatening issues.

### Legal rights of consultation with employers

Since the launch of the PDA in 2003, the reaction that it has had from employers has been mixed; perhaps this is understandable. Many employers will never have dealt with a situation where their employees are not only beginning to stand up for their rights, but are being assisted by an organisation specifically set up to look after their interests.

Some employers use the PDA as a sounding board for any new employment or locum policies – we at the PDA are proud of the fact that some of these proposed policies that we considered to be dubious were never actually implemented as a direct result of our involvement at the early stages. However, this is not the experience that we have had with all employers. Some employers

legal rights of consultation with employers. This means that our Association will be able to discuss matters related to the employment of its members with employers; and employers will ultimately be required to consult the PDA if it is proposing any changes that will affect the employment of PDA members.

### A democratisation of the PDA

The PDA always consults with its members, via surveys, focus groups and conferences; by becoming a union, the PDA will also enjoy a democratic dimension. PDA members will be able to elect its officers and representatives from across the whole pharmacy spectrum: community, hospital and primary care sectors, locums and pre-registration students. A democratisation of the PDA will help it when it consults the government on important matters. It will also be able to apply for grants which will help support much of its research on employment issues.

### A stronger voice in pharmacy

A PDA union could go a long way towards addressing the imbalance of influence within the profession between the vast majority of pharma-



Mark Koziol explains the unionisation of the PDA at the PDA conference in Birmingham.

cists who are employees or locums and who have little say in the way they practice, and the small number of large employers (community or NHS) who have far too much influence.

### What if PDA members don't want to be in a union?

We know that members must always be given a choice as to how they want the PDA to function. Consequently, for those members who prefer not to take part in the union aspect of PDA, we will respect that decision and give them an option to stay exactly as they are – as full

PDA members enjoying all of their current, wide-ranging benefits.

For those members who do choose to join, then they will be entitled to even wider benefits as described. Furthermore, because the insurance underwriters recognise that the risks of employment disputes for 'union' members are lower, they will reduce the insurance premiums for these members; in turn, we have allocated this reduction to pay the union fees. Consequently, there will be no increase in overall PDA membership fees for those members who choose the union option.

### So, what happens next?

In June 2007, PDA members will be sent detailed information regarding union formation and will be invited to join the PDA union.

PDA members will continue to be asked periodically to join the union during the usual membership renewal process. In November, those members who have already joined will be invited to stand for election and will be invited to vote for their representatives. It is hoped that the PDA union will have its new executive in place by January 2008.



## Questions and answers...

We understand that you will have questions about this important development, so here are some answers...

**Q.** Can I expect that the normal service that I have come to rely upon from the PDA will continue?

**A.** The intention is that the PDA will continue to act both reactively and pro-actively to support the individual pharmacists' agenda, as it has always done in the past. However, we at the PDA believe that union status will enable the Association to provide an even wider range of benefits for members at no extra cost to members.

**Q.** What if my employer finds out that I am a union member?

**A.** It would be illegal for your employer to take action or discriminate against you in any way if he learns that you are a union member. The penalties for such discrimination are significant.

**Q.** Will the PDA union be able to represent collectively the concerns of me and my colleagues to our employer without specifically naming those who are concerned?

**A.** If sufficient employees from your employing organisation join the PDA union, then the employer is legally required to allow the PDA union full consultation rights.

**Q.** What if I am already a member of another union?

**A.** There is nothing to stop you from being a member of more than one union. However, we expect that most members will consider which union is providing the widest benefits for them and become a member of just one. They may wish to think about which union has the greatest knowledge about pharmacy matters and whether it has full-time officers employed by the union and always available to members. They may also wish to consider whether their previous union had ever succeeded in taking on employers in the past and whether it had managed to secure several hundreds of thousands of pounds in compensation on behalf of its members. There is no doubt that if all current PDA members were to join the PDA union, then it would be by far the largest

solely pharmacist union in the UK and because of that, it would be very influential indeed.

**Q.** How can I be sure that the elected representatives are nothing more than senior employees (de facto employers) who will toe the employers' line?

**A.** Some pharmacist unions are indeed run by senior employees. However, the PDA membership is almost exclusively made up of non-employer and locum pharmacists.

Because of this, it is felt that the likelihood of this problem occurring is remote. Nevertheless, PDA union members will have to cast their votes wisely.

**Q.** What do I have to do if I want to stand for election to the PDA union?

**A.** First, you need to exercise your right to join as a member. In November, you will be entitled to participate in the elections. You will receive a detailed pack of information at that time.



# BREAKING OUT

A special 5 page report from the third annual PDA conference, held at the ICC in Birmingham on February 25th 2007.

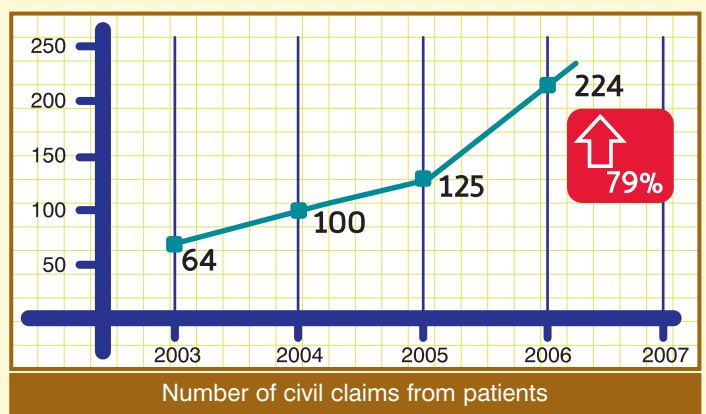
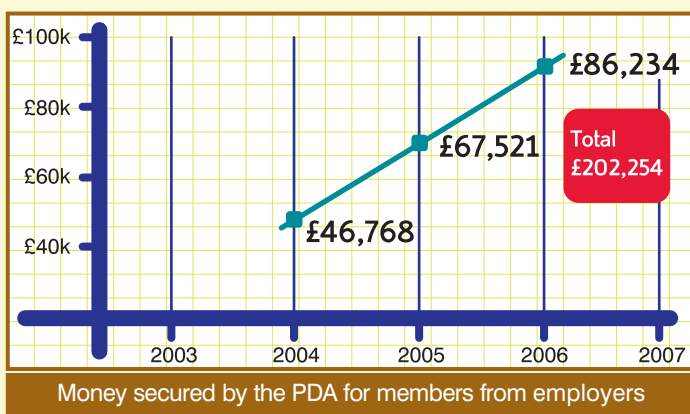
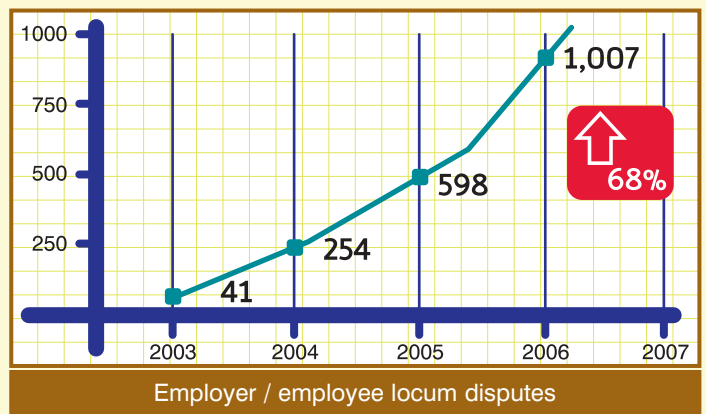
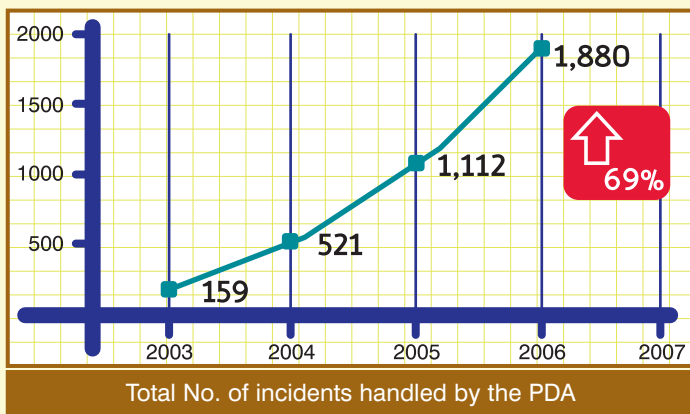
One of the most substantial projects undertaken by the PDA is the organisation of the Annual Conference, which now sees three meetings running simultaneously.

The third annual conference of the PDA took place in Birmingham on February 2007. With three events running concurrently; one -for pharmacists, pre-reg's and pharmacy students, the total number of delegates attending was in excess of 400 making the PDA annual conference the largest pharmacy day conference event in the UK. The various pharmacist conference sessions are detailed over the following pages.

### PDA Activity in 2006

The year 2006 saw meteoric increases in PDA activity across all fronts and also an increase in membership to above 12,000. In these accompanying graphs, we describe the levels of activity incurred in the defence of PDA members during the year 2006.

### PDA Levels of activity



## SANDRA GIDLEY, MP LAMBASTS A REMOTE SOCIETY

Conference delegates treated to insights on pharmacy from an MP's perspective

**"Lambeth is remote and bashes us over our heads with a hammer. It over-regulates and under-represents,"** according to Sandra Gidley, MP in her address to the PDA conference. She believes that as far as the Royal Pharmaceutical Society is concerned, things are no better now than they were when she was a student. She said that it is depressing that the Society does not stick up for her or do its best for her.

Mrs Gidley, is the Liberal Democrat spokesperson for health and the only pharmacist Member of Parliament.

During a session that gave an interesting overview of the current work that parliament is doing with regard to pharmacy, she told delegates that pharmacy matters are discussed by the All-Party Parliamentary Group on Pharmacy. In 2006, the group set up an inquiry to look into the future of pharmacy. Among other things, the inquiry is assessing the uptake of the new contract, which so far has been disappointing. Mrs Gidley said that pharmacists wanted to get on and do the new things but barriers are in the way.

There has now been a white paper on the reg-

ulation of the medical professions, as well as talk of a Society split. We have come to a fork in the road," said Mrs Gidley. She is quite concerned about the idea of remote supervision and believes nothing can replace the personal contact between pharmacist and patient. She said that the interaction could even save a life. For Mrs Gidley, the idea of a pharmacist sitting in front of two or three CCTV cameras is not a vision, but a nightmare.

Turning to her perspective on the Society, she told delegates about the time that she asked to attend a Society Council meeting in her capacity as an MP. She felt that anything on the agenda that was important but not regulatory was glossed over and that a lot of time was spent on minutiae.

Mrs Gidley thinks that it is possible that the majority of the Society's Council are now pro-split. Whether or not this is the case, a split is inevitable. She believes that pharmacists will need good professional leadership.

She told delegates the best way for pharmacists to lobby their MPs. She reminded the audience that most MPs are men, and therefore seldom visit a pharmacy. She said, "MPs know a little about many things. You can't expect them to understand pharmacist's concerns. You must write to them but don't whinge. It is better to say, 'I have a problem, this is what we should do'. Politicians are quite cynical but if you can show how it will benefit patients, they will be more interested and more willing to help".



### > What the graphs say...

The PDA continues to handle record levels of incidents on behalf of members. The volume of cases being handled was up by 69% over last year and came to 1,880 in the year 2006.

Disputes between employers and employees / locums represent more than 50% of all of the incidents handled. The 68% growth in the volume of these cases over the previous year clearly indicates the increasingly hostile environment in which many employed pharmacists and locums are working in.

The fact that more than £200,000 has been successfully claimed by the PDA on behalf of its members from employers who have treated them harshly/ illegally shows that remedies do now exist to deal with inequitable employment situations and that the PDA will not shy away from handling these decisively if necessary.

Two other startling statistics (not illustrated) is that the number of cases where the PDA supported members in situations that could have led to, or did lead to **RPSGB professional disciplinary issues rose by 240% to 635**. The Fitness to Practice directorate of the RPSGB is becoming increasingly active. Finally, **the value of compensation payments made to patients on behalf of members who made dispensing and other errors rose by 231% and now stands at more than £400,000**.

## How satisfied are you with your grading?

The PDA has successfully carried out a survey about Agenda for Change among its members who are involved in hospital or primary care practice.

John Farwell, advisory board member to the PDA, told delegates that PDA had been alerted to the problems that the Agenda for Change had thrown up because there were now 100 cases on its books of pharmacists who are dissatisfied with their grading. The PDA is supporting them from review of job descriptions through to appeal.

Dr Farwell said that as far as primary care pharmacists are concerned, there is no national profile and that panels did not fully consider the breadth and depth of pharmacists' roles. Although a national profile did exist for hospital pharmacists, feedback to the PDA suggests a considerable range and number of problems exist.

Dr Farwell explained that the PDA had successfully instigated internal reviews and given members support through formal appeal. However, because those who approach the PDA are unhappy about a situation, the organisation can get a distorted view about how satisfied or otherwise most pharmacists are with their AfC grading. The only way to find out the extent and depth of dissatisfaction is to investigate further. Dr Farwell went on to talk in depth about the electronic survey that the PDA conducted recently. There was a response from 580 pharmacists (385 hospital-based, 195 in primary care), of whom 12 per cent were non-members of the organisation.

The areas investigated were: the demographics of job content and previous grades, the

satisfaction and acceptance ratios for initial profiles, whether or not an internal review had been instigated, the satisfaction and acceptance ratios before internal review, satisfaction ratios from the appeals, and the length of time taken to complete the process.

Among the results, the survey shows that two-thirds of the respondents had accepted their grading, although not all those in primary care had yet received their grading. However, there are many who had been totally dissatisfied with their grading although there was some improvement in satisfaction levels after the first review process.

Claire Hollins, solicitor, took the floor to describe the consequences and impact of AfC. For all NHS employees, there had been about 10,000 claims for equal pay. She urged delegates to put down as much description as possible of the jobs they did, especially if they are working in a narrow speciality. If they did not do so, the consequence could well be that they are not properly graded. "If you are not happy with your grading, challenge the decision. As a last resort, consider resigning and claim constructive dismissal," she concluded.

Dr Farwell ended the session by telling the audience that the PDA would be looking at cases as they came forward and that the data would be published at a future date.



Shenaz Patel discusses paycales (see article opposite) while Mike Ratcliffe discusses the benefits to members of unionisation of the PDA in one of the afternoon sessions

## Pre-registration PDA members are 'Finishing First'

**The PDA-sponsored BPSA conference for pre-registration graduates continues to grow from strength to strength.**

Record numbers attended 'Finishing First', February's day conference held at the ICC in Birmingham.

Mark Pitt, the PDA Membership Services Manager, said that it was the second of a series of two that the PDA supports and sponsors every year. "We get great feedback from the graduates who believe that both conferences help them to improve their chances of completing a successful training year and passing their exam," said Mr Pitt.

The PDA has been a long-time supporter of BPSA and their graduate

members. Ever since the 'Peppermint water' case, the PDA has felt it important that pre-reg graduates understand the importance of personal liability and vulnerability to criminal and professional proceedings. As a consequence, all pre-reg graduates are eligible to join the PDA, free of charge. This includes up to £5 million of indemnity and £300,000-worth of legal defence costs cover.

One pre-reg from Andover was complementary: "Overall a great productive day," he said. "I feel more confident with what the exam entails and other issues which we will face once qualified." Another pre-reg, from Sussex agreed "Definitely worth attending" she said. "At this time of the year you need all the support which I think the conference provided."

Jen Deval, the BPSA president, said: "It's a

great conference. We are delighted to have the PDA's support in producing, delivering and funding it. My advice to anyone who is reading this article, whether a pre-reg or a tutor, is to encourage any pre-reg colleagues you have contact with in the future, to attend. It really does make a difference."



Pre-reg trainees sit a mock exam at the BPSA conference. >

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# Pharmacy Payscale survey

At the 2006 PDA Conference it was agreed to look into pay and undertake a survey of pay and conditions within the profession and good progress has been made.

We were pleased that Shenaz Patel (an Advisory Board Member) has agreed to undertake this important projects on the PDA's behalf.

From the outset it was evident that there was a veil of secrecy as far as pay information from employers was concerned - with little in the public domain and for once the Internet was not the source of all information. So Shenaz decided to harness one of our biggest assets, you - the members of the PDA.

Within minutes of the questionnaire appearing online, the responses flooded in. In all we received nearly 1,300 responses and despite all this information it only went to confirm that we had only just scratched the surface. The information, when analysed, gave the basis for Shenaz's presentation to this years' Conference.

#### **Shenaz established from the responses some interesting and important facts:**

- There are slightly more males than females working as locums, but significantly more females than males as employees.
- In the main the responses were evenly split throughout the country with slight peaks from respondents in the North East and South East.
- That male and female employees regularly worked up to 9 hours per day which infers that there is an element of unpaid hours.
- That male locums worked the longest hours.
- That locums operating through an agency often obtained a higher hourly rate than through direct negotiation.

We must continue to work with the data we have and obtain further information from you. This is quite clearly just the start of the project.

Its no use obtaining facts and figures unless you start using them, and some of the practical applications were provided by Michael Radcliffe from the Network Partnership. Michael, who delivered the second part of the presentation has been working with the PDA over the past year on the unionisation project.

Michael advised the meeting that employees especially, had various courses of action open to them, both individually and collectively.

The Equal Pay Legislation states: "You have a right not to be paid less than someone of the opposite sex doing the same, or nearly the same, work in the same organisation". Also; "You have the right to equal pay to a colleague of the opposite sex in the same employment, who may have a different job, but the two jobs are assessed to be of equal value". (Part-time workers are entitled to the same relative pay and conditions as full-time workers of the opposite sex).

#### **So if you are acting individually, you need to look at the qualifiers:**

- Your comparator must be somebody of the opposite sex.
- They can work anywhere within the geographical limits of the employer
- The comparator doesn't have to do be doing an identical job, they can be doing a totally different job, but that job must be assessed as being of equal value.
- The comparator doesn't have to be a current employee – it can be your predecessor or your successor.
- There is no service qualification

How do you know that somebody of the opposite sex is earning more than you? Well as our research builds this will be an invaluable source, but in the meantime we can look at the data provided by the Office of National Statistics in their Annual Survey of Hours and Earnings 2006.

the dice in favour of male pharmacists but regionally there are disparities where females are paid more than males.

Whereas the best source of information can be chatting to your colleagues you need more positive information should wish to challenge your employer. This you do by requesting that the employer completes an SD74 form that can be downloaded from the Equal Opportunities website. The employer can refuse to complete the form, but a Tribunal can infer such a refusal or a mischievous or vexatious answer as there being an equal pay case to answer. You must have submitted a form to your employer should you wish to go to Tribunal and there is also a 6 month time limit in bringing a claim.

If you find that your colleagues are in a similar position then the above procedure is open to you as a group. Most employers have a separate grievance procedure that "fast tracks" group grievances. However, you may consider referring the matter to your union who can obtain information not only using the SD74 but also in requesting information for bargaining purposes under the ACAS Code of Practice. Finally, as a group you could use the Information & Consultation of Employees Regulations.

Unfortunately the Equal Pay Act only covers employees, but that should not deter locums when negotiating an hourly rate, questioning whether or not the rate offered constitutes equal pay were it to be compared to a locum of the opposite sex.

With the invaluable work already undertaken by Shenaz we have started on an extremely

**...it would appear that men earn a significantly higher percentage than their female colleagues**

In brief in 2006 male pharmacists earned an average of £38,995.00 pa and females, £28,443.00 – so on this it would appear that men earn a significantly higher percentage than their female colleagues. On the face of it this loads

important topic for all pharmacists and we are just beginning to realise the enormity of the task. When asked: "How do you eat an Elephant?" the answer is, "In small but regular bites!" – a bit like this project.

BREAKING  
OUT

# Professional disciplinary action: how you can help yourself

There is now a 1 in 45 chance of being involved in a professional complaint. One conference session looked at the present reality and ways to avoid being implicated

"We are now using sledgehammers to crack small nuts," said John Murphy, the director of the PDA opening the session on professional disciplinary action. All health professionals have been caught up in over-zealous regulation as a result of the Bristol Royal Infirmary and Shipman inquiries, and, in Mr Murphy's view, the result has been disproportionate regulatory activity which can have the opposite effect to that intended, as well as not being in the interests of patient safety. It has also left the professionals in fear.

Mr Murphy stressed that regulation is important so that standards and public confidence are upheld but we are now in a situation that has led to an exponential growth in the number of investigations by the Society's Infringements Committee. The figure will probably reach 1,000 by the end of the year.

Mr Murphy described the process, beginning with a complaint to the Society from a number of sources. He said that of particular concern was the increasing tendency of employers to report their employees as a pre-emptive measure. For each complaint, the Infringements Committee can use a range of sanctions including referral to the Statutory Committee.

He told conference delegates that reports sent to pharmacists by the Fitness to Practise Directorate before referral to the Committee can often comprise as many as 160 pages. "Sometimes, this can be the first time that the pharmacist knows that a complaint has been made against him or her," he said. He recommended that legal advice should be obtained as early as possible.

The PDA wants the process to reform and for inspectors to have their power of 'general authority' reinstated

## Minimising the risk

Mark Pitt, membership services manager for the PDA, described how pharmacists can minimise their risk if, and when they are involved in an incident.

their labels so that blame could not be apportioned to them on a wrongly-dispensed medicine. Mr Pitt also warned that labels should never be prepared days in advance.

Care should also be taken in dispensing con-



PDA Director John Murphy voices his concerns about the fitness to practice directorate.

## Precipitating factors

When factors involve medicine errors, it is often because of similar drug names or packs, so pharmacists could review their personal checking protocol, use a near-miss log and share their concerns with other staff. Mr Pitt said that methotrexate continues to give rise to many claims and urged pharmacists to be extra vigilant.

Mr Pitt went on to say that poor staffing levels can contribute to risk. In situations where there are no staff, untrained staff or staff "gone wild" he urged pharmacists to telephone the superintendent of the company to inform him of the situation. The pharmacist could manage the risks by dealing with the most urgent and redirecting patients with non-urgent prescriptions to go to other pharmacies.

Pharmacists should always remember to sign

controlled drugs, for example, identifying the right patient for supervised consumption. Mr Pitt advised pharmacists not to be pressurised into making poor decisions, to only delegate to competent individuals and be mindful of the risk of deception.

## Handling the incident

Mr Pitt stressed that patient welfare is the absolute priority. He went to say that companies can get things wrong, identifying the wrong pharmacist who is involved in an incident. "If you are responsible when something goes wrong, then a prompt and comprehensive response is valuable as is a willingness to co-operate with the investigation," he said.

## After the event

When a complaint has been made about a pharmacist, he/she should contribute to any written report but get advice before doing so. "Never go into an interview without representation, because sometimes, pharmacists are making admissions without thinking if they really are liable," concluded Mr Pitt.

S

...of particular concern was the tendency of employers to report their employees as a pre-emptive measure

# Shoot first, ask questions later

by Mark Pitt

MRPharmS, PDA Membership Services Manager

There is concern at the PDA about the motivation of pharmacy superintendents of some **major chains...**



Our concerns revolve around these chains when discharging their responsibilities under the RPSGB's Code of Ethics. There are indications that some complaints to the Society are influenced by self-protection, spite or are intended to support a defence to civil proceedings, rather than for genuine reasons.

For example, one of our members, who had performed a long-term locum for a national pharmacy group, had his contract terminated abruptly with no good reason or notice. Because of his poor treatment by the company, and on legal advice, he lodged a claim for unfair dismissal with the employment tribunal. The company vigorously defended this action and seemed determined to use all means necessary to win the claim. The pharmacy superintendent lodged a comprehensive complaint to the RPSGB about the professional behaviour of the pharmacist, citing this as a reason for dismissing the pharmacist. This complaint was referred to the Infringements Committee, which deals with all complaints received by the Society. After robust written submissions from PDA lawyers, the Committee decided that no further action be taken. The PDA was of the view that the only reason for the complaint was to attempt to persuade the

**A bitter pill? Some pharmacies are influenced by self-protection when dealing with complaints against their employees or locums.**

emphases act with almost indecent haste, perhaps in their desire to "protect their own position". In one case, a respected employee pharmacist working for a multiple pharmacy was the subject of an unsubstantiated allegation by another member of staff with whom she was in dispute. The first action by this company, before any investigation whatsoever had taken place, was to report the matter to the local inspector. This had the inevitable consequence of launching a formal enquiry into the matter. After reporting it to the

pharmacist was subjected to appalling treatment by his employer. This pharmacist was sus-

pending for over eight weeks, during which time his employment rights were repeatedly ignored. The company disregarded its own internal procedures and signalled its intention to report the pharmacist before the internal investigation was complete. The company had decided he was guilty of the allegations it had made before the pharmacist had any opportunity to put his own explanation of events. After taking legal advice and involving the PDA, the employee issued a grievance about his treatment at the hands of the company. On the same day the grievance was lodged with the company, the pharmacy superintendent chose to report the pharmacist to the RPSGB. The pharmacist was finally able to put his version of events to a senior manager of the company, who decided that disciplinary action was not necessary and allowed him back to work. Members can make up their own minds as to the reason why this superintendent chose to make a complaint on the same day the pharmacist exercised his employment rights.

**After robust written submissions from PDA lawyers, the Committee decided that no further action be taken.**

employment tribunal that the company had a genuine reason to get rid of the pharmacist. This line of defence would have been strengthened had the complaint been upheld. As the Society did not progress the matter any further, this seems the most logical explanation for the company's behaviour.

The PDA is often surprised by how hasty a company is to instigate a professional investigation into one of its own employee pharmacists by the Fitness to Practise Directorate. Of course, in serious cases, there is a need to take action promptly, but sometimes pharmacy superintend-

Society, the company conducted its own thorough internal investigation into the complaint and completely exonerated the pharmacist concerned. The outcome of this will mean that although cleared of any wrongdoing, the pharmacist will end up with a complaint being recorded on her fitness-to-practise file. There is a professional duty on superintendents to report a pharmacist if they have good reason to do so, but by acting with such haste in this case, the professional reputation of one of the company's employees has been needlessly tarnished.

Another long-serving and highly respected

**find out more:**

There is more information on our website about how you can protect yourself against the issues raised in this article.

[www.the-pda.org](http://www.the-pda.org)

# Why we support the splitting of the RPSGB

by Mark Koziol

PDA Chairman



During the course of the Shipman debacle, when it was obvious that the healthcare regulatory landscape would change dramatically, the pharmacy profession was asked what it wanted to become in the future.



The splitting of the RPSGB?...

The majority of those pharmacists and bodies that participated felt that the Society should continue as a dual-role body, delivering both regulation and membership representation as it had done for many decades.

What we have ended up with however, is a dual-role body, but sadly, one with an organisational mindset that is much more comfortable with the role of regulation.

Under the regime of the new Fitness to Practise Directorate, the number of cases referred to the Infringements Committee have soared. In 1993, only 55 cases were referred to the Infringements Committee; in 2005, this rose to an unprecedented 874!

This relentless wave of regulation has seen pharmacists, superintendents and now, even technicians, finding out what it is like to be interviewed under Police and Criminal Evidence (PACE) procedures and then waiting, sometimes for almost a year, to hear the outcome. You may

think that they deserve what they get, but within that number are many who have committed the most trivial of technical errors that could never cause harm to anyone; others have been disciplined for no more than an uncorroborated complaint from a patient.

It is the view of the PDA that this kind of regulation is not only unnecessary, but it is damaging the interests of both the public and the profession.

Already, we are aware of pharmacists who will no longer go out of their way to help patients; instead, they find it safer to be jobsworths. This means a reduced likelihood of an

emergency supply, or a supply of medicine on a prescription which while incomplete, would nevertheless pass the 'common sense' test. Entries in the near miss or error logs are incomplete because the inspectors have been using them to discipline pharmacists.

The PDA spends a lot of time in discussions with various organisations and government officials and it is its firmly held belief that the Fitness to Practise Directorate's success in disciplining such a large number of pharmacists has led to much concern and disquiet.

It is hardly surprising that in a recent government consultation on the future of healthcare regulation, many of those pharmacists and bodies had changed their minds and now prefer the Society's dual role to be brought to an end.

Let us think about what it would be like if the RPSGB could concentrate on membership issues. Consider how much time the Society wasted needlessly considering its role in the Section 60 regulatory Order (a year or more) and

what it could have achieved if it had thrown its resources behind the provision of medicines use reviews by pharmacists instead.

Imagine if the RPSGB could properly support leading-edge practice by evaluating and nurturing, by creating the appropriate risk management frameworks and by acting as the advocate for pharmacists. The Society could succeed in moving far more innovative work into the main stream of practice. Imagine how much richer as a professional body we could be if we could actively encourage experienced pharmacists, who are currently discouraged from being members because of regulation, not only to remain as members, but also to play an active role in its affairs.

The PDA is keen on such an outcome because the painful experience of supporting pharmacists who are in problem situations has shown us just how much support they require to enable them to do their jobs safely and well. We want to see a new focus on safety and practice issues, and a new supportive culture emerge for pharmacists from the RPSGB. We want pharmacists to be able to turn to their professional body confident in the knowledge that they will receive encouragement and support and not a prosecution or disciplinary investigation.

We want pharmacists to receive help from the Society when they undertake their CPD and not a threat of removal from the register if they fail. We want to see fewer pharmacists in front of the disciplinary committee. **S**

An RPSGB unshackled from the role of regulation will be able to accomplish far more for pharmacists and patients alike...

We are hopeful that such a scenario is barely a few 'closed door' meetings away.

# The transfer of business (TUPE Regulations)

by Orla Sheils

PDA Paralegal



...the second in a series of articles discussing employment related matters.

## 1. 'TUPE or not TUPE'

The transfer of a business to another is increasingly common within pharmacy. While some employers handle this with great success others don't manage it so well. The result can be discontentment and, if not handled appropriately or sensitively by employers, many pharmacist employees can feel somewhat insecure and displaced. Fortunately, legislation exists to safeguard the position of pharmacist employees and provided employers fully meet their responsibilities and communicate openly throughout the process then good relations can be maintained.

The Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006 seek to preserve an employee's continuity of employment and terms and conditions of employment when a business or undertaking, or part of one transfers to a new employer. The Regulations have been widened in scope to include when there has been a service provision change for example where a contractor takes on a contract to provide a service for a client from another contractor.

In basic terms, employees employed by the previous employer when the undertaking changes hands, automatically become employees of the new employer on the same terms and conditions as if their contract had originally been made with the new employer. The general exception to this is some of the benefits acquired under occupational pension schemes.

Before a relevant transfer takes place the transferor employer is required by the Regulations to inform those affected employees about the prospective transfer and to provide information about the transferring workforce to the transferee employer. Consequently your employer must therefore inform you through your trade union or employee representative, that the transfer is going to take place and approximately when and why. The legal, economic and social implications of the transfer relating to you should be discussed and it should be clarified whether or not your employer envisages taking any action in connection with the transfer which will affect

you and if so, what action. If action is envisaged, your employer must consult you with a view to seeking agreement.

In the event that you wish to object to the automatic transfer of your contract of employment, you must inform either the transferor or the transferee. The effect of this is that you are not treated

may exist may be where the transferee employer operates at a different location and it is not practicable to relocate staff or where it wishes to introduce technology but the employees do not have the required skills to utilise it.

Where you are dismissed because of the transfer itself, or a reason connected with the

**Before a relevant transfer takes place the transferor employer is required by the Regulations to inform affected employees**

as having been dismissed and therefore cannot claim unfair dismissal. Moreover, you are regarded to have resigned and would therefore not be entitled to a redundancy payment.


While the Regulations seek to ensure you are not placed on inferior terms and conditions, it is possible for your contract of employment to be varied or terminated if there is an "economic, technical or organisational reason (ETO) entailing changes in the workforce". Essentially, this could include a reason relating to the profitability of the transferee's business, the nature of the equipment which the transferee operates or the management or organisational structure of the transferee's business. Changes in the workforce are generally restricted to changes in the numbers employed or to changes in the functions performed by employees.

Under employment legislation an employer seeking to rely on an economic, technical or organisational reason entailing changes in the workforce, will have to show that it acted reasonably in treating that reason as sufficient to justify dismissal. Dismissals on the grounds of redundancy are permitted by TUPE as they will normally be an ETO reason. However, the transferee will need to ensure that the selection process for redundancy has been followed fairly and that the required period for consultation has been given.

Further examples of where an ETO reason

transfer in the absence of an ETO reason the dismissal will be automatically unfair.

For those employees who find that there has been or will be a substantial change to their detriment in their terms and conditions as a result of the transfer, it is possible to resign claiming that the actions or proposed actions of the employer have constituted or would constitute a de-facto termination of your employment contract. Whether or not there has been a substantial change to your working conditions is entirely a matter for the courts to determine by examining the circumstances of each case and it must be evident that your employer has acted unreasonably.

What can be a substantial change in one environment may not necessarily be the case in another. Additionally and most importantly you must have one year's continuous employment in order to be eligible to bring your claim within the Employment Tribunals. Our members are therefore advised to give serious thought before considering resigning and to contact us prior to taking this course of action as you may find that you are prejudicing your position and your entitlements. 

**find out more:**

Further articles will explore the types of claims and the likely awards in greater detail

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16

# SIX FOLD INCREASE IN RPSGB DISCIPLINARY HEARINGS.

## DON'T FACE PROBLEMS ALONE.

The number of RPSGB Infringement committee hearings in 1993 was 56, in 2003 it was 333. ...874 in 2005

## who's defending your reputation?

When a complaint about a pharmacist is made to the RPSGB, the Society is duty bound to act in the public interest. An increasingly litigious culture produces many more complaints, consequently, RPSGB inspectors spend much more time investigating and acting upon them.

These days, the inspectors no longer have the flexibility that they used to and cannot issue a local written warning to a pharmacist. Instead, increasingly, pharmacists are receiving formal written warnings from the infringements Committee - or worse. This can leave pharmacists feeling bewildered and frustrated.

At the **Pharmacists' Defence Association** we have extensive experience of supporting pharmacists in these situations. We always work tirelessly to ensure that the rights of pharmacists are protected during an RPSGB disciplinary enquiry and in the more serious cases, we will send a PDA representative to accompany the pharmacist. We provide legal defence costs support, should the case go to a Statutory Committee hearing.

**You might call it defending your reputation; we would have to agree.**

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