The PDA's Response to the GPhC's Consultation: “Delivering equality, improving diversity and fostering inclusion. Our strategy for change 2021–26.”

July 2021

About the Pharmacists' Defence Association

The Pharmacists' Defence Association (PDA) is a not-for profit defence association and trade union for pharmacists. It is the only organisation that exclusively looks after the interests of employee and locum pharmacists across all sectors of pharmacy, currently with a membership of more than 32,000, the PDA is the largest representative membership body for pharmacists in the UK and this membership continues to grow.

Delivering more than 5,000 episodes of support provided to members who have found themselves in a critical incident situation in the last year alone, provides the PDA with a rich vein of up to date experiences which have informed policies and future strategy.

This experience has recently been informed by the very considerable number of Covid-19 related issues being faced by members. The practical experience gained in supporting member issues from the coal face is further enhanced by regular member surveys and focus group interactions. The information in this document is largely built upon the experience of our 32,000 members .

The primary aims of the PDA are to:

- Support pharmacists in their legal, practice and employment needs
- Represent the individual or collective concerns of pharmacists in the most appropriate manner
- Proactively seek to influence the professional, practice and employment agenda to support members
- Lead and support initiatives designed to improve the knowledge and skills of pharmacists in managing risk and safe practices, so improving patient care
- Work with like-minded organisations to further improve the membership benefits to individual pharmacists
- Arrange insurance cover for individual pharmacists to safeguard and defend their reputation.

Summary

The General Pharmaceutical Council is consulting about its strategy for delivering equality improving diversity and fostering inclusion.

Notably, the strategy does not acknowledge or make reference to any previous Equality, Diversity or Inclusion strategies or whether they made any progress.

The proposed strategy is set around 3 proposed themes each with underlying objectives and outcomes.

The 3 themes stated are :

- To make regulatory decisions that are demonstrably fair, lawful, and so free from discrimination and bias.
- To use our standards to proactively help tackle discrimination in all pharmacy settings and to make sure everyone can access person- centred care, fostering equality of health outcomes.
- To lead by example and demonstrate best practice within our organisation, holding ourselves to the same high standards we expect of others.

The PDA welcomes the opportunity to respond to the consultation, offers it support and assistance, and also makes a number of recommendations to help ensure that the GPhC makes progress in achieving its stated objective.

The consultation closed on 12th July 2021.

Executive Summary

- The GPhC has produced a number of Diversity and Equality plans since 2010, however we are unable to find evidence that any of the promises or pledges made since 2010 have been met.

- Given the context and history around previous plans, the PDA whilst delighted to see the publication of an EDI strategy from the GPhC, are disappointed that the consultation lacks questions about leadership and governance, assurance, and monitoring, reviewing and reporting on performance.

- As a starting point for developing our response to the consultation, the PDA conducted a survey of its members to determine what may be important to them in context of the 5-year GPhC strategy.

- More than 70% of respondents said they did not know if the last 11 years of GPhC EDI plans had demonstrably achieved their objectives.

- More than 75% of respondents wanted the GPhC to set and publish measurable targets (for example about the composition of the panels in fitness to practice hearings).

- And most importantly, more than 80% wanted the GPhC EDI policy to be subject to scrutiny by independent external stakeholders who would monitor and publish reports on progress.

- The PDA's overarching recommendations are therefore:

    1. The GPhC should set and publish measurable targets to measure progress on the strategy.
    2. The GPhC should constitute a credible external reference group for oversight and which would monitor and report annually on progress made.
    3. The GPhC should demonstrably engage with registrants and stakeholders to inform them about the progress in the EDI strategy and the resulting impacts.

- The PDA offers its full support and assistance to the GPhC to ensure that it makes progress on the strategy.

The wider equalities context.

The first significant piece of modern equalities legislation in post-war Britain was the Race Relations Act of 1965.[1] This act was introduced to mitigate against the hostility and discrimination faced by Black and Asian immigrants, many of whom were invited to work in the NHS and other key essential public services designed to rebuild post war Britain.

Sadly, given the continued need to outlaw discrimination a succession of human rights legislation outlawing gender, disability and other forms of discrimination followed and culminated in The Equality Act 2010. This Act places specific Public Sector Equality Duties on the GPhC .

Of equal concern are negative attitudes within general society towards a whole range of protected characteristics including age hostility, sexual orientation hostility, racial hostility and hostility based on a person's religion. The pharmacy profession, healthcare workers, healthcare regulators and patients are all part of general society and there is no reason to believe that the views they hold or have experienced are largely different to those detailed in a wide-ranging survey:

> ***"around a third of British adults felt that efforts to provide equal opportunities had gone 'too far' in the case of immigrants (37%) and Muslims (33%)"***
>
> ***"61% of people with a mental health condition experienced disability-based prejudice"***
>
> ***"46% of lesbian, gay or bisexual people experienced homophobic prejudice"*** [2]

This is the context within which organisations like the GPhC have from 2010 been required, by law, to produce robust, effective, and honest EDI strategies to combat bias.

History of GPhC and its Diversity Plans – 2010 onwards.

The GPhC has produced a number of Diversity and Equality plans since 2010. Each plan has made many promises but we are unable to find evidence that any of the promises or pledges made since 2010 have been met. The current consultation neither acknowledges or mentions past EDI plans nor details any achievements. Instead, it states :

> ***"This is a five-year strategy, and we see this as the beginning."***

[1] https://www.equalityhumanrights.com/en/what-are-human-rights/history-human-rights-britain

[2] https://www.equalityhumanrights.com/en/our-work/news/britains-conflicting-attitudes-towards-equality

In November 2014, a draft consultation paper "Consultation on the Equality Strategy 2014-2017 " was presented to Council for approval. The February 2015 minutes indicate concerns about the approach taken and asked for a better document :

> ***"The Council agreed that the organisation's approach to equality and diversity should be reconsidered by the executive to ensure that the work is integrated with and not separate from either strategic or day to day activities. A further paper to be presented to Council in due course."***

To appreciate the lack of progress we can look to the minutes of the February 2019 meeting of Council which records:

> ***"Members noted that the development of an EDI strategy had appeared in the plans for several years and asked when one might be developed. DR reassured members that progress had been made which was not reflected in the wording in the plan. The Chair noted that Council wished to see progress in this area as a matter of priority. "***

In July 2020, the GPhC Council further noted the outcomes it wished to see from EDI activities :

3.4 Members discussed the potential EDI outcomes that we would like to see in place across our regulatory functions and the organisation more widely, as well as the key objectives and approach to engagement. Members highlighted and discussed a number of key considerations including:

- the use of data and analytics, to underpin the strategy and help identify tangible EDI outcomes.
- the need to understand different experiences and perspectives, including student and pre-registration trainee experiences through the lens of equality, diversity and inclusion.
- the importance of pace and appetite for change, alongside the need to identify and take forward the right actions.
- how we might take forward issues around disproportionate referrals of BAME registrants by members of the public
- understanding the issues around disability in the pharmacy context, including access to the professions
- linking our EDI work to our other initiatives such as our work on understanding and enhancing the patient and public voice
- how we might use our regulatory levers and influence, to encourage our partners and stakeholders to help us to achieve our aims
- the next steps and expected timescales for this work.

The current strategy consultation is the result from the starting point 6 years earlier in November 2014 but still does not adequately reflect the wishes of Council as expressed in July 2020.

The PDA approach and overarching recommendations to this consultation.

Given the above context and history, the PDA whilst delighted to finally see the publication of an EDI strategy was disappointed with certain key aspects. As an organisation we strive to reflect the views and meet the needs of our members. We engage, we listen and we strive to learn from the experiences of our members as they inform our approach to issues within pharmacy and the broader healthcare sector.

As a starting point for this particular consultation, we conducted a survey to determine what may be important to our members in context of the 5 year GPhC strategy.[3]

The result was overwhelming. More than 70% of respondents said they did not know if the last 11 years of GPhC EDI plans had demonstrably achieved their objectives. Similarly, more than 75% of respondents wanted the GPhC to set and publish measurable targets (for example about the composition of the panels in fitness to practice hearings). Most importantly, more than 80% wanted the GPhC EDI policy to be subject to scrutiny by independent external stakeholders who would monitor and publish reports on progress.

The views expressed by PDA members are exactly in line with the suggestion made to the GPhC at its April 2021 GPhC Council Workshop by the Executive Director for the Equality and the Human Rights Commission who stated:

> ***"... accountability in this type of strategy was key, with a necessity to maintain continual oversight. It was vital to measure clearly and articulate the impact upon those most affected."***

It is on that basis of measuring clearly, continual stakeholder oversight and articulating the impact that we make our overarching recommendations:

Overarching recommendations:

1/ The GPhC should set and publish measurable targets to measure progress on the strategy.

2/ The GPhC should constitute a credible external reference group for oversight and which would monitor and report annually on progress made.

3/ The GPhC should demonstrably engage with registrants and stakeholders to inform them about the progress in the EDI strategy and the resulting impacts.

[3] https://www.the-pda.org/pda-members-are-encouraged-to-take-part-in-the-gphc-edi-strategy-consultation/

The approach of the PDA is always to work with organisations to help them deliver policy objectives that may impact positively on our members and the profession. It is in that spirit that we offer our full support and assistance to the GPhC to ensure that it actually makes progress on the strategy, that it delivers measurable change and effectively communicates the impact of these changes.

The GPhC Consultation – Questions that were not asked :

We have already mentioned the importance of monitoring and assurance. Equally as important is leadership and governance in driving change consistently and with purpose. The GPhC Council specifically noted its desire to identify the right actions and that these progress at pace.

It is therefore particularly notable that there are no questions around:

Part 4: Leadership and Governance

Part 5: Assurance

Part 6: Monitoring, reviewing and reporting our performance.

The Leadership and Governance structure outlined in the consultation document fails to engage with credibly and omits any external stakeholders in the oversight of Governance. The proposed structure is introverted and fails in engaging or recognising the legitimate rights of external stakeholders to shape, evaluate and monitor the progress made by the GPhC, which is classified under the Equality Act 2010 as a Public Authority.

The existing assurance process has clearly not been working. We have already noted that it has taken the GPhC 6 years to create and consult on this EDI strategy. This is why the assurance process must be led by a credible external stakeholder group within a proper and well constituted Governance process.

The monitoring, reviewing and reporting process needs to include an annual report produced by credible external experts which would evaluate progress against annual action plans to ensure that the right matters are identified and progressed at pace (as desired by the GPhC Council.) The results of the PDA members survey in response to the consultation clearly indicated that approximately 2/3 of respondents were not aware that the GPhC has had any EDI policy over the last 11 years. The need for the GPhC to effectively communicate it's EDI policy and annual progress is imperative.

The GPhC Consultation – Questions that were asked :

Theme 1 : To make regulatory decisions that are demonstrably fair, lawful, and so free from discrimination and bias.

To make informed evaluation whether regulatory decisions are demonstrably fair the GPhC has to collect relevant and meaningful data. However, the collecting of data is meaningless and futile unless a proper and effective plan of action follows, the progress of which can be independently verified by credible external stakeholders.

As an example, the GPhC identified the disparity of BAME referrals to fitness to practice in a report presented to council 7 years ago, in February 2014. This is the introduction to that report:

> ***"To provide the Council with an initial view into work that is continuing to understand the equality and diversity of registrants who are referred to fitness to practise compared to the equality and diversity of our register."***

The current 2021 EDI consultation document twice mentions that the GPhC will try to better understand the reasons behind the over-representation of BAME pharmacists to fitness to practice. 7 years after starting this work, it is clear that the GPhC is still failing to take meaningful action to address inequalities that have already been identified.

In contrast, the GMC having identified a similar issue of BAME over-referral to fitness to practice commissioned an expert report, titled "Fair to Refer" which was published in 2019. As a continuum of wishing to identify and address inequality problems the GMC has made a concrete commitment to eliminate inequalities starting with the core issue of only referring appropriate cases to the fitness to practice process by overhauling its referral form.[4] The GMC is thus taking tangible, measurable steps to meet its target of eliminating inequality in fitness to practice referrals by 2026.[5]

Q1 To what extent do you agree or disagree that theme 1 is appropriate?

We agree with theme 1 noting that this has always been a legal requirement and was reinforced under the Equalities Act 2010 to make decisions that are fair and free from discrimination and bias.

[4] https://www.gmc-uk.org/news/news-archive/gmc-targets-elimination-of-disproportionate-complaints-and-training-inequalities

[5] https://www.gponline.com/gmc-targets-elimination-shameful-bias-regulation-education/article/1716208

Q2 Please tell us if you have any views about theme 1.

To objectively evaluate the impact of theme 1 and whether the stated objectives have been met or are in the process of being met will require the collection of robust data and then take appropriate action at pace. Thus, it is imperative that the data collection process meets the objectives of this theme.

Data and analysis of the data matters (even for retrospective analysis) in demonstrating that decisions are (or were) demonstrably fair.

We discuss our views in greater detail in our response to Q4.

Q3 There are seven objectives under theme 1. To what extent do you agree or disagree that the objectives under theme 1 are appropriate?

We agree and support the objectives detailed. However, we have concerns about how the GPhC will achieve the following objectives which we detail in our response to Question 4.

Q4 Please tell us if you have any views about the objectives under theme 1.

The first objective we have concern about is:

> • use our diversity data to identify and monitor any disproportionate impacts on different groups, and to take steps to understand and deal with potentially discriminatory outcomes – for example, through initiatives such as anonymous decision-making pilots

To understand the importance of this we only need to turn to the comments made, about the anonymisation pilot, by a past member of a GPhC Fitness to Practice committee who noted:

> ***"This is long overdue and something I had pushed for following my own experiences of sitting as a panel member for the investigating committee. There were rare, but clear, examples of a panellist airing assumptions about an individual based on their presumed belonging to a certain group."*** [6]

There is no data or evaluation to ascertain if any past registrants could have been impacted by these assumptions about certain groups being held by committee

[6] https://pharmaceutical-journal.com/article/news/pharmacy-regulator-to-blind-fitness-to-practise-investigations-against-racial-bias

members and which potentially may have resulted in an unfair adjudication. The GPhC needs to consider this as part of the evaluation of the anonymisation trial.

The second objective we have concern about is:

> • identify and take forward appropriate equalities-related topics as part of our future research programmes

We are concerned that the report requested by Council in July 2017 around data and information on EDI in Fitness to practice not been suitably progressed by the GPhC. A report was to be commissioned but has failed to materialise.

This is what was requested by Council at its meeting in July 2017:

> ***"31.6. Council required some assurance around equality, diversity and inclusion in Fitness to Practise processes. A report on this would come to members in due course."***

Instead of commissioning such a report (as the GMC, the NMC and other regulators have done on the EDI impact of their fitness to practice processes) the GPhC merely conducted a scoping review which was presented to Council in September 2018 which detailed a timeline (including recommendations) ending with the presentation of a full report in December 2019.

We are not aware that this report yet exists, or whether one has even been commissioned or whether it is available to present to Council .

We urge the GPhC to make progress as detailed in the scoping paper presented some 4 years ago.

The scoping paper did identify a problem with:

> *1.6. Research in this area is well known for its limitations because of very small numbers of cases which make meaningful analysis difficult and also risk identification of registrants when published. The purpose of the scoping exercise was to explore those limitations and attempt to find ways to undertake meaningful research activity.*

Given that this issue about numbers has been identified we find it hard to understand the following objective can be met unless there is more thorough and robust data collection.

> • monitor key sources of intelligence (for example, complaints and fitness to practise concerns) for EDI themes and issues, to shape our work, share learning across the organisation and help us to measure progress

Q5 There are four strategic outcomes under theme 1. To what extent do you agree or disagree that the strategic outcomes under theme 1 are appropriate?

We agree with the outcomes under theme 1 in context of our answers above and the answer to Q6 below.

Q6 Please tell us if you have any views about the strategic outcomes under theme 1

The outcomes may not be achievable unless the whole process of data collection and intelligence gathering is configured/structured to ensure the delivery of the stated outcomes.

The GPhC council minutes from July 2020 state that the right actions needs to be identified and changes made at pace. Thus, the GPhC needs to now put into place processes that lead to better outcomes as a matter of some urgency.

Theme 2 : To use our standards to proactively help tackle discrimination in all pharmacy settings and to make sure everyone can access person- centred care, fostering equality of health outcomes.

Q7 To what extent do you agree or disagree that theme 2 is appropriate?

We agree and warmly welcome the GPhC intention to proactively use standards to help tackle discrimination and agree that the theme is appropriate.

Q8 Please tell us if you have any views about theme 2.

We detail these in our response to the objectives in Q9.

Q9 There are six objectives under theme 2. To what extent do you agree or disagree that the objectives under theme 2 are appropriate?

We agree that the objectives mentioned are appropriate. However, we make the following observations around 2 key objectives.

Firstly, the objective around accreditation:

> • *continue to make EDI a core part of our revised accreditation and quality assurance framework for pharmacy education and training. We will do this by strengthening our evidence framework and raising awareness of EDI themes through our accreditation reports.*

There has been long standing evidence of differential attainment outcomes for certain ethnic groups at both the MPharm degree stage and the subsequent registration exam attainment stage. The GPhC Council meeting was presented a paper in July 2018 titled "Learning from the Registration Assessment 2010-2018". It noted:

> ***"3.2. Both as students and trainees, people felt that they had been ignored or, rather, that lecturers and tutors prioritised others over them. Finally, in some cases they also experienced overt racism***
>
> ***"3.3. Unless there is a significant change in the profile of pre-registration trainees, or in the delivery of a training scheme, we expect future analyses to reveal the same trends."***

This is a structural issue and the GPhC has the levers that it can use to ensure that this inequality is extinguished.

This is an area where there already exists a substantial body of evidence and it is for the GPhC to now deliver outcomes that are demonstrably fair to all students, and it needs to do so with urgency.

Q10 Please tell us if you have any views about the objectives under theme 2.

Please see our response to Q9

Q11 There are four strategic outcomes under theme 2. To what extent do you agree or disagree that the strategic outcomes under theme 2 are appropriate?

Outcome 3 is a perfect example of having the data and information, confirming it and then failing to put into place effective standards to eliminate inequalities.

We disagree that outcome 3 is adequate given the large body of evidence (over the last decade) that already exists and clearly shows the inequality in the attainment gap at both the MPharm degree and the subsequent registration exam.

Outcome 3 merely states :

> *"There will be a greater emphasis on education providers to demonstrate how they build EDI into their curricula and academic culture."*

Outcome 3 needs to reflect the past and current reality of the inequality in educational attainment and needs to be robust enough to induce sustainable and measurable change quickly . We suggest a better, more relevant wording for Outcome 3:

> *"Education providers will have to take ownership and demonstrate measures that they have put in place to eliminate the attainment gap for their students for both the MPharm degree and the registration exam. The GPhC will proactively put into place measures to monitor progress and report on this annually. Academic institutions failing to reduce the attainment gap will be placing in jeopardy their accreditation."*

Differential attainment is also an issue in medical education. However, the GMC has made a clear and tangible commitment to eliminate inequalities in medical education and training. The wording is clear and sends a strong message to all those involved in medical education.

The GMC is committed to taking a proactive approach and identified the right actions. This is what the CEO of the GMC stated in an interview to GPonline:

> ***'In north-west England we have been providing additional support to GP trainees who failed their clinical skills assessment and that extra support made a huge difference in terms of their success rates, and in terms of their retaking of the CSA assessment.'***

There are a whole host of objectives and outcomes the GPhC can specify, based on existing evidence, around the area of education and training. The GPhC needs to put into place the right actions now which eliminate the inequalities which are clearly evidenced and documented in pharmacy education and training.

Q12 Please tell us if you have any views about the strategic outcomes under theme 2.

Please see our reply to Q11

Theme 3: To lead by example and demonstrate best practice within our organisation, holding ourselves to the same high standards we expect of others.

Q13 To what extent do you agree or disagree that theme 3 is appropriate?

We agree that theme 3 is appropriate and that the GPhC needs to lead by example.

Q14 Please tell us if you have any views about theme 3.

We welcome the ethos that the GPhC will not shy away, as stated in the consultation to:

- have those 'difficult' conversations that need to happen if we are to transform our approach to EDI

Implicit in this is the acknowledgement that these conversations are difficult. One such difficult conversation is around the failure over the last decade by the GPhC to recruit a diverse pool for panel hearings.

There is no mention of the recruitment process for persons that are appointed by the GPhC but are not members of staff. The GPhC undertakes recruitment for both members of Council and for Panel members of the fitness to practice committees. There needs to be clear objective to ensure that a more balanced pool is appointed at pace with a specified measurable outcome. The selection from that pool also needs to be a specific measurable outcome as recent data clearly shows that empanelment of women is at a far lower level than that of men.

We are also concerned that there is no consideration of diversity and equality for the companies that the GPhC buys in services from (for example legal services). The GPhC needs to make a clear commitment to only buy in services from companies that have robust demonstrable EDI policies.

The GPhC needs to also publish pay gap reports which cover all protected characteristics paying particular attention to diversity in more senior positions.

Q15 There are eleven objectives under theme 3. To what extent do you agree or disagree that the objectives under theme 3 are appropriate?

An additional objective is needed in order to ensure that members of Council and Panel members are recruited by the GPhC in a fair and transparent manner. There has

been little change in the diversity of the panel pool and given the pool of talent available it is incumbent on the GPhC to ensure that its recruitment processes are fit for purpose. The excuse of not having sufficient high quality applicants is not a reflection of the applicants but is in fact a reflection of the failure of the GPhC in having the appropriate recruitment processes.

As a comparison, the GMC made a clear commitment to increase the diversity of its panel pool and achieved this objective by 2015. This was a clear objective, was measurable and was achieved and was specifically noted the 2018 Williams review following the Bawa-Garba case.

We suggest that this could be appropriately enabled by an amendment to Outcome 4 to read (added words in blue)

> "Positive action, or other improvement action, will be focused and targeted based on evidence and particularly around areas of recruitment for and including staff, associates, partners, council and panel members".[7]

Q16 Please tell us if you have any views about the objectives under theme 3.

Please see our answer to Q15.

Q17 There are five strategic outcomes under theme 3. To what extent do you agree or disagree that the strategic outcomes under theme 3 are appropriate?

There needs to be an additional outcome.

> *"Our staff, our Council and our fitness to practice panel pool will fully reflect the diversity of the registrants of the GPhC."*

Q18 Please tell us if you have any views about the strategic outcomes under theme 3

Please see our response to question 17

[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717946/Williams_Report.pdf

We want to understand whether our proposals may have a positive or negative impact on any individuals or groups sharing any of the protected characteristics in the Equality Act 2010. The nine protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Q19 Do you think our proposals will have a positive or negative impact on individuals or groups who share any of the protected characteristics?

It is not possible to say whether the proposals will have a positive or negative effect unless there are measurables in place which are evaluated by external stakeholders.

The proposals have potential to positively impact all those with protected characteristics. However, as the GPhC has failed to provide any data from the last 11 years of having EDI policies or their impact, we are unable to answer this question. The current situation is that the GPhC has failed to demonstrate any reduction in inequality, especially in fitness to practice or education attainment in the last 11 years.

We also want to know if our proposals will have any other impact on any other individuals or groups (not related to protected characteristics), specifically: patients and the public, pharmacy owners or pharmacy staff.

Q20 Do you think our proposals will have a positive or negative impact on any of these groups?

Please see our reply to Q 19

Q21 Please give comments explaining your answers to the two impact questions above. Please describe the individuals or groups concerned and the impact you think our proposals would have.

Please see our reply to Q 19