IS IT WORTH A CANDLE?

Some employers say "our indemnity insurance will protect you if an error occurs", but can you trust them to robustly defend your reputation?

Protecting an individual pharmacist, in the event that something has gone wrong, requires the spirited defence of that individual. The PDA is solely focused on the pharmacist and does not concern itself with protecting the employer. In some cases, we even draw attention to the liability that should rest with the employer.

So what is the value of your employer's promise to provide defence?

How can their defence offering ever avoid the conflict of interest that exists?

What is the likelihood that employer funded indemnity lawyers would act in a way that is detrimental to the interests of the employer?

What use is employer's protection where;

- You resign or are dismissed by your employer?
- You make an error because the employer's pharmacy protocols or staff are at fault?
- You argue in the Court of Appeal that only employers can commit the Medicines Act offence?

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Community Edition
winter 10

insight

The magazine of the **Pharmacists' Defence Association**

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PDA consults on a new pharmacy road map

Also inside

Over £750,000 in compensation paid to PDA members by employers

Chairman's letter

Creating a new Road Map for Pharmacy

About ten years ago I attended a Young Pharmacists' Group Conference and the guest speaker was Gerry Griffin, an ex director of NASA. He had been involved in all of the Apollo moon landing missions of the late 60's and early 70's..

During a fascinating presentation I vividly recall him explaining that after the Moon missions were all finished by the mid 70's, a handful of the key people, astronauts, mission controllers, flight directors and senior NASA officials got together for a long weekend in a log cabin to discuss what they had all learned. In particular, the question that they were all keen to understand was "How on earth, despite all of the odds, did they succeed?"

They concluded that the years that led up to the final successful moon landings happened to be a time when a number of singularly unique and somewhat unconnected threats and opportunities had emerged. These included the fact that after the end of the second world war, the German missile scientists had all emigrated to the United States and that America happened to be enjoying a financial surplus. There was also the fact that there was now a cold war between Russia and America and Russia was initially leading the space race. There came a point in time, when all of these and other circumstances became aligned and when this occurred it created a perfect environment which acted as a very powerful catalyst for change. The result was that once it had been decided that there would be a man on the moon by the end of the decade, the process became virtually unstoppable.

I believe that in a similar way, we as pharmacists are currently encountering a situation, a point in time, where many wider factors, both threats and opportunities are now aligning together in such a way as to create an environment that will bring massive and substantial changes in healthcare provision in the UK.

We know that because of the financial crisis facing the country there will be significant pain and uncertainty. We also know that the government seeks to disband PCTs and empower GP consortia, this will inevitably affect lots of pharmacists in many different ways.

There's little that we can do to change the financial position of the country, but paradoxically, we could yet seek to use it to our advantage. What would be utterly unforgivable for us as a profession, is if we went into this period of change and uncertainty, without an idea of how we intended to emerge and instead allowed ourselves to simply be led by events.

If we, as a profession can understand the direction of travel and can smartly harness the energy being produced by all of the current circumstances, then it may become possible for us to exploit them to the benefit of the profession and patients alike.

At times like this, ideas which like the moon landings of the 60's may have been unthinkable before, suddenly find their moment.

But if we are to succeed then we must be proactive. Understanding the changing circumstances around us and knowing what we can and cannot influence means that we can develop a plan – a new Road Map for Pharmacy.

The PDA has embarked upon just such an exercise, much has already been done. Focus groups have been held and surveys undertaken with much more membership consultation to follow. We are working on the development of common goals with other organizations both within pharmacy and also with wider NHS organisations, we are also consulting with the government. On pages 12-14 we describe some of the circumstances that we believe are currently aligning to provide a fertile environment and we analyse how we need them to interconnect. Suddenly, we can connect many of the issues that have faced pharmacy in recent years use them to help set a new course.

Such is the scope of this ambitious work that our Annual PDA Conference in February of next year will become a two day event so that we can launch some of our initial proposals and seek member involvement in honing and sharpening some of the ideas.

What we are seeking to do with this substantial project is to describe a new way of working, which enables pharmacists to practice with professional autonomy and within a remuneration structure that respects that fact – something that we believe has not been happening in community pharmacy for quite some time. If pharmacy practice can arrive at a new and more fulfilling destination, then we hope that some of the problems that pharmacists currently face can be avoided altogether. Our initial soundings indicate that some pharmacists will welcome such a development, while others may be wary. We must find a way that enables those who wish to proceed, to do so. Whilst allowing those who initially do not, to continue to practice in a more traditional way. We must ensure that any new ideas must also sustain one of the profession's USPs - the community pharmacy network.

We invite you to participate in the forthcoming further surveys, petitions and focus groups which are ongoing. In particular, we invite you to support this years PDA Conference on the 26th and 27th of February in Birmingham.

Mark Koziol, Chairman, The PDA

Contents

The PDA conference - A New Pharmacy Road Map

In its most ambitious piece of strategic work to date, the PDA is launching a New Pharmacy Road Map initiative. The financial pressures occurring in the country mean that the time is right for radical proposals that can help to deliver more healthcare services through a more efficient distribution of responsibility for patient care.

In Hospital and Primary care pharmacy, pharmacists have already created a well respected clinical relationship with patients. Sadly in the community pharmacy setting, many thousands of pharmacists have ended up buried under increasing volumes of dispensing activity, often with a reduced staff support and with an increased exposure to risk and liability.

We believe that the time is now right for chronically ill patients to have their long term pharmaceutical care needs delivered by pharmacists.

Some highly qualified (usually prescribing) primary care pharmacists are already undertaking these roles in GP surgeries and we need to support them going forward. However, whilst there are approximately 8,000 GP surgeries, there are in excess of 13,000 community pharmacies in the UK. Even if only a quarter of pharmacies were ultimately suitable to provide a clinic style healthcare facility, then pharmacy could free up much of the blocked up surgery waiting rooms, allowing GPs to handle the more urgent acute cases, many of which currently find themselves needlessly being admitted to hospital.

Such proposals do not necessarily invent new roles as such, as similar roles are already being fulfilled by pharmacists in GP surgeries and in some hospitals, what they seek to do is to enable these roles to be delivered in the community pharmacy setting but only if we can create the appropriate infrastructure and pharmacy environment. Alongside that is needed the creation of a new remuneration structure so that pharmacists involved would, just like the GPs, have a financial relationship with the NHS which incentivises high standards of care.

There are many hurdles in the way, access to patients notes, competition from nurses and potential resistance from the medical profession, and we will probably need more than one pharmacist per pharmacy. We do not believe that these are reasons to abandon our mission. It is our belief that if we can identify the issues and work to overcome them, then the thrust of the proposal would provide huge benefits to patients and a professionally rewarding role for pharmacists.

Furthermore, if we can get the evidence right then we can also create a WIN WIN with community pharmacy owners coupled with a reduction in the overall costs to the NHS.

We cannot guarantee that all our objectives will ultimately be met, but what we do know is that there has never been a time when the possibility of a significant re-engineering of the system with a greater involvement of pharmacists would be so seriously contemplated by government. We are already discussing the general principles with them.

The two day New Road Map for Pharmacy Conference will consider these issues in much more detail enabling pharmacists to understand the trajectory. This will be an opportunity for pharmacists to give their input into fashioning any strategy.

Who should attend?

- Community pharmacists wishing to develop a deeper clinical relationship with patients in a community pharmacy setting.
- Primary Care pharmacists who may be concerned with the closure of PCTs and who may wish to fashion the future options.
- Hospital pharmacists, keen to improve the primary secondary interface or those who may consider transferring their skills to this new role.
- Newly qualified pharmacists who are concerned that the skills that they have attained during their five year training course are currently just not being utilised.

News

PDA achieves Independent Trade Union Status

The opening of a new chapter in the fledgeling Union's history.

The 24th November 2010 will be a date to remember for all of those associated with the PDA Union; on that day, the Certification Officer confirmed that the Union had been successful in its application under section 6 of the Trade Union and Labour Relations (Consolidation) Act 1992 for a Certificate of Independence.

"This is momentous news indeed" said Mike Radcliffe the Union Official who has advised the PDA through the process of moving from a 'listed' to an 'independent' status. **"The emergence of new unions of any status has been very rare; to have a Union which was started from scratch two years ago, to achieve this level of certification is historic and probably not been done for nearly twenty years. It is a great credit to all those who have worked so tirelessly in making the PDA Union such an effective force in such a short timescale."**

In the process of the application, the Certification Officer scrutinised the work of the PDA. In a written report to him, the PDA Union General Secretary, John Murphy, stated;

"I appreciate that this may be an unusual organisation for you to accredit. My understanding is that in recent times you are used to certifying organisations as 'Independent Trades Unions' that have evolved from being a representative body in one employer organisation and that you need to ensure there is no room for influence from the parent organisation.

The PDA Union in contrast has many members spread over a large number of companies ranging from employees in an independently owned pharmacy to a multiple chain that has 2000 outlets and employs over 5000 pharmacists. In addition, we have many members employed in hospital locations throughout the NHS and in other sectors such as Primary Care Trusts and the pharmaceutical manufacturing industry.

The PDA Union has evolved from ideals and values that have never seen it aligned to any employer of pharmacists; it was created only to serve the interests of the individual in challenging the status quo where it disadvantages its members and to protect their statutory employment rights and terms and conditions."

The achievement of this Independent status now opens a new chapter in the Union's history, giving it the momentum to seek recognition agreements with employers.

If this is achieved then the union will have the right to be consulted on issues such as health and safety, terms and conditions, redundancy or business transfers and officials should be given information by their employer that could be used for collective bargaining.

In certain circumstances Union officials and Representatives can now apply for time off work with pay to carry out their trade union duties and members can be given time off work to take part in trade union activities.

The PDA welcomes the work of the Legacy Determination Committee

When the General Pharmaceutical Council (GPhC) took over pharmacy regulation it inherited a very heavy case load from the previous regime.

The PDA is in regular dialogue with the new regulator, and in recent months has been discussing the possibility of the GPhC considering the cessation of disciplinary action in some of the cases, particularly where there is no longer any public interest in continuing.

The PDA has now learned that the GPhC has decided to use its transitional powers and is to cut a swathe through a backlog of old cases.

The new Registrar will be using his discretion to refer cases to an interim Legacy Determination Committee. A process has been put in place to review all cases and depending on such criteria, including but not limited to; the type of allegation, the age of the allegations, the length of time in referring the matter to the investigations committee and the strength of the witness evidence, a decision will be made whether to continue with the case.

Members who fall into this category have been informed that their case will go before the Legacy Determination Committee and any decisions will take into account the views of the complainant as well as the pharmacist before a decision is reached.

Some PDA members have already benefited from this approach and at a recent meeting with the GPhC, the PDA expressed its support for the initiative; in many instances if there are no further complaints over the course of several years then there is little prospect of any hearing finding a pharmacists current fitness to practice being impaired.

The astonishing case which was reported to PDA members in the last edition of Insight has been one such case to benefit from the cull of legacy cases. (Insight Summer 2010; P12: PDA asks GPhC to drop some old RPSGB disciplinary cases). Common sense at last!

Alliance Boots Advanced Declaration Template

Can pharmacists still be statutorily responsible for the safe and effective running of a pharmacy whilst asleep in bed?

The PDA has taken issue with Alliance Boots over its introduction of a process which seeks to enable the Company to assemble, prepare and accuracy check prescriptions at times when the pharmacy is closed to the public and the pharmacist is not there.

The Advanced Declaration Template (ADT) has been introduced as a mechanism that according to Alliance Boots is a lawful way of allowing pharmacists to declare that they can secure the safe and effective running of the pharmacy even before they have arrived. Upon arrival they are then required to record that they had signed on as RP before they arrived at work, often the day before, using the ADT as a documentary support tool. The result is that the pharmacists are technically taking on statutory responsibility for the pharmacy ahead of their arrival. However, the company claims that taking responsibility for the pharmacy operation in this way does not constitute working time and it does not pay pharmacists for doing so.

A Boots spokesperson said *"The introduction of the Boots 'advance declaration template' does not apply to all our stores or all our pharmacists. It was developed internally for specific circumstances when our pharmacy operations commence before the pharmacy opens to our patients.*

Patient safety is of paramount importance to Boots UK, and is carefully considered with everything we implement."

John Murphy the General Secretary of PDA Union believes that this is the 'thin end of the wedge' ***"I appreciate that it is not in operation in every pharmacy"*** he said, ***"but in our view the process undermines the principle and the intention of the RP Regulations which was that absences were to be used to enable pharmacists to deliver new healthcare roles, it also potentially conflicts with employment legislation. The absence is being used to extend the operational business hours without increasing costs by not paying pharmacists. The fact that an organisation has to go through such convoluted processes in an attempt to 'stretch' the Regulations probably shows the RP regulations for what they are. It is quite a liberty though to set out procedures for pharmacists to follow, which enable the pharmacy to operate without them and then to refuse to accept that this is working time which should be remunerated when the RP is taking statutory responsibility for what happens in their absence."***

Many PDA members have raised concerns and argue that if remote supervision is allowed, then employers will be able to run their pharmacies with a significantly reduced pharmacist presence.

The PDA has issued specific guidance to pharmacists working at Alliance Boots and suggests that members contact the PDA direct if they have any personal concerns.

New GPhC Registration Numbers; have you told us yours yet?

Since the RPSGB ceased to be the regulator in September 2010, the RPSGB register of Pharmaceutical Chemists is no longer the list of regulated pharmacists. In its place is the GPhC Pharmacy Register and to practice, all pharmacists (and from January 2011 all pharmacy technicians) must register with the General Pharmaceutical Council (GPhC).

Although all pharmacists on the RPSGB's practicing register were transferred to the new GPhC register, completely different registration numbers were issued.

The PDA uses the combination of registration numbers, policy numbers and certain biographical data to identify members and for security checks to protect privacy.

"The GPhC's public register only provide names and postal towns" said Mark Pitt the PDA Membership Services Manager, *"So it would be risky for us to try to make assumptions just by referring to the register particularly where there are people with similar names. This means that we have no option but to rely on members to provide us with their new personal GPhC registration number."*

The PDA therefore appeals to all members to ensure that the PDA is in possession of their new registration number. This can be done easily by visiting the dedicated web page: **www.the-pda.org/gphc/**

Staff theft and misconduct – RP to blame!

The PDA Union has successfully defended two members who work for a pharmacy multiple who faced dismissal from their employment for allegations of gross misconduct.

The allegations arose after certain trusted members of staff committed criminal acts, as well as other acts of gross misconduct, in the pharmacy, whilst the PDA members were the Responsible Pharmacist on duty. The employer claimed that the RP's responsibility was to secure the safe and effective running of the pharmacy and that they had failed to do so.

In these unrelated incidents, which happened in separate branches of this particular employer, the members were totally unaware that such acts were being committed under their noses by long serving and trusted members of the pharmacy team. The PDA legal representatives argued that it was unreasonable for a pharmacist to be disciplined for someone else's criminal acts or behaviour, when the member did not know this was occurring and could not reasonably be expected to know; to do so would be stretching the interpretation of the RP regulations too far. Both pharmacists were given extensive advice and representation by the PDA and successfully retained their jobs following their disciplinary meetings.

The advice to members is clear – if you suspect any of your team to be involved in criminal activity, either inside or outside of the pharmacy, you should contact the PDA for advice about how to inform your employer. As these cases have shown, the behaviour of work colleagues can impact upon the reputation of RPs.

Over £750,000 in compensation already paid to PDA members by employers

Sometimes employers are just poor employers, other times even a good employer can make mistakes. To date, the amount that the PDA secured in compensation for PDA members from employers who have treated them harshly, unfairly or illegally has now exceeded the £750,000 mark.

In this article we have used real life examples of cases that have typically resulted in significant sums of compensation being paid by well known employers to employees. Usually, this is done under a legal procedure called 'a compromise agreement' and this means that we are unable to disclose the name of the employer. We hope that by publicising cases such as these some employers will seek to improve the standards of their employment practices.

PDA member wins case of 'constructive dismissal'

In an important case, an Employment Tribunal has ruled that a pharmacist had good reason to resign and claim constructive dismissal because his employer had not taken sufficient care to protect his professional reputation or deal adequately with his concerns..

At the time of going to press the PDA is waiting for the Tribunal to decide the amount of compensation that should be awarded to a member after which the full written judgement will be available.

The case

In this case a serious sexual misconduct allegation had originally been made against a member by a junior female colleague. As a consequence the judge decided that the identity of the parties should be kept anonymous for the purpose of reporting.

During an investigation the company decided there was no evidence to take any action against our member however it was decided that he should continue to work with the complainant. He felt that by making such an allegation the member of staff was being vexatious and malicious trying to destroy his reputation. He raised a complaint of his own against the member of staff and asked that it be dealt with as a formal grievance. His line manager and HR advisor refused to deal with his complaint in line with company and statutory processes and actively tried to dissuade him from pursuing his grievance, telling him that it **"could get messy"** for **him** and that they would have to move **him** to another store.

At our member's insistence a grievance meeting took place seven weeks after his original letter and with PDA support it was successful in part, although it resulted in the recommendation that he continue to work with his junior colleague who had made the allegations. This state of affairs was unacceptable as he felt his position untenable. At a later date in proceedings, the company moved him to another store on a trial basis and he was certain that this had resulted in him being perceived as the guilty party, fuelled by 'shop gossip' from the relevant staff member.

During this ongoing dispute, our member became embroiled in disciplinary proceedings against him concerning expenses claims. Despite a number of procedural flaws in the process, his employer continued on regardless. He felt that his employer was acting unreasonably and he resigned claiming constructive dismissal as he had lost trust and confidence in their ability to deal with his case fairly.

In coming to its decision the Tribunal was critical of the supermarket because;

1. The incident involved a serious allegation of sexual misconduct and the tribunal understood why our member was concerned when it was proposed that the matter be dealt with informally. The pharmacist would have had no protection if he had continued to work with the junior colleague and any subsequent complaints would have seriously put his career as a pharmacist at risk. Our member was not unreasonable in pursuing a formal grievance and the attempt to pressurise him not to pursue it formally was judged to be improper and unreasonable.
2. He was told that he should return to work and continue to do so in close proximity of his accuser. The Tribunal determined that this was unreasonable, the Pharmacy was a relatively enclosed working environment.
3. The employer was blind to the impact of its conduct on our member with regards to the disciplinary process. On no less than five occasions when our member wrote to the company asking for documents being relied on, these requests were ignored. It was also not clear why he continued to be suspended over the expense claim allegations when the matter became no longer worthy of gross misconduct status.

Whilst supporting our member's claim, we found correspondence that showed that a company manager had written an email stating that she had no confidence in our member's integrity as a person or as a pharmacist and indicated that she "fortunately" had no vacancies hoping instead that he would leave the company. This was damning indeed and gave the Tribunal even more evidence (if any more were required), that the employer had no intention of trying to re-instate him in the pharmacy where the original allegations of sexual harassment initiated and had already closed its mind to the possibility that the disciplinary case involving expense claims could not be proven against him.

In his statement, the member told the tribunal;

"What my employer does not seem to understand or wish to understand is the impact of allegations regarding my employment for my registration. My regulatory body (then the RPSGB) deems allegations of dishonesty or sexual misconduct as being appropriate to remove a pharmacist from the register of pharmaceutical chemists. My profession demands that public confidence in the profession is upheld and the public need to be satisfied that conduct that is unacceptable or and unbefitting of a pharmacist is dealt with seriously."

The Employment Tribunal upheld his claim; justice has been done and a full report will follow subsequent to the written judgement being received.

Another member receives compensation from employer

Amit worked as a pharmacy manager for a large pharmacy multiple and was suspended from his employment for several unusual allegations even by PDA standards. The allegations included erratic behaviour over the last 5 years and ignoring branch colleagues for a similar time frame. Amit was a long serving pharmacy manager who thought he had a good and close working relationship with his members of staff which made the allegations very hard for him to accept as true. The PDA lawyers could not comprehend how any process could have been fair based on incidents some of which had allegedly happened 5 years ago.

Amit had been called to two investigation meetings prior to involving the PDA and attended a third with a PDA Union representative. Prior to doing so the PDA insisted on being provided with all the evidence that the Company was relying on. The triggering issue appeared to be a grievance raised by a member of staff following a disagreement about working hours. The Company was of course obliged to investigate this grievance; however for some unknown reason it then chose to trawl up matters that were many years old and for which there was no evidence to support what had been alleged.

As a result of the PDA's persistence the employers HR advisor provided examples of the allegations made. These were extremely petty, vague and even if true could not ever have been career threatening. It was also obvious that following the initial

investigation meeting, the employer had approached other individuals who no longer worked at the pharmacy to try and supplement the weak evidence gathered. Despite these unorthodox and seemingly desperate measures, there was a lack of specific details or examples of the historic allegations made. The HR representative did not seem to comprehend that it was unfair to expect anyone to be able to respond properly given so little information, let alone the importance of dealing with problems in a timely fashion.

The member of staff who raised the grievance, supported by another who had been taken to task by our member for a breach of security rules, complained about long standing problems and alleged that Amit had ignored and bullied them and played "mind games". Amit on the other hand was able to produce documents and evidence from text messages sent to him by these members of staff that in contrast to their complaints, they had what appeared to be a good and friendly relationship with him.

Having investigated matters arising from the grievance, the next stage of a fair process would have been for the employer to assess the facts, decide if Amit had a case to answer, convene a disciplinary hearing if appropriate and judge whether or not the allegations were wholly or partially true. Only at this point could the employer have made a fair decision as to whether or not to uphold the members of staff's grievance.

In previous meetings the same HR advisor had reassured Amit that they were dealing with this matter fairly stating that the process was an opportunity for him to tell his version of events and that no decision about the grievance would be made until after a disciplinary meeting, if one was indeed required. In emails to the PDA the HR advisor also denied there would be any prejudgement of Amit's case.

"The PDA Union representative told them that their process was a sham."

However, based on the actual conduct of the HR representative, a PDA legal advisor who had considerable experience of employers who are prone to disregard 'fair process', had an inkling that they had already upheld the grievance of the member of staff and were just going through the motions with Amit to dismiss him. The PDA therefore asked the employer whether or not they had already concluded the grievance against Amit without informing him and to the PDA's astonishment the HR advisor admitted that it had!

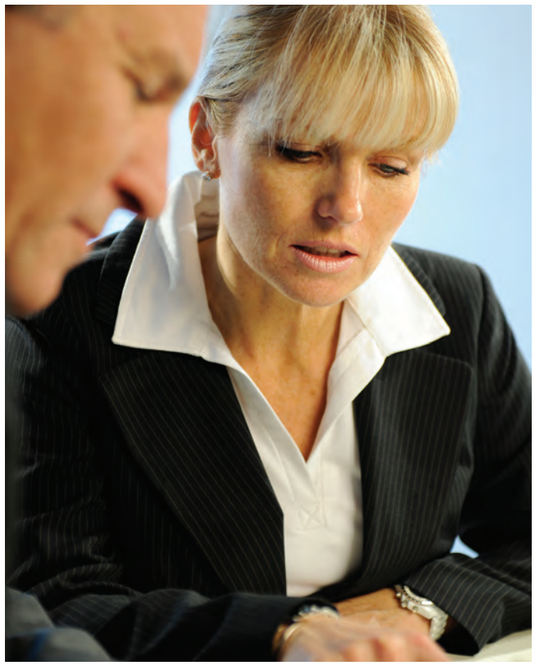
The PDA representative requested a formal copy of the grievance outcome letter, however, this was refused by the HR advisor. The employer had been duplicitous and the PDA Union representative told them that their process was a 'sham' and no more than a 'witch hunt'. The employer then became uncooperative and refused to provide a copy of the grievance outcome letter, so the PDA advised Amit to submit a subject access request to the company data controller to obtain a copy. Before he received this document the employer issued a letter inviting him to attend a disciplinary meeting to consider the allegations, indicating that dismissal was one possible outcome. Amit refused to attend on PDA advice and told to await a copy of the letter which was eventually obtained, proving what the PDA and Amit had suspected all along – that his case had been entirely prejudged.

The HR advisor had lied to Amit when she informed him and the PDA that no decision had been made and there was no predetermined outcome. The staff member's grievance had been upheld by this employer on almost every point and to make matters worse the letter that was extracted from the employer using a subject access request was dated shortly after the first investigation meeting. Amit had now lost all trust and confidence in this employer to treat him fairly. He resigned and the PDA assisted him to submit a claim to an Employment Tribunal for constructive dismissal.

As the date of the hearing approached the employer made a number of financial offers to Amit through PDA legal advisors in an effort to avert proceedings. Eventually Amit decided that the substantial sum of money being offered by this large multiple was sufficient to compensate for the losses he suffered as a result of their conduct and he withdrew his claim.

A large employer backs down to avoid expensive problems

Sarah was a pharmacy manager and was dismissed for two allegations of gross misconduct. One allegation related to the method of reimbursement for a work related expense and the other was for a dispensing error. Sarah came to the PDA for advice at a late stage and it can be very difficult, if not impossible to rescue the situation, because the PDA is left picking up the pieces rather than directing the strategy from the start. Sarah was anxious to retain her job and the legal and professional team at the PDA immediately conducted a critical case review.



Due to Sarah's late notification of her problem to the PDA she was unable to secure the services of a PDA Union representative in time for her first disciplinary meeting, although she was given advice by a PDA lawyer about how to approach it. After a comprehensive review and discussion with our member, it became quickly apparent that the disciplinary meeting was conducted in a wholly unacceptable manner for a number of reasons. Sarah had identified a fellow member of staff to accompany her as a staff representative; however the member of staff was not allowed to be released from her work duties by the area manager due to staff shortages. Sarah felt she had no option but to continue unrepresented in the meeting and to make matters worse, the letter of dismissal indicated that Sarah had declined to have a representative present, which was untrue. The member also reported that the meeting was hostile with a supposedly neutral note taker, interfering inappropriately in the discussions. This junior and untrained note taker made such an inaccurate record of the meeting, that mindful of PDA's advice Sarah refused to sign it and complained about the conduct of the note taker at the end of the meeting. Rather bizarrely the disciplining manager then decided to immediately rerun the whole meeting with a different note taker which was a very stressful experience for Sarah.

A lack of fairness

The underlying principle in any employment process is fairness and reasonableness; in this case the meeting fell well short of any acceptable standard and was contrary to company policy and employment law. A senior PDA case manager then engaged directly with the employer's HR team to highlight the flawed process carried out by local managers and pressed for immediate reinstatement of the member due to these gross failings and for a fresh hearing to be convened. To its credit and without any argument or resistance they agreed and the member was promptly reinstated and the whole disciplinary process started afresh. After rescuing the situation for the member, the PDA was then able to prepare for the fresh meeting unhindered by the initial delays in notifying us.

An experienced Union representative was assigned to the case and met with Sarah prior to the hearing to agree the strategy and make final preparations. After the incompetence shown by senior managers at the first meeting, the PDA representative looked forward to a professionally conducted meeting with an experienced disciplining manager and a trained HR person as the company scribe. This expectation was not met as it transpired there was no HR representative present and the note taker was a junior employee drafted in from a local branch who appeared never to have taken such notes before. To make matters worse the disciplinary manager was ignorant of the role of a representative and fully expected the PDA Union official to sit silently through the meeting and not contribute. The PDA representative then had to instruct the disciplining manager on the statutory rights accorded to the Union role and made it abundantly clear that he would be playing a very active role during the meeting. However the manager still felt it necessary to telephone his HR department in front of all assembled to check if what he had been told was true. Duly informed by the HR advisor at the end of the phone that it was, the meeting proceeded at what can only be described as a snail's pace. Although the scribe did eventually make a record; the laborious way in which she did so severely hampered a free flowing discussion and a meeting that should have been concluded in a couple of hours took over twice as long.

"An experienced Union representative was assigned to the case and met with Sarah prior to the hearing to agree the strategy."

Sarah faced two allegations of gross misconduct; the first related to a dispensing error which cited a failure to follow SOPs as the cause. Sarah supported by the PDA representative highlighted the workload and staffing difficulties that she felt may have contributed to the error and that these issues had been raised with her manager at the time. Her requests for additional staff hours were denied due to a block on overtime within the area. The PDA representative pointed out to the manager that virtually every dispensing error is caused by a failure to follow an SOP and asked if this employer's policy was to discipline every pharmacist who made an error; the answer was no.

During the final summing up the PDA representative ensured that the disciplinary manager knew that the allegations against Sarah did not constitute gross misconduct, nor did they warrant dismissal. At worst, this was a minor breach of procedures. He was also left in no doubt that if his decision was to dismiss Sarah, this would be swiftly appealed and if that failed, a claim for unfair dismissal would be immediately lodged at an Employment Tribunal. The meeting adjourned and the manager decided to consult with HR before making his mind up, so Sarah had a few more anxious days to wait for the final verdict.

Employer backs down

Several days later Sarah received a letter informing her that she was to be issued with a minor sanction for the breach of procedure with her expense claim and the other allegation for the dispensing error was dropped. This was an enormous relief for Sarah who had been through an emotional rollercoaster by first being dismissed, then reinstated and finally enduring a third disciplinary hearing. Sarah recognised that without the assistance of the PDA Union, she would have stood little chance of getting her job back and the nature of the allegations could have made finding another job very difficult. The PDA legal team agreed that the final decision was reasonable and proportionate in the circumstances. To its credit this employer did correct the problem caused by the first meeting's decision and agreed to reinstate Sarah, it therefore potentially avoided an Employment Tribunal and the likely financial consequences that would have inevitably followed. The question remains why did it take them so long to come to the right decision based on the facts and why did its managers handle the employment processes so badly?

"He was left in no doubt that if his decision was to dismiss Sarah, this would be swiftly appealed and if that failed, a claim for unfair dismissal would be lodged at an Employment Tribunal."

The PDA representative then drew attention to credible research which indicated that there was an average error rate in community pharmacy of approximately 4 items per 10,000 items and statistically this meant every pharmacist in the Company would have made an error at some stage. The disciplining manager was unable to give any logical reason why Sarah was being treated differently to all the other pharmacists who made errors, but were not being disciplined.

The discussions then moved onto the allegation about reimbursement of expenses. The PDA representative helped Sarah to elaborate on what had happened. On occasions due to the high workload and low staffing levels, Sarah had felt it necessary to stay behind after work to ensure the work outstanding from that day was completed. This additional work was unpaid and had recently been all the more necessary due to a "counselling session" with her manager. Sarah decided to stay behind work one evening to ensure that there were no outstanding matters for the following day. Finishing the work took her until 11:00pm and Sarah had missed the last train home. Not wishing to put herself at personal risk she decided to use a taxi to take her home, paid for the fare and asked for a receipt. The following morning she presented the receipt to a member of staff and was reimbursed from the till for the fare. Sarah and the members of staff involved were unaware that this method of reimbursement had a limit of £20, and the fare was greater than this. It was only some time later that this was queried and Sarah was suspended for the two allegations of gross misconduct.

There are a numbers of points that arise from Sarah's experience:

- **Regardless of the size of a company, serious mistakes can be made by senior managers when handling employment processes, particularly where there is a lack of training or experience.**
- **The use of untrained and inexperienced note takers, rather than trained HR advisors can compromise the integrity and effectiveness of meetings.**
- **Members should always take advice from the PDA at the earliest stage of an employment dispute.**
- **The backing of a powerful Union with expert advice and representation can help rescue a pharmacist's career and livelihood.**

RP refuses 'sign on' through unsatisfactory staffing levels

This article illustrates some of the difficulties that responsible pharmacists can face when their professional judgement as the RP comes into conflict with the opinion of their line manager.

Background

Andrea worked for a large pharmacy multiple as a relief pharmacist and was working one Saturday in a busy location. It was a particularly hectic day and the level of staffing was so low, all the staff including Andrea had to miss their breaks in order to keep the pharmacy open. Andrea was due to work on the following Monday and made enquiries with the non pharmacist manager about the level of trained staff the following week. The pharmacist manager said that he was doing his best to get additional staff and Monday morning would be particularly bad due to staff absence. Towards the end of the day the manager confirmed that at least for the first part of the day there would only be him and Andrea working.

Andrea had some sympathy with the manager, because there were company restrictions on salary spending, which had made covering holidays and sickness very difficult. The manager himself had been working on his own day off to cope with the pressure he was under. Andrea was unfamiliar with the pharmacy, but knew that mornings were very busy and she started to get concerned about how she would manage to provide a safe service working under great pressure entirely on her own. The member found out that the normal complement of staff on the Monday morning should have been two counter staff and two dispensers, plus the pharmacist, which reinforced her fears about the increased risk to patient safety.

Over the weekend Andrea became increasingly worried about her ability to secure a safe and effective service to patients with no staff, in an unfamiliar store. Her anxiety about working on Monday, coupled with looking after a new born baby meant that she had a restless night on Sunday. As soon as possible at 7:30am on the Monday morning Andrea rang the employer to say that she was unwilling to act in the capacity of RP of that particular pharmacy on that day due to her safety concerns over the staffing levels and offered to work in a store she was more familiar with, and where the staffing levels would be adequate. As an alternative if that was not possible, she offered to take a day's leave. Eventually the employer agreed for Andrea to take the day as leave.

Shortly afterwards to Andrea's great surprise she was called to an investigation meeting with her line manager, and members of the regional management team. The regional manager was very unhappy with her actions and following a 30 minute discussion where Andrea explained her decision making process to him, he decided to charge her with misconduct and she was invited to a disciplinary to face allegations of "a breach of conduct and trust". The letter of invitation indicated that one possible sanction could be a final written warning.

> **"Andrea became increasingly worried about securing a safe and effective service to patients with no staff in an unfamiliar busy pharmacy."**

Disciplinary meeting

Andrea then contacted the PDA for advice and representation at the forthcoming meeting. The notes of the meeting were scrutinised by a PDA case manager who spoke at length with Andrea. In Andrea's situation it was clear from the evidence and established facts that her decisions had been carefully made and she had come to a sensible and informed choice when deciding she was unwilling to put patients and herself at risk by signing on as RP. The PDA professional and legal team were very surprised that this company had decided to take such drastic action against an RP who had exercised their legal and professional duty. This was doubly so, because the regional manager who decided to instigate disciplinary action was a pharmacist himself and should have been able to understand the onerous responsibility an RP has towards patient safety.

The case manager decided to write to the non pharmacist disciplining manager to finalise arrangements for the meeting and to seek greater clarity regarding the allegation of "a breach of conduct and trust". From time to time when companies realise that the PDA is involved in a case, our intervention "encourages" a review of the evidence that led to the allegations and sometimes the disciplinary case is dropped altogether when they realise that the PDA will be representing its member. On this occasion the company was determined to progress the matter through to a disciplinary hearing.

The PDA Union representative met with Andrea prior to the meeting and agreed the approach and the strategy for the meeting.

The allegations when judged in context with the RP regulations and Andrea's decisions, crumbled after any degree of intelligent scrutiny and therefore the PDA representative started the meeting by levelling a volley of criticism at the decision to pursue any kind of disciplinary action against the member. The disciplining manager was told in no uncertain terms that the meeting was a waste of everyone's time and effort and that if any disciplinary sanction were to be issued to the member, the decision would be appealed immediately to the pharmacy superintendent. The representative made it clear that the whole debacle would prove highly embarrassing to the company.

After being taken aback by this blunt and forthright approach the disciplinary manager regained her composure and questioned Andrea about the sequence of events, with the PDA representative interjecting where necessary with informed opinion on the rights and responsibility of an RP. The representative suspected by the tone of questioning that the disciplining manager wished to reach a predetermined outcome by solely focussing on Andrea's actions, rather than taking all factors into consideration and coming to a decision based on the facts. This perception was reinforced when the following exchange occurred:

PDA Rep:
"Do you think the Company failed [Andrea] by not supplying sufficient staffing levels?"

Disciplining Manager:
"I am not here to be investigated myself."

PDA Rep:
"Can you not supply an answer? You are investigating [Andrea] so it is a reasonable question."

Disciplining Manager:
"I am conducting a disciplinary investigation, so I have to ask [Andrea] the questions."

> **"The PDA representative made it clear to the employer that the whole debacle would prove highly embarrassing to the company."**

The manager clearly did not want to answer the questions and shortly afterwards decided to end the meeting and take advice before coming to a final decision. At Andrea's request the PDA representative made final robust submissions, highlighting the failure of the company to provide sufficient resources to secure a safe and effective pharmacy service and that the approach the regional manager and the company were taking was tantamount to forcing pharmacists to abrogate their rights under the RP regulations by the use of disciplinary procedures.

After a 40 minute delay whilst the manager took advice, she delivered the verdict to Andrea. ***"I fully understand the decision you took on [date] and for that reason I am not going to issue any disciplinary sanction."***

Andrea was delighted that common sense had finally prevailed and very grateful for the support provided by the PDA. After seeing how the regional manager and the company had been determined to take her to a disciplinary meeting, she was left in no doubt that without PDA support she would have received a disciplinary sanction.

Summary

The PDA is contacted on a regular basis by members working in all sizes of pharmacy chains, who come under great pressure and the threat of adverse consequences when exercising their professional judgment as the RP. This case demonstrates that employee pharmacists can be called to face disciplinary action for making sensible and rational decisions. The PDA Union is committed to defending the rights and reputations of members and will provide advice and support to ensure that members faced with such dilemmas are able to exercise their professional judgement in the interests of patient safety.

Creating a new Road Map for Pharmacy

PDA launches a substantial member consultation

Prior to the establishment of the NHS, if someone went to see a doctor, he would charge a fee for his time and then usually write a prescription, which when presented to a local pharmacist would also result in a dispensing fee having to be paid.

Little surprise then that prior to the NHS, many patients decided to go and see their pharmacist first as the advice was free and only medicines were paid for. In those days, pharmacists would have spent 90% of their time in a patient facing role and would have been perceived as clinicians.

The introduction of the NHS brought free advice from the GP and a rapid increase in NHS prescriptions. With more significant dispensing income becoming available, pharmacists started to withdraw from public view and disappear into the dispensary.

More recently as staffing levels have been squeezed due to reducing margins, community pharmacists have become even less available to deal with the public.

Changing the perception

At a recent PDA member focus group, a member described a disturbing experience. This young pharmacist regularly worked in both a GP surgery and a hospital, he also undertook occasional community locums.

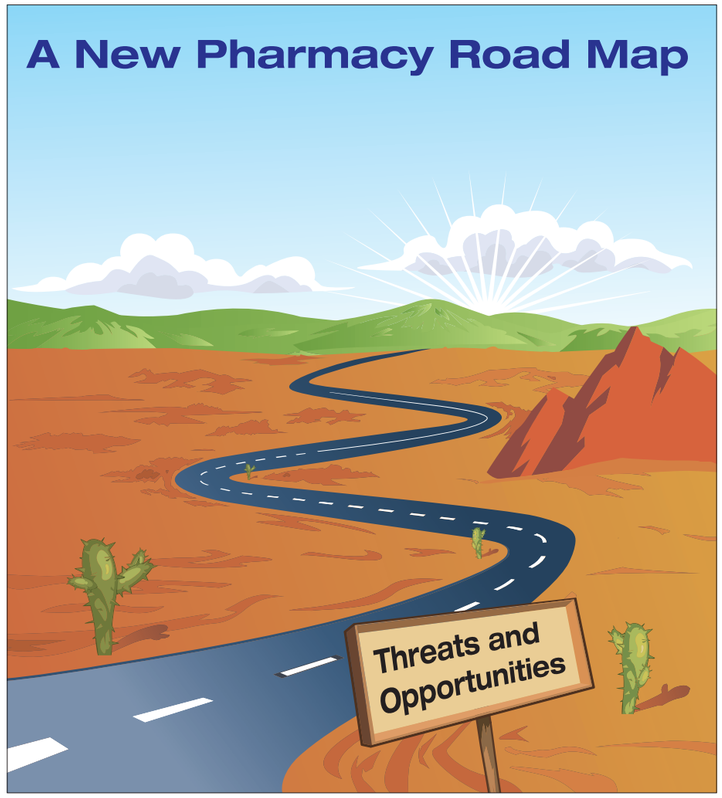
Whilst at the GP surgery, he had discussed a detailed pharmaceutical care issue with a patient and learned that it was the first time that anyone had ever bothered to make such a detailed clinical interest in his medication and was very grateful for it.

Two weeks later, whilst working as a locum, this pharmacist came across this very same patient. Upon dispensing his prescription he decided to follow up his previous activity and provide some further advice.

However, he was told ***"listen son, just hurry up and give me the bag thanks."***

This experience left its mark on this pharmacist and caused him to reflect on the possibility that, as distinct from the way that patients generally perceived a doctor, a nurse or even a pharmacist in either the GP surgery or hospital, many patients saw the role of the community pharmacist primarily as that of supplier and not as clinician.

There will no doubt be thousands of pharmacists who will, every day be enjoying very good relationships with their patients in the community pharmacy setting and



some of these interactions will be highly clinical, however, one sad truism remains; generally speaking, if a doctor spends less than five minutes with a patient in a surgery, the patients are unhappy, however, if a pharmacist takes longer than this, the reverse is true. Many patients measure the service provided by the community pharmacist not by the clinical interventions that may be made, but by the speed with which they can dispense a prescription.

While survey after survey shows that the public trust pharmacists implicitly, it would appear that nevertheless, they attach less value to this supplier role.

The government too is attaching less financial value to this role. Prescription fee increases are not rising at the same rate as growth of the national dispensing volume. Effectively pharmacists are being paid less and less for doing more and more dispensing and this is unsustainable.

Re-engineering the pharmaceutical service

To arrest this problem, community pharmacy must re-engineer its service and its remuneration structure. The fact that we must move away from a perception that we are primarily a source of supply and develop a much bigger role in the provision of services is a sentiment that is widely understood by all pharmacy organisations. The PDA believes that pharmacists must be enabled to firmly establish a deeper and more meaningful clinical relationship with patients. In so doing, consideration must be given to workload and also to how pharmacists can practice with professional autonomy and what remuneration structures are needed to support this.

This process must focus on the unique attributes pharmacists can bring to the table that other potential providers may find difficult to deliver. These are the reasons why the PDA has launched a new initiative, which we have called the **"New road map for pharmacy"**.

A new road map

The summer and autumn of 2010 has seen the PDA engaged in a period of focus group activity, member surveys and meetings with many other organizations. Meetings have been held with representatives of other healthcare professions, the government and other relevant parties. We can learn a lot from the likes of dentists, GPs and others and also from the different approaches being taken by the devolved healthcare administrations. There have been some encouraging signals. As a result, a mechanism and a rationale of how we, as a profession, could position ourselves so as to develop the kind of clinical relationship with patients in the community setting that is currently enjoyed by hospital and primary care pharmacists is beginning to emerge.

> **"We can learn a lot from the likes of dentists, GPs and others."**

Creating community pharmacy led "surgeries"

Our reasoning asserts that the most expensive form of healthcare is when patients are admitted to hospital, so if GPs could treat more patients requiring acute care at surgery level then they could prevent many unnecessary hospital admissions. However, due to overload, few GPs can currently provide the necessary access to acute service for patients. Usually an appointment is required and upon arrival at the surgery, perhaps a week later, patients will typically waste an entire morning just so that they can see the GP for 5 minutes. Often, they will sit in a waiting room full of patients, many of whom (the long term chronic healthcare sufferers) could be dealt with elsewhere in the healthcare system.

We believe that GPs could deliver substantially more in terms of reduced hospital admissions if the long term chronic patients were managed by pharmacists and others in the community pharmacy.

Once a diagnosis has been established by the GP, there should be no reason at all why pharmacists could not then take care of the maintenance of those patients.

The logistics support this proposition; currently there are around 8,000 GP surgeries in the UK, but there are 13,500 community pharmacies. This gives pharmacy the critical mass to make a very significant and noticeable impact upon the problem. Even if only 25% of pharmacies were to take up such a function, then this would potentially increase the number of 'surgery-style clinics' available by more than 40% with the government not requiring any capital outlay to build them.

Delivering pharmaceutical care

It is an established fact that more than 5% of hospital admissions are due to the adverse effect of medication on those who take it. This demonstrates that pharmaceutical care – uniquely the domain of pharmacy - is a role that could reduce hospital admissions through iatrogenic disease. The pharmaceutical care approach also controls drug costs by reducing unnecessary and wasteful prescribing, additionally, patients are helped to utilise their medication in a way that produces beneficial outcomes.

This list of savings could go much further however, pivotal to our proposition is that pharmacists become engaged in the treatment and management of the long term chronic patients and that they do so from the community pharmacy setting.

In majoring on these proposals, we create a much stronger clinical role for the benefit of patients and pharmacists and we major upon the unique skills of the pharmacist and the accessibility, and critical mass provided by the network of community pharmacies. Worked up properly, our proposals may even be able to deliver more than one pharmacist per pharmacy.

But can it really happen?

Many pharmacists would be right in thinking that these proposals, in one form or another, have been around for some time. Others may consider that whilst they are aspirational, they are, for a number of reasons, unlikely to happen. Focus groups point to significant obstacles such as, access to patient notes, resistance from the medical profession and failings in the community pharmacy environment. Beyond that are concerns over the nature of the relationship between a pharmacist and a 'bricks and mortar' contractor. At the introduction of this edition of Insight, the author described how an alignment of sometimes unconnected circumstances, some of these being threats and some being opportunities could result in a powerful force for change which can mean that ideas that hitherto would have been unthinkable, were now entirely feasible. We think that given the current UK healthcare and political environment, that many factors are now aligned.

The alligning of threats and opportunities

There are a number of specific threats and opportunities that are currently very real, that when considered and influenced in concert, could assist with the journey to a preferred destination. We consider how they will impact upon the planning of our route map.

The impact of the national debt

The new coalition government has clearly signaled that it will consider very radical measures to reduce the £900 billion national debt.

Major road projects have been cancelled, military bases are to be closed down and nearly half a million public sector jobs are to go. Although the NHS has been designated as a protected service, there will be huge upheavals as the government claims that it will reduce bureaucracy by closing down PCTs and redirect the money for services to patients.

This is clearly a time of radical reform with BIG and BOLD solutions becoming the norm; what better time to develop a new and radical plan for pharmacy!

The PDA is currently undertaking a detailed cost benefit analysis of the road map proposal described above and seeks to demonstrate to the government how, through a more clinical application of the pharmacist resource, the NHS could make significant cost savings in secondary care through unnecessary hospital admissions. In this way it may be possible for the NHS to deliver more for less.

Continued.....

The closure of PCTs

The question of where all the extra appropriately experienced pharmacists will come from to assist with the delivery of our new aims needs to be answered. With the upheavals that are now in train as a result of the planned closures of PCTs there is a possibility that appropriately experienced pharmacists, many of whom with prescribing qualifications, could be immediately available.

The splitting of the RPSGB

The RPSGB has just lost its regulatory role and has now become an entirely member facing body. This provides an unprecedented opportunity for the Society to concentrate its energies on developing the necessary professional support required.

MURs under pressure

No one doubts that the concept of MURs is a positive thing; however, because some multiple employers have been setting financial targets for MURs, this has attracted much criticism. This critical stimulus presents a perfect opportunity to develop clinical roles in a way that is both more integrated with the NHS and in a way that allows pharmacists to practice with professional autonomy.

Review of RP regulations and supervision

The community pharmacy should always remain the place that patients can expect to receive their medicines and also where they can always expect to find a pharmacist. The remote supervision idea, the plan to operate a pharmacy in the absence of a pharmacist simply fails to fulfill that criterion and must be resisted.

However, the opportunity to overhaul the rules on supervision must not be wasted. New rules on supervision should be developed that can underpin the "new road map for pharmacy" but ones that still maintain patient safety and avoid employer exploitation. The profession is now considering the supervision rules and more on this can be found on pages 16 and 17.

Review of pharmacy education

Currently a government program entitled Modernising Pharmacy Careers (MPC) is seeking to radically overhaul pharmacy undergraduate and postgraduate pharmacy education. Recently, the PDA has been asked to become a member of the MPC board. We will be using this opportunity in working with others to influence the government to try and ensure that concurrent with any repositioning of roles, comes the necessary training and support structures that will be required by pharmacists.

The supply function under pressure

It is very clear that the current remuneration arrangements for contractors have de-stabilised the community pharmacy network and that even the contractor representative bodies are now calling for a radical review of pharmacy remuneration. The time is right for the needs of the existing 'bricks and mortar' contractors to be aligned in a WIN WIN scenario with those of the individual pharmacist practitioners so that both concerns can be addressed.

The NHS White Paper

The NHS White paper, the government's own road map for how healthcare will be delivered in the future describes two new principles which could be of great assistance to pharmacists. Firstly the idea of any willing provider means that pharmacists should now be able to bid for roles previously not undertaken. Secondly that patient information can be provided to new providers at the behest of patients, this means that access to patient information for pharmacists is in principle already agreed.

New remuneration structures – A pivotal factor for any new road map for pharmacy.

New clinical roles will be delivered not by boards of directors, not by head office officials, not by shareholders, but by individual pharmacists. The investment that will be required will be less financial and much more so cognitive if the pharmacist is to work with professional autonomy and the remuneration structure must reflect this reality. The new clinical service provided by pharmacists in the community pharmacy setting must be patient needs led and cannot be subjected to the same kind of corporate target setting that currently occurs with MURs. Furthermore, if ultimately the role of pharmacist prescribing is to advance in this setting then it should be a role that could be attractive not only to community and primary care pharmacists but also to hospital pharmacists, and that role would need to be protected from corporatisation.

In creating a solid foundation which could be used to properly incentivise a more clinical pharmacy role, the PDA has been involved in a project to cost and propose new remuneration structures for pharmacists. This work is still underway and may well produce a number of options, such as the concept of the individual pharmacist holding an NHS contract for pharmaceutical care and surgery style based activities and the bricks and mortar contractors holding a contract for supply function and associated services.

The Road Map conference

We must ensure that the sector that employs the largest proportion of pharmacists enables them to be properly respected and valued by both the public and the government.

The measure of success that we should seek is where patients throughout the UK come to routinely recognise that time spent with a pharmacist in the community pharmacy is time well spent talking to a clinician. In so doing we will arrive at a destination already occupied by the majority of both primary care and hospital pharmacists.

Developing a road map so as to arrive at this destination for pharmacy has become the most ambitious project to date undertaken by the PDA and we continue to seek the views of our members in doing so, through general feedback, surveys and focus group meetings.

Space in this magazine does not permit a more detailed description but these matters will be given much more consideration at the forthcoming PDA Road Map for Pharmacy conference to be held in Birmingham on Saturday and Sunday 26th and 27th February 2011.

MURs; "Put your own house in order" PDA tells contractors

MURs came under attack in a recent report prepared for the National Institute for Health Research.

'Pulse' the magazine which claims to be the UK's leading medical weekly publication, counting more than 70% of GPs among its regular readers reported that;

Medicines-use reviews (MURs) carried out by pharmacists have no real benefit for patient care and are often performed for little other reason than to make money, a major new analysis concludes. The magazine went on to report that the wide-ranging report, on the impact of incentives across primary care, found delivery of some MURs was 'bordering on fraudulent', with pharmacists admitting to being paid for reviews of 'limited value.'

The report did not reserve its criticism solely for MURs; it was critical of other contractual arrangements made between the Department of Health and Doctors and Dentists which this article could not do justice to, but it was this particular item that the magazine (for GPs) chose to major on.

None of the criticisms made through the article are surprising to the PDA because we have mercilessly criticised the way pharmacists have constantly been harassed and bullied by employers into achieving set targets whilst overriding the pharmacists professional autonomy and without giving any due regard to lack of resources.

However we would contest that the principle behind MURs is not a good one and disagree with the article which states that *"The damning report, submitted to the Department of Health, will place pressure on ministers to consider scrapping MURs altogether."*

The PDA has always contended that it must be right that a pharmacist has a role in providing better pharmaceutical care to patients which could be enhanced by discussing interactions, compliance and concordance of their medication. Pharmacists have the knowledge and the skill set and good access to patients.

It is also appropriate that the pharmacist should be paid for providing these services and that it could and should be at the very least self-financing and even cost reducing if performed properly.

The PDA receives many good news stories about MURs such as the pharmacist who performed an MUR which resulted in the medicines taken being reduced from eight to four items and the patient expressing how much better he felt for it, there are many similar experiences to describe. However, there are also too many cases of pharmacists feeling that the only option for them is to conduct an MUR with members of their own family at the end of the month to ensure that they can keep up to their targets or risk being disciplined by their employer.

The principle of MURs is not at stake here; it is a good one, it is a combination of the implementation of MURs in the community pharmacy by the contractors and the public's narrow perceptions of the pharmacist's role that has impacted on the effectiveness of the delivery of this service.

Contractors (particularly the multiples as they claim over 70% of declared MURs) have decided that the targeted money made available for MURs is rightfully theirs and that they will ensure that they claim. Some of them will attempt to do so almost at any price and it is this which has made a significant contribution to bringing this service into disrepute.

It is true that the money made available for dispensing of medicines was reduced and more of the global sum was diverted away from supply and into services, but the employers have assumed that their employee pharmacists (though similar behaviours are now pervading through to Locums) will just have to 'deal with it' and add the provision of these services on to the many other activities they are expected to perform because the contractor wishes to control their costs and protect their profits.

The report goes on to say that some pharmacies were guilty of 'wasting patients' time' with MURs, and adding that: *'Most patients had little to say about their experiences in pharmacies and among the small number who had experienced MURs, opinions were mixed.'*

Some of the reported remarks made by patients reflects on the perceptions they have of the pharmacist's role. The pharmacy profession was badly let down by the Department of Health when MURs were introduced. It was envisaged that there would be an advertisement campaign to promote the service and the vital role the pharmacist could perform in getting patients to take their medication more effectively. It didn't happen so in simple terms, the patients weren't prepared for it and the profession, particularly those who believed that they had to claw back any potential lost earnings, could have handled it much more appropriately.

The PDA has been accused in some circles of stirring up a hornets nest and training a spotlight on the 'horror stories' associated with MURs which has given ammunition to critics who have an agenda to reduce the global sum.

We say to those critics; put your own house in order. You will have no better allies than the PDA if you can properly resource and support pharmacists in the delivery of any appropriate additional services. Such behaviours include appreciating the pharmacist's professional autonomy and recognising that rewards should reflect the extra income that they can bring through the provision of those services.

Update on Supervision

Central to PDA policy has been the fact that the community pharmacy is the place where members of the public can expect to get their medicines safely, whether dispensed or purchased and where they can expect a pharmacist to be readily available as the medicines expert to discuss their healthcare needs..

The **'Ask your pharmacist – you'll be taking good advice'** campaign will simply not work if the pharmacist is not at the pharmacy.

The concept of remote supervision; the plan to routinely operate a pharmacy in the absence of a pharmacist will never satisfy this criterion and must be resisted. This article sets out what has been done so far by the PDA to deal with this matter.

What we have learned so far

1. The need to create a coalition for change.

The PDA consistently raised concerns about the proposals for both remote supervision and the RP regulations. However, much more progress could have been made had the PDA not been the only pharmacy organisation that was alive to the risks of these proposals to the public and the profession. The government used this lack of cohesion to justify its intransigence.

This problem was compounded when the RPSGB failed to provide support.

In July of 2009, two months before the implementation of the RP regulations, the RPSGB (the then regulator) failed to back the PDA's call to delay their implementation.

After implementation, it became obvious that the RP regulations were simply unworkable and that they were putting both pharmacists and patients at risk. Consequently, in July 2010, the PDA wrote to the minister again, this time asking that the RP regulations be suspended until the problems could be addressed. Again the RPSGB stated that it did not support such a request.

When the minister wrote to the PDA indicating that he would not be suspending the regulations, he was able to say;

"I am not aware that other [pharmacy] organisations are raising concerns."

An important lesson learned was the importance of securing a coalition for change to tackle some of the fundamental pharmacy issues. Consequently, as members will recall, the PDA backed a number of candidates for the RPSGB elections and these candidates were elected by a landslide majority. From September 27th 2010, the profession is no longer led by those who either failed to get involved in the remote supervision debate when it was first being proposed by government or those who failed to support a delay in the RP regulations.

When placed alongside the petitions and surveys of PDA members , a new member focused leadership at the helm of the RPSGB will greatly increase the chances of success.

2. The need for the profession to take charge of the supervision debate.

The previous government appeared to have a pharmacy agenda all of its own, but it merely demonstrated that it did not understand the realities of pharmacy practice.

The sheer impracticality of the RP regulations demonstrated how detached from reality the government of the time actually was.

Nevertheless, the lack of cohesion within the profession on this issue, allowed the government to lead the supervision debate and virtually do as it saw fit.

If we are to avoid this in the future, then we as a profession must take the lead on the important professional issues.

The PDA believes that with the mobilisation of the pan professional debate on supervision that has involved several pharmacy organisations and many thousands of pharmacists, we as a profession have now prised the supervision debate back from the clutches of the government and have the opportunity to be in the driving seat.

This view is supported by a letter received by the PDA from the pharmacy minister where he wrote;

"I am aware that the profession is embarking upon an important debate about the principles that should inform development of future regulations relating to supervision and I look forward to seeing the outcome of these discussions."

3. Supervision needs reforming, but the impact on all sectors of the profession must be considered.

We all know that some of the current rules are inflexible and often confuse the public; they are in need of modernisation. However, what is now clear, is that the 'one size fits all' approach taken by government so far will not work across all sectors of pharmacy.

In the hospital setting a very significant amount of work is undertaken, but usually by a comparably large, well trained and often very experienced team of senior technicians who may also manage the dispensary department. The clinical assessments of prescriptions are typically completed by pharmacists on wards. The clinical practice of pharmacists in the hospital setting is at an advanced level and the whole prescribing service is more structured and proximate to the medical team. Systems are on the whole well developed, lines of command are clearly defined and processes usually audited.

Practice in the community setting is at the opposite end of the spectrum. Here, comparatively small teams (sometimes comprising just one part time member of staff) are working alongside a solo pharmacist in the dispensary; often, these staff members are very inexperienced. The rate of processing prescriptions per person is significantly higher; sometimes as high as 60 items per hour with little or no support staff. Additionally, there are patients walking in off the street requiring OTC medicines and the arrival of the area manager will usually result in a further demand to deliver two or three MURs in a day.

This tells us that we must take a more segmented approach to supervision; members of the public deserve a level of protection which is proportionate to the risk.

4. Use of the absence for purposes for which it was not intended.

The PDA predicted that any absences permitted by a relaxation of supervision would not be used for the purposes intended, namely to deliver new healthcare roles and benefit patients. We foresaw that they would be used to reduce employer's operational costs instead.

"We must not allow supervision rules to permit developments that are not in the patient's nor the profession's interests."

In the case of Alliance Boots at least, experience has shown that the two hour absence permitted under the RP regulations is being used in some of their pharmacies to increase the operational hours of the business, whilst not incurring an increase in salary costs, because the pharmacists who are signed on as the absent RP are not being paid for their responsibility.

The real life application of the RP regulations means that the profession can approach the current supervision debate with eyes wide open. The fact that the regulations may be used merely to reduce operational costs by employers is not just a hypothetical 'scare mongering' concern; it is now a genuine and real consideration that must be factored into any debate.

As a profession, we must not allow the supervision rules to permit developments that are not in the patients, nor the professions interests.

What else do we know?

In 2006, when these concepts were being debated in parliament the PDA secured the support of many senior politicians. One such person was Lord Howe and on June 26th 2006 in a debate in the House of Lords he said;

"[In relation to the pharmacy supervision rules] the [government] will need to take care not to go faster than the profession wishes to go, but at the same time leave room for sensible variations within a framework of maintaining patient safety."

Today, Lord Howe is in government and he is the pharmacy Minister.

The PDA wholeheartedly agrees with these sentiments; we believe that the rules on supervision must be overhauled to reflect modern practice – or ideally, where we want our modern practice to be.

We assert that it is the pharmacy profession and not the government that must decide the style and pace of change.

There is now wide recognition that the profession cannot afford to sleepwalk into any slapdash remote supervision arrangements.

What has already been achieved?

The government has now agreed to review the RP regulations.

The PDA has always argued that as the foundation stone to any supervision arrangements, the RP regulations were fundamentally flawed; this is why in August 2010 we asked the government to suspend the regulations altogether. However, whilst the government rejected our call, it has nevertheless now agreed to sit down with pharmacy representatives and the GPhC to undertake a review of the RP regulations. The first such meeting is scheduled to take place in the middle of December 2010 and there will be further meetings early in 2011.

What next?

The professions first iteration of a new view on supervision is soon to emerge.

In this last six months in particular,the PDA has accelerated its activities regarding supervision and we thank all of the PDA members who participated either in a survey, a focus group meeting or one of the various meetings around the country. Other bodies too have been involved in gathering the views of pharmacists. Numerous views have now been taken on board and we believe that the profession is now approaching a collective position on supervision which may support a new way of practice, but at the same time will not introduce dangerous risks to the public.

We have fought very hard to prise back the initiative on this matter, which is due in part to PDA members having been prepared to support our calls to action and participating in surveys and petitions.

We expect that a collective professional vision will emerge early in the New Year and when that occurs, we will be asking all pharmacists to feedback their views. This time, let us ensure that we do our utmost to ensure it is our profession's view on supervision that is taken forward as the model.

Union Representation can take many forms

Following the good news at the PDA achieving Independent status as a trade union, it is worth reflecting on why we have been successful so far in providing robust representation to members and how, as a relatively new union we have been able to cope with the diverse agendas in a widely spread geographic pharmacist community..

THE PDA union
strength in numbers

In May 2008 we were recognised as a listed trade union by the certification officer and as such we have been providing union representation to members who are in dispute with their employer.

One thing that we have learned is that it is neither necessary nor sometimes practical to provide physical representation (i.e a union rep at the meeting) for every step of the disciplinary or grievance process; neither is it necessary to arrange a physical presence in every single case.

Take a routine disciplinary process for instance. The employer is duty bound to investigate impartially. Normally there may be more than one investigation meeting. Sometimes, we have insisted further investigations be done by the employer in some cases because the quality of the initial investigation was so poor. There may then follow a disciplinary hearing at which the employee has a chance to answer the charges. Finally there is the right of an appeal and in some organisations there is the right of more than one appeal. We have known there to be as many as six meetings from the start to the finish of a dispute, even if this be over a relatively innocuous matter. Lodging a grievance may follow a similar complex and drawn out pattern.

Directing the defence strategy

Taking all of this into account, it is apparent that it is less the presence of a union representative at each meeting that is important and more that the overall defence strategy can be designed by the expert union official. Experience has shown us that the presence of a union representative at a meeting tends to be important generally in the following situations;

- A complex or technical issue (e.g. a grievance or disciplinary action related to the Responsible Pharmacist regulations)
- A career threatening disciplinary hearing (e.g. being threatened with dismissal)
- Appeals against dismissal
- Group grievances
- Action by the employer which, in our opinion is being or has been mishandled, to the extent that it will result in an application to the Employment Tribunal. (Including misconduct, equal pay, discrimination, bullying and selection for redundancy)

Each employment dispute is assessed by a panel of experienced lawyers and pharmacists to decide upon the most appropriate form and level of representation.

The PDA is on track to dealing with more than 1000 employer/employee disputes in 2010 and all of them have had access to union officials.

Representation is provided by the PDA Union in many forms so we are confident in our statement that **"we will provide union representation in all employment disputes"**.

Providing union representation in all employment disputes

If in the judgement of the legal team, the physical presence of a union representative is not necessary, applicable or practical, then representation will be provided in one or more of the following ways:

1. Verbal advice to and coaching of the member as to how to proceed. This is often appropriate when a member is called to an investigatory meeting. There is no statutory right for the employer to allow a representative to attend and unlike a disciplinary hearing; there is no obligation on the employer to give any notice. Members are strongly advised however to contact us before entering into any meeting or decline to comment until contact with the PDA is made.

2. Written advice or submissions so members can ensure that no points are missed and the strategy is clearly laid down for the hearing. We take time to assess the information and decide upon the strategy to achieve the optimum outcome for our member. One technique we have used is to either write to the employer on behalf of the employee or provide our member with personalised written advice to ensure that they do not miss any vital points in their defence.

3. Coaching of a member's chosen employee representative. Employees are entitled to representation by either a trade's union official or a fellow employee. Where there is a competent and trusted employee 'friend' then the PDA will coach and mentor the individual involved to ensure that the PDA member gets the appropriate representation.

Can you help other colleagues?

Despite all of the above, the PDA Union does send in representatives to a significant number of hearings and we need to have as wide a network of employee representatives as possible in all of the employer organisations. Currently, the most flexible trained representatives are locums, part time or retired pharmacists who together with the support they get from the central team are doing an excellent job. However, it is time to widen the net and have a group of representatives that can operate in specified companies. It is not only the right of an individual pharmacist to have representation in the workplace; it is also the right of any pharmacist who is a trade union representative, not to suffer detrimental treatment because of their representative duties.

If you are an employee and wish to receive training to be an accredited representative, please contact the PDA Union via: enquiries@pda-union.org

It's Official... Pharmacists took one hell of a beating!

From September, the GPhC took over as the pharmacy regulator and reported on the expensive legacy that they have inherited from the Society.

For many years, the PDA has regularly expressed disquiet about its belief that pharmacy was in the grip of a regulator that was excessive in its policing and draconian in the way it treated its pharmacists. The sheer number of cases and the onerous fitness to practice processes for the most innocuous of misdemeanours was testament to our claims that the regulators behaviour was disproportionate.

In 2007 we produced statistics that exhibited this;

Pharmacy Regulation; 2007

Proportion of healthcare professionals referred to the first stage of their regulatory process

Nurses	**1 in 256**
Dentists	**1 in 180**
Doctors	**1 in 52**
Pharmacists	**1 in 44**

The GPhC recently produced a paper which analysed its Fitness to Practice legacy and stated that *"The number of complaints per registrant which the RPSGB received is high relative to other regulators. This is thought to be a function of the public facing nature of the profession where prescribing errors or inappropriate behaviour can be can be straightforward to detect and report."*

There is no evidence to support this and although this may be part of the reason, the PDA believe other factors are more relevant.

- The mission of the RPSGB to be the toughest of all health regulators, to demonstrate that it could still perform in the public interest as a regulator and operate as a membership body.
- The unprecedented and significant level of resources demanded by and placed at the disposal of the FtP directorate by successive Councils, to the detriment of developing membership representation.
- The cancer of modern consumerism which is fuelled by the competitive agenda of high street retailers and supermarkets. This has turned medicines into everyday consumable commodities which the public believe they have an absolute right to purchase on demand, regardless of anyone trying to act in their best interests. This culture increases the risk to safety and the propensity of individuals to complain; often in the belief that they are reporting the organisation to the regulator and not the pharmacist.

How much has this disproportionate regulation cost us?

The PDA has estimated that since the introduction of the Section 60 Order and the 'rules' governing the Fitness to Practise procedures that the cost of hearings has increased to the order of four fold.

It is not surprising then that the GPhC has now confirmed that the average cost to RPSGB members for just one day of a hearing when the Society uses its internal lawyers is as much as £12,000 and when external lawyers are used to cope with the workload this doubles to £24,000 per day. The report does not state the average number of days per hearing, but in our experience it is normally more than one day for a 'full hearing' and seldom less than three. It brings to mind, once again, the expression so often used by Lord Frazier, a past chair of the Statutory Committee, that the unnecessary extension of FtP hearings is doing no more than "putting gold in the mouths of lawyers"

The GPhC exposes the legacy that it has inherited as a result of the interpretation of the 'FtP' rules by successive Counsels. It has a backlog of cases which using current financial data will cost GPhC registrants anything between £3.2million (for internal advocates) to £6.6 million for external advocates. The backlog is caused by two inherent factors; the length of the investigations and the introduction of the 'remedial' processes. These would include Interim Suspension Orders and 'reviews' of registrants that have had conditions imposed on them by previous hearings; this activity alone which was never a feature pre the Section 60 Order is likely to amount to much more than a quarter of the Disciplinary Committees time over the foreseeable future. Just as worrying is the fact that any serious misconduct case will take up to four years to come to be heard by the Disciplinary Committee.

Credit where it is due; the new body (the GPhC) has tackled these issues head on and is already using its discretion to dismiss cases under the transition arrangements using sensible criteria.

Through these columns, the PDA has protested against the disproportionate regulatory framework used to discipline pharmacists working under ludicrously demanding conditions imposed by their employer. It should not have escaped the new Regulator that the employer calls the tune in community pharmacy and the politically driven financial pressures imposed in the NHS give hospital pharmacists no respite. We believe that the individual pharmacist must claim back their professional autonomy from the monolithic employer organisations.

The new White Paper and our proposals for an Individual Pharmacist contract gives some hope; however, the Regulator can effectively reduce the number of pharmacists being disciplined and improve patient safety by imposing more rigorous inspection regimes on pharmacy owners to ensure that the working environment and staffing levels do not increase the risk of errors occurring.

THE PDA PLUS member benefits

Independent financial advice - a new service

In the second of our series of articles about the PDA membership services portfolio, PDA Plus, this article introduces one of the newest partners. Personal financial management and investment has always been important to pharmacists and yet in recent years there has been suspicion and lack of trust in the organisations on which they rely to meet their personal financial aspirations. Recognising these concerns and in trying to fill this void in our PDA Plus services, the PDA has found an organisation, Lloyd & Whyte which is experienced in providing such services to other healthcare professionals and which we are pleased to incorporate as one of our PDA Plus partners; in this article they ask...

The cost of retirement – are you prepared?

The ripples of the recent harsh economic climate can still be felt, with recovery teetering on a knife edge. Recent research suggests that over half of Britons foresee the economic recession continuing until at least 2012, with 3 in 5 believing new Government policy will hurt their financial situation (1). So what does this mean for those attempting to prepare for a financial secure retirement?

The cost of retirement continues to rise year on year. Recent figures suggest the average couple wishing to enjoy basic financial security throughout retirement will need to have saved at least £600,000 by retirement age (2). The increasing cost of living means annual expenditure in retirement has risen by a third in only 5 years, with this trend set to continue. However, a comfortable retirement is not unattainable, and can be achieved through effective planning and specialist knowledge of the market place.

The cost of delay

Pension plans provide an excellent way to prepare for retirement, whilst benefiting from potential growth over time and tax-relief on each contribution. Although it is easy to put off preparing for retirement until later; perhaps when you expect your disposable income will be higher, the full cost of delaying starting a pension is sometimes overlooked.

For instance, a 24 year old pharmacist might decide to contribute £250 per month into a pension plan, with the contributions increasing by 5% annually until the desired retirement age of 65. Another pharmacist of a similar age decides to wait 5 years until starting a pension on the same basis. Based on current projections, the first example might expect to retire with a pension pot of £1,210,00, whilst the second can expect to retire with £736,000. Whilst starting early would mean contributing around £16,500 more into the plan over the first 5 years, the result could leave you £474,000 better off in the long run. Which would you prefer?

It's not too late

It's never too late to start preparing for retirement, and it would be of no benefit to put it off further. The first step is to establish your financial objectives; where you want to be in the short, medium and long-term. By formalising your plan, you are giving yourself and your finances clear direction. However, it is also important to review your objectives regularly in line with your changing aspirations and situation. Objectives don't need to be set in stone, but should help to move your plan forwards.

The second stage is to take a thorough look at your current situation. After all, you can't plan a route to a desired location without knowing where you are in the first place. Regular review is crucial, typically annually, in order to measure progress towards your goals.

Prepare for the unexpected

Once your plan is in place, it is all too common to assume events will pan out as you want them to. The reality is that this is rarely the case. Your plan needs to include some protection against the unexpected and less desirable circumstances.

For instance, how would you continue to work towards your financial objectives if you were unable to work as a pharmacist due to illness or injury? Or what if a tragic accident or serious condition were to limit you from working in any capacity?

Whilst it's not healthy to dwell on such circumstances, it is beneficial to consider them. Particularly when we consider that one in three people will develop some form cancer during their life for example (3).

Financial protection comes in many forms, however the main two are Income Protection (or Permanent Health Insurance) and Critical Illness Cover.

An Income Protection policy will provide you with a replacement income, normally up to 75% of your regular income, should you be unable to work due to illness or injury. Benefits will begin after an agreed "deferred period", and will continue until you can return to work or retirement age, whichever is sooner.

Recent research by Aviva UK Health has identified that 78% of the working population in the UK would jeopardise their long term health by returning to work before they are 100% fit, primarily due to money worries. Income Protection provides the peace of mind in knowing you and your dependants will be supported financially during illness or injury, until a time when you are able to return to work.

A critical Illness policy will provide a much larger, lump-sum benefit upon diagnosis of a number of more serious conditions, such as cancer or loss of limbs.

With any financial protection, always consider the terms at which they will pay out. As a professional, it is always advisable to arrange both Income Protection and Critical Illness on an "Own Occupation" basis. This means the underwriter will assess your ability to work in your current profession when processing a claim. Policies without this clause might assess your ability to work in any profession, including menial jobs carrying minimum wage.

Specialist Financial Advice for Turbulent Times

In such turbulent times, increasingly more professionals are seeking specialist advice when it comes to their finances. Independent Financial Advice can help you identify and develop all aspects of your financial portfolio, including protection, retirement, investments, funding and inheritance tax planning, to name but a few.

Independent Financial Advisers differ from tied-agents, such as those you may find at your bank. Their independent status permits them to provide advice on all products available on the market, rather than those offered by a single provider.

As a PDA member, you can now receive such services through PDA Plus, as part of your membership package. As the newly appointed provider of financial services to the PDA, Lloyd & Whyte (Financial Services) Ltd specialise in the provision of quality Independent Financial Advice to healthcare professionals.

There is a common misconception that financial advice is expensive, or involves hidden fees. The truth is that we will never charge you for a service, or carry out any work, where you are not fully aware of the costs involved. Additionally, flexible payment options mean the cost can be tailored to suit your situation.

Providing for the lifestyle you desire in retirement whilst achieving aspirations along the way is not impossible, even in the current economic climate. Establishing a financial plan does make the whole process somewhat easier, especially when benefiting from specialist advice from an individual who understands your profession.

If you would like to discuss any aspect of financial planning, including reviewing your financial situation, pension planning or arranging financial protection, make the most of your PDA membership; visit the pda plus website for further details or call 01823 250 750.

Lloyd & Whyte (Financial Services) Ltd is authorised and regulated by the Financial Services Authority. PDA Plus is a trading name of Lloyd & Whyte (Financial Services) Ltd used under licence from the Pharmacist Defence Association.

(1) – Research carried out by Angus Reid Public Opinion
(2) - According to figures compiled by MGM Advantage
(3) – Cancer Research UK

CPD; Still causing members concerns

A concerned PDA member received a letter recently from the GPhC requesting, what he thought to be an 'invitation' to send in FIVE years of CPD records. The PDA took issue with the GPhC on his behalf on the following grounds.

Firstly we believed that the letter was confusing and ambiguous; it was quite clearly gave the impression that the GPhC is entitled to see five years of CPD records whereas the legal powers have existed to call in the CPD only since 1st March 2009. Pharmacists who had their records called in by the previous regulator (the RPSGB) were only invited to send in records prior to 2009 if they wished to but, but it was the records to cover any period after March 2009 that they required pharmacists to send in.

Secondly that before March 2009, pharmacists were asked to make a declaration that they have continued to educate themselves The previous administration took this declaration on trust, as indeed the GPhC should do so now we believe. We did not dispute their current powers, but giving the impression that they were claiming them retrospectively seems unreasonable.

The GPhC graciously accepted that their letter could have been better phrased and informed the PDA that it would review it as the criteria had not changed as a result of the emergence of the GPhC, but added that the rules for submitting CPD entries are now out for consultation and from what the PDA has seen so far, it is likely that we will need to challenge some of them.

The PDA recognised that CPD would be of concern to many members two years ago and has been working with a specialist provider to offer our members 'hands-on' support at preferential rates. Through PDA Plus, CPD Services has been providing PDA members with a wide range of support services at 30% reduction in their standard rates; from mentoring and reviewing entries through to doing the records for you if you hold appropriate notes. There are four different levels of service; bronze, silver, gold and platinum.

For more information visit www.the-pda.org/pdaplus and look for CPD Services or call 01795 533 077

8 ways to save the cost of membership and save on Christmas Presents

With Christmas fast approaching it is an expensive time of year for everyone. That is why PDA Plus have negotiated 8 money saving discounts which could help to save you the cost of your membership.

- **Cashback Gift Cards** - Earn cashback between 5% and 15% on everyday purchases from major retailers including M&S, ASDA, Sainsbury's, Comet, Debenhams, Top Shop, B & Q, Amazon and many more.
- **Frequent Holidays** - 1 week's holiday in a choice of 1500 resorts worldwide - only £250* inc. VAT.
- **Gym Membership** – Access to the lowest corporate rates at an exclusive network of over 2000 gyms, such as Fitness First, Nuffield Health & LA Fitness for £5!

To explore these benefits and the other '8 ways to save the cost of membership' **www.the-pda.org/pdaplus** and look for travel and lifestyle.

*Terms and conditions apply.
See website for full details.

Equality - Equal Pay

Nothing is more emotive in the workplace than feeling that you are not fairly valued

Within the context of work, perhaps the most important issue we think of when considering equality is that of pay. Whilst a high rate of pay is not necessarily the only or main reason one might apply for a particular job or choose to enter a profession, a perceived fair and equitable salary is certainly high on everyone's list when it comes to job satisfaction.

The Equality Act came into force in October 2010 bringing together all the various pieces of legislation covering the area of discrimination. As the law now states that discrimination can occur on the basis of someone's race, sex, disability, religion or political, philosophical belief, sexual orientation and age, those individuals who have reason to believe that they are paid less than their colleagues on one of these grounds are entitled to claim that they have been subjected to unlawful discrimination.

> "He had given 20 years loyal service to his employer and discovered that he was being paid less than newly qualified pharmacists."

Whilst the Equality Act amalgamates legislation regarding discrimination, it has been the Equal Pay Act 1970 that has been used by individuals to bring equal pay claims based on sex. Generally speaking the Equal Pay Act makes it unlawful for an employer to discriminate between men and women in relation to the terms of their contracts of employment. Although some of the language of the Act might lead one to conclude that only women would be treated less favourably and therefore seek to bring a claim in an Employment Tribunal, it applies equally to the other gender and claims from men are not as uncommon as you might think.

The issue of Equal Pay will be familiar to members working in the NHS; no doubt left traumatised by the Agenda for Change process. The aims of this were to deliver fair pay for all and provide better links between pay and career progression creating a single pay grading structure. The PDA having been involved in a number of appeal cases representing members' interests we are only too aware of the magnitude of this exercise and how complicated the Knowledge and Skills Framework could be at times. However, overall there is now some certainty regarding the issue of pay and equality for those employed within that sector, which did not exist before.

For pharmacists in community pharmacy, the concept of Equal Pay may be a foreign one and members may even have no idea whether or not their pay is fair and in line with that of their colleagues. With many employers keen to make costs savings, a sad reality is that those employees who do realise that they are not being paid what they are worth often keep quiet about it and feel grateful to have a job. As a pharmacists' Union, it is the aim of the PDA to support any members who feel they are underpaid and a successful challenge against an employer can only be mounted if members are armed with some knowledge of the law in this area.

What is Equal Pay? – The Legal Test

The principal of Equal Pay means that men and women should receive pay equal to that of a comparator of the opposite sex if employed in the same job doing the same or similar work or work of equal value. The Equal Pay Act requires a comparator to be employed by the same employer as the claimant, so a female pharmacist employed by Rolands could not bring a claim citing a male pharmacist employed by Lloydspharmacy for example.

The work must be the same or, if not the same, of a broadly similar nature to that of your comparator and any differences between the work must not be of practical importance. Some of the factors that are worthy of consideration in assessing whether the work is the same, similar or of equal value are knowledge, complexity of the task, training, responsibility, mental effort; physical activity and working conditions.

Getting Started with a Claim

The first step as with all complaints regarding employment should be raising a grievance. At this stage, even if a comparator has been identified, it is not essential to divulge this information. All that is required is an outline provided to the employer describing the underpayment and some detail surrounding any suspicions. It is recognised that not everyone is able to state for certain what the exact sum they are underpaid is. An employer will then need to instigate a meeting to which the pharmacist is entitled to be accompanied by a colleague or Trade Union representative before investigating the concerns. Members with specific question in these matters may find the Equal Pay Questionnaire beneficial. This effectively allows employees to ask questions of their employer in an officially recognised form that an Employment Tribunal will consider if the matter reaches that stage.

Fortunately, most grievances are upheld and the employee's pay is brought into line with the comparator's salary. The Tribunal however remains a mechanism for bringing a claim for those who do not have success or against employers who agree to an increase in pay but fail to backdate it appropriately subject to a maximum of six years.

What do your work colleagues earn?

Are you rewarded for long term service?

Employer's Defence

The bad news for employees is that there are perfectly acceptable reasons which can be used by employers to justify a difference in pay. This is known as the Genuine Material Factor defence (GMF) and what an employer argues is that whilst it acknowledges that there is a difference in pay, that reason is nothing to do with the fact that the claimant is a woman/man or that the comparator is a man/woman. One realistic and genuine example of a GMF might be geographical location for instance; it is widely accepted that the costs living in London are much higher than the rest of the UK and a difference to reflect this would be deemed acceptable. Another example may be a higher salary offered elsewhere to attract or retain pharmacists to relocate and work in a geographical area of the country that is notoriously difficult for recruitment. It pays members to take a wider view when they are considering whether or not they have fallen foul of the principles of the Equality Act.

Recent Case Study

One recent case in which the PDA supported a member has proved to be quite interesting. It concerned a male employee who had been a pharmacist for over 30 years and had given 20 years loyal service to his employer. For some time the member suspected that his pay was significantly less than his colleagues who were also pharmacy managers. These concerns were reinforced when he noticed that those pre-registration students that he had trained and who had now qualified refused to accept salaries offered to them that were slightly less than his. It then came to his attention that colleagues within the company had long bypassed his salary and he was indeed being paid less than newly qualified pharmacists. The member contacted the PDA for some advice and as the PDA receives employment contracts on a daily basis from many members, it was possible to confirm that this member's salary fell well below that of other colleagues who were less qualified in terms of the number of years spent on the register and indeed had much less continuous service with that particular employer. Naturally, the identity of other members was not revealed, nor was any other information that would lead to the same.

> "Our member's grievance was successful, his employer recognised that he was significantly underpaid to the tune of £5,000 per annum."

The PDA provided assistance in submitting a formal grievance showing that previous correspondence with the employer had not been addressed. Meetings were then held allowing the member to elaborate on his concerns. At first, the response of the company was to argue that the reason behind the increased pay for new employees was to attract them to the business and it was suggested that this was a legitimate company aim. This appeared to the PDA to be a bizarre stance to take and it was made clear to the employer that the aim of attracting people to a business was the same as retaining existing employees. In fact, longer service is generally accepted as being a good enough reason to pay an employee carrying out the same job as a newly appointed member of staff a higher rate of pay. Our member's grievance was successful in that his employer then recognised that he was significantly underpaid to the tune of £5,000 per annum. The member is currently deciding whether or not to pursue the matter further as he believes the sum of £10,000 per annum is more appropriate.

Summary

Since October, pay secrecy clauses within employment contracts are unenforceable when the discussion relates to equal pay. The law also enables employees to bring a claim of victimisation if they have been disciplined, dismissed, or otherwise had action taken against them for discussing possible discrimination in their pay. Any concerns members have regarding Equal Pay can be directed to the PDA and where necessary support through the process can be provided. PDA urges all pharmacists to complete the PDA's annual Salary Surveys when requested as the results can be a very useful tool in helping to negotiate the salary that is fair and deserved.