



The Pharmacists' Defence Association's Response to the General Pharmaceutical Council's Consultation on the Draft 2019 Fees Rules

January 2019

About the Pharmacists' Defence Association

The Pharmacists' Defence Association (PDA) is a not-for-profit organisation which aims to act upon and support the needs of individual pharmacists and, when necessary, defend their reputation. It currently has more than 28,000 members. The PDA Union was inaugurated in May 2008 and achieved independent certification in 2011.

The PDA is the largest pharmacist membership organisation and the PDA Union is the only independent Trade Union exclusively for Pharmacists, in the UK.

The primary aims of the PDA are to:

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

Summary of the Consultation

The GPhC is consulting from 1 November 2018 to 24 January 2019 on changing its fees for registered pharmacists, pharmacy technicians and pharmacy premises. The proposed fee increases for renewals and registration are as follows:

- Pharmacists - from £250 to £257
- Pharmacy technicians - from £118 to £121
- Pharmacy premises - from £241 to £262

There are approximately 56,555 pharmacists and 24,551 pharmacy technicians on the register, alongside approximately 14,000 registered pharmacies. [1] Based on those figures, that would mean an additional £763,538 revenue for the GPhC as a result of the fee increases.

Questions

1. Do you agree or disagree with our proposal to increase the entry and renewal fee for pharmacists by £7, from £250 to £257?

Disagree

Recommendation

Before increasing fees, the GPhC must explore other alternatives to reduce its costs, such as moving its headquarters out of Canary Wharf to a cheaper location. At the same time as reducing the GPhC's outgoings, such a move could also make it less expensive for registrants to attend GPhC hearings in London, including the requirement to find overnight accommodation there.

Recommendation

The GPhC has a duty to ensure that its registration and renewal fees are sufficient, without being excessive, to allow it to adequately fulfil its role in protecting patients and the public. That includes markedly improving the regulation of pharmacy premises – creating parity in its approach to issuing sanctions to organisations and individuals. The GPhC must ensure that the fees it sets enable it to do that.

2. Do you agree or disagree with our proposal to increase the entry and renewal fee for pharmacy technicians by £3, from £118 to £121?

Disagree

Recommendation

The GPhC must provide information to show how it has calculated the fee level, and the proposed increase, for registered pharmacists, pharmacy technicians and pharmacy premises. Since its fees are based on the cost of regulating each group, the GPhC must explain why these costs are different on a per-registrant / registered premises basis.

Recommendation

The GPhC must explain why pharmacists and pharmacy technicians pay different fees for the same scenario, where it appears that the work involved for the GPhC would be similar in each case; for example, the fee for restoration to the register for failing to meet CPD requirements is £573 for a pharmacist and £301 for a pharmacy technician.

3. Do you agree or disagree with our proposal to increase the entry and renewal fee for pharmacy premises by £21, from £241 to £262?

Disagree

Please see our responses to other questions for the rationale.

4. Do you agree or disagree that our proposals are in line with our fees policy?

Disagree

The GPhC's fees policy is set out in Annex three of the consultation document.

The GPhC makes the commitment within the policy that: *"We will continually strive to identify efficiencies in our regulatory operations and set these out when consulting on fees."*

We cannot see any evidence of the GPhC having considered moving out of Canary Wharf to a cheaper location, or indeed how much that location currently costs. This could improve the efficiency of the GPhC's operations.

The commitments within the policy also include: *“The fees we set must cover the costs of delivering our regulatory functions and ensure the financial resilience of the organisation so that pharmacy standards can continue to be maintained.”* The PDA cannot know whether the GPhC has, in determining its new fees, taken these matters in to account, including the requirement for substantial improvements to premises regulation. The GPhC has not set out in this consultation how it proposes to make those improvements, but this does not change its responsibility to regulate premises more effectively, and it must be able to do so through the fees it has set.

5. Do you have any comments explaining your answers to the questions above?

Premises regulation

The GPhC has a dual role in regulating premises and individual registrants. The PDA has previously pointed out that, according to the GPhC’s annual reports, it has issued 4,111 sanctions against individual pharmacists since its inception in 2010 – but according to its response to a Freedom of Information request in August 2018, had not issued a single sanction against any pharmacy owner or superintendent for a failure to comply with the Standards for Registered Pharmacies. Nor had it disqualified, removed, or sought to disqualify or remove, any pharmacy premises from the register. It did not even have a category in its fitness to practice database for recording complaints which relate to compliance with the Standards for Registered Pharmacies. [2]

The PDA has over 28,000 members and provides over 5,000 instances of support each year. The PDA highlighted a recent example from an inspection report in which members of staff were in tears during the inspection, telling the inspector about inadequate staffing levels; they had raised concerns but felt these were not always listened to / acted upon and when the inspector tried to raise concerns about the staffing levels during the visit, he/she was unable to get hold of the relevant people. The pharmacy was, nevertheless, awarded “satisfactory” for the principle “Staff are empowered and competent to safeguard the health, safety and wellbeing of patients and

the public.” [3] The GPhC’s policy is not to revisit such pharmacies (awarded “satisfactory” overall but given an action plan) to check whether the issues have been addressed. [2] The PDA is also aware that pharmacists who have raised concerns about pharmacy premises have been persuaded by the GPhC to convert the complaint in to one about individuals, changing its focus.

By way of context, the PDA also discovered through the GPhC’s response to a Freedom of Information request in June 2018 that it has issued 667 overall “poor” ratings following pharmacy inspections between Nov 2013 and 24 June 2018. The GPhC says that a poor rating will be given where there are “major concerns about patient safety... **that require immediate improvement**” and that the pharmacy is “likely to present an **unacceptable risk of harm to patients and the public**. This means the **risk is likely to occur and/or will have moderate to high impact.**” (Emphasis as per original documents). [2]

The PDA takes the view that this amounts to a failure to adequately regulate pharmacy premises. It surely cannot be the case that, regardless of the degree of risk to patient safety or failure to meet standards, no sanction is warranted, or that wrongdoing is always the fault of the individual registrant and never the organisation. This requires a substantial improvement in the approach from the GPhC.

Recommendation

The GPhC has a duty to ensure that its registration and renewal fees are sufficient, without being excessive, to allow it to adequately fulfil its role in protecting patients and the public. That includes markedly improving the regulation of pharmacy premises – creating parity in its approach to issuing sanctions to organisations and individuals. If the GPhC needs additional funding to enable that, then it must explore its options to ensure it can afford to do so.

Council member remuneration

The PDA notes that GPhC Council members recently approved increases to their own remuneration, taking effect from April 2018. The increase was recommended by the remuneration committee, 4 out of 6 members of which are GPhC Council members, including the Chair. The remuneration committee is chaired by a Council member, who received an increase in her own remuneration as both the committee Chair and as a Council member. [4] [5]

From 1 April 2018:

- a. Council member remuneration increased to £12,500 from £12,000;
- b. Chair remuneration increased to £56,000 from £48,000;
- c. Discretionary payments for Chairs of the Audit and Risk and Remuneration Committees increased to £2,500 from £2,000 [a discretionary payment of the same level is also made to the Chair of the Efficiency and Effectiveness Assurance and Advisory Group].

Recommendation

The GPhC must improve the governance over the remuneration of council members. This could include appointing an independent committee to review such remuneration.

Fee structure

The GPhC said in the consultation document that 65.88% of its funding comes from pharmacists' fees; a further 12.46% comes from pharmacy technician fees and 4.64% comes from pre-registration fees. In total, it appears that 82.98% of the GPhC's revenue comes from individual registrants. According to the consultation document, that is sufficient to pay for all of the GPhC's employee (54%), professional (8%), occupancy and building (8%) and council and associate (7%) costs. In contrast, just 16.06% comes from premises fees.

Considering that the GPhC is meant to be just as much a premises/systems regulator as it is

regulator of individuals, it seems that individual registrants pay a disproportionate amount to its overall running costs.

Recommendation

The GPhC's fee structure appears to support the continued targeting of individual registrants, rather than its dual role of the regulation of both individuals and premises. The GPhC must review its overall fee structure to ensure a proportionate focus on the regulation of premises/systems, and individuals.

Freedom of Information Requests

The GPhC has attributed the proposed increase in costs, in part, to an increased number and complexity of FOI requests. Our view is that this cost could be reduced if the GPhC put more information in to the public domain. For example – it does not currently provide any information on its website about:

- Strategic Relationship Managers which form part of its inspection process within multiple pharmacies
- Its inspection decision-making process and its revisit policy
- Its bank of acceptable tolerances when deciding inspection ratings.

Recommendation

The GPhC must increase its transparency by putting additional information in to the public domain, which will help to reduce its costs in responding to Freedom of Information requests.

Expenditure on legal costs

The findings of a Freedom of Information request in 2017 revealed that the GPhC spent almost £200,000 (total) on three legal cases: [6]

- £114,337.40 in legal costs in relation to pharmacist HK, in which the Supreme Court found in 2016 that the level of sanction imposed against him by the GPhC's Fitness to Practise Committee was too severe. It also addressed a point of law in relation to the GPhC's powers, but it seems likely this would not have arisen if the sanction had been proportionate in the first place. [7]
- £47,868.56 on litigation in relation to Dr. EM, in which the Supreme Court determined in 2017 that individuals could bring claims of discrimination against regulators in Employment Tribunals. The GPhC was not involved in the case but intervened to try to prevent the ruling. Most other healthcare and non-healthcare regulators who were affected by the ruling did not intervene. [8]
- £34,818.72 in costs in relation to pharmacist MY, wherein in 2016, 16 of the 17 fitness-to-practise allegations against her were not upheld and one allegation merited a warning.

Recommendation

The GPhC must demonstrate that it carefully controls the amount of money it spends on fitness to practise cases and litigation before it considers raising registration fees. GPhC registrants should not have to bear the costs of unnecessary litigation.

6. We want to understand whether our proposals may discriminate against or unintentionally disadvantage any individuals or groups sharing any of the protected characteristics in the Equality Act 2010. We are also interested to find out whether the proposals will benefit any of these individuals or groups. The protected characteristics are:

Age

Disability

Gender reassignment

Marriage and civil partnership

Pregnancy and maternity

Race

Religion or belief

Sex Sexual orientation None of the above

Question posed in question 7

7. Do you think any of the changes will have an impact – positive or negative – on certain individuals or groups who share any of the protected characteristics listed above? If yes, please give comments explaining your answer. Please describe the nature of the impact and the individuals or groups concerned.

The fee increases are likely to present a higher increase as a proportion of the income for those in part-time roles. Therefore, the impact on women may be higher than that on men. There would be difficulties in setting a lower renewal fee for part-time workers than full-time workers, for example: What counts as part time? What about zero hours contracts? What if an employment pattern changes part way through the year? However, our view is that the GPhC must consider its options in this respect.

Recommendation

The GPhC should consider a proportionate fee for those working less than full time.

8. We also want to know if there will be any other impact of our proposals on any other individuals or groups (not related to the protected characteristics). For example, patients, pharmacy owners or pharmacy staff. Do you think our proposals would impact – positively or negatively – on any other individuals or groups? If yes, please give comments explaining your answer. Please describe the nature of the impact and the individuals or groups concerned.

Our comments have been made in response to other questions.

References

- [1] General Pharmaceutical Council, "GPhC Council Meeting Papers," 9 February 2017. [Online]. Available: http://www.pharmacyregulation.org/sites/default/files/2017-02-09_-_council_papers_for_website_2.pdf.
- [2] The Pharmacists' Defence Association, "The GPhC identified major patient safety concerns in 667 pharmacy inspections," 27 July 2018. [Online]. Available: <https://www.the-pda.org/the-gphc-identified-major-patient-safety-concerns-in-667-pharmacies-across-great-britain/>.
- [3] The Pharmacists' Defence Association, "Is the GPhC premises inspection process failing on the staffing standard?," 3 December 2018. [Online]. Available: <https://www.the-pda.org/is-the-gphc-premises-inspection-process-failing-on-the-staffing-standard/>.
- [4] General Pharmaceutical Council, "Remuneration committee," 28 November 2018. [Online]. Available: <https://www.pharmacyregulation.org/about-us/who-we-are/gphc-committees/remuneration-committee>.
- [5] General Pharmaceutical Council, "Council Meeting Papers," 8 November 2018. [Online]. Available: <https://www.pharmacyregulation.org/sites/default/files/document/20181108-gph-council-meeting-papers-combined.pdf>.
- [6] "Freedom of Information Request - Re: Costs and copy of Supreme Court submission," 29 November 2017. [Online]. Available: <https://minhalexander.files.wordpress.com/2017/11/gphc-foi-disclosure-litigation-costs-29-11-2017.pdf>.
- [7] "Habib Khan (Respondent) v General Pharmaceutical Council (Appellant) (Scotland) [2016] UKSC 64," 10 December 2016. [Online]. Available: <https://www.bailii.org/uk/cases/UKSC/2016/64.html>.
- [8] "Michalak (Respondent) v General Medical Council and others (Appellants) [2017] UKSC 71," 1 November 2017. [Online]. Available: <https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKSC/2017/71.html>.