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Judge rules on the PDA's legal challenge to the GPhC's new Standards

The Pharmacists' Defence Association's (PDA) challenge to the General Pharmaceutical Council's (GPhC) new Standards was heard on 23rd March 2017 in front of the Honourable Mr Justice Singh.

The hearing was intended to consider two points:

- a) Whether the Judicial Review should be allowed to proceed

And if so,

- b) A decision on the application.

The judge decided that he would not permit the Judicial Review to proceed, primarily because the two pharmacists bringing the action could not be considered to be 'victims of the proposals' since the rules had not yet come into force and he could not consider matters in advance.

Mark Pitt, PDA Director of Defence Services and one of the claimants said:

"Seeking a judicial review prior to the new Standards coming into force on 17th May was always going to present some practical difficulties, but we believed it would be preferable to seek a resolution before May rather than wait and expose members to uncertainty and risk."

Despite the decision, the judge did hear all the legal arguments from both sides during a full day in court and he has provided welcome clarification which the PDA had hoped to secure via a full judicial review. The judge's determination provides answers to the concerns expressed by the PDA. It confirms the approach that the GPhC and employers can take in the application of the Standards to a narrow view in compliance with the European Convention on Human Rights. It provides the clarity that was missing and the GPhC will need to interpret the Standards in accordance with the judge's direction.

What the judge has confirmed:

1. The Standards must be interpreted in a way which is rooted in real life and common sense. If a pharmacist has not been polite in a domestic situation, they need not declare this in their annual declaration, unless their actions are indicative of a wider issue which could bring the profession into disrepute or call into question the way in which they approach patients.
2. The GPhC cannot apply these Standards in a wider sense. The PDA will now press the GPhC to accept there will be certain patient facing situations where the requirement to rely on courtesy, politeness and open body language simply cannot be observed.

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The Pharmacists' Defence Association is a company limited by guarantee. Registered in England, Company No. 4746656. Registered address as above.

3. The New Standards cannot be interpreted in a way that violates the (European Convention on Human Rights) rights of Pharmacists. These findings apply across the GPhC and employers. Should the Standards be applied by the regulator (or an employer) in a way that violates a pharmacist's right to a private life or freedom of expression, they leave themselves open to legal challenge.

Concessions offered by the GPhC during the hearing

During the hearing, the GPhC's legal representatives accepted the GPhC's Standards would benefit from clarification and offered several concessions:

1. Setting up a helpline for pharmacists to call if they were uncertain whether they needed to notify the GPhC about conduct outside work at the time of making their annual declaration.
2. Provision of information and engagement evenings.
3. Written guidance for pharmacists so that the practical effect of these new Standards could be discussed and considered within the wider profession.

Commenting on the outcome Mark Koziol PDA Chairman said:

"We took proceedings because the new Standards lacked clarity and because they extended the scope of the regulator on expected behaviours such as tone of voice, body language courtesy and politeness outside of the workplace. Had the Standards been applied in their widest sense, they would have imposed an unacceptable burden of behaviour upon pharmacists in their private lives. The action was not only necessary to prevent the GPhC from interpreting these Standards in the widest sense, but it was important to prevent employers from seeking to use the Standards inappropriately in employment matters."

He continued:

"Although it did not proceed to a full Judicial Review, we are satisfied with the outcome as the determination from the judge has given us the legal clarity to resist any inappropriate regulatory activity from the GPhC. It also provides support to employee pharmacists, as the decision will help in employment disputes related to behaviour."

Going forward

It is clear that the PDA is examining the work of the regulator with a significant degree of scrutiny. The PDA was prepared to hold the regulator to account over these Standards and to protect the interests of its members and will do so again where necessary in the future.

-ENDS-

Note for Editors

The Pharmacists' Defence Association (PDA) is a not for profit organisation and trade union which aims to act upon and support the needs of individual pharmacists and, when necessary, to defend their reputation. It currently has more than 26,000 members.

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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.
- Provide insurance cover to safeguard and defend the reputation of the individual pharmacist.

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