

# Why formal recognition of the **PDA Union** by Boots would be good for patients and pharmacists

**STOP PRESS**  
Boots Judicial Review  
final hearing  
July 23rd and 24th



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# Why formal recognition of the PDA Union by Boots would be good for pharmacists and patients.

John Murphy  
M.R.Pharm.S.

General Secretary  
PDA Union

The road to gaining formal recognition with Boots has been tortuous, with the company expending considerable efforts to prevent its pharmacists being able to negotiate their pay, hours and holidays through a union of their choice.

The PDA Unions application, to have a statutory agreement with Boots to represent pharmacists, initially made in February 2012, has gathered considerable support from Boots pharmacists and has attracted the attention of the legal press, members of parliament and the national media. Boots has fought us every step of the way through the arbitration committee and now the courts. The current state of play is that the judge presiding over the Judicial Review instigated by Boots has extended a hand and invited the PDAU to ask the High Court to declare the current UK law incompatible with European Human Rights legislation and this will place the issue into the hands of parliament.

Some of you will have read the article by the Guardian Journalist Nick Cohen entitled *'Homely' Boots treats its staff like red revolutionaries.*"

In the article, he contends that the venture capital company KKR have trebled the value of their initial investment in Boots from around £1bn when it sold 45% of its stake for £4.5bn to the American company Walgreens. He observes *"it [Walgreens] doesn't like trade unions and doesn't appear to want to deal with them either."*

Walgreens, which has an option to take full control of Boots in 2015, has given its American employee's reasons why they should not join a Union; Boots have written to all its pharmacists expressing some similar views. Boots claims that it wants to speak directly to pharmacists to get their views and that it already has a relationship with the Boots Pharmacists Association (BPA).

Despite the rhetoric, Boots picks and chooses when it consults with its pharmacists as was evident when it unilaterally cut premium payments for Sunday working. Boots did not consult and was found to have acted unlawfully by the Employment Tribunal. More recently, despite guidance from both the GPhC and the Royal Pharmaceutical Society not to sell unlicensed e-cigarettes, Boots has required its pharmacists to do so. It says its decision has the support of its pharmacists, yet in its recent newsletter, the BPA has stated that the company had completely bypassed them on this topic. **These facts demonstrate exactly why pharmacists need a strong Independent Union to represent them.**

Nick Cohen also touched on the issue of professional autonomy and gave reasons for his logic. *"On the one hand, the law treats them [pharmacists] as professionals who are personally liable for mistakes in prescriptions and diagnoses. If a patient is given the wrong medicine and suffers, it is their responsibility. On the other, the conglomerates who employ them treat them as staff, "proletarians," if I may use old-fashioned language, who must obey orders, even though if a mistake happens because the corporation has not given pharmacists the backup they need, the pharmacist rather than conglomerate pays the price."*

Pharmacists who are statutorily responsible for the safety of patients need both independent and professional support when dealing with a corporation whose primary objective is to improve its profits. In our view, this support is essential to helping protect their professional autonomy and consequently the safety of patients.

Nick Cohen also criticised the employer's role in this collective representation debacle;

*"Boots' private equity owners are so jealous of their profits and contemptuous, arguably, of their workforce that pharmacists must seek a change in the very laws of the land to get the bosses to talk to them."*

Indeed the PDAU has been forced to seek a change in the UK law so that Boots cannot deny the human rights of its pharmacists in being able to negotiate their terms and conditions of employment through a union of their choice. We believe that any arrival of new American owners would make protecting such rights more important than ever.

A recognition agreement protected by statute will provide for effective representation. Boots would be obliged to pay more than lip service. We believe that this will strongly support the aim of balancing more the objective of profit making with that of patient safety as delivered through the greater professional autonomy of pharmacists.

This begs the question for all Boots pharmacists; *"What has Boots got to fear from recognising the PDAU?"*

1. [www.theguardian.com/commentisfree/2014/mar/01/boots-chemist-trade-unions](http://www.theguardian.com/commentisfree/2014/mar/01/boots-chemist-trade-unions)

Nick Cohen, The Observer, Saturday 1 March 2014

# 10 Reasons THE PDAU ask you to join us and support us

## 1 Belonging to a strong independent union is in YOUR best interests.

That patient safety is a core objective of anyone operating a healthcare business is a given. However, another important objective of any pharmacy operator is to generate income and profits for its owners. For the PDAU, our primary objective is to protect and enhance the terms and conditions of our members so as to ensure that their professionalism can act in a way as to keep patients safe. Professionalism and commercialism have to be kept in balance as otherwise professional autonomy and patient safety can be put at risk. We argue that since patient safety and professionalism should be key aims of both pharmacists and their employers – these aims can be strongly supported through a union recognition agreement. Aligning the interests of employee's, their employers and patients is a common facet of many successful union recognition agreements.

## 7 An independent judicial process has concluded that The PDAU is likely to have the support of the MAJORITY of YOUR pharmacist colleagues.

The Central Arbitration Committee confidentially studied membership lists and then carefully scrutinised hundreds of pages of evidence presented by Boots and the PDAU at a hearing to consider the extent of support for recognition within Boots. The panel concluded in the face of strong resistance from Boots that there was likely to be majority support for recognition of the PDAU amongst all Boots pharmacists.

## 2 The PDAU is committed to ensuring YOU are always treated fairly whilst at work.

The PDAU has supported hundreds of Boots pharmacists and many pre reg graduates through disciplinary and grievance processes. It is not unusual for investigations and outcomes to be of poor quality, which can cause pharmacists to lose confidence in the process and be afraid to speak out. We are able to deal with individual cases by exposing the failures of the company and securing the right outcome for the pharmacist; however a recognition agreement would considerably improve the quality of employment processes that pharmacists experience and enable them to feel more comfortable in raising concerns.

## 8 The PDAU has always operated transparently in its dealings with Boots over Union recognition.

Our approaches towards Boots for recognition have always been in good faith and in accordance with our objectives and a mandate from members. The CAC decided that during the process of initial discussions between Boots and the PDAU, Boots "*had no intention of recognising*" the PDAU, and that it had "*deliberately misled*" the PDAU "*in order to buy time*" to make a new agreement with the BPA. The agreement which Boots reached with the BPA was in truth a device which was designed to block a formal application for recognition by the PDAU, which was to be presented to the CAC. The CAC agreed that Boots had been disingenuous in its dealings with the PDAU.

## 3 The PDAU is committed to ensuring YOUR employer complies with all aspects of employment law.

Employment Judge Britton found that Boots acted unlawfully when it cut premium pay for long serving employees in 2011 and awarded the claimants compensation for their losses. Currently in excess of 60 Boots pharmacists still have outstanding claims lodged in the employment tribunal service for unlawful deduction of pay, others make claims for age discrimination and constructive dismissal. Further pharmacists are contemplating lodging claims for unfair dismissal and whistle-blowing based on their treatment at work. We believe that had a robust collective agreement been in place all of this litigation and associated stress for pharmacists, not to mention reputational damage for the company, could have been avoided.

## 9 The PDAU employs a team of expert lawyers and pharmacists who are dedicated to support YOU.



Pharmacists have ready access to our legal and professional team whose day-job is to protect members from being treated unfairly. Never before has the demand for our services from Boots pharmacists been so great and a project team has been assigned to deal specifically with the growing caseload. No other organisation can deliver the same level and breadth of expertise in defending pharmacists.

# union support recognition



4

**The PDAU is committed to protecting YOUR rights to collectively bargain.**

Boots is relying upon an outdated piece of employment law to block pharmacists being able to collectively bargain over their pay, hours and holidays. A High Court Judge and the Central Arbitration Committee (CAC – an independent government adjudicator) both agreed that this outdated legislation is in breach of Article 11 of the European Convention on Human Rights. The legal battle continues and it is likely that Parliament will be required to change the law to stop Boots from violating the rights of pharmacists to collectively bargain. The PDAU is committed to protecting such rights of Boots pharmacists.

5

**The PDAU defends YOUR professional autonomy.**

The PDAU has supported a worrying number of Boots pharmacists who believe that professional decisions they have made on the grounds of patient safety have resulted in managers treating them unfairly or harshly. This treatment includes being accused of not being a team player and subsequently graded as “non performing” after they raised concerns over poor staffing levels. Other pharmacists have been subjected to threats of disciplinary action or a performance improvement plan for making patient safety related decisions that managers did not approve of.

The involvement of the PDAU in these situations has always improved the outcomes for pharmacists and the PDAU continues to tackle the company over this form of unacceptable behaviour.

6

**The PDAU is a certified INDEPENDENT trade union**

Boots says that it consults with the Boots Pharmacists Association (BPA). The BPA recently applied for a certificate of independence which the Union Certification Officer rejected; the first such rejection for 12 years. He found that “*the relationship between the BPA and Boots is a relatively cosy one*” and that the BPA is “*liable to interference tending towards domination or control*” by Boots.

An independent trade union can gain statutory recognition within a company to negotiate on terms and conditions; a listed trade union (such as the BPA) can only enter into a voluntary arrangement. The voluntary arrangement is at the gift of the company and the Boots/BPA agreement specifically excludes negotiations on terms and conditions and currently blocks pharmacists from exercising their statutory rights to do so.

10

**The PDAU has a clear strategy and plan for the future which will help to provide YOU with a career structure and more professional fulfilment.**

#### **Boots says:**

Whilst there is much we can agree upon, the PDAU sees the future of pharmacy in a fundamentally different way to us.

#### **PDAU says:**

Boots refers to the PDAU's Road Map vision about a structured career framework in community pharmacy. At the foundations of this framework would be the (newly qualified) practitioner, then the advanced practitioner. They would primarily be leading a more accessible patient facing service operated from the community pharmacy. Remote supervision (the plan to operate a pharmacy in the absence of a pharmacist) would have no part to

play in such a vision. The higher echelons of this structure would involve the specialist and the consultant pharmacist and they would be delivering pharmaceutical care to caseloads of patients on long term conditions referred to them by GP's. Such a role could be delivered from a community pharmacy, from a GP surgery, in a care home or elsewhere, it would not be done as a transactional (MUR style) service over the counter that could be targeted by an area manager. It would rely not so much on the premises, but on the skills and professional expertise of the individual pharmacist and on the creation of a meaningful clinical relationship via named pharmacist patient registration.

A combination of these approaches would give both community pharmacy AND pharmacy in the wider community a much stronger role than is currently the case. We believe that it would enable individual pharmacists to engage in an aspirational career framework and a chance to work with much greater professional autonomy. They would have the final word on how patients should be treated and therefore would be liberated from the area manager target driven MUR style approach currently prevalent in community pharmacy. This vision has proved unpopular with large contractor organisations, but after much hard work over the last four years, it has already become government policy in Scotland. As far as this policy for England, Wales and Northern Ireland is concerned, we believe that the question is not IF but WHEN will this happen?

# Q&A's

## Q. If the PDAU had a formal recognition, what would be different?

**A.** Such an agreement would ensure that pharmacists' views are effectively heard at the earliest stage of any proposed changes that could affect their terms & conditions using a legally binding process. Currently Boots is not obliged to negotiate with any pharmacist representatives nor is there any external arbitration facility. Consequently, the company view is always likely to prevail regardless of any opposition from pharmacists or the BPA. Under a formal recognition agreement, the PDAU would negotiate with the company with a view to reaching agreement; with the option of external arbitration should this not be achieved.

The issue of how the company expects pharmacists to use the two hours absence provided under the RP regulations, how the company sets targets for MURs, the culture of pharmacists having to forgo their rest breaks due to organisational priorities and unfair performance processes which are all matters linked to pay are examples of some of the topics that would be up for negotiation. Members also tell us that their contribution to the business must be fairly recognised, they believe that it is improper for an employer that makes vast profits to require pharmacists to undertake company training in their own time. We expect that other issues may emerge if the company is taken under the full control of Walgreens.

## Q. Boots tells me that it prefers to talk directly with me and consult with the BPA. It says that a separate consultation channel would be more complicated, slow down decisions and be counter-productive at a time of great change; is that right?

**A.** A recognition agreement will not stop the company communicating directly with pharmacists. Our experience shows that where there is an issue of contention, Boots does not always consult.

We believe that at times the company has operated a 'divide and conquer' strategy. This is demonstrated over the lack of consultation during the cuts in premium rates of pay and with what happened to the initial 80 pharmacists who wanted to complain. Rather than to accept our suggestion which was to allow a collective grievance to speed up decisions at a time of great change and resolve the matter efficiently, the company insisted that every person must attend an individual grievance meeting with their line manager. Boots desire to 'talk directly to their employees' caused many pharmacists to abandon their grievance, rather than face a long, laborious and stressful process which took over 5 months to conclude in some cases. It was also confirmed at a recent tribunal hearing that individual grievances had very limited value because there was never any prospect of the company changing its mind through such a process. As previously stated Boots have bypassed the BPA on matters of great importance to pharmacists, such as the sale of e-cigarettes. A formal legally binding recognition agreement with an independent trade union is the only way that Boots will be required to listen fully to the views of its pharmacists.

## Q. It is often implied that PDAU will be a militant union and that pharmacists, as professional people, won't like your approach. What do you have to say about that?

**A.** As an Independent trade union, the PDAU must demonstrate to the Certification Officer under Trade Union legislation that it has democratic credentials and it is free from the employer's influence or control. This means that the members will decide what issues they want to address with their employer and how. If being robust in our dealings so far with Boots so as to successfully protect the interests of our members is termed as being 'militant' then we are guilty as charged. We deal with hundreds of grievances and disciplinary matters and make no apologies for exposing any poor practices and holding the company to account for any unfair treatment of our members. We recognise that there are powerful forces at work seeking to maximise returns on investment, we believe that the interests of pharmacists could so easily be overridden. If it is necessary for the PDAU to stand up and be counted on behalf of Boots pharmacists then we have consistently demonstrated that we will not shy away from that challenge.

As Nick Cohen said in his article (reported on page 2) *"We still have free trade unions in this country and rights to association are still regarded as fundamental liberties, although you would be forgiven for not knowing it, pharmacists need them as much as everyone else."*

## Q. What can I do to help the PDAU achieve recognition?

**A.** Boots unsuccessfully tried to convince the CAC that there was little support amongst pharmacists for PDAU recognition or that the support for PDAU was in decline. This demonstrates how PDAU membership numbers within Boots is important to a successful recognition process. We urge PDAU members to keep informed of developments and encourage other pharmacist colleagues to join the PDAU and take an interest. The company also challenged each decision in favour of our recognition in the courts and the process has therefore been considerably extended to its advantage. A formal recognition agreement will help to protect and enhance the terms and conditions of Boots pharmacists at what is likely to be a time of change and uncertainty.





# I'LL GET BY WITH A LITTLE HELP FROM MY FRIENDS

Pharmacists want to do their very best to deliver a high quality safe service for patients, they expect their performance to be fairly judged and to be rewarded for their contribution. Pharmacists need proper rest breaks and to feel supported if things go wrong, whilst being able to raise concerns in a supportive culture.

Getting the right balance between generating increasing profits and providing a safe pharmacy service underpinned by individual professional autonomy is not always easy.

By joining the PDA Union and supporting our application for a formal recognition agreement with Boots you can have a real influence in shaping your working life, both now and for the future.

If you are already a PDA member – thank you for your continuing support and please encourage your colleagues to join us. If you are not, then we urge you to join without delay.

**If ever there was a time for Boots pharmacists to have their rights protected by the PDA – then that time is now!**

- ✓ More than £1,000,000 compensation already secured from employers who have treated pharmacists unfairly or illegally
- ✓ £500,000 worth of Legal Defence Costs Insurance
- ✓ £5,000,000 worth of Professional Indemnity Insurance

~~17,000~~ *now more than 22,000*  *have you?*  
**pharmacists have already joined the PDA.**

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