

## **Response of the Royal Pharmaceutical Society to:**

### **General Pharmaceutical Council: Consultation on draft amendments to rules 2012**

The Royal Pharmaceutical Society (RPS) is the professional body for every pharmacist in Great Britain. We are the only body that represents all sectors of pharmacy in Great Britain.

The RPS leads and supports the development of the pharmacy profession within the context of the public benefit. This includes the advancement of science, practice, education and knowledge in pharmacy. In addition, it promotes the profession's policies and views to a range of external stakeholders in a number of different forums.

Its functions and services include:

**Leadership, representation and advocacy:** promoting the status of the pharmacy profession and ensuring that pharmacy's voice is heard by governments, the media and the public.

**Professional development, education and support:** helping pharmacists to advance their careers through professional advancement, career advice and guidance on good practice.

**Professional networking and publications:** creating a series of communication channels to enable pharmacists to discuss areas of common interest.

### **General comments**

The RPS welcomes the opportunity to comment on these draft amendments, and have drafted our response with consideration to our recent submission to the **Law Commission joint consultation paper LCCP 202/ SLCDP 153 / NILC 12 (2012): Regulation of Health Professionals** .

Within our submission we were supportive of the Law Commissions consultation proposal of giving broader powers to the regulators to make or amend rules, as we believe that giving greater autonomy to the individual regulator will lead to an agile, effective regulator able to understand the environment for which they are responsible but still acting within the overarching ethos of regulation. We were also supportive of the proposal for consultation with professional bodies prior to any amendment to the Rules of the regulator, and therefore view this consultation by the General Pharmaceutical Council (GPhC) on amendment to its Rules as an extremely important demonstration of the value that the views of the professional leadership body can add to the rigor and robustness of the process of regulation. We believe the best practice in developing Rules requires a scrutiny process to act as a check and balance and the professional leadership body is best placed to provide that scrutiny check for the professional of pharmacy.

## **Question 1**

**Do you agree with the proposal to set minimum and maximum sizes of the statutory committees?**

### **Agree**

We are supportive of the GPhC having flexibility and the discretion to adjust the size of statutory committees to undertake those functions in the most cost effective manner to achieve their statutory function. However the proposals within this consultation are very broad, and would give the GPhC the power to establish a large group of individuals on a “just in case basis”. As stated by the GPhC the proposal is for a “generous maximum size” of committee members, whilst this may add a degree of flexibility for the GPhC, we would be concerned about additional training costs for committee members, which would add to the running cost of the regulator and ultimately add to the fees paid by our members.

The membership of the statutory committees of the GPhC requires a degree of knowledge and expertise that must be current and consistent. Under the GPhC maximum levels of committee membership it would be difficult for all members to maintain and hone their skills if they are not regular members of committees. We would therefore suggest that the maximum number of committee members be equivalent to the number needed to meet the actual demand for membership of these committees and not that proposed in the consultation.

Of greater concern to the RPS is the proposal contained within the explanatory notes 3.3 namely “to ensure the number of lay members of a committee was at least equal to the number of registrant members.” This statement makes no distinction between the two professions the GPhC regulates and appears to put both professions on an equal standing within the regulatory and fitness to practise process.

The RPS is concerned with the growing trend in pharmacy regulation that fails to recognise the hierarchical structure of the individual professions. The GPhC through its Rules must pay recognition to the different professions it regulates. Namely: Registered Pharmacist and Registered Pharmacy Technicians are different roles and pharmacists act in the more overarching function and often supervise the work of pharmacy technicians.

We accept that the same principles apply to both professions but would ask that the GPhC amends its Rules to explicitly recognise the two distinctive professions it regulates. Namely where the Rules

state “registrant members” it should specify either pharmacist or pharmacy technician i.e. “to ensure the number of lay members of a committee was at least equal to the number of pharmacist members, when that committee is discussing a pharmacist.”

## **Question 2**

**Do you agree with the proposal to remove the requirement for a separate Investigating Committee report to the Council?**

**Not sure**

The RPS recognise the merit in the GPhC proposal of amalgamating the reports, our only concern would be that some of the detail and learning for the investigation process may be lost in the production of a single report.

A previous analysis undertaken by RPS in 2008, indicated that Pharmacy receives more allegations per registrant than some other regulators. This may be due to the context within which pharmacy is practised, in particular community pharmacy; frequent financial transactions, easily verifiable mistakes and lack of alternative complaint routes. The detail of the investigation process and ultimately the referral of complaints to the adjudication process is therefore an important element for pharmacy within the whole the fitness to practise process. We would therefore ask the GPhC produces reports in the most cost effective manner, but these reports contain enough detail for both the public and pharmacist to see the full picture of the fitness to practise process and decision making. It would also be useful for the GPhC to work with stakeholders to design reports that are user friendly and provide the level of detail required for scrutiny of a fair and just process.

## **Question 3**

**Do you agree with the proposal to remove the requirement for the Investigating Committee to determine whether the GPhC should consider instituting criminal proceedings, after the committee has applied the ‘real prospect’ and ‘public interest’ tests?**

**Agree**

The proposed amended appears to be a logical amendment to speed up the process and apply consistency to the committee functions.

## **Question 4**

**Do you agree that the Council should provide guidance on the criteria for referral of cases from the Investigating Committee to the Fitness to Practise Committee?**

## **Agree**

We would support the GPhC interpretation that the Council sets the policy framework and thus guidance for the Statutory Committees to implement as they discharge their duties. However in accepting this interpretation there must be provision for the Council to have an effective and robust scrutiny role and to monitor the efficiency and effectiveness of the committees in interpreting its guidance in a consistent manner. The Council must operate in a transparent manner and ensure the public, pharmacists and stakeholders are aware of its guidance and how it measures compliance with its guidance.

Additionally when drafting guidance for the committees there should be a formal step within the process for ensuring any action and decisions taken by the committees must be in the spirit of a just culture namely open, fair , transparent and balancing accountability with learning.

Furthermore there should be provision made within the Rules for the GPhC to take advice from the RPS as the leadership body on the composition of the referral/sanction guidance.

The GPhC must make provision when drafting guidance for committees to review the outcome of any concerns that have arisen as part of an investigation process. There must be provision for the regulators to promulgate any deficiencies identified in investigations in order to learn lessons, avoid such deficiencies occurring again and to improve services. Additionally there must be provision for the GPhC to liaise with other professional leadership bodies and members to highlight any areas of malpractice occurring repeatedly so that awareness is raised and standards improved as necessary.

## **Question 5**

**Do you agree that both committees should advise the Council on the content of guidance on the criteria for referral of cases from the Investigating Committee to the Fitness to Practise Committee?**

**Agree** as per our response to question 4

## **Question 6**

**Do you agree that the Council should provide guidance to inform the Fitness to Practise Committee's approach to decisions on sanctions?**

**Agree** as per our responses to question 4

### **Question 7**

**Do you agree that the Fitness to Practise Committee should advise the Council on the content of guidance to inform the committee's approach to decisions on sanctions?**

**Agree** as per our responses to question 4

### **Question 8**

**Do you agree that the Appointments Committee should determine the size of each statutory committee, within the limits stated in the rules?**

**We agree** with the proposal providing there is clear guidance pertaining to the size and composition of the Statutory Committee.

#### **Size and composition of the Statutory Committees:**

As per our response to question 1 we agree there should be guiding principles for the total number of committee members, in our view the maximum proposed number in this consultation is are too generous.

The RPS supports the need for an open, robust, transparent process of appointment to the GPhC statutory committees and would support the GPhC to amend the Rules to undertake this function in the most cost effective manner possible.

In our view there must be sufficient members to offer efficient decision making and provide the spectrum of views that is required to ensure the committee fulfils its function. There must be plurality of expertise and perspectives, with members being appointed for their skills, knowledge and ability to undertake this duty both in an impartial manner and in the public interest. The selection of candidates with the required skills may be considered a generic task that can be undertaken by an appointment committee but all appointment must be aligned with the Commissioner for Public Appointments current code of practice and be based on the Nolan Principles related to merit, fairness and openness.

Additionally all committees must be balanced in membership between lay members, and pharmacists members when a pharmacist is being investigated by that committee.

### **Question 9**

**Do you agree with the proposal to allow some common membership of the Appeals Committee and the Fitness to Practise Committee?**

**Agree,**

The proposal seems logical with the proviso that there is a robust appointment process and scrutiny of that process by Council, and stakeholders.

**Question 10**

**Do you agree that the rules should provide flexibility about how the competencies for statutory committee members and the procedure for suspension and removal are developed, while retaining the requirement for the Council to determine these matters?**

**No**

We are unsure of responding to this proposal as it is lacking the detail of reassurance that we would seek for governance of a robust process.

**Question 11**

**Do you agree with the proposal to provide more flexibility in statutory committee members' terms of office?**

**Agree.**

This seems a logical amendment to the Rules

**Question 12**

**Do you agree with the proposal to have a single reserve list for the statutory committees?**

**Agree.**

We are supportive of the GPhC having the flexibility of a single reserved list, providing all committee appointments are aligned with the Commissioner for Public Appointments current code of practice and are based on the Nolan Principles related to merit, fairness and openness.

**Question 13**

**Do you agree with the proposal to allow members of the statutory committees secretariat to act as secretary to any committee as required, provided that anyone who acts as secretary to the Investigating Committee in relation to a fitness to practise allegation must not act as secretary to the Fitness to Practise Committee in any proceedings in connection with that allegation?**

### **Not sure**

The sharing of expertise and resources is a logical argument; however we are unsure in supporting that argument in this instance, as we are unclear why the present system is not functioning effectively, and if the current arrangements are not flawed why a change is needed.

Hence for reasons of governance, workload and timeliness we are more inclined to support keeping the status quo and separation of secretariat to the committees.

### **Question 14**

**Do you agree that the chair of the Appeals Committee should be able to determine the size and composition of a committee tasked with hearing a certain case or cases?**

We agree in principle to this proposal but would refer to our previous response to question 1 and question 8 on size and composition of the Statutory Committees: namely

- As per our response to question 1 we agree there should be guiding principles for total numbers of committee members, in our view the maximum proposed number in this consultation is too generous.
- The RPS supports the need for an open, robust, transparent process of appointment to the GPhC statutory committees and would support the GPhC to amend the Rules to undertake this function in the most cost effective manner possible.
- In our view there must be sufficient members to offer efficient decision making and provide the spectrum of views that is required to ensure the committee fulfils its function. There must be plurality of expertise and perspectives, with members being appointed for their skills, knowledge and ability to undertake this duty both in an impartial manner and in the public interest. The selection of candidates with the required skills may be considered a generic task that can be undertaken by an appointments committee but all appointment must be aligned with the Commissioner for Public Appointments current code of practice and be based on the Nolan Principles related to merit, fairness and openness.
- Additionally all committees must be balanced in membership between lay members, and pharmacists when a pharmacist is being investigated by that committee.

In the case of the Appeals committee we believe this panel must be robust and comprise, as a minimum, a legally qualified chair, a peer of the professional being judged and a lay member. This would then provide expert knowledge, impartiality and context to the panel. In the case of

pharmacy, it should be ensured that the professional panel member is a pharmacist where a pharmacist is being investigated.

Additionally we would ask for clarity of the term registrant members especially in respect to 3.35 “the number of registrant members did not exceed the number of lay members by more than one.” As per our response to question 1 we would ask that the GPhC amends its Rules to specify the two distinctive professions it regulates. Namely where the Rules state “registrant members” it should specify the distinct professions it regulates i.e. “ the number of pharmacists members did not exceed the number of lay members by more than one”

#### **Question 15**

**Do you agree that the chair of a statutory committee, whether or not legally qualified, should have the option of having a legal adviser present?**

As a principle we believe the chair of all statutory committees should be legally qualified.

In response to your question we believe the chair of the committee should always have the option of having a legal adviser present, and have the ability to seek further legal advice if needed as this adds robustness to the process and findings of the committee.

#### **Question 16**

**If not, do you agree that the chair of a statutory committee, whether or not legally qualified, should have the option of having a legal adviser present but that, if the Investigating Committee’s chair is not legally qualified, it must have a legal adviser present when considering whether to refer a case to the Fitness to Practise Committee or whether to notify the Registrar that the GPhC should consider bringing criminal proceedings?**

As a principle we believe the chair of all statutory committees should be legally qualified.

In response to your question we believe chair of the committee should always have the option of having a legal adviser present. This is particularly important for consideration of criminal proceedings



In respect to the investigation committee there must be legal representation on the committee, furthermore, if in exceptional circumstances they require further legal advice then the chair should be able to request it, as this adds robustness to the process and findings of the committee.

#### **Question 17**

**Do you agree with the proposed definition of 'defence organisation'?**

**Agree**

#### **Question 18**

**Do you agree with the proposed changes to the arrangements for identity checks?**

**Agree.** The GPhC must be in a position to satisfy itself of registrant identity in an efficient, cost effective manner and thus reassure the public of a robust system of regulation.

#### **Question 19**

**Do you have any other comments you wish to make?**

We would ask that the GPhC takes every opportunity to embed within its processes of Rules amendment, production of guidance and committee decisions a *Just Culture*.

We believe the making and amending of Rules by the GPhC is an ideal opportunity to ensure the regulator delivers on its commitment within its second annual report of:

“building our ‘learning’ approach,” and “to encourage a culture of openness among pharmacy professionals– and this includes whenever ‘adverse incidents’ occur, such as single dispensing errors. Anything that deters individuals from disclosing such adverse incidents is potentially damaging to public safety.”

We would ask that, when Rules amendments are being considered by the GPhC they make a conscious decision to consider if these amendments will lead to a *Just Culture* of openness, transparency, fairness and balance accountability with learning, leading to an increase in the safety culture and ultimately patient safety.

Furthermore when drafting guidance for the committees there should be a formal step within the process for ensuring any action and decisions taken by the committees must be in the spirit of a just culture namely open, fair, transparent and balancing accountability with learning.

The GPhC should also demonstrate a self learning culture, where they review if any of their Rules or guidance has prohibited a *Just Culture* for the registrant and ultimately lead to an environment that perpetrated the offence that lead to the registrant being brought before the Regulator.