

COMMUNITY PHARMACY SCOTLAND

Community Pharmacy Scotland (formerly known as the Scottish Pharmaceutical General Council) is the body recognised to represent Scotland's 1246 community pharmacy contractors. It negotiates on their behalf with the Scottish Government on all matters affecting terms of service and remuneration for contractors' NHS work.

Our prime focus in recent years has been the development of a new contract for pharmacy contractors, one which will call for the delivery of new services, potentially in novel ways, but continuing to place emphasis on the opportunity which community pharmacy offers in terms of access for patients to healthcare services throughout Scotland.

We welcome the opportunity to respond to this consultation of the current control of entry arrangements. We take the view that the current legislation is, in general, fit for purpose but there is a need to tidy up some anomalies and to ensure that the procedures are followed in a rigorous and consistent manner.

CONSULTATION RESPONSE FORM

Consultation Proposals - Part 1

Control of Entry (Pharmacy Applications) and Dispensing GP Practices

The stability of NHS services in remote and rural areas

Proposal 1:

The Scottish Government proposes amending legislation that will introduce the designation of ‘*controlled remote, rural and island localities*’ for the purposes of considering pharmacy applications in these areas of Scotland and introducing a ‘Prejudice Test’ in addition to the test of ‘necessary or desirable’ (the adequacy test).

Do you agree with this proposal?

Yes

No

Please tell us the reason for your answer in the box below

Potentially, we could support the designation of “controlled remote, rural and island” areas; there are however issues around the definition of a controlled locality. For example in rural areas there are examples of pharmacy contractors who operate in small villages where the local population alone would not support a pharmacy but it is augmented by patients travelling from surrounding areas to access the services. It would be reasonable to also consider GP catchment area when defining the pharmacy “neighbourhood”.

Further to this it cannot be assumed that all rural populations are the same. Often populations in rural areas can be elderly and will have greater need for NHS services. To address this we believe the age of the population and SIMD should be used to give a greater understanding of the population needs when the pharmaceutical care services plan is developed.

We welcome the Government’s statement that dispensing income is not intended to subsidise primary medical services and believe monies should be made available to help dispensing practices move away from perceived reliance on dispensing income. We recognise that in remote and rural areas GPs are also being asked to provide medical services which are not always in line with those provided in other parts of Scotland and this in turn may prove a barrier to recruitment of a replacement GP.

It is important to recognise that a dispensing service providing by a GP is not comparable to the pharmaceutical care which can be provided by an NHS community pharmacy. To partially address this gap, we support the “Wilson Review” recommendation that standards of dispensing and the payment arrangements (including drug cost reimbursement) should be the same for pharmacies and dispensing doctors.

We would require more details on how the “prejudice test” will be applied before we could support it. The test would need to be objective and applied against what is considered adequate medical services nationally. We are aware that dispensing practices often have more GP’s per head of population than other areas of Scotland. Dispensing income and the perceived conflict of interest this could represent should not be used to subsidise differential

incomes and enhanced staffing levels.

Proposal 2:

The Scottish Government proposes that the designation of an area as a ‘*controlled remote, rural and island locality*’ should be reviewed periodically by NHS Boards so that NHS provided or contracted services are responsive to population changes, and changing healthcare needs and priorities both locally and nationally. It is proposed that the review should be carried out at a minimum of every three years.

Do you agree with this proposal?

Yes

No

Please tell us the reason for your answer in the box below

The review should take place annually and should link in closely with the pharmaceutical care services plans

Proposal 3:

The Scottish Government is of the view that people living in remote, rural and island areas should have access to NHS pharmaceutical services and NHS primary medical services that are no less adequate than would be the case in other parts of Scotland.

Where the dispensing by a GP practice is necessary, it should be supplemented with pharmaceutical care provided by a qualified clinical pharmacist sourced by the NHS Board to ensure the person-centred, safe and effective use of the medicines. NHS Boards would be required to develop local plans sensitive to local circumstances to achieve this.

Do you agree with this proposal?

Yes

No

Please tell us the reason for your answer in the box below

CPS is supportive of developing innovative ways of enabling patients in remote, rural and island areas to access pharmaceutical care. Patients in other areas of Scotland access pharmaceutical care services from the existing community pharmacy network. In order to ensure patients in remote rural and island locations receive the same quality of service as the rest of the population, we believe the necessary expertise should be sourced from within that network. CPS believes a redirection of resource to the existing network from NHS Boards and utilising to the full the existing skills will be the most cost-effective way to deliver

pharmaceutical care to these patients.

IT solutions such as telehealth should also be considered to facilitate ways for patients to source pharmacy expertise from the community pharmacy network. Patient choice is an important principle when accessing pharmacy services in Scotland and we believe patients should be able to source their pharmaceutical care from the contractor of their choice.

In our view the provision of most pharmaceutical care is planned rather than acute and as CMS develops that should increase. The “one stop shop” argument often used in support of dispensing practices fails to recognise there is rarely an immediate need for most pharmaceutical care. All GP practices should stock a supply of medicines for use in acute situations and that could be augmented to some degree in “remote, rural and Island areas”.

Consultation Proposals - Part 2

Wider Pharmacy Application Processes

The proposals discussed in Part 2 apply to all applications to open a community pharmacy whether in a remote, rural or island area, or in other parts of Scotland.

Public consultation and the community voice

Proposal 4:

The Scottish Government proposes that the regulatory framework going forward will look to include a community representative among those who should be notified, as an ‘interested party or persons’, of any application to open a community pharmacy in the locality. The community would therefore in statute be considered as a body or party whose interests may be significantly affected by the pharmacy application.

This would be a nominated representative from, for example, the local Community Council or the local Residents Association or another appropriate local community representative body recognised by the NHS Board.

As an ‘interested party’ the community representative would be entitled to make written representations about the application to the Board to which the application is made within 30 days of receipt of the Board’s notification of the application.

In addition, where the NHS Board PPC decides to hear oral representations, the community representative will be entitled to take part, together with the applicant and the other interested parties, and would be given reasonable notice of the meeting where those oral representations are to be heard. Once each interested party, including the community representative, has presented their evidence in turn they would then leave the hearing leaving the PPC to consider all the evidence presented.

As an ‘interested party’ the community representative will also have a right of appeal against the decision of the NHS Board PPC to represent the views of the local community.

Do you agree with this proposal? Yes No
Please tell us the reason for your answer in the box below

We welcome the principle of more involvement of the local community. We believe however the concept is ill conceived and in practice unworkable. It is also a surprising proposal given that the current Scottish Government abandoned having elected representatives on Health Boards. We believe it is inevitable a number of issues will arise. For example:

1. How would the “interested party or person” have a mandate to speak for the whole community? Some applications cover different communities which would have various potential representatives. It is also entirely possible that two or more communities could have completely opposing views.
2. The interested party or persons would need to have a full understanding of the legal test applied to applications.
3. The “interested party or person” would need to understand the implications of awarding, or rejecting an application. For example most patients would want a pharmacy within short walking distance of their home but the current global sum for pharmacy funding is not large enough to allow mass proliferation of pharmacy contracts across the country without a serious destabilising impact on the current network
4. The “interested party or persons” must not express a personal bias either for or against the application and must provide a balanced view from the community
5. If an application is made in a remote, rural or island locality where there is a dispensing practice it is likely that all members of the local community will be patients of that practice and will feel compromised and possibly find it hard to give an objective view of the application.

CPS has concerns that this appears to be an attempt to completely overhaul a process which is not broken. The 2009 regulations (amended 2011) have delivered a pharmacy network throughout Scotland offering an efficient and cost effective network with unrivalled access to the NHS for patients all across the country. It appears the agenda to make fundamental changes to the application process has been driven by a minority when their wish has not been met and has ignored the views of the silent majority who are supportive of the adequate service already provided by community pharmacies in their neighbourhood.

Proposal 5:

The Scottish Government is of the view that in the future PPC hearings should be handled in such a way so that no one person or organisation is able to dominate the entire hearing. This might include options such as limiting the time allocated to give oral representations or the issuing of guidance to PPCs. The Scottish Government thinks that all PPC meetings in future should follow a standard process in the management of PPC Hearings.

Do you agree with this proposal? Yes No

Please tell us the reason for your answer in the box below

We are aware of issues surrounding PPC hearings in the past where one party has dominated the hearing. We believe, rather than needing to be prescriptive with process, a strong Chair should be able to run the hearing as they see fit and avoid inappropriate amounts of time being taken by any party.

Guidance could be issued to the Chair of the meeting around a format but we believe there must be flexibility to allow the applicant and other interested parties to have a fair hearing. We believe any guidance must only enable the chair to facilitate the meeting. If the chair is appropriately trained and experienced there is no reason to impose a strict framework.

We are aware of issues in some boards where hearings are held in the evening which can have a time limiting impact. It is vital that all interested parties receive a fair hearing and that inappropriate time constraints should not be in place.

We propose that all PPC hearings should take place during normal business hours to allow a fair hearing.

Proposal 6:

The Scottish Government proposes that going forward those assisting in oral representations by the applicant, the community and other interested parties in attendance are able to speak on behalf of those they are assisting.

Do you agree with this proposal?

Yes

No

Please tell us the reason for your answer in the box below

We would require further details before we could offer our support to this proposal. In principal we have no objection to allowing someone to speak on behalf of those they are assisting provided that only one person is allowed to speak for each interested party and that they are not a member of the legal profession.

Proposal 7:

The Scottish Government proposes that going forward those applying to open a pharmacy, for the purpose of providing NHS pharmaceutical services, should first enter into a pre-application stage with the NHS Board to determine whether there is an identified unmet need in the provision of NHS pharmaceutical services.

This would assist NHS Boards in determining the urgency of the demand for NHS pharmaceutical services identified by the applicant. NHS Boards Pharmaceutical Care Services Plans would need to reflect an assessment of service gaps and where need is most urgent.

Where an application proceeds, the applicant must be able to provide evidence to the NHS Board and the affected communities that every effort has been made to publicise the intention to open a community pharmacy and to consult

and obtain responses from residents in the associated neighbourhood. Also, the notice must be advertised in a newspaper and all circulating local news free-sheets and newsletters in the neighbourhood in order to reach the vast majority of residents.

NHS Boards will also be required to do the same level of advertising in relation to its consultation activities.

Do you agree with this proposal? Yes No

Please tell us the reason for your answer in the box below

We believe the concept of a pre-application stage is flawed and would require far more information before we could consider supporting any such proposal. A number of concerns must be addressed as currently we believe the concept may be unworkable.

1. Would the pre-application stage be a mandatory part of the application process? If not it would be damaging to the application process if someone who enters pre-application with the board is then beaten to a full application by some who decides not to engage the board.
2. The pre-application process must not prevent applications from moving forward to be assessed under the legal test. The NHS Boards Pharmaceutical Care Needs Assessment (PCNA) is a subjective plan and should be subject to challenge should the applicant have identified an unmet need. It is possible the Board's PCSP may be out of date. In such circumstances we would argue that the applicant should have the power to access a PPC hearing.

CPS is aware that concerns are often raised around the quality and objectivity of the consultation process. We believe that to improve the quality and remove any perceived bias of the process adopted, the NHS Board should have responsibility for undertaking this work. This should be funded by the applicant in order to ensure there is no increase in cost to the NHS.

We believe that flexibility with regards to advertising should be offered to the applicants as different neighbourhoods will be best reached in different ways. A comprehensive consultation process delivered by the NHS Board should also raise awareness of an application.

Proposal 8:

The Scottish Government proposes that going forward NHS Boards specify to what extent the views of the community have or have not been taken into account in their published decisions on the outcome of a pharmacy application.

Do you agree with this proposal? Yes No

Please tell us the reason for your answer in the box below

CPS believes it is important that the Board recognise and acknowledges the views of the public with regards to the outcomes of applications. It is vital however that the measure by which the application is judged is the legal test of adequacy, and whether it is necessary or desirable to grant the application to gain an adequate service.

Members of the general public should be made aware that although the PPC must recognise the views of the public the legal test is the critical factor in assessing pharmacy applications.

We believe that our proposal for the NHS Board to accept responsibility for the public consultation should ensure the public's views are adequately represented.

Securing NHS pharmaceutical services

Proposal 9:

The Scottish Government considers that NHS Boards should be able to take into account how NHS pharmaceutical services would be delivered in practice in the long term after an application has been received. This includes taking into account the financial viability of the pharmacy business proposed. This is an important factor in securing these services in the long term.

Do you agree with this proposal? Yes No

Please tell us the reason for your answer in the box below

CPS believes the knowledge and experience of a PPC is not ideally suited to assess the viability of an individual business. For the future it would be beneficial to consider whether it is in the NHS interest to fund the NHS pharmacy services the new application would deliver. That consideration should also look at the overall impact on service delivery by pharmacies in that neighbourhood.

Timeframes for reaching decisions

Proposal 10:

The Scottish Government proposes that going forward the regulatory framework would require NHS Board PPCs to make a decision within 6 weeks of the end of the public consultation process and the NAP to make a decision within 3 months upon receipt of an appeal (or appeals) being lodged.

In more complex cases the timeframe would be made extendable where there is a good cause for delay.

Do you agree with this proposal? Yes No

Please tell us the reason for your answer in the box below

We agree with the proposal although it may be difficult for the PPC and NAP to meet these timescales on some occasions

Expert advice and support to PPCs during deliberations

Proposal 11:

The Scottish Government proposes that going forward the regulatory framework would make provisions for the appropriate role of an independent legal assessor acting in a supporting and advisory capacity, including providing advice and guidance on technical and legal aspects of the application process during PPC deliberations.

Do you agree with this proposal?

Yes

No

Please tell us the reason for your answer in the box below

We strongly agree with this proposal as a legal assessor independent of the Health Board should strengthen the application process. We can see a number of benefits to an independent legal assessor being present at every PPC hearing.

1. Any legal advice required could be promptly delivered rather than calling central legal office and waiting for a reply
2. The likelihood of appeals being lodged and upheld will be reduced if the chair can be guaranteed access to a prompt legal opinion.

CPS believes it is also important that the chair and PPC members receive adequate training and support in order to guarantee a robust process for all parties.