

PSNC Health Policy and Regulations Subcommittee Agenda

Meeting to be held on Tuesday 10th January 2017

Radisson Edwardian Grafton Hotel, London, 3.45 -5.15pm

Members: Ian Cubbin (Chair), David Evans, Prakash Patel, Janice Perkins, Stephen Thomas.

Apologies for absence

No apologies for absence have been received.

Minutes of the previous meeting and matters arising

The minutes of the last subcommittee meeting held on 11 October 2016 are set out in **Appendix HPR 01/01/17 (pages 7-9)**.

Agenda and Subcommittee Work

The PSNC strategic Plan 2017-2020 and PSNC 2017 Plan are attached with the main committee agenda; the items for the subcommittee are:

12. Considering and where necessary, proactively seeking, potential changes in the regulatory framework that could support contractors and robustly responding to any Government proposals, including on remote dispensing and supervision (HPR);

13. Ensuring administration of the regulations is undertaken properly and effectively, advising and supporting LPCs and contractors where necessary (HPR);

Agenda items are set out under the strategic aims of the year, first matters for decision, second, matters of report. Possible draft subcommittee work plans are also included.

All ongoing matters are set out in **Appendix HPR 02/01/17 (pages 10-11)**.

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| 1 | Considering and where necessary, proactively seeking, potential changes in the regulatory framework that could support contractors and robustly responding to any Government proposals, including on remote dispensing and supervision |
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Matters for Decision

a) Discretionary payment claims - Switching

NHS England has no formal process for making discretionary payments and a number of contractors are seeking such payments, particularly in relation to issues associated with the submission and payment of electronic prescriptions. These issues were under discussion in 2015 and before and discussions with DH are ongoing.

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Next steps:

Meeting with DH on 9 January 2017; when appropriate, subcommittee and committee consideration of proposed changes to the Drug Tariff.

Matters for REPORT

b) Judicial Review

On 20 October 2016, a two-year funding package was imposed on community pharmacies in England.

On 1 December 2016, PSNC issued proceedings seeking judicial review of the decision and an update is provided in the main committee agenda.

On 21 December 2016, leave or permission for judicial review was granted with a date for the hearing in the week commencing 6 February 2017. The Judge also indicated that if DH applies for a later hearing date, he would be willing to consider whether implementation of the legislation (imposed decision) should be delayed.

Next steps:

12 January 2017, DH hearing to vary the directions (timetable). The judicial review hearing is listed for 7/8 February 2017.

c) Pharmacy Access Scheme – PhAS

As part of the two-year final funding package imposed upon community pharmacies in England, DH introduced the Pharmacy Access Scheme (PhAS), with the stated aim of ensuring that a baseline level of patient access to NHS community pharmacy services is protected.

PSNC has published initial information on PhAS, the BSA has published an application form and DH is publishing some FAQs.

In response to PSNC questions about LPS pharmacies, the DH has stated:

What is the position for LPS pharmacies that return to the pharmaceutical list – will there be an exception for these pharmacies?

The intention is that the policy intent of the PhAS be applied consistently. So if a LPS pharmacy would have been eligible for the PhAS, were it on the pharmaceutical list, and the terms of the contract mean that the funding reductions are applied, NHS England will consider a contract variation. If that pharmacy then later moves to the pharmaceutical list, they would receive the PhAS (it would go from a 'contract variation' payment to a 'PhAS payment' but the intent would be that they wouldn't lose that payment).

Will LPS pharmacies have an extended application period given that for some their contracts do not end until March 2017 or later?

NHS England local teams first need to undertake the work described in paragraph 4. This will quantify the size of this issue. Once the NHS England central team have that information it will then be able to make an informed decision and communicate that to PSNC.

Next steps:

PSNC to publish additional information shortly. Await NHS England's decision on LPS pharmacies.

d) Market Entry

On 5 December 2016, amendments to the 2013 Regulations came into force which facilitate pharmacy business consolidations, from two or more sites on to a single existing site.

PSNC has published initial information about the changes.

NHS England confirmed that an update to the Pharmacy Manual will be published shortly.

Next steps:

PSNC to publish more detailed information.

Subcommittee Plan for 2017

The subcommittee is asked for its views on the proposed workplan.

Subject	<u>Status</u>	<u>Comment</u>
Judicial Review	Ongoing	Hearing listed for 8/9 February 2017
Discretionary claims and EPS	Ongoing	Meeting with DH on 9 January 2017
Remote dispensing, including hub and spoke dispensing	On hold	DH has not progressed hub and spoke dispensing following the close of the consultation in May 2016 and a stakeholder meeting in early September 2016 DH did not progress separate terms of service for DSPs in the 2016 consultation and the decision of 20 October 2016 included the following under the heading 'later changes': <i>3.46. We recognise that there are different types of community pharmacy providers and, as part of our initial proposals, we set out our intention to explore new terms of service for distance-selling pharmacies in recognition of their different service offering.</i> <i>3.47. This will be the subject of further consultation with the PSNC.</i>
Supervision / rebalancing	-	Any discussions taking place have not included PSNC
Review the rules on the selection, training and guidance provided to NHS England's Pharmaceutical regulations committees to seek to ensure their decisions are lawful	To start	This arises from issues with the NHS England West Midlands Team
Responses to consultations	Ongoing	-
FMD	-	Support as required to the Director of NHS Services
Direction of Prescriptions	To start	Consider a plan to seek to resolve the issue with changes in legislation.

2 Ensuring administration of the regulations is undertaken properly and effectively, advising and supporting LPCs and contractors where necessary

MATTERS FOR REPORT

a. Primary Care Support England (PCSE)

PCSE (formerly Primary Care Support Service – PCSS) provides administrative and payment services to community pharmacies amongst others. On 1 September 2015, Capita assumed responsibility for the delivery of most of NHS England’s primary care support services.

During the summer of 2016, the Director of Operations and Support wrote to NHS England about poor delivery of controlled stationery, poor market entry management and poor customer service and received a response from NHS England director Karen Wheeler. Since then, a review of PCSE service delivery has been announced. There have also been changes in the senior management at PCSE/Capita and NHS England staff have been drafted in to help address operational issues.

Since the summer, problems have continued with market entry and customer service. In addition, the office has received increasing numbers of reports of problems with pre-registration payments.

The Director of Operations and Support raised the issues again with Karen Wheeler and reiterated PSNC’s request for a compensation scheme for contractors affected by the ongoing problems with PCSE/Capita; she has indicated this is something NHS England would like to discuss with PSNC.

Next steps:

A meeting with Karen Wheeler is being arranged for discussion of a compensation scheme.

b. Annual completion of the IG Toolkit and the recent actions of the NHS England West Midlands team.

In late August/early September 2016, the NHS England West Midlands Team started to address contractors' failure to complete the online IG Toolkit, seeking to recover remuneration paid to contractors for MURs during 2015/16, if the online IG Toolkit had not been completed in that year. It claimed there had been an overpayment. This was incorrect and the recovery of remuneration was unlawful; and the money withheld was later repaid to contractors.

In November 2016, the NHS England West Midlands Team sought to recover similar amounts of money from contractors for the same reason, for the previous 3 years. The basis for withholding remuneration was the performance procedures of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. In the opinion of the Director of Operations and Support, the NHS England West Midlands team followed a process and made decisions that were not lawful.

The Director of Operations and Support has been supporting the 9 LPCs concerned throughout the autumn as these events have unfolded and PSNC and the NPA are supporting 3 contractors who are appealing their respective (November 2016) breach notices and withholdings. The issues were escalated to the NHS England central team and then subsequently to Alison Tonge, Director of Commissioning at NHS England West Midlands. A copy of the letter to her dated 20 December 2016 is attached as **Appendix HPR 04/01/17 (pages 19-36)** which sets out the various PSNC concerns.

On 28 December 2016, the NHS England West Midlands team indicated it would be withdrawing many of the decisions made against contractors, stating:

A spokesperson for NHS England (West Midlands) said:

“The Pharmaceutical Services Regulations Committee (PSRC) has looked into the matter and shared its findings and recommendations with NHS England (West Midlands).

“NHS England (West Midlands) note the decision made by PSRC that the completion of the IG toolkit is a mandatory requirement for contractors. Where contractors have not completed the toolkit they have not fulfilled the requirements of their contract and any monies paid for this should be reclaimed.

“It has been agreed that the historic review of contractors will cease and any further deductions in 2016/17 will not be made. Any monies currently re-claimed for historic non-completion of the IG toolkit will be returned. NHS England (West Midlands) will implement the recall of any monies overpaid for any failures to complete the IG toolkit for the financial year 2016/17 onwards. All contractors have until 31 March 2017 to complete the toolkit for this financial year. Contractors have been made aware of this requirement and date.”

[Draft message]

Next steps:

A reply is awaited from NHS England. To clarify the position for contractors with non-historic deductions and those appealing the now withdrawn breach notices.

c. Equality Act and its applicability to the provision of MDS trays

To clarify and confirm the requirements of the Equality Act to the provision of MDS trays, legal advice has been sought from external counsel.

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Next steps:

To consider the advice and any further advice received at a conference with external counsel, before promulgating the advice to contractors.

Subcommittee Plan for 2017

The subcommittee is asked for its views on the proposed workplan.

<u>Subject</u>	<u>Status</u>	<u>Comment</u>
PCSE / Capita	Ongoing	A compensation scheme for pharmacy contractors is sought Information to be provided if any NHS England review of Capita's performance requires this.
Online IG Toolkit	Ongoing	Supporting West Midlands contractors and ensuring that NHS England acts in accordance with the regulations

All PSNC members can attend this meeting and may speak with the permission of the Chairman.

Equality Act and MDS trays	Ongoing	Advice to ensure that MDS trays need to be provided only to those who need them according to the Equality Act
CPAF	Annual support to the process	-
Support for LPC and contractor queries	Ongoing	e.g. briefings
LPC support for activities in 2017 to support the review of PNAs by HWBs in 2018	To start	Revise questionnaire for LPCs to use to assist assessment of pharmaceutical needs
Contractor checklist for required actions in 2017 to comply with the Terms of Service	To start	Following West Midlands action on compliance with the online IG Toolkit

Any other business.

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Appendix HPR 01/01/17

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Report on progress on matters previously discussed by the subcommittee (January 2017 agenda)

Matters worked on between January 2016 to present (starting with most recent open workstream items and descending to closed workstream items)			
Item/description of workstream	Most recent action/s	Current status	Date of last subcommittee meeting
Direction of Prescriptions	To continue to support LPCs and contractors, and collate evidence, sharing with Pharmacy Voice and the NPA where appropriate.	Open	10/16
Visitor and Migrant cost recovery	The regulations officer to continue attending these meetings	Open	7/16
Discretionary payments	Agenda item	Open	10/16
Pharmacy numbers – planned reduction	Now part of the judicial review. Agenda item.	Open	10/16
Planned protection for patient access – Phas	Matter of report. Agenda item.	Open	10/16
Market entry	Matter of report. Agenda item.	Open	10/16
Hub & spoke	Matter of report. No further substantive update has been provided by DH since their decision on 7 June 2016 to postpone plans on hub and spoke dispensing.	Open	10/16
Accessible Information Standard	Await NHS England's review of the Information Standard by March 2017	Open	07/16
Rebalancing	Director of Operations & Support has followed up previous requests to DH to be part of the working group on supervision, but without success.	Open	07/16

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Discretionary payments and “switching” etc.	Was “on hold” pending community funding consultation outcome. Department of Health meeting on 28 September. HPR to consider whether legal advice is to be sought. Agenda item.	Open	10/16
ToS for DSPs	On 20 October 2016, as part of the Government funding imposition, DH confirmed that it is their intention to explore new terms of service for distance-selling pharmacies in recognition of their different service offering. This will be the subject of further consultation with PSNC.	Open	10/16
FMD	Delegated Acts issued. Department of Health currently holding meetings with stakeholders regarding implementation. Following a PSNC response to the proposed UK MVO, it is likely that PSNC, CPW, CPS and CPNI, with other community pharmacy representatives will be directly involved with the formation of the UK MVO. Issues now with the professional development team at PSNC.	Open	07/16
Co-Commissioning	Informal discussions so far. Legislation may need to be amended, and the co-commissioning will be “complementary and supplementary to the core contract”. The Director of Regulation and Support provided comments on a draft of: ‘Managing conflicts of interest: revised statutory guidance for CCGs’. The revised guidance was published in late June 2016.	Open	7/16
PCS England and Capita	On 1st September 2015, Capita took over responsibility for primary care support services. PSNC has written to NHS England to raise concerns. Agenda item.	Open	10/16

Text in **yellow highlight** is confidential

Text **is blue** has been revised this month

All PSNC members can attend this meeting and may speak with the permission of the Chairman.

Appendix HPR 03/01/17

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All PSNC members can attend this meeting and may speak with the permission of the Chairman.

Appendix HPR 04/01/17

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