ALL-PARTY PHARMACY GROUP

David Lammy MP
Parliamentary Under-Secretary
Department of Health
Richmond House
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10 June 2003

Dear David

The All-Party Pharmacy Group has taken a close interest in the future of the control of entry regulations since the publication of the OFT's report in January. You were present at our meeting in February and you saw the report and recommendations we sent to you and ministerial colleagues in the light of that meeting. Since then we – like you – have continued to be inundated by constituents and others concerned by the effect that de-regulation would have on local pharmacy services. We are also aware of growing concerns that pharmacists' investment and service expansion decisions are on hold pending the resolution of this issue. This is not merely frustrating for them, it is also bad news for patients and the NHS.

We are aware that the government is currently in the process of developing "a balanced package of proposals" for implementation in England. We are pleased to see that the Department of Health's approach to its part in that process has reflected the view we set out in our report. Namely, you have asked the PSNC, on behalf of community pharmacy, and the NHS Confederation, on behalf of PCTs, to produce proposals for change. We have had sight of their proposals and we consider them to be a sound basis for moving forward.

We are keen to input our thoughts and views on what the package should contain, and we are interested in gaining a better understanding of the policy making process in respect of this issue, hence my reason for writing to you now.

PROCESS ISSUES

Interim report

When the government made known its initial response to the OFT's report, ministers said that a consultation document would be published in July, before the summer recess. There was also a commitment to make a progress report to the House during June. When you appeared before the Health Select Committee on 15 May you made no reference to the progress report, instead repeating the commitment to publishing the consultation document in July. Do you still expect the government to be making a progress report in June? Given the extraordinary level of interest and concern that this issue has generated amongst colleagues (not just the 120 or so who are members of this Group) we would be keen to see ministers keeping Parliament closely informed of developments prior to the publication of the consultation document.

The devolution effect& competition vs health

There appears to be some confusion as to the manner in which this matter is to be handled in different parts of the UK. As you know, the devolved institutions in Scotland, Wales and Northern Ireland have expressed antipathy towards the OFT's report and recommendations. In Whitehall, the government has acknowledged the need to enable community pharmacies to continue to fulfil their current valued role but has talked of responding with a "balanced package of measures".

We believe there is a need for clarity as to the basis on which policy is being reviewed and changes proposed. Is the balance that is required a balance between competition policy objectives and health policy objectives? If not, it would be helpful to know what other balance the government is seeking to achieve. If it is, then wouldn't logic suggest that the government should seek consistent approaches to achieving that balance across the UK? It has the power to do so, since competition is an area of policy that is reserved. In response to parliamentary questions Melanie Johnson has stated that this is not how matters will proceed. I should emphasise that allowing competition considerations to feature significantly in the development of changes to the regulations would in our view be wrong, both in England and in the UK as a whole, but it is the logical conclusion of what ministers have said.

It seems from the various parliamentary questions answered and statements made that the Department of Trade & Industry is leading the government's response to the OFT report. We acknowledge that the OFT reported to the DTI – its sponsoring department - in January. But it is regulations made under the NHS Act 1977 that are being reviewed and may be amended or replaced. It is the NHS Plan, specifically *Pharmacy in the Future*, that sets out the government's objectives and ambitions in respect of community pharmacy services. And it is you, not the DTI, with whom ministerial responsibility for community pharmacy resides. Why therefore is the Department of Health not leading the government's response? It is the various health departments in the devolved administrations that have led the responses in the devolved countries.

We would welcome your views as to why it appears that a different approach is being taken in England as compared with Scotland, Wales and Northern Ireland.

The concern it raises is that somehow health policy will be relegated to a secondary position in England and that competition theory will be permitted to dominate health service planning arrangements. In our view, this would be wrong, and not merely because it would be inconsistent with the approach taken elsewhere in the UK. Since this issue first arose, we have been clear in our view that the control of entry regulations could and should be modernised, but that they should be modernised on the basis of health policy objectives. The interests of patients and PCTs must take precedence over the interests of competition theorists and those (relatively few) commercial organisations who seek de-regulation. The public shares this view, as do pharmacists, GPs and many parliamentary colleagues across all parties. I believe you do too and we would welcome an indication from you as to how the Department of Health is seeking to ensure that health policy forms the basis for any changes.

PROPOSALS FOR CHANGE

The driver for change is a desire to see improved access to community pharmacy services. As was clear from the recent Health Select Committee inquiry into this issue, there is general agreement now that outright deregulation would compromise rather than enhance access. It would cause volatility in service provision: some pharmacies would open but others would close, and all this would happen in an unplanned way. Vulnerable patients and high users of pharmacy services would be among those most likely to suffer from a loss of neighbourhood services.

We therefore do not support change that will, or is likely to lead to disruption in service provision, especially for those who rely most on community pharmacy services. There are, however, certain changes that we believe could be made to the current regulations to the benefit of patients and PCTs.

Application criteria

The existing arrangements for contract applications are complex, almost Byzantine in nature. We would like to see a fresh set of criteria applied to all applications, criteria that are consistent as between PCTs in different parts of the country. This would provide applicants, PCTs and other interested parties with greater certainty and it should reduce the incidence of procedural appeals. In the light of my comments above, the central criterion should be access. Applications should be considered on the basis of whether or not they would improve access to community pharmacies. Other criteria should be of secondary importance but would include choice and competition considerations.

It follows from this that applicants should be required to state the access improvements that their application would deliver to the local community. This should be enshrined in the application process along with statements relating to the other criteria to be applied.

Unmet needs

Whilst the OFT itself acknowledged that access to pharmacy services across the country is generally very good, it is always possible – especially as service provision evolves - that there are areas where need is unmet. The OFT's proposed solution was to sweep away the regulatory framework entirely in order to enable those inclined to do so to meet that need. We see that approach as fraught with risk and uncertainty, but we are keen to ensure that everyone has good access to the developing range of services provided by community pharmacies.

In our view the right approach is to place power to address unmet needs in the hands of PCTs. It makes good sense, and it reflects wider policy objectives, for PCTs to plan the provision of pharmacy services. Hence, we recommend that they, in consultation with the relevant Local Pharmaceutical Committees, be given the ability to identify and quantify an unmet need. The PCT should be able to require the LPC locally to consider how existing contractors could meet that need. If the LPC proved unable or unwilling to do so the need could be met either through a Local Pharmaceutical Services contract or by inviting applications for a new (non-LPS) contract. The PCT would need to satisfy itself that the granting of an additional contract did not adversely affect access to existing services.

Reduced bureaucracy and cost

PCTs can find the application process time-consuming and expensive. The simplest way of dealing with the issue of cost is to require applicants to pay a fee when they submit their application. This fee would be set at such level as to reduce substantially, and preferably meet, the cost to the NHS of dealing with the application.

We are aware that some sites attract a series of applications. Having refused the granting of a contract, the PCT should not find itself having to deal with a batch of applications to establish a pharmacy on the same site, unless there has been some material change suggesting that a later application warrants attention. We agree with the NHS Confederation and PSNC that the problem of multiple applications could be removed by introducing a cooling-off period.

The appeal process can create significant additional work for PCTs and costs for the NHS. We are attracted to the proposal that appellants pay a fee. We have been told that some appeals are frivolous or tactical in nature, and often achieve nothing more than a delay in the granting of a contract. The fee would be returned only if the appeal was successful.

Hours of service
We agree with the OFT that a good physical distribution of community pharmacies is not the only way in which access should be measured. Opening hours are also important. There is a lack of reliable information about pharmacy opening hours across the country, but the evidence we have seen and heard suggests that there is room for improvement. The government's plans for improvements in primary care will rightly demand more flexibility in pharmacy opening hours, and already this is being reflected in local strategies drawn up by PCTs.

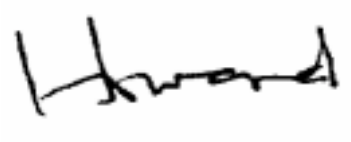
We wish to see the hours of existing pharmacies extended to meet local needs and improve convenience for patients, but we also wish to see the contract application process give sufficient weight to this important measure of access. This is one change that also needs to be considered as part of the process of drawing up a new contract for community pharmacy services, and we are aware that this work is already underway at the Department.

There are various, more detailed provisions in the current regulations that could be changed to improve their operational effectiveness. We defer to your Department, and to the NHS Confederation and PSNC, on that point. The changes we have proposed are clearly and deliberately considered primarily from a health policy perspective. It is our view that this is the right basis on which to approach this matter. Furthermore, we believe our proposals would simplify the regulatory framework and enable PCTs to address local needs quickly and effectively. Access, choice and competition would all be enhanced.

I hope you find these proposals helpful. We would welcome your thoughts on them and on the questions I have raised in this letter. I am sending copies to Alan Milburn, Patricia Hewitt and Melanie Johnson.

I look forward to seeing you at our AGM on 1 July.

Best wishes



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