

GPhC consultation on draft guidance for pharmacist prescribers

The Christian Medical Fellowship (CMF) was founded in 1949 and is an interdenominational organisation with over 5,000 British doctor members in all branches of medicine, and around 1,000 medical student members. We are the UK's largest faith-based group of health professionals.

We are very pleased to support our colleagues in pharmacy, as we did in response to the 2017 consultation on 'Religion, Personal Values and Beliefs'.

CMF welcomes both the move towards training and deploying more pharmacist prescribers and the guidance intended to ensure safe and effective care for patients. We limit our response to Q2 –

Taking responsibility for prescribing safely

1. The draft guidance does not reflect existing GPhC guidance

The draft guidance states:

'Pharmacy professionals must take responsibility for ensuring person-centred care is not compromised by their own personal values and beliefs. They must understand that people receive safe and effective care when professionals recognise and value diversity and respect cultural differences'.

Our concern is that the guidance fails to include any mention of the pharmacist's freedom not to prescribe on the grounds of conscience, a freedom already recognised in the GPhC guidance document issued on 22 June 2017 '**In practice: Guidance on religion, personal values and beliefs**'¹ that stated clearly:

'We recognise and respect that a pharmacy professional's religion, personal values and beliefs are often central to their lives and can make a positive contribution to their providing safe and effective care to a diverse population'.(p7).

'Pharmacy professionals have the right to practise in line with their religion, personal values or beliefs'.

As it stands, we believe that there is a mismatch between the draft guidance under current consideration and the established 2017 guidance. CMF strongly supports the right of pharmacist subscribers to practise in line with their conscientiously-held beliefs.

2. The draft guidance could endanger person-centred care, nor ensure it

The draft guidance for pharmacist prescribers appears to shift the balance between the patient's right to 'access' and the pharmacist's right to freedom of conscience (FOC) disproportionately in

¹https://www.pharmacyregulation.org/sites/default/files/in_practice_guidance_on_religion_personal_values_and_beliefs.pdf

favour of the patient. The wording tips this balance so far as to suggest that ‘conscientiousness’ on the part of the pharmacist is a hindrance to patient care.

If the pharmacist is obliged to act against his or her conscience, care is effectively coerced, the care-giver exploited and the receiver made complicit. Person-centred care is not thereby safeguarded – it is a casualty.

It is of concern to CMF that in the draft form of the 2017 guidance on ‘religion, personal values and beliefs’, already referred to, the same lack of respect for pharmacists’ freedom of conscience was evident. To the GPhC’s credit, the final draft of that guidance did provide for refusal to prescribe on grounds of conscience, as evidenced by these passages:

‘We want to be clear that referral to another health professional may be an appropriate option, and this can include handover to another pharmacist at the same, or another, pharmacy or service provider.’ (p8).

‘Pharmacy professionals should use their professional judgement to decide whether a referral is appropriate in each individual situation, and take responsibility for the outcome of the person’s care. This includes considering the impact of their decision on the person asking for care, and meeting their legal responsibilities.’

That a similar provision is not included in the draft guidance for pharmacist prescribers suggests that the GPhC is again seeking to diminish the ‘space’ for conscience. We urge the Council not to take this path.

3. The draft guidance makes no provision for ‘reasonable accommodation’

Many conscientious objectors find even making a referral unacceptable and consider that by it they are effectively participating, or complicit in the procedure to which they object. For doctors, there is no legal obligation to refer for abortion under the GMC guidance² as long as enough information is given to the patient to arrange to see another doctor. Existing GPhC guidance³ suggests it is similar for pharmacists:

There are a number of factors for pharmacy professionals to consider when deciding whether a referral is appropriate in the circumstances. In particular, pharmacy professionals should make sure:

- *people receive the care they need as a priority*
- *people are provided with all the relevant information to help them access the care they need, and*
- *people are treated as individuals, fairly and with respect’ (p8).*

Rightly, the guidance for pharmacists also emphasises the importance of openness and sensitive communication with colleagues and employers:

‘Pharmacy professionals should also:

² http://www.gmc-uk.org/guidance/ethical_guidance/21177.asp

³ https://www.pharmacyregulation.org/sites/default/files/in_practice_guidance_on_religion_personal_values_and_beliefs.pdf

- *tell their employer, as soon as possible, if their religion, personal values or beliefs might prevent them from providing certain pharmacy services, and*
- *work in partnership with their employer to make sure adequate and appropriate arrangements are put in place*

We trust that this kind of reasonable accommodation will enable pharmacist prescribers to practise with integrity whilst at the same time ensuring people's care does not suffer.

4. The draft guidance fails to respect conscience as it is protected by laws and conventions

GPhC guidance in 2017 on 'religion, personal values and beliefs' clarified that under Article 9 of the European Convention on Human Rights (ECHR)⁴ a pharmacist's right to freedom of thought, conscience and religion is protected. The final guidance also cited the 2010 Equality Act, which protects individuals from direct and indirect discrimination and harassment under nine protected characteristics, including 'religion or belief'.⁵

We note that the European Court of Human Rights has been a robust defender of the right to freedom of conscience generally. To concisely capture the essence of the Court's view on conscience, it is helpful to note the case of *Bayatyan v. Armenia* (Application No 23459/03, judgment of 7 July 2011).⁶ The case concerned an applicant who was looking to be exempted from military service, and the Court considered Armenia's refusal to accommodate the applicant's request to be a violation of Article 9 of the European Convention on Human Rights (the right to freedom of thought, conscience and religion).

The Court held that Armenia had failed to strike a fair balance between the interests of society as a whole and those of the applicant in question. It held that the protection of the right to freedom of conscience '*ensures cohesive and stable pluralism, and promotes religious harmony and tolerance in society*',⁷ and that a situation where no allowances were made for the exigencies of a person's conscience and beliefs could not be seen as a necessary measure in a democratic society. The Court further reiterated that pluralism, tolerance and broadmindedness are hallmarks of a democratic society. Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position.⁸

In 2015 the Spanish Constitutional Court ruled that individual pharmacists have a right to refuse to sell the morning after pill for conscience reasons.⁹

With regard to pressure to resign from employment, the *Eweida* court reasoned that: '*Given the importance in a democratic society of freedom of religion, the Court considers that, where an*

⁴ http://www.echr.coe.int/Documents/Convention_ENG.pdf, p.10

⁵ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

⁶ ECHR, *Bayatan v. Armenia* [GC], (2012) 54 E.H.R.R. 15.

⁷ *Id.* at § 124, 125

⁸ *Id.* at § 126

⁹ <http://www.telegraph.co.uk/news/worldnews/europe/spain/11723511/Spanish-pharmacy-wins-right-to-refuse-to-sell-morning-after-pills.html>

*individual complains of a restriction on freedom of religion in the workplace, rather than holding that the possibility of changing job would negate any interference with the right, the better approach would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate’.*¹⁰

All UK health professionals are currently protected by a conscience clause¹¹ in the Human Fertilisation and Embryology Act 1990 from having to participate in ‘any activity’ governed by that Act. Freedom of conscience (FOC) is similarly protected in the 1967 Abortion Act which states: ‘...no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection’. A Parliamentary Report into Freedom of Conscience in Abortion Provision (2016) suggested several practical recommendations to strengthen provision of the protection, and also that the concept of ‘Reasonable Accommodation’ be incorporated into legislation in this country.

The General Medical Council’s Good Medical Practice guidance¹² respects the professional judgment of the doctor by stating clearly that ‘the law does not require doctors to provide treatments or procedures that they have assessed as not being clinically appropriate or not of overall benefit to the patient’. The same guidance confers protection of conscience for doctors, stating: ‘You may choose to opt out of providing a particular procedure because of your personal beliefs and values, as long as this does not result in direct or indirect discrimination against, or harassment of, individual patients or groups of patients.’ Similarly, conscience is protected in Resolution 1763(2010) of The Parliamentary Assembly of the Council of Europe.¹³

CMF welcomes the move to train and deploy more pharmacist prescribers. In giving this greater measure of responsibility to pharmacists, it seems only right that they should also be given the same respect for conscience that their medical colleagues enjoy. We recommend that the new GPhC guidance should make explicit such provision.

We contend that the weight of international and national laws, conventions and professional guidance, taken together, affords strong protection for the right of conscientious objection. If the GPhC imposes a ‘duty to dispense’ on its pharmacist prescribers it will not only be running roughshod over the professional status of pharmacists, but could also be opening itself up to a legal challenge.

5. The draft guidance, if implemented, would undermine respect for conscience clauses in regulations governing other healthcare professionals

If the GPhC final draft does not include a conscience clause there would be implications for FOC clauses in regulations governing other healthcare professionals and government bodies. Narrowing the scope of FOC for pharmacists will likely be seen as encouragement by those who wish to remove completely the right of conscientious objection generally. CMF strongly resists this trajectory.

¹⁰ Eweida and Others v. the United Kingdom, nos. 48420/10, 59842/10, 51671/10, 36516/10, 15 January 2013.

¹¹ <http://www.legislation.gov.uk/ukpga/1990/37/section/38>

¹² http://www.gmc-uk.org/guidance/ethical_guidance/21177.asp

¹³ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17909&lang=en>

6. The draft guidance, if implemented, would undermine respect for conscience in new but contentious areas of treatment

The proposal is not future-proofed. Most pharmacists who currently exercise their right to refer on grounds of conscience do so in response to requests for Emergency Hormone Contraception (EHC) or other, potentially abortifacient contraceptives. Future developments are likely to lead to a wider range of issues where FOC, and the right to refer, will be highly relevant. For example, the use of pre-pubertal hormone blockade, transgender hormone treatment and, if regulations on licensed premises are relaxed, the use of mifepristone and misoprostol for medical abortions in the home. If assisted suicide or euthanasia were to be legalised, the provision of barbiturates for this purpose would also be at issue.

7. The draft guidance, if implemented, would deter some pharmacists from becoming prescribers

The proposed guidance equates person-centred care with unhindered access to pharmaceuticals. It appears to marginalise the beliefs, values and religion of pharmacists disproportionately and unnecessarily, and trivialises their right to freedom of conscience under the law. It suggests their role is primarily to 'keep the customer satisfied' or to act as a 'rubber stamp' to decisions made by others. As it stands, the draft guidance appears to require pharmacist prescribers to set aside their convictions in order to provide whatever is wanted upon request. We suggest it could prove to be a deterrent to those considering undertaking the training to become prescribers.