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NHS Resolution re-starts oral appeal hearings

In our last Pharmacy Brief, we reported that PCSE had re-started processing market entry applications in England. NHS Resolution never stopped processing appeals, but it had paused the determination of any appeals that needed to go to an oral hearing.

Since then NHS Resolution has agreed to re-start hearings, but they will only take place remotely via video conference.

Noel Wardle attended the first appeal hearing to be organised under the new regime on 16th September. Apart from some connectivity issues with a Panel member (and the odd occasion where people starting speaking but were on mute!) the hearing went smoothly.

It is not ideal for hearings to take place remotely: there are non-physical cues and gestures that are missed when using video-conferencing software and it is inevitably more difficult to connect with people through a webcam. However, with no immediate prospect of physical hearings resuming, the need to hold a hearing in order to fairly determine some appeals and the desirability that appeals are determined within a reasonable timescale it seems there is no option but to conduct hearings remotely for the time being.

Information law expertise

Did you know that our team of information law experts frequently advise businesses working in the pharmacy and wider healthcare sector?

We include below a snapshot of some of the areas the team advise on:

- Providing 'key measures' data protection compliance audits (covering fundamental compliance measures) to enable younger businesses, or those with less developed compliance programmes, to assess and manage their risk in a proportionate and cost-effective manner.
- Providing full data protection audits aimed at businesses in the pharmacy sector who are moving to a more comprehensive level of compliance.
- Advising on contractual issues (including the ownership of data, data sharing and the transfer of data overseas).
- Advising on all areas in relation to the Freedom of Information Act.
- Advising on marketing and advertising law.
- Managing data breaches, rights requests, information law disputes and other contentious matters.

Our sector understanding combined with our passion for information law means we are well placed to assist. If you require any help regarding the issues highlighted above (or any aspect of information law), please contact Jonathan McDonald at jonathan.mcdonald@crsblaw.com, who leads the firm's data protection practice and who would be delighted to arrange a call.



Articles

- [Legal view: The possible next steps for Amazon Pharmacy \(Chemist and Druggist\)](#)
 - [What are the risks of using volunteers to deliver medicines? \(P3 Pharmacy\)](#)
 - [Winds of change as GPhC releases draft FtP Strategy \(Charles Russell Speechlys\)](#)
 - [Is your business COVID-secure? The HSE publishes common areas of failure \(Charles Russell Speechlys\)](#)
 - [Potential legal impacts of pandemic on your business \(Pharmacy Business\)](#)
 - [How market entry delays can impact your pharmacy transactions \(Pharmacy Business\)](#)
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Closing a pharmacy – what if you change your mind?

Pharmacy owners cannot just lock the front door and walk away from the business: the NHS Terms of Service require that contractors must give 3 months' notice to close a 40-hour contract and 6 months' notice to close a 100-hour pharmacy down.

A lot can change over 3 or 6 months and, occasionally, a pharmacy owner who has given a notice to NHS England to cease the provision of pharmaceutical services has a change of heart and decides that they want to keep the business open after all.

So can a notice to close a pharmacy be withdrawn before it takes effect?

Up until recently, our experience was that NHS England would accept the withdrawal of a notice to close at any time up until the pharmacy is removed from the pharmaceutical list.

However, at least one NHS England Local Area Team appears to be taking a different approach, stating that a notice to close can only be withdrawn if this is agreed by NHS England, and requesting contractors to provide detailed reasons for the withdrawal.

This uncertainty gives rise to significant unfairness to contractors who are considering submitting a notice to close a pharmacy, not least creating a postcode lottery as to how NHS England will deal with the withdrawal of a notice to close. We are calling for clarity across all NHS England teams on this issue.

RIDDOR Reporting and COVID-19

In the last edition of the Pharmacy Brief, we looked at the health and safety obligations on pharmacy owners to ensure that pharmacies remain "Covid-19 Secure". However, did you know that you may have obligations to report any member of staff who falls ill with coronavirus?

The Reporting of Injuries Disease and Dangerous Occurrence Regulations (RIDDOR) set out the circumstances in which an incident in the workplace is reportable, and this includes where a worker has been diagnosed as having COVID-19 attributed to an occupational exposure to coronavirus.

In deciding whether a worker's diagnosis of COVID-19 was "attributable" to their working in the pharmacy, the pharmacy owner "*must make a judgement, based on the information available, as to whether or not a confirmed diagnosis of COVID-19 is likely to have been caused by an occupational exposure, that is, whether or not there is reasonable evidence that a work-related exposure is the likely cause of the disease*"

The HSE was recently reported as having received only 6 RIDDOR reports from community pharmacy. This may reflect the careful measures that pharmacy owners have put in place to protect staff, the difficulty for employers in knowing whether a member of staff who has the virus was exposed to it in the pharmacy or elsewhere, or a lack of knowledge of the RIDDOR regime.



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GPhC Annual Review

The GPhC has recently published its Annual Review for 2019/2020, which includes information about how it is handling Fitness to Practise cases.

In respect of pharmacy premises registrations, the GPhC managed to get round a fifth of all pharmacies in the year. Of those pharmacies inspected, 15% resulted in improvement action plans being put in place. Perhaps more surprisingly 18% of those pharmacies with improvement action plans either had not sustained the actions by the 6 month point or had further issues identified on re-inspection leaving those contractors open to additional enforcement action.

The GPhC found “notable practice” worthy of publication in its knowledge hub in fewer than 5% of inspections – evidence, perhaps, that inspectors are more interested in looking for problems than celebrating good practice.

A whole section of the Report concentrates on online medicine supplies, which reflects our experience that this is an area where the GPhC has been particularly active over the last year.

The number of complaints received by the GPhC about individual pharmacists continues to increase year-on-year and was 2,985 in 2019/2020, a 10% increase on 2018/2019 and up by 656 on 2017/2018.

The Council has continued with its efforts to close complaints at the earliest stage possible. 47% of concerns are now closed at the triage stage (up from 34% two years ago). The number of concerns which are investigated but conclude either with no action or with the provision of guidance has remained relatively stable with just under half of all cases being closed at this stage.

That leaves just 76 concerns being referred to the Investigating Committee – a significant reduction from the previous year’s figure of 125.

Finally, the number of Fitness to Practise Committee hearings in 2019/2020 fell by a third on prior year – down to 40 from 63. Of those, 17 resulted in suspension from the register and 16 ended with removal.

Recent market entry success

Despite delays in processing market entry applications in England over the last few months, we continue to support many clients with market entry applications. Recent successes include:

- Opposing an application for a new pharmacy contract in Oxfordshire following an oral appeal hearing
- Relocation applications in Shrewsbury, Bradford, Lancashire, Caerphilly and Merthyr Tydfil
- Securing a new “unforeseen benefits” pharmacy contract in Gloucestershire

If you want to know more about how we can help you with a market entry application, click [here](#).

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