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Sent: 03 March 2003 15:55
To: pharmacy.report@scotland.gsi.gov.uk
Cc: hamish.wilson@scotland.gsi.gov.uk
Subject: oft report



oft report.doc

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Dear Ronnie
I am attaching the response of the Scottish Consumer Council to the OFT report on the control of entry regulations and retail pharmacy in the UK. I will put a hard copy in the post. As discussed between Martyn Evans and Hamish Wilson, if our council has any further comment following the meeting on 14 March, I will let you know as soon as possible. While the response is described as draft at this stage, I hope that there will not be any significant change to it.
Best wishes

Liz Macdonald

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SCOTTISH CONSUMER COUNCIL

DRAFT RESPONSE TO OFT REPORT "THE CONTROL OF ENTRY REGULATIONS AND RETAIL PHARMACY IN THE UK"

The Scottish Consumer Council (SCC) welcomes the opportunity to respond to the Scottish Executive on this important report from the Office of Fair Trading (OFT). This report deals with an important market, playing a key role in the provision of health care services in the UK.

The SCC is concerned that markets and public services work for all consumers. In the area of pharmaceutical services, consumers need convenient access and a quality of service appropriate to their needs. The SCC has a remit to consider the most disadvantaged consumers, and in the pharmacy market people may be disadvantaged as a result of poverty, ill health, disability, old age, or geographical location. In its response the SCC has tried to consider what the effects of the proposed deregulation might be for disadvantaged consumers.

1 The research carried out by the OFT

The OFT report is the first to be carried out by the Markets and Policy Initiatives Division of the OFT. It appears to be a very thorough investigation into the pharmacy market in the UK, exploring the market from a variety of standpoints including: consumer use of pharmacies; the system of regulation in the UK; the different approaches in other countries; analysis of the effects of competition; modelling of price, location and measures of local competition; the effect of competition on quality of service; and the possible consequences of deregulation.

The report argues that removing restrictions on entry to the community pharmacy market "would give consumers greater choice, benefits from greater competition, and better access to pharmacy services. There would also be large regulatory cost savings for business and government".

The OFT found that the regulations that currently control entry to the industry:

- restrict consumer choice and convenience in terms of location of pharmacies and opening hours
- restrict price competition on OTC medicines
- blunt incentives for pharmacies to compete on additional customer services
- result in consumers paying £25m - £30m per year more for OTC medicines than if competition were freer
- cost businesses an estimated £16m in compliance costs every year
- cost the NHS approximately £10m a year in administration costs
- hold back innovation and responsiveness to changing and growing consumer needs.

The research has been carried out on a UK basis, and the SCC has a concern that the particular circumstances of different parts of the UK may not have been adequately described in the various pieces of research carried out. For example, Annex H on Pharmacists in Great Britain does not disaggregate the data for Scotland, so that it is impossible to say whether there are differences in the make up of the profession in Scotland, or where they tend to be employed. Annex J deals with the location of pharmacies, GPs and supermarkets, and is an extremely detailed piece of research involving geographical mapping and analysis. However, the evidence is largely presented on a UK basis, and so it is not clear whether there are particular issues in Scotland, particularly in remote and rural areas.

Annex D deals with consumer use of community pharmacies. Occasionally the findings in this annex do refer to Scotland, for example stating that Scotland has the lowest incidence of prescription cashing, but the highest incidence of repeat prescriptions. Scotland is singled out as having less choice of pharmacist, at 8% of those surveyed. Scotland, or indeed other parts of the UK, tend to be mentioned specifically only where they are out of line with the rest of the UK or where they are top or bottom of the scale. However, Scottish respondents formed only 9% of the 1000 people surveyed, and this is a relatively small sample on which to base comparisons with different parts of the UK, or on which to draw conclusions about the market in this area.

The SCC considers that it would be useful to analyse the research data on a Scotland-wide basis so as to be clear about how the market operates in remote and rural areas, and whether the views of Scottish consumers, particularly in remote and rural areas, are significantly different from those of UK consumers as a whole. We do not believe that there is sufficient information specifically about the nature of the market in different parts of Scotland on which to make judgements about the way forward in Scotland.

2 The relevance to NHS services of a market model of competition

Many commentators on the report have focused on the apparent contradiction between viewing pharmaceutical services as essentially retailing services at a time when the health departments in London, Edinburgh and Cardiff are increasingly seeing pharmacists as an essential part of the NHS, with a distinctive role to play in the provision of primary health care services and in promoting public health. The suggestion is that there may be a conflict between social policy and competition policy goals.

Given the volume and depth of research carried out by the OFT, it would be hard to argue that, looked at as a UK market, the pharmacy market is not unusually static, and has been protected from competition by the existence of the Control of Entry Regulations, which appear to act as a deterrent to new or innovative

services. The regulations also tend to have the effect of strengthening local monopolies of particular pharmacy chains. Pharmacists themselves have recognised that there are problems associated with the regulations. Annex E of the report states that 25% of pharmacists admitted that there were areas of the country where provision was inadequate, and 20% considered that the regulations should be modified, with 4% believing they should be abolished. This represents a fairly significant minority of pharmacists who recognise that there are problems with the existing system of regulation.

In addition, the very large sums required at present to purchase a pharmacy business with the aim of obtaining an NHS contract suggests that there is a significant financial incentive for existing owner pharmacists in the continuation of the present regulatory system.

However, even if it is accepted that the regulations have tended to create a static market without incentives to improve services or compete on price, that does not address the public policy role of pharmacy in relation to health care, which is outwith the remit of an OFT report.

3 The effect of the present regulations and the possible effect of deregulation

3.1 Access to pharmaceutical services

The OFT research carried out in connection with this report suggests that consumers find the location of pharmacists to be convenient. This agrees with the research carried out by SCC on consumer views of community pharmacies in Scotland, which showed a high level of use of pharmacies, and 90% agreed or strongly agreed with the statement that they found the location of their pharmacist convenient¹. This was true across different geographical areas, and was consistent across different groups of consumers. There were differences between different groups of consumers in how consistently they used the same pharmacy, and in their attitudes towards pharmacists providing a wider range of services. Younger people seemed particularly willing to access a wider range of services through their pharmacist.

However, there is more to access than simply location. Work carried out by the SCC on access to primary care services described access in relation to three broad areas²:

- **accessibility** (in terms of geographical location, physical accessibility and transport considerations)

¹ Scottish Consumer Council, *Consumer Views of Community Pharmacies*, 2002, Scottish Consumer Council, Glasgow

² Scottish Consumer Council, *Access to primary care services in Scotland*, 2001, SSC and Scottish Executive

- **availability** (in terms of how quickly the service could be accessed, opening hours etc), and
- **acceptability** (dealing with communication, attitudes and other factors affecting how readily people would make use of the service).

The opening hours of different providers of pharmaceutical services varies considerably. The OFT report shows the considerably longer opening hours of pharmacists within supermarkets (79 hours a week compared with 50 hours in an independent pharmacy). Early evidence from NHS 24 in Scotland suggests that there is a demand for more out of hours pharmaceutical services in Scotland, and access to out of hours pharmaceutical care is probably harder than accessing other parts of the primary healthcare system. It would therefore appear that deregulation could improve the availability of services, particularly if supermarkets were able to provide pharmaceutical services during their normal opening hours.

3.2 The supermarket effect

The OFT report premises many of its findings on the effect of the entry of supermarkets into the pharmacy market. The OFT argues that access to pharmaceutical services would be improved if the entry regulations were removed because there would be more services available in supermarkets, greater price competition, and there might be more competition between non-supermarket providers on the quality of service provided. As stated above, it is likely that for those with reasonable access to supermarkets, there would be an improvement in access, particularly in relation to opening hours. It would also increase choice for some consumers, allowing them to obtain pharmaceutical services in a convenient location where they probably already do the majority of their shopping.

The OFT argues that even if the entry of a supermarket led to the closure of the two nearest community pharmacies, the distance to the nearest pharmacy would only increase by a small amount, and that only 4% of the population would have to travel more than 500 metres extra. However, as discussed above, it is unclear from the report what the impact would be in rural and remote parts of Scotland.

Early commentators have argued that the entry of supermarkets will lead to the closure of high street pharmacies, thus making access harder, particularly for the most disadvantaged consumers. The OFT does not believe that the entry of supermarkets will lead to widespread closures, mainly because of the high degree of convenience experienced at present by consumers, and because supermarkets are not necessarily convenient for doctors' surgeries.

The SCC considers that pharmacists are probably overstating the extent to which consumers would change their behaviour following deregulation. If the location of pharmacies is convenient at present, it is unlikely to become inconvenient just

because a supermarket is providing a service to some consumers for whom this option is more convenient.

If the policy set out in *The Right Medicine* is followed, pharmacy premises will increasingly be used for a wider range of health care services, with the possibility of other health care professionals, such as podiatrists making use of their premises. The SCC's research³ showed that people, particularly younger people, are very open to the possibility of making use of pharmacies in different ways. There is no reason why pharmacists based in supermarkets would not be able to provide these services as well as pharmacists based in the High Street, but again it would depend on the availability of suitable premises within the store, and a willingness on the part of the supermarket business to allow activities which are not necessarily income generating.

3.3 Planning services

Some commentators have described the present system as being "stable" and "planned". This "stability" is described by the OFT in relation to the extent of entries and exits from the market. The report shows that in England and Wales, in the ten years from 1990, the average annual net change in the number of NHS contractor pharmacies was only four. As a result the OFT argues that the regulations have impeded entry by pharmacies that offer lower prices, more convenient opening times or innovative services.

The extent to which the existing pattern of provision could really be described as "planned" is highly questionable. The way the system works means that while health boards may refuse an NHS contract to a pharmacist, they cannot actively promote services in areas which might stand to benefit from increased or innovative pharmaceutical services. Where pharmacies are located is not planned by the health board, but largely dictated by where there are already existing services. The Essential Small Pharmacy Scheme provides support for services which would not otherwise be commercially viable.

The SCC believes that the Scottish Executive Health Department should regard the need to respond to the OFT report as an opportunity to improve the current system of regulation. The OFT has highlighted the static nature of the market, a continuing problem of access for a small but not inconsiderable proportion of consumers, and a significant number of pharmacists who do not believe the current regulations are working well.

3.4 Deregulation and *The Right Medicine*

The SCC does not believe that removing the control of entry regulations or altering the regulatory system as described above would necessarily put in jeopardy the policy direction set out in *The Right Medicine*. While opening the

³ see footnote 1 above

door to greater competition, and encouraging new entrants into the pharmacy market, the SCC considers that the impact on pharmacies is unlikely to be as great as some commentary seem to fear. The vast majority of consumers in Scotland find their existing pharmacy convenient in terms of location, and they are unlikely to suddenly change their behaviour unless a new entrant to the market is offering a significantly better service, for example by delivering prescriptions or through longer opening hours.

The proposals outlined in *The Right Medicine* are based on the willingness of pharmacists to become involved in the development of their professional role, as part of a more co-ordinated primary health care team, and in relation to public health. There is no obvious reason why a change to control of entry regulations should impact on their willingness to play this more extended role within the NHS.

Some commentators have argued that deregulation would lead to pharmacists being unwilling to invest in their premises so as to be able to provide discreet consultation areas, and to a reduction in their credit rating with the banks to carry out premises improvements. This would restrict their ability to improve the services they provide in line with *The Right Medicine*. The SCC is unconvinced that the effect of deregulation would be as drastic as suggested, but would be concerned if deregulation created the degree of uncertainty which would discourage investment and service development. Interestingly, the OFT report (Annex M) found that where there was more competition in an area, pharmacists were more likely to have a private consultation area, and that they were less likely to offer home deliveries if there was no other pharmacy within five kilometres. The OFT states that "markets without entry controls are more dynamic, exhibit greater innovation and focus more directly on what consumers want".

4 Conclusion

The SCC believes that the OFT has carried out a useful piece of research into an important market, raising many interesting issues, and challenging the assumption that the existing market is working well for consumers. It would have been particularly useful to have disaggregated data for the devolved areas of the UK, so that a clearer picture could be obtained of the situation in Scotland, and the likely implications of deregulation in Scotland particularly in remote and rural areas. The SCC would encourage the Scottish Executive Health Department to obtain much fuller data before reaching a firm conclusion on the OFT report.

The SCC considers that the regulations have created a comfortable market situation in which pharmacists have not had strong incentives to improve the services they provide to consumers, and this is particularly apparent in relation to opening hours and the lack of services out of hours. The introduction of more

competition and the entry of supermarkets has the potential to improve access and the quality of services for some consumers.

We consider that the OFT has made the case that there is a need for change, and that this report provides an opportunity to reconsider how pharmacy services should be regulated, in a way which ensures that the goals of health policy can be met, and which addresses some of the negative effects of the present system. In particular, a new system of regulation could ensure that pharmacists undertake to provide a certain level of service, which might include specifying the opening hours, providing for out of hours services, providing a delivery service, providing private consultation areas etc. This would help to achieve the goals set out in *The Right Medicine* and it would help to ensure that supermarkets were completing with community pharmacists on a level playing field.

Finally, it is important that the Scottish Executive considers this report in terms of its implications for joined-up government. The strategy for pharmacy must not stand in isolation to other policy areas. As well as forming a key component of health care policy there should be clear links with transport policy, planning and rural policy. It is insufficient to make a decision in this area purely on the grounds of competition policy.