Why the Society should continue to recognise antipodean pharmacists

In this article John Ferguson says that the Royal Pharmaceutical Society’s reasons for abandoning reciprocal registration arrangements with Australia and New Zealand are untenable and weak, and that the Society should have pursued its long-standing mutual recognition policy.

The Council of the Royal Pharmaceutical Society confirmed in The Pharmaceutical Journal of 13 August (p200) that the reciprocal registration arrangements with Australia and New Zealand were to be terminated. The same issue of The Journal contained a letter (“Sacrificed to political correctness”, p194), from Ian Dean of New South Wales, Australia, commenting at length on the issue.

The report about the Council’s decision to confirm the end of the reciprocity agreement indicated that “a number of Council members expressed concerns but accepted they had no choice but to agree the change” having been reminded that “the reciprocal arrangements could be challenged on the basis of the EU directive, that it was the government’s policy to remove bilateral agreements and that reciprocity could be challenged on the grounds of discrimination”.

In my opinion, the first and last of these “reasons” are probably untenable and the second is weak. Let us examine the points one by one.

EU directive

The new directive on recognition of professional qualifications, which is likely to come into force in about two years’ time, like the current directives governing recognition of pharmacist qualifications, applies only to nationals of EU member states (see the article dealing with scope in the new directive.) The current directives for pharmacists’ qualifications date from 1985. As far as I am aware, there has been no suggestion by the EU Commission that the Society’s reciprocity agreements are in conflict with EU legislation.

Nor am I aware of any challenge by the Commission to any arrangements that Britain may have with, say, Brazil.

Moreover, the article in the new directive relating to scope states: “Each member state may permit member state nationals in possession of evidence of professional qualifications not obtained in a member state to pursue a regulated profession . . . on its territory in accordance with its rules. In the case of professions covered by title III, chapter III, [pharmacists are covered] this initial recognition shall respect the minimum training conditions laid down in that chapter”.

Thus, for a national of an EU member state, the Society is permitted to recognise a third-country qualification provided it meets the minimum requirements set out in the directive — a course of at least five years including at least four years at university (or equivalent) and at least six months traineeship in a community or hospital pharmacy. The course must cover the subjects set out in the relevant article in the directive and in the relevant annex. Nowhere in the directive is there a bar on recognition of third-country qualifications held by a person who is not a national of a member state. However, as a senior official of the EU Internal Market Directorate General said in reply to a direct question from me a few months ago, for automatic recognition the Society would be bound only to recognise qualifications meeting the co-ordinated minimum training requirements in the directive. And the individual who is not a UK national, whose qualifications were recognised by the Society, would not, under the terms of the directive, have the right to automatic recognition in other member states.

But how could the Society ensure that the course of education and training leading to registration as a pharmacist in one of the states or territories in Australia or in New Zealand met the minimum co-ordinated training requirements in the directive? History provides the answer to that, on the understanding always that the regulatory authorities in Australia and New Zealand remain committed to action to ensure the continuation of the reciprocity agreements, the first of which had been entered into with Victoria and Queensland, Australia, by 1913. As far as I am aware, there has been no indication that the authorities in Australia and New Zealand would not commit to action, as they did in the past, to ensure the continuation of the arrangements.

I shall deal only with the relatively recent history, information on which is needed for an understanding of the later part of this article.

History

In 1969, the Society’s Education Committee, in the knowledge that, from 1967, all students entering schools of pharmacy in Britain would have to study for a degree in pharmacy, asked the various pharmacy bodies in the countries and states with which the Society had reciprocity agreements for information about their arrangements for qualifying for registration. The last examinations for a diploma based on a three-year course in Britain were to be held in December 1970. In the light of the information received by the Education Committee, the Council resolved that all existing arrangements for the reciprocal recognition of qualifications would end on 1 January 1968. This was later postponed until March 1968.

For those registered in Australia or New Zealand after March 1968, new agreements would be negotiated “based on equivalence in educational standards for registration”. Nothing was done to prejudice the rights of those registered before March 1968.

Acting on this resolution, the Society’s president, secretary and registrar and the chairman of the Education Committee visited all the schools of pharmacy in Australia and New Zealand and had extensive discussions with all the registration authorities between March and May 1969. They also visited community and hospital pharmacies. Not surprisingly, because of the historical background they found that the community pharmacies were almost indistinguishable from those in Britain and that hospital practice at that time was also similar.

The Council considered detailed reports of these meetings and visits at its meeting in December 1969. It decided that new reciprocity agreements would be negotiated with five states in Australia and with New Zealand. New requirements imposed were that pharmacists registered in these Australian states and in New Zealand should have at least one year’s post-registration experience of pharmacy practice in Australia or New Zealand and undertake four weeks’ experience in pharmacy practice in Britain before registration in this country.

Gregory Haines in his book ‘Pharmacy in Australia’ states that throughout the 1960s “Britain was to exercise great influence on the education and standards of pharmacy in the Australian states by threatening to withdraw its reciprocity agreements”. By 1967, three Australian universities (in Queensland, New South Wales and South Australia) conferred degrees in pharmacy and the Victorian College of Pharmacy, which continued to have its own high quality course, was pressing for degree status, which came in 1968. In Western Australia the quality of the course was improved substantially. The problem in...
Tasmania was more difficult because of the expenditure associated with mounting a degree course for relatively few students. However, in 1969 the registrar of the Pharmacy Board of Tasmania was able to inform the Society that there was to be a degree course. This started in 1972.

The influence of Britain on pharmacy teaching in New Zealand during this period, and since has also been remarkable. A three-year diploma course (now discontinued) was previously taught at the Central Institute of Technology near Wellington and there was a degree course at the University of Otago in Dunedin. The excellent course continues at Otago and recently a second degree course has been established at the University of Auckland.

In my period in New Zealand — 1975 to 1985 — pharmacists from Britain were heads of both schools of pharmacy and today the current head of the relatively new department of pharmacy at Auckland is a British pharmacist. Courses in New Zealand have developed in line with the UK and thus EU model. There appears to be no reason, considering the strong wish of the authorities in the antipodes for the reciprocal arrangements to continue, why this process need be halted. Representatives of the registration authorities in Australia and New Zealand meet regularly and, in my experience, their first objective is to ensure a uniformly high standard of education and training leading to registration in both countries.

**Bilateral agreements**

Now, let us consider the question of bilateral agreements. It is, of course true that in the World Trade Organization (including in discussions on the General Agreement on Trade in Services [GATS]), the EU Commission negotiates on behalf of all 25 member states. Courses in New Zealand have developed in line with the UK and thus EU model. There appears to be no reason, considering the strong wish of the authorities in the antipodes for the reciprocal arrangements to continue, why this process need be halted. Representatives of the registration authorities in Australia and New Zealand meet regularly and, in my experience, their first objective is to ensure a uniformly high standard of education and training leading to registration in both countries.

**Unfair discrimination**

Finally, we come to the issue of a possible challenge to the reciprocal arrangements with Australia and New Zealand on the ground of unfair discrimination. This issue was argued at length in a case before the courts, first in 2000 and then before the Court of Appeal in 2001. Two pharmacists from Pakistan and Saudi Arabia challenged the Society’s right to make a Byelaw providing that “a person who fails the registration examination at the third attempt will not normally be eligible for registration as a pharmaceutical chemist”. Lord Justices Kennedy, Chadwick and Rix, all approaching the question from different directions, decided that the Byelaw making powers of the Society had not been misused.

At the Court of Appeal stage, the two applicants for judicial review were given permission to present arguments questioning whether the arrangements for recognition of pharmacists qualified under the EU arrangements, and those who qualified under the reciprocity agreements, improperly discriminated between categories of applicant for registration. All three Lord Justices decided that they did not.

Lord Justice Kennedy said in his judgment: “[Counsel for the applicants] submitted that, the limitation on the number of attempts not being of itself irrational, in order to invoke it in a way which was not arbitrary, the Society should have discharged all reciprocal arrangements with states or countries where the registration procedure did not involve such a limitation, before introducing that limitation as it did. To do otherwise, it was contended, was irrational. That I am unable to accept. In my judgment, the whole argument proceeds upon a false basis. . . . The question arises as to whether it is reasonable to permit some qualified pharmacists to be registered without examination because the Society has reason to believe that they have already been adequately trained and tested. Plainly the answer to that question must be in the affirmative. The next question is whether it was irrational to grant exemption from the registration examination to European Union and antipodean pharmacists but not to those from Pakistan, Saudi Arabia or elsewhere. On the available evidence it seems to me to be plain that the answer to that question is in the negative.”

The “available evidence” in respect of the reciprocity agreements was a detailed explanation on how they had been administered by the Society over the years and how the pharmacy courses in both countries had been developed. Lord Justices Chadwick and Rix agreed completely with the judgment of Lord Justice Kennedy on this point.

The power enabling the Society to make the Byelaw relating to the reciprocity agreements that were considered by the Court of Appeal in 2001 was in the 1954 Pharmacy Act. Similar powers were given earlier legislation. It would seem to me that, had the Society wished the reciprocal arrangements with Australia and New Zealand to continue, it could have argued strongly for the continuation of the enabling legislation and would have ensured that the Australian and New Zealand courses leading to registration as a pharmacist continued to meet the minimum co-ordinated education and training requirements of the EU directive for automatic recognition of qualifications.

Graham Phillips, in his letter — “From the Society’s perspective” (PJ, 10 September, p308) — makes no mention of the three points which led the Council to decide that “it had no choice” but to discontinue the reciprocal arrangements and introduces completely new reasons. He seeks to argue that because the education for pharmacists in the UK is now at master’s level, “it would not be fair or equitable to let applicants enter the Register in the knowledge that they have received a different education to their UK equivalents, no matter how good it may be”. It is difficult to see how such a statement can be justified, bearing in mind what was said in the Court of Appeal decision and the undoubtedly fact that every pharmacist from an EU or EEA member state applying for automatic recognition here will have received a “different education to their UK equivalents”.

And titles of qualifications are irrelevant. Under the EU directive, the Society will be recognising “diplomas” in pharmacy from countries such as Belgium, Latvia and Luxembourg among other countries and, for example, the title of licensed pharmacist in Spain. The vital point, as I have said, is that the formal qualification, whatever its title, would have been awarded after the successful completion of a course meeting the minimum education and training requirements of the directive.

**Political correctness?**

In my view, the Society should have pursued the policy as it did in the late 1960s, that continued recognition of Australian and New Zealand qualifications would be based on “equivalence in educational standards”. I am confident that the relevant authorities in Australia and New Zealand would again have risen to that challenge to secure the result they wanted. There would have been no challenge by the EU and any challenge on unfair discrimination would surely have been unsuccessful.

Those of us who value the historical development of our Society greatly regret the abandonment — on what Mr Dean described in his letter to the PJ of 13 August as grounds of “political correctness” — of ties which have existed for nearly a century with two countries where the profession of pharmacy was founded by British pharmacists and there is every indication that pharmacy education has developed in the same direction as in the UK and would continue, on the face of it, to do so given the necessary encouragement.