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01 August 2006

Dear Michael,

**Re: Consultation on Revised Section 29 Process and Guidelines Document**

With reference to your email of 3 July 2006, I am pleased to enclose the response of the Royal Pharmaceutical Society of Great Britain ("the Society") to your recent consultation on the Section 29 Process and Guidelines document.

The Society welcomes the opportunity to comment on the revised Section 29 Process and Guidelines Document, and is content for this response to be published.

I do hope you find the Society's comments helpful. I look forward to receiving the results of the consultation in due course. In the meantime, please do not hesitate to contact me should you require any further information.

Finally, I note in paragraphs 80 and 83 of the document, a reference to two reports commissioned from Professor Montgomery. The Society should be most grateful for copies of these reports.

Yours sincerely,

Ann M Lewis  
Secretary and Registrar

## **Response of the Royal Pharmaceutical Society of Great Britain to the Consultation on the Revised Section 29 Process and Guidelines Document.**

### Explanatory Note

Page 5-typo in penultimate sentence (delete apostrophe s)

### Introduction

(b) It would be helpful to clarify here that there are actually two tests-“Undue lenience” and “Should not have been made”. The same point arises in paragraph 53.

Paragraphs 4 and 59 –the Society has concerns about notification to the employer. As the CHRE is aware, a considerable number of the Society’s registrants work on a locum basis. Regardless of this potential difficulty, the Society’s view is that the CHRE, as the legal person initiating proceedings, should notify the employer and send a copy of such notification to the regulator.

Paragraphs 17,19 ,20, 25, 51-It would be more appropriate to use the language of the enabling legislation - “unduly lenient” or “should not have been made”, rather than “wrong” or “erroneous” or “correct”. To do otherwise, is to invite judicial review.

Paragraph 22-The Society would prefer to see a reference to evidence that the prosecution could *reasonably* have been expected to obtain and place before the panel

Paragraph 27-typo in 3<sup>rd</sup> line from the bottom “we are committed?”

Paragraph 30-the more appropriate analogy is to an Investigating Committee or PPC. Registrants and complainants are entitled to make representations to those bodies, and the Society considers that natural justice would require them to be allowed to make representations to the CHRE S29 case meeting. The Society believes that the regulator should also be allowed to make written submissions to the case meeting.

Additionally, the Society considers that, in some circumstances, it may be appropriate to obtain comments from the Chairman of the Committee whose decision is to be referred.

Paragraphs 34, 45 and 48 -it is not clear whether or not the Legal and Technical advisers are entitled to vote. The Society considers that any advice given by a technical adviser should be disclosed to the registrant and the regulator. The same point –in relation to advice from the Legal Adviser-arises in paragraph 54.

Paragraph 34 and paragraph 38, the Society remains unclear why the Director also needs to be present at the meeting. The wording of paragraph 38(d) comes dangerously close to implying that the Director or other staff member has a key role in the decision making process.

Paragraph 36-the Society considers that the use of a “casting vote” is out of step with modern regulatory practice. It lays the Chair open to accusations of bias. It would be preferable to ensure that there are always three members present.

### Paragraph 73

The Society considers that the regulator should not be liable for costs where it has indicated at the outset that it does not intend to contest the referral.