

GPhC Criminal Prosecution Policy

1. Introduction

1.1 The Pharmacy Order 2010 creates a number of criminal offences, most of which relate to the register, with the remainder relating to the inspection of premises. In addition, there are other pharmacy related offences within the GPhC's enforcement remit in medicines and poisons legislation.

2. Purpose of policy

2.1 The GPhC is a public authority with powers to institute criminal proceedings for offences under the Pharmacy Order 2010 and other legislation (and has a duty of enforcement under medicines legislation). A prosecution policy is required for the purposes of:

- informing affected parties of the GPhC's approach
- guiding decision-makers as to the approach which the governing Council wishes them to take
- enabling prosecution decisions to be taken in a consistent, fair and accountable way.

3. Policy statement

3.1 The GPhC Prosecution Policy can be found at Appendix 1

4. Application of policy

4.1 The prosecution policy will be applied in all cases where the GPhC has reason to believe that a relevant offence may have been committed.

5. Measurement and evaluation

5.1 To be kept under continual review however formal review to take place within two years from effective date.

Matthew Hayday, Head of Governance

Reference: GP/2014/89

Effective date: 13/11/2014

Review date: To be kept under continual review however formal review to take place within one year from effective date, 14/11/2014

Agreed by: Council 13 November 2014

Appendix 1

GPhC Prosecution Policy

1. Alternatives to prosecution

- 1.1 Consistent with the GPhC's values and regulatory principles, we always aim to select the most proportionate and cost-effective approach to addressing problems. In the case of criminal matters within our remit this usually means seeking alternatives to prosecution, including securing voluntary compliance and non-criminal regulatory interventions for example fitness to practise proceedings where appropriate.
- 1.2 GPhC standards and regulatory proceedings are specifically designed as effective mechanisms for regulating the conduct and standards of pharmacy professionals. Where it appears that a relevant offence¹ may have been committed by a GPhC registrant, regulatory proceedings are more likely in most cases to provide an effective and proportionate mechanism for challenging that behaviour than criminal prosecution.
- 1.3 Exceptions to this general approach are possible and should be considered where a registrant's conduct demonstrates that in their particular case a regulatory intervention may not be an effective and adequate response (which could be the case for example if a registrant commits an offence by practising whilst suspended from the register, thereby demonstrating a disregard for regulatory decisions).
- 1.4 In the case of a relevant offence which appears to have been committed by a non-GPhC registrant, then the institution of criminal proceedings may be the only enforcement tool available to the GPhC. By definition, a person who is not registered with the GPhC is beyond the reach of GPhC regulation, including fitness to practise proceedings. This is equally true whether or not the person has ever been a registrant; a person who is removed from the register and then commits an offence by continuing to practise is just as beyond the GPhC's reach as a person who masquerades as a registrant. In both cases the GPhC has a role in upholding the integrity of the register by challenging this behaviour and seeking to stop it. A criminal prosecution may be the only option – and therefore the right and proportionate response – in such circumstances.

2. Deciding whether to prosecute

- 2.1 In cases in which it appears that a criminal prosecution may be an effective and proportionate response to alleged criminal behaviour, in England and Wales we apply the Code for Crown Prosecutors, which involves a two stage test examining firstly a review of all of the relevant evidence to decide whether there is a 'realistic prospect of conviction' and, if there is, a second stage to determine whether prosecution is in the public interest. In cases in which it appears that a criminal prosecution in Scotland may be an effective and proportionate response to alleged criminal behaviour we use the Scottish Prosecution Code to help us decide whether to refer a matter to the Crown Office and Procurator Fiscal Service, for them to consider whether to initiate a prosecution.
- 2.2 In cases in which a relevant offence appears to have been committed as part of a wider course or episode of criminality involving more serious offences, we liaise with the police and prosecution authorities to determine the best course of GPhC action in order to secure public and patient safety and to facilitate the prevention, investigation and detection of serious crime by the relevant authorities.

3. Sentencing

- 3.1 When acting as a prosecutor, the GPhC, has a duty to assist the court in relation to sentencing and in particular should, where possible, be in a position to provide the court with all relevant information relating to the facts of the case and the individual defendant's personal circumstances, including (but not limited to) the following:
- The defendant's age, background, present circumstances and previous convictions
 - All relevant aggravating and mitigating factors
 - Any relevant statutory sentencing provisions and sentencing guidelines and/or guideline cases
 - Ancillary orders, such as compensation
 - The views of any victim through the Victim Personal Statement
 - The impact of the offending on a community.
- 3.2 This policy is to be reviewed at regular intervals.

ⁱ An offence under the Pharmacy Order 2010 or an offence under the Medicines Act or the Poisons Act within the GPhC's enforcement remit