General Pharmaceutical Council

Draft hearings and sanctions guidance consultation

A consultation on guidance for use by people involved, or with an interest, in a fitness to practise hearing

Contents

About this consultation

The General Pharmaceutical Council (GPhC) is consulting on draft hearings and sanctions guidance for use by people involved, or with an interest, in a fitness to practise (FtP) hearing. This consultation is the second stage in our review of our present indicative sanctions guidance. The guidance is the main document fitness to practise (FtP) committees use to help with their decision-making.

The deadline for responding to this consultation is **Tuesday 31 March 2015.** You can respond online at **www.pharmacyregulation.org/hasg**

The guidance was first produced in May 2011 and is available on our website. It will remain in force until this consultation is finished and the hearings and sanctions guidance, as it will be known from that point onwards, has been agreed by the GPhC council and published.

On 20 November 2014 we published a discussion paper, *Supporting decision-making in hearings*. This asked for views on a range of issues that our FtP committees decide on during hearings, including sexual misconduct, dishonesty, raising concerns and the duty of candour. It also set out a new approach to considering mitigating and aggravating factors at a hearing. The feedback received from stakeholders through the discussion paper has been invaluable in producing specific parts of this consultation.

We want to use this consultation to get your views on the entire guidance, and its structure, tone and content. We have included questions on some of the specific areas we want feedback on. Your answers are really important and will help us to develop and produce our final guidance.

You can find more information about how to respond to this consultation on page 10.

About the GPhC

We are the regulator for pharmacists, pharmacy technicians and registered pharmacies in Great Britain. It is our role to protect, promote and maintain the health, safety and wellbeing of patients and the public who use pharmacy services in England, Scotland and Wales. Our principal functions include:

- approving qualifications for pharmacists and pharmacy technicians and accrediting education and training providers
- maintaining a register of pharmacists, pharmacy technicians and pharmacy premises
- setting standards for conduct, ethics and performance, proficiency, education and training, and continuing professional development (CPD)
- establishing and promoting standards for the safe and effective practice of pharmacy at registered pharmacies
- establishing FtP requirements, monitoring pharmacy professionals' FtP and dealing fairly and proportionately with complaints and concerns

An important part of our role is dealing with the small numbers of pharmacists and pharmacy technicians who fall short of the standards that the public can reasonably expect from healthcare professionals.

Why are we reviewing the indicative sanctions guidance?

When pharmacists or pharmacy technicians fall short of expected standards, their fitness to practise may be called into question. This can lead to a referral to the GPhC, an investigation, and possibly a hearing before an independent FtP committee.

FtP committees reach their own conclusions about the evidence they hear. However, it is important that the decisions they make uphold confidence in the pharmacy profession, protect the public, and maintain and uphold professional standards.

The decisions made by the fitness to practise committees, and the sanctions they impose, need to accurately reflect established case law. Crucially, they need to protect the public and make sure the public has confidence in the professions we regulate.

There is guidance to help FtP committee members to reach a decision and produce a determination as part of an FtP hearing.

The FtP committee itself used to be responsible for producing this guidance. However, with the introduction of the *Amendment of Miscellaneous Provisions Rules*[1] in December 2012 the GPhC took over responsibility for agreeing the content of 'decision-making guidance' used at an FtP hearing.

We are now reviewing the present version of the guidance which was produced in 2011. We want to make sure that it takes account of legal and regulatory changes. But we also want to be sure that it is fit for purpose, accessible to all, and is a basis for fair and proportionate decisions used at an FtP hearing.

The revised guidance should improve consistency, lead to greater transparency and improve the quality of committee decisions about sanctions. This will be to the benefit of everyone involved in and affected by the process, and will lead to better public protection.

It is important to emphasise that FtP committees are independent of the GPhC. It is also important to stress that, although this guidance will be used by the committees, they do not have to follow it. The guidance is not designed to affect their ability to make independent decisions.

1. www.legislation.gov.uk/uksi/2012/3171/made

The review so far

Since the start of the review we have been in touch with stakeholders – including FtP committees, other healthcare regulators, pharmacy organisations and patient representatives – to help us develop the draft guidance.

Using feedback from these groups and individuals we launched a discussion paper in November 2014 on specific areas, including sexual misconduct and dishonesty. We have used the feedback from this discussion exercise to produce this draft guidance, and the key findings are below.

The discussion paper was open for comment for six weeks, from 20 November until 31 December 2014. The aim of this was to test our governing council's thinking on specific areas that arose during discussions about the indicative sanctions guidance review. We also contacted committee chairs and several stakeholders, including GPhC advocates. We used the results of this consultation when deciding on the content of the draft guidance. We received 26 responses to the discussion paper. This included three responses from UK-wide pharmacy bodies (APTUK, PDA, Pharmacy Voice), one from a patient representative organisation (AVmA) and one from a law firm (BLM). Please ask us if you would like to see the details of responses.

Feedback on the discussion paper

There was strong support for the council's thinking on the key areas of sexual misconduct, dishonesty, duty of candour, raising concerns and the revised approach to mitigating and aggravating factors. However, there was some uncertainty about the approach to the duty of candour and raising concerns. Respondents queried the role of non-pharmacists in these areas, and the wider work needed to make sure pharmacy professionals can be confident about being candid and raising concerns.

Challenges to our proposals were mainly about our approach to cases of sexual misconduct and the need to consider the context of cases when deciding on a sanction. We have taken this into account in the draft guidance, and revised our proposals so that committees will consider carefully the circumstances of each case but recognise that there are some cases when removal will most likely be appropriate.

There were strong arguments for and against moving away from lists of mitigating and aggravating factors. On balance, we decided to revise our approach and include more detail in this section than we originally intended. Therefore, rather than having a general description of mitigation and aggravation, we propose including in the draft guidance examples of generic factors for the committee to consider. This should also help registrants and defence groups in deciding what the relevant factors are to highlight in any given case.

Feedback from focus groups

We held focus groups in England, Scotland and Wales, to test the council's thinking with patients and the public. The focus groups considered each of the areas covered by the discussion paper. The results of the discussion were consistent across the three events. Overall, focus group participants:

- agreed that instances of failure to raise concerns or to be candid should result in sanctions at the upper end of the scale
- felt strongly that context is very important when considering cases of dishonesty
- held a range of views on sexual misconduct in terms of the actual act involved and suggested a varying scale of activities that can present a risk to patient safety
- sometimes had some difficulty in deciding what a sanction should be, as there was a 'gap' between warnings and suspension, and in some circumstances imposing conditions is not appropriate
- highlighted the importance of mitigating or aggravating factors such as remorse, concealment and persistent offending
- felt that small instances of dishonesty, if not dealt with, can lead to more significant events
- felt that in general, issues that happen in private life should not have an impact on professional life

A summary of the main changes

We are proposing to replace our 'indicative sanctions guidance' with what will be known as the 'hearings and sanctions guidance'. The name change will better reflect its content and structure.

This revised guidance, included in the appendix, is very different in language and structure from the present guidance. However, it still contains the key principles and relevant information that a committee needs when deciding on a sanction. We intend the guidance to be accessible and understandable for all the stakeholders and participants in FtP proceedings.

The guidance gives useful context and details about the FtP process which will help to show how a committee reaches a decision. It also includes specific sanctions guidance for committees to use when making a decision about what sanction to apply.

The draft revised document is in two parts. It follows the sequence of a hearing from start to finish and gives the key considerations and actions at each stage. It also includes some specific guidance on particular areas where the council believes it is needed. The key changes include:

- a significantly revised structure and tone to make sure the guidance is more accessible to a wider audience, particularly everyone involved in the hearings process
- more context for each section to make it easier for people to understand the process
- more clarity on the process of reaching decisions, including the principles guiding the decisions and relevant case law
- adding the council's view on sexual misconduct, dishonesty, duty of candour and raising concerns – to help committees with their decision-making
- adding a framework for decision-making which focuses on our principal objective of protecting the public. This replaces the present exhaustive list of aggravating and mitigating factors for committees to consider

How to give us your comments

The consultation asks a series of questions, which are set out here.

You can respond to the consultation in a number of ways:

- go to **www.pharmacyregulation.org/hasg** and respond online
- email **consultations@pharmacyregulation.org**
- complete the consultation response form and send it to:

  Draft hearings and sanctions guidance consultation
  Standards and fitness to practise policy team
  General Pharmaceutical Council
  25 Canada Square
  London
  E14 5LQ

  You can attach extra pages if you need more space to respond. Please indicate which question(s) any extra text relates to.

Other formats

There is a Welsh language version of this consultation document at **www.pharmacyregulation.org/hasg**

If you are seeking this document in other formats, please contact us at **consultations@pharmacyregulation.org** or call us on **020 3713 7988**

The consultation ends on **Tuesday 31 March 2015** and we must receive your response by this date.

Background questions

First, we would like to ask you for some background information. This will help us to understand the views of specific groups, individuals or organisations and enables us to better respond to those views.

If you are responding:

- as an individual – please go to section A
- on behalf of an organisation – please go to section B

Consultation response form

Draft hearings and sanctions guidance

Section A - Responding as an individual

Please tell us your:
Name: _____
Address: _____

_____

Email: _____
Where do you live?
□ England
□ Scotland
□ Wales
□ Northern Ireland
□ Other (please give details)

_____

Are you responding as:
□ A pharmacy professional – Please go to section A1
□ A member of the public
□ Other (please give details)

_____

Section A1 - Pharmacy professionals

Are you:
□ A pharmacist
□ A pharmacy technician
Please select the option below which best describes the area in which you primarily work:
□ Community pharmacy
□ Hospital pharmacy
□ Primary care organisation
□ Pharmacy education and training
□ Pharmaceutical industry
□ Other (please give details)

_____

If you work in community pharmacy, are you:
□ A pharmacy owner
□ An employee
□ A self-employed locum

Section B: Responding on behalf of an organisation

Please tell us your:
Name: _____
Job title: _____
Organisation: _____
Address: _____
Email: _____
Phone: _____
Is your organisation:
□ A pharmacy organisation
□ A non-pharmacy organisation
Please choose the option below which best describes your organisation:
□ Body/organisation representing professionals
□ Body/organisation representing patients/the public
□ Body/organisation representing trade/industry
□ Community pharmacy
□ Corporate multiple
□ Independent
□ NHS organisation/group
□ Research, education and/or training organisation
□ Government department/organisation
□ Regulatory body
□ Other (please give details)

_____

How we will use your responses

All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want your response to remain confidential, you should explain why you regard the information you have provided as confidential. However, we cannot give an assurance that confidentiality can be maintained in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the GPhC.

Your response to this consultation may be published in full or in a summary of responses.
Responses to the consultation will be anonymised if they are quoted. Individual contributions will not be acknowledged unless specifically requested.

The GPhC is a data controller registered with the Information Commissioner's Office. The GPhC makes use of personal data to support its work as the regulatory body for pharmacists, pharmacy technicians and retail pharmacy premises in Great Britain. Data may be shared with third parties in pursuance of the GPhC's statutory aims, objectives, powers and responsibilities under the Pharmacy Order 2010, the rules made under the order and other legislation. Personal data may be processed for purposes including (but not limited to) updating the register, administering and maintaining registration, processing complaints, compiling statistics and keeping stakeholders updated with information about the GPhC.

Information may be passed to organisations with a legitimate interest including (but not limited to) other regulatory and enforcement authorities, NHS trusts, employers, Department of Health, universities and research institutions. Please note that the GPhC will not share your personal data on a commercial basis with any third party.

Consultation questions

We are particularly interested in your views on the following points, although we welcome comments on any issues that you wish to raise in the relation to the draft hearings and sanctions guidance.

1. This document is formed of two distinct parts: part a gives an overview of the decision making that fitness to practise committees follow; and part b provides specific guidance about sanctions, which FtP committees must consider.

a. To what extent do you think presenting these parts together is helpful?

- □ Very helpful
- □ Helpful
- □ Neither helpful or unhelpful
- □ Unhelpful
- □ Very unhelpful

b. Do you think the title 'Hearings and sanctions guidance' clearly reflects the content and purpose of the document?

- □ Yes
- □ No
- □ Not sure

If not, what would make it clear?

2. Do you think the structure and tone of the document it is clear and accessible?

- □ Very clear/accessible
- □ Clear/accessible
- □ Neutral
- □ Unclear/inaccessible
- □ Very unclear/very inaccessible

If you think it is unclear or very unclear, please let us know areas that can be improved.

3. Do you think the guidance is useful in helping you to understand:

a. the sanctions available?

- □ Very useful
- □ Useful
- □ Neutral
- □ Not useful

b. how the FtP committee decides upon a sanction?

- □ Very useful
- □ Useful
- □ Neutral
- □ Not useful

4. Please let us know if there are any improvements that we can make in the information about the sanctions and how FtP committees make their decision.

5. Our revised draft guidance is set out in two parts. It covers the process of a hearing including how a committee reaches a decision, and what a committee will consider when reaching a decision.

a. Do you think part a: 'Hearings and the decision-making process' clearly sets out the process and what we mean by 'hearings'?

- □ Very clear
- □ Clear
- □ Neutral
- □ Unclear
- □ Very unclear

b. Do you have any views on how this section could be improved?

6. **a.** Do you think part b, called 'guidance on sanction' gives clear guidance to help FtP committees decide which sanction would be appropriate in a given case?

- □ Very clear
- □ Clear
- □ Neutral
- □ Unclear
- □ Very unclear

b. Do you have any views on how this section could be improved?

7. The section called 'relevant mitigating and aggravating factors' presents a framework for decision making by the FtP committee, rather than an exhaustive list of mitigating and aggravating factors. The intention is to provide greater flexibility for those involved in fitness to practise hearings to take into account the specific context for each case.

Do you agree that this will support effective decision-making?

- □ Strongly agree
- □ Agree
- □ Neither agree, nor disagree
- □ Disagree
- □ Strongly disagree

8. Do you think the draft hearings and sanctions guidance clearly sets out our governing council's position where the following issues form part of the allegation?

	Yes	No	Not sure
Dishonesty			
Sexual misconduct			
The duty of candour			
Raising concerns			

If you answered 'no' to any of the issues above, do you have any further comments about how greater clarity could be provided?

9. Do you have any other comments on the draft guidance?

Next steps

Thank you for submitting a consultation response. We will consider your feedback and use it, with other responses we receive, to compile a report. We will use the information we gather from this consultation when producing the final guidance which we intend to publish in Spring 2015.

Appendix A: Draft hearings and Sanctions guidance

About us

The General Pharmaceutical Council (GPhC) is the regulator for pharmacists, pharmacy technicians and registered pharmacy premises in England, Scotland and Wales. It is our job to protect, promote and maintain the health, safety and wellbeing of members of the public by upholding standards and public trust in pharmacy.

Our principal functions include:

- approving qualifications for pharmacists and pharmacy technicians and accrediting education and training providers
- maintaining a register of pharmacists, pharmacy technicians and pharmacy premises;
- setting standards for conduct, ethics, proficiency, education and training, and continuing professional development (CPD)
- establishing and promoting standards for the safe and effective practice of pharmacy at registered pharmacies
- establishing fitness to practise requirements, monitoring pharmacy professionals' fitness to practise and dealing fairly and proportionately with complaints and concerns

We are committed to protecting, promoting and improving the health and safety of people who use pharmacy services in England, Scotland and Wales. An important part of that role is dealing with the small number of pharmacists and pharmacy technicians who fall short of the standards that the public can reasonably expect from healthcare professionals.

Contents

1. Introduction

What this guidance is about

1.1 This guidance tells you about our fitness to practise hearings, how decisions are made and the sanctions committees can impose. Under the law we can publish[1] decision-making guidance used at fitness to practise hearings. So this guidance is for committees to use when deciding what sanction is appropriate in any given case.

1.2 This guidance is in two parts:
Part a: Hearings and the decision-making process
Part b: Sanctions guidance

Who this guidance is for

1.3 This guidance is aimed at everyone who is involved in a fitness to practise hearing. This includes GPhC staff, committee members, registrants (whether appearing at a hearing or not) and their representatives. It will also be useful to anyone who is interested in a fitness to practise hearing, including:

- people thinking about making a complaint to the GPhC about a registrant
- patients and their representatives
- defence organisations
- other regulatory bodies, including the Professional Standards Authority (PSA)
- the courts

1.4 We will regularly review this guidance to:
- take account of changes to case law
- make sure it stays 'fit for purpose' and accessible to all stakeholders

Equality and diversity

1.5 The GPhC is committed to promoting equality, diversity and inclusion when it does its work. We value diversity and individuality in our staff, the profession and our council. Our aim is to make sure that our processes are fair, objective, transparent and free from discrimination, and that all stakeholders receive a high level of service. We keep to the principles set out in the Equality Act 2010 and have developed an equality, diversity and inclusion scheme

1.6 All GPhC staff are expected to demonstrate our values and to work towards these aims at all times during the fitness to practise process. The GPhC will uphold and promote the principles of the European Convention on Human Rights (ECHR) in accordance with the Human Rights Act 1998.

1 www.legislation.gov.uk/uksi/2012/3171/made

Part a: Hearings and the decision-making process

This part tells you about fitness to practise hearings, how they fit into the decision-making process and how a committee reaches a decision on whether to impose a sanction, and if so, which one.

2. Hearings

2.1 A fitness to practise hearing is one part of a detailed process that begins once a complaint has been received by the GPhC. This process can end[2] at several key stages:

- after investigation takes place
- at an investigating committee
- at a fitness to practise committee.

2.2 Decision-making guidance is used at each stage to decide what action to take.

- Our threshold criteria[3] are used at the investigation stage to decide whether to refer a case to the investigating committee
- Our referral criteria[4] are used by the investigating committee to help it deal with cases it makes a decision on
- This guidance covers fitness to practise hearings and the decisions made by a fitness to practise committee during a hearing

2.3 If a case is referred to the fitness to practise committee, there will usually be a hearing. The hearing is held by a committee of three people (a chair, a registrant member and a lay member). Other people may also be at the hearing, including a legal adviser, a medical adviser, GPhC staff and registrant representatives. Committees hear evidence and decide whether a registrant's fitness to practise is impaired[5].

Guidance used at each stage of a complaint

2 Those allegations that are within the GPhC's jurisdiction
3 www.pharmacyregulation.org/sites/default/files/The%20threshold%20criteria%20po.pdf
4 www.pharmacyregulation.org/sites/default/files/GPhC%20Investigating%20Committee%20Referral%20Criteria%20-%20August%202012.pdf
5 The meaning of impairment is given in paragraph 2.9

2.4 Fitness to Practise committees are independent of the GPhC. They are accountable for the decisions they make and must take account of guidance produced by the GPhC[6].

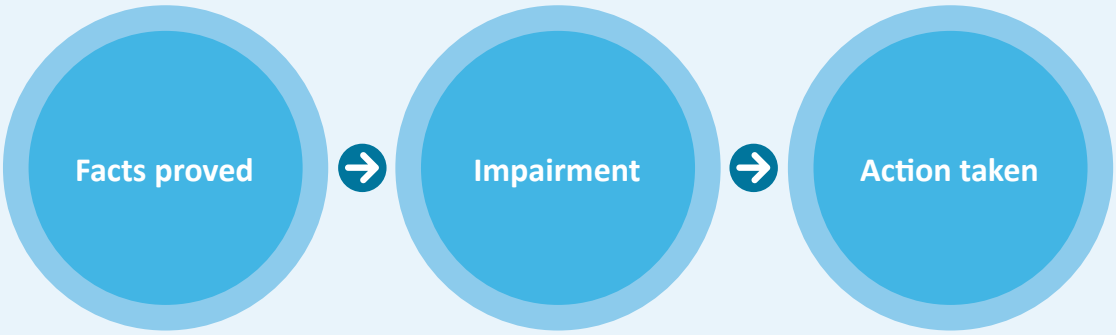
2.5 A committee must hold hearings in public. If the hearing is about the health of the registrant, or relates to an interim order, the committee must hold it in private, unless it is satisfied that the interest of the registrant concerned, or of a third party, in maintaining their privacy is outweighed by the public interest. A hearing may also be held wholly or partly in private if the committee is satisfied that the interest of the person concerned or the third party in maintaining their privacy outweighs the public interest in holding the hearing, or the part of the hearing, in public[7].

Reaching a decision

2.6 During a hearing the committee follows a three-stage process before it reaches a decision on whether to impose a sanction, and if so, which sanction to impose[8] . Once the committee has heard the evidence, it must decide:

- whether the **facts** alleged have been found proved
- whether the registrant's fitness to practise is **impaired**
- whether any **action** should be taken, by way of a sanction, against the registrant's registration or not. This is dealt with in detail in part b of this guidance

Reaching a decision about sanction



6 Rule 31(14)(a) – General Pharmaceutical Council Fitness to Practise Rules Order of Council 2010
7 Rule 39 - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010
8 Rule 31 – General Pharmaceutical Council Fitness to Practise Rules Order of Council 2010

Facts proved

2.7 In a hearing, the GPhC has to prove the facts alleged against a registrant. The standard of proof which applies is the 'balance of probabilities'. This means that the committee will find an alleged fact 'proved' if it decides, after hearing the evidence, that it is more likely than not to have happened. This is not the same as the standard of proof in a criminal court, which is 'beyond a reasonable doubt'.

2.8 If the facts alleged against the registrant have been proved it does not necessarily mean that there will be a finding of impairment. A committee's decision on impairment must be separate from the decision on the facts of the case. For example, even if there is a finding of misconduct, a committee may decide that a registrant's fitness to practise is not impaired and therefore no action is needed.

Impairment

2.9 A pharmacy professional is 'fit to practise' when they can demonstrate the skills, knowledge, character, behaviour and health needed to do their job safely and effectively. In practical terms, this means maintaining appropriate standards of proficiency, demonstrating good character, and also keeping to the principles of good practice set out in our various standards, guidance and advice.

2.10 Fitness to practise can be impaired for a number of reasons including misconduct, lack of competence, ill-health and a conviction for a criminal offence[9].

2.11 The committee will have regard to issues that occur in both personal and professional life and must decide whether the registrant's fitness to practise is currently impaired, not whether it was at the time the incident occurred[10] . The committee must take into account relevant factors, which include whether or not the conduct or behaviour[11]:

- presents an actual or potential risk to patients or to the public
- has brought, or might bring, the profession of pharmacy into disrepute
- has breached one of the fundamental principles of the profession of pharmacy
- shows that the integrity of the registrant can no longer be relied upon

2.12 The committee should also consider whether:

- the conduct which led to the complaint is able to be addressed
- the conduct which led to the complaint has been addressed
- the conduct which led to the complaint is likely to be repeated
- a finding of impairment is needed to declare and uphold proper standards of behaviour and/or maintain public confidence in the profession

9 Pharmacy Order (section.51)
10 Meadow v GMC [2007]
11 Rule 5 - General Pharmaceutical Council Fitness to Practise Rules Order of Council 2010

2.13 The decision on impairment is a matter for the judgment of the committee. Therefore the committee has to make its own decision about impairment even when it is admitted by the registrant. A committee must make clear what factors have been taken into account when deciding on impairment.

Action taken

2.14 If a committee decides a registrant's fitness to practise is impaired, it can:

- take no action
- issue a warning
- impose conditions
- suspend the registrant from practising
- remove the registrant from the register in the most serious cases

These sanctions are intended to protect the public, not to punish the registrant. You will find more details on these sanctions, and what a committee considers when reaching a decision about sanctions, in part b of this document.

The determination

2.15 Once a committee has made a decision on a sanction it will give its 'determination'. The determination is the formal, written statement by the committee announcing its decision and explaining the reasons for it. The amount of detail a committee gives in a determination depends on the nature and complexity of the case. In every case the reasons must be adequate. They must also be easily understood by both the registrant, the GPhC, and any other interested party, so that it is clear why a particular decision has been made.

2.16 When writing a determination the committee should follow the guidance on drafting fitness to practise determinations[12]. If a committee decides not to follow the guidance, it should clearly explain in its reasons why it has done this.

12 www.pharmacyregulation.org/sites/default/files/Guidance%20on%20drafting%20fitness%20to%20practise%20determinationsMay%202013.pdf

2.17 The committee's determination must explain why it thinks the sanction it has chosen is fair, reasonable and proportionate. It should say how the committee considered the possible sanctions, starting with the least severe sanction and moving upwards. The determination should say why the committee has decided upon the sanction and explain:

- why the lesser sanctions are not appropriate
- why the next available, more serious sanction, is not appropriate
- how the sanction chosen will adequately protect the public and the wider public interest.

2.18 It is also important that the registrant is given proper reasons, so they can decide whether or not to appeal against a decision. The GPhC, the complainant, the public, the Professional Standards Authority (PSA) and other pharmacy professionals must also be able to understand the reasoning behind the committee's decisions. Any committee which has to consider the case later (for example, at a review hearing) must be able to understand properly the reasoning behind the original decision.

3. After a decision has been made

Once a committee has made a decision on a sanction it may also impose 'interim measures'. Once the hearing has ended, there may be other hearings on another date. This depends on the sanction and circumstances of the case.

Interim measures

3.1 The committee may impose interim measures if it has made a direction for:

- removal from the register
- suspension
- conditional entry in the register[13]

3.2 Before considering whether to impose interim measures, the committee should invite representations from both parties. When announcing whether it is to impose interim measures, the committee should give its reasons for that decision.

13 Pharmacy Order 2010 Article 60(3) and (4)

3.3 Even if it decides not to impose interim measures, the committee should make clear in its determination that it has considered them, what it has decided and why. The interim measures will take effect immediately and can cover the 28-day 'appeal period'. If the registrant appeals against the decision, they will stay in force until that appeal is decided. A committee may impose interim measures[14] if it is satisfied that they are necessary to protect the public, or are otherwise in the public interest or in the interests of the registrant.

3.4 The committee must give proper, adequate and clear reasons for imposing interim measures. The reasons must explain why the committee is satisfied that imposing interim measures is:

- necessary for the protection of the public
- otherwise in the public interest, or
- in the interests of the registrant

3.5 Interim measures, in the form of a suspension, may be imposed only if substantive direction for suspension or removal is given, and interim conditions may only be imposed if substantive conditions have been imposed.

Review hearings

3.6 When a registrant is suspended from the register following a hearing, a committee may direct that a review hearing takes place before the period of suspension ends.

3.7 When a registrant is made subject to a 'conditions of practice direction' following a hearing, a committee may direct that a review hearing takes place before the period of conditional registration ends.

3.8 Review hearings[15] should usually take place towards the end of the period of suspension or conditions unless there is a good reason for the committee to review the matter earlier. For example, the GPhC may have evidence that the registrant has practised while suspended or has failed to comply with the conditions imposed upon their practice.

3.9 At a review hearing, the registrant must provide evidence or demonstrate how any past impairment has been addressed[16].

14 Pharmacy Order 2010 Article 60
15 See Rule 34 for the procedure followed at a review hearing
16 Abrahaem v GMC [2008] EWHC 183 (Admin)

3.10 If, before a review hearing, the GPhC becomes aware of new evidence* that it wants to bring to the attention of the committee:

- the council may request case management directions
- the committee chair may direct that the new evidence be considered at the review hearing, and that these rules are modified to take into account the particular circumstances of the case[17]

(*For example, evidence of a failure to comply with conditions, or inclusion on any of the barred lists.)

3.11 At a review hearing, any finding of impairment made by the committee must be based on the original allegation. The committee will need to consider whether the registrant's fitness to practise remains impaired after considering all of the information now available.

3.12 When the registrant's registration is, or will be, subject to conditions, or is suspended, there will usually be a further review hearing. If, in a particular case, the committee decides that a further review hearing is not needed, it must explain its reasons. If there is to be a further review hearing, the committee should explain in its determination the sort of evidence the registrant would be expected to provide at that hearing.

Review of a suspension

3.13 There is a range of sanctions that the committee can impose at the review hearing. If the committee has suspended a registrant, it may, following a review, decide that[18]:

- their entry be removed from the register
- the suspension be extended by another period of up to 12 months, to start from the time when the original suspension would have ended
- their registration be suspended indefinitely, if the suspension has already been in force for at least two years[19]
- an indefinite suspension is ended
- conditions should be imposed when the suspension expires or is terminated

3.14 In some cases it may be obvious that, following a short period of suspension, there will be no value in a review hearing. However, in most cases when a suspension is imposed the committee will need to be sure that the registrant is fit to resume practice either unrestricted or with conditions.

3.15 The committee will also need to satisfy itself that the registrant:

- has fully appreciated the seriousness of the breach or breaches they have committed
- has not committed any further breaches of the GPhC's standards of conduct, ethics and performance

17 Rule 30 - General Pharmaceutical Council Fitness to Practise Rules Order of Council 2010
18 Pharmacy Order 2010 Article 54(3)(a)
19 This direction must be reviewed if the registrant asks and there has been at least two years since the direction took effect or was reviewed: Article 54(4).

3.16 At a review hearing, the committee should check whether the registrant is on any of the barred lists, if this was not confirmed at the original hearing. This is particularly true in cases of a sexual nature, or cases that involve children or vulnerable adults. If the registrant is on any of the barred lists, the committee should consider the implications of this for the review hearing (for example, the confidentiality of information).

3.17 When the committee:

- is removing a suspension order and imposing conditions on the registrant's registration instead, or
- allowing the registrant to return to unrestricted practice

the determination should explain why the public will not be put at risk by this decision.

Review of conditions

3.18 If the committee is reviewing a registrant's conditions, the determination should deal with whether, and how, the registrant has complied with the conditions. If the committee decides that there has been a failure to comply, it must make specific findings. These must explain which conditions have not been complied with, in what way, and on what evidence the committee has based that decision.

3.19 When a registrant's entry in the register is conditional upon their complying with requirements the committee may[20]:

- extend the period for complying with the requirements for up to 3 years starting from the time when the earlier period would have ended
- add to, remove or vary the requirements
- suspend the entry, for up to 12 months
- remove the entry from the register

3.20 In most cases when conditions have been imposed the committee will need to be sure that the registrant is fit to resume unrestricted practice, or to practise with other conditions or further conditions.

3.21 The GPhC will monitor any conditions imposed on registration. This may mean the committee does not need to ask for an early review of the case. If the GPhC then discovers any breach of, or failure to keep to, the conditions a review hearing should take place. This is so that the committee can decide whether to continue, modify or end the conditions and impose a different sanction.

20 Pharmacy Order 2010 Article 54(3)(b)

Part b: Guidance on sanction

This part sets out the GPhC's guidance on what sanctions are, and what issues or factors a committee should consider before deciding on what sanction to apply. This guidance is not intended to interfere with the committee's powers to impose whatever sanctions it decides in individual cases[21] . Committee members must use their own judgment when deciding on the sanctions to impose. They must also make sure that any sanction is appropriate, based on the individual facts of the case. In deciding on the appropriate sanction, the committee must consider this guidance. If a committee chooses not to follow the guidance, it should explain why it has done this in its reasons for choosing the sanction.

4 Available sanctions

4.1 The committee has powers to impose a sanction whether it decides that a registrant's fitness to practise is impaired or not. However, some sanctions can only be imposed once a there has been a finding of impairment of fitness to practise. The tables below show the sanctions that are available.

4.2 Fitness to practise sanctions are used to protect patients and the wider public interest. They are not used to punish registrants. Whilst the effect some sanctions have, for example a suspension or removal, could be punitive, a sanction must not be imposed to punish a registrant.

4.3 Committees must make sure that the decision on sanction is fully understood. The committee chair should carefully explain, in clear and direct language which leaves no room for misunderstanding or ambiguity:

- what sanction, if any, the committee has imposed
- the reasons for the sanction
- what this means for the registrant

21 CRHP -v- (1) GMC (2) Leeper [2004]

Registrants

4.4 A committee may apply any of the sanctions set out below.

Sanction	The impact on registration	Circumstances when this can apply
Take no action	No action will be taken, the case will be closed and no record of the case will be recorded on the register.	This may apply even when impairment is found, but there is no risk to the public or need for a sanction to be imposed.
Warning[22]	The committee gives a warning to the registrant. The details of this warning will be recorded in the register.[23]	There is a need to demonstrate to a registrant, and more widely to the profession and the public, that the conduct or behaviour fell below acceptable standards. There is no need to take action to restrict a registrant's right to practise and there is no continued risk to patients or the public.
Conditions[24]	Conditions place certain restrictions on a registrant's registration for the period given by the committee (up to three years). The details of these conditions will be recorded in the register.	There is evidence of poor performance, or significant shortcomings in a registrant's practice, but the committee is satisfied that the registrant may respond positively to retraining and supervision. There is not a significant risk posed to the public, and it is safe for the registrant to return to practice but with restrictions.
Suspension	A suspension prevents a registrant from practising for a specific period given by the committee (up to 12 months). The details of the suspension will be recorded in the register.	The committee considers that a warning or conditions are insufficient to deal with any risk to patient safety or to protect the public, or would undermine public confidence. Required when public confidence in the profession demands no lesser sanction.
Removal	The registrant's entry in the GPhC register will be removed and they will no longer be able to work as a pharmacy professional in Great Britain[25].	Removing a registrant's registration is reserved for the most serious conduct. The committee cannot impose this sanction in cases which relate solely to the registrant's health. The committee should consider this sanction when the registrant's behaviour is fundamentally incompatible with being a registered professional.
Warning or advice[26]	The committee gives a warning or advice to the registrant about any issue it considers necessary or desirable. Details of the warning will be recorded in the register. .	The concerns do not amount to an impairment of fitness to practise but are serious enough to need a formal response. The committee should explain why a formal response is needed even though 'no impairment' was found.

22 See the publication and disclosure policy for details of recording sanctions on the register
23 Sanctions are placed on the register for a period given in our publication and disclosure policy www.pharmacyregulation.org/sites/default/files/gphc_publication_and_disclosure_policy_vseptember_2014.pdf
24 Taken from the 'published conditions bank'
25 The applicant must wait for five years before applying to be restored to the register
26 If there is no finding of impairment

4.5 The committee may also give advice[27] – to any other person or other body involved in the investigation of the allegation – on any issue arising from, or related to, the allegation[28].

4.6 If the registrant is entered in more than one part of the register, the committee must produce a separate, written determination for each part of the register. The committee may impose one sanction for all parts of the register, or different sanctions for different parts of the register.

Health cases

4.7 If the committee decides that a registrant's fitness to practise is impaired solely because of physical or mental ill-health, it cannot direct that the registrant be removed from the register[29].

Corporate bodies

4.8 The committee also has the power[30] to deal with 'disqualification allegations' made against a corporate body that carries on a retail pharmacy business. The committee may direct that:

- a corporate body should be disqualified for the purposes of Part IV of the Medicines Act 1968
- a 'representative' of the corporate body should be disqualified as being a representative for the purposes of Part IV of the Medicines Act 1968
- the registrar should remove from the register of premises some or all of the premises at which the corporate body carries on retail pharmacy
- the registrar should remove from the register of premises, for a limited time, some or all of the premises at which the corporate body carries on retail pharmacy[31]

Bringing a prosecution

4.9 If the committee believes that the GPhC should consider using its powers to bring criminal proceedings it must tell the registrar about this[32].

27 Whether or not impairment is found
28 Pharmacy Order 2010 Article 54(5)
29 Pharmacy Order 2010 Article 54(7)
30 Under section 80 Medicines Act 1968
31 See section 80(3) of the Medicines Act 1968
32 www.pharmacyregulation.org/sites/default/files/Prosecution%20Policy%2C%2010-11-2011_0.pdf

5 Deciding on sanction

5.1 When making its decision, the committee should consider the full range of sanctions it can impose. It should use its discretion and decide on a sanction that is proportionate, fair and reasonable. By 'proportionate', we mean that a sanction should be no more severe than it needs to be to achieve its aims[33].

Key factors to consider

5.2 That a hearing has the appropriate outcome is important for public confidence, and fairness to the registrant. In deciding on the most appropriate sanction, if any, to impose, the committee should consider:

- the extent to which the registrant has breached the standards of conduct, ethics and performance published by the GPhC
- the interests of the registrant, weighed against the public interest
- the personal circumstances of the registrant and any mitigation* they have offered
- any testimonials and character references given in support of the registrant
- any relevant factors that may aggravate* the registrant's conduct in the case
- any statement of views provided to the committee by a patient or anyone else affected by the conduct of the registrant
- any submissions made to the committee by the GPhC's representative, the registrant or their representative
- the contents of this guidance

(*See paragraphs 5.10 and 5.11 for an explanation of mitigating and aggravating factors.)

5.3 To make sure that the sanction is proportionate, the committee should consider each available sanction, starting at the lowest, and decide if it is appropriate to the case. If it is not, the committee should consider the next sanction, and so on, until it decides that a particular sanction is appropriate[34].

5.4 The committee should also consider the sanction immediately above the one it has decided to impose, and give reasons why the more severe sanction is not appropriate and proportionate.

5.5 The term of a suspension can be up to 12 months. How long a suspension should be is for the committee to decide, taking into account the seriousness of the particular case. The period should be considered against the facts of the case, and be proportionate. The committee must give reasons for the period of suspension it has chosen, including the factors in the case that led them to decide that the particular period of suspension was appropriate. This applies whether the committee has opted for a 12-month suspension or a shorter one.

33 Chaudhury v General Medical Council [2002] UKPC 41 – at paragraph 21
34 Chaudhury v General Medical Council [2002] UKPC 41 – at paragraph 21

The public interest

5.6 In reaching a decision on what sanction to impose, the committee must give enough weight to the wider public interest[35]. In the context of a fitness to practise hearing, there are three things to consider:

- protecting the public
- maintaining public confidence in the profession
- maintaining proper standards of behaviour

5.7 The committee, although it should consider the effect any sanction has on a registrant, is entitled to give greater weight to the public interest, and the need to maintain public confidence in the profession, than to the consequences for the registrant[36].

5.8 Even if a sanction will have a punitive effect,[37] it may still be appropriate if its purpose is to achieve one or more of the three outcomes listed in 5.6[38].

5.9 Mr Justice Newman[39] described the indicative sanctions guidance and the public interest in the following way: "Those are very useful guidelines and they form a framework which enables any tribunal, including this court, to focus its attention on the relevant issues. But one has to come back to the essential exercise which the law now requires in what lies behind the purpose of sanctions, which, as I have already pointed out, is not to be punitive but to protect the public interest; public interest is a label which gives rise to separate areas of consideration."

35 CHRE v Nursing and Midwifery Council (Grant)
36 Mairnovich v General Medical Council [2002] UKPC36
37 Bolton v The Law Society [1994] 2 All ER 286
38 Laws LJ in Rashid and Fatnani v GMC [2007] 1 WLR 1460
39 R (on the application of Abrahaem) v GMC [2004]

Relevant mitigating and aggravating factors

5.10 When a committee makes decisions about a pharmacist or pharmacy technician's fitness to practise and the appropriate sanction, it must be sure that it has been presented with the evidence it needs to make a fair and proportionate decision. It must take into account the context of a case. By 'context' we mean the circumstances in which the incident took place and what has happened since the allegation was made. This includes considering any aggravating and mitigating factors, (depending on the individual circumstances of each case) and bearing in mind that the main aim is to protect the public.

5.11 Aggravating factors are the circumstances of the case that make what happened more serious. Mitigating factors are the opposite of this. They may appear in the facts of a case as circumstances, behaviours, attitudes or actions. Whether a factor is a mitigating or aggravating is entirely a matter for the committee to decide. In each case, the committee must consider both mitigating and aggravating features in the evidence they have considered.

Circumstances

5.12 The circumstances in which the allegation arose may include important factors. The committee may want to consider, for example:

- whether the incident was a 'one-off' one or repeated
- the location the incident took place
- if there is relevant history of fitness to practise concerns

They should consider if the incident involved:

- an abuse or breach of trust
- an abuse by the registrant of their professional position
- any financial gain on the part of the registrant

Other factors might include if the registrant was under the influence of alcohol or drugs, or if there was harm or risk of harm to a patient or another person present.

Behaviour and attitude

5.13 Evidence of the registrant's behaviour and attitude before, during and after the incident in question and before, during and after proceedings, is also important. The committee may want to consider whether the registrant has shown any remorse, has demonstrated insight into their behaviour or set out to put things right – including by offering an apology. Their behaviour following the incident in question might also be considered (including during the hearing and general proceedings) as it could have a bearing on the outcome.

Actions

5.14 The registrant's actions are important elements for the committee to consider when deciding on a sanction. Factors the committee may want to consider include whether the conduct was pre-meditated or not.

6 More guidance on particular areas

6.1 There are often certain case types in fitness to practise hearings that are not straightforward when deciding what sanction to apply. We believe that giving more guidance – including the relevant case law, legal principles and the GPhC view on particular areas – will help to ensure proportionate and consistent decision-making. This is intended to help committees in their decision-making.

Sexual misconduct

6.2 Sexual misconduct – whatever the circumstances – undermines public trust in the profession, has a significant impact on the reputation of pharmacy professionals and in some circumstances can present a significant and immediate risk to patient safety. It covers a wide range of behaviour, including sexual harassment, sexual assault, physical examination of patients that are without consent or unnecessary, and serious sexual offences which lead to criminal convictions.

6.3 The GPhC believes that some acts of sexual misconduct will be incompatible with continued registration as a pharmacist or pharmacy technician. Removal from the register is the most appropriate sanction in these circumstances, unless there is evidence of clear, mitigating factors that cause a committee to decide that such a sanction is not appropriate.

The misconduct is particularly serious if:

- there is a conviction for a serious sexual offence
- there is an abuse of the special position of trust that a registrant has
- it involves a child (including accessing, viewing, or other involvement in images of child sexual abuse[40]) or a vulnerable adult
- the registrant has been required to register as a sex offender or has been included on a barred list[41]

6.4 This is not a full list. It is meant to show that in cases of this type, given the risk to patients, removal from the register is likely to be the most proportionate and most appropriate sanction[42] . If a committee decides to impose a sanction other than removal it should explain fully why it made this determination. This is so that it can be understood by people who have not heard all the evidence in the case.

40 CHRP v (1) GDC and (2) Mr Fleischmann
41 Disclosure & Barring Service or Disclosure Scotland scheme
42 Dr Haikel v GMC (Privy Council Appeal No. 69 of 2001)

6.5 The misconduct can take place in many settings. This can be in a private setting with family members or in a social context, or in the course of a registrant's profession with patients and colleagues. It is therefore important that the committee carefully considers each case on its merits, and take decisions in the light of the particular circumstances of the case and the risk posed to patients and the public. The committee should also refer to the GPhC's guidance on maintaining clear sexual boundaries.

6.6 A registrant may have committed an offence but not be included on a barred list. If so, and if the committee is in any doubt about whether they should return to work without any provisions to ensure public protection, the registrant should not be granted unrestricted registration. A committees does not need to make recommendations on whether a registrant should be referred to a barring authority, as this will be considered by the GPhC.

6.7 Given the role of pharmacists and pharmacy technicians, and their proximity and regular contact with patients (including children and vulnerable adults), there is also the potential for inappropriate, but not sexual, relationships. The GPhC view is that committees should regard as serious any predatory behaviour, or abuse of position, that results in inappropriate relationships with vulnerable patients, or with colleagues. Committees should carefully consider the context of the relationship and the vulnerability of the people involved when deciding on a sanction.

Dishonesty

6.8 Regulators ensure that public confidence in a profession is maintained. This is a long-established principle and set out in law. There are some acts which, while not presenting a direct risk to the public, are so serious they undermine confidence in the profession as a whole. The GPhC believes that dishonesty damages public confidence, and undermines the integrity of pharmacists and pharmacy technicians. However, the GPhC view is that cases of dishonesty can be complicated and that committees should carefully consider the context and circumstances in which the dishonesty took place. Therefore, although serious, there should not be a presumption of removal in all cases involving dishonesty.

6.9 Some acts of dishonesty are so serious that the committee should consider removal as the only proportionate and appropriate sanction. This includes if the dishonesty happened when a registrant was carrying out their role as a pharmacy professional, or if it involved intentionally defrauding the NHS or an employer, falsifying records, or dishonesty in clinical drug trials.

6.10 When deciding on the appropriate sanction in a case involving dishonesty, the committee must balance all the relevant issues, including any aggravating and mitigating factors. It must then put proper emphasis on the effect a finding of dishonesty has on public confidence in the profession[43].

43 R v General Optical Council [2013] EWHC 1887 (Admin) and Siddiqui v General Medical Council [2013] EWHC 1883

6.11 The committee should also consider the 'Ghosh test' – a two-part test[44]. The first part is whether the committee thinks what the registrant did was dishonest in the eyes of ordinary people. If not, then no dishonesty occurred. If the committee believes the answer is 'yes, it was a dishonest act', it has to apply the second part of the test. Did the registrant realise ordinary people would think what he or she did was dishonest? The second part of the test is not what the defendant personally thought, according to their own standards, but whether they realised what ordinary people would think.

6.12 It is important to understand the context in which the dishonest act took place and make a decision considering the key factors. For example, in *Brennan v Health Professions Council* the court accepted that the dishonesty had occurred, but that it took place in unusual circumstances – no one was harmed, and the actions of the registrant had been on the instructions of a manager.

Duty of candour

6.13 Acting with openness and honesty when things go wrong is an essential duty for all pharmacists and pharmacy technicians. The GPhC believes it is important that there is an environment and culture in pharmacy so that pharmacy owners, superintendent pharmacists, pharmacists and pharmacy technicians:

- are open and honest with patients and the public when things go wrong (either because of what they have done, or what someone else has done), and
- can raise concerns with employers

Our published standards of conduct, ethics and performance say registrants must respond honestly, openly and politely to complaints and criticism.

6.14 Registrants are expected to be open and honest with everyone involved in patient care. Committees should therefore see registrants' candid explanations, expressions of empathy and apologies as positive steps before, and during, a hearing. However, these will not amount to an admission of impairment by the registrant. So, unless there is evidence to prove otherwise, the committee should not treat them as such.

44 R v Ghosh [1982] 3 WLR 110

6.15 The joint statement on candour clearly sets out the importance of this issue[45]. Therefore, the GPhC's view is that committees should take very seriously a finding that a pharmacy professional took deliberate steps to avoid being candid with a patient, or with anyone involved in a patient's care, or to prevent someone else from being candid. It must consider sanctions at the upper end of the scale when dealing with cases of this nature.

Raising concerns

6.16 The GPhC believes that the individual decisions of pharmacy professionals make the most significant and positive contribution to quality improvements in pharmacy and in managing risks to patients. Failing to raise concerns can lead to failures in healthcare and cause significant risk to patients.

6.17 Therefore, pharmacists and pharmacy technicians must act to prevent problems arising in the first place. It is important that an environment and culture exists in pharmacy where individuals are supported in raising concerns about standards of care and risks to patient safety. This is already reflected in the standards of conduct, ethics and performance and the standards for registered pharmacies.

6.18 The GPhC believes that committees should take very seriously a finding that a pharmacist or pharmacy technician did not raise concerns where patient safety is at risk. It must consider sanctions at the upper end of the scale when cases involve a failure to raise concerns and, in the most serious cases, remove pharmacists and pharmacy technicians from the register to maintain public confidence.

6.19 Our guidance on raising concerns[46] explains the importance of raising concerns, and the steps that a pharmacy professional will need to consider taking when raising a concern.

45 www.pharmacyregulation.org/sites/default/files/joint_statement_on_the_professional_duty_of_candour.pdf
46 www.pharmacyregulation.org/sites/default/files/GPHC%20Guidance%20on%20raising%20concerns.pdf

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