General Pharmaceutical Council

# Supporting good decision making at hearings

November 2022

# Contents

## About the GPhC

### Who we are

We regulate pharmacists, pharmacy technicians and pharmacies in Great Britain.

We work to assure and improve standards of care for people using pharmacy services.

### What we do

Our role is to protect the public and give them assurance that they will receive safe and effective care when using pharmacy services.

We set standards for pharmacy professionals and pharmacies to enter and remain on our register.

We ask pharmacy professionals and pharmacies for evidence that they are continuing to meet our standards, and this includes inspecting pharmacies.

We act to protect the public and to uphold public confidence in pharmacy if there are concerns about a pharmacy professional or pharmacy on our register.

Through our work we help to promote professionalism, support continuous improvement and assure the quality and safety of pharmacy.

# Overview

There is no place for discrimination in health and care, and we are committed to making positive changes to play our part in tackling all forms of discrimination. Equality, diversity and inclusion (EDI) are central to everything we do and are built into our *Vision 2030* and *Strategic plan 2020-2025*. These set out our plans for the future direction of pharmacy regulation. Also, EDI is a key part of our published strategy on managing concerns, and we have a strategy on EDI itself.

In our **managing concerns strategy,** we committed to managing the concerns we receive in a way that is free from discrimination and bias. Part of this commitment involves taking appropriate action when concerns are raised about discriminatory behaviour by pharmacy professionals and taking relevant advice from outside experts on such matters when we need to. Also, in the strategy, we said that we will support people to make non-discriminatory regulatory decisions.

In our organisation-wide **EDI strategy**, we also committed to making regulatory decisions that are demonstrably fair and free from discrimination and bias.

These strategies are interconnected. They each have a clear focus on how we will minimise and deal with the risk of potential biases in our decision making and how we will manage concerns about discrimination.

Health and social care regulators have been criticised for not taking racism and discriminatory behaviour seriously enough and for underestimating the impact that these

concerns are having on public confidence and trust in the professions that they regulate. The Professional Standards Authority has published its report *Safer care for all – solutions from professional regulation and beyond*. The report has called for regulators to review how their fitness to practise processes, including their indicative sanctions guidance, deal with allegations of racist and other discriminatory behaviour.

As a regulator, it is vital that we lead by example when tackling all forms of discrimination. We have a responsibility to make sure that our processes, policies and guidance are clear and that we take these concerns seriously when they are raised with us. We also want to make sure that not only are we taking concerns of this nature seriously but also that we are tackling any potential bias in our decisions and that our decisions are fair.

To support this we want to strengthen our decision-making guidance for fitness to practise committees to cover how they should consider concerns about discrimination.

The strengthened guidance will also look at taking account of cultural factors when professionals are demonstrating insight, for example when expressing an apology.

This is only part of the work we are doing in this important area to make sure our decisions are fair and free from potential discrimination. Work that we are carrying out, or plan to do, includes:

- an exercise to make data anonymous at the investigating committee stage
- improving our data to understand more about potential disproportionate representation in the referrals we receive and
- publishing diversity data about fitness to practise concerns

# About this discussion paper

Discrimination and discriminatory behaviour can have a significant impact within healthcare settings on both professionals and people receiving care. Healthcare professionals should treat patients and colleagues with dignity and respect, and regulators themselves must be clear about how they manage concerns about discrimination.

To tackle this, and to deliver on our published strategy commitments, we want to strengthen our hearings and outcomes guidance. Our aim is to be clear about:

- how seriously concerns of this nature need to be taken, and
- how fitness to practise decision makers should, when deciding on an outcome, take into account the seriousness of any discriminatory behaviour

These updates will make sure we, and our fitness to practise panels, consider very carefully the nature of racist and discriminatory conduct and its impact on others. The revised guidance will also make sure that committee members consider cultural sensitivities and differences when taking account of expressions of apology and insight. This is particularly important when making a decision about a pharmacy professional's fitness to practise.

This discussion paper therefore covers two main areas:

- supporting decision making in hearings where discrimination is a factor
- taking account of cultural factors when panels are deciding on an outcome

The information we want to include is set out below and we are asking for views on these proposed changes. The full revised guidance document is included in appendix B and it shows the impact the proposed changes will have on the present guidance.

We welcome responses from anyone with an interest in fitness to practise. But we are particularly interested to hear the views of patients, the public and pharmacy professionals – especially people who have been involved in a fitness to practise concern – and individuals and organisations representing professionals and patients.

We want to use the responses to test our proposed revisions, and to help us decide whether there are any further changes we need to consider. We believe that strengthening this guidance will be a positive step in our efforts to tackle discrimination and make sure our processes and decisions are demonstrably fair and free from bias. We look forward to hearing your views.

We are also making a number of other changes to the guidance. This includes a changes to the language to improve consistency with similar decision-making guidance, and the title of the document to 'hearings and outcomes guidance' to better reflect the content and terminology we use. These changes are not part of this discussion paper and we are not asking for views on them, as they are minor changes. The main revisions are set out below and can be seen in the revised guidance document in appendix B.

## The process

**The consultation will run for eight weeks and will close on 31 January 2023**. During this time, we welcome feedback from both individuals and organisations. We will send this document to a range of stakeholders, including patients' representative bodies, pharmacy professionals, pharmacy owners and others with an interest in this area.

## Our report on this discussion paper

Once the consultation period ends, we will analyse the responses we receive and the feedback from any meetings we have with stakeholders and others. We will publish a report summarising what we have heard. Our Council will consider the feedback at a meeting in Spring 2023 before making decisions on the proposed revisions. We will clearly communicate the decisions that our Council makes. If our Council approves, we will publish the revised guidance in Spring 2023. Before publication we will work with GPhC staff and associates who sit on fitness to practise committees to make sure they understand the changes and how they may affect the decisions they make.

We will publish our analysis of the responses and an explanation of the decisions we take. You will be able to see this on our website **www.pharmacyregulation.org**.

# Responding to the consultation

## How we use your information

We will use your response to help us develop our work. We ask you to give us some background information about you and, if you respond on behalf of an organisation, about your organisation. We use this to help us analyse the possible impact of our plans on different groups. We are committed to promoting equality, valuing diversity and being inclusive in all our work as a health professions regulator, and to making sure we meet our equality duties. There is an equality monitoring form at the end of the survey. You do not have to fill it in, but if you do, it will give us useful information to check that this happens.

## How we share your information

After the consultation period ends, we will publish a report summarising what we heard. If you respond as a private individual, we will not use your name or publish your individual response. If you respond on behalf of an organisation, we will list your organisation's name and may publish your response in full unless you tell us not to. If you want any part of your response to stay confidential, you should explain why you believe the information you have given is confidential.

We may need to disclose information under the laws covering access to information (usually the Freedom of Information Act 2000). If you ask us to keep part or all of your response confidential, we will treat this request seriously and try to respect it. But we cannot guarantee that confidentiality can be maintained in all circumstances.

If you email a response to the discussion paper and this is covered by an automatic confidentiality disclaimer generated by your IT system this will not, in itself, be binding on the GPhC.

## Your rights

Under data protection law, you may ask for a copy of your response to this discussion paper or other information we hold about you, and you may also ask us to delete your response. For more information about your rights and who to contact please read our privacy policy on our website.

## How to respond

You can respond to this consultation by going to **pharmacyregulation.org/draft-hearings-and-outcomes-guidance-consultation** and filling in the online questionnaire there.

We encourage respondents to use the online questionnaire. However, if you want to send a response by email, please write your response to the consultation questions and send it to us at **consultations@pharmacyregulation.org**.

### Other formats

Please contact us at **communications@pharmacyregulation.org** if you would like a copy of the consultation survey in another format (for example, in larger type or in a different language).

### Comments on the consultation process itself

If you have concerns or comments about the consultation process itself, please send them to:

**feedback@pharmacyregulation.org**

or post them to us at:

**Governance Team**
**General Pharmaceutical Council**
**25 Canada Square**
**London**
**E14 5LQ**

Please do not send consultation responses to this address.

# Our present guidance and the proposed revisions

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.

When a pharmacy professional falls short of those standards, their fitness to practise may be called into question. This can lead to a concern being received by the GPhC, an investigation and possibly a hearing before an independent committee. Although committees will reach their own conclusions about the evidence they hear, it is important that the decisions they make protect the public and uphold professional standards and confidence in the pharmacy professions.

To support decision making we publish guidance that committees should follow. This includes our hearings and sanctions guidance. This is the main document the fitness to practise committees use to guide their decision making to make sure that decisions are consistent, fair and proportionate. This guidance includes information on our fitness to practise hearings, how decisions are made and the sanctions which committees can impose. It also gives guidance for committees to use when deciding what sanction is appropriate in any given case.

Strengthening the guidance will guide fitness to practise committees on concerns that involve discrimination, and how to consider some aspects when there are cultural sensitivities. The following section sets out how we propose to strengthen the guidance across two areas:

- part one: supporting decision making in hearings where discrimination is a factor
- part two: taking account of cultural factors when panels are deciding on an outcome

## Part one: supporting decision making in hearings where discrimination is a factor

Discriminatory behaviour of any kind can negatively affect public safety and confidence in the profession. Professionals should be aware of how their behaviour can affect and influence the behaviour of others and affect the ability to provide patient care. The environment that pharmacy and other health and social care professionals work in should be safe and free from discriminatory behaviour.

Our standards say pharmacy professionals must recognise and value diversity, and respect cultural differences – making sure that every person is treated fairly whatever their values

and beliefs. We therefore take concerns of this nature very seriously.

In many cases, people can put things right by:

- being open and honest about what happened
- showing insight into what went wrong, and
- taking steps to improve their practice

In these sorts of situations, when someone can demonstrate they're safe to practise, they should have the opportunity to continue with their professional career.

Decision makers should assess the conduct that led to the concern. They should consider whether the conduct itself, and the risks it could pose, can be remedied ('remediated') by the professional taking steps such as completing training courses or having supervised practice.

However, in cases where displaying discriminatory views and behaviour – for example, incidents of harassment, discrimination or victimisation – is proved, the conduct is unlikely to be remediated. That means it may not be possible to deal with the issue through steps such as training courses or supervision at work. A committee will, however, take account of any steps the professional has taken to remediate when deciding on the appropriate outcome. And, although discriminatory behaviour may not be remediable, any steps on the part of the professional may affect the outcome.

When considering insight and remorse, a committee will need to be satisfied that behaviour of this nature has been addressed. It would expect to see comprehensive insight and remorse from an early stage, which deals with the specific concerns that have been raised. Also, it must be satisfied that discriminatory views and behaviour are no longer present. This is so that members of the public can be confident that there is no risk of repetition.

Therefore, when a pharmacy professional displays discriminatory views and behaviour, and it has been proved, it will amount to a serious breach of our professional standards. An outcome from the upper end of the scale

(suspension or removal) will be likely to be needed to maintain public trust and confidence.

Our guidance already includes our view on sexual misconduct, dishonesty and failures to be open and honest – often referred to as the professional duty of candour. We want to strengthen this guidance by adding a section on discrimination, to be clear about our expectations in this area.

We are proposing to include the following text for committees to take account of when making a decision on the appropriate outcome: *(These changes are included from section 6.14 in the full guidance document in the appendix)*

"Discriminatory behaviour and attitudes undermine public confidence and trust in the pharmacy professions and can have an impact on the reputation of professionals. Our standards state that we expect professionals to recognise and value diversity, and respect cultural differences  making sure that every person is treated fairly whatever their values and beliefs. This is essential for professionals to provide safe care and maintain trust with their patients and colleagues.

All forms of discriminatory behaviour on the part of professionals towards patients, the public and colleagues are unacceptable in society. We take all concerns relating to this seriously. Discriminatory behaviour can include:

- abusive verbal comments, including hate speech, or offensive writing towards someone because of their protected characteristics such as their race, sex and gender, religion or sexuality
- threatening or aggressive behaviour towards someone because of their race, sex and gender, religion, sexuality or other protected characteristics
- comments on social media or public platforms about a particular group of people because of their protected characteristics
- refusing a patient treatment based on the patient's protected characteristics
- treating a patient less favourably because of a protected characteristic
- treating a colleague less favourably because of their protected characteristics

Discriminatory behaviour can happen in various settings including at a professional's place of work when interacting with patients or colleagues, in their personal life or in a wider social setting. The committee should consider the circumstances in which the behaviour took place. This is so it can decide if there are any wider implications in maintaining public confidence in the profession. The committee should also consider any cautions or convictions as a result of the professional's actions, and any implications this may have on their fitness to practise and the wider pharmacy profession.

When deciding on an outcome, the committee should balance all the relevant issues, including any aggravating and mitigating factors. Because of the serious nature of these concerns and the impact on public trust and confidence in the profession, the committee should consider outcomes at the upper end of the scale."

## For discussion

When discrimination is proven at a hearing, even if there has been no criminal conviction, our view is that outcomes from the upper end of the scale are the appropriate outcomes – including removal from the register. This guidance makes it clear that racism and other forms of discrimination are serious and are likely to result in removal or suspension from the register.

Some examples of cases relating to discriminatory behaviour and the outcome we would expect are included in the table below. We welcome views on the proposed content and whether this type of concern should result in an outcome from the upper end of the scale.

### Table 1: examples of cases relating to discriminatory behaviour

| Concern details | Expected outcome |
|---|---|
| A conviction for racist and/or religious hate crime, or other racially or religiously aggravated offences | Removal would be the expected outcome |
| A superintendent pharmacist bullied and harassed a number of staff across a period of time and their behaviour had a significant impact on these colleagues | An outcome from the upper end of the scale would be expected |
| The outcome of an employment tribunal found a pharmacy professional was discriminated against in the workplace by their employer. The employer, a pharmacy professional, was then referred to the GPhC about their actions in relation to the case | An outcome from the upper end of the scale, most likely removal, would be expected |
| A pharmacy professional makes a number of racially motivated comments on social media which are investigated by the police but do not result in any conviction | An outcome from the upper end of the scale would be expected |

## Part two: taking account of cultural factors when panels are deciding on an outcome

Committees must make sure they have the fullest possible evidence before they reach a decision. Their determination should reflect their decision-making process and demonstrate that they considered the context.

When a committee makes a decision about a pharmacy professional's fitness to practise, and the appropriate outcome, it must:

- take into account the context and circumstances of a case, and
- carefully consider all the evidence that is presented to it, including any aggravating or mitigating factors

Aggravating factors are the circumstances of the case that make what happened more serious – for example, persistent behaviour and abuse of a position of trust. Mitigating factors are the opposite of this. They may include, for example:

- evidence of insight and understanding
- meeting the requirements of core professional standards
- testimonials, and
- expressions of apology

Whether a factor amounts to mitigation or aggravation is entirely for the committee to decide. In each case, the committee must consider both mitigating and aggravating features in the evidence they have.

To be fair to everyone, committees need to consider the differences in cultural expressions, including those when expressing regret or remorse, and the shame that an investigation can raise in some communities. If not, decision makers may mistakenly think pharmacy professionals have no insight and may conclude that these professionals' fitness to practise is impaired.

Studies of cross-cultural communication show that there are substantial differences in the way that individuals from different cultures and language groups communicate. There may be cultural reasons for not asking for references and testimonials. It is important that committees are aware that cultural differences and some circumstances could affect how a professional expresses insight. For example, it could affect how they frame and communicate an apology or regret.

We therefore want committees to be sensitive to and to take into account any cultural differences when considering mitigating and aggravating factors.

We are proposing the inclusion of the following text for committees to take account of when deciding on the appropriate outcome.

*The changes are also included from section 5.20 in the full guidance document in the appendix.*

**"Insight and remediation**

When deciding what action to take, decision makers must consider:

- the nature of the concern
- whether the actions can be remediated, and
- if a professional can demonstrate insight

There may be some cases where a professional's conduct is so serious that it is not remediable. This means that even though the professional may provide evidence of insight and remediation, the conduct is so serious that it is not appropriate to take this evidence into account when considering an outcome. Examples where this may occur include concerns involving discriminatory behaviour or sexual misconduct. This is because regulatory action is necessary to ensure public protection and maintain public confidence in pharmacy, and a professional's involvement in these matters can undermine this.

The committee should be aware that there may be cultural differences or a professional's personal circumstances, such as ill-health, that may affect the way an individual communicates and expresses themselves. This could affect, for example, how an apology, insight or expression of regret is framed and delivered. This is particularly the case for individuals who are communicating in a second language and may use elements of their first language to construct their sentences or statements. This could alter the intended meaning when spoken in their second language. Expressions of apology, and how an apology is communicated, can differ across cultures, and be affected by religion and beliefs. For example, in some cultures written apologies are not the norm.

There may also be differences in the way individuals use non-verbal cues to communicate. This will include, among other things, facial expressions, eye contact and gestures. For example, a professional with a sight impairment may have difficulty making eye contact with committee members. The committee should be aware of and sensitive to these issues when deciding how a professional frames their insight and remorse, and in judging their behaviour and attitude during the hearing.

**Testimonials**

The committee should be aware that in some circumstances, there may be cultural or other reasons why a professional may not want to ask for testimonials (or references). For example, sharing information about their investigation with family members or colleagues may affect their private lives, and their reputation with their family and community. The committee should bear this in mind and not make assumptions about why there is an absence of this type of evidence. Equally the committee should not speculate as to what may have been said had any references or testimonials been requested."

## For discussion

We want committees to carefully consider any cultural differences and sensitivities when taking account of expressions of remorse, apology and the submission of testimonials and references. We welcome views on the proposed content of the guidance and the possible impact this will have on committee decision making.

# Consultation questions

We welcome your views on the following questions. Please go to **pharmacyregulation.org/draft-hearings-and-outcomes-guidance-consultation** to fill in the online survey.

This document includes a number of proposals on which we are asking for views. The consultation gives you an opportunity to influence the proposals by responding to the questions below.

## Section one: Supporting decision making in hearings where discrimination is a factor

We are proposing to include the paragraphs outlined earlier in this document, and included from section 6.14 in the full guidance document in the appendix. These set out our position on how serious concerns involving discrimination are, and will support decision making.

1. **Do you agree or disagree with the proposed text on discriminatory behaviour for inclusion in our guidance?**

   Strongly agree
   Agree
   Neither agree nor disagree
   Disagree Strongly disagree
   Don't know

2. **Please explain your answer.**

## Section two: Taking account of cultural factors when panels are deciding on an outcome

We are proposing to include the paragraphs outlined earlier in this document, and included from section 5.20 in the full guidance document in the appendix. This will support committee decision making and will help to make sure their decisions are fair and free from discrimination and bias.

3. **Do you agree or disagree with the proposed text on cultural factors in insight, remorse and testimonials for inclusion in the guidance?**

   Strongly agree
   Agree
   Neither agree nor disagree
   Disagree
   Strongly disagree
   Don't know

4. **Please explain your answer.**

## Equality and impact questions

We want to understand whether our proposals may have a ***positive*** or ***negative*** impact on individuals or groups sharing any of the protected characteristics in the Equality Act 2010.

The protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race/ethnicity
- religion or belief
- sex
- sexual orientation

5. **Do you think our proposals will have a positive or negative impact on individuals or groups who share any of the protected characteristics?**

   Yes – positive impact
   Yes – negative impact
   Yes – both positive and negative impact
   No impact
   Don't know

6. **Do you have any other comments about the impact of the proposals on individuals or groups sharing protected characteristics?**

November 2022

# Appendix: Good decision making: hearings and outcomes guidance (revised)

## 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 outcomes which committees can decide on. It also provides guidance for committees to use when deciding what outcome is appropriate in any given case.

1.2 This guidance is in two parts:

Part a: Hearings and the decision-making process

Part b: Guidance on outcomes

### 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, pharmacy professionals (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:

- patients and members of the public thinking about raising a concern with the GPhC about a professional
- patients and members of the public who have raised a concern with the GPhC about a professional
- 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 legislation and case law
- make sure it stays 'fit for purpose' and accessible to all stakeholders

### Equality and diversity

1.5 The GPhC is committed to delivering equality, improving diversity and fostering 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 (EDI) strategy and approach**.

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 upholds and follows the principles of the European Convention on Human Rights (ECHR) in line with the Human Rights Act 1998.

## 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 about which outcome is appropriate.

## 2 Hearings

2.1 A fitness to practise hearing is one part of a detailed process that begins when we receive a concern about a professional's fitness to practise[1]. This process can end at several key stages:

- after an initial assessment of the concern
- after an investigation takes place
- at an investigating committee meeting
- at a fitness to practise committee hearing[2]

[1] If the allegation is one that the GPhC can deal with

[2] Some cases are referred directly by the Registrar under Article 52 (2) (b) and Article 54 (1) (a) of The Pharmacy Order 2010

### Figure 1: The guidance used at each stage of the process


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

Our **threshold criteria** are used at the investigation stage to decide whether to refer a case to the investigating committee.

Our ***Good decision making: investigating committee meetings and outcomes guidance*** is 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 panel of three people (a chair, a professional member and a lay member).

2.4 Other people may also be at the hearing, including a legal adviser, a medical adviser, GPhC staff and professionals' representatives. However, some professionals may attend a hearing without a representative. In these circumstances, the committee chair should make sure that a brief explanation of the hearing process, including the roles of the various people at the hearing and the different stages of the hearing, is given before the hearing begins. The committee chair will also check if the professional has any particular needs or concerns which might affect their ability to take part in the hearing.

Committees hear evidence and decide whether a professional's fitness to practise is impaired[3].

[3] The meaning of impairment is given in paragraph 2.12

2.5 The fitness to practise committee is independent of the GPhC. It is accountable[4] for the decisions it makes and must take account of guidance produced by the GPhC[5].

2.6 In most cases, a committee will hold a hearing in public. But a hearing may be held wholly or partly in private if the committee is satisfied that the interests of the professional concerned, or of a third party, in maintaining their privacy outweigh the public interest in holding the hearing, or that part of the hearing, in public[6]. If the hearing is about the health of the professional, or relates to an interim order, the committee must hold it in private. However, if it is satisfied that the interests of the professional concerned, or of a third party, in maintaining their privacy are outweighed by the public interest it may hold the hearing in public[7].

## Reaching a decision

2.7 During a hearing the committee follows a three-stage process before it reaches a decision on which outcome is appropriate[8]. Once the committee has heard the evidence, it must decide:

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

2.8 While coming to its decisions the committee should also keep in mind the overall objectives of the GPhC[9].

[4] All decisions are scrutinised by the Professional Standards Authority and may also be appealed against – see section 29 of the National Health Service Reform and Health Care Professions Act 2002

[5] Rule 31 (14) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

[6] Rule 39 – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. 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 and Disqualification etc. Rules) Order of Council 2010

[9] Article 6 - The Pharmacy Order 2010

### Figure 2: the decision making process


## Fact finding

2.9 In a hearing, the GPhC has to prove the facts alleged against a professional. 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 to have happened than not happened. This is not the same as the standard of proof in a criminal court, which is 'so that you are sure'.

2.10 If a professional admits any of the facts alleged, the committee must find the admitted facts to be proved[10].

2.11 If the facts alleged against the professional 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 professional's fitness to practise is not impaired and may conclude that no action is needed.

## Impairment

2.12 A pharmacy professional is 'fit to practise' when they have the skills, knowledge, character, behaviour and health needed to work as a pharmacist or pharmacy technician safely and effectively. In practical terms, this means maintaining appropriate standards of competence, demonstrating good character, and also keeping to the principles of good practice set out in our various standards, guidance and advice.

[10] Rule 31 (6) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

2.13 Fitness to practise can be impaired for a number of reasons. These include misconduct, lack of competence, not having the necessary knowledge of English, ill-health or a conviction for a criminal offence[11].

2.14 The committee may consider allegations about a professional's personal or professional life. They must decide whether the professional's fitness to practise is currently impaired, **not** whether it was at the time the incident happened[12]. The committee must keep in mind the overall objectives of the GPhC when deciding whether a pharmacy professional's fitness to practise is impaired[13]. The committee must also take into account relevant factors, which include whether or not the conduct or behaviour[14]:

- 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 professional can no longer be relied upon

2.15 The committee should also consider whether:

- the conduct which led to the concern is able to be addressed
- the conduct which led to the concern has been addressed
- the conduct which led to the concern 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

2.16 In deciding whether a person's fitness to practise is impaired because they do not have the necessary knowledge of English, the committee may take into account, among other things[15]:

- whether the person concerned has not complied with a direction, given under the rules, to have an examination or other assessment of their knowledge of English, or

[11] Article 51 – The Pharmacy Order 2010
[12] Meadow v GMC [2007]
[13] Schedule 1(5) (8) – The Pharmacy Order 2010
[14] Rule 5 – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010
[15] Rule 24 (11a) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

- whether the person concerned has not provided the registrar with evidence of the result of that examination or assessment

2.17 The decision on impairment is a matter for the judgement of the committee. The committee has to make its own decision about impairment even when it is admitted by the professional. It should make clear what factors it has taken into account when deciding on impairment.

### Action taken

2.18 If a committee decides a professional's fitness to practise is impaired, it can:

- take no action
- agree undertakings16
- issue a warning
- impose conditions on the professional's practice
- suspend the professional from practising, or
- remove the professional from the register in the most serious cases

2.19 The committee must, having taken account of this guidance, consider the appropriate outcome in the given case, announce its decision and give its reasons for that decision[17].

2.20 These outcomes are intended to protect the public, and the wider public interest, not to punish the professional. You will find more details on these outcomes, and what a committee considers when reaching a decision about a particular outcome, in part b of this document.

### The determination

2.21 Once a committee has made a decision at each stage of the hearing, it will give its written 'determination'. The determination is the formal 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 should be adequate so that the decision can be easily understood by the professional, the GPhC, the complainant and any other interested party. It should be clear why a particular decision has been made.

[16] See paragraph 4.11

[17] Rule 31 (14) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

2.22 The committee should make sure that the decision on the outcome is fully explained and understood. The written determination should carefully explain, in clear and direct language which leaves no room for misunderstanding or ambiguity:

- what outcome the committee has decided on
- the reasons for the outcome, and
- why the committee is satisfied that the decision is sufficient to protect the public. This involves considering the committee's need to protect the health, safety and wellbeing of the public, to maintain public confidence in pharmacy, and to maintain proper professional standards and conduct for pharmacy professionals

2.23 A committee must consider this guidance when reaching a decision on the outcome. If it decides not to take account of the guidance it will be expected to clearly explain its reason for not doing so.

2.24 The committee's determination should explain why it thinks the outcome is necessary and proportionate. It should say how the committee considered the possible outcomes, starting with the least severe and moving upwards. The determination should say why the committee has decided upon the outcome and explain:

- why the lesser outcomes are not sufficient
- why the next available, more serious, outcome is not necessary or proportionate
- how the outcome chosen will adequately protect the public and the wider public interest

2.25 It is important, and in the interests of fairness, that the professional is given proper reasons, so they can decide whether or not to appeal against the 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) should also be able to properly understand the reasoning behind the original decision.

# 3 After a decision on the outcome has been made

3.1 Once a committee has made a decision on the outcome it may also impose 'interim measures' that take effect immediately. Once the hearing has ended, there may be a review hearing on another date. This depends on the outcome and circumstances of the case.

## Interim measures

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

- removal from the register
- suspension
- conditions on the professional's entry in the register[18]

3.3 A committee may impose interim measures[19] if it is satisfied that they are needed to protect the public, or are otherwise in the public interest or in the interests of the professional. Any interim measures will take effect immediately and can cover the 28-day 'appeal period'. If the professional appeals against the decision, the measures will stay in force until that appeal is decided.

3.4 Before considering whether to impose interim measures, the committee will invite representations from both parties. When announcing whether it is to impose interim measures, the committee will give its reasons for that decision. When considering whether or not to impose interim measures, the committee should bear in mind:

- the outcome it has reached, and
- any risk to the public

3.5 Even if it decides not to impose interim measures, the committee should make clear in its determination that it has considered them and why it has decided not to impose them.

3.6 The committee must give proper, adequate and clear reasons for imposing interim measures, and make sure the measures are consistent with its finding that the professional's fitness to practise is currently impaired. The reasons should explain why the committee is satisfied that imposing interim measures is:

- needed to protect the public
- otherwise in the public interest, or
- in the interests of the professional

3.7 Interim measures in the form of a suspension may be imposed only if the committee has decided to suspend the professional or remove them from the register. Interim conditions on the professional's entry in the register may only be imposed if the committee's decision is to impose conditions.

[18] Article 60 (3) and (4) – The Pharmacy Order 2010
[19] Article 60 – The Pharmacy Order 2010

## Review hearings

3.8 Review hearings[20] can take place when:

- a professional is suspended from the register following a hearing – a committee will usually direct that a review hearing takes place before the period of suspension ends
- a professional is made subject to a 'conditions of practice direction' following a hearing – a committee will usually direct that a review hearing takes place before the period of conditional registration ends

3.9 A committee can review the matter before the scheduled review hearing. For example, the GPhC may have evidence that the professional has practised while suspended or has failed to comply with the conditions imposed upon their practice. Additional outcomes can be decided upon by the committee at the review hearing[21].

3.10 If, in a particular case, the committee decides that a further review hearing is not needed, it should give reasons for making this decision. If there is to be a further review hearing, the committee should explain in its determination the type of evidence the professional would be expected to provide at that hearing.

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

- the GPhC may ask for case management directions
- the committee chair may direct that the new evidence be considered at the review hearing, and that these rules are altered to take into account the particular circumstances of the case[22]

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

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

[20] See Rule 34 – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010 for the procedure followed at a review hearing

[21] Removal not available for health cases

[22] Rule 30 – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

professional is expected to provide evidence that any past impairment has been addressed[23]. The committee must also take this guidance into account at a review hearing[24].

3.13 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 comply with, the conditions, an early review hearing will take place. This is so that the committee can decide whether to continue, modify or end the conditions and arrive at a more appropriate outcome.

## Suspension

**Considerations**

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 professional is fit to resume practice either unrestricted or with conditions.

The committee will also need to satisfy itself that the professional:

- has fully appreciated the seriousness of the breach or breaches they have committed
- has not committed any further breaches of the standards[1]

**Outcomes**

If the committee has suspended a professional, it may, following a review, decide that[1]:

- their entry be removed from the register (not in a solely health-related case)1
- the suspension be extended by another period of up to 12 months, to start from the time when the original suspension would otherwise end
- their registration be suspended indefinitely, if the suspension has already been in force for at least two years[1]
- an indefinite suspension ends
- conditions should be imposed when the suspension ends or is terminated

[23]Abrahaem v GMC [2008] EWHC 183 (Admin)

[24] Rule 34 (9A) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

**Determination**

When the committee is:

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

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

## Conditions

**Considerations**

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

**Outcomes**

When a professional's entry in the register depends upon their complying with conditions the committee may*

extend the period for complying with the conditions for up to three years starting from the time when the earlier period would have ended

- add to, remove or vary the conditions
- suspend the entry, for up to 12 months, or

**Determination**

If the committee is reviewing a professional's conditions, the determination should deal with whether, and how, the professional 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.

_____

* CRHP v (1) GMC (2) Leeper [2004]

## Part b: Guidance on outcome

This part sets out the GPhC's guidance on what outcomes are, and what issues or factors a committee should consider before deciding on an outcome.

This guidance is not intended to interfere with the committee's powers to choose whatever outcome it decides in individual cases[25].

Committee members should use their own judgement when deciding on the outcome. They should also make sure that any outcome is:

- necessary and proportionate
- based on the individual facts of the case, and
- in the public interest

In deciding on the appropriate outcome, the committee must consider this guidance. If a committee chooses not to follow the guidance, it must explain why it has done this in its reasons for choosing the outcome.

## 4 Available outcomes

4.1 Actions imposed by fitness to practise outcomes are used to protect patients and the wider public interest. This includes declaring and upholding proper standards of conduct and behaviour, and maintaining public confidence in the pharmacy professions and in the regulatory process. Although the effects of some outcomes – for example a suspension or removal from the register – could be punitive, an outcome must not be chosen solely to punish a professional.

4.2 The committee may decide on an outcome whether it decides that a professional's fitness to practise is impaired or not. However, most outcomes only apply once there has been a finding of impairment of fitness to practise. The table below shows the outcomes that are available.

### Outcomes for pharmacy professionals

4.3 A committee may apply any of the outcomes set out below. The table includes details of what outcome can be displayed on the online register. Our **publication and disclosure policy** sets out how long they are displayed on the register for.

[25] CRHP v (1) GMC (2) Leeper [2004]

### Take no action

| The impact on registration | Circumstances when this may apply |
|---|---|
| No action will be taken, the case will be closed and it will not be recorded on the register. | This may apply even when impairment is found, but there is no risk to the public or need to decide on a different outcome. |

### Advice

| The impact on registration | Circumstances when this may apply |
|---|---|
| The committee gives advice to the professional about any issue it considers necessary or desirable. It will not be recorded in the register. | There is no need to take action to restrict a professional's right to practise and there is no continued risk to patients or the public.<br>Advice can only be given to a professional when no impairment is found.<br>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. |

### Warning

| The impact on registration | Circumstances when this may apply |
|---|---|
| The committee gives a warning to the professional. The details of this warning will be recorded in the register. | A warning may also be given when no impairment is found (see 'advice' above).<br>There is a need to demonstrate to a professional, and more widely to the profession and the public, that the conduct or behaviour fell below acceptable standards.<br>There is no need to take action to restrict a professional's right to practise, there is no continuing risk to patients or the public, but there needs to be a public acknowledgement that the conduct was unacceptable. |

### Conditions

| The impact on registration | Circumstances when this may apply |
|---|---|
| Conditions[26] place certain restrictions on a professional'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 professional's practice, but the committee is satisfied that the professional may respond positively to retraining and supervision.<br>There is not a significant risk posed to the public, and it is safe for the professional to return to practice but with restrictions. |

### Suspension

| The impact on registration | Circumstances when this may apply |
|---|---|
| A suspension prevents a professional 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 not sufficient to deal with any risk to patient safety or to protect the public, or would undermine public confidence.<br>When it is necessary to highlight to the profession and the public that the conduct of the professional is unacceptable and unbefitting a member of the pharmacy profession. Also when public confidence in the profession demands no lesser outcome. |

### Removal

| The impact on registration | Circumstances when this may apply |
|---|---|
| The professional'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[27]. | Removing a professional's registration is reserved for the most serious conduct. The committee cannot choose this outcome in cases which relate solely to the professional's health. The committee should consider this outcome when the professional's behaviour is fundamentally incompatible with being a registered professional. |

[26] Taken from **a standard bank of conditions that is made available to the committee**.
[27] The applicant must wait for five years before applying to be restored to the register.

4.4 The committee may also give advice[28] to any other person or other body involved in the investigation of the allegation on any issue arising from, or related to, the allegation[29].

4.5 If the professional 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 apply one outcome for all parts of the register, or different outcomes for different parts of the register.

## Health cases

4.6 If the committee decides that a professional's fitness to practise is impaired solely because of physical or mental ill-health, it cannot direct that the professional be removed from the register[30] at the principal hearing. In the case of a health allegation, the chair may require the person concerned to agree to be medically examined by a registered medical practitioner chosen by the GPhC[31].

## Requiring a language assessment

4.7 The committee has the power to require the professional to have a language assessment. The chair may give a direction requiring the professional to[32]:

- have an examination or other assessment of their knowledge of English, and
- provide the registrar with evidence of the result of that examination or assessment

4.8 The committee may order this if it believes that a person registered as a pharmacy professional does not have the knowledge of English needed for safe and effective practice as a pharmacy professional in Great Britain. If the committee is considering this type of case it should take account of the published guidance.

## Agreement of undertakings

4.9 The committee has the power, when the professional admits that their fitness to practise is impaired, to agree undertakings[33]. Undertakings are promises by the professional on things

[28] Whether or not impairment is found
[29] Article 54 (5) – The Pharmacy Order 2010
[30] Article 54 (7) – The Pharmacy Order 2010
[31] Rule 13 (1) (a) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010
[32] Rule 6 (4) (e) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010
[33] Rule 26 (1) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

they will or will not do in the future. They may include restrictions on their practice or behaviour or a commitment to undergo supervision or retraining. Undertakings that are not health related will be recorded in the online register as set out in our **publication and disclosure policy, which is available on our website**.

4.10 Undertakings will only be appropriate if the committee is satisfied that the professional will comply with them – for example, because the professional has shown genuine insight into their behaviour and the potential for remediation. The registrar may refer the matter to the committee for a review hearing if:

- a professional fails to comply with an undertaking, or
- the professional's health or performance deteriorates or otherwise gives further cause for concern about their fitness to practise[34]

### Corporate bodies

4.11 The committee has the power, if it thinks fit, to agree appropriate undertakings with the 'section 80' party[35], or to give advice or a warning, instead of giving a direction under section 80 of the Medicines Act 1968 to remove the corporate body from the register[36].

4.12 If the GPhC becomes aware that a party has failed to comply with any undertakings agreed, the committee must[37]:

- consider the matter again, and
- reconsider the outcome. It may instead issue a direction under section 80(1) of the Medicines Act 1968 against the body corporate, or under section 80(4) against an individual

4.13 The committee also has the power[38] to deal with 'disqualification allegations' made against a corporate body that carries on a retail pharmacy business. The committee may direct that:

[34] Rule 45(3) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

[35] Defined in Rule 2 as 'an individual who, or a body corporate which, is subject to proceedings before the Committee in connection with the giving a direction under section 80(1) or (4) of the Act (or, where appropriate, their representatives)'

[36] Rule 26(2) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

[37] Rule 32(18) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

[38] Section 80 Medicines Act 1968

- 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[39]

### Bringing a prosecution

4.14 If the committee believes that the GPhC should consider using its powers to bring criminal proceedings it must tell the registrar about this, according to **the prosecution policy available on our website**.

## 5 Deciding on the outcome

5.1 When making its decision the committee must keep in mind the overall objectives of the GPhC. The committee should also consider the full range of outcomes. It should use its discretion and decide on an outcome that is necessary and proportionate. By 'proportionate', we mean that an outcome should be no more serious than it needs to be to achieve its aims[40]. The committee should also make sure any outcome is sufficient to protect the public. This involves considering:

- whether it is sufficient to protect the health, safety and wellbeing of the public
- whether it is sufficient to maintain public confidence in pharmacy, and
- whether it is sufficient to maintain proper professional standards and conduct for pharmacy professionals

### Key factors to consider

5.2 Making sure that a hearing has the appropriate outcome is important for both public confidence in the profession and in the way it is regulated. In deciding on the most appropriate outcome, the committee should consider:

[39] Section 80(3) of the Medicines Act 1968
[40] Chaudhury v General Medical Council [2002] UKPC 41

- the extent to which the professional has breached the standards[41] as published by the GPhC
- the interests of the professional, weighed against the public interest
- the overall objectives of the GPhC
- the personal circumstances of the professional and any mitigation* they have offered or which the committee has identified in its findings
- that the decision is sufficient to protect the public
- any testimonials and character references given in support of the professional
- any relevant factors that may aggravate* the professional'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 professional
- any submissions made to the committee by the GPhC's representative, the professional or their representative
- the contents of this guidance
- any other guidance published by the GPhC

** See paragraphs 5.10 to 5.23 for an explanation of mitigating and aggravating factors.*

5.3 To make sure that the outcome is proportionate, the committee should consider each available outcome, starting at the lowest, and decide if it is appropriate to the case. If it is not, the committee should consider the next outcome, and so on, until it decides that a particular outcome is appropriate[42].

5.4 The committee should also consider the outcome immediately above the one it has decided on and give reasons why a more serious outcome is not necessary 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 or relevant factors 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 it 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 period.

5.6 The period for conditions of practice may not be more than three years. It is for the committee to decide what conditions to apply and for how long they should last. Conditions

[41] Article 48 (1) – The Pharmacy Order 2010

[42] Giele v General Medical Council [2005] EWHC 2143 (Admin)

should be imposed to protect the public, or for other reasons in the public interest or in the interests of the professional.

## The public interest

5.7 In reaching a decision on what outcome to choose, the committee should give appropriate weight to the wider public interest[43]. In the context of a fitness to practise hearing, public interest considerations include:

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

5.8 The committee is entitled to give greater weight to the public interest than to the consequences for the professional[44]. Even if an outcome will have a punitive effect,[45] it may still be appropriate if its purpose is to achieve one or more of the three outcomes listed in paragraph 5.7[46]. The committee should make sure that the public interest considerations are reflected in the reasons for deciding on a particular outcome.

5.9 Mr Justice Newman[47] described 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."

## 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 outcome, 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 alleged incident took place, including any relevant personal matters (a bereavement, for example), and what has happened since the alleged incident took place. This includes considering any aggravating

[43] CHRE v Nursing and Midwifery Council (Grant)
[44] Marinovich v General Medical Council [2002] UKPC36
[45] Bolton v The Law Society [1994] 2 All ER 286
[46] Laws LJ in Rashid and Fatnani v GMC [2007] 1 WLR 1460
[47] R (on the application of Abrahaem) v GMC [2004]

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. They may appear in the facts of a case as circumstances, behaviours, attitudes or actions.

5.12 Whether a factor amounts to mitigation or aggravation 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

5.13 The circumstances in which the allegation arose may include important factors when making a decision on an outcome. The committee may want to consider the implications or risks to patient safety as a result of the incident. It may also want to consider, for example:

- whether the incident was a 'one-off' one or repeated
- the setting in which the incident took place
- any relevant personal matters
- if there is a relevant history of fitness to practise concerns

5.14 The committee should consider if the incident involved:

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

It should also consider any previous committee findings involving the professional that are relevant to the case.

5.15 Other factors might include if the professional 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

5.16 Evidence of the professional's behaviour and attitude before, during and after the incident in question and before and during proceedings, is also important. This could include for example, co-operating with the investigation or being candid with patients and the public when things go wrong. The committee may want to consider whether the professional has:

- shown any remorse or set out to put things right – including by offering an apology

- demonstrated insight into the concerns in question and taken actions to avoid repeating them
- been open and honest with the committee

5.17 Evidence may also be presented by way of references and testimonials. We say more about this below.

## Insight and remediation

5.18 The GPhC believes that insight and remediation are key factors for committees to consider during fitness to practise proceedings. The expectation is that a professional:

- can accept and understand that they should have behaved differently (insight), and
- will take steps to prevent a reoccurrence (remediation)

5.19 When assessing insight the committee will need to take into account factors such as whether the professional has:

- genuinely demonstrated insight – not only consistently throughout the hearing but also through their actions after the incident took place, and
- demonstrated understanding and insight after the committee finding

5.20 When deciding what action to take, decision makers must consider:

- the nature of the concern
- whether the actions can be remediated, and
- if a professional can demonstrate insight

There may be some cases where a professional's conduct is so serious that it is not remediable. This means that even though the professional may provide evidence of insight and remediation, the conduct is so serious that it is not appropriate to take this evidence into account when considering an outcome. Examples where this may occur include concerns involving discriminatory behaviour or sexual misconduct. This is because regulatory action is necessary to ensure public protection and maintain public confidence in pharmacy, and a professional's involvement in these matters can undermine this.

5.21 The committee should be aware that there may be cultural differences or a professional's personal circumstances, such as ill-health, that may affect the way an individual communicates and expresses themselves. This could affect, for example, how an apology, insight or expression of regret is framed and delivered. This is particularly the case for individuals who are communicating in a second language and may use elements of their first language to construct their sentences or statements. This could alter the intended meaning when spoken in their second language. Expressions of apology, and how an apology is

communicated, can differ across cultures, and be affected by religion and beliefs. For example, in some cultures written apologies are not the norm.

5.22 There may also be differences in the way individuals use non-verbal cues to communicate. This will include, among other things, facial expressions, eye contact and gestures. For example, a professional with a sight impairment may have difficulty making eye contact with committee members. The committee should be aware of and sensitive to these issues when deciding how a professional frames their insight and remorse, and in judging their behaviour and attitude during the hearing.

## Testimonials

5.23 Testimonials (or references) can have an important bearing on the outcome of a fitness to practise hearing and may be submitted as mitigation at a hearing. Committees should first consider whether these are genuine and can be relied upon. The committee should consider whether the authors of the testimonials were aware of the events leading to the hearing and what weight, if any, to give the testimonials.

5.24 The committee should be aware that in some circumstances, there may be cultural or other reasons why a professional may not want to ask for testimonials (or references). For example, sharing information about their investigation with family members or colleagues may affect their private lives, and their reputation with their family and community. The committee should bear this in mind and not make assumptions about why there is an absence of this type of evidence. Equally the committee should not speculate as to what may have been said had any references or testimonials been requested.

5.25 As with other mitigating or aggravating factors, any references and testimonials will need to be weighed appropriately against the nature of the facts found proved and be considered at the appropriate stage of the process. The committee will need to consider the appropriate stage for them to take account of personal mitigation and testimonials.

5.26 Testimonials prepared before a hearing should be considered in the light of the factual findings made at the hearing. Testimonials or other evidence which confirms the steps taken by the professional to remedy the behaviour which led to the hearing (for example from professional colleagues) and evidence of how the professional currently practices may be relevant when the committee is considering the issue of impairment. This evidence should not be left to the outcome stage[48].

[48] Mr Justice McCombe said in Azzam v General Medical Council [2008]

### Actions

5.27 The professional's actions are important elements for the committee to consider when deciding on an outcome. Factors the committee may want to consider include whether the:

- conduct was pre-meditated or not
- professional attempted to cover up wrongdoing
- conduct was sustained or repeated over a period of time
- professional took advantage of a vulnerable person

## 6 More guidance on particular areas

6.1 There are often certain case types in fitness to practise hearings that are more complex than usual when deciding what outcome 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 and has a significant impact on the reputation of pharmacy professionals. In some circumstances it can present a significant and immediate risk to patient safety. It covers a wide range of behaviour, including sexual harassment, sexual assault, physical examinations 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 likely to be the most appropriate outcome in these circumstances, unless there is evidence of clear, mitigating factors that cause a committee to decide that such an outcome 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 professional has
- it involves a child (including accessing, viewing, or other involvement in images of child sexual abuse[49]) or a vulnerable adult[50]

[49] CHRP v (1) GDC and (2) Mr Fleischmann

[50] Disclosure & Barring Service or Disclosure Scotland scheme

- the professional has been required to register as a sex offender or has been included on a barred list

6.4 This is not a full list. It is meant to show that in cases of this type, given the risk to patients and the impact on public confidence in the profession, removal from the register is likely to be the most necessary and proportionate outcome[51]. If a committee decides on an outcome other than removal it should explain fully why it made this decision. This is so that it can be understood by people who have not heard all the evidence in the case.

6.5 The misconduct can take place in many settings. This can be:

- in a private setting with family members
- in a social context, or
- in the course of a professional's work with patients and colleagues

It is therefore important that the committee carefully considers each case on its merits, and takes 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 professional 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 professional should not be granted unrestricted registration. A committee does not need to make recommendations on whether a professional 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 closeness to 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 an outcome.

## Dishonesty

6.8 Regulators ensure that public confidence in a profession is maintained. This is a long-established principle, and standards[52] state that professionals should act with honesty and integrity to maintain public trust and confidence in the profession. There are some acts

[51] Dr Haikel v GMC (Privy Council Appeal No. 69 of 2001)
[52] Article 48 (1) – The Pharmacy Order 2010

which, while not presenting a direct risk to the public, are so serious that they undermine confidence in the profession as a whole. The GPhC believes that dishonesty damages public confidence, and undermines the integrity of pharmacy professionals. However, cases involving dishonesty can be complicated – committees should carefully consider the context and circumstances in which the dishonesty took place. Therefore, although serious, there is not 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 outcome. This includes cases that involve intentionally defrauding the NHS or an employer, falsifying patient records, or dishonesty in clinical drug trials.

6.10 When deciding on the appropriate outcome in a case involving dishonesty, the committee should balance all the relevant issues, including any aggravating and mitigating factors. It is important to understand the context in which the dishonest act took place and make a decision considering the key factors. The committee should then put proper emphasis on the effect a finding of dishonesty has on public confidence in the profession[53].

## Duty of candour

6.11 Acting with openness and honesty when things go wrong is an essential duty for all pharmacy professionals. Our published standards say professionals must be candid and honest when things go wrong[54]. The GPhC believes it is important that there is an environment and culture in pharmacy where pharmacy owners, superintendent pharmacists, pharmacists and pharmacy technicians:

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

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

6.13 **The joint statement on candour** clearly sets out the importance of this issue. Therefore, the GPhC's view is that committees should take very seriously a finding that a pharmacy professional took deliberate steps to:

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

[54] Article 48 (1) – The Pharmacy Order 2010

- avoid being candid with a patient, or with anyone involved in a patient's care, or
- prevent someone else from being candid

It should consider outcomes at the upper end of the scale when dealing with cases of this nature.

### Discriminatory behaviour

6.14 Discriminatory behaviour and attitudes undermine public confidence and trust in the pharmacy professions and can have an impact on the reputation of professionals. Our standards state that we expect professionals to recognise and value diversity, and respect cultural differences – making sure that every person is treated fairly, whatever their values and beliefs. This is essential for professionals to provide safe care and maintain trust with their patients and colleagues.

6.15 All forms of discriminatory behaviour on the part of professionals towards patients, the public and colleagues are unacceptable in society. We take all concerns relating to this seriously. Discriminatory behaviour can include:

- abusive verbal comments, including hate speech, or offensive writing towards someone because of their protected characteristics such as their race, sex and gender, religion or sexuality
- threatening or aggressive behaviour towards someone because of their race, sex and gender, religion, sexuality or other protected characteristics
- comments on social media or public platforms about a particular group of people because of their protected characteristics
- refusing a patient treatment based on the patient's protected characteristics
- treating a patient less favourably because of a protected characteristic
- treating a colleague less favourably because of their protected characteristics

6.16 Discriminatory behaviour can happen in various settings, including at a professional's place of work when interacting with patients or colleagues, in their personal life or in a wider social setting. The committee should consider the circumstances in which the behaviour took place. This is so it can decide if there are any wider implications in maintaining public confidence in the profession. The committee should also consider any cautions or convictions as a result of the professional's actions, and any implications this may have on their fitness to practise and the wider pharmacy profession.

6.17 When deciding on an outcome, the committee should balance all the relevant issues, including any aggravating and mitigating factors. Because of the serious nature of these

types of concerns and the impact on public trust and confidence in the profession, the committee should consider outcomes at the upper end of the scale.

## Raising concerns

6.18 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.

6.19 Therefore, pharmacists and pharmacy technicians must act to prevent problems arising in the first place. It is important that there is an environment and culture in pharmacy where individuals are supported in raising concerns about standards of care and risks to patient safety. This is reflected in the standards[55].

6.20 The GPhC believes that a committee should take very seriously a finding that a professional did not raise concerns when patient safety is at risk. It must consider outcomes at the upper end of the scale when cases involve a failure to raise concerns. In the most serious cases, it must remove professionals from the register to maintain public confidence.

6.21 **Our guidance on raising concerns** explains the importance of raising concerns, and the steps that a professional will need to consider taking when raising a concern.

[55] Article 48 (1) – The Pharmacy Order 2010

General Pharmaceutical Council
25 Canada Square, London E14 5LQ
F 020 3713 8000
E info@pharmacyregulation.org

@TheGPHC
TheGPHC
/company/general-pharmaceutical-council
www.pharmacyregulation.org