

# Guidance for committees on issuing and drafting the wording for a warning

## Overview

1. This note sets out the approach to issuing a warning at an Investigating Committee (IC) and Fitness to Practise Committee (FtPC) hearing. It provides guidance, and examples, on drafting some proposed wording for the warning.
2. This guide provides additional information on warnings and the procedure for imposing a warning, particularly at an IC. It should be considered alongside the following documents:
  - a. Good decision-making: Investigating committee and outcomes, and
  - b. Good decision-making: Fitness to practise committee and outcomes guidance.

## About warnings, when and how they apply

3. There are many commonalities on warnings between statutory committees, particularly the structure and circumstances when they apply. There are some differences in process, and these are set out below.

## Investigating Committee

4. The IC has the power to impose a warning if it decides that this is how it should conclude the case. It will consider the following when issuing a warning:
  - the IC is satisfied there is a real prospect of proving the factual allegations, but the allegations do not need to be considered by an FtPC (see appendix A for decision making at the IC)
  - the IC is satisfied that the behaviour cannot be addressed solely by advice, but that more serious action is needed. 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
  - a warning will not be appropriate if there is a risk to the public or patients which means that the professional's registration must be restricted. Generally, warnings will not be appropriate if the allegation relates solely or mainly to the professional's mental or physical health.

## Where the GPhC recommendation to the IC is for a warning

5. Where the recommendation to the IC is for a warning the proposed draft wording of the warning must attach to the recommendation. This will be included in the notice of referral sent to the

pharmacy professional and will be their opportunity to comment on the recommendation, or on the wording of the warning.

6. The IC will consider the recommendation and any comments submitted on the warning or the wording of the warning when making its decision. The IC may:
  - decide to impose the warning with the proposed wording
  - amend the proposed wording or substitute its own wording
  - determine that another outcome is appropriate.
7. Where the IC amends the proposed wording of the warning or substitutes its own wording this does not require an adjournment to consider the professional's comments where the IC is of the view that the changes are minor and cause no prejudice to the pharmacy professional.

#### **Where the GPhC recommendation to the IC is NOT for a warning**

8. Where the recommendation is not for a warning, and the IC have enough information before it to determine the real prospect test (RPT) both on facts and impairment, then they should make a decision in relation to that.
9. Where the IC considers that a warning would be the appropriate outcome, the IC will draft proposed wording for the warning and send this to the professional for comment (as they would if the draft warning has been drafted as part of the recommendation to the IC). When sending out this warning to the professional the IC should make clear that they have made their decision on the real prospect test and on outcome and that the only matter to be determined is the content of the warning.
10. Should the IC decide to adjourn on this basis, there is no requirement that the same IC must consider the case at a subsequent IC meeting. This is because the IC has already made a finding on the RPT and their role in the case is complete. When the IC next considers the case, it must be provided with the previous IC decision.
11. Unless the response from the professional reveals that the previous IC made their decision on a fundamental mistake of fact, the next IC must not consider the RPT (or decide on a new outcome) but decide simply whether to or not to issue the warning as drafted or make amendments in response to submissions.
12. Alternatively, if the professional's response to the warning reveals that the previous IC made their decision on the real prospect test on a fundamental mistake of fact then the next IC *can* consider the real prospect test and appropriate outcome anew. In these circumstances they should clearly identify the fundamental mistake of fact which has become clear following the response from the professional and that this is the basis for them reconsidering the test and outcome.

#### **Adjourning to obtain further information**

13. The document *Good Decision-Making: Investigating Committee and Outcomes guidance* makes clear, at paragraph 5.2, that the IC may decide on outcomes *after* it has considered the RPT.
14. If, therefore, the IC identifies additional particulars, or want to put a matter to the professional to determine insight - without either of which, they are not in a position to make a decision about the RPT - then they should *not* draft a warning, even if they think that it may eventually be the right outcome.
15. Instead, they should adjourn their consideration of the allegations under Rule 9(3)(b)(iii) until such time as that further information has been obtained and any comments are received. They should make clear that they have not yet decided on the RPT.

16. Should the IC decide to adjourn its meeting there is no requirement that the same IC must consider the case at a subsequent IC meeting. However, if a newly constituted IC does consider the case, it must consider it afresh including the additional information sought and/or received. In which case all options are open to it in terms of decision and outcome.

#### **Professional's right to a hearing**

None of the paragraphs in this section affect the professional's right to request that their case be referred to the Fitness to Practise Committee. If the IC determine that a warning is suitable, but the professional responds to request an FtP hearing then the IC *must* refer the matter to FtP regardless.

### **Fitness to Practise Committee**

17. The Fitness to Practise Committee (FtPC) has the power to impose a warning if it decides that this is how it should conclude the case. The FtPC can give a warning as follows:
- once it has found impairment in 'connection with any matter arising out of, or related to, the allegation and give a direction that details of the warning be recorded in the Register' under Article 54(2)(a), and also,
  - where no finding of impairment is made in Article 54(5)(a)(i) 'a warning to the person concerned in connection with any matter that the Committee considers necessary or desirable taking into account the Committee's findings and give a direction that details of the warning be recorded in the Register.'
18. 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. 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
  - to maintain public confidence in pharmacy, and
  - to maintain proper professional standards and conduct for pharmacy professionals.
19. The FtPC will consider the following when issuing a warning:
- 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
  - 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 and when there needs to be a public acknowledgement that the conduct was unacceptable
  - in cases where no impairment is found, the concerns do not amount to impaired 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.

### **Drafting the wording of the warning**

20. The wording must be tailored to the specific issue and concern, it does not always need to be detailed and should avoid unnecessary commentary. It should be fact specific and be in four parts.
- a short factual statement about why the warning has been recommended, including references to any breaches of standards or guidance

- b. sets out what they are warned against doing in the future or how they should conduct themselves in the future
- c. how it impacts on their registration
- d. set out what might be the implications of a failure to observe the warning.

### Template for proposed wording of a warning

21. The template below, and examples in appendix B, can be used as a guide when drafting the wording.

**Table 1:** Warning structure

| Area                                                           | Details                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Why has the warning been recommended</b>                    | <ul style="list-style-type: none"> <li>• Short explanation about the purpose of our professional standards</li> <li>• Identify the key acts or omissions that relate to the regulatory issue</li> <li>• Include references to any breaches of standards or guidance.</li> </ul>                                                                                |
| <b>What they need to do to address the issue in the future</b> | <ul style="list-style-type: none"> <li>• The purpose of the warning i.e. what acts or omissions, or issue should not be repeated; to mark the seriousness of the issue; to remind the public and the professions of the standards they are expected to meet at all times</li> <li>• References to upholding public confidence and/or public safety.</li> </ul> |
| <b>Impact on their registration</b>                            | <ul style="list-style-type: none"> <li>• This warning will be published on the register and will be available for 12 months.</li> </ul>                                                                                                                                                                                                                        |

### Publication and impact on registration

- 22. The details around publication and disclosure can be read in the full **publication and disclosure policy**. If the committee issues a warning, the details of the warning will be recorded in the register for 12 months as set out in the policy and the table below.
- 23. If the **Investigating Committee** gives a warning to the professional, there are no restrictions on the professional's ability to practise. The fact of this warning will be recorded on the register. A professional has the right to ask to be referred to an FtPC instead of having a warning imposed by the IC. If a request for referral is made, the IC must refer.
- 24. If the **Fitness to Practise Committee** gives a warning to the professional, there are no restrictions on the professional's ability to practise. The details of this warning will be recorded in the register. A warning may also be given when no impairment is found.

**Table 2:** Publication and disclosure

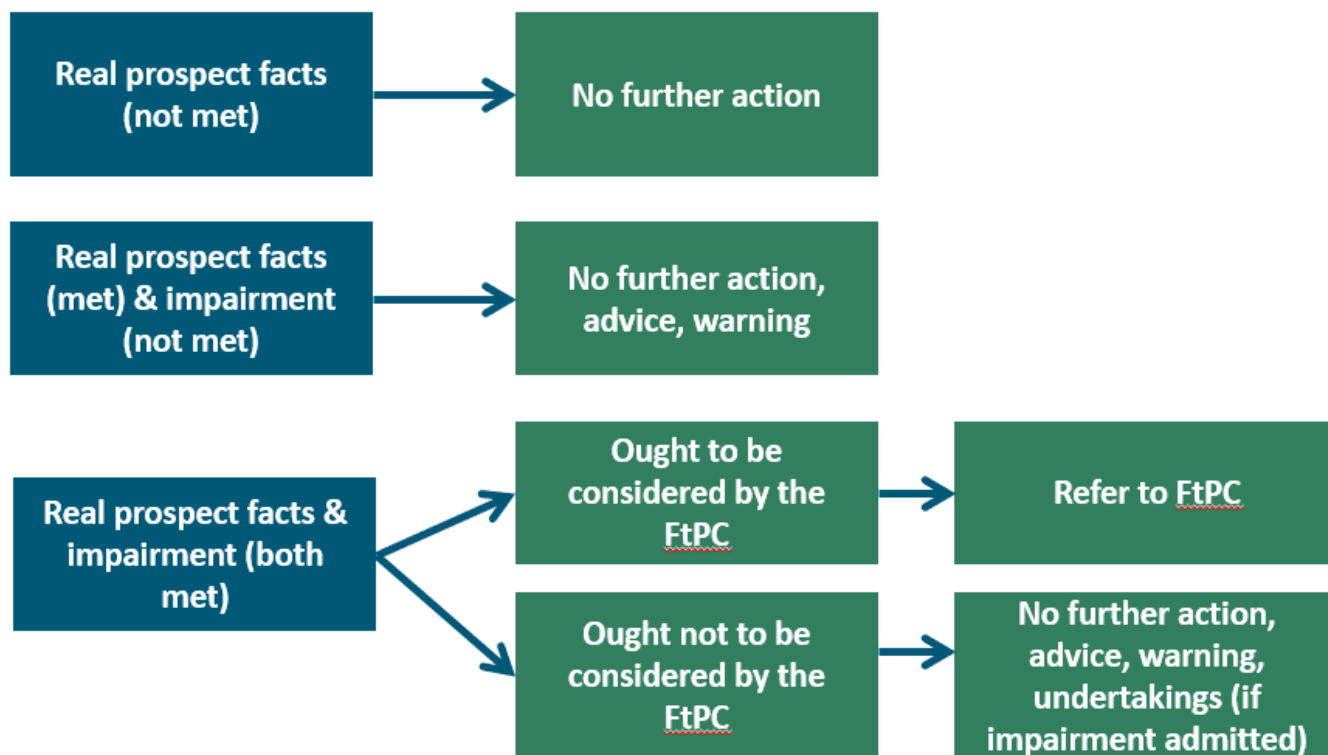
| Outcome                   | How 'status' will appear on the register for the duration of the sanction | How the accompanying information will be presented | Length of time the warning will remain on the register |
|---------------------------|---------------------------------------------------------------------------|----------------------------------------------------|--------------------------------------------------------|
| IC warning                | 'Registered'                                                              | With the warning or summary attached               | one year                                               |
| FtPC warning <sup>1</sup> | 'Registered'                                                              | With the determination or summary attached         | one year                                               |

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<sup>1</sup> Includes warnings where no impairment is found

## Appendix A: Decision making at an IC

Figure 1: IC decision-making pathway



## Appendix B: Examples of wording to accompany a warning

| Type of concern                          | Example wording of the warning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Dispensing errors</b>                 | <p>The failings amount to breaches of the following standards for pharmacy professionals.</p> <p>Standard 2: Pharmacy professionals must work in partnership with others<br/>In particular we consider that the failure to conduct effective checks amounts to a failure to demonstrate effective team working and to take action to safeguard people.</p> <p>By failing to complete an incident report the Committee considers that you have breached standard 8: Pharmacy professionals must speak up when they have concerns or when things go wrong and standard 9: Pharmacy professionals must demonstrate leadership.</p> <p>All of these standards are in place to ensure safe and effective practice. In failing to conduct adequate final checks prior to dispensing medication, failing to spot a dosage error on each of these occasions and in failing to take appropriate action when these errors were notified to him he has fallen short of the standards the public expects of registered pharmacists and must not be repeated.</p> <p>The Committee is satisfied that you understand the importance of a focused and diligent final check as well as how to ensure you conduct these to the necessary standard in his day-to-day practice. Referral to the Fitness to Practise Committee is therefore not required however in light of the seriousness of the allegation, in particular that the errors were repeated, related to a high risk medication, were not acted on appropriately when disclosed and had the potential to cause very serious patient harm, we consider that a warning is necessary in order to publicly mark your failings in order to declare and uphold standards and thereby ensure public confidence in the profession.</p> <p>This warning will be published on the register and will be available for 12 months.</p> |
| <b>Breach of professional boundaries</b> | <p>As a pharmacist you hold a respected position in society and are expected to behave in a professional manner (standard 6), respect and maintain a person's privacy (standard 7) and demonstrate leadership (standard 9).</p> <p>Your actions in seeking to establish a personal relationship with a patient using details known to you only through her attendance at the pharmacy are in breach of all of these standards. They also demonstrate a lack of appreciation of the impact of such behaviours on someone suffering from an anxiety disorder and do not demonstrate person centred care (standard 1). It is of particular concern that you did so in front of an impressionable trainee and indicated to them that such behaviour was acceptable. It is not; such behaviour damages the reputation of the profession and undermines public confidence and must not be repeated.</p> <p>This warning will be published on the register and will be available for 12 months.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

| Type of concern                                              | Example wording of the warning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>No indemnity insurance</b>                                | <p>There is clear evidence that the Professional's actions fell below what would be expected of a registered pharmacist operating as a sole trader. There is a clear public interest element in this case given that no insurance cover was in place for around five months and given the extent and the risk posed by practising without the relevant cover.</p> <p>A warning is appropriate to remind the Professional of his regulatory responsibilities and the seriousness of non-compliance. The public has a right to expect that the standards for a registered pharmacist are met, and that the appropriate insurance is in place, and a warning is the proportionate outcome for this failure.</p> <p>A warning should be given to the Professional about complying with his regulatory responsibilities and upholding the relevant standards, and to remind him that such behaviour must not be repeated. This warning will be published on the register and will be available for 12 months.</p>                                                                                                                                                                                                                                                        |
| <b>Drug use</b>                                              | <p>The Committee is of the view that a warning is the appropriate way to deal with this case due to the fact that the Professional took a controlled class A drug post-referral to the General Pharmaceutical Council and in the absence of a drug dependency.</p> <p>This accessing and misuse of illegal recreational drugs is unacceptable conduct that falls below the standard acceptable for a registered pharmacy professional.</p> <p>The Committee has considered the representations of the Professional and is of the view that a warning would stand as a reminder to the Professional that such actions may negatively affect the reputation of pharmacy professionals and must not be repeated. This warning will be published on the register and will be available for 12 months.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Non-compliance with investigating and medical testing</b> | <p>The Committee concluded that issuing a formal warning about the need to co-operate with her regulator is the necessary, proportionate and appropriate outcome. It considered the likely impact of a formal warning, which will remain on the professional's registration for 12 months, on their ability to obtain work in her chosen field. However, it considered that the public interest in reinforcing the need for health professionals to co-operate with their regulator outweighed this. The purpose of the warning is to prompt reflection on her professional obligations as a registered health professional.</p> <p>The Committee therefore issues the following warning:</p> <p>You are warned that as a registered pharmacy technician, you have responsibility to co-operate with your regulator in order that it can fulfil its statutory duty of protecting patients and maintaining confidence in the profession. You should ensure that you are vigilant about meeting this responsibility in the future.</p> <p>The fact that you have received a warning will appear on the register against your name (for 12 months) and may be taken into consideration should any fitness to practise allegations arise against you in the future.</p> |