

# Good decision making:

Fitness to practise hearings  
and sanctions guidance

**Revised  
March 2017**

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# About us

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

Our main work includes:

- setting standards for the education and training of pharmacists and pharmacy technicians, and approving and accrediting their qualifications and training
- maintaining a register of pharmacists, pharmacy technicians and pharmacies
- setting the standards that pharmacy professionals have to meet throughout their careers
- investigating concerns that pharmacy professionals are not meeting our standards, and taking action to restrict their ability to practise when this is necessary to protect patients and the public
- setting standards for registered pharmacies which require them to provide a safe and effective service to patients
- inspecting registered pharmacies to check if they are meeting our standards

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.



# 1. Introduction

## What this guidance is about

- 1.1 This guidance tells you about our fitness to practise hearings, how decisions are made and the sanctions which committees can impose. It also provides guidance for committees to use when deciding what sanction is appropriate in any given case.
- 1.2 This guidance is in two parts:
  - Part a: Hearings and the decision-making process
  - Part b: Guidance on sanction

## Who this guidance is for

- 1.3 This guidance is aimed at everyone who is involved in a fitness to practise hearing. This includes GPhC staff, committee members, registrants (whether appearing at a hearing or not) and their representatives. It will also be useful to anyone who is interested in a fitness to practise hearing, including:
  - people thinking about making a complaint to the GPhC about a registrant
  - patients and their representatives
  - defence organisations
  - other regulatory bodies, including the Professional Standards Authority (PSA)
  - the courts
- 1.4 We will regularly review this guidance to:
  - take account of changes to 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 promoting equality, diversity and inclusion when it does its work. We value diversity and individuality in our staff, the profession and our council. Our aim is to make sure that our processes are fair, objective, transparent and free from discrimination, and that all stakeholders receive a high level of service. We keep to the principles set out in the Equality Act 2010 and have developed an **equality, diversity and inclusion scheme**
- 1.6 All GPhC staff are expected to demonstrate our values and to work towards these aims at all times during the fitness to practise process. The GPhC will uphold and embed the principles of the European Convention on Human Rights (ECHR) in accordance 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 on whether to impose a sanction, and if so, which one.

## 2. Hearings

2.1 A fitness to practise hearing is one part of a detailed process that begins once a complaint has been received by the GPhC<sup>1</sup>. This process can end at several key stages:

- after investigation takes place
- at an investigating committee meeting
- at a fitness to practise committee hearing<sup>2</sup>

### 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***<sup>3</sup> 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 registrant member and a lay member).

<sup>1</sup> Those allegations that are within the GPhC's jurisdiction

<sup>2</sup> Some cases are referred directly by the Registrar Article 52 (2) (b) and Article 54 (1) (a) - The Pharmacy Order 2010

<sup>3</sup>[www.pharmacyregulation.org/sites/default/files/document/good\\_decision\\_making\\_investigating\\_committee\\_meetings\\_and\\_outcomes\\_guidance.pdf](http://www.pharmacyregulation.org/sites/default/files/document/good_decision_making_investigating_committee_meetings_and_outcomes_guidance.pdf)





Other people may also be at the hearing, including a legal adviser, a medical adviser, GPhC staff and registrant representatives. Committees hear evidence and decide whether a registrant's fitness to practise is impaired<sup>4</sup>.

- 2.4 The fitness to practise committee is independent of the GPhC. It is accountable<sup>5</sup> for the decisions which it makes, and must take account of guidance produced by the GPhC<sup>6</sup>.
- 2.5 In most cases, there is a presumption that a committee will hold a hearing in public. A hearing may be held wholly or partly in private if the committee is satisfied that the interests of the person concerned or the third party in maintaining their privacy outweigh the public interest in holding the hearing, or the part of the hearing, in public<sup>7</sup>. If the hearing is about the health of the registrant, or relates to an interim order, the committee must hold it in private, unless it is satisfied that the interests of the registrant concerned, or of a third party, in maintaining their privacy are outweighed by the public interest<sup>8</sup>.

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<sup>4</sup> The meaning of impairment is given in paragraph 2.12

<sup>5</sup> All decisions are scrutinised by the Professional Standards Authority and may also be subject to appeal – see section 29 of the National Health Service Reform and Health Care Professions Act 2002

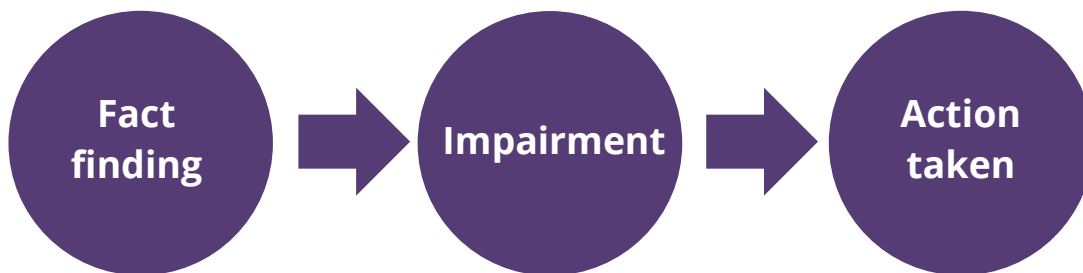
<sup>6</sup> Rule 31 (14) - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>7</sup> Rule 39 - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>8</sup> Rule 39 - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

## Reaching a decision

- 2.6 During a hearing the committee follows a three-stage process before it reaches a decision on whether to impose a sanction, and if so, which sanction to impose<sup>9</sup>. Once the committee has heard the evidence, it must decide:
- whether the **facts** alleged have been found proved
  - whether the registrant's fitness to practise is **impaired**
  - whether any **action** should be taken, by way of a sanction, against the registrant's registration or not. This is dealt with in detail in part b of this guidance.
- 2.7 While coming to its decisions the committee should also keep in mind the overall objectives of the GPhC<sup>10</sup>.



## Fact finding

- 2.8 In a hearing, the GPhC has to prove the facts alleged against a registrant. The standard of proof which applies is the 'balance of probabilities'. This means that the committee will find an alleged fact 'proved' if it decides, after hearing the evidence, that it is more likely than not to have happened. This is not the same as the standard of proof in a criminal court, which is 'so that you are sure'.
- 2.9 If a registrant admits any of the facts alleged, the committee must find the admitted facts proved<sup>11</sup>.
- 2.10 If the facts alleged against the registrant have been proved it does not necessarily mean that there will be a finding of impairment. A committee's decision on impairment must be separate from the decision on the facts of the case. For example, even if there is a finding of misconduct, a committee may decide that a registrant's fitness to practise is not impaired and may conclude that no action is needed.

<sup>9</sup> Rule 31 - General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>10</sup> Article 6 - The Pharmacy Order 2010

<sup>11</sup> Rule 31 (6) - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010



## Impairment

- 2.11 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 adhering to the principles of good practice set out in our various standards, guidance and advice.
- 2.12 Fitness to practise can be impaired for a number of reasons including misconduct, lack of competence, not having the necessary knowledge of English, ill-health or a conviction for a criminal offence<sup>12</sup>.
- 2.13 The committee may consider allegations that occur in either personal or professional life. They must decide whether the registrant’s fitness to practise is currently impaired, **not** whether it was at the time the incident occurred<sup>13</sup>. The committee must keep in mind the overarching objectives of the GPhC when deciding whether a pharmacy professional’s fitness to practise is impaired<sup>14</sup>. The committee must also take into account relevant factors, which include whether or not the conduct or behaviour<sup>15</sup>:
- presents an actual or potential risk to patients or to the public
  - has brought, or might bring, the profession of pharmacy into disrepute
  - has breached one of the fundamental principles of the profession of pharmacy
  - shows that the integrity of the registrant can no longer be relied upon
- 2.14 The committee should also consider whether:
- the conduct which led to the complaint is able to be addressed
  - the conduct which led to the complaint has been addressed
  - the conduct which led to the complaint is likely to be repeated
  - a finding of impairment is needed to declare and uphold proper standards of behaviour and/or maintain public confidence in the profession
- 2.15 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<sup>16</sup>:
- 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

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<sup>12</sup> Article 51 – The Pharmacy Order 2010

<sup>13</sup> Meadow v GMC [2007]

<sup>14</sup> Schedule 1(5) (8) – The Pharmacy Order 2010

<sup>15</sup> Rule 5 - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>16</sup> 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

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

### Action taken

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

- take no action
- agree undertakings<sup>17</sup>
- issue a warning
- impose conditions on the registrant's practice
- suspend the registrant from practising, or
- remove the registrant from the register in the most serious cases

2.18 The committee must, having taken account of this guidance, consider the appropriate sanction in the given case, announce its decision and give its reasons for that decision<sup>18</sup>.

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

### The determination

2.20 Once a committee has made a decision at each stage of the hearing, it will give its '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 registrant, the GPhC, the complainant and any other interested party. It should be clear why a particular decision has been made.

2.21 The committee's determination should follow the guidance on drafting fitness to practise determinations. The committee should make sure that the decision on sanction is fully explained and understood. The determination should carefully explain, in clear and direct language which leaves no room for misunderstanding or ambiguity:

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<sup>17</sup> See paragraph 4.11

<sup>18</sup> Rule 31 (14) - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010



- what sanction, if any, the committee has imposed
- the reasons for the sanction, 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 the profession concerned, and to maintain proper professional standards and conduct for members of that profession

2.22 A committee must consider this guidance when reaching a decision on sanction. If it decides not to take account of the guidance there is an expectation that it should clearly explain its reason for not doing so.

2.23 The committee's determination on sanction should explain why it thinks the sanction it is imposing is appropriate and proportionate. It should say how the committee considered the possible sanctions, starting with the least severe sanction and moving upwards. The determination should say why the committee has decided upon the sanction and explain:

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

2.24 It is important, and in the interests of fairness, that the registrant is given proper reasons, so they can decide whether or not to appeal 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 sanction has been made

3.1 Once a committee has made a decision on a sanction it may also impose 'interim measures' that take immediate effect. Once the hearing has ended, there may be a review hearing on another date. This depends on the sanction 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
- conditional entry in the register<sup>19</sup>

3.3 A committee may impose interim measures<sup>20</sup> if it is satisfied that they are necessary to protect the public, or are otherwise in the public interest or in the interests of the registrant. Any interim measures will take effect immediately and can cover the 28-day 'appeal period'. If the registrant appeals against the decision, they will stay in force until that appeal is decided.

3.4 Before considering whether to impose interim measures, the committee should invite representations from both parties. When announcing whether it is to impose interim measures, the committee should give its reasons for that decision. The committee should be mindful of the sanction imposed and any risk to the public when considering whether or not to impose interim measures.

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 should give proper, adequate and clear reasons for imposing interim measures and ensure the measures are consistent with its finding that the registrant is currently impaired. The reasons should explain why the committee is satisfied that imposing interim measures is:

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

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<sup>19</sup> Article 60 (3) and (4) – The Pharmacy Order 2010

<sup>20</sup> Article 60 - Pharmacy Order 2010



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

## Review hearings

3.8 Review hearings<sup>21</sup> can take place when:

- a registrant is suspended from the register following a hearing; a committee will usually direct that a review hearing takes place before the period of suspension expires
- a registrant 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 registrant has practised while suspended or has failed to comply with the conditions imposed upon their practice. Additional sanctions can be imposed by the committee at the review hearing<sup>22</sup>.

3.10 If, in a particular case, the committee concludes that a further review hearing is not needed, it should give reasons for reaching this decision. If there is to be a further review hearing, the committee should explain in its determination the type of evidence which the registrant 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 request case management directions
- the committee chair may direct that the new evidence be considered at the review hearing, and that these rules are modified to take into account the particular circumstances of the case<sup>23</sup>

*(\*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 consider whether the registrant's fitness to practise remains impaired after considering all the information now available. The registrant is

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<sup>21</sup> 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

<sup>22</sup> Removal not available for health cases

<sup>23</sup> Rule 30 - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

expected to provide evidence that any past impairment has been addressed<sup>24</sup>. The committee must also have regard to this guidance at a review hearing<sup>25</sup>.

- 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 should take place. This is so that the committee can decide whether to continue, modify or end the conditions and impose a more appropriate sanction.

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<sup>24</sup>Abrahaem v GMC [2008] EWHC 183 (Admin)

<sup>25</sup> Rule 34 (9A) - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010



## Suspension

Considerations	Outcomes	Determination
<p>In some cases it may be obvious that, following a short period of suspension, there will be no value in a review hearing. However, in most cases when a suspension is imposed the committee will need to be sure that the registrant is fit to resume practice either unrestricted or with conditions.</p> <p>The committee will also need to satisfy itself that the registrant:</p> <ul style="list-style-type: none"> <li>• has fully appreciated the seriousness of the breach or breaches they have committed</li> <li>• has not committed any further breaches of the standards<sup>26</sup></li> </ul>	<p>If the committee has suspended a registrant, it may, following a review, decide that<sup>27</sup>:</p> <ul style="list-style-type: none"> <li>• their entry be removed from the register (not in a solely health related case)<sup>28</sup></li> <li>• the suspension be extended by another period of up to 12 months, to start from the time when the original suspension would otherwise expire</li> <li>• their registration be suspended indefinitely, if the suspension has already been in force for at least two years<sup>29</sup></li> <li>• an indefinite suspension ends</li> <li>• conditions should be imposed when the suspension expires or is terminated.</li> </ul>	<p>When the committee is removing a suspension order and imposing conditions on the registrant's registration instead, or allowing the registrant to return to unrestricted practice the determination should explain why the public will not be put at risk by this decision.</p>

<sup>26</sup>Article 48 (1) – The Pharmacy Order 2010

<sup>27</sup>Article 54 (3) (a) - The Pharmacy Order 2010

<sup>28</sup>See paragraph 4.6

<sup>29</sup>This direction must be reviewed if the registrant asks and there has been at least two years since the direction took effect or was reviewed: Article 54 (4) – The Pharmacy Order 2010

## Conditions

Considerations	Outcomes	Determination
<p>In most cases when conditions have been imposed the committee will need to be sure that the registrant is fit to resume unrestricted practice, or to practise with other conditions or further conditions.</p>	<p>When a registrant’s entry in the register is conditional upon their complying with conditions the committee may<sup>30</sup>:</p> <ul style="list-style-type: none"> <li>• extend the period for complying with the conditions for up to 3 years starting from the time when the earlier period would have ended</li> <li>• add to, remove or vary the conditions</li> <li>• suspend the entry, for up to 12 months</li> <li>• remove the entry from the register</li> </ul>	<p>If the committee is reviewing a registrant’s conditions, the determination should deal with whether, and how, the registrant has complied with the conditions.</p> <p>If the committee decides that there has been a failure to comply, it must make specific findings.</p> <p>These must explain which conditions have not been complied with, in what way, and on what evidence the committee has based that decision.</p>

<sup>30</sup> Article 54 (3) (b) - The Pharmacy Order 2010



## Part b: Guidance on sanction

This part sets out the GPhC's guidance on what sanctions are, and what issues or factors a committee should consider before deciding on what sanction to apply.

This guidance is not intended to interfere with the committee's powers to impose whatever sanction it decides in individual cases<sup>31</sup>.

Committee members should use their own judgement when deciding on the sanction to impose. They should also make sure that any sanction is appropriate and proportionate, based on the individual facts of the case, and is in the public interest.

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

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<sup>31</sup> CRHP v (1) GMC (2) Leeper [2004]

## 4. Available sanctions

- 4.1 Fitness to practise sanctions are used to protect patients and the wider public interest. Whilst the effect some sanctions have, for example a suspension or removal, could be punitive, a sanction must not be imposed to punish a registrant.
- 4.2 The committee has powers to impose a sanction whether it decides that a registrant's fitness to practise is impaired or not. However, most sanctions can only be imposed once there has been a finding of impairment of fitness to practise. The table below shows the sanctions that are available.

### Registrants

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

### Take no action

The impact on registration	Circumstances when this may apply
No action will be taken, the case will be closed and no record of the case will be recorded on the register.	This may apply even when impairment is found, but there is no risk to the public or need for a sanction to be imposed.

### Advice

The impact on registration	Circumstances when this may apply
Advice can only be given to a registrant when no impairment is found.  The committee gives advice to the registrant 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 registrant's right to practise and there is no continued risk to patients or the public.  In cases where no impairment is found, 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
<p>The committee gives a warning to the registrant. The details of this warning will be recorded in the register.</p> <p>A warning may also be given when no impairment is found (see 'advice' above).</p>	<p>There is a need to demonstrate to a registrant, and more widely to the profession and the public, that the conduct or behaviour fell below acceptable standards.</p> <p>There is no need to take action to restrict a registrant'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.</p>

## Conditions

The impact on registration	Circumstances when this may apply
<p>Conditions<sup>32</sup> place certain restrictions on a registrant's registration for the period given by the committee (up to three years). The details of these conditions will be recorded in the register.</p>	<p>There is evidence of poor performance, or significant shortcomings in a registrant's practice, but the committee is satisfied that the registrant may respond positively to retraining and supervision.</p> <p>There is not a significant risk posed to the public, and it is safe for the registrant to return to practice but with restrictions.</p>

<sup>32</sup> Taken from a standard bank of conditions that is made available to the committee:

[www.pharmacyregulation.org/sites/default/files/good\\_decision\\_making\\_undertakings\\_bank\\_january\\_2016.pdf](http://www.pharmacyregulation.org/sites/default/files/good_decision_making_undertakings_bank_january_2016.pdf)

## Suspension

The impact on registration	Circumstances when this may apply
<p>A suspension prevents a registrant from practising for a specific period given by the committee (up to 12 months).</p> <p>The details of the suspension will be recorded in the register.</p>	<p>The committee considers that a warning or conditions are insufficient to deal with any risk to patient safety or to protect the public, or would undermine public confidence.</p> <p>It may be required when necessary to highlight to the profession and the public that the conduct of the registrant is unacceptable and unbecoming a member of the pharmacy profession. Also when public confidence in the profession demands no lesser sanction.</p>

## Removal

The impact on registration	Circumstances when this may apply
<p>The registrant's entry in the GPhC register will be removed and they will no longer be able to work as a pharmacy professional in Great Britain<sup>33</sup>.</p>	<p>Removing a registrant's registration is reserved for the most serious conduct. The committee cannot impose this sanction in cases which relate solely to the registrant's health. The committee should consider this sanction when the registrant's behaviour is fundamentally incompatible with being a registered professional.</p>

- 4.4 The committee may also give advice<sup>34</sup> to any other person or other body involved in the investigation of the allegation on any issue arising from, or related to, the allegation<sup>35</sup>.
- 4.5 If the registrant is entered in more than one part of the register, the committee must produce a separate, written determination for each part of the register. The committee may impose one sanction for all parts of the register, or different sanctions for different parts of the register.

<sup>33</sup> The applicant must wait for 5 years before applying to be restored to the register.

<sup>34</sup> Whether or not impairment is found

<sup>35</sup> Article 54 (5) – The Pharmacy Order 2010



## Health cases

- 4.6 If the committee decides that a registrant's fitness to practise is impaired solely because of physical or mental ill-health, it cannot direct that the registrant be removed from the register<sup>36</sup> 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 nominated by the GPhC<sup>37</sup>.

## Requiring a language assessment

- 4.7 The committee has the power to require the registrant to have a language assessment. The chair may give a direction requiring the registrant to<sup>38</sup>:
- 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, where the registrant admits that their fitness to practise is impaired, to agree undertakings<sup>39</sup>. Undertakings are promises by the registrant on things they will or will not do in the future and may include restrictions on practice or behaviour or the commitment to undergo supervision or retraining. Those that are not health related will be recorded in the online register<sup>40</sup>.
- 4.10 Undertakings will only be appropriate where the committee is satisfied that the registrant will comply with them, for example, because he or she has shown genuine insight into his or her behaviour and the potential for remediation. Where a registrant fails to comply with an undertaking or the registrant's health or performance deteriorates or otherwise gives further cause for concern regarding their fitness to practise, the registrar may refer the matter to the committee for a review hearing<sup>41</sup>.

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<sup>36</sup> Article 54 (7) – The Pharmacy Order 2010

<sup>37</sup> Rule 13 (1) (a) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>38</sup> Rule 6 (4) (e) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>39</sup> Rule 26 (1) - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>40</sup> [www.pharmacyregulation.org/sites/default/files/document/gphc\\_publication\\_and\\_disclosure\\_policy\\_july\\_2018.pdf](http://www.pharmacyregulation.org/sites/default/files/document/gphc_publication_and_disclosure_policy_july_2018.pdf)

<sup>41</sup> Rule 45(3) - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

### Corporate bodies

- 4.11 Concerning corporate bodies the committee has the power, if it thinks fit, to dispose of disqualification proceedings by agreeing appropriate undertakings with the 'section 80' party<sup>42</sup> or by giving advice or a warning, instead of giving a direction under section 80 of the Medicines Act 1968<sup>43</sup>.
- 4.12 Where the GPhC becomes aware that a party has failed to comply with any undertakings agreed then the committee must<sup>44</sup>:
- resume its consideration of the matter; and
  - reconsider the sanction imposed, and may instead issue a direction under section 80(1) or, as the case may be, section 80(4), of the Medicines Act 1968
- 4.13 The committee also has the power<sup>45</sup> to deal with 'disqualification allegations' made against a corporate body that carries on a retail pharmacy business. The committee may direct that:
- a corporate body should be disqualified for the purposes of Part IV of the Medicines Act 1968
  - a 'representative' of the corporate body should be disqualified as being a representative for the purposes of Part IV of the Medicines Act 1968
  - the registrar should remove from the register of premises some or all of the premises at which the corporate body carries on retail pharmacy
  - the registrar should remove from the register of premises, for a limited time, some or all of the premises at which the corporate body carries on retail pharmacy<sup>46</sup>

### 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<sup>47</sup>.

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<sup>42</sup> 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)"

<sup>43</sup> Rule 26(2) - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>44</sup> Rule 32(18) - The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>45</sup> Section 80 Medicines Act 1968

<sup>46</sup> Section 80(3) of the Medicines Act 1968

<sup>47</sup> [www.pharmacyregulation.org/sites/default/files/gp201489\\_gphc\\_criminal\\_prosecution\\_policy.pdf](http://www.pharmacyregulation.org/sites/default/files/gp201489_gphc_criminal_prosecution_policy.pdf)





## 5. Deciding on the sanction

5.1 When making its decision the committee must keep in mind the overarching objectives of the GPhC. The committee should also consider the full range of sanctions it can impose. It should use its discretion and decide on a sanction that is appropriate and proportionate. By 'proportionate', we mean that a sanction should be no more serious than it needs to be to achieve its aims<sup>48</sup>. The committee should also make sure any sanction 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 the profession concerned, and
- whether it is sufficient to maintain proper professional standards and conduct for members of the profession concerned

### Key factors to consider

5.2 Ensuring 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 sanction, if any, to impose, the committee should consider:

- the extent to which the registrant has breached the standards<sup>49</sup> as published by the GPhC
- the interests of the registrant, weighed against the public interest
- the overarching objectives of the GPhC
- the personal circumstances of the registrant and any mitigation\* they have offered
- that the decision is sufficient to protect the public
- any testimonials and character references given in support of the registrant
- any relevant factors that may aggravate\* the registrant's conduct in the case
- any statement of views provided to the committee by a patient or anyone else affected by the conduct of the registrant
- any submissions made to the committee by the GPhC's representative, the registrant or their representative
- the contents of this guidance
- any other guidance published by the GPhC

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

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<sup>48</sup> Chaudhury v General Medical Council [2002] UKPC 41

<sup>49</sup> Article 48 (1) – The Pharmacy Order 2010

- 5.3 To make sure that the sanction is proportionate, the committee should consider each available sanction, starting at the lowest, and decide if it is appropriate to the case. If it is not, the committee should consider the next sanction, and so on, until it decides that a particular sanction is appropriate<sup>50</sup>.
- 5.4 The committee should also consider the sanction immediately above the one it has decided to impose, and give reasons why a more serious sanction is not appropriate and proportionate.
- 5.5 The term of a suspension can be a maximum of 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 should 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 term of 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 remain in place. Conditions will be imposed for the protection of the public or for other reasons in the public interest or in the interests of the registrant.

## The public interest

- 5.7 In reaching a decision on what sanction to impose, the committee should give appropriate weight to the wider public interest<sup>51</sup>. 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 registrant<sup>52</sup>. Even if a sanction will have a punitive effect,<sup>53</sup> it may still be appropriate if its purpose is to achieve one or more of the three outcomes listed in paragraph 5.7<sup>54</sup>. The committee should ensure that the public interest considerations are reflected in the reasons for deciding on a particular sanction.

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<sup>50</sup> *Giele v General Medical Council* [2005] EWHC 2143 (Admin)

<sup>51</sup> *CHRE v Nursing and Midwifery Council* (Grant)

<sup>52</sup> *Marinovich v General Medical Council* [2002] UKPC36

<sup>53</sup> *Bolton v The Law Society* [1994] 2 All ER 286

<sup>54</sup> *Laws LJ in Rashid and Fatnani v GMC* [2007] 1 WLR 1460



5.9 Mr. Justice Newman<sup>55</sup> 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 sanction, it must be sure that it has been presented with the evidence it needs to make a fair and proportionate decision. It must take into account the context of a case. By ‘context’ we mean the circumstances in which the 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 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. 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.

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<sup>55</sup> R (on the application of Abrahaem) v GMC [2004]

### Circumstances

5.12 The circumstances in which the allegation arose may include important factors when making a decision on sanction. 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

5.13 They should consider if the incident involved:

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

They should also consider any previous committee findings involving the registrant that are relevant to the case.

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

### Behaviour and attitude


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

- shown any remorse or set out to put things right – including by offering an apology
- demonstrated insight into the concerns in question and actions taken to avoid repetition of them
- been dishonest with the committee

5.16 Evidence may also be presented by way of references and testimonials. Both are expanded on below.

### Insight

5.17 The GPhC believes that insight is a key factor for committees to consider during fitness to practise proceedings. The expectation that a registrant can accept and understand that they



should have behaved differently, and that they will take steps to prevent a reoccurrence, is an important factor for a committee to consider.

- 5.18 When assessing insight the committee will need to take into account factors such as whether the registrant has genuinely demonstrated insight – not only consistently throughout the hearing but also through their actions after the incident took place - and also has demonstrated understanding and insight after the committee finding.
- 5.19 The committee should be aware that there may be cultural differences in the way that insight is expressed, for example, whether or how an apology or expression of regret is framed and delivered. Sensitivity to these issues is important in deciding how a registrant frames their ‘insight’ and in judging their behaviour and attitude during the hearing.

## Testimonials

- 5.20 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 to 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 to the testimonials.
- 5.21 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.
- 5.22 Testimonials prepared in advance of 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 registrant to remedy the behaviour which led to the hearing (for example from professional colleagues) and evidence of the registrant’s current fitness to practise may be relevant when the committee is considering the issue of impairment. This evidence should not be left to the sanction stage<sup>56</sup>.

## Actions

- 5.23 The registrant’s actions are important elements for the committee to consider when deciding on a sanction. Factors the committee may want to consider include whether the:
- conduct was pre-meditated or not
  - registrant attempted to cover up wrongdoing
  - conduct was sustained or repeated over a period of time
  - registrant took advantage of a vulnerable person

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<sup>56</sup> Mr Justice McCombe said in *Azzam v General Medical Council* [2008]

## 6. More guidance on particular areas

6.1 There are often certain case types in fitness to practise hearings that are more complex than normal when deciding what sanction to apply. We believe that giving more guidance – including the relevant case law, legal principles and the GPhC view on particular areas – will help to ensure proportionate and consistent decision-making. This is intended to help committees in their decision-making.

### Sexual misconduct

6.2 Sexual misconduct – whatever the circumstances – undermines public trust in the profession and has a significant impact on the reputation of pharmacy professionals, and in some circumstances can present a significant and immediate risk to patient safety. It covers a wide range of behaviour, including sexual harassment, sexual assault, physical 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 sanction in these circumstances, unless there is evidence of clear, mitigating factors that cause a committee to decide that such a sanction is not appropriate. The misconduct is particularly serious if:

- there is a conviction for a serious sexual offence
- there is an abuse of the special position of trust that a registrant has
- it involves a child (including accessing, viewing, or other involvement in images of child sexual abuse<sup>57</sup>) or a vulnerable adult<sup>58</sup>
- the registrant 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 proportionate and most appropriate sanction<sup>59</sup>. If a committee decides to impose a

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<sup>57</sup> *CHRP v (1) GDC and (2) Mr Fleischmann*

<sup>58</sup> Disclosure & Barring Service or Disclosure Scotland scheme

<sup>59</sup> *Dr Haikel v GMC (Privy Council Appeal No. 69 of 2001)*



sanction 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 or in a social context, or in the course of a registrant's profession with patients and colleagues. It is therefore important that the committee carefully considers each case on its merits, and 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<sup>60</sup>.
- 6.6 A registrant may have committed an offence but not be included on a barred list. If so, and if the committee is in any doubt about whether they should return to work without any provisions to ensure public protection, the registrant should not be granted unrestricted registration. A committee does not need to make recommendations on whether a registrant should be referred to a barring authority, as this will be considered by the GPhC.
- 6.7 Given the role of pharmacists and pharmacy technicians, and their proximity 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 a sanction.

## Dishonesty

- 6.8 Regulators ensure that public confidence in a profession is maintained. This is a long-established principle and our standards<sup>61</sup> state that registrants should act with honesty and integrity to maintain public trust and confidence in the profession. There are some acts which, while not presenting a direct risk to the public, are so serious they undermine confidence in the profession as a whole. The GPhC believes that dishonesty damages public confidence, and undermines the integrity of pharmacists and pharmacy technicians. However, 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 sanction. This includes allegations that involve intentionally defrauding the NHS or an employer, falsifying patient records, or dishonesty in clinical drug trials.

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<sup>60</sup> [www.pharmacyregulation.org/sites/default/files/in\\_practice-guidance\\_on\\_maintaining\\_clear\\_sexual\\_boundaries\\_may\\_2017\\_0.pdf](http://www.pharmacyregulation.org/sites/default/files/in_practice-guidance_on_maintaining_clear_sexual_boundaries_may_2017_0.pdf)

<sup>61</sup> Article 48 (1) – The Pharmacy Order 2010

6.10 When deciding on the appropriate sanction 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<sup>62</sup>.

### Duty of candour

6.11 Acting with openness and honesty when things go wrong is an essential duty for all pharmacists and pharmacy technicians. Our published standards say registrants must be candid and honest when things go wrong<sup>63</sup>. 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 Registrants are expected to be open and honest with everyone involved in patient care. Committees should therefore see registrants' candid explanations, expressions of empathy and apologies as positive steps before, and during, a hearing. However, these will not normally amount to an admission of impairment by the registrant. So, unless there is evidence to prove otherwise, the committee should not treat them as such.

6.13 The joint statement on candour clearly sets out the importance of this issue<sup>64</sup>. Therefore, the GPhC's view is that committees should take very seriously a finding that a pharmacy professional took deliberate steps to avoid being candid with a patient, or with anyone involved in a patient's care, or to prevent someone else from being candid. It should consider sanctions at the upper end of the scale when dealing with cases of this nature.

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<sup>62</sup> R v General Optical Council [2013] EWHC 1887 (Admin) and Siddiqui v General Medical Council [2013] EWHC 1883

<sup>63</sup> Article 48 (1) – The Pharmacy Order 2010

<sup>64</sup> [www.pharmacyregulation.org/sites/default/files/joint\\_statement\\_on\\_the\\_professional\\_duty\\_of\\_candour.pdf](http://www.pharmacyregulation.org/sites/default/files/joint_statement_on_the_professional_duty_of_candour.pdf)

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## Raising concerns

- 6.14 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.
- 6.15 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 and this is reflected in the standards<sup>65</sup>.
- 6.16 The GPhC believes that a committee should take very seriously a finding that a pharmacist or pharmacy technician did not raise concerns where patient safety is at risk. It must consider sanctions at the upper end of the scale when cases involve a failure to raise concerns, and in the most serious cases, remove pharmacists and pharmacy technicians from the register to maintain public confidence.
- 6.17 Our guidance on raising concerns<sup>66</sup> explains the importance of raising concerns, and the steps that a pharmacy professional will need to consider taking when raising a concern.

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<sup>65</sup> Article 48 (1) – The Pharmacy Order 2010

<sup>66</sup> [www.pharmacyregulation.org/sites/default/files/in\\_practice-guidance\\_on\\_raising\\_concerns\\_may\\_2017.pdf](http://www.pharmacyregulation.org/sites/default/files/in_practice-guidance_on_raising_concerns_may_2017.pdf)







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