

Pharmaceutical Society of Northern Ireland

Statutory Committee

Indicative Sanctions Guidance

1. Preamble

The Statutory Committee has produced this guidance on sanctions to assist practitioners appearing before it. The Statutory Committee is keen to ensure that its disciplinary procedures are compliant with the Human Rights Act and to conform with good regulatory practice.

Fairness requires that a practitioner appearing before the Statutory Committee knows, prior to any decision being made, what sanctions are available to the Committee, and, in the event that sanctions are to be imposed, the matters that the Committee will take into account when coming to a decision.

The factual bases underpinning any criminal convictions or findings of misconduct are many and varied. The features that the Committee will consider relevant in individual cases are set out at paragraphs 6 to 10 below. Please note, however, that the features set out are intended to be a guide, and are not an exhaustive list.

The guidance contained herein cannot operate either to alter or to displace what is the law.

2. Sanctions available

The sanctions available to the Statutory Committee are as follows:

(i) ***Individual Practitioners and those seeking registration or restoration to the Register***

The Statutory Committee may by virtue of the provisions of the Pharmacy (Northern Ireland) Order 1976 and the Medicines Act 1968 as hereunder referred to, direct that:

- a) an applicant's name should not be registered;
- b) an applicant's name should not be registered until the Statutory Committee directs otherwise;
- c) the Registrar should remove the name of the pharmaceutical chemist or druggist from the register;
- d) an applicant for restoration should not be restored to the register;
- e) applicant for restoration should not be restored to the register until the Statutory Committee directs otherwise;
- f) an application for restoration to the register shall not be entertained until the expiration of such period or the fulfilment of such conditions as may be specified;
- g) a representative of a pharmacist should be disqualified;

[The Pharmacy (Northern Ireland) Order 1976 Article 20 and the Medicines Act 1968 Section 80(4)]

The Statutory Committee does not have any powers to impose conditions on a person's registration, or to suspend a person's registration for a limited period.

(ii) *Corporate bodies*

The Statutory Committee may direct under the provisions of the Medicines Act 1968 Section 80, that

- a) a Corporate body should be disqualified;
- b) the Registrar should remove from the register some or all premises entered in the register as being premises at which the corporate body carries on retail pharmacy;
- c) the Registrar should remove from the register for a limited period some or all premises entered in the register as being premises at which the corporate body carries on retail pharmacy.

[The Medicines Act 1968 Section 80, (1) (2) (3)]

3. *Purpose of Sanctions*

The purpose of sanctions is threefold, namely:

- i) the protection of the public;
- ii) the maintenance of public confidence in the profession; and
- iii) the maintenance of proper standards of behaviour.

It matters not that a practitioner may already have paid a heavy price for his misconduct in prior criminal proceedings. The object of disciplinary proceedings against a practitioner who has been convicted of a criminal offence is twofold. It is to protect members of the public who may use his services, and to maintain the high standards and reputation of the profession. The object is not to punish him a second time for the same offence.

4. *General principles- Fairness and Proportionality*

In considering whether to apply a sanction, the Statutory Committee has to exercise a discretion.

Notwithstanding a finding that the conduct of a pharmacist is such as to render him unfit to remain on the register, the Statutory Committee still has a discretion as to whether or not to direct the removal of that pharmacist's name.

The Statutory Committee is required to exercise its discretion in a way that is fair and reasonable. This will require the Committee to weigh the interests of the practitioner against the need for public protection.

In making its decision, the Statutory Committee will have regard to the public interest. This includes the protection of members of the public, the maintenance of public confidence in the profession, and declaring and upholding proper standards of conduct and performance.

The Statutory Committee will ensure that any sanction imposed is proportionate, in all the circumstances of the case. This will involve a consideration of :

- any mitigating or aggravating features of the offence or misconduct in question
- the personal circumstances of the practitioner and any mitigation advanced by him
- any testimonials and character references adduced in support of the practitioner
- any statement of views provided to the Statutory Committee by a patient or victim

The Statutory Committee will have regard to the following:

“ the application of the doctrine of proportionality is to ensure that a measure imposes no greater restriction upon a Convention right than is absolutely necessary to achieve its objectives.” (*Chaudhury v General Medical Council [2002] UKPC 41- at paragraph 21*)

5. Medicines, Ethics and Practice

In making its determination on the sanction to be imposed, the Statutory Committee will have regard to the Code of Ethics and Standards, and any relevant guidance, set out in the Society’s publication “Ethics and Practice. A Guide for Pharmacists in Northern Ireland” 1997 Edition and in particular to any breach of the Key responsibilities of the Pharmacist which are stated therein.

6. Aggravating Features

Note: The following table is not an exhaustive list of aggravating features. Some of these features may also be the actual subject of the allegation.

Dishonesty
Vulnerable victim
Sexual misconduct in relation to professional duties
Misconduct sustained or repeated over long period of time
Previous convictions, or finding of misconduct by the Statutory Committee
Disregard of previous warnings by the Chairman of the Statutory Committee
Breach of confidentiality
Actual or potential injury to patient
Abuse of trust/position
Blatant disregard for the system of registration
Concealment of wrong doing
Failure to respond to complaint by patient
Disregard of written/oral advice given by a Professional Standards Inspector employed by the Pharmaceutical Society of Northern Ireland
Misconduct committed by person in charge on pharmacy premises

7. *Mitigating Features*

Note: the following table is not an exhaustive list of mitigating features.

Repayment of any misappropriated funds
Ill health at the time the crime or misconduct was committed
Single isolated incident in a long and unblemished career
Open and frank admissions at an early stage, demonstrating insight into misconduct or offence committed
No actual or potential harm to patient

8. *Cases where removal from the register may be appropriate*

Note: The following list is not an exhaustive list of cases where removal from the register may be appropriate.

Continuing risk to patients or members of the public	
Offence or misconduct is so serious as to undermine confidence in the profession if the practitioner were to remain on the register	
Lack of sufficient insight on the part of the practitioner	
Lack of competence or ill health such as to call into question the continued ability of the practitioner to practise safely	
Dishonesty	
Violent or sexual misconduct	

9. *Reasons*

The Statutory Committee will give reasons for its decision. The reasons will set out clearly the matters that the Statutory Committee took into account when deciding whether or not to impose a sanction, and if so, what sanction to impose.

The reasons will indicate why the decision taken by the Committee is considered to be proportionate, in all the circumstance of the case.

Approved by the Statutory Committee on 16 December 2005.