

## **The Statutory Committee - Indicative Sanctions Guidance**

### **1. Preamble<sup>1</sup>**

The Council of the Pharmaceutical Society of Northern Ireland has produced the following guidance, to which the Statutory Committee refers when considering and determining the appropriate sanction in all cases that come before it under the Pharmacy (Northern Ireland) Order 1976 (as amended) ("the 1976 Order"). The guidance describes the options available to the Committee at the sanction stage of proceedings and sets out various factors that may make one sanction more or less appropriate in any particular case.

The Council seeks to ensure that its procedures are open and transparent, compliant with human rights legislation and that they conform to models of good regulatory practice developed by other regulators and the Council for Healthcare Regulatory Excellence ("CHRE") (soon to be known as Professional Standards Authority for Health and Social Care).

### **2 Agreement of Undertakings**

#### Registered Persons

Where the registered person admits that their fitness to practise is impaired the Committee may, if it thinks fit, dispose of the fitness to practise proceedings by agreeing undertakings with the registered person<sup>2</sup>.

Where the Committee agrees undertakings with a registered person, the Registrar will record them in the Register<sup>3</sup>. Undertakings (that is, promises by the registered person to the Committee in respect of things they will or will not do in the future) may include restrictions on a registered person's practice or behaviour, (but not amounting to a total suspension from practice) or the commitment to undergo supervision or retraining. Undertakings will only be appropriate where the Committee is satisfied that the registered person will comply with them, for example, because he or she has shown genuine insight into his or her problems/deficiencies and potential for remediation. Where the Registrar receives information that the registered person has failed to comply with an undertaking which was agreed with the Committee or the registered person's health or performance has deteriorated 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>4</sup>.

#### Corporate Bodies

The Committee may, if it thinks fit, dispose of disqualification proceedings by agreeing appropriate undertakings with the „section 80 party<sup>5</sup>“ or by giving advice or a warning, instead of giving a direction under section 80 of the Medicines Act 1968<sup>6</sup>.

Where the Pharmaceutical Society of Northern Ireland becomes aware that a section 80 party has failed to comply with any undertakings agreed then the Statutory Committee must<sup>7</sup>.

Resume its consideration of the matter (the procedure at the hearing being for the Committee to determine); and

Reconsider the sanction imposed, and may instead issue a direction under Section 80(1) or, as the case may be,(4) of the Act

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<sup>1</sup> Unless otherwise stated, references in this document to paragraphs are to those contained in Schedule 3 of the Pharmacy (Northern Ireland) Order 1976 (as amended) and references to regulations are to those in the Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012

<sup>2</sup> [Regulation 28](#)

<sup>3</sup> [Regulation 29](#)

<sup>4</sup> [Regulation 47 \(3\)](#)

<sup>5</sup> Defined in Regulation 2 (1) as a person who is subject to proceedings before the Statutory Committee in connection with the giving of a direction under section 80 (1) and (4) of the Medicines Act 1968

<sup>6</sup> [Regulation 28 \(2\)](#)

<sup>7</sup> [Regulation 35 \(18\)](#)

In a review hearing, where the Committee finds that an undertaking has not been complied with, it may treat the failure as misconduct and give a direction under section 80 (1) or (4) of the Medicines Act 1968<sup>8</sup>.

### 3. Sanctions available

The sanctions available to the Committee are as follows<sup>9</sup>:

#### (i) Registered Persons

(a) Where an allegation or matter is referred to the Committee and the Committee determines that the fitness to practise of the person in respect of whom the allegation is made is impaired, it may<sup>10</sup>:

give a warning to the registered person 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<sup>11</sup>,

give advice to any other person or other body involved in the investigation of the allegation on any issue arising out of, or related to, the allegation

impose conditions on the registered person's registration for a period not exceeding three years

suspend the registered person's registration for a period not exceeding twelve months

give a direction that the name of the registered person be struck off the Register.

Please note that the sanction of conditional registration and suspension may be subject to review – see paragraph 17 below.

(b) If the Committee determines that the fitness to practise of the registered person is **not impaired** the Committee may give<sup>12</sup>:

a warning to the registered person 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<sup>13</sup>,

advice to the registered person in connection with any such matter, and

advice to any other person or other body involved in the investigation of the allegation on any issue arising out of, or related to, the allegation.

(c) **Health cases.** If the Committee determines that a person's fitness to practise is impaired solely by reason of adverse physical or mental health, it may not give a direction that the entry in the Register in respect of that person be struck off<sup>14</sup>.

(d) **Criminal proceedings.** If, having considered the allegation, the Committee considers that the Department of Health, Social Services and Public Safety should consider exercising any of its powers to bring criminal proceedings under any statutory provision it must notify the Department accordingly<sup>15</sup>.

**A person whose entry has been removed from the Register, in accordance with a direction by the Committee<sup>16</sup> may apply to the Registrar for restoration to the Register only after the expiration of five years from the date of the removal<sup>17</sup>.**

#### (ii) Corporate bodies

In addition to the powers set out above the Committee also has the power<sup>18</sup>, to deal with 'disqualification allegations' made against a corporate body that carries on a retail pharmacy business. The Committee may direct that:

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<sup>8</sup> Regulation (9)(b)

<sup>9</sup> Paragraph 7 (2) – (6)

<sup>10</sup> Paragraph 7 (2)

<sup>11</sup> The Registrar must record any such warning in the register in accordance with Regulation 29

<sup>12</sup> Paragraph 7 (5)

<sup>13</sup> The Registrar must record any such warning in the register in accordance with Regulation 29

<sup>14</sup> Paragraph 7 (6)

<sup>15</sup> Paragraph 7 (8)

<sup>16</sup> Under paragraph 7(2) (c) or (3) (a) (i) or (b) (iv)

<sup>17</sup> Paragraph 9 (1) & (2)

<sup>18</sup> Under section 80 of the Medicines Act 1968

A corporate body should be disqualified for the purposes of Part IV of the Medicines Act 1968. A "representative" of the corporate body should be disqualified as being a representative for the purposes of Part IV of the Medicines Act 1968.

The Registrar should remove from the Register of Premises some or all premises entered in that Register as being premises at which the corporate body carries on retail pharmacy.

The Registrar should remove from the Register of Premises some or all premises entered in that Register as being premises at which the corporate body carries on retail pharmacy, "for a limited period."

#### **4. Purpose of Sanctions**

In the context of fitness to practise proceedings before a professional regulatory body, the purpose of sanctions is threefold, namely:

protection of the public

the maintenance of public confidence in the profession; and

the maintenance of proper standards of behaviour

It matters not that a practitioner may already have paid a heavy price for his or her misconduct in prior criminal proceedings. In *Dey v General Medical Council- Privy Council Appeal No. 19 of 2001*, it was said that the object of proceedings against a practitioner who had been convicted of a criminal offence was twofold. It was to protect members of the public who may use their services, and to maintain the high standards and reputation of the profession. The object was not to punish him or her a second time for the same offence. The important thing was not the facts themselves, but "the perspective from which they are viewed".

However, the fact that a sanction will have a punitive effect does not make such a sanction inappropriate where its purpose is one or more of the three listed above. (See Laws LJ in *Rashid and Fatnani v GMC* [2007] 1 WLR 1460).

The Committee is entitled to give greater weight to the public interest and to the need to maintain public confidence in the profession than to the consequences of the appellant of the imposition of the penalty (See *Mairnovich v General Medical Council* [2002] UKPC36).

#### **5. General principles – fairness, proportionality & reasonableness**

In considering the appropriate sanction the Committee has to exercise discretion and will have regard to the principles of fairness, proportionality and reasonableness. The Committee is required to weigh carefully the interests of the registered person against the public interest, which is made up of the three purposes set out above.

In making its decision, the Committee will have regard to the full range of sanctions available to it, and will seek to ensure that any sanction imposed is proportionate, fair and reasonable in all the circumstances of the case.

In determining the appropriate sanction to be imposed therefore the Committee may need to consider some or all of the following:

any mitigating or aggravating features of the facts found proved;

the personal circumstances of the registered person and any mitigation advanced;

any testimonials and character references adduced in support of the registered person;

any statement of views provided to the Committee by a patient or any individual affected by the conduct of the registered person; and

any statement of views provided to the Committee by the Pharmaceutical Society of Northern Ireland

In the context of proceedings before a professional regulatory body, the Privy Council said the following about the principle of proportionality:

"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).

Thus, in order to ensure that proportionality is achieved, the Committee will usually consider sanctions in ascending order of severity.

## **6. Code of Ethics**

In making its determination on the sanction, if any, to be imposed the Committee will have regard to the extent to which the registered person has breached the Code of Ethics published by the Pharmaceutical Society of Northern Ireland's Council.

## **7. Aggravating Features - General**

The following aggravating factors may be present in a case before the Committee. Please note that this is not an exhaustive list of all aggravating factors. Some of these factors may also be the actual subject of the allegation.

### **Dishonesty**

#### **Abuse of trust**

#### **Taking advantage of a vulnerable person**

#### **Sexual misconduct in relation to professional duties**

#### **Misconduct/deficient professional performance sustained or repeated over a long period of time**

#### **Previous convictions or finding of misconduct by the Committee**

#### **Failure to comply with or disregard of previous sanctions issued by the Statutory Committee or previous Committees of the Pharmaceutical Society of Northern Ireland (whether statutory or non- statutory) charged with considering allegations of misconduct or impairment of fitness to practise, or warnings issued by any such Committee including the Scrutiny Committee etc.**

#### **Failure to co-operate/comply with an assessment of professional performance**

#### **Failure to co-operate with an investigation into an allegation(s)**

#### **Breach of confidentiality**

#### **Potential harm**

#### **No/minimal steps taken to prevent actual harm**

#### **Actions premeditated**

#### **Abuse of position and dishonesty in the context of drug abuse**

#### **Blatant disregard for the system of registration**

#### **Blatant disregard of the Code of Ethics published by the Pharmaceutical Society of Northern Ireland's Council**

#### **Lack of insight**

#### **Concealment of wrongdoing**

#### **Failure to respond to complaint by patient**

#### **Breach of any written undertaking(s) previously given to the Scrutiny Committee or Statutory Committee**

#### **Disregard of written/oral advice given by the Registrar of the Pharmaceutical Society of Northern Ireland', a Pharmacy Inspector or the Health and Social Care Board of Northern Ireland**

#### **Misconduct/deficient professional performance committed by person in charge on pharmacy premises**

#### **Conduct prior to and in the course of the hearing**

#### **Breaches of statutory requirements\***

#### **Previous findings of impairment by the Committee and its predecessors**

\*The Committee will also be aware that the following was stated in *Balamoody v UKCC for Nurses, Midwives and Health Visitors* [1998] EWHC 521 that 'where a professional person had infringed important statutory requirements in the course of duties of a senior or supervisory kind so as to attract a criminal sanction, a professional body and the court was bound to view those infringements with grave concern'.

## **8. Mitigating Features - General**

Note: the following list is illustrative but it is not an exhaustive list of all mitigating factors that the Committee may take into account.

### **Repayment of any misappropriated funds**

**No prior disciplinary history**  
**Ill health at the time of the misconduct /the professional performance was deficient**  
**Single isolated incident in a previously unblemished career**  
**Genuine insight (full/partial) into misconduct/deficient professional performance/ill health**  
**Open and frank admissions at an early stage, demonstrating insight**  
**No actual or potential harm to patients or the public**  
**Steps taken to prevent actual harm**  
**Genuine apology given to patient/genuine expression of remorse to Committee**  
**Steps taken to remedy, ameliorate or prevent recurrence of the misconduct or acts resulting in impairment**  
**Full admissions/full cooperation/self-reporting at and from an early stage**  
**Lack of relevant training or support**

#### **9. Aggravating Features - Health**

The following aggravating features may be present in a health related case before the Committee. The following is not an exhaustive list.

**Evidence of actual or potential danger to patients or to the public**  
**Evidence of actual or potential self-harm**  
**Lack of insight**  
**Episodic or recurrent condition**  
**Ill health or behaviour sustained over a long period of time**  
**Failure to seek help/treatment/support**  
**Failure to comply with conditions**  
**Failure to provide/comply with undertakings**  
**Failure to comply with/disregard of written/oral advice given by the Registrar of the Pharmaceutical Society of Northern Ireland', a Pharmacy Inspector or the Health and Social Care Board of Northern Ireland**  
**Failure to comply with drug regime/treatment regime/medical supervision/support services recommendations**  
**Failure to co-operate with testing/investigations/medical assessment**  
**Inappropriate behaviour exhibited by registered person in charge on pharmacy premises**  
**Previous findings of impairment by the Committee and its predecessors**

#### **10. Mitigating Features – Health**

The following mitigating features may be present in a health related case before the Committee. Please note the table is not an exhaustive list of all mitigating factors that may be present.

**Evidence of insight into ill health**  
**Self-reporting/full admission and full cooperation at and from an early stage**  
**No actual or potential harm to patients or public**  
**Compliance with medication/treatment regime/support service recommendations**  
**Compliance with undertakings or conditions relating to health**  
**Evidence of voluntary attendance at addiction support services**  
**Evidence of regular attendance at medical supervisor**

#### **11. Cases where a warning may be appropriate**

Note: the following is not an exhaustive list of factors.

**No continued risk to patients or public**  
**Evidence of genuine insight**  
**Minor breaches of Code of Ethics published by the Pharmaceutical Society of Northern Ireland's Council**  
**Evidence of appropriate medical supervision**

### **Attendance at addiction support services**

#### **Evidence of lengthy periods of abstinence from addictive substances**

The factors italicized are usually only applicable in health cases

#### **12. Cases where conditions may be appropriate**

Note: the following is not an exhaustive list of factors.

**Conditions will protect the public during the period they are in force**

**Appropriate, realistic and verifiable conditions can be formulated**

**Evidence that the registered person has insight and is likely to comply with conditions imposed**

**Identifiable areas of registered person's practice in need of assessment or retraining**

**Evidence of a minor breach or non-compliance with previous undertakings given**

**Disregard of previous warnings**

**Conduct or deficient professional performance is capable of being remedied and allowing the registered person to continue to practise would not pose any risk to the public**

**The registered person would benefit from closer monitoring or medical supervision**

Please note that the Pharmaceutical Society of Northern Ireland maintains a list of Standard

Conditions giving examples of conditions that may be imposed. The Standard Conditions are not an exhaustive list of all possible conditions.

#### **13. Cases where suspension from the Register may be appropriate**

Note: the following is not an exhaustive list of factors.

**No conditions can be adequately framed to protect the public/conditions would be unworkable in practice**

**Evidence of a serious breach or non-compliance with previous undertakings or conditions**

**Deficient performance where there is a risk to patient safety if suspension not put in place - but where is there evidence of potential for remedy through retraining**

**Evidence of disposition towards non-compliance**

**Lack of sufficient insight on the part of the registered person**

**Professional performance is such as to call into question the continued ability of the registered person to practise safely but rehabilitation is considered possible**

**Public confidence in the profession demands no lesser sanction**

**Message needs to be sent to profession and public that conduct is unacceptable and unbecoming of person registered with the PHARMACEUTICAL SOCIETY OF NORTHERN IRELAND**

**Pharmaceutical Society of Northern Ireland Conduct falls short of being fundamentally incompatible with continued registration**

#### **14. Cases where striking off from the Register may be appropriate**

Note: the following list is not an exhaustive list of factors.

**Continuing risk to patients or members of the public**

**Serious potential harm**

**Lack of insight on the part of the registered person**

**Professional performance is such as to call into question the continued ability of the registered person to practise safely**

**Dishonesty**

**Violent or sexual misconduct**

**Behaviour is fundamentally incompatible with registration**

**Public confidence in the profession demands no lesser sanction**

**Serious departure from/reckless disregard of the Code of Ethics published by the Pharmaceutical Society of Northern Ireland's Council**

#### **15. Reasons**

The Committee will consider and announce its decision as to the appropriate course of action to be taken in respect of the registered person or corporate body and give its reasons for that decision. The reasons will normally set out the matters that the Committee took into account when deciding whether or not to impose a sanction, and if so, what sanction to impose. The reasons will explain why the decision taken by the Committee is considered to be fair, proportionate and reasonable in all the circumstances of the case.

The Committee's reasons should also explain why the sanction chosen will protect the public (see *CHRE v GDC (Marshall)* [2006] EWHC 1870 (Admin)).

The Committee's reasons should be focused to the particulars in the allegation themselves and the proper ambit of the charges (see *Chauhan v GMC* [2010] EWHC 2093 (Admin)).

## **16. Interim Measures**

The power to impose "interim measures"<sup>19</sup> applies where the Committee gives a direction<sup>20</sup> to strike the name of the registered person off the Register; or gives a direction for suspension.

If the Committee is satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest or in the interests of the registered person it may order that the entry of the registered person who is the subject of the direction be suspended forthwith, pending the coming into force of the direction.

Furthermore, if the Committee has given a direction for conditional registration<sup>21</sup> and the Committee is satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest or in the interests of the registered person, it may order that the entry of the registered person who is the subject of the direction be conditional upon that registered person complying, pending the coming into force of the direction, with such requirements specified in the order as the Committee thinks fit to impose.

The effect of this is that interim measures will be in force during the period allowed for the bringing of an appeal and if an appeal is lodged, the interim measures remain in force until the appeal is finally disposed of.

Before making any such interim measures<sup>22</sup>, the Committee will invite representations from the parties before considering and announcing whether it is to impose such measures, together with its reasons for that decision<sup>23</sup>.

A registered person who is aggrieved by a decision of the Committee to make an interim measures may appeal against that decision to the High Court.

## **17. Review of conditions/suspension**

### Review of Suspension

Where the Committee has given a direction<sup>24</sup> to suspend a registered person then, following a review, it may if it thinks fit give a direction<sup>25</sup> that:

the name of the registered person be struck off the Register,

the suspension of the entry be extended for such further period not exceeding 12 months as may be specified in the direction, starting from the time when the period of suspension would otherwise expire,

the entry be suspended indefinitely, if the suspension has already been in force throughout a period of at least two years<sup>26</sup>,

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<sup>19</sup> [Under Paragraph 12](#)

<sup>20</sup> [Under Paragraph 7](#)

<sup>21</sup> [Under Paragraph 7](#)

<sup>22</sup> [Under Paragraph 12](#)

<sup>23</sup> [Regulation 34 \(15\)](#)

<sup>24</sup> [Under Paragraph 7](#)

<sup>25</sup> [Under Paragraph 7 \(3\) \(a\)](#)

<sup>26</sup> This direction must be reviewed if requested by the registered person and at least two years have elapsed since the direction took effect or was reviewed – [paragraph 7\(4\)](#)

in the case of an indefinite suspension, the suspension be terminated; or on expiry or termination of the period of suspension (including a period of suspension that was expressed to be indefinite), the entry be conditional upon that person complying, during such period not exceeding 3 years as may be specified in the direction, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or otherwise in the public interest or in the interests of the registered person.

In some cases it may be self-evident that following a short period of suspension, there will be no value in a review hearing. In most cases however, where a period of suspension is imposed the Committee will need to be reassured that the registered person is fit to resume practice either unrestricted or with conditions or further conditions. The Committee will also need to satisfy itself that the registered person has fully appreciated the seriousness of the relevant breach(es), has not committed any further breaches of the Pharmaceutical Society of Northern Ireland's Code of Ethics, has maintained his or her skills and knowledge up to date and that the public will not be placed at risk by resumption of practice or by the imposition of conditional registration.

### Review of Conditions

Where the entry in the Register of the registered person is conditional upon that person complying with requirements specified in a direction<sup>27</sup>, the Committee may give a direction<sup>28</sup> that:

the period specified in the direction for complying with the requirements be extended for such further period not exceeding 3 years as may be specified in the direction, starting from the time when the earlier period would otherwise expire;

the requirements be added to, removed or otherwise varied in such manner as may be specified in the direction;

the entry instead be suspended (for example, where that person has failed, whether wholly or partly, to comply with the requirements), for such period not exceeding 12 months as may be specified in the direction; or

the name of the registered person be struck off the Register, (for example, where the registered person has failed, whether wholly or partly, to comply with the requirements).

In most cases where conditions have been imposed the Committee will need to be reassured that the registered person is fit to resume practice either unrestricted or with a variation of conditions or further conditions.

### Review Hearings – General<sup>29</sup>

Review hearings should ordinarily take place towards the end of the relevant period unless there is good reason for the Committee to review the matter earlier, for example, if the Pharmaceutical Society of Northern Ireland has evidence that the registered person has practised whilst suspended or has failed to comply with conditions imposed upon his practice etc.

Where, before a review hearing, the Pharmaceutical Society of Northern Ireland becomes aware of new evidence which it wishes to bring to the attention of the Committee, for example, evidence of a failure to comply with conditions etc.

(a) the Pharmaceutical Society of Northern Ireland may request case management directions; and  
(b) the chair may direct that the new evidence be considered at the review hearing, and that the Fitness to Practise and Disqualification Regulations are to apply as modified to take into account the particular circumstances of the case.<sup>30</sup>

## **18. Entry on the sex offenders register or the barred lists**

Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust that a registered person occupies, or

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<sup>27</sup> [Given under paragraph 7](#)

<sup>28</sup> [Under paragraph 7 \(3\) \(b\)](#)

<sup>29</sup> [See Regulation 36 of the procedure to be followed at a review hearing.](#)

<sup>30</sup> [Regulation 33](#)

where the registered person has been required to register as a sex offender. The risk to the public is important. In such cases removal from the register has therefore been judged the appropriate sanction. In *Dr Haikel v GMC (Privy Council Appeal No. 69 of 2001)* their Lordships stated the following:

*'The public, and in particular female patients, must have confidence in the medical profession whatever their state of health might be. The conduct as found proved against Dr Haikel undoubtedly undermines such confidence and a severe sanction was inevitable. Their Lordships are satisfied that erasure was neither unreasonable, excessive nor disproportionate but necessary in the public interest.'*

Committee is firmly of the view that no registered person that is registered on the Sex Offenders Register or has been included in a barred list (within the meaning of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 or the Safeguarding Vulnerable Groups Act 2006) or the children's list or the adult's list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007) should have unrestricted registration.

The Committee may also need to consider whether registered persons that are registered as sex offenders should be required to undergo an assessment, for example by a clinical psychologist, to assess the potential risk to patients before they may be permitted to resume any form of practice. Furthermore, when the Committee is dealing with a case where the registered person has completed the prescribed period of registration (which is dependent on the nature and gravity of the offence) and is no longer required to register as a sex offender the Committee will take into account:

- the seriousness of the original offence;
- evidence about a registered person's response to any treatment programme that he or she has undertaken;
- any insight shown by the registered person;
- the likelihood of the registered person re-offending if he or she was allowed to resume unrestricted practice;
- and the possible damage to the public's trust in the profession if the registered person was allowed to resume unrestricted practice etc.

Each case will be carefully considered on its merits and decisions taken in the light of the particular circumstances of the case.

Where the Committee has any doubt about whether a registered person who is no longer required to register as a sex offender should resume unrestricted practice, the registered person will not be granted unrestricted registration.

**Approved by the Council on 25<sup>th</sup> July 2012**