

Consultation on the disclosure and publication of fitness to practise information

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About the Pharmaceutical Society of Northern Ireland

The Pharmaceutical Society of Northern Ireland is the regulatory body for pharmacists in Northern Ireland.

Our primary purpose is to ensure practising pharmacists in Northern Ireland are fit to practise, keep their skills and knowledge up to date and deliver high quality safe care to patients.

It is the organisation's responsibility to protect and maintain public safety in pharmacy by:

- Setting and promoting standards for pharmacists' admission to the register and for remaining on the register;
- Maintaining a publicly accessible register of pharmacists, and pharmacy premises;
- Handling concerns about the fitness to practise of registrants, acting as a complaints portal and taking action to protect the public; and
- Ensuring high standards of education and training for pharmacists in Northern Ireland.

The Pharmaceutical Society of Northern Ireland's governing legislation is the Pharmacy (Northern Ireland) 1976 ('the Order')¹ which sets out its powers and responsibilities.

The Council of the Pharmaceutical Society of Northern Ireland is the governing body of the organisation and focuses on strategic and major policy issues.

On October 2012, the Pharmaceutical Society of Northern Ireland embarked on a new era, when new legislation, in the form of the Pharmacy (NI) Order 1976 (Amendment) Order (NI) 2012 approved by the Northern Ireland Assembly on 31st January 2012, came into operation, bringing additional fitness to practise sanctions, statutory CPD from June 2013 and a new, appointed Council.

The new Council, appointed by a competency based selection process, is made up of 50% lay and 50% registrant membership.

The new appointees took up their roles in October 2012.

¹ Pharmacy (Northern Ireland) Order 1976

Consultation summary

From 1 October 2012, the enactment of the Pharmacy (1976 Order) (Amendment) Order (Northern Ireland) 2012 and its associated regulations, enables the Pharmaceutical Society of Northern Ireland to utilise a full range of fitness to practise sanctions.

Additional powers will enable more proportionate approaches to be taken to the management of fitness to practise case outcomes than simply removal from the register.

We as an organisation will be able to deal more appropriately with the range of issues raised when a registrant's fitness to practise is queried.

The greater range of sanctions include powers to issue formal warnings, suspensions, place conditions on the practise of pharmacists and impose interim orders where appropriate to take the pharmacist off the register whilst a case is investigated.

An essential step towards modernising pharmacy regulation in Northern Ireland, it will enable the Pharmaceutical Society NI to operate more effectively and improve the regulation of pharmacists in Northern Ireland.

In February 2010, the Professional Standards Authority² (formerly the Council of Healthcare Regulatory Excellence (CHRE)) issued a report³ that included a number of the recommendations for healthcare regulators, regarding the accessibility and information to be displayed concerning fitness to practise decisions. It made the following recommendations:

- Regulators should provide information about all current fitness to practise sanctions on the online register
- Regulators should provide information about health professionals who have been struck off on their online register for at least 5 years
- Regulators who do not currently publish fitness to practise histories should begin to take a proportionate approach to making this information available against a register entry
- Regulators' online registers should share common features to make them credible, useful and accessible. These include:
 - clear signposting from the regulator's homepage
 - list of current and previous fitness to practise sanctions
 - ease of navigation to greater levels of detail where available
 - an indication of location of practice
 - a glossary of terms
 - the absence of material that could compromise the credibility of the data, such as advertising.

² On 1 December 2012 the Council for Healthcare Regulatory Excellence becomes the Professional Standards Authority for Health and Social Care.

³ CHRE Health professional regulators' Registers: Maximising their contribution to public protection and patient safety' (February 2010)

Although there are similarities, the fitness to practise information provided by other healthcare regulators currently varies across the regulators.

With new additional sanctions, the Pharmaceutical Society NI is now consulting on its approach to the publication and disclosure of fitness to practise information. We are seeking views on how sanctions are to be displayed on the online register; how we will make fitness to practise hearing decisions available on the website and if expired fitness to practise warnings and sanctions on registrant's individual records are to be displayed on the public registers and if so, for how long.

How to respond to this consultation

We are holding this consultation to seek your views on how we publish and disclose fitness to practise information. We will use your responses to help us to decide whether changes are required to the way we currently make fitness to practise information available particularly via the online register.

Responses should be sent by post, fax or email to:

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Accessibility of information

If you are having difficulties accessing the documentation or you need us to make adjustments in order to be able to respond to this consultation, please contact us and we will do our best to address the issue.

If you wish your response to remain confidential, the Pharmaceutical Society NI will generally respect that request. However, the information you provide may be subject to disclosure under the Freedom of Information Act 2000 which gives the public a right of access to any information held by a public authority.

Consultation period

The consultation runs for a period of 12 weeks from 6 February to 1 May 2013.

We will analyse the responses and produce a summary report. Any changes will be announced following decisions by Council, with a view to publishing the final policy in mid 2013.

Key principles

The key principles adopted by the Pharmaceutical Society NI are consistent with the principles of good regulation identified by 'Better Regulation Executive' in 2000; the Hampton Review of 2005, commissioned by the Treasury and the Professional Standards Authority⁴ 'Right Touch Regulation'.

When making decisions on what to publish and disclose, the Pharmaceutical Society NI will adhere to:

- **Proportionality:** We are committed to ensuring that information that is disclosed is appropriate and proportionate. It is important to achieve the correct balance between the rights of the individual and the need to consider what is in the public interest.
- **Transparency:** The Pharmaceutical Society NI will be transparent about its processes, explain and publicise the decisions it makes.
- **Accountability:** We will seek the views of stakeholders and consult before policy decisions are taken. We will justify and clearly explain our decisions which we expect to be open to public scrutiny.
- **Consistency:** This policy has been developed to ensure consistency across the organisation and that is implemented fairly. We will also ensure consistency, where appropriate with other UK healthcare regulators.
- **Targeted:** We will ensure that our activity is focused on areas of greatest risk and/or what is deemed to be in the interests of public safety.

⁴ On 1 December 2012 the Council for Healthcare Regulatory Excellence becomes the Professional Standards Authority for Health and Social Care.

Legislative context/framework

The Pharmaceutical Society of Northern Ireland is also subject to, and will take account of the following non exhaustive list when it makes decisions about disclosing information that it holds.

- The Pharmacy (1976 Order) (Amendment) Order (Northern Ireland) 2012⁵
- The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012⁶
- The Council of the Pharmaceutical Society of Northern Ireland (Continuing Professional Development) Regulations (Northern Ireland) 2012
- The Council of the Pharmaceutical Society of Northern Ireland (Statutory Committee, Scrutiny Committee and Advisers) Regulations (Northern Ireland) 2012⁷
- The Council of the Pharmaceutical Society of Northern Ireland (Appointments and Procedure) Regulations (Northern Ireland) 2012⁸
- **Freedom of Information Act 2000**⁹ - The Freedom of Information Act 2000 provides, to any person upon written request, a general right of access to information held by a public authority. They have the right to be informed whether or not the authority is in possession of the information and, with certain exemptions, to have that information communicated to them.
- **Data Protection Act 1998**¹⁰ – prohibits the disclosure of personal data unless certain exemptions apply. One of those exemptions is where the data subject consents to disclosure.
- **Human Rights Act 1998**¹¹ - It is important that professionals' human rights are fully upheld when considering information that should be disclosed and published. The Human Rights Act 1998 has been in force since October 2000. It incorporates into domestic law the rights and liberties enshrined in the European Convention on Human Rights, a treaty to which the United Kingdom is signatory but which until 2000 had no application in domestic law.

⁵ http://www.legislation.gov.uk/nisr/2012/308/pdfs/nisr_20120308_en.pdf

⁶ http://www.legislation.gov.uk/nisr/2012/311/pdfs/nisr_20120311_en.pdf

⁷ http://www.legislation.gov.uk/nisr/2012/310/pdfs/nisr_20120310_en.pdf

⁸ http://www.legislation.gov.uk/nisr/2012/309/pdfs/nisr_20120309_en.pdf

⁹ http://www.legislation.gov.uk/ukpga/2000/36/pdfs/ukpga_20000036_en.pdf

¹⁰ <http://www.legislation.gov.uk/all?title=Data%20Protection%20Act%201998%20>

¹¹ <http://www.legislation.gov.uk/all?title=Human%20Rights%20Act%201998%20%20%20>

Impairment of Fitness to practice

Anyone can complain to the Pharmaceutical Society NI if they have concerns about any of our registrants.

Upon receipt of a complaint, we will notify the registrant concerned that we have received information – however, this is subject to consent obtained from the complainant, as appropriate.

Where an allegation is made to the Pharmaceutical Society NI against a registered person that their fitness to practise is impaired or the Pharmaceutical Society NI has information that calls into question a registered person's fitness to practise, the Registrar must refer the matter to the Scrutiny Committee.

There are exceptions to the above provision and the Registrar must not refer an allegation¹²:

- if an allegation fails to meet the threshold criteria, it should not be referred where more than 5 years have elapsed since the most recent events referred to in the allegation unless the Registrar considers that it is necessary for the protection of the public, or otherwise in the public interest, for the allegation to be referred;
- where the informant is anonymous and the allegation is not capable of verification from an independent source; or
- the informant does not participate in the consideration of the allegation and the allegation is not capable of verification from an independent source.

Where a person registered with the Pharmaceutical Society NI or lawfully conducting a retail pharmacy business fails to comply with the standards and legal obligations imposed by statute, the Pharmaceutical Society NI is required to take action to enforce those standards.

A pharmacy professional's fitness to practise can be impaired for a number of reasons¹³ including misconduct, lack of competence, ill health and through having been convicted of a criminal offence.

Committees involved in Fitness to Practise

There are two committees involved in determining allegations of impaired fitness to practise (involving individual pharmacists) and disqualification (involving bodies corporate): the Scrutiny Committee and the Statutory Committee.

¹² Regulation 5 (2) of the Fitness to Practise and Disqualification Regulations 2012

¹³ Paragraph 4(1) of Schedule 3 to the Order

Fitness to Practise Committees

Under the new legislation, two committees have been established which determine allegations regarding fitness to practise.

Scrutiny Committee

This committee considers initial allegations on a paper based format and it has the power to refer cases, or in some instances, issue sanctions if appropriate.

The Scrutiny Committee meets in private¹⁴ has the power¹⁵ to

- dismiss a case;
- in relation to a health allegation, require the person concerned to undergo a medical examination;
- issue warnings;
- agree undertakings;
- give advice to the person concerned or to other persons and
- refer the matter to the Statutory Committee.

Statutory Committee

This committee considers allegations at hearings of misconduct of registered pharmacists.

The Statutory Committee deals with all categories of alleged impairment referred to it by either the Registrar or the Scrutiny Committee.

The Statutory Committee deals with all categories of alleged impairment referred to it by either the Registrar or the Scrutiny Committee. If the Statutory Committee finds that a registrant's fitness to practise is impaired, the Committee may impose the following sanctions:

- a warning;
- give advice to the person concerned or to other persons;
- agree undertakings;
- place conditions on the registrant's registration;
- suspension from the Register
- remove the registrant from the Register.

The Statutory Committee also deals with interim orders, restoration applications and review hearings.

Interim orders are sought to restrict a person's registration whilst allegations regarding their fitness to practise are resolved. An Interim Order may be made for a period of up to 18 months. If that period (or any lesser period imposed by the Statutory Committee) comes to an end and an extension is required, the Pharmaceutical Society NI must make an application to the High Court.

¹⁴ The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012

¹⁵ Paragraph 6 (2) (a) & (3) to Schedule 3 of the Order, regulation 10 (6) & 11 of the Fitness to Practise and Disqualification Regulation 2012

Publication of Fitness to practise information

The Pharmaceutical Society NI has a statutory duty to publish as soon as reasonably practicable, particulars of any orders and decisions made by any of its Committees.

The Pharmaceutical Society NI has the power to disclose to any person, any information relating to a person's fitness to practise which it considers to be in the public interest to disclose.¹⁶

What we will not publish:

Information relating solely to health: The Pharmaceutical Society NI does not publish information relating solely to the physical or mental health of a pharmacist. This information is treated as confidential regardless of which Committee (Scrutiny or Statutory) hears the case. Where information regarding a pharmacist's health is disclosed during any part of a hearing that is held in public, this information will be redacted from the published decisions.

Ongoing investigations: We will not disclose or publish information about ongoing investigations on its website, to the media or any other enquirers; except where it is necessary for the protection of the public or otherwise in the public interest. The decision to disclose information to employers will be decided on a case by case basis appropriate to circumstances to the case and/or where the issues being investigated give rise to immediate concerns about patient or public safety.

Forthcoming Scrutiny Committee meetings or proceedings: Meetings of the Scrutiny Committee are held in private¹⁷ therefore no information is published about forthcoming meetings or proceedings, and cases that the Committee are due to consider.

Publication of Scrutiny Committee determination: We will not publish the outcomes of the Scrutiny Committee where the case has been closed and in cases only when advice has been given to the person concerned or to other persons.

The Pharmaceutical Society NI will not make any disclosures where no impairment or sanction has been applied; unless the registrant requests so.

¹⁶ 'Disclosure of fitness to practise matters in the public interest' Pharmacy (1976 Order) (Amendment) Order (Northern Ireland) 2012

¹⁷ The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012

What we will publish:

The Pharmaceutical Society NI will publish information where the outcome of the Scrutiny Committee is a warning; an undertaking or referral to the Statutory Committee.

In health related cases where the registrant has agreed to undertakings, the determination will be published but details of the undertaking will not be disclosed.

The following Statutory Committee determinations will be published on the Pharmaceutical Society NI website:

- warnings;
- undertakings;
- conditions placed on the registrant's registration;
- suspension from the Register
- Interim Orders.

Information about a Statutory Committee hearing will be published on the Pharmaceutical Society NI website, three working days after the Notice of Hearing is served. Details will include the date, time, venue and the allegation to be considered.

The Pharmaceutical Society NI has a statutory duty to publish as soon as reasonably practicable, particulars of any orders and decisions made by any of its Committees. At the end of a hearing, decisions and reasons in cases where a sanction is imposed will be publicised on the website, within three working days of the end of the hearing.

The Pharmaceutical Society NI will not publish the outcome of a hearing where no impairment or sanction has been applied; unless the registrant requests so.

Accessibility of past hearings

The Pharmaceutical Society NI will not publish transcripts or minutes of Statutory Committee hearings. These are available on request and sent out electronically. Paper copies requested will be subject to copying and postage charges.

All previous outcomes and reasons remain in the public domain and are also available to the public on request.

Details of past public hearings and decisions are available on the Pharmaceutical Society NI website. Decisions regarding all fitness to practise sanctions, including those registrants that have been struck off and suspended can be accessed [here](#).

There are arguments that this approach could be considered disproportionate as the sanction would remain linked to the registrant despite being removed from the online register. However, in the interests of transparency and to ensure that the information is as easily accessible to the public as possible, we propose that fitness to practise committee hearing outcomes will be available on the Pharmaceutical Society NI website indefinitely.

Question 1

Do you believe that fitness to practise committee determinations should be:

- a) Made permanently available on the fitness to practise section of the Pharmaceutical Society NI website
- b) Past fitness to practise committee outcomes and information should be removed after a set period of time

Further comments

The Pharmaceutical Society NI online register

The Pharmaceutical Society NI has a duty to protect the public. One way we do this, is by maintaining a publicly accessible register of pharmacists and pharmacy premises in Northern Ireland.

All pharmacists who wish to practise in Northern Ireland must be on the register.

In order to join the register, pharmacists must meet certain requirements including attainment of an approved and accredited pharmacy qualification, maintenance of Continuing Professional Development and adherence to our Code of Ethics and Professional Standards.

The online register of pharmacists in Northern Ireland is an important patient safety tool, enabling members of the public and employers to identify professionals who are qualified and fit to practise.

The information on the online register enables members of the public, employers and other interested stakeholders to verify that a pharmacist is registered and provides reassurance that they are qualified and fit to practise.

The online register is accessible via the Pharmaceutical Society NI website and currently contains the following information:

- Forename
- Surname
- Registration number
- Date registered
- Status
- Fitness to practise history

Question 2

For what purpose(s) would you access the online register?

Please tick as appropriate

Verify that a pharmacist is registered

Check if a pharmacist has any current fitness to practise sanctions

Check a pharmacist's fitness to practise history

Verify a pharmacist's qualifications

Inform choice of pharmacist when accessing services

Other

Further comments

Question 3

The online register is accessible via the Pharmaceutical Society NI website and currently contains the following information: forename; surname; registration number; date registered; Status and fitness to practise history.

Should the Pharmaceutical Society NI online register contain any additional information?

Yes

No

Further comments

Fitness to practise information on the Pharmaceutical Society NI register

Registers contribute to public protection by¹⁸:

- Assuring the public that professionals are regulated and are required to meet certain standards
- Helping the public and employers to identify registered professionals from those practising illegally
- Informing the public of any limits imposed on the way a registered professional is allowed to practise
- Providing information about special areas of practice that a professional may be qualified to work in.

Employer checks

Anyone employing a pharmacist is expected to check the whether they are registered with the Pharmaceutical Society of Northern Ireland and therefore entitled to work in the UK. We will provide employers with further details of sanctions imposed on written request.

Current Pharmaceutical Society NI policy

In line with our legislation¹⁹, all current sanctions that have been imposed by a fitness to practise committee in relation to a pharmacist are displayed against a registrant's record on the Pharmaceutical Society NI online register. Links are provided to information about warnings and sanctions that are currently in force.

The only exception to this is matters relating solely to the registrant's health which is treated as confidential.

The online register does not provide information about a registrant that is currently under investigation or has been referred to the Scrutiny Committee.

¹⁸ CHRE Health professional regulators' Registers: Maximising their contribution to public protection and patient safety' (February 2010) (page 3)

¹⁹ The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012

Expired fitness to practise sanctions

The Pharmaceutical Society NI online register displays information regarding sanctions such as suspensions, conditions and undertakings, that are no longer in force and have expired.

With regards to the length of time a determination will remain on the online register, the Pharmaceutical Society NI has the following in place:

Table (1)

	Interim Order	Warning	Suspension	Conditions
Length of time determination will remain on the online register	Duration of the Order	2 years	Duration of the suspension plus 5 years	Duration of the condition plus 5 years
Status	Interim Order	Warning	Suspended	Conditions
		Information regarding expired sanction included in a separate historical tab of registrants online records	Information regarding expired sanction included in a separate historical tab of registrants online records	Information regarding expired sanction included in a separate historical tab of registrants online records
Link provided	Determination attached	Determination attached	Determination attached	Determination attached

We believe that there are legitimate public protection arguments in favour of displaying past fitness to practise sanctions against individual records on the public register. Displaying all information pertaining to a pharmacist's conduct enhances trust in regulation.

In the interests of transparency, the Pharmaceutical Society NI believes that information about previous impairments should be made available on the register.

Information regarding expired fitness to practise sanctions is included in a separate historical tab of registrant's online records which ensures that the information is appropriately available to members of the public, employers and other interested stakeholders.

Suspensions and conditions placed on the practise of a pharmacist will remain on the online register for the duration of the sanction and will be accessible on the historical tab of the registrant's online records for an additional five years.

We have adopted this approach to ensure consistency and alignment with the GPhC which has responsibility for regulating pharmacists in England, Scotland and Wales; our approach is also informed and takes account of the updated legislative framework, which will enable the Pharmaceutical Society NI to reopen closed cases within 5 years.

Where the Scrutiny Committee has considered a fitness to practise or a disqualification allegation and decided not to refer it to the Statutory Committee and within 5 years (from the date of service of the notice) the Pharmaceutical Society NI receives a new allegation about the same registered person, the Scrutiny Committee may consider whether to refer both the original and new allegation to the Statutory Committee or just the new allegation²⁰.

However, it could be argued that once the period of a sanction has expired, the fitness to practise of the registrant is no longer considered to be impaired, therefore there is no public protection requirement for those expired sanctions to be recorded on the public register and not proportional for that information to continue to appear directly on their record on the public registers.

Fitness to practise decisions are in the public domain and are discoverable already. Making the same information accessible would improve transparency by making the information as accessible as possible to the public.

²⁰ Regulation 14 of the Fitness to Practise and Disqualification Regulations 2012

Question 4

The Pharmaceutical Society NI online register displays information regarding sanctions such as conditions and undertakings, that are no longer in force and have expired.

With regards to the length of time a determination will remain on the online register, do you agree that

(Please tick one option)

- (a)** Warnings and sanctions should be removed from the registrants record on the online register when the sanction expires
- (b)** Warnings and sanctions should be displayed in accordance with the approach set out in table (1)
- (c)** Warnings and sanctions should be displayed on the public register permanently
- (d)** Other

Further comments

Display of suspensions

The Pharmaceutical Society NI online register includes the records of all those registrants currently suspended and this will be displayed for the duration of the suspension and will remain there for an additional five years.

Rather than removing the record of the suspension from the online register for the duration of the suspension, it is the view of the Pharmaceutical Society NI that displaying the sanction would show that the registrant is suspended and would remove any uncertainty over why the registrant has not appeared on the online register.

Question 5

Do you agree that the Pharmaceutical Society NI online register should display and include records of those registrants who are currently suspended?

Yes

No

Further comments

Struck off the register

The Professional Standards Authority recommends that the records of all those who have been erased following a fitness to practise decision, should be retained on the public registers for at least five years following their erasure, to provide clarity regarding their status.

Former registrants who have been removed from the register are not entitled to practise. Public registers, are in principle intended to be a definitive record of all those who are registered and fit to practise, therefore the Pharmaceutical Society NI online register does not display records of those registrants who have been struck off.

It could potentially create confusion as to why a pharmacist who had been erased was able to continue practising.

It is made clear on the Pharmaceutical Society NI website that pharmacists who have been struck off the register no longer appear on the online register.

Members of the public will be able to check whether a particular individual has been struck off as findings of Statutory Committees remain a matter of public record indefinitely.

Question 6

Should the Pharmaceutical Society NI online register include the records of former registrants who have been struck off?

Yes

No

Further comments

Question 7

Do you have any additional comments, recommendations or suggestions you would like to make in relation to our proposals on the disclosure and publication of fitness to practise information?

Please add any further comments