INDICATIVE SANCTIONS GUIDANCE

Published January 2019

Effective from

27 March 2019

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About the Pharmaceutical Society of Northern Ireland

The Pharmaceutical Society NI is the regulatory body for pharmacists and registered pharmacies in Northern Ireland.

Our primary purpose is to ensure that 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 and the standards for Registered pharmacy premises;
- maintaining a publicly accessible Register of pharmacists and pharmacy premises;
- handling concerns about the Fitness to Practise of pharmacists, acting as a complaints portal, acting to protect the public and maintaining public confidence in the pharmacy profession; and
- ensuring high standards of education and training for pharmacists in Northern Ireland.

Purpose of document

What is this document about?

This document provides Guidance from the Council of the Pharmaceutical Society NI to the Statutory Committee of the Pharmaceutical Society NI to use when deciding upon what sanction is appropriate in any given case. It also provides an overview of our Fitness to Practise hearings and how decisions are made.

This Guidance is in three parts:

- Fitness to Practise Stages
- Deciding Upon Sanction
- Actions When A Sanction Has Been Decided Upon

Who is this document for?

This document provides Guidance from the Council of the Pharmaceutical Society NI to the Statutory Committee of the Pharmaceutical Society NI to use when deciding upon what sanction is appropriate in any given case. The document is designed to provide a decision-making framework to assist with the delivery of consistent, proportionate and reasonable decisions on sanction and should be considered by the Statutory Committee when coming to a decision on sanction.

The document will also be useful for anyone else involved in a Statutory Committee hearing including registrants and their representatives and/or anyone interested in a Statutory Committee hearing, including:

- Patients and service users thinking of making a complaint to the Pharmaceutical Society NI about a registrant;
- Patients and their representatives;
- Defence organisations; and
- Other Regulators, the Professional Standards Authority and the Courts.

The Guidance provided to the Statutory Committee contains references to relevant case law and legal authorities. It should be noted by the Statutory Committee and interested parties that the cases cited are not the only legal authorities that may be relevant. This Guidance will be regularly reviewed to take account of legislative changes and new case law to ensure it remains fit for purpose and accessible to stakeholders.

1. Part 1: Fitness to Practise stages[1]

Investigation

1.1 The office of the Registrar handles all investigations. Once investigations are complete, threshold criteria[2] are used to determine if a case should be referred to the Scrutiny Committee.

[1] More detailed information on Fitness to Practise procedures can be found here: http://www.psni.org.uk/wp-content/uploads/2012/12/Procedures-of-fitness-to-practise-committees.pdf

[2] http://www.psni.org.uk/wp-content/uploads/2012/12/threshold-criteria-amended-October-2016.pdf

Scrutiny Committee

1.2 The Scrutiny Committee has the power to close cases referred to it. For more serious cases, it uses referral criteria[3] to decide if a case should be referred to a full Fitness to Practise hearing carried out by the Statutory Committee.

Statutory Committee

1.3 The Statutory Committee carries out hearings to decide if a registrant's Fitness to Practise is impaired. If the Statutory Committee finds that a registrant's Fitness to Practise is impaired, it will consider this document when deciding on the most appropriate sanction to impose.

Statutory Committee Hearings

1.4 A Panel of 3 members selected from the full list of Statutory Committee members generally conducts Statutory Committee hearings. The 3 members of a Panel comprise a legally qualified Chair, a lay member and a registrant member.

1.5 Hearings are normally held in public except for cases that relate to the health of a registrant which are held in private. In health cases, a Clinical Adviser will be present to advise the Statutory Committee on health-related evidence. In specific circumstances the Statutory Committee may hear cases in private.

1.6 The Panel will consider written evidence, will receive representations from the Pharmaceutical Society NI and the registrant and can hear oral evidence from witnesses.

1.7 A record of all Statutory Committee hearings is made.

Statutory Committee Decision Making Stages

Determining the Facts[4]

1.8 Having first considered any witness evidence and any submissions on behalf of the Pharmaceutical Society NI and the registrant, the Panel will consider the allegations made against the registrant.

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[3] http://www.psni.org.uk/wp-content/uploads/2012/12/Scrutiny-Committee-Referral-Criteria-in-respect-of-an-allegation-capable-of-being-referred.pdf

[4] The Pharmaceutical Society of Northern Ireland (Fitness to practise and Disqualification) Regulations (Northern Ireland) 2012, Regulation 34 (5) – (12).

1.9 The Pharmaceutical Society NI bears the burden of proof in that it is up to the regulator to present a case which proves the allegations. The Panel will make its decision on the factual basis of the allegations based on the civil standard of proof. It will only find an alleged fact 'proven' if it considers that the allegation is more likely to have happened than not to have happened.[5]

1.10 Having considered all the evidence in relation to the allegations, the Panel will make a determination on the facts of the case.

1.11 If, having considered the allegation, the Panel considers that the Department of Health NI should consider exercising any of its powers to bring criminal proceedings under any statutory provision, it must notify the Department immediately[6].

Deciding on Impairment[7]

1.12 After determining the facts of the case, the Panel will invite submissions from the Pharmaceutical Society NI and the registrant on whether the proven allegations amount to the registrant's Fitness to Practise being currently impaired.

1.13 Based on the facts of the case, the submissions made in relation to impairment and the statutory criteria for what constitutes impairment[8], the Panel will then determine on whether the registrant's Fitness to Practise is currently impaired.

1.14 If the Panel determines that the registrant's Fitness to Practise is not impaired, the Panel may still give:

- Advice to the registrant;
- A Warning to the registrant; 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.

1.15 If the concerns do not amount to impairment of a registrant's Fitness to Practise but are sufficiently serious to require a formal response in the form of Advice or a Warning, the Panel must give clear reasons why Advice or a Warning is needed even though 'no impairment' was found.

[5] The Pharmaceutical Society of Northern Ireland (Fitness to practise and Disqualification) Regulations (Northern Ireland) 2012, Regulation 44
[6] The Pharmacy (Northern Ireland) Order 1976, Schedule 3, Paragraph 7(8)
[7] The Pharmaceutical Society of Northern Ireland (Fitness to practise and Disqualification) Regulations (Northern Ireland) 2012, Regulation 34 (13)
[8] The Pharmacy (Northern Ireland) Order 1976, Schedule 3, Paragraph 4

1.16 The need to provide clear reasons is even more pronounced if the Panel decides to give a Warning to the registrant.

Deciding on Sanction[9]

1.17 If the Panel determines that a registrant's Fitness to Practise is currently impaired, it will consider submissions from the Pharmaceutical Society NI and the registrant on what each considers the most appropriate sanction.

1.18 Having heard the submissions, the Panel must consider the Council's Indicative Sanctions Guidance before determining the most appropriate sanction to impose.

Available Sanctions[10]

1.19 On finding that a registrant's Fitness to Practise is currently impaired, the Panel may decide to impose one of the following sanctions[11]:

Warning

- A Warning to the registrant in connection with any matter arising out of, or related to, the allegation.

Conditions

- A Direction that the registrant must comply with a certain condition or conditions which the Panel deems fit for the protection of the public or otherwise in the public interest or in the interests of the registrant, to be complied with for up to a maximum of 3 years[12].

Suspension

- A Direction that the registrant be suspended from practice for a period not exceeding 12 months.

[9] The Pharmaceutical Society of Northern Ireland (Fitness to practise and Disqualification) Regulations (Northern Ireland) 2012, Regulation 34 (14)
[10] The Pharmacy (Northern Ireland) Order 1976, Schedule 3, Paragraph 7(2).
[11] The Statutory Committee also has the power to 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.
[12] The Pharmaceutical Society NI maintains a list of Standard Conditions that may referenced by the Panel. The list is not exhaustive, and the Panel is entitled to construct its own Conditions as it deems appropriate.

Removal from Register

- A Direction to strike the name of the registrant off the Register.

Health Cases

1.20 If the Panel determines that a registrant's Fitness to Practise is impaired solely by reason of adverse physical or mental health, it may not give Direction that the registrant is removed from the Register (struck off)[13].

Agreement of Undertakings[14]

1.21 Where the registrant admits that their Fitness to Practise is impaired, the Panel may dispose of the Fitness to Practise proceedings by agreeing undertakings with the registrant. The Panel should only propose undertakings when to do so would provide sufficient protection to the public and, where appropriate, realistic and verifiable undertakings can be formulated. Undertakings agreed by the Panel and the registrant must be appropriately recorded on the Register[15].

Corporate Bodies

1.22 The Panel may, if it thinks fit, dispose of disqualification proceedings by agreeing appropriate undertakings with the "Section 80 party" [16]"or by giving Advice or a Warning instead of giving a Direction under Section 80 of the Medicines Act 1968[17].

1.23 Where the Pharmaceutical Society NI becomes aware that a Section 80 party has failed to comply with any undertakings agreed, then the Panel must[18]:

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

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[13] The Pharmacy (Northern Ireland) Order 1976, Schedule 3, Paragraph 7(6)
[14] The Council of the Pharmaceutical Society of Northern Ireland (Fitness to practise and Disqualification) Regulations (Northern Ireland) 2012, Regulation 28(1).
[15] The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012, Regulation 29.
[16] 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
[17] The Pharmaceutical Society of Northern Ireland (Fitness to practise and Disqualification) Regulations (Northern Ireland) 2012, Regulation 28(2)
[18] The Pharmaceutical Society of Northern Ireland (Fitness to practise and Disqualification) Regulations (Northern Ireland) 2012, Regulation 35(18)

- Reconsider the sanction imposed and the Panel may instead issue a Direction under Section 80 (1) or, as the case may be, Section 80 (4) of the Medicines Act 1968.

1.24 In a Review hearing, where the Panel 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[19]

2. Part 2: Reaching a Decision on Sanction

2.1 In reaching a decision on which sanction to impose upon finding that a registrant's Fitness to Practise is currently impaired, the Statutory Committee must take the following relevant factors into consideration:

The Public Interest and Proportionality

2.2 In reaching a decision on sanction, the Panel must have regard to ensuring that its decision is proportionate.

2.3 The purpose of the sanction is not to be punitive but to protect the public interest[20]. The sanction imposed should pose no greater restriction upon the registrant than is absolutely necessary to achieve its objectives[21].

2.4 When considering proportionality and the public interest, the Panel is, however, entitled to give greater weight to the public interest and to the need to maintain public confidence in the profession than to the consequences to the registrant of the imposition of the sanction[22].

2.5 The fact that the sanction will have a punitive effect does not make such a sanction inappropriate where its purpose is to meet the public interest, including one or more of the points listed below.

2.6 The public interest in the context of a Fitness to Practise case includes but is not necessarily limited to:

- Protecting the public;
- Maintaining public confidence in the profession; and
- Maintaining proper standards of behavior.

2.7 In making its decision, the Panel will have regard to the full range of sanctions available to it, starting with the lowest, and decide if it is

[19] Regulation 9 (b)
[20] R (on the application of Abrahaem) v GMC [2004]
[21] Chaudhury v General Medical Council [2002] UKPC 41
[22] Marinonvich v General Medical Council [2002] UKPC36

appropriate to the case. If it is not, the Panel should consider the next sanction, and so on, until it decides that a particular sanction is appropriate.[23] The Panel should give reasons why the next more severe sanction was not required, except in the case of removal from the register.

The Code of Conduct

2.8 In making its determination on the sanction to be imposed, the Panel will have regard to the extent to which the registrant has breached the Code, Professional Standards of Conduct, Ethics and Performance for Pharmacists in Northern Ireland (2016)[24], published by the Council of the Pharmaceutical Society NI.

Guidance on when a particular sanction might be appropriate[25]

2.9 The Panel should have regard for the contents of Figure 1:

Figure1

Impact on Registration[26]	**Circumstance when this may be appropriate**	**Actions to be considered by a Panel of the Statutory Committee**
Take no Action 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 when impairment is found but there is no risk to the public or no impact upon public confidence in the pharmacy profession.	If the Panel finds that a registrant's Fitness to Practise is impaired and determines to take no action in relation to Sanction, the Panel must provide clear reasons for this decision including the related circumstances and how it meets the public interest.
Warning The registrant's practice will not be restricted. Details of the Warning will be recorded on the Register.	This may apply when impairment is found but there is no risk to the public and/or there is no significant impact upon public	If the Panel finds that a registrant's Fitness to Practise is impaired and determines to give a Warning to the registrant, the Panel must provide clear

[23] Giele v General Medical Council [2005] EWHC 2143 (Admin)
[24] http://www.psni.org.uk/psni/about/code-of-ethics-and-standards/
[25] Note that the Panel has the power to also 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. (Schedule 3 Paragraph 7(2)(b)
[26] The full policy on the disclosure and publication of fitness to practise information can be found here: http://www.psni.org.uk/wp-content/uploads/2012/11/Policy-on-the-disclosure-and-publication-of-FtP-information-June-2014.pdf

	confidence in the pharmacy profession and/or the breach of the Standards has been of a more minor nature. However, 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 the acceptable standards. A Warning may be appropriate when the registrant has shown considerable insight and taken remedial action.	reasons why a more severe sanction is not appropriate and how the giving of a Warning meets the public interest.
Conditions Conditions will place restrictions on a registrant's registration for the period specified by the Panel (up to 3 years). Details of the Conditions will be recorded on the Register. Conditions will be reviewed by the Statutory Committee before they expire.	This may be appropriate when impairment of a significant nature is found but where the Panel considers that a failure or deficiency is capable of being remedied and is unlikely to be repeated. Conditions are appropriate where area/s of the registrant's practice and/or conduct are identified as being in need of assessment and improvement. Conditions are only suitable where they are workable, in that they: • are appropriate to remediate the reasons for the registrant's current impairment; • have a realistic chance of being met by the registrant; • are capable of being verified by the Statutory Committee on completion; and	If the Panel finds that a registrant's Fitness to Practise is impaired and determines to place Conditions on the registrant's practice, the Panel should provide clear reasons why a more severe sanction is not appropriate and how placing Conditions on the registrant's practice meets the public interest. The Panel should make any Conditions as clear and as understandable as possible for the registrant and the public. The Panel should give consideration to what is a realistic timetable for completing any Conditions imposed and subsequently what is the most appropriate point at which to review a particular Conditions Order.

	• protect the public for their duration. The Panel should be satisfied that the registrant will adhere to the Conditions for their duration. The level of insight a registrant has shown, and/or any appropriate remedial action already demonstrated are factors to consider in this regard.	
Suspension A Suspension prevents a registrant from practising for a period specified by the Panel (up to 12 months) The details of the Suspension will be recorded on the Register.	The Panel considers that giving Advice, a Warning or Conditions would be insufficient to address any risk to patient safety or to protect the public, or that to apply a lesser sanction would undermine public confidence in the pharmacy profession. It may be required to highlight to the profession and the public that the conduct of the registrant is unacceptable and unbefitting a member of the pharmacy profession. However, the conduct falls short of being fundamentally incompatible with continued registration and/or the Panel considers that the registrant shows enough insight to suggest that their reasons for their impairment may be remediable in the future. A Suspension may be appropriate were the Panel considers that the registrant's impairment is remediable, and that	If the Panel finds that a registrant's Fitness to Practise is impaired and determines to suspend the registrant's practice, the Panel should provide clear reasons why a more severe sanction is not appropriate and how suspending the registrant's practice meets the public interest. If the registrant has been convicted of a serious criminal offence, the Panel must consider the general principle that they not be permitted to resume practice until they have satisfactorily completed their sentence. [27] If the Panel chooses to deviate from this general principle, it must give clear reasons. Suspension Orders cannot be made subject to Conditions. However, where the Panel expects the registrant to address specific issues or take specific action before the Suspension is reviewed, a recommendation may be made to the registrant as to actions

[27] CHRP v GDC and Fleischmann [2005] EWHC 87 (Admin)

	Conditions are not presently workable due to the circumstances of the registrant. However, they may be so in the future.	the Panel considers may remediate the reasons for the finding of impairment. The Panel should not be overly prescriptive in its recommendations so as not to bind any Panel reviewing the Suspension Order.
Removal from the Register (striking off) The registrant's entry in the Pharmaceutical Society NI's Register will be removed and they will no longer be able to work as a pharmacy professional in Northern Ireland. The former registrant must then wait for 5 years before reapplying to be restored to the Register. The restoration application will be considered by a Panel of the Statutory Committee.	The Panel considers the registrant's behaviour is fundamentally incompatible with being a registered professional and removing the registrant from the Register is considered to be the only means by which to protect the public and/or maintain confidence in the profession.	If the Panel finds that a registrant's Fitness to Practise is impaired and determines to remove the registrant from the Register, the Panel should provide clear reasons why this is an appropriate sanction and how removing the registrant from the Register meets the public interest.

Mitigating and Aggravating Circumstances

2.10 To make a fair and proportionate decision on sanction, the Panel should take into consideration the context of the case. The context of the case includes the circumstances in which the incident/s took place, including any relevant personal matters and what has happened since the incident/s took place. This consideration will include any aggravating and mitigating factors.

2.11 An aggravating factor is any fact or circumstance that increases the severity of the impairment or the registrant's personal responsibility for the finding of current impairment of Fitness to Practise.

2.12 A mitigating factor is the opposite of this in that it decreases the severity of the impairment or the registrant's personal responsibility for the impairment.

2.13 In each case, the Panel must consider both mitigating and aggravating factors. Whether a factor amounts to mitigation or aggravation is a matter for the Panel to decide. However, the Panel should consider the general examples outlined below.

2.14 Mitigating factors may include:

- The circumstances leading to the incident/s in question;
- Evidence of insight from the registrant;
- Evidence of remedial action taken by the registrant after the incident/s;
- Compliance with the duty of candour, if appropriate;
- Evidence of the registrant's good character;
- The incident/s in question being a one off.

2.15 Aggravating factors may include:

- The circumstances leading to the incident/s in question;
- Evidence of a lack of insight from the registrant;
- The incident/s in question resulted in potential harm or actual harm to a patient;
- Previous findings of the Statutory and/or Scrutiny Committee;
- Actions were premeditated or formed a pattern over time;
- Abuse of position and/or trust;
- Dishonesty;
- Failure to comply with the duty of candour, if appropriate.

2.16 The weight a panel gives to a mitigating or aggravating factor is a matter for the Panel. The Panel should provide clear reasons explaining the weight the panel has given to any particular aggravating or mitigating factor in its determination on sanction.

Insight and remedial actions

2.17 The purpose of a sanction is not to be punitive but to uphold the public interest which includes protecting the public, maintaining public confidence in the profession and maintaining proper standards of behaviour.

2.18 When the Panel is deliberating on an appropriate sanction, it should, therefore, carefully consider the extent to which the registrant has shown insight to the circumstances and actions which led to their Fitness to Practise being impaired. The Panel should consider whether there is evidence that the registrant has assessed and understood the reasons for their Fitness to Practise being impaired and whether they have displayed genuine regret and/or apologised for their actions, if appropriate.

2.19 The Panel should also consider any actions or steps the registrant has taken of their own accord with the aim of remediating the reasons why their Fitness to Practise is currently impaired. The Panel should carefully consider the appropriateness of any actions taken. The Panel should seek to verify remedial activity as far as is possible and provide clear reasons as to why any activities undertaken amount to, or do not amount to, remediation of the issues at hand.

2.20 The Panel should consider that insight and remediation may carry less weight in cases where public confidence in the profession is seriously undermined, than in cases related to clinical errors or incompetence[28].

2.21 The Panel will decide upon the appropriate stage of the hearing for these issues to be considered. It should review issues concerning insight and remediation in the context of deciding on sanction, if it has already considered them at the impairment stage of the hearing.

Testimonial and Character References

2.22 A registrant may present a testimonial from a third party as mitigation at a hearing. The weight to be given to testimonials is a decision for the Panel. If the testimonial was prepared before the hearing, the Panel should consider whether the author of the testimonial was aware of the allegations against the registrant, that their testimonial would be put to the Panel and when the testimonial was written.

2.23 The Panel will decide upon the appropriate stage of the hearing for testimonials to be considered. It should review testimonials in the context of deciding on sanction, if it has already considered them at the impairment stage of the hearing.

2.24 The absence of testimonials should not count against a registrant.

Consideration of an Interim Suspension Order

2.25 When deciding upon sanction, the Panel should take into consideration the existence of any Interim Suspension Order. The Panel should judge whether the existence of an Interim Suspension Order has any effect on the appropriate sanction to be imposed by the Panel having taken into consideration all other factors[29].

[28] Dr Cheng Toh Yeong v The General Medical Council [2009] EWCH 1923 (Admin)
[29] Akhtar v GDC [2017] EWHC 1986 (Admin) Mckenna J (sitting as Justice of the High Court)

Guidance on most serious types of misconduct

Dishonesty

2.26 The issue of dishonesty can cover a diverse range of allegations and factual circumstances. Allegations of dishonesty may relate to a registrant's professional or personal life.

2.27 A primary consideration for the Panel, when considering dishonesty, is the impact it will have on the public's confidence in the profession[30].

2.28 Patients and service users are, by definition, vulnerable. They trust that their pharmacist will place their interests first and will act with honesty and integrity at all times.

2.29 When a registrant acts dishonestly, the trust between the patient and the registrant can breakdown and the public's trust in the profession can be considerably damaged.

2.30 Dishonesty can take various forms, some acts of dishonesty are criminal, some are not; some acts of dishonesty can destroy trust instantly whilst others will undermine trust to a greater or lesser extent. The Panel should take into consideration the form of dishonesty it is dealing with in a given case and assess its impact on the public's trust in the profession and any public safety implications[31].

2.31 The issue of dishonesty is complex and, where a finding of current impairment is found based on an allegation of dishonesty, the Panel must take the context of the facts established into consideration. However, dishonesty is very serious and remediating against dishonesty is very difficult.

2.32 Where a registrant's Fitness to Practise has been found to be impaired due to dishonesty this is a serious issue which may merit removal from the Register. If the Panel determines to give a less severe sanction, it must provide clear reasons for doing so including how the public's confidence in the profession has been maintained and how the public has been adequately protected.

Duty of Candour

2.33 Along with other regulators of healthcare professionals, the Pharmaceutical Society NI published a joint statement on the duty of

[30] Siddiqui v GMC [2013] EWHC 1083 (Admin)
[31] See: Lusinga v Nursing and Midwifery Council [2017] EWHC 1458 (Admin)

candour to their respective registrants, students and patients in November 2014.[32]

2.34 The joint statement made it clear that '*every healthcare professional must be open and honest with patients when something that goes wrong with their treatment or care causes, or has the potential to cause, harm or distress*'.

2.35 In March 2016, the Pharmaceutical Society NI published the Code, Professional Standards and Conduct, Ethics and Performance for Pharmacists in Northern Ireland. Standard 1.2 of the Code states that pharmacists in Northern Ireland must: 'Uphold the duty of candour and raise concerns appropriately'**.**

2.36 The duty of candour is a key aspect in protecting the public and maintaining the public's trust in the pharmacy profession. In cases where a pharmacist's Fitness to Practise has been found to be impaired due to a failure to follow the duty of candour and the relevant aspects of the Code, the Panel should take the issue very seriously and consider sanctions at the upper end of the scale. If the Panel determines to give a less severe sanction, it must provide clear reasons for doing so including how the public's confidence in the profession has been maintained and how the public has been adequately protected

2.37 Based on the established facts, if the Panel considers that the registrant should have followed the duty of candour, it would be appropriate to consider the observance of the duty of candour as a mitigating factor and the absence of candour as an aggravating factor when considering sanction.

Raising concerns

2.38 Pharmacists have a duty to put the patient first and to protect the public. Raising concerns about poor practice or behaviour, which is potentially putting patient safety at risk, is vitally important to ensure patient safety and protect public confidence in the pharmacy profession.

2.39 A failure to raise appropriate concerns places the safety of patients and the public at risk and has the potential to significantly damage public confidence in the profession. Where the Panel finds that a registrant's Fitness to Practise is impaired due to a failure to raise appropriate concerns, the Panel should take the issue seriously and consider a sanction at the upper end of the scale. If the Panel determines to give a less severe sanction, it must provide clear reasons for doing so including how the public's confidence in the profession has been maintained and how the public has been adequately protected

[32] http://www.psni.org.uk/wp-content/uploads/2013/02/Joint-statement-on-the-professional-duty-of-candour-FINAL.pdf

2.40 All pharmacists have a duty to contribute to and foster a culture of openness, honesty and learning[33]. Employers, managers and lead staff have a duty to make sure that there is an effective procedure in place that allows staff to raise concerns openly and safely without fear of reprisals[34].

2.41 The inappropriate handling of a genuine concern could place patients and the public at risk, be detrimental to the person raising the concern and undermine the public's confidence in the profession.

2.42 Instances where a registrant's Fitness to Practise has been found to be impaired because the registrant deliberately ignored, stymied or disciplined a member of staff who raised a genuine concern in the public interest, should be treated very seriously and the Panel should consider a sanction at the upper end of the scale. If the Panel determines to give a less severe sanction, it must provide clear reasons for doing so including how the public's confidence in the profession has been maintained and how the public has been adequately protected.

Sexual and Violent Misconduct

2.43 The Code (2016) states that: 'Pharmacists must maintain proper and appropriate relationships with patients and service users'[35] and must 'take special care when dealing with vulnerable individuals, both adults and children '[36].

2.44 Sexual misconduct can range from sexual offences such as child pornography to inappropriate sexual behaviour involving patients and colleagues. Instances of sexual misconduct by pharmacists not only cause serious harm to patients but also can seriously undermine public trust in the profession.

2.45 Where impairment has been found due to sexual misconduct, this is a serious issue, which may merit removal from the Register. This is particularly the case for instances of sexual abuse involving a child or vulnerable adult; the abuse of the special position of trust that the registrant occupies; where there is a conviction for a serious sexual offence and/or the registrant has been required to register as a sex offender or has been included on a Barred List. If the Panel determines to give a less severe sanction, it must provide clear reasons for doing so

[33] The Code, Professional standards of conduct, ethics and performance for pharmacists in Northern Ireland (2016) Standard 1.2.1
[34] The Code, Professional standards of conduct, ethics and performance for pharmacists in Northern Ireland (2016) Standard 1.2.6
[35] The Code, Professional standards of conduct, ethics and performance for pharmacists in Northern Ireland (2016) Standard 3.2.1
[36] The Code, Professional standards of conduct, ethics and performance for pharmacists in Northern Ireland (2016) Standard 3.2.1

including how the public's confidence in the profession has been maintained and how the public has been adequately protected[37].

2.46 Instances of violent conduct carried out in a professional or personal setting have the potential to be directly harmful to patients and can also seriously undermine public trust in the profession.

2.47 Where impairment has been found due to violent misconduct, this is a serious issue, which may merit removal from the Register. If the Panel determines to give a less severe sanction, it must provide clear reasons for doing so including how the public's confidence in the profession has been maintained and how the public has been adequately protected[38].

3. Part 3: Actions When a Sanction Has Been Decided Upon

Interim Measures[39]

3.1 A Direction by the Panel to remove a registrant from the Register, suspend a registrant from the Register or place Conditions on a registrant's practice can be appealed by the registrant[40]. A period of 28 days is allowed for a registrant to lodge an appeal with the High Court. The decision of the Panel is not formally imposed until this period of appeal has formally ended or, where an appeal is brought, the date on which the appeal is fully disposed of.

3.2 If the Panel considers that it is in the public interest to do so, it has the power to impose 'interim measures' until the appeal period is over or, if an appeal is successfully lodged, until the appeal has been fully disposed of.

3.3 If the Panel directs that a registrant should be removed from the Register (struck off) or suspended from the Register, the Panel has the power to suspend the registrant as an interim measure until the appeal period is over or any appeal lodged is fully disposed of if the Panel considers it necessary to protect the public or if it is in the registrant's interests or that of the public.

3.4 If the Panel directs that a registrant should have Conditions placed on their practice and if the Panel considers it necessary to protect the public or if it is in the registrant's interests or that of the public, the Panel has the power to place Conditions on the registrant's practice as an interim

[37] Dr Haikel v GMC (Privy Council Appeal No. 69 of 2001)
[38] Haikel v GMC (Privy Council Appeal No. 69 of 2001)
[39] The Pharmacy (Northern Ireland) Order 1976, Schedule 3, Paragraph 12.
[40] The Pharmacy (Northern Ireland) Order 1976, Schedule 3, Paragraph 10.

measure until the appeal period is over or any appeal successfully lodged is disposed of.

Review Hearings

3.5 A Review hearing can take place when:

- A registrant has been suspended[41] from the Register following a hearing. (The Panel will usually direct that a Review hearing takes place before the period of suspension expires).

- A registrant's registration has been made subject to a Condition[42] following a hearing. (The Panel will usually direct that a Review hearing takes place before the period of conditional registration ends).

3.6 Review hearings should ordinarily take place towards the end of the relevant period unless there is good reason for the Panel to review the matter earlier, for example, if the Pharmaceutical Society NI has evidence that the registrant has practised while suspended or has failed to comply with Conditions imposed upon their practice.

3.7 Where, before a scheduled Review hearing, the Pharmaceutical Society NI becomes aware of new evidence which it wishes to bring to the attention of the Panel, for example evidence of a failure to comply with Conditions, the following may occur:

a) The Pharmaceutical Society NI may request case management directions;
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 in the particular circumstances of the case.

3.8 The role of the Panel in a Review Hearing is not to reassess the appropriateness of an original sanction but to examine a registrant's actions since the principal hearing or any previous Review hearings and to consider whether the registrant's Fitness to Practise is no longer impaired or remains impaired[43].

Review of Suspension[44]

3.9 Where the Panel has given a Direction to suspend a registrant, if the Panel considers that the registrant's Fitness to Practise remains impaired, the Panel may give direction that:

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[41] The Pharmacy (Northern Ireland) Order 1976, Schedule Schedule 3 Paragraph 7
[42] The Pharmacy (Northern Ireland) Order 1976, Schedule Schedule 3 Paragraph 7
[43] Khan v GPhC [2016] UKSC 64
[44] The Pharmacy (Northern Ireland) Order 1976, Schedule 3, Paragraph 7(3)

- the name of the registrant 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 2 years[45];
- 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 Panel thinks fit to impose for the protection of the public or otherwise in the public interest or in the interests of the registrant.

Review of Conditions[46]

3.10 Where the Panel has given a Direction that the registrant's entry on Register is conditional upon the registrant complying with requirements specified in a Direction, if the Review Panel considers that the registrant's Fitness to Practise remains impaired, the review Panel may give Direction 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 registrant be struck off the Register, (for example, where the registrant has failed, whether wholly or partly, to comply with the requirements).

[45] 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)
[46] The Pharmacy (Northern Ireland) Order 1976, Schedule 3, Paragraph 7(3)(b)