

Scrutiny Committee Referral Criteria in respect of an allegation capable of being referred**1. INTRODUCTION**

- 1.1 The objective of this guidance is to provide assistance and to set out the referral criteria that the Scrutiny Committee must have regard to before disposing of any allegation before it regarding the pharmacy professional or company / section 80 party where relevant (referred to throughout as “the registered person”). This guidance should be viewed as a “living document” which may be updated and revised in line with case law and other developments in regulation and elsewhere.
- 1.2 The guidance has been developed in accordance with the Pharmaceutical Society of Northern Ireland's vision and strategy to be risk based and proportionate. Schedule 3 to the Pharmacy (Northern Ireland) Order 1976 (as amended) (“the 1976 Order”), supplemented by the Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) Order of Council 2012 (“the FtP Regulations 2012”), makes provision for the fitness to practise procedures of the Pharmaceutical Society of Northern Ireland. The Scrutiny Committee is a crucial element of the fitness to practise committee structure. Paragraph 6 (1) to Schedule 3 of the 1976 Order provides that where a matter is referred to the Scrutiny Committee by the Registrar, the Committee must decide whether the allegation ought to be considered by the Statutory Committee.
- 1.3 In addition, Regulation 7 (1) (b) of the Council of the Pharmaceutical Society of Northern Ireland (Statutory Committee, Scrutiny Committee, and Advisers) Regulations (Northern Ireland) 2012 requires the Scrutiny Committee referral criteria to be “published”. A copy of the Scrutiny Committee referral criteria is at Annex D.

2. PROCEDURE

- 2.1 The Pharmaceutical Society of Northern Ireland's fitness to practise procedures recognise that an allegation of impairment requires an initial consideration to determine the most appropriate method of disposal.
- 2.1.1 The Scrutiny Committee's role is to decide whether there is a real prospect of impairment of fitness to practise being established before the Statutory Committee. The “real prospect” test applies to both factual allegations and if proved, whether the facts would amount to impairment of fitness to practise. The Scrutiny Committee meets in private and does not hear oral evidence. However, before disposing of any allegation the Scrutiny Committee must consider all documents and recommendations placed before it by the Registrar and any written representations received from the registered person.
- 2.1.2 The role of the Scrutiny Committee is primarily that of a screening role. Whilst the Scrutiny Committee is entitled, as part of its function, to assess the materiality and weight of the evidence, it does not have the function of making judgments on nor should it seek to resolve substantial conflicts of evidence. It will not, therefore make findings of fact on the substantive issues arising in the allegation. Nonetheless, its practices and procedures are sufficiently rigorous to ensure that all allegations are thoroughly considered. The Committee is permitted to direct that further investigations are undertaken. The Committee is required to take into account all of the representations which have been made. It will be supported by legal advisers, and in appropriate cases, by clinical and specialist advisers. The Scrutiny Committee should give reasons for all of its decisions.

3. REFERRAL CRITERIA

3.1 In considering individual cases the Scrutiny Committee should have regard to the principles and obligations set out in the Code of Ethics (which sets out the standards relating to the conduct, ethics and performance expected of registered persons).

3.2 Regard should also be had to the fitness to practise criteria contained within Regulation 4 of the FtP Regulations 2012. This states that the Statutory Committee:

“...must have regard to the criteria specified in paragraph (2) or, where appropriate, (3), or, where appropriate, paragraphs (2) and (3), when deciding, in the case of any registered person, whether or not the requirements as to fitness to practise are met in relation to that registered person.

(2) In relation to evidence about the conduct or behaviour of the registered person which might cast doubt on whether the requirements as to fitness to practise are met in relation to the registered person, the Statutory Committee must have regard to whether or not that conduct or behaviour –

- a. presents an actual or potential risk to patients or to the public;*
- b. has brought, or might bring, the profession of pharmacy into disrepute;*
- c. has breached one of the fundamental principles of the profession of pharmacy as defined in the standards; or*
- d. shows that the integrity of the registered person can no longer be relied upon.*

(3) In relation to evidence about the registered person’s physical or mental health which might cast doubt on whether the requirements as to fitness to practise are met in relation to the registered person, the Statutory Committee must have regard to whether or not that evidence shows actual or potential –

- a. self-harm; or*
- b. harm to patients or to the public.”*

3.3 In addition to 3.1 and 3.2 above, regard should also be had to the following criteria listed below. It is important to bear in mind that this does not purport to be an exhaustive list and the Scrutiny Committee may properly take into account all relevant factors relating to the particular circumstances of an individual case.

The Scrutiny Committee in performing its task should have regard to the following:

CONDUCT

Conduct which involves discrimination on grounds prohibited by law
The extent of (or if relevant, the lack) of cooperation by the registered person with any inquiries into their conduct
How long ago the relevant conduct took place
Whether the relevant conduct involves an abuse of trust or position
Whether the registered person has not complied with advice given by the Registrar of the Pharmaceutical Society of Northern Ireland or a Pharmacy Inspector
The extent to which the conduct is characteristic of the registered person or is indicative of a propensity to commit such conduct
Any efforts (or if relevant, the lack) of rehabilitation by the registered person since the conduct took place
The registered person's insight (or lack of insight, where relevant) in relation to their misconduct
Any warnings, agreed undertakings, sanctions or advice relating to the same or similar conduct given by a pharmacy regulatory body or the Health and Social Care Board in the 5 years preceding the conduct
Whether there has been an attempt to impede/obstruct a relevant investigation into the alleged conduct
Whether the registered person put their own interests, or those of a third party, before those of their patients
Whether there has been a failure to maintain appropriate professional boundaries in a relationship with patients and/or others
Conduct which may indicate an intention to disregard provisions of the 1976 Order and legislation made under it.
Whether there may have been a deliberate or serious breach of the Code of Ethics and / or other supplementary guidance published by the Pharmaceutical Society of Northern Ireland.
Whether the registered person damaged or put at significant risk the best interests of patients by failing to communicate appropriately with patients or others

PHYSICAL OR MENTAL HEALTH

Whether the condition is episodic or recurrent
Whether the condition has been sustained over a protracted period of time
Whether the registered person has sought help or has complied (or has not, where relevant) with treatment or support for their condition
The registered person's insight (or lack of insight, where relevant) in relation to their condition
Any previous findings of misconduct in relation to the registered person's physical or mental health
Whether there has been a breach or failure to comply with any previous written undertakings
Whether there has been an attempt to deliberately conceal the condition

- 3.4 The Scrutiny Committee should also take into account public interest considerations. This may include (but is not limited to) the maintenance of public confidence in the profession; declaring and upholding proper standards of conduct; and the protection of members of the public. These in turn will need to be balanced against the registered person's own interests.

4. EQUALITY AND DIVERSITY STATEMENT

The Pharmaceutical Society of Northern Ireland is committed to promoting equality and valuing diversity and to operating procedures and processes which are fair, objective, transparent, and free from unlawful discrimination.

5. REVIEW

This Referral Criteria document shall be the subject of a regular review, to reflect developments and changes in the Scrutiny Committee's practices and procedures.

Date Referral Criteria came into effect: 1st October 2012