

Annual Report of the Scrutiny Committee 2016

One of the obligations of the “The Council of the Pharmaceutical Society of Northern Ireland (Statutory Committee, Scrutiny Committee and Advisers) Regulations (Northern Ireland) 2012” is the provision of an annual report. The legislation states as follows;

7. (1) The Scrutiny Committee has the following additional functions -

- (a) providing an annual report to the Council in respect of each calendar year, by a date specified by the Council, which is to include:
 - (i) trends, patterns and learning points observed from cases considered by the Scrutiny Committee;
 - (ii) details of the numbers of fitness to practise and disqualification allegations which were disposed of by the Scrutiny Committee by means of warnings and undertakings during that year; and
 - (iii) the reasons why the allegations referred to in sub-paragraph (ii) were not referred to the Statutory Committee.

This is the fourth such report and covers the calendar year of 2016. During this period, there were some changes to the composition of the Scrutiny Committee. New members were also able to avail of training.

Composition of the Scrutiny Committee

The statutory Scrutiny Committee which sat during 2016 consists of a publicly recruited panel trained in fitness to practise proceedings.

Chair and legally qualified member	Mr. John Gibbons
Deputy Chair and legally qualified member	Ms. Rosemary Connolly
Lay member	Mr. Andrew Popplewell*
Lay member	Mr. Colin Kennedy
Lay member	Mr Andrew Thomson**
Pharmacist member	Mrs. Bronagh White
Pharmacist member	Prof. Colin Adair
Pharmacist member	Mr. James Taggart
Pharmacist member	Mrs Anita Lowther*

* Appointed in October 2016

** Retired due to time served in October 2016

Background

By way of background, following the enactment of new legislation in October 2012, additional powers enable the Pharmaceutical Society NI to take more proportionate approaches to the management of fitness to practise case outcomes than simply removal from the register.

The updated powers in regard to fitness to practise mean that, as a regulator, the Society can:

- give advice;
- issue formal warnings;
- agree undertakings;
- place conditions on the practise of a pharmacist;
- impose suspension;
- issue interim orders; and
- remove Registrants from the register.

Fitness to Practise Committees

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

Scrutiny Committee (Initial Proceedings)

This Committee considers initial allegations on a paper based format and it has the power to dismiss a case, give advice, issue warnings and agree undertakings, if appropriate, and refer more serious cases to the Statutory Committee (subject to threshold criteria).

Statutory Committee (Hearings Committee)

This Committee considers allegations at hearings of misconduct of registered pharmacists. Registrants are invited to make representations with legal support, if necessary. The Statutory Committee deals with all categories of alleged impairment referred to it by either the Registrar or the Scrutiny Committee and may utilise the full range of fitness to practise sanctions ie: give advice, issue formal warnings, agree undertakings, place conditions on the practise of a pharmacist, impose suspension and remove Registrants from the register. It also deals with interim orders, restoration applications and review hearings.

The Work of the Scrutiny Committee - 2016

The Committee sat on five occasions, dealing with a total of eight cases, in the full calendar year. A short summary of those cases is attached hereto at **Appendix One**, detailing the Registrant, the date of hearing, composition of the Committee panel, the category of complaint and the method of disposal.

To better understand the reasoning of the Scrutiny Committee in such cases, the “Threshold Criteria” for referral to the Statutory Committee are set out in full at **Appendix Two** hereto. These criteria guide the Scrutiny Committee as to how to assess which cases are more serious and deserving of consideration by the Statutory Committee. In each of the eight cases, a full reasoned written decision is provided by the Legal Chairperson, setting out how these criteria have been applied in each case, after deliberation by the committee. In one of this year’s cases, the Scrutiny Committee did conclude that the threshold for referral to the Statutory Committee had been met. In each of the other cases, it was felt that the Scrutiny Committee was able to deal with those matters using the powers granted to it by the legislation. Further information on those matters is necessarily provided later in the section of this report that deals with Regulation 7(1)a(iii).

The one case which was referred on to the Statutory Committee could be considered an example of a case where the level of seriousness was unclear and the Scrutiny Committee used its developing experience to conclude that it was a case that did indeed require to be referred on to the Statutory Committee. However, this is likely to remain an exception as obviously serious cases will remain likely to be referred straight to the Statutory Committee.

THE STATUTORY PURPOSE OF THIS REPORT:

Regulation 7(1)a(i): “Trends, Patterns and Learning Points”

As required by the legislation mentioned earlier, the first purpose of this report is to identify “trends, patterns and learning points” and bring these to the attention of the Council of the Society with a view to enabling issues to be identified at as early a stage as possible.

Trends and Patterns:

The Scrutiny Committee noted that some of the cases referred to it this year, as in previous years, involved dispensing errors of varying degrees. The particular trends and/or patterns of behaviour that came to the attention of the Committee often involved the interplay between human error and SOPs. This would seem to be a perennial problem and the comments below will no doubt require the Council of the Society to reiterate advice to the profession on such issues.

There was again one case involving “drink driving”. However, this will inevitably occur when considering a body of people of the size of the profession and the Committee could not say that they found any unusually high level of offending behaviour of any particular category. There was one case of theft and one of dispensing without prescription. Two cases involving students were dismissed.

These cases highlight the diverse mix of cases that come before the Scrutiny Committee and again, this year, it was impossible to discern any particular pattern of concern.

Learning Points

Each panel considering a case will comprise a Legal Chair, a Lay Member and a Pharmacist member. The Pharmacist Members of each panel were asked to comment on any learning points they felt had arisen in each case they were involved in, as they were felt to be best placed to comment on what may or may not be the considered view of the average member of the profession. Other members were asked to put forward any points they felt may be relevant from their more general experience. Below is a summary of the points made by Committee members as to what could be considered learning points which were considered and gathered from the panel members at the end of each hearing on the dates given. These are issues which may already be addressed in training and guidance given to the profession but, as they have arisen in the context of the caseload of the Committee, these may be areas where further emphasis may be needed. That would be a matter for the Society to consider.

Learning points for the profession – recorded at Scrutiny Committee meetings in 2015

Hearing date: 07-01-2016

- As this Pharmacist was dismissed as a result of dispensing without prescription, the seriousness of such conduct is obvious.
- Allowing personal circumstances to interfere with professional obligations will rarely be accepted as excusing one's conduct.

Hearing date: 17-02-2016

- The Committee highlighted that one should always be careful when making an MDS tray to check against the original prescription to avoid dispensing errors.
- As happened in this case, Superintendents and Responsible Pharmacists will be required to answer for the mistakes of those under their charge.

Hearing date: 03-05-2016

- In cases where there has been a conviction for drink-driving, Registrants can expect to be referred to the Statutory Committee unless the following factors apply:
 - (i) it is a first offence;
 - (ii) there are no apparent aggravating factors eg harm to others; excessive levels of alcohol in breath or in blood, etc;
 - (iii) there is a level of insight exhibited by the Registrant;
 - (iv) medical evidence does not highlight an alcohol issue.

Hearing date: 23-06-2016

- Pharmacists should be scrupulously honest and, where there is an allegation that they are not, they can expect to be referred to the Statutory Committee as happened in this case.

Hearing date: 30-09-2016

- None - cases were dismissed

Regulation 7(1)a(ii): “Details of disposals by warnings and undertakings”

As required by the legislation mentioned earlier, the second purpose of this report is to identify those cases where the Scrutiny Committee felt able to dispose of the case by way of warnings and/or undertakings, rather than refer the case on to the Statutory Committee for disposal. Inevitably, most cases fall into this category. The new legislation has established “referral criteria” and only those cases that meet the referral criteria should be referred on to the Statutory Committee. By definition, these will be the more serious cases.

The Scrutiny Committee will, therefore, receive less serious cases that do not pass the threshold for referral to the Statutory Committee yet demand suitable censure or response on behalf of the Council of the Society. The purpose of this part of the annual report is to inform the Council of the Society of the detail of such cases. There were eight cases considered, three of which (all the same incident/allegation) resulted in **advice** about future conduct being given, whilst two cases resulted in a **formal warning**. One case resulted in a **referral** to the Statutory Committee and two were **dismissed**.

These cases are identified in the report at **Appendix One** hereto.

Regulation 7(1)a(iii): “Reasons for non referral to Statutory Committee”

The Scrutiny Committee is obliged to explain, in this third part of the report, the reasons why the five cases mentioned above did not pass the threshold for referral to the Statutory Committee. The purpose of this is to satisfy the Council of the Society that the Scrutiny Committee is exercising its powers in an appropriate way.

For example, if the Council of the Society was concerned that the Committee was being too lenient in the way it disposed of any particular case or category of case, then the reasoning of the Committee should be readily available to be understood and explored.

Of the five cases disposed of by way of advice or warning, three arose from the one incident when the student who made the actual error, the Superintendent and Responsible Pharmacist all were referred to the Committee. This case fell into the category of case which might be described as a “dispensing error”. Advice on remedying deficiencies in SOPs was considered to be sufficient. The other cases

involved criminal proceedings or misconduct of a relatively minor nature. In each case, the Committee considered that the cases were serious enough, by reference to the threshold criteria, that the Registrar was correct in referring them to the Scrutiny Committee in the first place and justified a recorded warning.

The Scrutiny Committee must not refer a fitness to practice allegation to the Statutory Committee unless it is satisfied that there is a real prospect that the Statutory Committee will make a finding that the Registrant's fitness to practise is impaired. Each of the cases below had its own unique factual matrix with mitigating factors in play. A short summary of the reasoning of the Committee in each case of the five cases is set out in **Appendix One**.

Appendix One

Dispensing error cases:

1. Registrant A, B & C

This case involved an MDS tray being labelled and given to the wrong patient. The SOPs operating in the Pharmacy were out of date and there wasn't one for patient verification. It was unclear who had actually made the dispensing error. The Committee noted there was no dispute of the facts in that regard.

The Committee felt that the issues of particular concern were as follows:

- i. there was inadequate training and no evidence of a SOP to verify the identity of the patient being handed an MDS tray;
- ii. the Registrant admitted that she did not check the identity of the person to whom she gave the medication dispensed; and
- iii. the Superintendent and Responsible Pharmacist had been unable prevent such a mistake being made.

The Committee accepted that the following factors were particularly relevant:

- i. the Committee noted that there was no dispute of facts;
- ii. there is no evidence of harm to the patient;
- iii. the medication dispensed was not a high risk product; and
- iv. this was a one-off dispensing error on the part of all involved.

Other' cases

2. Registrant D

This case involved the Registrant being convicted of driving with excess alcohol.

It was alleged that there was evidence of behaviour on the part of the person concerned which is likely to undermine public confidence in the profession generally, if not challenged by the Regulatory Body. The allegation was admitted. The Committee was of the opinion that this was an appropriate case to exercise its power to issue a warning. The Committee considered that the public perception of drink driving was that it was socially unacceptable and should be considered as a serious matter in every case and, particularly so, when it involved a healthcare professional who ascribed to a level and standard of behaviour befitting the profession to which they belong.

In this case, the Scrutiny Committee has found that the Registrant promptly acknowledged the fact of his conviction and showed insight and application in dealing with the situation. The Committee acknowledged the commitment of the Registrant to addressing the situation.

The Committee wishes to make it clear that if any of these factors had been absent, or if there had been any aggravating factors to the facts of the offence, it would have been unable to conclude that the case was capable of being disposed of without reference to the Statutory Committee. The published GMC guidance notes as follows:

“Examples of convictions and cautions that have resulted in a warning include one off drink driving offences where we are satisfied that there are no underlying health concerns”.

The Committee concluded that this case fell into that description and there were no compelling reasons to treat the matter in a different way.

3. **Registrant E**

This case involved the Registrant dispensing without prescription.

The Committee had regard to the following issues in reaching its decision in this case:

- that the Scrutiny Committee considered the documentation presented to it and noted that there was no evidential dispute of the facts;
- that the Committee noted that the Registrant had been dismissed from his employment and, as such, had been “punished” in that way;
- that the Registrant had signed undertakings, from the Registrar, to voluntarily desist from practising as a Pharmacist until the conclusion of the proceedings. The acceptance and provision of undertakings indicate a measure of insight by the Registrant of the gravity of the situation and subsequent proceedings;
- that the Registrant had made a submission to the Scrutiny Committee, outlining his explanation with respect to the allegations, which the Scrutiny Committee accepted had occurred all on one day and which indicated that there had been distracting personal circumstances. The Committee were prepared to accept that there had been no deliberate premeditated dishonesty;
- that, whilst not binding on the deliberations of the Committee, nevertheless, the Criminal Court had rejected the allegation of dishonesty;
- that any sanction less than a warning would be inappropriate; and

- that the Registrant should not be referred to a Statutory Committee hearing because: (i) that would be disproportionate for what the Committee were prepared to accept were “one-off offences” (ii) the Registrant had been sanctioned already by their employer; and (iii) the proceedings and the undertakings sought and given clearly provided a salutary lesson.

Conclusion

I trust that this report will again provide a useful insight into the work of the Scrutiny Committee in the past year and will reassure the Society that these important issues are being addressed in accordance with the legislation and in a satisfactory and proportionate manner. As Chair, I am again delighted that my colleagues and I have dealt with the cases in a timely and professional manner and to a high standard.

Accordingly, I commend this report to you.

As Chair of the Scrutiny Committee, I can report that the Committee members have found the work they have been tasked with to be challenging, varied and interesting. We have benefitted greatly from the training and assistance provided by the Society, together with the dedicated and professional preparatory work carried out by the administration office, to whom we owe a debt of gratitude.

John Gibbons

Chair of the Scrutiny Committee

29 August 2017

Appendix Two

Threshold Criteria for Referral to Scrutiny Committee

Cases are not to be referred to the Scrutiny Committee unless one of the following statements is true:

Principle 1: Make the safety and welfare of patients your prime concern

- there is evidence that the Registered Person's conduct or performance caused moderate or severe harm or death which could and should have been avoided;
- there is evidence that the Registered Person deliberately attempted to cause harm to patients and the public or others;
- there is evidence that the Registered Person was reckless with the safety and wellbeing of others.

Principle 2: Respect and protect confidential information

- there is evidence that the Registered Person failed to respect the confidentiality of information or misused confidential information acquired in the course of professional practice to an extent likely to undermine public confidence in the profession if not challenged by the Regulatory Body.

Principle 3: Show respect for others

- there is evidence that the Registered Person failed to respect the human rights of patients or demonstrated behaviour attitudes which are incompatible with registration as a pharmacy professional;
- there is evidence that the Registered Person failed to maintain appropriate professional boundaries in their relationship with patients and/or others.

Principle 4: Exercise professional judgment in the interests of patients and public

- there is evidence that the Registered Person put their own interests, or those of a third party, before those of their patients;
- there is evidence that the Registered Person culpably failed to act when necessary in order to protect the safety of patients.

Principle 5: Encourage patients (and/or their carers, as appropriate) to participate in decisions about their care

- there is evidence that the Registered Person damaged or put at significant risk the best interests of patients by failing to communicate appropriately with patients or others.

Principle 6: Maintain and develop professional knowledge and competence

- there is evidence that the Registered Person practised outside of their current competence;
- there is evidence that the Registered Person failed to maintain their knowledge and skills in a field relevant to their practice;

- there is evidence of a course of conduct which is likely to undermine public confidence in the profession generally, or put patient safety at risk, if not challenged by the Regulatory Body;
- there is evidence of adverse physical or mental health which impairs the Registered Person's ability to practice safely or effectively.

Principle 7: Act with honesty and integrity

- there is evidence that the Registered Person behaved dishonestly;
- there is evidence of behaviour on the part of the Registered Person which is likely to undermine public confidence in the profession generally, if not challenged by the Regulatory Body.

Principle 8: Provide a high standard of practice and care at all times

- there is evidence that the Registered Person has practised in a way that was systematically unsafe, or, has allowed or encouraged others to do so, where he or she has responsibilities for ensuring a safe system of working.

If the Registrar is in doubt as to whether the above criteria have been met, he shall refer the case to the Scrutiny Committee.