


# Good decision making:

Investigating committee meetings  
and outcomes guidance



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# About us

**The General Pharmaceutical Council (GPhC) is the regulator for pharmacists, pharmacy technicians and registered pharmacy premises in England, Scotland and Wales. It is our job to protect, promote and maintain the health, safety and wellbeing of members of the public by upholding standards and public trust in pharmacy.**

Our main work includes:

- setting standards for the education and training of pharmacists and pharmacy technicians, and approving and accrediting their qualifications and training
- maintaining a register of pharmacists, pharmacy technicians and pharmacies
- setting the standards that pharmacy professionals have to meet throughout their careers
- investigating concerns that pharmacy professionals are not meeting our standards, and taking action to restrict their ability to practise when this is necessary to protect patients and the public
- setting standards for registered pharmacies which require them to provide a safe and effective service to patients
- inspecting registered pharmacies to check if they are meeting our standards

We are committed to protecting, promoting and improving the health and safety of people who use pharmacy services in England, Scotland and Wales. An important part of that role is dealing with the small number of pharmacists and pharmacy technicians who fall short of the standards that the public can reasonably expect from healthcare professionals.



# 1. Introduction

## What this guidance is about

- 1.1 This guidance tells you about the investigating committee (IC) and its meetings. It sets out how decisions are made and the outcomes or actions an IC can decide on. It also gives guidance for an IC to use when deciding what outcome is appropriate in any given case and, in particular, how to decide which cases to refer to a fitness to practise committee (FtPC).
- 1.2 This guidance is in two parts:  
Part a: The investigating committee  
Part b: Guidance on outcome

## Who this guidance is for

- 1.3 This guidance is aimed at anyone who is involved in an IC meeting, has raised a concern about a registrant, or has had a concern about them referred to an IC meeting. There is more information about the process on our website at [\*\*www.pharmacyregulation.org/raising-concerns\*\*](http://www.pharmacyregulation.org/raising-concerns)
- 1.4 This includes GPhC staff, IC members, and registrants and their representatives. It will also be useful to anyone who is interested in the fitness to practise process, including:
  - people thinking about raising a concern with the GPhC about a registrant
  - patients and their representatives
  - defence organisations
  - other regulatory bodies, including the Professional Standards Authority (PSA), and
  - the courts
- 1.5 We will regularly review this guidance to:
  - take account of changes to legislation and case law
  - make sure it is consistent with other associated guidance documents
  - make sure it stays ‘fit for purpose’ and accessible to all stakeholders

## Equality and diversity

- 1.6 The GPhC is committed to promoting equality, diversity and inclusion when it does its work. We value diversity and individuality in our staff, our associates (including members of statutory committees), the profession and our council. Our aim is to make sure that our processes are fair, objective, transparent and free from discrimination, and that all stakeholders receive a high level of service. We keep to the principles set out in the Equality Act 2010 and have developed an **equality, diversity and inclusion scheme**
- 1.7 All GPhC staff are expected to demonstrate our values at all times during the fitness to practise process. The GPhC will act in accordance with the rights set out in the European Convention on Human Rights (ECHR) as incorporated into domestic law by the Human Rights Act 1998.



## Part a: The investigating committee

This part tells you about IC meetings, the role of the IC, how it fits into the fitness to practise decision-making process and how it reaches a decision on outcome.

## 2. Investigating committee meetings

2.1 An IC meeting is just one part of a process that starts when a concern has been received and investigated by the GPhC<sup>1</sup>. This process can end at different stages:

- after the investigation
- at an IC meeting
- at a fitness to practise committee hearing<sup>2</sup>

### The guidance used at each stage of the process



2.2 Decision-making guidance is used at each stage to decide what action to take. The guidance is based on the law and established procedures. It also includes specific guidance for decision-making, including criteria and thresholds:


- **Threshold criteria** are used at the investigation stage to decide whether to refer a case to the IC.
- **This guidance** covers IC meetings, the decision-making process and the outcomes of IC meetings.
- **Good decision-making: Fitness to practise hearings and sanctions guidance** covers fitness to practise hearings and the decisions made by an FtPC during a hearing.

2.3 The IC should be aware of all the guidance listed above.

<sup>1</sup> Those allegations that are within the GPhC's jurisdiction

<sup>2</sup> Some cases are referred directly by the registrar – Article 52(2)(b) and Article 54 (1)(a) of the Pharmacy Order 2010



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- 2.4 It must take into account this guidance when making a decision on outcome<sup>3</sup>. This guidance is not intended to interfere with the committee's decision-making discretion but should help an IC to decide on whatever outcome it considers is appropriate in individual cases. If the IC departs from this guidance it should make this clear in its reasons.

## About the investigating committee

- 2.5 Once an investigation has taken place, and if an allegation meets the threshold criteria, it is usually referred to an IC meeting. The IC operates, and makes decisions, independently of the GPhC. It is accountable<sup>4</sup> for the decisions it makes and must give reasons for its decisions. The registrar receives, investigates and refers the case to the IC. The registrar is the most senior employee of the GPhC and has responsibility on behalf of the GPhC for the investigation of cases.
- 2.6 The IC meets to consider allegations that are referred to it. It meets in private<sup>5</sup> and all papers and discussions remain confidential. This means that the person raising the concern, the registrant and GPhC investigations staff do not attend the meetings.
- 2.7 The IC does not hear oral evidence<sup>6</sup> from registrants or witnesses. However, the registrant concerned will be invited to provide 'written representations' on the allegation, and on any recommendations the registrar makes for dealing with the case<sup>7</sup>.
- 2.8 An IC meeting usually includes four people (a chair or deputy chair, two registrant members and a lay member). There must be at least three<sup>8</sup> members of the committee at an IC meeting before it can reach a decision, including at least one professional and one lay person.
- 2.9 The chair, registrant and lay members of the IC should work within the framework set out in this guidance. They are expected to behave in a fair and balanced way when reaching a decision. They are all equally responsible for the decision-making process and for the content of the IC's determination (its formal, written decision).
- 2.10 Other people may also be at the meeting, including the IC secretary, a legal adviser and a clinical adviser. In some cases the committee may ask for advice from a specialist adviser<sup>9</sup>. All IC attendees must respect the confidential and sensitive nature of the information received. **You can see the present members of the committee on our website**

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<sup>3</sup> Rule 9 (3) (a) (ii) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>4</sup> Investigating committee decisions may be challenged through a judicial review – for example, if the IC has failed to apply the appropriate test to its decision-making or has provided inadequate reasons to explain its decision. Decisions are scrutinised from time to time by the Professional Standards Authority (PSA).

<sup>5</sup> Rule 9 (1) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>6</sup> Rule 9 (2) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>7</sup> Rule 7(2) (f) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>8</sup> Rule 18 – The General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010

<sup>9</sup> Rule 23 – The General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010

## The role of the IC secretary

- 2.11 The IC secretary<sup>10</sup> is responsible for the administrative arrangements of the committee<sup>11</sup>. The secretary plays an important role in the work of the IC and helps make sure this guidance is followed. The secretary attends all IC meetings. They do not take part in decision-making, or discussion, and are not entitled to vote<sup>12</sup>. The secretary must keep a record, or make sure a record is kept, of all decisions made by the IC and the reasons for them<sup>13</sup>.
- 2.12 The IC secretary must, in consultation with the IC chair, identify any legal, clinical and specialist advisers who will attend a particular IC meeting<sup>14</sup>.

## The role of the clinical adviser

- 2.13 The role of the clinical adviser<sup>15</sup> is to advise the IC on any issues within their area of medical expertise, and to intervene if there is a possibility of a mistake being made. The clinical adviser should answer questions the IC may have about medical conditions or health-related matters that apply to the case.
- 2.14 The clinical adviser should not make a diagnosis, dispute the diagnosis of a medical practitioner who has examined the registrant, nor give an opinion about the registrant's fitness to practise<sup>16</sup>. The clinical adviser should explain only the medical evidence available – answering specific medical questions and giving advice about the nature, consequences and natural progress of the medical condition disclosed by the expert reports or medical records. They must not take part in the decision-making of the IC.
- 2.15 A clinical adviser must be present at any meeting of the IC if it is to consider the health of the registrant who is the subject of the case. The adviser may also be present at any other IC meeting if health-related issues are to be considered.
- 2.16 If an IC does not accept advice given by the clinical adviser, the IC chair must give reasons for this and these must be recorded formally<sup>17</sup>.

## The role of the legal adviser

- 2.17 The role of the legal adviser<sup>18</sup> is to advise the IC on questions of law, and to intervene if there is a possibility of an error of law being made. They must also make sure that IC meetings – and

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<sup>10</sup> The IC secretary is an employee of the GPhC

<sup>11</sup> Rule 17 (4) – The General Pharmaceutical Council (Statutory Committees and their Advisers Rules) Order of Council 2010

<sup>12</sup> Rule 17 (7) – The General Pharmaceutical Council (Statutory Committees and their Advisers Rules) Order of Council 2010


<sup>13</sup> Rule 17 (6) – The General Pharmaceutical Council (Statutory Committees and their Advisers Rules) Order of Council 2010

<sup>14</sup> Rule 17 (5) – The General Pharmaceutical Council (Statutory Committees and their Advisers Rules) Order of Council 2010

<sup>15</sup> Rule 22 – The General Pharmaceutical Council (Statutory Committees and their Advisers Rules) Order of Council 2010

<sup>16</sup> Sandra Watson v General Medical Council [2005] EWHC 1896 (Admin)

<sup>17</sup> Rule 26 – The General Pharmaceutical Council (Statutory Committees and their Advisers Rules) Order of Council 2010



the proceedings which are followed by the IC – are fair, proper and in line with the legal framework. The legal adviser must tell the committee when this may not be the case.

- 2.18 A legal adviser may be present at any meeting if the IC secretary asks for this, after consulting the chair. However, because of the importance of the role, we believe that a legal adviser should be present at all IC meetings as this will support good decision-making.
- 2.19 The legal adviser must not take part in the decision-making of the IC. If the chair asks, they can advise the IC on the structure and format of the reasons for a decision by that IC.
- 2.20 If an IC does not accept advice given by the legal adviser, the IC chair must give reasons for this and these must be recorded formally<sup>19</sup>.

## What an investigating committee can do

- 2.21 The IC must make decisions about allegations that are referred to it, and must decide whether they ought to be considered by an FtPC<sup>20</sup>. The IC has a range of outcomes it can decide on, depending upon its assessment of the evidence. Unless the registrant has asked for the case to be referred to an FtPC<sup>21</sup>, the available outcomes include:
- take no action
  - give advice to the registrant (or to another person or body involved in the allegations)
  - issue a warning
  - agree undertakings with the registrant, if the registrant admits their fitness to practise is impaired
  - refer to an FtPC
- 2.22 If the IC decides to refer an allegation to an FtPC, and considers that case management directions<sup>22</sup> should be issued or that an interim order<sup>23</sup> should be made, it must tell the FtPC. An interim order can only be imposed if it is necessary to protect the public or is otherwise in the public interest, or in the interests of the registrant.
- 2.23 The IC can also:
- adjourn its meeting until it has more information
  - ask for further investigation
  - require a registrant to have a medical examination

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<sup>18</sup> Rule 21 – The General Pharmaceutical Council (Statutory Committees and their Advisers Rules) Order of Council 2010

<sup>19</sup> Rule 26 – The General Pharmaceutical Council (Statutory Committees and their Advisers Rules) Order of Council 2010

<sup>20</sup> Article 53 – The Pharmacy Order 2010

<sup>21</sup> Article 53 (3) – The Pharmacy Order 2010

<sup>22</sup> Case management directions put obligations on the parties involved concerning the disclosure of information and evidence

<sup>23</sup> Rule 9 (3) (b) (i) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010 imposes restrictions on registration while allegations about their conduct are resolved

- require the registrant to have a language assessment<sup>24</sup>
- get advice from a legal, clinical or other specialist adviser
- consider rescission (cancelling a referral to an FtPC)
- tell the registrar that the GPhC should consider bringing criminal proceedings against a registrant

### Adjourning the meeting and asking for further investigation

- 2.24 An IC may adjourn a meeting in particular circumstances. It may adjourn a meeting until the registrant has had a medical examination and a report on this has been prepared. It may also, if it needs more information, adjourn until it receives the information it has asked for, or until it receives any comments it has asked for from the person that raised the concern.
- 2.25 It may also ask for further investigations to take place. If further investigations<sup>25</sup> are needed, the IC should adjourn the case to allow these to be carried out. It should make clear its reasons for asking for further investigation, and the specific issues about which further investigation is needed.
- 2.26 If the registrar decides that the further investigation requested is not necessary, or should not be undertaken, the allegations will be returned to the IC. This will include a clear explanation of the registrar's decision.

### Requiring a medical examination

- 2.27 When dealing with a health allegation, the IC may<sup>26</sup>:
- require the registrant to agree to be medically examined by a registered medical practitioner chosen by the council, and
  - if it receives information that the registrant has refused to cooperate fully with a medical examination, refer that refusal to the FtPC as a separate allegation of misconduct

### Requiring a language assessment

- 2.28 In relation to a knowledge of English allegation the IC has the power to require the registrant to have a language assessment<sup>27</sup>. It may require the registrant to:
- have an examination or other assessment of their knowledge of English, and
  - provide the registrar with evidence of the result of that examination or assessment


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<sup>24</sup> Rule 9 (5A) (a) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>25</sup> Rule 9 (3) (b) (i) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>26</sup> Rule 9 (5) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>27</sup> Rule 9 (5A) (a) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

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- 2.29 The IC may require a registrant to have an assessment of their language if it believes that they do not have the knowledge of English needed for safe and effective practice<sup>28</sup>. If the IC is considering cases of this type it should take account of the published guidance<sup>29</sup>.
- 2.30 If the IC receives information that the person concerned has failed to comply with an assessment request, it may<sup>30</sup>:
- refer the 'knowledge of English' allegation to the fitness to practise committee, and treat the failure to comply with the direction as a separate allegation of misconduct and refer that allegation to the committee, or
  - decide not to refer the 'knowledge of English' allegation to the fitness to practise committee, but treat the failure to comply with the direction as a separate allegation of misconduct and refer that allegation to the committee

## Considering rescission

- 2.31 When an allegation has been referred to the FtPC, but a hearing has not yet taken place, the council's representative in the proceedings may consider that the hearing should not be held. If so, they must give the IC their opinion and the reasons for it<sup>31</sup>.
- 2.32 The council's representative must consider that the hearing should no longer be held and that the allegations should be reconsidered by the IC. This may be based on, for example:
- the evidence available
  - other information the council has, or
  - new information about the case that has come to light after the case has been referred to an FtPC
- 2.33 Rescission means that the referral of the case to an FtPC is cancelled ('rescinded'). It is rare, and the council's representative will only give the IC their opinion that the hearing should not be held after carefully considering the evidence.
- 2.34 The IC must consider whether the referral to the FtPC is to be rescinded. To do so it must consider the 'real prospect' test when reaching a decision (please see part b for more on what we mean by impairment and the real prospect test). The IC must not rescind a referral without first giving the person raising the concern a reasonable opportunity to comment on the proposed rescission.

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<sup>28</sup>Article 3 (1) The Pharmacy Order 2010

<sup>29</sup>[www.pharmacyregulation.org/registration/new-language-and-revised-indemnity-requirements](http://www.pharmacyregulation.org/registration/new-language-and-revised-indemnity-requirements)

<sup>30</sup>Rule 9 (5A) (b) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>31</sup>Rule 38 of the General Pharmaceutical Council's (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

2.35 The IC may decide whether to rescind all of, or part of, the case against the registrant. Or the IC may decide that the hearing should not go ahead and that advice, a warning, undertakings or no further action is a more appropriate outcome. It must give reasons for its decision.

## Bringing a prosecution

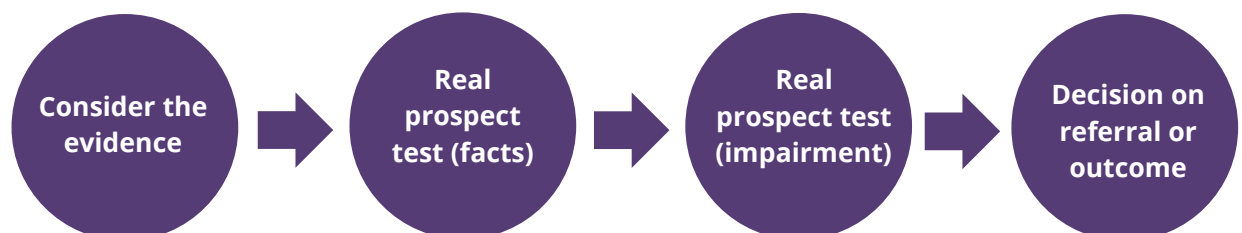
2.36 If the IC believes that the GPhC should consider using its powers<sup>32</sup> to bring criminal proceedings it must tell the registrar and give reasons for its decision.

## Reaching a decision

2.37 Making sure that an IC decides on the appropriate outcome is important for patient safety and also public confidence both in relation to the pharmacy professions generally but also in relation to individual pharmacy professionals. The IC may consider allegations that relate to a registrant's personal or professional life – as concerns about either can damage the trust and confidence in pharmacy or present a risk to patients. The IC is not restricted to considering just the draft allegations recommended by the registrar and must consider the entire case.


2.38 Before reaching a decision on the appropriate outcome the IC must consider the evidence, the 'real prospect' test and whether the allegation ought to be considered by an FtPC<sup>33</sup>. The IC will:

- consider the evidence and decide if there is enough information on which to reach a decision
- decide whether there is a real prospect of the facts of an allegation being proven
- decide whether the facts, if proven, would mean that there is a real prospect that the FtPC will make a finding that the registrant's fitness to practise is impaired
- decide on whether the matter ought to be considered by an FtPC or whether another outcome is more appropriate



<sup>32</sup> Article 53 (4) – The Pharmacy Order 2010

<sup>33</sup> Article 53 (1) – The Pharmacy Order 2010

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- 2.39 In reaching its decision the IC should recognise that it is conducting a limited, paper-based exercise on the information before it, and should not make findings of fact. The IC must decide whether any allegations – and if so, which allegations – should be considered by an FtPC.
- 2.40 The IC must clearly identify which allegations, if any, are supported by evidence and which, if any, are not. It should clearly say what conclusions it has reached, why it has reached them and how it has reached them.
- 2.41 It can also decide that an allegation should not be referred to an FtPC. If an allegation is not referred, the IC can decide on a number of outcomes (please see part b for details of the available outcomes).

## Recording the decision

- 2.42 The IC must give a formal statement setting out its decision and its reasons for that decision. The formal statement should be clear and allow anyone to easily understand the decision. The reasons must leave the reader with a clear understanding of:
- the factors considered
  - the decision made
  - why the decision was made
  - how the decision was reached (including the 'real prospect' test and whether it ought to be considered)
  - why any advice or material was rejected, if this happened
  - why the IC chose not to follow the registrar's recommendation, if this happened, and
  - why it chose not to follow this guidance, if this happened
- 2.43 Reasons do not need to be elaborate or lengthy, but they should tell everyone involved in broad terms why the IC reached its decision<sup>34</sup>. Repeating the real prospect test or stating the conclusion does not amount to giving reasons. When giving advice, the IC should clearly say what that advice is. Decisions are shared with the person raising the concern, the registrant and, in some cases, the registrant's employer.
- 2.44 If the IC is recommending that further allegations should be considered by the council, then the IC should make clear what these allegations are and the reasons for considering them.

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<sup>34</sup> Lutton v GDC [2011]CSOH 96



## Part b: Guidance on outcome

This part gives guidance on the approach that the IC should take when deciding whether to refer a matter to the FtPC. In particular, it provides guidance on the application of the real prospect test and whether the IC ought to refer an allegation to an FtPC.

It also includes guidance on the possible outcomes that the IC can decide on, what they mean and what an IC should consider before deciding on a particular outcome.

IC members must use their own judgement when considering the information available and deciding on the appropriate and proportionate outcome. By 'proportionate' we mean that an outcome should be no more serious than it needs to be to achieve its aims<sup>35</sup>.

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<sup>35</sup> Chaudhury v General Medical Council [2002] UKPC 41





## 3. The real prospect test

- 3.1 When deciding on the outcome the IC should first decide whether it considers that there is a real prospect of an allegation being proven before an FtPC. This is the 'real prospect' test.
- 3.2 The real prospect test is in two parts, and applies to:
  - a: the factual allegations themselves, and
  - b: the question of whether the facts, if proven, could demonstrate that the registrant's fitness to practise is impaired
- 3.3 A 'real prospect' means that something must be a genuine possibility, not one that is merely remote or fanciful<sup>36</sup>. The IC should consider all the information before it. It is entitled to assess the relevance and weight of the evidence, but should not try to resolve significant conflicts of – or disputes about – evidence. That is a matter for an FtPC.
- 3.4 The IC should not try to consider what the FtPC will, or might, decide. The IC should only decide whether or not there is a real prospect of a matter being established before an FtPC. It should consider whether there is a real prospect that the FtPC will make a finding that the registrant's fitness to practise is currently impaired.
- 3.5 It is the responsibility of an FtPC to decide whether any facts are proved, and, if so, whether the registrant is currently impaired.

### Considering the factual allegations (part a of the test)

- 3.6 The IC must first assess the evidence before it and decide whether there is a real prospect of the alleged facts being established. Only then can it consider the second part of the test. When considering the real prospect test, the IC should bear in mind that it is for the council to prove, on the balance of probabilities, the truth of the alleged facts at an FtPC hearing.
- 3.7 A case may consist of more than one allegation. If so, the IC should consider the first part of the real prospect test for each allegation separately.
- 3.8 If the IC decides that there is a real prospect of proving the alleged facts, it should then go on to consider part b of the test.

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<sup>36</sup> Swain v Hillman (2001) 1 All ER 91

## Impairment (part b of the test)

- 3.9 The second part of the test is that the IC should ask itself whether there is a real prospect that the FtPC will make a finding that the registrant's fitness to practise is impaired<sup>37</sup>. This does not mean the IC must decide whether the registrant's fitness to practise is currently impaired, as this is a decision for an FtPC.
- 3.10 When considering impairment the FtPC looks at current impairment, not whether the registrant was impaired at the time the incident occurred. However, to decide on a registrant's fitness to practise, the FtPC will have to take account of the way the person concerned has acted or failed to act in the past.
- 3.11 If the IC concludes that there is no real prospect of the FtPC deciding that the registrant's fitness to practise is currently impaired, but decides that there is a real prospect of the alleged facts being proven, then it should consider whether advice or warning is appropriate in the circumstances of the case.

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<sup>37</sup> Rule 9 (7) (a) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010



## What we mean by ‘impairment’

A pharmacy professional is ‘fit to practise’ when they have the skills, knowledge, character, behaviour and health needed to work as a pharmacist or pharmacy technician safely and effectively.

In practical terms, this means maintaining appropriate standards of competence, demonstrating good character, and also adhering to the principles of good practice set out in our various standards, guidance and advice.

Fitness to practise can be impaired for a number of reasons including misconduct, lack of competence, not having the necessary knowledge of English, ill-health or a conviction for a criminal offence<sup>38</sup> (this is not a full list).

The fitness to practise committee may consider allegations that occur in either personal or professional life. They must decide whether the registrant’s fitness to practise is currently impaired, not whether it was at the time the incident occurred. The committee will keep in mind the overarching objectives of the GPhC when deciding whether a pharmacy professional’s fitness to practise is impaired<sup>39</sup>. The committee must take into account relevant factors, which include whether or not the conduct or behaviour<sup>40</sup>:

- presents an actual or potential risk to patients or to the public
- has brought, or might bring, the profession of pharmacy into disrepute
- has breached one of the fundamental principles of the profession of pharmacy
- shows that the integrity of the registrant can no longer be relied upon

The committee should also consider whether:

- the conduct which led to the complaint is able to be addressed
- the conduct which led to the complaint has been addressed
- the conduct which led to the complaint is likely to be repeated
- a finding of impairment is needed to declare and uphold proper standards of behaviour and/or maintain public confidence in the profession

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<sup>38</sup> Article 51 – The Pharmacy Order 2010

<sup>39</sup> Schedule 1 (5) (8) - The Pharmacy Order 2010

<sup>40</sup> Rule 5 – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

In deciding whether a person's fitness to practise is impaired because they do not have the necessary knowledge of English, the fitness to practise committee may take into account, among other things<sup>41</sup>:

- whether the person concerned has not complied with a direction, given under the rules, to have an examination or other assessment of their knowledge of English, or
- whether the person concerned has not provided the registrar with evidence of the result of that examination or assessment

The decision on impairment is a matter for the judgement of the committee. The committee has to make its own decision about impairment even when it is admitted by the registrant. It should make clear what factors it has taken into account when deciding on impairment.

## Key factors to consider

3.12 In deciding whether the real prospect test is met, the IC should consider:

- all documents placed before it by the registrar<sup>42</sup>
- the circumstances of the allegation
- the registrant's behaviour, attitude and actions
- the standards<sup>43</sup>
- the registrar's recommendation<sup>44</sup> (the IC is not bound by this)
- any written representations received from the registrant concerned
- any representations offered by a relevant patient or the person raising the concern
- any relevant fitness to practise history
- any guidance issued by the GPhC to the statutory committees, including this guidance
- any other guidance issued by the GPhC

3.13 Aggravating and mitigating factors may also be relevant to the decision on part b of the real prospect test. However, generally they are of more relevance when considering whether the IC ought to refer the matter to the FtPC or decide on some other outcome.

<sup>41</sup> Rule 24 (11a) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>42</sup> Rule 9 (3) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>43</sup> Article 48 (1) – The Pharmacy Order 2010

<sup>44</sup> Rule 9 (3)(a)(i) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010



## 4. Deciding on the outcome

- 4.1 If the IC decides that the real prospect test has not been met then it must not refer the allegation to an FtPC<sup>45</sup>. If it decides that there is a real prospect of the alleged facts being proven, but there is no real prospect of a finding of current impairment, then it should go on to consider whether advice or a warning is appropriate in the circumstances of the case.
- 4.2 However, if the IC decides that there is a real prospect of the alleged facts being proven and a real prospect that such facts, if proven, will lead the FtPC to reach a decision that the registrant's fitness to practise is currently impaired it should consider whether it ought to refer the allegation to the FtPC or whether some other outcome is appropriate<sup>46</sup>. Usually the IC will refer such an allegation.
- 4.3 In deciding whether to refer to an FtPC, the IC must consider whether referral is in the public interest and whether such a referral is a proportionate outcome. It should consider relevant mitigating and aggravating factors. It should also bear in mind those particular types of allegation for which further guidance has been provided to the FtPC in the GPhC hearings and sanctions guidance.
- 4.4 If the specific circumstances of a case mean the IC concludes that it ought not to be considered by the FtPC, then the IC should consider alternative outcomes. It should explain the reasoning behind its decision and why an alternative outcome is more appropriate.
- 4.5 If the IC is unsure about whether the real prospect test is met, or whether it ought to refer, it should favour referring the allegation(s) to the FtPC.

### Key factors to consider

- 4.6 In deciding whether the allegation ought to be referred to the FtPC or whether some other outcome is more appropriate, the IC should consider:
  - the public interest
  - any aggravating or mitigating factors
  - the circumstances of the allegation and whether there is an ongoing risk to members of the public
  - the registrant's behaviour, attitude and actions
  - all evidence placed before it by the registrar<sup>47</sup>

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<sup>45</sup> Rule 9 (7) (a) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>46</sup> Article 53 (1) - The Pharmacy Order 2010

<sup>47</sup> Rule 9 (3) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

- the standards<sup>48</sup>
- the registrar's recommendation<sup>49</sup> (the IC is not bound by this)
- any written representations received from the registrant concerned
- any representations offered by a relevant patient or the person raising the concern
- any relevant fitness to practise history
- whether a lesser outcome would be appropriate
- the section *More guidance on particular areas* in *Good decision-making: Fitness to practise hearings and sanctions guidance*
- any other guidance issued by the GPhC

## The public interest

4.7 In reaching a decision on outcome, the IC should give appropriate weight to the wider public interest<sup>50</sup>. Public interest considerations include:

- protecting the public
- maintaining public confidence in the profession
- maintaining proper standards of behaviour

4.8 In reaching a decision on whether to issue a warning or give advice, if the IC decides that it need not refer an allegation to the FtPC, the committee should also consider the GPhC's overarching objectives.<sup>51</sup>

## Aggravating and mitigating factors

4.9 Aggravating factors are the circumstances of a case that can make what happened more serious. Aggravating factors could, for example, include the level of harm caused or an apparent lack of insight shown by the registrant. Mitigating factors are the opposite. They are factors that make what happened less serious. Relevant aggravating and mitigating factors can be considered by an IC when assessing the real prospect test or when deciding on an outcome (which includes whether the allegation ought to be referred to an FtPC).

4.10 Although both mitigating and aggravating factors are important elements to consider, there are limits to how much the IC can consider them. This is because, unlike the FtPC, the IC cannot test any evidence before it. Therefore the IC should not usually consider any purely


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<sup>48</sup> Article 48 (1) – The Pharmacy Order 2010

<sup>49</sup> Rule 9 (3) (a) (i) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>50</sup> Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council [2011] EWHC 927 (Admin)

<sup>51</sup> Article 53 (2a) - The Pharmacy Order 2010



personal mitigation – for example, character references or professional testimonials. This is evidence that the FtPC will usually only consider once it has concluded that a registrant's fitness to practise is impaired.

- 4.11 However, as part of their decision-making, the IC can take account of any features of the case that would be considered by an FtPC as either aggravating or mitigating ones. These may include expressions of regret or apology, or evidence of remediation undertaken by the registrant.

## The circumstances

- 4.12 The circumstances in which the alleged incident occurred may be relevant to the decision on outcome. The IC should consider the implications or risks to patient safety as a result of the incident. It may also want to consider, for example:

- whether the incident was a 'one-off' one or repeated
- the setting in which the incident took place
- if there is a relevant history of fitness to practise concerns

- 4.13 The IC should consider if the incident involved:

- an abuse or breach of trust
- an abuse by the registrant of their professional position
- any financial gain on the part of the registrant

- 4.14 They should also consider any previous fitness to practise findings involving the registrant that are relevant to the case. Other factors might include if the registrant was under the influence of alcohol or drugs, or if there was harm or a risk of harm to a patient or another person present.

## Behaviour and attitude

- 4.15 Evidence of the registrant's behaviour and attitude before, during and after the incident in question and before and during proceedings, is also important – for example, co-operation with the investigation or being candid with patients and the public when things go wrong. The IC may want to consider whether the registrant has:
- shown any remorse or set out to put things right – including by being candid and offering an apology
  - demonstrated insight into the concerns in question and actions taken to avoid repetition of them
  - undertaken further training

## The registrant's actions

4.16 The registrant's actions are important elements for the committee to consider when deciding on an outcome. Factors the committee may want to consider include whether the:

- conduct was pre-meditated or not
- registrant attempted to cover up wrongdoing
- conduct was sustained or repeated over a period of time
- registrant took advantage of a vulnerable person





## 5. Available outcomes

- 5.1 The IC has the power to decide on a range of outcomes for any given case. The following table shows the outcomes that are available, and the circumstances the IC should consider when deciding on the most appropriate and proportionate outcome.
- 5.2 An IC may decide on any of the outcomes after it has considered the real prospect test. The following table includes details of what outcomes can be displayed on the online register. **Our publication and disclosure policy** shows how long they are displayed on the register for.

### Take no action

The impact on registration	Circumstances when this may apply
No action will be taken, the case will be closed and no details will be recorded on the register.	<p>The IC is satisfied there is no real prospect of proving the factual allegations or no real prospect of the registrant's fitness to practise being found to be impaired, and no other outcome is needed.</p> <p>There is no advice that should be offered to the registrant.</p>

## Advice

The impact on registration	Circumstances when this may apply
<p>The IC gives advice to the registrant about any issue it considers necessary, to make sure they address any specific areas so that they meet the relevant professional standards. It will not be recorded on the register. There are no restrictions on registration.</p> <p>The IC can also give advice to any other person involved in the investigation.</p>	<p>The IC is satisfied there is a real prospect of proving the factual allegations but the allegations do not need to be considered by an FtPC.</p> <p>Although there is no impairment of fitness to practise, a letter of advice about a registrant's future conduct or performance may be appropriate.</p> <p>The IC should consider whether specific advice can deal with the issue. Advice may be appropriate if there are no aggravating factors, or if the registrant has demonstrated insight and taken action to remedy the wrongdoing themselves. Advice can be offered to a registrant about their future conduct.</p> <p>If the IC decides advice is appropriate it should clearly set out what that advice should be. It should form part of its reasons for the decision, and be included in the letter to the registrant. Any advice should also be relevant to the allegations that are being considered by the IC.</p> <p>An advice letter can be sent to any other person involved in the investigation – for example, a superintendent pharmacist.</p> <p>When considering whether to issue a letter of advice to any other person involved in the investigation, such as the superintendent pharmacist, the IC should carefully consider the recipient and the potential benefits of the advice, and make sure it is tailored to the circumstances of the case it is considering.</p> <p>When deciding on whether a warning or advice is appropriate the IC must have regard to the over-arching objective of the council.</p>



## Warning

The impact on registration	Circumstances when this may apply
<p>The IC gives a warning to the registrant. There are no restrictions on the registrant's ability to practise. The fact of this warning will be recorded on the register.</p> <p>A registrant has the right to ask to be referred to an FtPC instead of having a warning imposed by the IC. If a request for referral is made, the IC must refer<sup>52</sup>.</p>	<p>The IC is satisfied there is a real prospect of proving the factual allegations, but the allegations do not need to be considered by an FtPC.</p> <p>The IC is satisfied that the behaviour cannot be addressed solely by advice, but that more serious action is needed. 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 acceptable standards.</p> <p>A warning will not be appropriate if there is a risk to the public or patients which means that the registrant's registration must be restricted. Generally, warnings will not be appropriate if the allegation relates solely or mainly to the registrant's mental or physical health.</p>

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<sup>52</sup> Article 53 (3) – The Pharmacy Order 2010

## Undertakings

The impact on registration	Circumstances when this may apply
<p>Undertakings<sup>53</sup> may include restrictions on practice or behaviour or a commitment to undergo supervision or retraining.</p> <p>Undertakings allow a registrant to continue to practise, while putting right any shortcomings in their practice and dealing with any health issues.</p> <p>Undertakings can be set for up to two years. The fact the undertaking was issued will be recorded on the register.</p>	<p>The IC is satisfied there is a real prospect of proving the factual allegations, impairment is admitted or could be found at an FtPC, but the allegations do not need to be considered by an FtPC.</p> <p>The IC has the power, if the registrant admits that their fitness to practise is impaired, to agree undertakings<sup>54</sup>.</p> <p>The IC is satisfied that the registrant will comply with the undertakings – for example, because they have genuine insight into their behaviour and the potential for remediation. Undertakings may be appropriate if there are identifiable areas of the registrant's practice which are in need of review, assessment or retraining. They may also be appropriate if there is evidence that the registrant has sufficient insight into any health problems and is prepared to agree to keep to undertakings relating to medical supervision and treatment.</p> <p>They will not be appropriate if patients will be put at risk, either directly or indirectly, as a result of continued registration with undertakings.</p> <p>Undertakings, and the reasons for them, should be made clear so that when there is a review the IC (and the GPhC) is able to evaluate whether the aims have been achieved. If they need to be in place for longer than two years, to ensure public protection, the IC should consider referring the case to an FtPC.</p>

<sup>53</sup> Undertakings are taken from a published 'undertakings bank':

[www.pharmacyregulation.org/sites/default/files/good\\_decision\\_making\\_undertakings\\_bank\\_january\\_2016.pdf](http://www.pharmacyregulation.org/sites/default/files/good_decision_making_undertakings_bank_january_2016.pdf)

<sup>54</sup> Rule 10 (1) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

## Referral to an FtPC

The impact on registration	Circumstances when this may apply
There is no immediate restriction on a registrant's registration and the case will be considered by an FtPC which has a range of outcomes at its disposal <sup>55</sup> .	<p>The IC is satisfied that both parts of the real prospect test are met and the allegation(s) ought to be considered by an FtPC.</p> <p>When deciding on referral, the IC should be aware of the guidance provided to the FtPC. The IC should consider whether an interim order is appropriate in the circumstances of the case (further information about interim orders can be found in paragraph 2.22)</p>

## Administrative procedures

- 5.3 If the registrar makes a recommendation, in all cases the registrant will be invited to make a written representation about this to the IC within 21 days, and before the IC holds its meeting. If the IC has decided on an outcome that includes an undertaking or warnings, there are some important procedures to follow to ensure a decision made by the IC is formal and recorded. These are given below.

### Issuing a warning

- 5.4 If the IC decides that a warning is the appropriate outcome, and it has been recommended by the registrar, there is no need to adjourn the meeting to invite representations from the registrant about the warning.
- 5.5 If no recommendation has been made by the registrar – or if the IC disagrees with the recommendation made, but decides a warning is the appropriate outcome – the IC must adjourn the meeting to allow the registrant to make written representations specifically on that warning<sup>56</sup>.
- 5.6 When the case comes back to the IC it must take into account any written representations made – and this guidance – when deciding whether or not to issue the warning. The IC can decide that a warning can be imposed without the consent of the registrant.

<sup>55</sup> See *Good decision-making: Fitness to practise hearings and sanctions guidance*

<sup>56</sup> No later than 21 days after the date of the issue of the letter inviting submissions

## Agreeing undertakings

- 5.7 Once the IC reaches a decision to offer undertakings, the IC secretary will write to the registrant within 10 days. They will send them a copy of the undertakings and the reasons for offering them. If the registrant agrees to accept the undertakings, they must sign the undertakings form and send it back to the IC secretary within 14 days. If they do not accept or comply with the undertakings then the case may be referred to a fitness to practise committee.
- 5.8 It should be made clear that the registrant must meet the cost of complying with their undertakings.
- 5.9 Undertakings may be reviewed by an IC before the end of the period they were originally set for. The information provided by the GPhC may show that:
- the registrant has complied with the undertakings and their health and performance has improved
  - they are in breach of their undertakings, or
  - the GPhC has concerns about the registrant's fitness to practise
- 5.10 If the IC receives information that undertakings have not been complied with, it may<sup>57</sup>:
- refer the original allegation to the FtPC, and treat the failure to comply with the undertakings as a separate allegation of misconduct and refer that allegation to the FtPC, or
  - decide not to refer the original allegation to the FtPC, but treat the failure to comply with the undertakings as a separate allegation of misconduct and refer that allegation to the FtPC
- 5.11 If the IC receives information that undertakings may no longer be appropriate, it may<sup>58</sup>:
- with the agreement of the registrant, vary those undertakings, or
  - decide that those undertakings no longer apply

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<sup>57</sup> Rule 10 (2) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010

<sup>58</sup> Rule 10 (3) – The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010









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