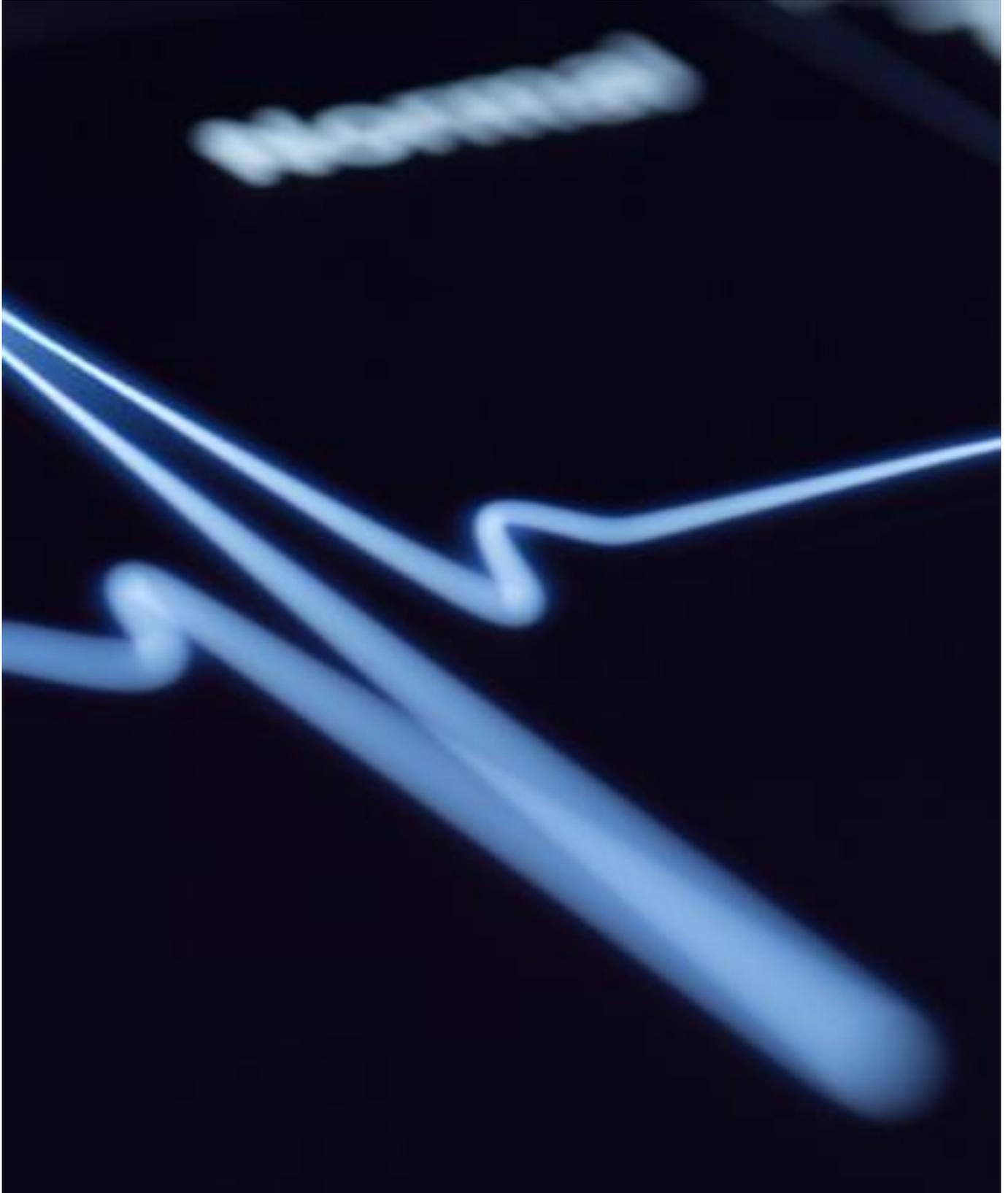


**A guide to GPhC Investigations
and fitness to practise
proceedings**



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Introduction

The team is 'uniquely placed to deal with the plethora of issues that arise during cases'.

Legal 500 UK, 2019, Professional Discipline

As a pharmacist, any complaint or concern which is raised by the General Pharmaceutical Council can be confusing and stressful, particularly because the outcome may have an impact on your ability to earn a living. It is therefore crucial that you take specialist legal advice at an early stage in order to put you in the best possible position to respond to the allegation and to help you to navigate your way through the various stages of the disciplinary process.

Charles Russell Speechlys is the UK's only law firm specialising in providing a full range of legal services to the community pharmacy sector. We have been representing pharmacists in GPhC and Royal Pharmaceutical Society (RPSGB) cases for over 50 years.

We have a dedicated team of solicitors who specialise in advising and representing people who are subject to fitness to practise proceedings. Our particular expertise in this area means that we are not only able to assist in relation to proceedings brought by the GPhC, but we are also able to advise regarding associated issues which may also be ongoing at the same time, such as corresponding fitness to practise steps being taken by NHS England; helping to protect your business as well as you.

This guide is intended as an overview of the GPhC's fitness to practise process, and we hope that it will be of use to any pharmacy professional who is concerned about fitness to practise proceedings, or who wants to know more about how the GPhC regulates. It deals with the most common questions that our clients ask us when they are facing an investigation. The figures in this guide are taken from the GPhC's Annual Report of 2018/2019.



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What is the GPhC's role?

The GPhC has 79,675 registrants

The GPhC is the body responsible for registering and regulating pharmacists, pharmacy technicians and pharmacy premises in Great Britain. As of 31 March 2019, 79,675 pharmacists and pharmacy technicians were registered with the GPhC.

Its main function is:

“to set and promote standards for the safe and effective practice of pharmacy by registrants at registered pharmacies”

From time to time, the GPhC may have concerns regarding whether a pharmacist or technician is practising safely and effectively. If it does, it may carry out a 'fitness to practise' investigation.

The GPhC may start a fitness to practise investigation because of issues identified during an inspection, or because a complaint has been made by someone else, such as a patient or another healthcare professional.

Many pharmacists will never have to face a fitness to practise investigation, but investigations by the GPhC are not uncommon and there has been a general upwards trend in the number of investigations in recent years. Between 2017/2018 and 2018/2019, the overall number of concerns raised with the GPhC increased by 9%, which followed a 23.5% increase the previous year. This is probably due to a greater awareness amongst the public of the role of the GPhC, combined with the ease with which the public can now raise concerns.

In 2018/2019, the GPhC received 2,674 fitness to practise concerns. Of the cases it closed that year, almost 95% of cases either resulted in no further action or a letter of advice.

In 2018/2019, the GPhC received 2,674 fitness to practise cases

The GPhC says that it aims to complete its investigation within six months from receipt of the complaint, although it may take longer depending on the seriousness and complexity of the case and in 2018/2019 there was a slight increase in the number of cases that had been open for more than 12 months.

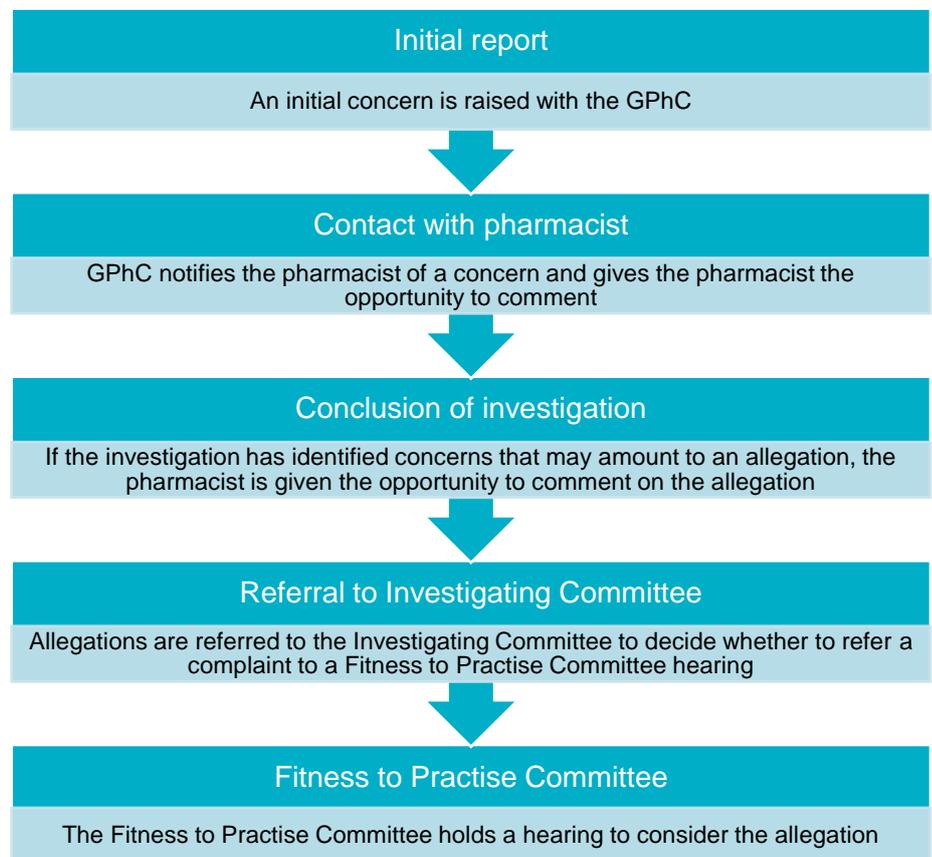
How does the GPhC investigate concerns?

Most concerns do not result in a Fitness to Practise Committee hearing

The GPhC may investigate a concern using its own inspectors, through its in-house case workers, or using external solicitors.

There are several stages to a fitness to practise investigation, and an investigation may conclude and be closed at any one of these stages – just because a concern has been raised does not mean that the concern will end up being considered at a Fitness to Practise Committee hearing.

We have set out the main stages of an investigation in the flow chart below and will then look at each stage in more detail.



Stage 1 – Raising Concerns

‘In 2017/2018 34% of concerns raised fell outside the GPhC’s role’

As well as its role in registering and regulating pharmacists, the GPhC must register and regulate pharmacy premises.

As part of its duty to regulate pharmacy premises, the GPhC conducts inspections of pharmacy premises using its team of inspectors, who are all registered pharmacists.

If the inspectors identify concerns whilst carrying out premises inspections, or as part of other routine duties, the inspectors may pass those concerns to the GPhC to investigate further.

Concerns may also be raised by members of the public, other pharmacists, or other healthcare professionals. Concerns can be communicated to the Council by the completion of the ‘raising concerns’ form on the Council’s website.

The GPhC will conduct an initial review of the concern to consider whether it should investigate further. For example, a concern may be raised which falls outside the scope of the GPhC’s role.

If the GPhC considers that the complaint is outside its remit, it will close its file without further action. In 2017/2018, 791 complaints were concluded for this reason. That was over a third (34%) of the total number of cases it closed that year. Figures for 2018/2019 are not available as the GPhC no longer reports the data in this way.

If the concern does raise matters which fall within the GPhC’s statutory functions, it will proceed to investigate the concern.

Stage 2 – Investigation

‘Care should be taken when corresponding with the case investigator’

The first you may hear of a GPhC investigation might be when you receive a letter from a GPhC case investigator informing you that an issue has been brought to their attention. That letter might not give any more information about the concern, and may simply state that the GPhC is investigating a concern and will write to you again when it has investigated further.

Any pharmacist who receives a letter from the GPhC will naturally be worried, but remember that many cases do not progress further than the initial investigation.

Sometimes the initial letter will state that you are not being invited to comment at that stage, but you may comment or provide documentation if you wish. You should seek legal advice before commenting or providing documentation at this stage, because you are unlikely to know the full picture, and anything you say at this early stage is likely to have an impact on the case as it progresses.

The GPhC’s investigation may be wide-ranging and take some time. The GPhC may obtain statements from the complainant and witnesses, obtain documents such as prescriptions, PMR data, standard operating procedures or pharmacy registers. Depending on your role in the pharmacy, the GPhC may ask you to provide those documents or they might ask someone else to provide them (for example the superintendent pharmacist).

As part of the investigation, the case investigator may also ask you to answer questions. This is usually done in correspondence. Again, you should seek legal advice before answering any questions. Whilst the case investigator may explain that pharmacists have a duty to co-operate with fitness to practise investigations, careful thought must be given to replies.

At this stage you will also need to consider whether steps should be taken to protect your business, especially if it is not owned by a limited company.

Stage 3 – Conclusion of Investigation

Around 95% of concerns raised with the GPhC were concluded with either no further action being taken or with the pharmacist receiving a letter of advice after the investigation stage

When the case investigator considers that they have completed their investigation, they will consider whether any of the concerns raised give rise to an allegation against the pharmacist.

An allegation may arise in many different circumstances, for example following a criminal conviction or caution, or a failure to comply with the Standards for pharmacy professionals.

At that stage, the case investigator will usually write to you and give you the opportunity to comment on the allegations arising out of the investigation and the evidence obtained by the GPhC.

Even though the GPhC may have taken many months to conclude its investigation, you will often be given only a short time to respond.

At this stage you will have to consider whether to respond and, if so, what you should say. Care must be taken with any response you give.

The GPhC will then consider the allegations and all of the evidence – including your response – and decide what action to take.

In 2018/2019, just over 28% of investigations concluded with the pharmacist receiving a letter of advice at this stage. This figure does not include those cases where the investigation team decide that no further action was required.

If the GPhC believes that an allegation is more serious, it may either refer the allegation directly to the Fitness to Practise Committee (usually for the most serious types of cases, or cases which arise out of a criminal conviction or caution) or they may refer the allegation to the Investigating Committee.

Stage 4 – The Investigating Committee

The Investigating Committee meets in private

The Investigating Committee is a screening committee. It cannot decide disputes of fact. Its role is to consider the allegations which have been made against the pharmacist and to decide whether they are sufficiently serious to be referred to the Fitness to Practise Committee for a hearing, or whether the allegations can be disposed of in another way, such as by giving a letter of advice, or a warning.

The Investigating Committee may decide, even at this stage, that no further action is required.

The Committee meets in private. Witnesses do not give evidence in person; it does not hear live evidence from any person but the Committee considers the allegations by reference to documents and statements. You will not be able to attend the meeting at which your case is considered. However, you will be given the opportunity to submit a written response to the allegations which have been made against you, and this response will be provided to the Committee in advance of the meeting, together with the GPhC's documents.

The Investigating Committee has a wide range of options for the disposal of cases, including:

- Direct further investigations
- Take no further action
- Provide a letter of advice
- Give a warning (usually only if the pharmacist consents)
- Accept undertakings
- Refer to the Fitness to Practise Committee for a hearing

2% of investigations by the GPhC conclude with either a letter of advice or warning at the Investigating Committee stage

In 2018/2019, of those complaints which are raised with the GPhC, 2% were concluded at the Investigating Committee Stage with either a letter of advice or a warning.

You will be notified of the Committee's decision in writing. It usually takes a week or two to receive the decision.

Stage 5 – The Fitness to Practise Committee

The Fitness to Practise Committee considers allegations at a hearing

In 2018/2019, around 3% of all concerns which were concluded in that year were considered by the Fitness to Practise Committee at a final hearing.

Sometimes the GPhC may decide that it is necessary for interim steps to be taken against the pharmacist's ability to practise before the final fitness to practise hearing. In these circumstances, the GPhC will make a formal application to the Fitness to Practise Committee for an interim order to be made. Typically, an interim order will involve a pharmacist being suspended from practice, or conditions being imposed on their registration until the final hearing has ended. If you receive a notification from the GPhC that they are going to apply for an interim order you need to take urgent legal advice as you may only receive a few days' notice before the application is heard.

Before the final hearing takes place, formal allegations and documentary evidence will be sent to you by the GPhC or its lawyers. If you are going to give evidence, you will have to send a written statement to the GPhC together with the statements of any other witness on whose evidence you intend to rely at the hearing. There are time limits and formalities that apply to these procedures. Careful thought must be given to the preparation of your evidence because it may have a significant impact on the outcome.

From the date when the case is referred to the Fitness to Practise Committee, it usually takes between six months and a year until the final hearing.

The Fitness to Practise Committee secretary will give formal notice of the date and time of the final hearing.

Depending on the complexity of the case, the hearing may last several days.

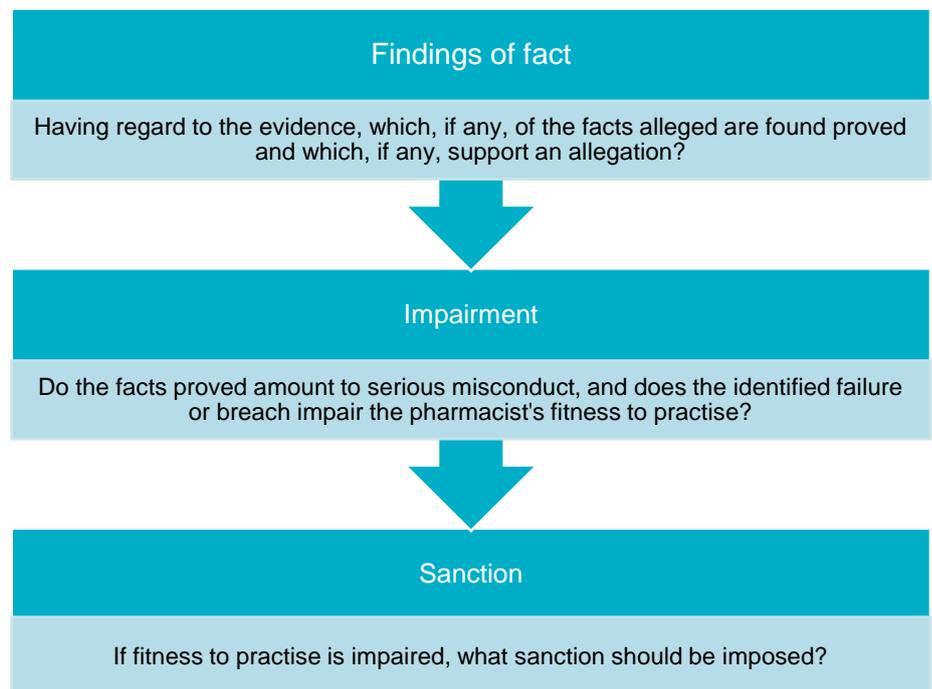
When the hearing takes place, the Fitness to Practise Committee will consider the allegations. You will have the opportunity to attend the hearing, ask questions of the GPhC's witnesses, give evidence, and address the Committee. The pharmacist should usually attend the final hearing. During a recent High Court case, the Judge commented that a pharmacist who fails to attend the hearing is courting removal from the register because it deprives the pharmacist of the opportunity to explain what happened and to demonstrate insight.

Whilst it is possible to attend a Fitness to Practise hearing without a lawyer, statistics show that pharmacists that do not attend the Fitness to Practise Committee hearing at all are twice as likely to be struck off as those who both attend and are represented by a lawyer. That is because an experienced lawyer who understands community pharmacy will know what questions to ask, what points should be drawn to the Committee's attention and the best way to present your case.

Three stages of a Fitness to Practise Committee hearing

The Fitness to Practise Committee will consider the allegations in three stages. These are set out below.

At each stage you will have the opportunity to address the Committee. It will then consider its decision in relation to each stage in private. It can take some time between stages for the Committee to make its decision.

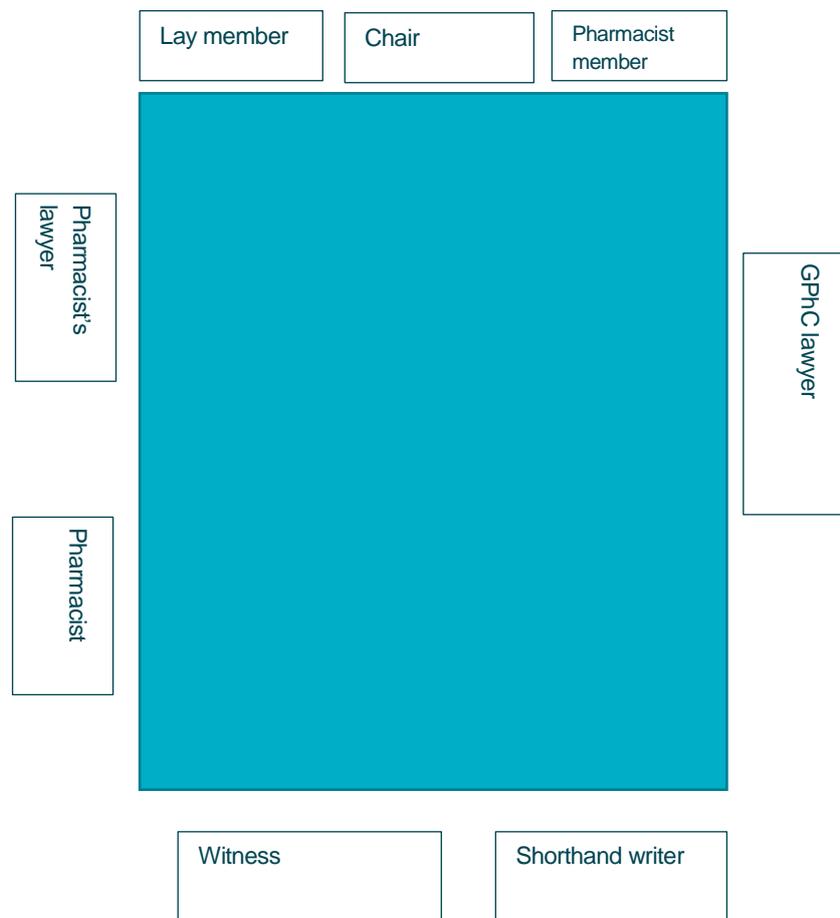


What does the hearing room look like?

The Fitness to Practise Committee usually has three members: a legally-qualified Chair, a pharmacist member and a lay member. Sometimes the Chair is not legally qualified, in which case there will also be a qualified legal assessor who assists the Committee with matters of law.

The Committee will hear evidence and submissions in the hearing room. The hearings usually take place in public (unless the allegations are based on ill health) and may be reported.

The Committee room is usually set out like this:



What sanction can the Fitness to Practise Committee impose?

The Committee has a range of sanctions available to it

The Committee has a range of sanctions available to it. When considering sanction it must impose only the minimum sanction which is necessary to address the findings that it has reached. It may:

- Take no further action.
- Give advice.
- Issue a warning. This was the outcome in 8% of cases closed in 2018/2019 by the Fitness to Practise Committee following a final hearing where there was an adverse outcome.
- Impose conditions upon the pharmacist's registration. The conditions must be designed to address the failings that it has identified. Conditions must be for a fixed period and may be reviewed at the end of that period. Conditions were imposed in about 13% of cases closed in 2018/2019 which resulted in a sanction being imposed by the Fitness to Practise Committee.
- Impose a period of suspension. The suspension must be for a fixed period of up to 12 months, and will usually be reviewed at a hearing before the end of that period. The Fitness to Practise Committee directed that the pharmacist should be suspended from practice in around 59% of cases closed in 2018/2019 which resulted in a sanction being imposed by the Fitness to Practise Committee.
- Removal from the register. A pharmacist who is removed from the register cannot apply to be restored for a period of at least five years. Removal was the eventual outcome in around 20% of Fitness to Practise hearings in 2018/2019 resulting in a sanction.

There is a right of appeal against the Fitness to Practise Committee's decision

In certain circumstances the Committee can order the GPhC to pay some or all of the pharmacist's legal costs, or it can order that the pharmacist pays some or all of the GPhC's legal costs. However, in practice, costs orders are rarely made.

There is a right of appeal against the Fitness to Practise Committee's decision. The appeal must be made within 28 days of the decision, so if you intend to appeal, you must act quickly.

Conclusion

We won't charge you for an initial call to discuss your case

If there is anything raised in this Guide that you would like to discuss, or if you are currently the subject of an investigation and would like to speak to one of our team then please do not hesitate to contact us. We won't charge for the call. We will usually give you a written estimate of fees in advance of doing any work for you

If you are a member of the NPA or have other legal expenses insurance, we can discuss securing a contribution to your legal fees. We would typically assist pharmacists with:



We can advise you during any of the above stages on the process having many years' experience with investigations and can offer time and cost-effective solutions.

Our team



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"healthcare regulatory head Noel Wardle provides clear measured advice in his cases and has fantastic knowledge of pharmacy law and practice'."

Legal 500, 2019, Professional Discipline



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"Rachel Warren is 'a fantastic solicitor who provides clear, timely legal and practical advice and is the sort of solicitor every client hopes to get"

Chambers UK, 2019, Professional Discipline



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"Susan Hunneyball has wide experience of assisting individual practitioners such as pharmacists on a range of disciplinary matters. Clients say that 'she has been excellent in terms of her advice and support throughout'."

Chambers UK, 2018, Professional Discipline



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