

Response to the General Pharmaceutical Council consultation on Investigating Committee guidance

September 2015

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.
- 1.2 As part of our work we oversee nine health and care professional regulators (including the General Pharmaceutical Council or GPhC) and report annually to Parliament on their performance. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.3 We welcome the GPhC's efforts to draft a document that is in plain English and accessible to a range of readers. As it stands, however the guidance may be both too simplified to be useful to the Committee and too technical to be accessible to others. Our response assumes that the GPhC is not intending to publish separate pieces of guidance for the different parties involved, as follows:
 - Guidance for Investigating Committee (IC) members, describing the role and remit of the Committee and its members, and the procedures it must follow (with reference to the supporting legislation). This guidance would need to provide the level of detail necessary to the Committee in the language it has to use in its proceedings.
 - Accessible guidance for professionals who are the subject of a fitness to practise allegation explaining the process from their point of view and what is expected of them.
 - Accessible guidance for complainants and witnesses who may be involved in the process setting out the process from their point of view and what is expected of them.

2. Detailed comments

- 2.1 Because of the way the guidance is structured, there are several aspects of the registrant's and complainant's roles in the process that are not sufficiently clear:
 - It is not clear whether the registrant can make representations for the IC to consider and whether they should be oral or in writing (for example, paragraph 2.6 does not mention this)
 - The guidance does not explain whether registrants or complainants can apply for the case to be rescinded (paras 2.20 to 2.22), or what might otherwise trigger this process

- There is no information about what evidence complainants and/or witnesses will be asked to provide for the real prospect decisions, and nothing is said about how and when they will be kept informed of the decisions made by the IC. In our 2009 paper on sharing the registrant's response,¹ we recommended that the registrant's response to the allegations should be shared with the complainant at the Investigating Committee stage. If this is part of the GPhC's process, it should be explained in the guidance. If not, the GPhC may want to consider including this in their processes.
 - The information provided in the table on pp 29-30 and in paragraph 4.4 is not sufficiently clear about the implications for the registrant of agreeing undertakings. The table implies that an admission of impairment is necessary for undertakings to be offered, but does not explain what this means for the registrant.
- 2.2 In addition, in section 3 of the guidance on deciding the outcome, the sequence of decision-making is not properly explained. It is stated in paragraph 2.32 that if a case meets the 'real prospect test', it must be referred to the Fitness to Practise Committee. However the first sentence of paragraph 3.1 (*'once it has considered the 'real prospect' test, the IC will make a decision on the outcome'*) is unclear, and suggests that a range of outcomes may be available whether or not the test is met. It is also not clear (mainly because of the ambiguous use of the word 'outcome') whether the public interest and mitigating and aggravating factors are to be considered as part of the real prospect test or when considering possible outcomes if the case is not being referred to a hearing.
- 2.3 We have concerns about the way that insight is presented in the guidance. Insight is referred to both implicitly or explicitly in the section entitled '*Considering mitigating and aggravating factors*'. In our view, the guidance should recognise that the Investigating Committee has a limited ability to consider insight, because it cannot test the written evidence put before it – unlike the Fitness to Practise Committee.
- 2.4 The information given on advice (see the table on page 29) should make it clear that this option places no restrictions on registration (as is stated in respect of warnings). The circumstances given make no reference to the overall seriousness of the allegations, which should be central to the IC's deliberations about the appropriate outcomes.
- 2.5 We were also concerned that the guidance made no mention of the process for reviewing IC decisions.
- 2.6 Finally we have some further comments about the drafting:
- Paragraph 2.15: this paragraph contains contradictory statements: it states both that a legal adviser may be present at the request of the IC secretary, and that a legal adviser will be present at all IC meetings.

¹ CHRE. December 2009. *Handling complaints: sharing the registrant's response with the complainant*. Available at: <http://www.professionalstandards.org.uk/docs/default-source/psa-library/chre-report-on-sharing-the-registrant-s-response.pdf?sfvrsn=0>

- Para 2.18 and 2.23: it would be helpful if the guidance explained the types of cases where criminal proceedings were available.
- Para 3.15: the Committee will always want to consider the implications or risks to patient safety – ‘may’ should be replaced with ‘will always’.
- Para 4.4: there is no information here about what happens when undertakings are not agreed.
- Para 4.9: the reference to the registrar’s recommendation is confusing. The IC makes the decision on what action to take and this recommendation is not mentioned in the outcomes table.

3. Further information

- 3.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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