

## **Introduction**

### ***Background***

There is a tendency for the susceptibility of individual healthcare professionals towards disciplinary action to be attributed to personal characteristics.<sup>[1-5]</sup> The severity of outcomes at tribunal is often ascribed to specific factors outside the control of the practitioner, including area of practice and level of experience; as well as to personal choices, including attendance at the hearing and the presence of a legal representative.

### ***Fitness to Practice in Great Britain***

Analogous procedures from across several jurisdictions for dealing with misconduct among pharmacists have been previously described in this journal.<sup>[6]</sup> In the context of this piece of research, it is necessary to understand only the basic process employed by Great Britain's General Pharmaceutical Council (GPhC) (**Fig. 1**), which has a statutory responsibility to ensure the continued "fitness to practise" (FtP) of its registrants.<sup>[7](art.4(3)(a))</sup> A person's FtP may be impaired by reason of – for example – a criminal conviction or misconduct.<sup>[7](art. 51(1))</sup>

If there are concerns about a registrant's FtP, the GPhC must start an investigation.<sup>[7](art. 52(1))</sup> The Registrar may refer the matter to the Investigating Committee, which must investigate all cases referred to it.<sup>(rule 6(2))</sup> The Investigating Committee may dispose of the case by agreeing undertakings with the registrant concerned, or may refer it to the Fitness to Practise Committee (FtPC), which can impose a more severe sanction.<sup>[8](rule.10(1))</sup>



**Fig. 1:** The disciplinary processes activated by the receipt of a complaint against a pharmacy professional in Great Britain. (Adapted from [6].)

The Fitness to Practise Committee meets in public, except where they are considering confidential information concerning a registrant's health.<sup>[9](rule 39)</sup> Both the GPhC (which brings the case) and the registrant are invited to attend the hearing.

The GPhC is normally represented by counsel, and the registrant may attend and be legally represented. There are three stages to a hearing, namely:

1. Findings of fact;
2. Decision of impairment;
3. Sanction.

At stage 1, the panel will decide if specific facts or accusations are proven “on the balance of probabilities”.

At stage 2, the FtPC decides whether the registrant’s fitness to practise is impaired due to the facts, if proven at stage 1. If the panel concludes that it is, the hearing moves to stage 3, at which the following sanctions are available: to take no action; to issue a warning; to place conditions on registration; to suspend the registration; or to remove the registrant’s name from the relevant register. In deciding on the appropriate sanction the panel must have regard to GPhC’s guidance.<sup>[10]</sup>

## **Methods**

### ***Data collection***

Once a Fitness to Practise Committee has decided, it gives its determination. The GPhC are responsible for ensuring the determinations of their public hearings are published in a timely manner, except when the matter relates to a registrant’s health.<sup>[11](s. 4)</sup> Determinations are published on the GPhC website, where they remain for one calendar year before being removed. Decisions from 2018 and 2019 were collated from the website between 13 November 2018 and 12 December 2019. A freedom of information (FOI) request was made to the GPhC for decisions from 2016 and 2017, in accordance with s.8 of the Freedom of Information Act 2000.<sup>[12]</sup> The GPhC complied with this request on 19 March 2019.

Cases were selected on the basis of specific inclusion criteria. Only those cases published within the 4-year period between 1 January 2016 and 31 December 2019 and which involved a registrant who was appearing before the Fitness to Practise Committee at first instance were included. One redacted case was removed. Each case that met the inclusion criteria was analysed.

## **Data coding**

The categories into which the data were coded included: the nature of the allegation; area of practice; level of experience; gender; whether the registrant attended the hearing; whether they were legally represented; and outcome. These are summarised in **Table 1**.

Allegations were coded as either arising from misconduct or a criminal conviction (or police caution). In several cases, multiple allegations were made against the same registrant. Where these straddled both categories, the more serious category (i.e. conviction) was recorded.

Experience levels were coded as newly-qualified (<3 years), adolescent (3-5 years),<sup>[13]</sup> experienced (6-10 years), and senior (>10 years).

Guidance stipulates there must be a real prospect of an allegation being proven if referred to the Fitness to Practise Committee (FtPC),<sup>[14](para. 3.1)</sup> and, if the allegation is proven, it could demonstrate that the registrant's fitness to practise is currently impaired.<sup>[8](rule 9(7))</sup> Over the four-year period of this study, only one case published found no impairment, possibly because this outcome is only published with the registrant's consent.<sup>[11](s. 9)</sup> Other lower end sanctions of a warning or conditions on practice were applied in only three and eight cases (2% and 6%), respectively. Suspension was the outcome in 60 cases (47%), while removal was warranted in 55 (43%). For this reason, it was decided that the appropriate coding of outcomes was minor (i.e. no impairment, warning, conditions, and suspension) and major (i.e. removal).

**Table 1:** *Demographic characteristics of pharmacists and pharmacy technicians referred to the Fitness to Practice Committee. \*This category was applied if the registrant was not engaged in their professional practice when the misconduct or offence leading to conviction occurred (e.g. domestic abuse; kidnapping; murder).*

<b>Variable</b>	<b>Categories</b>	<b>Raw</b>	<b>%</b>
Allegation	Misconduct	81	63.8
	Conviction/caution	43	33.9
	Unknown	3	2.4
Profession	Pharmacist	101	79.5
	Technician	26	20.5
Area of Practice	Community	77	60.6
	Hospital	11	8.7
	Prison	1	0.8
	Not relevant*	35	27.6
	Unknown	3	2.4
Experience	<3 years	23	18.1
	3-5 years	29	22.8
	6-10 years	25	19.7
	>10 years	40	31.5
	Unknown	10	7.9
Gender	Female	38	29.9
	Male	89	70.1
Attended	Yes	70	55.1
	No	55	43.3
	Unknown	2	1.6
Legally represented	Yes	52	40.9
	No	73	57.5
	Unknown	2	1.6
Outcome	Not impaired	1	0.8
	Warning	3	2.4
	Conditions	8	6.3
	Suspension	60	47.2
	Removal	55	43.3
<b>Total</b>		127	100.0

## ***Statistical analysis***

Statistical testing was carried out for associations between all variable pairs. All variables were categorical, and Pearson's  $X^2$  or Fisher's exact tests were applied.<sup>[15]</sup>

<sup>16]</sup> Relative risk calculations were applied to compare the likelihood of an event occurring between two groups.<sup>[17]</sup> Statistical analyses were carried out using IBM® SPSS® Statistics (v.25).<sup>[18]</sup>

## **Results & discussion**

### ***Descriptive statistics***

The GPhC published unredacted determinations for 127 fitness to practice cases between 1 January 2016 and 31 December 2019. Of these, 101 involved pharmacists and 26 concerned pharmacy technicians. These figures represented 1.8% of the approx. 55,000 pharmacists and 1.1% of the 23,000 technicians registered during that period.<sup>[19-21]</sup> Descriptive data are summarised in **Table 1**.

### ***Lack of engagement was associated with removal from the Register***

70 of the 127 registrants (55%) were present their respective hearings, of which 49 (39%) were legally-represented. 21 (17%) attended without legal representation, three (2.4%) were represented but did not attend themselves, and 52 (41%) were neither present nor represented. In total, less than 41% of registrants were legally represented.

Attendance and legal representation were highly concurrent ( $X^2 = 182.5$ ,  $p < 0.001$ ). In order, attendance ( $X^2 = 39.35$ ,  $p < 0.001$ ) and legal representation ( $X^2 = 24.35$ ,  $p < 0.001$ ) bore the strongest bivariate associations with seriousness of outcomes.

Registrants that did not attend their hearing were over three times more likely to be removed from the Register compared to those who were present ( $n = 125$ ,  $RR = 3.2$ ), while the absence of a legal representative was associated with twice the risk of removal as a sanction ( $RR = 2.2$ ).

In explaining their determination to remove a pharmacist from the register, the FtPC highlighted that to demonstrate that their fitness to practice is not currently impaired, a pharmacist must first gain insight into their misconduct. Without evidence of insight

into the wrongness of their actions, the committee cannot satisfy itself that they will not recur:

*“The lack of insight or indeed any expression of remorse is a very concerning factor here and it gives us no prospect that a period of suspension is likely to lead to a complete rehabilitation and provide the necessary reassurance that the public interest can be protected and preserved in due course. We consider that, without the foundation of some degree of insight at this stage, it is not appropriate to impose a period of suspension, but rather that the proportionate and reasonable sanction to impose is that of removal from the Register.”*<sup>[22](para. 46)</sup>

Being present at the hearing to be cross-examined by counsel and available to answer questions from the Committee is the registrant’s principal opportunity to demonstrate such insight, as stated by Justice Kerr in dismissing the appeal:

*“The main difficulty with those arguments is that ... [the pharmacist] did not attend to answer questions about her state of mind. It is unclear why she chose not to attend.”*<sup>[22](para. 53)</sup>

The data demonstrates that which has been common knowledge within the legal profession for some time: that failing to attend or engage legal representation “virtually invites removal from the Register”.<sup>[23](p. 390)</sup>

This was shown in April 2020, when the General Medical Council (GMC) appealed to the High Court against a 12-month suspension imposed by the Medical Practitioner Tribunal Service (MPTS) against a registrant, arguing that it was unduly lenient.<sup>[24]</sup> The registrant did not attend. Instead, he presented a 53-page bundle of documents for consideration. This included evidence of his voluntary attendance at a course that, on the face of it, seemed to remedy the shortcomings that led to his misconduct. However, the tribunal considered it to be “of limited value because it has seen no evidence of ... the material impact [the course] has had on [his] reflection on, and insight into, his offences”.<sup>[25](para. 18)</sup> In upholding the GMC’s appeal, Murray J, highlighted this lack of attendance as “forgoing the opportunity to meet and deal directly with the case put forward by the GMC”.<sup>[24](para. 21(iii))</sup>

### ***Seriousness of sanction was not related to composition of panel***

The number of lay members of each committee (including any chair or deputy chair) must be at least the same as the number of registrant members.<sup>[26](rule 3A)</sup> Quorum for a hearing of a Fitness to Practice Committee is three members, which must include the chair or a deputy chair, a registrant member, and a lay member.<sup>[26](rule 18(1-2))</sup> The number of registrant members considering a case must not exceed the number of lay members (including any chair or deputy chair) by more than one.<sup>[26](rule 18(3))</sup> Each of the 127 hearings examined engaged three members exactly (one chair or deputy chair, one registrant, and one layperson). 24 different chairs (or deputy chairs), 32 registrants, and 23 lay members were drawn from the committee membership over the course of four years and deployed in different combinations.

Several advocates who frequently appeared in front of the committee during this period have expressed opinions as to whether one chair or another was better for their client. Personal communication indicates that some chairs were associated with favourable (i.e. less harsh) outcomes among legal counsel, while others favoured more severe sanctions:

*“... [Y]ou always want to know as early as possible who’s chairing the panel ... it was always an uphill battle appearing in front of [XXX].”<sup>[27]</sup>*

*“[XXX was] ponderous, gave the impression that [they were] dragging cases out, and decisions under Committees [they] chaired were harsh.*

*“I didn’t appear before [YYY] often, but [they were] studiously fair and non-pompous.”<sup>[28]</sup>*

*“You can breathe easy if [ZZZ] is in charge. [They have] nothing to prove... no ego. Some chair[s] are very keen on the sound of their own voice.”<sup>[27]</sup>*

The data reveals no association with the attendance of any chairperson ( $p = 0.22$ ), registrant ( $p = 0.63$ ), or lay panel member ( $p = 0.43$ ), either alone or in combination with another, with seriousness of sanction.



***Severity of sanction was not associated with profession, level of experience, gender, nature of allegation, or area of practice***

Demographic factors had no effect on outcome. Neither was there any correlation between experience of the registrant and their likelihood to be either present ( $p = 0.19$ ) or represented ( $p = 0.10$ ) at the hearing.

***Pharmacists are more likely to be legally-represented than pharmacy technicians***

Demographic characteristics did not, in general, affect engagement. Although pharmacists were more likely both to attend ( $p = 0.004$ ) and to be legally-represented ( $p < 0.001$ ) than pharmacy technicians, this did not manifest in a significantly different outcome distribution ( $p = 0.01$ ). The proportion of technicians appearing because of a criminal conviction (42.3%) was higher than for pharmacists (31.4%), though this was not statistically significant ( $p = 0.06$ ).

**Conclusions**

There is a clear association between the failing to attend and/or not having legal representation and the most severe sanction of removal from the Register. Other factors – such as the registrant’s profession, gender and experience – that one would expect to be irrelevant, have no statistically-significant relationship with outcomes. Furthermore, the composition of the FtPC does not affect the outcome of a case in the way that experienced advocates had expressed concern over. Previous research has shown that the GPhC does, in general, adhere to its own guidance when determining whether a registrant’s fitness to practise is impaired.<sup>[29]</sup> Additionally, we can now say that this is not related to the membership of the panel. Given the similarities to both national and international disciplinary process of the GPhC’s disciplinary machinery,<sup>[6, 29-34]</sup> this may generalize to other professions across jurisdictions.

## Future directions

Given the strong correlation between engagement and outcome, it would be useful to know the reasons why over half of all registrants do not attend or engage counsel. It could be speculated that the registrant recognises the seriousness of their actions and decides that defending themselves is a futile effort; or perhaps that their professional indemnity insurance does not cover the costs of their defence. Hubris could also play a part. Although the GPhC sends registrants a questionnaire after each case, they do not ask about their reasons for not engaging. Now that its importance has been demonstrated, it is our intention to carry out a series of semi-structured interviews with former registrants to determine their rationale for failing to present a robust defence.

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