

Pharmacists' Defence Association Response to the Pharmaceutical Society of Northern Ireland's consultation on Draft Indicative Sanctions

About the Pharmacists' Defence Association

The Pharmacists' Defence Association (PDA) is a not-for-profit organisation which aims to act upon and support the needs of individual pharmacists and, when necessary, defend their reputation. It currently has more than 28,000 members. The PDA Union was inaugurated in May 2008 and achieved independent certification in 2011.

The PDA is the largest pharmacist membership organisation and the PDA Union is the only independent Trade Union exclusively for Pharmacists, in the UK.

The primary aims of the PDA are to:

- Support pharmacists in their legal, practice and employment needs
- Represent the individual or collective concerns of pharmacists in the most appropriate manner
- Proactively seek to influence the professional, practice and employment agenda to support members
- Lead and support initiatives designed to improve the knowledge and skills of pharmacists in managing risk and safe practices, so improving patient care
- Work with like-minded organisations to further improve the membership benefits to individual pharmacists
- Arrange insurance cover for individual pharmacists to safeguard and defend their reputation.

Summary of the Consultation

The PSNI is consulting from 30 August 2018 to 27 October 2018 on revised indicative sanctions guidance for pharmacists undergoing fitness to practice proceedings.

Questions

Q1. Does the document clearly set out the processes of the Statutory Committee?

Yes

Q2. Does the document clearly set out the purpose of Indicative Sanctions Guidance?

Recommendation

Whilst the document does set out its stated purpose clearly, it should be revised to include an equal amount of information about the approach to be taken to pharmacy owners for breaches of pharmacy premises standards as it contains about individual pharmacist registrants. This should include details of the investigation process, the available sanction(s), the factors for Statutory Committees to take in to account when considering applying them and the process to be followed.

Recommendation

The guidance should include a requirement that the PSNI must ensure it has the resources to ensure cases are dealt with both thoroughly and expediently. Expediency is important both to complainants and pharmacists; it limits the potential for adverse effects of being subjected to protracted proceedings with uncertainty of outcome.

Q3. Is the Guidance on the public interest and proportionality (Pg.8) appropriate?

Yes

Recommendation

Consideration of the public interest must also include the effects of depriving the public of a pharmacist and the wider consequences of the decision. For example, issuing a harsher sanction simply because of media coverage of a particular case may be unfair, and lead to detriment to the public interest if an unfair process was applied. This ought to be reflected in the indicative sanctions guidance.

Q4. Is the Guidance on when a particular sanction might be appropriate (Pg.9) clear?

Yes

Q5. Is the Guidance on when a particular sanction might be appropriate proportionate?

Yes

Q6. Is the Guidance on mitigating and aggravating circumstances (Pg.12) appropriate?

No

Recommendation

The list of potential mitigating factors at paragraph 2.16 must include poor working environments or poor premises standards in the pharmacy as a result of the actions of an employer, and other factors that are outside the control of the pharmacist.

Q7. Is the Guidance on insight and remedial actions (Pg.13) appropriate?

Yes

Q8. Is the Guidance on testimonials (Pg.14) appropriate?

Yes

Q9. Is the Guidance on how the Statutory Committee should consider an Interim Suspension Order proportionate (Pg.14)?

Yes

Q10. Is the section on additional issues identified for requiring further Guidance (Pgs. 14-16) clear?

Yes

Q11. Is the content of the section on additional issues identified for requiring further guidance appropriate?

No

Recommendation

The guidance must state that where, during the course of investigation by the PSNI or statutory committee processes it becomes apparent that the standards within a registered pharmacy are inappropriate, the PSNI must investigate this.

Q12. Is the Guidance on actions when a sanction has been decided upon (Pgs. 18-20) clear?

Yes

Q13. Are any aspects of our proposals that could result in equality and diversity implications for groups or individuals based on one or more of the following protected characteristics? If yes, please explain what could be done to change this.

- **Age**
- **Gender reassignment**
- **Disability**
- **Pregnancy and maternity**
- **Race**
- **Religion or belief**
- **Political Opinion**
- **Sex**
- **Sexual orientation**

No

Q14. Do you have any other comments about the Draft Indicative Sanctions Guidance?

The PSNI's consultation document states *"Our primary purpose is to ensure that practising pharmacists in Northern Ireland are fit to practise, keep their skills and knowledge up to date and deliver high quality, safe care to patients."* It then lists four bullet points about how the PSNI protects and maintains public safety, which do not include the regulation of registered pharmacies. We were disappointed that the PSNI approaches its role in this way, since it is an important part of the PSNI's role to regulate pharmacy premises, as a foundation to patient safety in pharmacy. This function is given scant mention in the document.

Broadly speaking, the PSNI protects the public in two ways – through the regulation of:

- registered pharmacists
- registered pharmacy premises

Overall the PDA is generally supportive of this document as we feel it takes a generally balanced approach insofar as it relates to indicative sanctions for individual registered pharmacists. However, it contains very little detail about the indicative sanctions applicable to pharmacy owners for a breach of premises standards and must be revised to include an equal amount of information on this matter (see our recommendation in response to question 2).

The section on corporate bodies is brief and starts immediately with how the Statutory Committee panel may dispose of disqualification proceedings, rather than how it should approach them and the factors it should consider. The remainder of the document is focused on the regulation of pharmacists and is not written to be applicable to the regulation of pharmacy owners or pharmacy

premises. It contains very little detail about the considerations which may lead to action being taken against a pharmacy owner or the disqualification of premises.

The Pharmacy (Premises Standards, Information Obligations, etc.) Order 2016 made changes to the PSNI's statutory powers. The explanatory note to the order states, inter alia: *"The sanctions regime that the FTPC and the PSNI's Statutory Committee (SC) operate in relation to pharmacy owners is altered in a number of respects. Firstly, the procedure in section 80 of the Medicines Act 1968 (which enables the FTPC and the SC to remove entries from the premises part of the GPhC's register or from the PSNI premises register – or to disqualify a pharmacy owner) now applies in relation to breaches of PSNI premises standards as well as to breaches of GPhC premises standards. Secondly, the section 80 procedures are changed so that they apply not just to pharmacy owners that are bodies corporate, but also to pharmacy owners that are partnerships or individual pharmacists. Thirdly, provision is made so that sanctions may only be applied in relation to breaches of premises standards where the FTPC or SC is satisfied that the pharmacy owner is unfit to carry on the relevant business safely and effectively (articles 9, 10, 16 and 26)."* [1] In light of these new powers the public might have expected that the PSNI would elaborate on the circumstances in which it might use them, within its guidance to Statutory Committees on issuing sanctions.

Recommendation

Paragraph 1.16 of the document states *"The need to provide clear reasons [for the decision on impairment] is even more pronounced if the Panel decides to give a Warning to the registrant."* The need to provide clear reasons for the decision on impairment exists irrespective of whether a sanction is issued and the nature of any sanction.

References

- [1] "The Pharmacy (Premises Standards, Information Obligations, etc.) Order 2016," 15 March 2016. [Online]. Available:
https://www.legislation.gov.uk/uksi/2016/372/pdfs/uksi_20160372_en.pdf.