Harmonising Fitness to Practise Sanctions across Regulators

The Royal Pharmaceutical Society of Great Britain (RPSGB) is the professional and regulatory body for pharmacists in England, Scotland and Wales. It also regulates pharmacy technicians on a voluntary basis, a role that is expected to become statutory under new legislation soon. The primary objectives of the RPSGB are to lead, regulate, develop and represent the profession of pharmacy.

There are some differences in the range of sanctions available to each of the healthcare regulators. The RPSGB has wide jurisdiction and regulatory powers in relation to medicines as well as to individual pharmacists (and Pharmacy Technicians on the voluntary register) and premises. Sanctions are available, under fitness to practise procedures, when a registrant's fitness to practise is found to be impaired. The purpose of sanctions is to protect patients and the public, although they may also have a punitive effect, intended or unintended. For most of the regulators, sanctions are available at the end of their fitness to their practise procedures when a formal determination has been made by the relevant committee (the adjudication stage). For the GMC and the RPSGB, limited sanctions are also available at the investigation stage without the need for a hearing. The focus of this consultation is the sanctions themselves, rather than the fitness to practise procedures.

RPSGB believes that the standard of regulation for the pharmacy profession is extremely high and there should not be any lowering of standards as a result of any harmonisation of sanctions. In considering the terminology used in fitness to practise sanctions, RPSGB considers that it is necessary to use terms that the general public would understand.

RPSGB believes that whilst some harmonisation of sanctions could be achieved, recognition must be given to the fact that different health professionals carry different risks, for example higher risks are associated with being patient facing, and therefore total harmonisation of sanctions may not be in the interests of patients or the public. Despite significant differences between the fitness to practise procedures of the nine healthcare regulators, greater harmonisation of the sanctions available to them could be achieved. This initiative is supported by the RPSGB and we have welcomed the opportunity to engage with this important consultation exercise.

Consultation questions

Questions 1 to 3: Common sanctions

Question 1: Should all regulators in FTP cases have available the same set of sanctions?

The RPSGB believes that there is scope for harmonisation of sanctions to make some aspects of the regulators work clearer and more easily understood by the public. There is also diversity amongst the regulators and it is in the public interest for some of those aspects to be retained alongside the harmonised regulatory structure. There should also be some consideration of setting out the principles behind sanctions; the ethical and philosophical elements of this should not be underestimated. The debate as to how far sanctions should

signal disapproval of the relevant conduct, how far they should be deemed to have deterrent effect and how far they should be directed at remediation is a critically important issue. Public engagement in regulatory activities and increased confidence in regulation as a tool of public protection will not be achieved unless personal professional accountability is reinforced. *There should be a core set of sanctions with the ability to add on as appropriate.*

Question 2: If you believe that there should be a standard set of sanctions, which of the following existing sanctions should be available to all regulators: erasure from the register, suspension from practice, conditions on practice, cautions or warnings, fines?

A common minimum standard set would assist with consistency and fairness. The work of the Sentencing Guidelines Council should be carefully scrutinised as they have developed sentencing guidelines for specific criminal offences and have also defined indicators of seriousness, some of which could be of general application. All of the above sanctions should be included in the standard set of sanctions for all regulators. Erasure from the register should always be an option for the most serious cases. The step of erasure must always be an immediate option for a committee even if this requires a specific direction from the Committee in question. Circumstances where findings of the utmost gravity have been made and a direction for removal which can only take effect after the expiry of an appeal period is unsatisfactory and does not adequately protect the public. Cases of this nature have been damaging to the reputation of the regulator and have made regulators appear powerless.

Suspension from practise should also be available as an immediate option pending investigation and final adjudication. The difficulties in maintaining competence while suspended and the punitive effect of suspension needs to be considered.

Conditions on practise might not be appropriate for some professions, e.g. where the nature of the profession makes it difficult to find meaningful conditions. Working under supervision arrangements can be very difficult in some professions. Conditions should not be used as way of excluding an individual from the profession by imposing unachievable conditions. Cautions or warnings are appropriate for all regulators but they should always be accompanied by guidance as to areas of remediation and improvement in practice if they are going to improve public protection.

In relation to fines, please see the RPSGB response to question 20.

Question 3: Are there any other sanctions that should be included in the standard set?

An area that merits closer scrutiny is the jurisdiction that some regulators have in relation to costs, whilst not a sanction, it can have wide ranging impact, especially as a deterrent to those who may wish to delay, hamper proceedings, protract proceedings due to poor case management or fail to comply with directions etc. The potential for regulators to become embroiled in complex, technical territory and to expend unnecessary cost should not be underestimated. Equally costs awarded against a registrant could be a real deterrent. There are potential problems for regulators when costs may be awarded to the registrant. This could deter the regulator from proceeding with complex cases.

Questions 4 and 5 Erasure/Striking off/Removal

Question 4: Should there be a common term for 'erasure'/ 'striking off'/'removal' across the regulators? If so what is your preferred term?

The RPSGB would advise that the term 'removal' from the register is used. This term can be easily understood by patients and the public and succinctly describes the outcome of the fitness to practise procedure.

Erasure/striking off is the most severe sanction available to regulators. The effect of erasure is that the registrant is not able to practise during the period that the registrant is erased as they are, in effect, excluded by the profession and unable to practise from a specified date. There is a debate to be had about the extent to which censure and disapproval should accompany such orders for removal. The difficulty with longer periods of removal from the register, prior to the ability to apply for restoration, means that it is less likely that a practitioner can remediate and re-skill. This suggests that erasure should only be used when the chances of remediation are low. At the moment the P&PTO legislation does not permit an application for restoration prior to a five year period elapsing. A Chairman of an FTP committee should also be able to indicate when the impairment found means that restoration in the future is a most unlikely outcome, this would then stop individuals from submitting applications for restoration that have to be dealt with in the full knowledge that any restoration is highly unlikely.

CHRE should consider the work of the Sentencing Guidelines Council on the "Overarching Principles: Seriousness; Guideline" and other work. A similar model could be applied to healthcare regulation. This would be a more productive approach at this time as there is now an established body of case law from Section 29 referrals. Sentencing guidelines could be devised and training of panel members could address these issues. The public should be widely consulted on this question as from a regulatory standpoint the practical effect is the same, however the nuances of communication and nomenclature may send different signals which may play a part in altering public perception.

Question 5: Should erasure be available to all regulators in cases in which the allegations relate solely to health and/or performance?

There is some inconsistency between the regulators as to the availability of removal from the register, when the allegations relate exclusively to the health or the performance of a registrant. In Northern Ireland the power to remove in these circumstances does exist in some cases and the regulator has the power to suspend the registrant indefinitely, after two years of continuous suspension, and this has the same practical effect. Some regulators have the power to remove a registrant when the allegations are exclusively about the registrant's performance. The Disciplinary Committee could find impairment on performance grounds sufficient to justify removal, however there are constraints on health cases. However, other regulators are not able to remove a registrant in these circumstances. There should be a common approach applied to all regulators and the power to remove should apply across health and performance cases. However, health is less within personal control than competence, and it is arguably easier to monitor progress and review the position

during a period of suspension or conditional registration than would be the case if a person had been removed and had to bring restoration proceedings in order for the body to review fitness to practise. There are clear difficulties where a registrant's health has deteriorated extremely, e.g. due to disease or age and is beyond recovery, yet the regulator must persist with the process which still potentially allows for re-entry to the profession. This is wasteful in terms of resource and fails to acknowledge the true circumstances.

Questions 6 to 8: Restoration

Question 6:Following erasure, should there be a standard minimum period that must expire, before an individual can apply for restoration to the register?

When a registrant is erased from a register there is a general expectation that it will normally be for life and that the registrant will not be able to practise again within the UK. There have now been a number of high profile cases where practitioners with FTP history have then practised overseas and re-offended. Differing periods are appropriate in differing types of practise, even within the healthcare field. Comprehensive judgements should be delivered which give the indicators of seriousness of the case and also set our any possible routes back to the profession at a later date, should that be appropriate. This period of time can vary significantly between the regulators. For example, at the RPSGB, GMC and the NMC it is 5 years, at the GOC it is 24 months and at the GCC it is 10 months.

Ultimately, patient and public safety is paramount, and any decision to restore a registrant on the register must be considered with patient and public safety in mind.

Question 7 If so, what should it be?

Please see question answer to question 6 above. In considering the standard minimum period that must expire before an individual can apply for restoration to the register, the RPSGB believes that the time period should be proportionate and be of sufficient length to ensure that patients are protected.

Question 8: Should all regulators be able to specify to the registrant the kind of evidence the regulator would want to consider at a restoration hearing?

This will assist the registrant and also the panel hearing the restoration application. However the panel should not be bound to restore nor should there be a presumption of restoration if such evidence is provided, the discretion of the panel cannot be fettered in any way.

Suspension

Question 9*:* What powers/ recommendations can regulators have/make when imposing and reviewing suspension orders?

The effect of suspension is that the registrant is not able to practise for a specified period of time. Normally, the regulator will have the option of extending the period of suspension at a review hearing. (Review Hearings enable regulators to consider whether registrants who are

suspended or subject to restrictions on their practise are fit to return to unrestricted registration.) Suspension can be used to send out an important message about the expectations on healthcare professionals. It can also indicate to registrants and the public when unacceptable behaviour has occurred. Suspension from the register also has a punitive effect and may be deemed to have little remedial value.

Questions 10 and 11: Conditions

Question 10: Should all the regulators be able to review a case early if the registrant does not comply with conditions?

Conditional registration or a conditions of practice order allows a registrant to practise under certain restrictions. The primary purpose of the imposition of conditions is the protection of the public; they enable registrants to take steps to remedy any deficiencies in their practice while placing restrictions on the types of work that the registrant may undertake. The regulator must be able to act quickly and review the case if conditions are not being complied with.

***Question 11**:* Should the regulators be able to restrict a registrant's practise by imposing conditions on restoration to the register?'

Conditions (like undertakings) can ensure that registrants improve their practise in circumstances that ensure the safety of the public. However, conditions might not be workable in some circumstances and recognition must be given to the fact that different health professionals work in different environments, for example, an NHS pharmacist working in a hospital will have more scope for support and supervision than a sole-trading community pharmacist in an isolated community.

Undertakings

Question 12: At a hearing should there be provision in the rules of all regulators for panels to accept written undertakings from the registrant?

The agreement of undertakings at the investigation stage allows the registrant to acknowledge that he or she has a particular impairment of one kind or another and to enter into an agreement with the regulator as an alternative to being referred to a Fitness to Practise Panel. Undertakings are monitored and disclosed in the same way as conditions. Regulators have the same powers to take action following a failure to comply with undertakings as they do for breaches of conditions. The benefit of undertakings is that they allow the regulator to agree undertakings with the registrant, without referring the registrant to a Fitness to Practise panel. They can offer an effective, timely and proportionate way of resolving certain types of concern. This also has the practical effect of encouraging insight and the taking of remedial steps. Undertakings should be encouraged in healthcare regulation.

Question 13: Should all regulators have a power to agree undertakings at the investigation stage, in appropriate circumstances, as an alternative to referral to a hearing?

The RPSGB's Investigating Committee has the power to agree undertakings in health and performance cases. The Disciplinary Committee can accept written undertakings from companies in disqualification cases. The GOsC are proposing to acquire a power to dispose of complaints by 'orders by agreement' at the Investigation Committee stage of their procedures. The work that has been undertaken on developing Threshold Criteria is consistent with this approach.

Questions 14 to 19: Cautions

Question 14: Should there be a single common sanction of warnings or cautions? If so what should it be called? Currently, caution, warning, reprimand or admonishment are used. The RPSGB would advise that the term 'warning' is used.

Warnings are often given where the registrant's fitness to practise has been found to be impaired or there has been a significant departure from the standards expected of the practitioner. Our preferred term is warning as it is understood by the public and is not confused with police cautions.

The RPSGB's Disciplinary and Health Committees have the power to issue warnings and advice, even though the registrant's fitness to practise is not found to be impaired. The GOC can also issue warnings where there is no finding of impairment. These provisions should be extended to all regulators.

Question 15: Should cautions remain in place for a single fixed period of time? If so for how many years?

3 - 5 years may be appropriate with the committee having the power to specify.

Question 16: Would it be helpful if FTP panels had the option of issuing cautions for different lengths of time (e.g. five years, three years, one year) to take account of the particular circumstances.

This is supported by the RPSGB as it retains flexibility and minimises the potential for injustice. It would allow committees in exercise their discretion in all of the circumstances of the case.

Question 17: Should cautions be available in cases in which the registrants practice is found:
to be impaired?
not to be impaired?
Yes please see response to Question 14.

Question 18: Should all cautions be required by law to appear on the relevant public register? Should all cautions be disclosed to enquirers?

Arguably, recording and disclosing cautions would act as a deterrent, and also assist in protection of the public. There is of course the contrary view that a registrant found fit to practise (i.e. not removed from the register) should be allowed to practise without the inevitable difficulties that would be caused by having a caution on his record. The protection of the public and transparency of regulation demands that there should be disclosure and entries on the register.

Question 19: Should there be a consistent procedure across regulators to take into account a previous caution, if a registrant appears before a FTP hearing at a future date?

Different health professionals carry different risks and as such any previous caution should be looked at on a case-by-case basis.

Fines

Question 20: Should financial penalties be made available to all regulators?

Fines are not commonly available to the regulators. Currently, only the GOC and, recently, the GDC (in relation to dental companies) have the power to impose fines. The GOC has found fines to be a useful sanction, particularly against business registrants. The RPSGB, which also regulates corporate bodies, does not have the power to issue fines. Financial penalties would need to be determined on a consistent basis and accompanied by enforcement provisions. The RPSGB questions the length of time that this would take given the changes to legislation that would be required.

The RPSGB believes that more in-depth consideration is needed in relation to the issuing of fines. The RPSGB believes that the issuing of fines should be used as a deterrent rather than as a profit making sanction.

Interim Orders

Question 21: Should all regulators have a power to impose interim suspension and conditions?

These steps allow regulators to act if a registrant faces allegations of such a nature that it may be necessary for the protection of the public, is in the public interest or in the interests of the registrant, for their registration to be restricted while the allegations are investigated. This is supported by the RPSGB.

Immediate sanctions

Question 22: Should all sanctions imposed by FTP panels come into force immediately and/or should all panels have the power to impose an immediate order?

An immediate order means that the sanction will take place immediately following the panel's decision, regardless of an appeal period. This is supported by the RPSGB.

Registrant's right to appeal

Question 23: Should registrants have a right of appeal against all decisions that affect their registration, including cautions?

The rights of appeal should be as provided for in the Pharmacists and Pharmacy Technicians Order 2007.

Other powers

Question 24: Are there any other sanctions for regulators to consider?

The RPSGB has no further comments to make on this question.

Other Comments

Question 25: Are there any other comments or suggestions that you would like to make regarding this consultation.

The RPSGB would welcome any guidance from CHRE on fitness to practise sanctions.

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