

Council meeting 31 March 2010

CONFIDENTIAL BUSINESS

Investigating Committee Annual Report to Council

Purpose

To receive a written report from the Chairman of the Investigating Committee on the Committee's work for the period from March 2009 to February 2010.

Action required

Council is asked to receive the report.

1. Background

Article 6(a) of the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc. Rules) Order of Council 2007 provides that the Investigating Committee shall provide

“ an annual report to the Council in respect of each calendar year, by a date specified by the Council, which shall include-

- (i) trends, patterns and learning points observed from cases considered by the Investigating Committee,
- (ii) recommendations to the Council as regards the published threshold criteria referred to in rule 9(1)(d),
- (iii) details of the numbers of fitness to practise and disqualification allegations which were disposed of by means of warnings and undertakings during that year, and
- (iv) the reasons why such cases were not referred to the Health or Disciplinary Committee;”

The attached report from Miss Karen Rea, Chairman of the Investigating Committee covers the period from March 2009 to February 2010.

2. Risk implications

It is important that the Council is confident that the Society's fitness to practise processes are effectively discharged in the interest of public safety and that public confidence is maintained in the profession. It is equally important that registrants have confidence that the process is fair, transparent and proportionate and operating appropriately as set out in the P&PTO 2007.

3. Resource implications

There are no budget implications in the report.

Jeremy Holmes
Chief Executive & Registrar

Annual Report of the Investigating Committee to the Council of the Royal Pharmaceutical Society of Great Britain 2009-2010

1 Legislative Background

The making of the **Pharmacists and Pharmacy Technicians Order 2007** in February 2007 provided for a fundamental change in the fitness to practise scheme within the Royal Pharmaceutical Society of Great Britain. The 2007 Order gave the power for the making of the **Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc. Rules) Order of Council 2007**, and the **Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007**. Together these three pieces of legislation make provision for a comprehensive fitness to practise committee structure.

Provision for fitness to practise is made in **Part 5** of the 2007 Order, with specific provision for the establishment and powers of the **Investigating Committee** in Articles 6, 7 and 50. Provision for the procedural rules of the Committee are made in **Part 6** of the 2007 Order, **Part 3** of the Fitness to Practise and Disqualification etc. Rules) Order of Council 2007, and the Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007. These legislative provisions specific to the Investigating Committee should not be seen in isolation, however, as the powers and procedures of the Investigating Committee are closely linked to the remainder of the fitness to practise committee structure.

Article 6 of the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc. Rules) Order of Council 2007 provides that the Investigating Committee shall have a number of additional functions. The first of these functions is set in Article 6(a), as follows:

‘providing an annual report to the Council in respect of each calendar year, by a date specified by the Council, which shall include-

- (v) trends, patterns and learning points observed from cases considered by the Investigating Committee,
- (vi) recommendations to the Council as regards the published threshold criteria referred to in rule 9(1)(d),
- (vii) details of the numbers of fitness to practise and disqualification allegations which were disposed of by means of warnings and undertakings during that year, and
- (viii) the reasons why such cases were not referred to the Health or Disciplinary Committee;’

This report is published pursuant to the specific statutory obligation imposed by Article 6 of the 2007 Order.

2 Referral Criteria

Article 49 of the 2007 Order states that the Registrar, where an allegation is made to the Society that a registrant’s fitness to practise is impaired, or where the Society has information that calls into question a registrant’s fitness to practise, shall, *except in such cases and subject to such considerations as the Council may prescribe* refer the matter to the Investigating Committee.

Rule 9 of the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc.) Rules 2007 provides that the Registrar shall not refer an allegation to a fitness to practise committee if, *inter alia*, the allegation is of a type which the Council *has stated in its published threshold criteria should not be referred* to the Investigating Committee.

Article 6 of the 2007 Order also provides that the Investigating Committee should prepare, publish and amend from time to time its **Referral Criteria**. Members of the Investigating Committee agreed the details of its initial Referral Criteria following detailed discussions during the Committee's establishment period and further perfection by amendment after review in February 2009.

In drafting its Referral Criteria, the Investigating Committee emphasised that there was more to the Committee's philosophy, practice and procedure than the publication of a list of the matters which may be taken into account by the Investigating Committee, in carrying out its statutory role. Accordingly, the Referral Criteria document also emphasises the Committee's underlying role and principles.

The description includes a reminder of the context of the Investigating Committee as a mechanism within the fitness to practise structure for the initial consideration of allegations of impairment and the determination of the most appropriate method of disposal of those allegations, including referral to the most relevant component of the committee structure. It also emphasises the importance of the *real prospect* test, requiring an important balancing of the key principles of the protection of the public; the maintenance of public confidence in the pharmacy profession; safeguarding the competent professional from unjustifiable allegations; and the legitimate expectation of complainants and the public that allegations will be fully and fairly investigated.

The Referral Criteria document contains a reminder that the Committee considers the allegations before it on the basis of documentary evidence alone. Additionally it does not have the function of making judgements on, or seek to resolve substantial conflicts of evidence. It does not, therefore, make findings of fact on the substantive issues arising in the allegation.

Nonetheless, the document emphasises that the practices and procedures of the Committee are sufficiently rigorous to ensure that all allegations are thoroughly considered, that the Committee is permitted to direct that further investigations are undertaken, is required to take into account all of the representations which have been made and is supported by legal advisers, and in appropriate cases, by clinical advisers.

The Referral Criteria document also emphasises that Committee is obliged to issue reasons for all of its decisions, and will take into account guidance available to it from the CHRE, and the courts. The existing Referral Criteria have worked well this year and the Committee continues to be vigilant about their application and any amendments that may be required in the future.

The Investigating Committee is keen to stress that those who might be subject to its jurisdiction are entitled, under the principle of fairness, to be aware of the factors and criteria which the Committee will consider, in making significant decisions which might impinge on their professional practice. Accordingly, the Investigating Committee actively publishes and promotes all aspects of its Referral Criteria, including its philosophy and approach. A copy of the current Referral Criteria is attached to this report as **Appendix A**.

3 Proposed new Aide Memoires

The Chair has composed new Aide Memoires which are currently near to completion after some consultation and perfection. Once completed fully, they will be circulated to all Investigating Committee members and it is anticipated that there will be a short Investigating Committee study day in early Spring 2010 so as to ensure all members are familiar with them ready for all future meetings. They now consist of 4 separate Aide Memoires dealing with Misconduct, Deficient Professional Performance, Health and

Disqualification cases, respectively. It is anticipated that they will make the process of the meetings easier where the steps that the Committee takes are clearly set out, together with the variants of action that can be taken in any one scenario. Whilst not rigid, it is hoped that these Aide Memoires will ease the process of the Committee's decision making. Further information of how the system "settles in" will be given in next year's report.

4. Membership and Composition

The initial recruitment and appointment procedures provided for the appointment of a Chair, Deputy Chair and eight other members to the membership of the Investigating Committee, representing the agreed professional and lay background required for the Committee.

In early 2009 the previous Chair was appointed to another (Judicial) post and after a recruitment process, the current Chair was appointed and commenced sitting in May 2009. Towards the end of 2009, the Committee "lost" 2 members due to them being appointed to the General Pharmaceutical Council and one lay member resigned. One of the 2 members appointed to the General Pharmaceutical Council had been Deputy Chair. A recruitment process followed and all 3 vacancies were filled. Details of the current membership of the Investigating Committee are set out at **Appendix B**.

Under Article 17 of the Fitness to Practise and Registration Appeals Committees and their Advisers Rules) Order of Council 2007, the quorum for all of the fitness to practise committees is set as three, comprising the Chair (or Deputy Chair), a professional member and a lay member. The Committee often sits with 4 members following an agreement between the previous Chair and the Chief Executive Officer. In addition, it has been decided this year by the Society that if no Pharmacy member is available, then an eligible professional member can be a Pharmacy Technician member, as it has been recognised that the Pharmacy members sit on the Pharmacy Technician cases, and, so, conversely, the same can be done as effectively. It is vital that the quality of decision-making should not be compromised.

5 Caseload

5.1 Caseload - Statistics

All of the statistics relating to the caseload of the Investigating Committee are available in the Statutory Committee Statistical Reports.

During the period from 1st March 2009 to 28th February 2010, the Committee sat on **20** occasions. Up to December 2009 the Committee met twice a month and from January 2010 the Committee will meet once a month.

The **total number of cases** considered by the Committee during the period was **321**, involving **351** registrants.

Of the **321** cases considered, **92** were categorised as 'Full' cases, **16** as 'Health' cases, **203** as 'Recommendation' cases, **9** were **applications for rescission** and **2** were **applications for reconsideration**. Of the total cases considered **29** were **adjourned** on the day of the Investigating Committee meeting.

5.2 Caseload – Outcome

All of the matters considered resulted in 405 outcomes. A case may have more than one allegation and therefore more than one outcome. Of all of the matters which were considered by the Investigating Committee, **48** were referred to the **Disciplinary**

Committee, 8 were referred to the **Health Committee, 56** were disposed of by way of issue of a **letter of warning, 142** were disposed of by way of issue of a **letter of advice, 4** were disposed of by **agreeing undertakings** with the respondent, **29** were **referred back** to the Society, in **23** cases, it was recommended that **no further action** be taken, and, in **95** cases the matter was **dismissed**.

5.3 Caseload – analysis

(i) *Categorisation of cases*

Cases which are allocated to individual meetings of the Investigating Committee are categorised as **‘Full’**, **‘Health’** or **‘Recommendation’**.

This classification policy is internal to the Fitness to Practise Department, and no requirement to categorise cases is to be found in the legislative provisions which give rise to the fitness to practise Committee structure. Indeed, Article 49 of the Pharmacists and Pharmacy Technicians Order 2007 provides for the Registrar to refer *matters* to the Investigating Committee, where fitness to practise issues arise – either through a specific allegation, or where the Registrar receives information to that effect.

In the case papers relating to **‘Full’** or **‘Health’** cases, which are prepared by the Fitness to Practise Department, there is no recommendation made as to the likely disposal of the case by the Investigating Committee. The case papers in **‘Full’** or **‘Health’** cases are complete and include the whole evidential basis upon which the matter is referred. On the other hand, in **‘Recommendation’** cases, the case papers are not as comprehensive, involving a summary of the investigation, and the evidence available to the Fitness to Practise Department. As might be expected, **‘Recommendation’** cases also include a recommendation as to a disposal which the Investigating Committee is invited to adopt. Of course, the Investigating Committee is not obliged to adopt the suggested outcome, and, following application of its rigorous procedures, can, and does dispose of allegations as it considers appropriate. Accordingly, it may be the case the Investigating Committee refers allegations to the Disciplinary or Health Committees, in cases initially categorised as **‘Recommendation’**.

Article 15 of the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc. Rules) Order of Council 2007 permits the reconsideration of decisions which have been made by the Investigating Committee, in certain circumstances. In the 2 cases in which applications to that effect were made from the Fitness to Practise Department, the basis of the applications were in the first case, it transpired that the Committee had mistakenly thought that the registrant was the pharmacist in charge on the day of the alleged error, this in fact was not the case and an application for reconsideration was made by the registrant’s representative. In the second case reconsideration was necessary for the prevent of injustice to the registrant as the application was made on the basis that the Committee had received erroneous legal advice.

Continuing follow-up discussions with the Fitness to Practise Department, about the basis upon which cases are investigated and categorised, revealed that, following an internal categorisation of a case, depending on its perceived degree of gravity, and in order to target the Society’s investigative resources effectively, the paperwork to the Investigating Committee in cases which are initially categorised as **‘Recommendation’** is less detailed than in **‘Full’** cases. Whilst this may be the case, the Committee still has reservations about cases where there appears to be serious, or potentially serious, issues in the Recommendation section that may permit dangerous or potentially dangerous practitioners to be allowed to continue to practise unrestricted, if the Committee adopted the Recommendations made. To that end, the FtP Dept has re-assured the Investigating Committee recently that if a Recommendation case is thought to be appropriate to be referred by the Investigating Committee to the Disciplinary Committee (with Referral Criteria and the Real Prospect test having been met in discussion), then the Investigating Committee has been asked to adjourn the case on the grounds of insufficient information

and the FtP caseworkers will work it up to a Full case for the Committee to discuss at the next possible meeting. This is an excellent suggestion and the reasons for the adjournment could include the fact that the Committee was of the view that the papers need to be fully investigated for further consideration as a Full case and the reasons should include a brief description of the nature of the conduct under discussion. This latest policy from the FtP Dept has been welcomed by the Investigating Committee and it is hoped this will go some way to resolving what has been a difficult issue, but one which the Investigating Committee wished to see addressed, as it impacts directly on the protection of the public and the confidence that the public is entitled to have in the regulatory process and in the profession. How this progresses will be reported on in next year's report. .

(ii) Caseload

Building on the success of reducing the throughput of cases during 2008, during 2009, the Investigating Committee, together with the Committee Secretariat, has been proactive in endeavouring to ensure that outstanding cases were listed in a timely fashion. As the 'Caseload – Forward Look' section below will confirm, as of 24 February 2010, there are **21** cases waiting to be listed and **29** cases allocated to meetings waiting to be considered. This is a significant reduction from last year, which, in itself, had improved considerably from the previous period. Accordingly, there is currently almost no backlog of cases as cases are listed to be considered at a meeting date as soon as they are received from the Investigations team. The membership of the Investigating Committee is to be thanked for its hard work in tackling an existing workload. Further, the relationship between the Investigating Committee and the Committees' Secretariat is exemplary, and a large part of the success in ensuring that there is quick and effective access to the committee structure is due to the extremely hard work of the Secretariat staff.

(iii) Referral to the Disciplinary Committee

The primary function of the Investigating Committee is set out in Article 50(1) of the 2007 Order, and is that where an allegation or matter has been referred to it, the Committee must decide whether the allegation ought to be considered by the Disciplinary Committee or the Health Committee.

As noted above, in **48 cases** such a referral has been made. Implicit in those decisions is a determination that the Investigating Committee is satisfied that there would be a real prospect, of a finding that the respondent's fitness to practice is impaired as a result of misconduct. Almost exclusively, referrals to the Disciplinary Committee were in cases which had been categorised as 'Full'. The subject-matter of the allegations in all the cases in which referral to the Disciplinary Committee was determined was serious, involving significant breaches of the medicines' legislation, the Code of Ethics, or both. During the period under consideration, the Investigating Committee has noted a continuation in the number of cases where the case involved a conviction for a criminal offence. Dishonesty, both within the criminal courts' jurisdiction and within the Society's Rules and Code, also achieved a worrying prominence this year. There was also a number of cases involving extreme anti social behaviour towards colleague and clients, beyond the disputes that might be expected occasionally in a retail environment.

(iv) Referral to the Health Committee

Article 7 of the 2007 Order establishes the Health Committee as a new statutory committee, and Article 50(1) permits referral of allegations to the Health Committee, by the Investigating Committee. Under Article 50(3) referral must be exclusively to the Health Committee where that is determined to be appropriate by the Investigating Committee, and where the allegation is that fitness to practise is impaired by reason only of adverse physical or mental health. The Investigating Committee is vigilant to ensure that where

there is a real prospect of a finding of fitness to practise impairment by reason of misconduct, in cases involving both misconduct and health, then a referral to the Disciplinary Committee and not the Health Committee is the correct way to deal with these types of cases, encompassing the relevant case law.

To assist the Investigating Committee in its determination of cases involving allegations of impairment of fitness to practise as a result of adverse physical or mental health, the Committee has devised health-related criteria as part of its published Referral Criteria.

As noted above, in **8 cases** such a referral has been made. Implicit in those decisions is a determination that the Investigating Committee is satisfied that there would be a real prospect of a finding that the respondent's fitness to practice is impaired as a result of adverse physical or mental health.

(v) Disposal by way of issue of a letter of warning

Article 50(2) of the Pharmacists and Pharmacy Technicians Order 2007 states that 'if the Investigating Committee decides that the allegation need not be considered by the Disciplinary Committee or Health Committee ... the Investigating Committee may issue a warning or advice to the person concerned in connection with any matter arising out of or related to the allegation ...'

Rule 13 of the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc.) Rules 2007 states that:

- (1) The Investigating Committee may dispose of disqualification proceedings by issuing a warning to the registrant concerned instead of referring the allegation to the Disciplinary Committee, but only in the circumstances set out in paragraph (3).
- (2) The Investigating Committee shall only dispose of fitness to practise proceedings by issuing a warning, instead of referring the allegation to the Health or Disciplinary Committee, in the circumstances set out in paragraph (3).
- (3) Cases shall only be disposed of by issuing a warning where—
 - (a) the registrant concerned does not dispute the particulars of the allegation set out in the notice of referral; and
 - (b) the registrant concerned has confirmed, within the period specified by the Committee, that he agrees to disposal of the matter by means of a warning, and in the terms notified to him when the period is specified.

The Investigating Committee remains of the view that the power to issue a warning is beneficial in disposing of a category of case where it would be appropriate to do so without requiring recourse to the full disciplinary process. However, the procedure for the issue of a warning continues to be a problem.

There remains a legislative tension between the requirements of Article 50(3) of the 2007 Order and Rule 13 of the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc.) Rules 2007. Article 50 does not appear to impose any additional restriction on the warning powers of the Investigating Committee, while Rule 13 links the possibility of a warning to non-dispute of the allegations, and agreement to the warning by the registrant. At different meetings of the Investigating Committee, there has been conflicting advice from the Legal Advisors as to the effect of the effect, and supremacy of the two different legislative provisions.

Difficulties remain in relation to the agreement to a warning by the registrant. No difficulty arises in Full or Recommendation cases where the registrant did not dispute the allegation and accepted that a warning on particular terms is appropriate.

However, in Recommendation cases where no Real Prospect test has been met, where the respondent had been made aware that a letter of warning might be issued, and an acknowledgement form was forwarded and had been returned and where the registrant has disputed the allegation and/or has not agreed to its disposal by way of a warning, difficulties continue to arise. The Investigating Committee cannot be re-seized of the matter for a de novo discussion, because it has already made its decision to issue a Warning by the Recommendation route, after discussion. Thus, on return to the Committee, all it can do within its powers is to send a letter of advice, take no further action or dismiss the case. It cannot refer to the Disciplinary Committee as it cannot revisit its earlier decision, including the fact that it cannot then commence discussions on the Referral Criteria and the Real Prospect, both of which are required in order to get to the point of referral to the Disciplinary Committee.

Difficulties also arise in Recommendation cases where an advice is being sought and the Registrant has agreed to that, but where the Committee has determined that a Warning is more appropriate. The prescriptive nature of the Recommendation process means that the case has to go back to the secretariat for a letter to the Registrant seeking their consent to a warning. If the Registrant does not agree, the problems arise as set out in the previous paragraph.

This year, in Full cases, the Committee has tended to consider in discussions that the Warning outcome can often be more suitable for the more serious cases that will often, but not exclusively, have passed the Real Prospect test. This avoids the problems described in the paragraphs above, if the Registrant refuses to consent to a Warning. In such a case, on return to the Committee, it then has the clear power to refer the case to the Disciplinary Committee.

Historically, to alleviate some of the problems which have arisen, the format and wording of the Notice of Referral and Acknowledgement Form, which is sent to registrants who are the subject of fitness to practise proceedings, had been altered. Additionally, the Committee had attempted to alleviate the consequences of the problematic warning rule, by, in appropriate cases, recommending that a warning is issued to the registrant, and asking that registrant to confirm that he does not dispute the particulars of the allegation, and accepts that the disposal of the proceedings by way of issue of a warning is appropriate. However, the adoption of this latter procedure is not ideal, as it continues to result in a 'technical' adjournment of the case, and a requirement for the formal outcome to be considered at a later meeting. However, as seen in Paragraphs 3 and 5.3 (i) above, the latest F to P Dept advice and the new Aide Memoires may go some way to an ease and consistency of approach by the Committee.

This year, **56** cases were disposed of by way of issue of a letter of warning. Of these, **39** were cases where the Investigating Committee had to adopt the technical adjournment procedure outlined in the previous paragraphs. Of the 56, 30 were Full cases and 24 were Recommendation cases. Where the figures do not reconcile means that there were (two) cases in which more than one registrant was issued with a letter of warning. In each of these Full cases, the Committee had concluded that there would be a real prospect of a finding, by the Disciplinary Committee, that the respondent's fitness to practice is impaired as a result of misconduct. Accordingly, in all such cases, the subject-matter of the allegations was serious, and several of the Investigating Committee's Referral Criteria were engaged. It remains typical that the subject-matter involved serious breaches of the controlled drugs legislation. Nonetheless, the Committee determined that there were sufficient other positive factors which permitted the alternative disposal by way of issue of a letter of warning. Amongst these factors would be a clear insight by the registrant into the consequences of the allegation, direct action to alleviate those consequences, the introductions of improvements to professional practice, and no previous history of misconduct.

The administrative records of the Secretariat confirm that in the majority of cases where a letter of warning has been issued by the Investigating Committee, it has been accepted by the registrant(s) concerned. In the few cases where there has not been such an acceptance the formal outcome of the Full case was that the relevant allegations were referred to the Disciplinary committee. The Committee now feels more confident in doing this in light of the Real Prospect test having been met. As set out in Paragraph 3 and above, the new Aide Memoires will increase this level of confidence. Of course, where the refusal concerned a Recommendation case or where there has been a decision that the real prospect test has not been met in a Full case, the problem arises of the Committee's lack of power to do anything other than dismiss or issue a letter of advice on the next occasion. As discussed in the body of this report, this has attempted to be addressed by the Committee in each case (not necessarily exclusively) keeping in mind that letters of warning may be more appropriate in cases where the real prospect test has been met.

Notwithstanding all the efforts made this year to overcome these issues, the Investigating Committee continues to recommend that serious consideration is given, in any legislative reform programme, to a resolution of the aforementioned legislative tension.

(vi) Disposal by agreeing undertakings with the registrant (only in Deficient Professional Performance and Health cases)

Rule 13(4) of the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc.) Rules 2007 states that:

'The Investigating Committee may dispose of fitness to practise proceedings by agreeing undertakings with the registrant concerned (that is, that he will comply with such undertakings as the Committee considers appropriate), instead of referring the allegation to the Health or Disciplinary Committee where –

- (a) the allegation concerns deficient professional performance or adverse physical or mental health; and
- (b) the registrant concerns admits that his fitness to practise is impaired'

This year, **4** cases were disposed of by way of **agreeing undertakings with the registrant**, in **1** case undertakings were offered but were subsequently declined by the registrant which resulted in a referral to the Health Committee. In each of these cases, the allegation concerned adverse physical or mental health, and, accordingly, the decision to dispose of the allegation by agreeing undertakings with the registrant was as an alternative to referral to the Health or Disciplinary Committees. In each of these cases, the Committee had concluded that there would be a real prospect of a finding, by the Disciplinary Committee, that the respondent's fitness to practice is impaired as a result of deficient professional performance, or by the Health Committee, as a result of adverse physical or mental health. In each case the undertakings were formulated by the Committee, after careful consideration of the issues arising, and agreed to be appropriate to the circumstances giving rise to the allegation. Undertakings ranged from agreement to submit medical reports at specified intervals, to a declaration of continuing to comply with a health regime, or to place themselves under appropriate workplace supervision. The Committee was vigilant to ensure that the Registrants in all these cases, as per the legal requirements, had admitted the facts of the particulars of the allegation and that his/her fitness to practise is impaired.

In **1** case, the registrant had not given a prior indication that he/she admitted that his fitness to practise was impaired. Accordingly, the decision of the Committee was to seek such admission from the registrant and an agreement to specific undertakings. Again, as described in the Warning section above, if the registrant did not agree to his/her fitness to practise impairment and/or to the Undertakings and/or their detail, then the Investigating

Committee, on the return of the case to it at a future date, would be empowered to refer the case to either of the 2 relevant Committees (the new Aide Memoires will help in this process).

During the period under consideration, concern was raised as to how compliance with undertakings might be monitored. The Investigating Committee agreed to include in the wording of undertakings a mechanism for the registrant to provide to the Committee appropriate evidence of their compliance. Further, the Fitness to Practise Department had agreed last year to investigate any role which the Inspectorate might play in this regard. Feedback from the FtP Dept has taken place, which has resulted in the FtP Dept taking responsibility for monitoring the Undertakings made by the Committee. This will be very helpful as it will ensure a single point where the professional standards Inspector can monitor the Undertakings in place and any relevant deadlines in place. The FtP Dept can then report back to the Committee with a report, for any further action, should that be necessary. This will also have the effect of any other FtP matters that might otherwise have gone unnoticed.

(vii) Disposal by way of issue of a letter of advice

Article 50(2) of the 2007 Order gives the Investigating Committee the power to issue advice to the person concerned in connection with any matter arising out of or related to the allegation.

This year, **142** cases were disposed of by way of issue of a letter of advice. ***In each of these cases***, the Committee had concluded that there would be ***no real prospect of a finding***, by the Disciplinary Committee, that the respondent's fitness to practice is impaired as a result of misconduct. In each case, the Committee was satisfied that, for example, while there was evidence of a breach of the medicines' legislation or the Code of Ethics, there were sufficient positive additional factors to merit the disposal of the allegation by way of issue of a letter of advice. Such factors included absence of any legal history in relation to the registrant, an acceptance that an error was a 'one-off' and unlikely to be repeated, co-operation with the Society's Inspectorate, implementation of appropriate advice from the Inspectorate, clear insight into the consequences of the allegation, and relevant changes to professional practise. What differentiated the disposal of an allegation by way of issue of a letter of advice as opposed to a letter of warning was the gravity of the allegation, and, therefore, often, if there was a Real Prospect of an Impairment finding by the Disciplinary Committee or the Health Committee.

In recommending disposal of an allegation by way of issue of a letter of advice to the registrant(s) concerned, the Investigating Committee has often proposed that the letter of advice repeats advice already given to the registrant by the Inspector involved with the case. This has been because the Committee has considered the advice to be practical and appropriate to the circumstances of the case. In many instances, the advice given by the Inspectorate has been first-class and wholly relevant. This year, the Investigating Committee continued to note cases where the subject-matter of the case involved an allegation of impolite or discourteous interaction with a member of the public. In considering all such allegations, the Investigating Committee is conscious that members of the pharmacy profession, as other health care professionals, should not be the subject of unwarranted verbal abuse or harassment from members of the public. Balanced against that, however, is the fact that that an inherent characteristic of professional conduct is the ability to deal with problematic situations, in a sensitive manner. It is important to remember that those who are subject to professional service often fall into the vulnerable category.

(viii) No further action or dismissal

During the course of the period under consideration, the Investigating Committee adopted separate and distinct interpretations in cases where the outcome was determined to be 'No Further Action (NFA)' and 'Dismissal'.

The outcome of 'NFA' is typically arrived at in cases where the Society's Inspectors have already taken action and the Committee has formed the view that the issues forming the basis of the allegation have been dealt with adequately by the Inspectorate at a 'local' level; that the registrants have taken the advice suggested by the Inspectorate, and have altered their professional practice and procedure as a result; and have shown insight. In such cases, the Committee has found no basis to refer the allegations to the Disciplinary or Health Committees and has determined that the Inspectorate action is sufficient to deal with the allegation, while recognising that there is a basis to the complaint.

The outcome of 'Dismissal' is typically arrived at in cases where there is no substance to the allegation; for example, where the evidence is of insufficient weight to support the allegation and there is no case to answer.

In a number of cases the Investigating Committee recommended that no further action be taken in connection with the allegation **23 (NFA)**, or that it be dismissed **95 (Dismissed)**. There were a number of different reasons for this course. In many instances, and these invariably resulted in a 'Dismissal' outcome, there was an insufficient evidence base for the allegations as drafted. Accordingly, the Committee concluded that the allegation could not be proved due to poor or non-existent evidence. In other cases, the Committee concluded that the subject-matter of the allegations, for example obvious employment disputes, or commercial rivalries, was clearly not relevant to fitness to practise proceedings. In some other cases, the Committee concluded that the complaint giving rise to the allegation was vexatious, or mendacious, and that, far from being the subject-matter of fitness to practise allegations, the pharmacist had, at all times, acted professionally and placed a patient's interests at the forefront of his actions. In some cases, the Committee decided that the allegation had been dealt with appropriately at a local level, with Inspectorate intervention, and that the matter should be closed.

In addition, this year, it was decided by the Committee that a conflict of evidence between witnesses was not a good reason to dismiss a case as conflicts should be resolved by the Disciplinary Committee. Therefore, the Committee now looks to see if there is an obvious weight to any conflicts in favour of the registrant before dismissing a case.

(ix) Rescission

In the period under consideration there were **9** applications for rescission dealt with by the Investigating Committee. These have been lodged for a number of reasons; insufficient evidence for Impairment following Counsel's advice, no record of the Rule 9 decision, or that a registrant has subsequently accepted the offer of a letter of warning which they had initially declined, which then resulted in a referral to the Disciplinary Committee as explained above. If the application for rescission was successful, the outcome of the matter would no longer be a referral to the Disciplinary Committee, but would receive one of the other outcomes available to the Investigating Committee.

(x) Reconsideration.

There were **2** applications for reconsideration in the period under consideration. The first was required because of initial incorrect legal advice to the Committee and in the second case reconsideration was necessary for the prevention of injustice to the registrant as the application was made on the basis that the Committee had received erroneous legal advice.

(xi) Postponement or Adjournment

This year **3** cases were postponed and **29** cases were adjourned.

Postponements are as a result of either applications for such by registrants and/or their representatives, or because of issues arising on the day of the hearing. If an application is made pre-hearing for a postponement of a case, it is dealt with by the Chair or Deputy Chair. In determining such an application, the Chair/Deputy, amongst other matters, has regard to the public interest in the expeditious disposal of the case, the potential inconvenience caused to a party, and fairness to the parties concerned. Some applications, usually by representatives, are on the basis of a lack of preparation time or for return of submissions within the statutory time period permitted.

Adjournments are where the Committee determines that there is insufficient evidence for them to proceed consideration of the case and therefore an adjournment is necessary for the Society's Case Manager to be able to provide the information requested by the Committee.

(xii) Interim Orders

The Investigating Committee has the power, under Article 50 of the 2007 Order, to notify the Disciplinary or Health Committees, to which it is referring an allegation, of its opinion that that Committee should consider making an interim order. These are rare for the Investigating Committee to deal with, as the FtP Dept and the Registrar look carefully at all complaints when they are received to see if an Interim Order is deemed to be necessary. However, this Committee retains the right to recommend an Interim Order, particularly where it has determined that a case shall be referred to either the Disciplinary or the Health Committees. The Investigating Committee, in the period under consideration, has considered, in a small number of cases, whether it should recommend that the Disciplinary or Health Committee should consider making an interim order, and it has made **2** such formal referrals. In **1** case an Interim Order recommendation was rescinded once the Committee was informed that it was likely that the criteria would not have been by the Disciplinary Committee. In 1 case the Health Committee successfully made an interim order.

5.4 Caseload – forward look

As of 24 February 2010 we currently have 21 cases waiting to be listed and 29 cases allocated to meetings waiting to be considered. Accordingly, there is currently almost no backlog as the 21 cases will be listed to be considered at one meeting

6 Practice and policy, learning and feedback points

The statistics in this section relate to the period from the beginning of April 2009 to the end of February 2010.

As a result of its deliberations on a wide range of cases, a number of general issues have been identified, which the Investigating Committee have recommended should merit additional action, outside of the parameters of individual cases. These points can be classified as either:

- (i) Practice and policy
- (ii) Learning
- (iii) Feedback

(i) Practice and policy

No pharmacy practice points were identified by the Investigating Committee this year.

(ii) Learning

Learning points are related to the day-to-day work of the Investigating Committee, and are identified to ensure improvements in the Committee's practice and procedures, consistency in procedural application across different meetings of the Committee, and enhancement of the service given to the Committee by the Society. In the period under consideration, the Committee has identified **12** such learning points, the subject-matter of which can be summarised, as follows:

- Consistent and clear wording to be used in the reasons for 'Dismissal' and 'No Further Action' cases, the latter usually implying that there already had been some Inspectorate action on the case.
- Consideration of Referral Criteria – continually working to refine the way the Committee works –especially, this year, further discussion about examples to help with Referral Criteria under the H (Harm), PP11 and PPN1 and PPN2 categories.
- The disposal of allegations concerning convictions for drink-driving offences.
- The fairest disposal of various criminal convictions and Police cautions, where the conviction/caution is either not at the most serious end of the spectrum of offences, and/or the conviction/caution is old.
- Constant vigilance that the Committee is operating under up to date guidance, especially on Rescission applications.
- Monitoring of Undertakings needs to be carefully structured and discussion needs to take place about the efficacy of the Committee's role in this type of outcome, with urgent consideration to be given to the making of detailed rules in relation to the monitoring of undertakings agreed with the Registrant. A set of precedent undertakings would be useful (akin to a Conditions of Practice "bank").
- Clear Committee directions when identifying the needs for a re-visit by the Inspector (following a brief visit to the Committee by Mr Andy Smith, Professional Standards Inspector).
- To ensure that in Health cases any Undertakings imposed should reflect the Committee's powers under Rule 13(5).
- The need to include at the next Training Day the procedure to adopt in Disqualification cases, as these type of cases are less common.
- The Committee would like feedback by way of examples of letters of advice issued after its recommendations.
- The ignorance amongst the profession about the seven days within which a member has to report a caution or conviction. This has led to a substantial number of cases where this regularly forms the subject matter of a sub-allegation in relation to that breach of the Rules. Most are innocent over-sights and have been treated as such by the Committee. The Society may wish to market the point to all members during the coming year, so as to reduce the level of ignorance amongst the profession about this point.
- Concern about a misconduct case where a Registrant attempted to intimidate the complainant. This was a Full case and it provoked robust discussion about whether this was appropriate behaviour for a member. It was referred to the Disciplinary Committee to reflect that this type of behaviour is unacceptable, especially to an informed member of the public.

(iii) Feedback

Feedback points are for the Society and are directly linked to improving the quality of case-work service provided to the Investigating Committee. It is the case that there are aspects of the format, presentation, and content of case submissions which would require amendment or enhancement.

In the period under consideration, the Committee has identified **52** such feedback points, the subject-matter of which can be summarised, as follows:

- Quality and readability of cases papers
- Quality of information in case papers
- Drafting of allegations
- Querying recommendations for dismissal on the basis of insufficient evidence or conflict of evidence
- Procedure for referring other healthcare professionals who are referred to in cases where their actions may amount to misconduct by their regulatory authority.
- Procedure for including a copy of Rule 9 in the case papers for each relevant case.
- Querying why certain allegations involving criminal convictions are not referred directly to the Disciplinary Committee
- Procedure for the Inspectorate revisiting premises after an IC outcome
- Feedback to inspectors commending their advice to registrants.
- Requesting feedback from the Society regarding the number of outstanding cases.
- Concerns relating to the amount of time registrants are given to report convictions as it may be unfair.
- Ensuring that documentation relating to convictions/warnings/reprimands is contained in the case papers.
- Querying the Society's position and steps taken to regulate internet pharmacies.

6 Training, learning, development and appraisal

Members of the Investigating Committee continued to participate in a training, learning and development programme, during the period under consideration. On 16 November 2009 members of the Investigating Committee met for a comprehensive training day. Careful consideration was given regarding the content of the training programme. The content of the training delivered was considered carefully in line with individual training needs as well as training requirements for the committee overall. During the course of the training day, time was provided to review practice and procedure of the committee.

The Investigating Committee training folder has been further updated during 2009 with legislative update documents, Law and Ethics bulletins, CHRE publications and relevant Council papers. Members are also aware that some of this information is available on the Society website.

7 Committee Secretariat

The Investigating Committee has received excellent administrative support from the Committee Secretariat, which has facilitated the Committee's work. The Investigating Committee places on record its immense gratitude to the members of the Secretariat for the support and assistance which has been provided in this difficult transitional year for the posts of both Chair and Vice Chair.

8 Conclusion

This report covers the third year of the work of the Investigating Committee, a statutory committee, as part of the RPSGB's fitness to practise structure. The Council can be

confident that the Investigating Committee remains committed to its pivotal role as a mechanism within the fitness to practise structure for the initial consideration of allegations of impairment and the determination of the most appropriate method of disposal of those allegations, including referral to the most relevant component of the committee structure. The members of the Committee are assiduous in their commitment to the principles identified by the Committee as essential to its role - the protection of the public; the maintenance of public confidence in the pharmacy profession; safeguarding the competent professional from unjustifiable allegations; and the legitimate expectation of complainants and the public that allegations will be fully and fairly investigated. This Committee remains proud to be the gatekeeper to the Disciplinary process.

Miss Karen Rea
Chairman, Investigating Committee

ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN**INVESTIGATING COMMITTEE****REFERRAL CRITERIA IN RESPECT OF FITNESS TO PRACTISE ALLEGATIONS****1 BACKGROUND**

Part 5 of the Pharmacists and Pharmacy Technicians Order 2007, supplemented by more detailed rules, makes provision for the fitness to practise procedures of the Royal Pharmaceutical Society of Great Britain. Those procedures establish statutory mechanisms for the determination of allegations that a registrant's fitness to practise is impaired.

The Investigating Committee has been established as a key component of the fitness to practise committee structure. One of its functions is to make initial decisions in relation to allegations of impairment of fitness to practise, by deciding whether or not to refer such allegations to other relevant parts of the committee structure.

In disposing of allegations before it, by making such referral decisions, the Investigating Committee has an important legislative duty to take into account, amongst other things, its published referral criteria. Accordingly, this document gives guidance on the matters which may be taken into account by the Investigating Committee, in carrying out its referral role.

The Investigating Committee is additionally of the view that those who might be subject to its jurisdiction are entitled, under the principle of fairness, to be aware of the factors and criteria which the Committee will consider, in making significant decisions which might impinge on their professional practice. In this sense, this document has a duality of purpose. The Explanatory Notes which accompany this document are intended to provide further clarification.

2 UNDERLYING PRINCIPLES

The Royal Pharmaceutical Society's fitness to practise procedures recognise that all allegations of impairment require initial consideration to determine the most appropriate method of disposal, including referral to the most relevant component of the committee structure.

Accordingly, the procedures provide for the Investigating Committee to ensure that the cases which are referred to the alternative fitness to practise committees, the Health Committee, and the Disciplinary Committee are those where it is satisfied that there is a **real prospect** that those Committees will establish that the registrant's fitness to practise is impaired.

This important test, which applies in most healthcare regulatory schemes, requires an important balancing of the key principles of the protection of the public; the maintenance of public confidence in the pharmacy profession; safeguarding the competent professional from unjustifiable allegations; and the legitimate expectation of complainants and the public that allegations will be fully and fairly investigated. The Investigating Committee adopts a cautious approach, however, and will commit to making a referral in any case where there is an element of doubt.

In making its decisions, the Investigating Committee will take into account guidance on the parameters of the **real prospect** test, which has been given by the relevant courts.

Additionally, the Committee will consider guidance issued by the Chairs of the Health and Disciplinary Committees.

The Investigating Committee considers the allegations before it on the basis of documentary evidence alone. Additionally it does not have the function of making judgements on, or seek to resolve substantial conflicts of evidence. It will not, therefore make findings of fact on the substantive issues arising in the allegation.

Nonetheless, its practices and procedures are sufficiently rigorous to ensure that all allegations are thoroughly considered. The Committee is permitted to direct that further investigations are undertaken. The Committee is required to take into account all of the representations which have been made. It will be supported by legal advisers, and in appropriate cases, by clinical advisers.

The Committee is obliged to issue reasons for all of its decisions. Trends in the Committee's decision-making and analyses of the reasons for referral decisions will be reported on an annual basis, in the Committee's Annual Report.

3 FACTORS WHICH MAY INDICATE A REFERRAL TO THE DISCIPLINARY OR HEALTH COMMITTEES

It is important to note that the following factors are indicative only, and the Investigating Committee will reserve the right to take into account additional factors, relevant to any particular allegation.

Harm:

- H1. Evidence of previous or existing actual harm to patients or the public**
- H2. Evidence of previous or existing potential harm to patients or the public**
- H3. Realistic risk of future harm to patients or the public**
- H4. Subject of harm is a vulnerable patient/person**

Personal Health:

- PH1. Risk of self-harm**
- PH2. Recurrent or episodic conditions**
- PH3. Sustained ill-health**
- PH4. Current medical supervision or treatment**
- PH5. Current addictive behaviour**
- PH6. Relapses into addictive behaviour**
- PH7. Underlying condition suffered by registrant which, although in remission, is capable of causing impairment of fitness to practise if it recurs**
- PH8. Failure to comply with drug/treatment regimes or medical supervision or support recommendations**
- PH9. Failure to comply with medical assessment**
- PH10. Failure to comply with undertakings**

Personal Behaviour:

- PB1. Dishonesty**
- PB2. Sexual misconduct**
- PB3. Breach of confidentiality**
- PB4. Lack of insight**
- PB5. Breach of trust**
- PB6. Vulnerable patient or victim**

PB7: Lack of respect for others
PB8: Adverse determination in criminal, civil, or administrative proceedings
PB9: Harassment or bullying
PB10: Violation of appropriate boundaries Professional

Practice:

- PP1. Registration status**
- PP2. Serious departure from accepted professional standards and guidelines**
- PP3. Breach of RPSGB Code of Ethics or Guidance**
- PP4. Failure of supervision or control**
- PP5. Abuse of professional position**
- PP6. Exceeding appropriate professional boundaries**
- PP7. Disregard or breach of Inspectorate advice**
- PP8. Failure to maintain indemnity insurance**
- PP9. Excessive or irresponsible supply of medicines with potential for abuse**
- PP10. Failure to work effectively, or co-operate with other healthcare professionals**
- PP11. Lack of professional competence or judgement**
- PP12. Placing commercial interests above those of patients or public**
- PP13. Serious breach of controlled drugs legislation**
- PP14. Failure to comply with conditions imposed by the Health or Disciplinary Committees**
- PP15. Failure to comply with undertakings**
- PP16. Refusal to provide an undertaking not to practise**
- PP17. Failure to respond to correspondence from the RPSGB**
- PP18: Failure to take action in the public interest**
- PP19: Failure to practise within agreed parameters**

Professional status:

- PPN1. Bringing the profession into disrepute**
- PPN2. Undermining public confidence in the profession**

Registration status:

- PPN3. Deliberate disregard for the system of registration**
- PPN4. Failure to co-operate with RPSGB or other Investigation**
- PPN5. Failure to comply with personal performance assessment**

Current Allegation:

- CA1. Attempt to cover up the facts**
- CA2. Attempt to impede/obstruct investigation**

Prior Allegations:

- PA1. Prosecutions, previous warnings, reprimands, sanctions, advice on same or similar matter in previous 5 years**

- PA2. Disregard or breach of advice given in relation to previous allegations**
- PA3. Failure to comply with undertakings in relation to prior allegations**

4 ADDITIONAL FACTORS WHICH MAY BE TAKEN INTO ACCOUNT

It is important to note that the following factors are indicative only, and the Investigating Committee will reserve the right to take into account additional factors, relevant to any particular allegation.

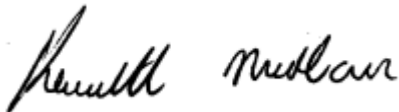
Relative experience of the registrant
Length of time since matters complained of
Response of the registrant to the allegation

5 COMMITMENT TO FAIRNESS

The Investigating Committee is committed to operating its practices and procedures in a manner which is fair, objective, transparent and free from discrimination. The members of the Committee have agreed to comply with a relevant code of standards, reflecting these principles.

6 REVIEW

This Referral Criteria document shall be the subject of a regular review, to reflect developments and changes in the Investigating Committee's practices and procedures. The first review took place after six months of the operation of the Investigating Committee, and, thereafter, on a regular basis. The Referral Criteria document, when reviewed, shall be re-published in its revised format.



4th February 2009

KENNETH MULLAN

DATE

Chair, Investigating Committee
Royal Pharmaceutical Society of Great Britain

ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN**INVESTIGATING COMMITTEE****REFERRAL CRITERIA IN RESPECT OF FITNESS TO PRACTISE ALLEGATIONS****EXPLANATORY NOTES****PURPOSE**

These explanatory notes are intended as clarification for registrants, following the first review of the referral criteria. The purpose of the notes is to help registrants understand how the investigating committee's referral criteria are applied when the committee considers whether referral to the health or disciplinary committee is indicated. It is important to emphasise that the outcome of the review will have no impact on the committee's decisions or judgements but is intended to result in clearer guidance for all stakeholders.

1. Vulnerable patients.

H4: 'Subject of harm is a vulnerable patient/person': H4 is included under the heading 'Harm' because it is considered to be relevant if the patient who is harmed is in a vulnerable condition e.g. is elderly, terminally ill, a child, is vulnerable because of addiction, or has a learning disability, so that the potential for harm is greater as a result of that vulnerability. H4 does not stand alone as one at least of H1 – H3 must apply for H4 to take place.

In contrast, **PB6** (Vulnerable patient or victim) is set in the context of personal behaviour, where the registrant takes advantage of the pharmacist/ patient or victim relationship, often but not exclusively, in a social or domestic setting.

2. Professional status and Registration status.

By separating out **PPN1** (Bringing the profession into disrepute) and **PPN2** (Undermining public confidence in the profession) from the registration criteria it is intended to make clear that matters related to behaviour outside the professional setting, for which registration is required, are capable of meeting these two criteria and hence might result in referral. In this context, the referral criteria relating to personal behaviour have been clarified by the inclusion of the criteria **PB8**, **PB9** and **PB10**, to assist registrants in understanding issues which the committee MAY take into account.

3. Age

The term 'Relative experience' has replaced the previous use of 'Age' to make it clear that the committee MAY consider the relative experience (or inexperience) of a registrant to be relevant in certain circumstances.

10 January 2009

Appendix B

Membership of the Investigating Committee

| | |
|-----------------------|------------------------------|
| Miss Karen Rea | (Chairman) |
| Dr Kameel Khan | (Deputy Chairman) |
| Mr V'Iain Fenton-May | (Pharmacist Member) |
| Ms Corinne Hunt | (Pharmacy Technician Member) |
| Mr Mohammed Hussain | (Pharmacist Member) |
| Mr Peter Jones | (Lay Member) |
| Mrs Julie Mathieson | (Pharmacy Technician Member) |
| Mr Raymond Paul | (Lay Member) |
| Mrs Linda Stone | (Pharmacist Member) |
| Mr Kenneth Thomson | (Lay Member) |
| | |
| Mr Peter Curphey | (Reserve Pharmacist Member) |
| Ms Elizabeth McMeikan | (Reserve Lay Member) |