

## A complaint has been made about me

Complaints and concerns come from different sources and will be managed differently depending on the nature of the complaint or concern.

For further information, see one of the following:

- [Complaints from members of the public](#)
- [Convictions](#)
- [Concerns raised about competence or health](#)
- [Other concerns](#)
- [Council decisions - your right to request a review or appeal a decision](#)

### Seeking support

Being the subject of any formal process can be stressful. We recommend that you consider seeking professional support. Council must remain impartial and consider a complainant's concerns and the pharmacist's response without prejudice. This means that whilst the Council can explain the usual process, we cannot give detailed guidance on how to respond or indicate the likely outcome.

For the majority of complaints (e.g., dispensing errors), we look for evidence that the pharmacist has assessed the incident in detail (e.g. Root-cause analysis) and has identified the lessons. An experienced peer may be able to help you address the concerns raised by a complaint. For more serious concerns (e.g. harm has been caused, allegations about your conduct or where interacting with the complainant was difficult) you may need legal advice.

If you are a member of [Pharmacy Defence Association](#), you can access the required level of support to respond to the complaint. Alternatively, consider seeking advice from a lawyer with experience in health law. In addition, if you are a member of any professional body, seek peer support and guidance.

### PROCESS

- **Complaints from members of the public**

When a member of the public is not satisfied with the service provided by a pharmacy or a pharmacist, they may make a complaint directly to the [Health and Disability Commissioner](#), (HDC).

HDC will make preliminary enquiries into the complaint and may start a formal investigation. The HDC assesses whether there may have been a breach of the [Code of Rights](#) and will inform Council if an investigation is started and provide information about the complaint.

Alternatively, the HDC may decide to refer the complaint to the Council, refer for [advocacy](#), or conclude its enquiries without referring the complaint further. The Council is not informed of all complaints to the HDC.

Although we encourage complainants to contact the HDC directly, we often receive these complaints first, and we must refer complaints to the HDC when a health consumer has been affected by a pharmacist's conduct or practice. The Council may make further enquiries in parallel if the complaint raises concerns about the pharmacist's competence or health. If the HDC does not investigate the complaint it may refer it back to Council for consideration.

Members of the public do not always want to make a formal complaint, but may want to discuss their concerns, understand the expected standard for pharmacy practice, or are considering their options because they were not satisfied with the pharmacy's response to their complaint. Not all complaints will relate to health service and may relate to the pharmacist's conduct. The complainant may have concerns about matters outside Council's jurisdiction (e.g. employment or commercial concerns) and we will therefore suggest other options for a resolution.

**Practice Review prompt:**

Health consumers are less likely to make a formal complaint about pharmacy services if their concerns are recognised, they are listened to, treated with respect, and receive an apology when warranted. Consider whether your management (or the pharmacy's management) of complaints needs reviewing to minimise the likelihood of further formal complaints.

If the information does not raise questions about the pharmacist's competence, health, or conduct, we assess whether a formal process can be avoided, minimising the stress on pharmacists and complainants. With the consent of the complainant and the pharmacist, it is often possible to resolve the complaint without following the formal processes. Council may need further information to decide whether an easy resolution is possible or whether a formal process is needed.

When the HDC has concluded its investigation, it may publish its findings for educational purpose, without naming the pharmacists involved. The findings may include recommendations for the pharmacist or the pharmacy, or for the Council to consider further action, such as reviewing the competence of the pharmacist.

If the HDC consider the breach of the Code of Rights is serious, it may refer to the [Director of Proceedings](#). The Director of Proceedings may decide to lay charges with the Health Practitioners Disciplinary Tribunal.

**What happens next?**

Before considering the complaint made against you (whether directly from the complainant or HDC), you can make a written submission on the information that Council holds relating to the complaint, to explain the circumstances and provide your own evidence.

If the complaint raises questions about your conduct or the safety of your practice, we may refer the complaint to a [Professional Conduct Committee](#) (PCC) to investigate. The PCC will liaise directly with you and the complainant, keep you informed of the progress of its investigation and give you opportunities to respond to the information gathered and to make submissions in person or through your lawyer.

Alternatively, the complaint may raise questions about your competence or health and will be handled accordingly.

- **Convictions**

**What if I have been convicted by a court?**

The courts are required to notify the Council when a pharmacist is convicted of any offence that is punishable by an imprisonment of three months or more, or an offence under a [named Act](#).

The Council must either refer the notification to a PCC to investigate, or when it is reasonable to do so and with your consent, consider whether a health intervention would result in a better resolution.

- **Concerns raised about competence or health**

Pharmacists or other health professionals may notify Council if they believe that you are not practising at the expected level of competence, or that your practice is adversely affected because of a physical or mental condition. The Council will inform the notifiers of the formal action it takes in relation to their notification.

### **Competence concerns**

After receiving a notification, or when a complaint raises competence concerns, the Council may order a competence review to determine whether you are practising to the expected standard. The competence review is a formal independent assessment of your competence completed by two experienced practising pharmacists.

Before the [Competence and Fitness to Practise Committee](#) (CFPC) orders a competence review, we will make further enquiries such as asking for your submission or conducting a practice visit (with your consent) to better understand the concerns raised. The practice visit is an opportunity to observe your practice and to discuss the concerns. The practice visit may confirm that a competence review is not necessary, and that your practice can be improved through professional development or amending your procedures.

Before considering the results of the competence review and its recommendations, the Council will provide you a copy of the report, and the opportunity to make written submissions to the CFPC and to meet the Committee members to make a submission in person.

If the competence review identified deficiencies in your practice, the CFPC may order a competence programme to remedy the deficiencies. The CFPC may also order practice conditions (e.g. supervision) to safeguard your practice whilst you are completing the programme.

### **Health concerns**

If your fitness to practise is affected by a health condition, the Council may order a health assessment by a suitable independent practitioner. We will consult with you about the assessment and you will be given a week's formal notice at least, stating the name of the assessor and date, time, and place for the assessment. Another person can attend the assessment with you. The cost of the assessment and your travel will be covered by Council.

The assessor will provide a written report to Council, which will include a statement regarding your fitness to practise, and (if necessary) recommendation for restricting your practice or monitoring your health. Before considering the recommendations and taking any actions, the Council will provide you a copy of the report, and the opportunity to make written submissions to the CFPC and to meet the Committee members to make a submission in person.

However, most health concerns can be managed collaboratively, provided you give consent for Council to contact your general practitioner (or other treating health professionals) and provide clinical information on your condition.

Depending on the likely impact on your practice, your insight into your condition, and willingness to co-operate with Council, we may reach a written voluntary arrangement with you setting out the terms of monitoring, including for example, frequency of reports from your

health practitioners and employer and agreeing to inform Council before changing place of work.

- **Concern about risk of harm**

When Council receives notifications or complaints that raise concerns about the competence, health or conduct of a pharmacist, we will assess the level of risk associated with the concerns.

If there is an assessed risk of harm to the public, Council will consider further action to mitigate the risk. This could include:

- Making enquiries into competence or fitness to practise (health) concerns in parallel with a HDC investigation
- Notifying the following of Council's assessment that you may pose a risk of harm and the reasons for reaching that assessment:
  - Accident Compensation Corporation,
  - the Health and Disability Commissioner,
  - the Director-General of Health, and
  - your employer
- Make an interim order to place a condition on your scope of practice or suspend your practising certificate.

## **COUNCIL DECISIONS - YOUR RIGHTS TO REQUEST A REVIEW OR APPEAL THE DECISION**

Before making an order, the Council will advise you of its proposed order and give you (or your legal advisor) an opportunity to make a written submission and whether you can also make a submission in person to the Council or its representatives.

In extreme exceptions, (serious conduct or health concern causing serious risk to the public), the Council has the right to make an order for a short time without first notifying you of its intentions or waiting for your submission. This does not remove your right to make a submission, appeal the decision to a district court or ask Council to review the decision, if it was made under delegation by the Registrar or the Competence and Fitness to Practise Committee.

Not all decisions can be appealed to the district court, but we will advise you when you can exercise this right.