

General Pharmaceutical Council

Fitness to Practise Committee

Principal Hearing

Remote videolink hearing

Monday 24 – Wednesday 26 July 2023

Registrant name:	Mohammed Roohul Haque
Registration number:	2226084
Part of the register:	Pharmacist
Type of Case:	Misconduct
Committee Members:	Angela Black (Chair) Leigh Settingington (Registrant member) Victoria Smith (Lay member)
Committee Secretary:	Adam Hern
Registrant:	Present, not represented
General Pharmaceutical Council:	Represented by Kay-Marie Tomlinson, Case Presenter
Facts proved:	1.2, 4.1 and 4.2
Facts proved by admission:	1.1, 2.1, 2.2, 2.3, 3.1, 3.2, 3.3 and 3.4
Facts not proved:	None
Fitness to practise:	Impaired
Outcome:	Suspension for 3 months, no review
Interim measures:	None

This decision including any finding of facts, impairment and sanction is an appealable decision under *The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010*. Therefore, this decision will not take effect until 23 August 2023 or, if an appeal is lodged, once that appeal has been concluded.

Particulars of Allegation

You, a registered pharmacist, whilst employed as a locum pharmacist at Hollowood Chemists Limited, 28 Blackhorse Street, Blackrod, Bolton;

1. *On 12 July 2021:*

1.1. *showed a work colleague, Witness 1, an indecent image of a penis, which was displayed on your mobile phone; [ADMITTED AND FOUND PROVED]*

1.2. *your actions in relation to charge 1.1 above were deliberate. [FOUND PROVED]*

2. *On 12 July 2021, made one or more inappropriate comments to Witness 1 using words to the effect that:*

2.1 *“you still have a really nice figure”; [ADMITTED AND FOUND PROVED]*

2.2 *If she had a partner he’d be “a lucky man looking at you”; [ADMITTED AND FOUND PROVED]*

2.3 *“you look so fit walking around the dispensary” [ADMITTED AND FOUND PROVED]*

3. *Your actions at 1 and/or 2 were inappropriate, in that you:*

3.1 *Did not maintain professional boundaries within the workplace and/or; [ADMITTED AND FOUND PROVED]*

3.2 *Did not treat work colleagues with dignity and respect and/or; [ADMITTED AND FOUND PROVED]*

3.3 *Did not behave in a professional manner and/or; [ADMITTED AND FOUND PROVED]*

3.4 *Made Witness 1 feel uncomfortable and/or embarrassed. [ADMITTED AND FOUND PROVED]*

4. *Your actions in relation to 1 and/ or 2 above were sexually motivated in that you;*

4.1 *Sought to obtain sexual gratification and / or; [FOUND PROVED]*

4.2 *Acted in pursuit of a sexual relationship / interaction. [FOUND PROVED]*

By reason of the matters set out above, your fitness to practise is impaired by reason of misconduct.

Documentation

Document 1- Council hearing bundle

Document 2- Council skeleton argument

Document 3- Registrant's bundle

Witnesses

Ms 1, Dispenser at Hollowood Chemists Ltd - gave evidence at the facts stage

Ms 2, Dispenser at Hollowood Chemists Ltd - gave evidence at the facts stage

Mr 3, Superintendent Pharmacist, Hollowood Chemists Ltd – his witness statement was taken as read at the facts stage.

The Registrant – gave evidence at the facts and sanction stages.

Introduction

1. This is the written determination of the Fitness to Practise Committee at the General Pharmaceutical Council ('the Council').
2. The hearing is governed by *The Pharmacy Order 2010* ("the Order") and *The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010* ("the Rules").
3. The statutory overarching objectives for these regulatory proceedings are:
 - a. To protect, promote and maintain the health, safety and well-being of the public;
 - b. To promote and maintain public confidence in the professions regulated by the Council; and
 - c. To promote and maintain proper professional standards and conduct for members of those professions.
4. The Committee also has regard to the guidance contained in the Council's *Good decision making: Fitness to practise hearings and sanction guidance* as revised March 2017.
5. A Principal Hearing has up to three stages:
 - Stage 1. Findings of Fact – the Committee determines any disputed facts.
 - Stage 2. Findings of ground(s) of impairment and impairment – the Committee determines whether, on the facts as proved, a statutory ground for impairment is established and, if so, whether the Registrant's fitness to practise is currently impaired.
 - Stage 3. Sanction – the Committee considers what, if any, sanction should be applied if the Registrant's fitness to practise is found to be impaired.

Service of Notice of Hearing

6. The Committee saw a letter dated 24 May 2023 from the Council headed 'Notice of Hearing' addressed to the Registrant. The Committee was satisfied that there had been good service of the Notice in accordance with Rules 3 and 17.

Registrant's response to Particulars of allegation

7. The Registrant admitted the following particulars of allegation: 1.1, 2.1, 2.2, 2.3, 3.1, 3.2, 3.3 and 3.4. He denied allegations 1.2, 4.1 and 4.2.
8. In the light of the above, and by the application of Rule 31(6) of the Rules, the admitted factual particulars were found proved.

9. The Committee went on to receive evidence and submissions regarding the remaining disputed particulars.

Background

10. On Monday 12 July 2021 the Registrant was employed as a locum Responsible Pharmacist at Hollowood Chemists Ltd, Blackhorse Street, Blackrod, Bolton (“the Pharmacy”). Also working at the Pharmacy were two dispensers: Ms 1 and Ms 2. Ms 1 had worked for Hollowood Chemists Ltd for 12 years. Ms 2 had worked there since May 2021.
11. This was the first occasion on which the Registrant had worked at this Pharmacy and had met Ms 1 and Ms 2.
12. The dispensary at the Pharmacy, in which the Pharmacist and two dispensers worked, measured approximately 6 metres by 5 metres.
13. At the start of the day the three members of staff introduced themselves. There was general conversation. Ms 1 mentioned she was 40 years old and the Registrant said she did not look 40 but looked younger to which Ms 1 replied that he could work there again; she took this as a compliment. The Registrant made a number of further personal comments including that Ms 1 “still ha[d] a really nice figure”; that if Ms 1 had a partner he’d be “a lucky man looking at you”; and that she “look[ed] so fit walking around the dispensary”. The Registrant’s comments made Ms 1 feel very uncomfortable; she felt they were very personal, unprofessional and inappropriate in the workplace.
14. At about 12.45pm Ms 2 left for her lunch break, leaving Ms 1 and the Registrant alone in the dispensary. The Registrant asked Ms 1 to look at his phone because he wanted to show her photographs of the renovation work he was undertaking at his home and which he had mentioned earlier in the day. Ms 1 looked at his phone. Initially the photographs were of building work but when the Registrant swiped to the next photograph it was a full screen picture of an erect penis. The Registrant apologised for showing Ms 1 the photograph. Ms 1 was shocked and immediately walked away. The Registrant continued to apologise, saying he had not realised the photograph was there. Ms 1 felt uncomfortable as a result of what she had seen and the Registrant’s behaviour throughout the morning. Despite Ms 1 asking the Registrant to drop the conversation, the Registrant kept mentioning what had happened, apologising for it.
15. The following day Ms 1 sent an email to the Superintendent Pharmacist of Hollowood Chemists complaining about the behaviour of the Registrant. She indicated that she would be reporting the Registrant to the Council.

Determination

Decision on Facts

16. In reaching its decisions on facts, the Committee considered the documentation listed at the start of this determination, the oral evidence and the submissions made by the Council and the Registrant.
17. When considering each particular of allegation, the Committee bore in mind that the burden of proof rests on the Council and that particulars are found proved based on the balance of probabilities. This means that particulars will be proved if the Committee is satisfied that what is alleged is more likely than not to have happened.

Particular 1.2

1. On 12 July 2021 ... your actions in relation to charge 1.1 above were deliberate.

The Committee took into account relevant evidence from the Council and the Registrant. It considered that the evidence of Ms 1 was coherent, consistent and reliable. She had prepared a contemporaneous account of what happened in an email she sent to the Superintendent Pharmacist on the day after the alleged event. Her statement and her oral evidence were consistent with that account. To some extent this witness' evidence is corroborated by the Registrant himself, as well as Ms 2. Ms 1 did not embellish her evidence in any way; it was presented without emotion and succinctly in a matter of fact manner. Her evidence was thoughtful and considered. By way of example she said:

“At first, I took Haque’s apology at face value, but as I started to process what had happened, I began to feel that it seemed planned, as if he had waited until [Ms 2] had gone for her lunch break before asking me to look at his phone and the photos.”

Her evidence suggested a balanced approach to her perception of the Registrant’s conduct.

This witness’ account was of a developing scenario where the Registrant initially made a personal comment to which Ms 1 responded positively. The Registrant then went on to make more personal and inappropriate comments which the Registrant himself accepted in oral evidence were of a sexual nature. Ms 1 told the Committee that the Registrant had made inappropriate comments both before and after showing her the indecent photograph; she said his behaviour did not change significantly after that event.

The Registrant’s evidence was that he had shown the indecent photograph to Ms 1 by accident. He said that he had previously that morning looked on his mobile at photographs of the renovation work he had undertaken at his home; he had done so by looking at photographs sent via Whatsapp between himself and his wife. In contrast, he said, when he called Ms 1 over to look at photographs of the renovation work he had shown them to her via the gallery on his mobile phone. He claimed that, as a result, when he had swiped to the next photograph he had inadvertently shown her a photograph of his erect penis. He claimed that this was unintentional; it was a mistake.

The Committee accepted that the Registrant's explanation for showing Ms 1 the indecent photograph was potentially plausible. However, it was rendered less plausible by the quality of the Registrant's evidence generally. By way of example the Committee noted the following:

- a. The Registrant accepted his comments to Ms 1 were of a sexual nature.
- b. The Registrant told the Committee he was not sexually attracted to Ms 1 yet could not explain why he had made comments of a sexual nature to her.
- c. The Registrant did not make sexual comments to Ms 2.
- d. He agreed Ms 1 had ignored him after seeing the indecent photograph yet he continued to make comments about the photograph to her, e.g saying he was glad she had seen it and not anybody else, and asking Ms 1 whether she had had a good look at it. The Registrant's explanation that he was trying to make light of the situation was wholly implausible: he and Ms 1 had only met that morning and he had no grounds to assume Ms 1 might not be very offended by it or had not seen what it was.
- e. The Registrant claimed to have developed a "good banter level" with Ms 1. This was put to Ms 1 who denied it. She said she had met him for the first time that morning and he was "already making comments on my appearance and how I looked. I don't think that within an hour of meeting, anybody can get to that level.... We were nowhere near that level at all". Ms 1 said that, after responding to the first comment about her age, she did not respond to later comments by the Registrant; she tried not to engage with him. This could not be described as "banter".
- f. The Registrant said his comments were made to Ms 1 to flatter her and to create a "favourable impression and good working relationship". This claim was at odds with the evidence of Ms 1 and Ms 2 that the Registrant had spent most of the morning on his mobile phone, rather than assisting in the dispensary. The evidence suggested the Registrant was trying to impress Ms 1 for other reasons.
- g. According to his statement, the Registrant had been taught that locums were often viewed differently by regular members of staff compared to employed pharmacists and that it was important to establish a good working rapport with regular pharmacy members of staff. He claimed he wanted to establish a good rapport with Ms 1 and Ms 2 yet his inappropriate remarks were more likely to create friction within the dispensary; it should have been reasonably foreseeable to the Registrant that comments of a sexual nature were unlikely to foster a professional relationship with Ms 1 and Ms 2.
- h. The Registrant agreed Ms 1 ignored him after seeing the photograph except to tell him to drop the conversation. Her evidence is that, despite her request, he carried on making inappropriate remarks. The Registrant's evidence that he was attempting to defuse the situation by being light-hearted was undermined by his remarks that he was glad it was Ms 1 who saw the photograph and not anyone else. He justified this comment by saying that he based this comment on their good relationship of banter earlier in the day. Yet Ms 1 denied having such a

relationship; she told the Committee she had not replied to the Registrant's inappropriate comments.

- i. The Registrant's evidence was that he was stressed at the time but there was no detail about this, for example how this impacted on his behaviour. There was insufficient evidence to demonstrate this was a relevant factor.
- j. The Registrant accepted he asked Ms 1, after showing her the photograph, whether she had got a good look at it. He explained this as being in the hope that she had not. This was a surprising question in circumstances where the Registrant claimed to have been attempting to defuse the situation; it suggested otherwise and that he was trying to continue the discussion (against the specific wishes of Ms 1).
- k. Similarly, the Registrant's comment that he was glad it was Ms 1 who had seen the photograph and no-one else was explained by him as an attempt to suggest that he felt they had got on well and she may be less offended/upset by what happened than if someone else had seen the image. This was implausible on the evidence of Ms 1 who said she had been ignoring the Registrant's personal comments earlier in the morning.
- l. The Registrant claims that, had he had a sexual interest in Ms 1, he would have taken steps to maintain contact with her, whereas he did not hear of the allegation until months later. This had no bearing on the issue of whether or not he deliberately showed the photograph to Ms 1.
- m. The Registrant claimed that he had not behaved in this way before; had that been the case it would have come to light. However, the absence of other similar complaints was not, without more, indicative of good behaviour, only that no such other complaints had been received by the Council.

While the Committee considered the Registrant's explanation for showing the photograph to Ms 1 was a potentially plausible one, this explanation was belied by the quality of the evidence in the round and, in particular, the context in which the disclosure of the photograph occurred. The showing of the photograph took place in the course of a series of sexual comments to Ms 1; and those comments did not cease after the photograph had been seen by Ms 1 despite her asking the Registrant to stop the conversation and her ignoring the Registrant. Taking the evidence in the round the Committee rejected the Registrant's explanation and found it more likely than not that the photograph was deliberately shown to Ms 1 by the Registrant and that he had, in advance, decided to explain the disclosure to Ms 1 as a mistake, if the photograph were not well received by her.

For these reasons, the Committee concluded that the Registrant deliberately showed Ms 1 on his mobile phone an indecent image of his erect penis.

This particular is found proved.

Particular 4

4. Your actions in relation to 1 and/ or 2 above were sexually motivated in that you;

4.1 Sought to obtain sexual gratification and / or;

4.2 Acted in pursuit of a sexual relationship / interaction.

The Committee took into account relevant evidence from the Council and the Registrant. It has also taken into account its findings above.

In *Haris v General Medical Council (Rev 1) [2021] EWCA Civ 763*, a sexual misconduct case, the Court of Appeal held that the inference to be drawn, namely whether a doctor's conduct was sexual or sexually motivated, did not require evidential proof; rather, it was a matter of judgement by way of inference.

The Registrant himself accepted in oral evidence that his comments, as set out in the Particulars of Allegation, were of a sexual nature. He denied they were sexually motivated. The Committee gave weight to the fact that the comments were directed only at Ms 1, not Ms 2. This suggested a sexual interest in Ms 1 and not Ms 2.

Ms 1 stated as follows in her statement:

"I felt [the Registrant] was continually watching me ..."

In oral examination she was asked to explain her reasons for this and told the Committee that a lot of "comments he made about [her] appearance, [her] figure, made [her] think he was looking and watching [her]". She described the Registrant sitting in the corner looking at her while she was working. In the context of his sexual comments, this evidence was suggestive of the Registrant having a sexual interest in Ms 1 and that he found her sexually attractive. The Committee was in no doubt that the Registrant targeted Ms 1 when Ms 2 was absent: she said he asked her to look at the renovation photographs straight after Ms 2 left for lunch. The timing suggested this was planned by the Registrant for a time when Ms 1 and he were alone together.

The Committee was in no doubt that it can reasonably be inferred from the evidence as a whole that the Registrant's sexual comments were made to Ms 1 for his sexual gratification. Similarly, it was in no doubt that he showed her the photograph for such gratification. He had shown an interest in Ms 1 throughout the morning and his actions in making sexual comments and showing her a photograph of his erect penis were part of the continuum of his sexualised behaviour and his objective of achieving sexual gratification.

The Committee did not consider there was sufficient evidence to demonstrate that the Registrant was acting in pursuit of a sexual or any relationship with Ms 1. It accepted the Registrant's evidence that, were this the case, he might have taken steps to maintain contact with her, for example by mobile phone. There was no evidence of this despite his not being aware of the allegation of sexual misconduct until months later.

However, the Committee was satisfied the Registrant was acting in pursuit of sexual interaction with Ms 1. On his own case he believed they were engaged in banter and the Committee found that he wanted to engage in sexual banter with Ms 1 and that he had made sexual comments and shown her the indecent photograph to that end.

The Committee noted the Registrant's claim that a finding of sexual motivation would be precluded by his marriage and family circumstances. The Committee did not accept that his marital status was necessarily indicative of a lack of interest in a potential sexual interaction with Ms 1.

This particular is found proved.

Misconduct and Impairment

18. Having found all particulars of allegation proved, the committee went on to consider whether the particulars found proved amounted to misconduct and, if so, whether the Registrant's fitness to practise is currently impaired.
19. The Committee took account of the guidance given to the meaning of 'fitness to practise' in the Council's publication "*Good decision-making*" (Revised March 2017). Paragraph 2.11 reads:

"A pharmacy professional is 'fit to practise' when they have the skills, knowledge, character, behaviour and health needed to work as a pharmacist...safely and effectively. In practical terms, this means maintaining appropriate standards of competence, demonstrating good character, and also adhering to the principles of good practice set out in your various standards, guidance and advice."
20. The Committee took into account the submissions made by Ms Tomlinson and those of the Registrant, as set out in his skeleton argument. The Registrant chose not to give further oral evidence at this stage but relied on his earlier evidence.
21. Ms Tomlinson submitted, in summary, that the Registrant's behaviour fell far below the standards expected of a registered pharmacy professional. She identified breaches of various standards of the profession. She submitted that the Registrant's fitness to practise was currently impaired and that Rule 5(2)(b) and (c) of the Rules were engaged. It was submitted that the Registrant's conduct brought the profession into disrepute; his conduct would be considered shocking. He had breached fundamental principles of the profession. It was accepted that the likelihood of repetition was low. However, a finding of impairment was required to uphold public confidence in the profession and to maintain professional standards.
22. The Registrant had provided a skeleton argument for this stage of the hearing. He noted that the decision as to whether his conduct amounted to misconduct and whether his fitness to practise was currently impaired was a matter of professional judgment for the Committee.

Decision on misconduct

23. When considering whether the particulars found proved amounted to misconduct the committee took into account the *Good Decision making guidance*.
24. The Committee considered whether the Registrant had breached any of the Council's Standards for Pharmacy Professionals (May 2017). The Committee determined that there had been breaches of the following Standards:
- a. Standard 2 - Pharmacy professionals must work in partnership with others;

The Registrant had not demonstrated effective team working; his conduct could have undermined the quality of service provided by Ms 1 who may have been distracted from her work by the Registrant's conduct and his showing her the indecent photograph while in the dispensary. The Registrant's conduct undermined effective partnership working.
 - b. Standard 3 – Pharmacy professionals must communicate effectively;

The Registrant created barriers to communication rather than overcoming them. His conduct was likely to have had a detrimental impact on Ms 2 who was listening to his inappropriate comments to Ms 1 while working as a dispenser. He did not listen actively and failed to respond to Ms 1 appropriately: he ignored her request to stop the conversation about the indecent photograph. He did not communicate effectively.
 - c. Standard 6 – Pharmacy professionals must behave in a professional manner;

The Registrant was not polite or considerate; he did not show empathy or compassion to Ms 1; he did not treat Ms 1 with respect or safeguard her dignity. He embarrassed her and made her feel uncomfortable. He did not maintain appropriate personal and professional boundaries with his professional colleague.
 - d. Standard 9 – Pharmacy professionals must demonstrate leadership.

The Registrant had a leadership role as the Responsible Pharmacist. He did not demonstrate leadership to his subordinate colleagues. He abused his position. He did not lead by example.
25. The Committee bore in mind that the Standards may be taken into account when considering the issues of grounds and impairment but that a breach of the Standards does not automatically result in a finding of misconduct (Rule 24(11) of the Rules).
26. The Registrant engaged in unwanted sexual conduct in a pharmacy setting. While not at the most severe end of the spectrum of such conduct, it was nonetheless serious and had the potential to undermine good pharmacy practice. Ms 1 had to remain in the dispensary working with the Registrant, for part of the time alone with

him, in circumstances where he had made her feel uncomfortable. The Registrant had abused his position with a junior colleague. The Registrant's conduct was reprehensible and far below the standard expected of any registered pharmacist, even one who was recently qualified.

27. Accordingly, the Committee concluded that, in its judgement, the ground of misconduct is established.
28. The Committee therefore went on to consider whether the Registrant's fitness to practise is impaired.

Decision on Impairment

29. Having found that the particulars of allegation amounted to misconduct, the Committee went on to consider whether the Registrant's fitness to practise is currently impaired. In doing so the Committee considered whether the particulars found proved show that actions / omissions of the Registrant:

- *present an actual or potential risk to patients or to the public*
- *has brought, or might bring, the profession of pharmacy into disrepute*
- *has breached one of the fundamental principles of the profession of pharmacy*
- *means that the integrity of the registrant can no longer be relied upon*

30. The Committee agreed with the Council that the misconduct was remediable. The Registrant was capable of understanding why his conduct was inappropriate and unacceptable.
31. The Registrant denied he had deliberately shown the photograph to Ms 1 and denied that his actions were sexually motivated. However, the Committee determined that these denials were probably as a result of his embarrassment at finding himself the subject of a sexual misconduct investigation by his regulator and having to declare that ongoing investigation to potential employers. His reluctance to seek locum employment since notification of the allegations was consistent with this.
32. The Registrant has shown insight into the circumstances of the misconduct. He apologised to Ms 1 during the hearing. He has apologised in writing for his actions in making personal inappropriate comments to her (albeit not the deliberate showing of the photograph or the motivation for his comments). He acknowledged in oral evidence that his comments were of a sexual nature. The Committee found that the Registrant understands the impact of his behaviour on Ms 1.
33. The Committee was satisfied the Registrant had remediated his misconduct by demonstrating regret. It noted his evidence that he had not undertaken professional boundaries training because he had insufficient funds to do so. His second child was

born recently, and he was not currently working. He had only worked intermittently as a pharmacist in recent months. The Committee accepted he would have undertaken such training if he had the funds to do so. The Registrant produced a reflective statement in which he acknowledged the impact of his actions.

34. The Committee was satisfied that the Registrant was unlikely to repeat his misconduct. The Registrant appeared to have found the Council's investigation and these proceedings embarrassing. They were likely to serve as a stark warning to the Registrant. The Committee was satisfied that the Registrant was unlikely to repeat the sexual misconduct in pharmacy practice; the risk of recurrence was minimal.
35. The Committee concluded that Rule 5(2)(b) and (c) were engaged by the Registrant's misconduct because he had brought the profession of pharmacy into disrepute and had also breached fundamental principles of the profession.
36. Notwithstanding the low risk of recurrence, the wider public interest (i.e. maintaining public confidence and upholding professional standards) also required a finding of impairment to mark the seriousness of what occurred. Such a finding was necessary to maintain public confidence and promote professional standards by making clear to other professionals what is expected and deterring other professionals from failing to meet required standards.
37. In summary, therefore, the Committee found the Registrant's current fitness to practise to be impaired on public interest grounds.

Decision on Sanction

38. Having found impairment, the Committee went on to consider the matter of sanction. The Committee's powers are set out in Article 54(2) of the Order. The Committee was required to consider the available sanctions in ascending order from the least restrictive, taking no action, to the most restrictive, removal from the register, in order to identify the appropriate and proportionate sanction in the circumstances of the case.
39. The purpose of the sanction was not to be punitive, although a sanction might in fact have a punitive effect. The purpose of the sanction was to meet the overarching objectives of regulation, namely the protection of the public, the maintenance of public confidence and to promote professional standards. The Committee was therefore entitled to give greater weight to the public interest than to the Registrant's interests.
40. The Committee had regard to the Council's '*Good decision making: Fitness to practise hearings and sanctions guidance*' to inform its decision.
41. The Committee took into account the additional oral evidence of the Registrant who apologised to everyone involved for his conduct. He promised it would not happen again either in the workplace or outside. He reiterated his intention to attend a

professional boundaries course when he could afford to do so; once he had paid income tax due at the end of this month he would have no money and would have to borrow from family. He said that if his registration were suspended he would find some non-pharmacy work. It would be difficult financially for his family as his wife was on maternity leave. He asked that if the Committee decided to suspend his registration it could be for a short period.

42. In her submissions Ms Tomlinson identified various mitigating and aggravating factors. She noted the Registrant's remediation and insight. She submitted that the sanction imposed should reflect the importance of the public interest, the need to maintain proper professional standards and the seriousness of the misconduct. Ms Tomlinson revised the submission in her skeleton argument, asserting that a short period of suspension was the appropriate and proportionate response in the context of the Registrant's remediation and insight. She submitted that the period of suspension should be no less than four months.
43. The Registrant adopted his skeleton argument in which he had identified various mitigating features. It was asserted in the skeleton that suspension was not required but that if this was considered appropriate it should be for the shortest possible period.
44. The Committee first considered what, if any, aggravating and mitigating factors there may be.
45. The Committee identified some aggravating factors, including:
 - a. The misconduct occurred in the course of pharmacy practice and involved a professional colleague.
 - b. The victim of the misconduct, Ms 1, was a subordinate; the Registrant abused his professional position.
 - c. There was a degree of planning in the course of the morning, in that the Registrant had created a plausible excuse for showing the indecent photograph; he could rely on this excuse if Ms 1 did not respond positively to the photograph.
46. The Committee identified some mitigating features including:
 - a. The misconduct occurred in the course of one day only. It did not involve physical touching. It was sexual misconduct at the lower end of the scale of such misconduct.
 - b. The Registrant had apologised repeatedly for his comments of a sexual nature; he had acknowledged the detrimental impact on Ms 1.
 - c. The Registrant was ashamed of his behaviour and remorseful.
 - d. He had shown insight and there was a low risk of repetition.

- e. The Registrant was otherwise a man of good character with no adverse fitness to practise history.
 - f. The Registrant cooperated fully with the investigation and with these proceedings.
 - g. The Registrant had provided some positive testimonials albeit limited in content.
47. The Committee also considered it relevant that the Registrant was recently qualified as a registered pharmacist at the time of the misconduct. He had limited practical experience of working as a Responsible Pharmacist in a pharmacy setting, albeit he had had some pre-registration understanding of working in a pharmacy setting. It was also relevant that the Registrant had denied both deliberately showing the indecent photograph to Ms 1 and that his conduct was sexually motivated (although he accepted in oral evidence that his comments were of a sexual nature).
48. The Committee agreed with the Council that, in the particular circumstances, the Registrant was unlikely to repeat the sexual misconduct. There was minimal risk of repetition.
49. The Committee had regard to the mitigating and aggravating features at each stage of its decision-making on the appropriate and proportionate sanction. It also had regard to the limited testimonials. However, they warranted little evidential weight in this case which was one of public interest.
50. Throughout its consideration of an appropriate sanction, the Committee had in mind the issue of proportionality, weighing the interests of the public against those of the Registrant.
51. The Registrant told the Committee he had undertaken little work as a registered pharmacist in recent months. He and his wife had recently had a second child and his wife was, as a result, not currently working. The Registrant was engaged in supporting his wife rather than working as a locum pharmacist. He had found the investigation and these proceedings stressful but was relieved that the process was coming to an end. The Registrant was due to pay income tax at the end of this month and that would leave the family in very difficult financial circumstances, without savings or income. The Registrant thought he would have to borrow funds from a family member until he could find work. He had considered his options if his registration were suspended and concluded that he would be able to find some non-pharmacy work but the financial strain would be reduced if the period of suspension were as short as possible. He told the Committee he would accept whatever sanction was imposed, recognising the seriousness of his actions on 12 July 2021.
52. This was not a case where no action could be taken: members of the public, with knowledge of the misconduct and the circumstances in which it took place, would be surprised were no action to be taken, particularly as it occurred in the course of

pharmacy practice and involved a more junior member of staff. In particular, pharmacy dispensers would expect action to be taken by this Committee to act as a deterrent to members of the profession. The Registrant's sexual misconduct warranted action by this Committee to mark the seriousness of his actions.

53. The Committee decided against imposing a warning because the Registrant's misconduct was serious (albeit over the course of only one day). While he had shown insight and remediation, he had denied the most serious particulars of allegation. His misconduct involved breaches of various professional standards to which the Registrant was expected to adhere as a registered pharmacist. While a warning would serve as a public acknowledgement that the misconduct was unacceptable, it was not sufficient to mark the damage done to the reputation of the profession and the extent to which public confidence in the profession would be undermined by misconduct in the course of pharmacy practice. Furthermore, dispensers within the pharmacy profession would expect a restrictive sanction to be imposed to mark the detrimental impact of the Registrant's sexual misconduct within the workplace.
54. The Committee next considered whether to impose conditions on the Registrant's registration but determined this was not appropriate given the absence of any concern about the Registrant's professional performance: there was no allegation of deficient practice and no facts were found proved in that respect. Conditions would not be workable or practicable in this case. They would not, in any event, be sufficient to address the wider public interest in this case.
55. With regard to the option of suspension, the Committee noted the guidance in "Good decision making: fitness to practise hearings and sanctions guidance" that suspension may be appropriate to highlight to the profession and the public that the conduct of the Registrant was unacceptable and unbecoming a member of the pharmacy profession. It might also be appropriate when public confidence in the profession demanded no lesser sanction. Both parties submitted that a short period of suspension would be a proportionate response if the Committee were not minded to impose a lesser sanction (which it was not, for the reasons set out above).
56. The public interest included protecting the public, maintaining public confidence in the profession and maintaining proper standards of behaviour. It was not the purpose of this Committee to punish the Registrant but the Committee was entitled to give greater weight to the public interest than the Registrant's own interest.
57. The Registrant had shown insight into the impact of his misconduct, both on Ms 1 and the wider public interest. He had apologised profusely to all concerned, including to Ms 1 at the hearing. There was minimal risk of repetition.
58. The maximum period of suspension which the Committee could impose was 12 months. The Committee bore in mind the mitigating and aggravating factors. The Registrant's behaviour was likely to have damaged public confidence in the profession and its reputation. The Registrant had fallen short of the standards

expected of a registered pharmacist. Nonetheless, a fully informed member of the public, including professional colleagues, would acknowledge and give credit to the Registrant for his apologies, his remorse and the meaningful steps he had taken and continued to take to remediate his misconduct. Such a member of the public would consider, as did the Council, that only a short period of suspension was required to mark the seriousness of the Registrant's unacceptable sexual conduct.

59. The Committee considered the interests of the Registrant and set those against the public interest.
60. Given the positive features in this case (notwithstanding the aggravating factors), the Committee determined that three months' suspension was the appropriate and proportionate sanction. This was a relatively short period but was justified by the mitigating factors and the Registrant's genuine insight and remorse. In reaching this conclusion, the Committee took into account that the Registrant did not admit to deliberately showing Ms 1 the photograph of his erect penis or that his actions were sexually motivated but it considered that this was probably due to his embarrassment and shame, emotions which he had demonstrated throughout the hearing. His failure to admit these particulars of allegation was, to some extent, offset by his reflection, his remediation, his insight and the minimal risk of repetition. To his credit, the Registrant indicated in his oral evidence that he would accept any period of suspension imposed by the Committee. This was a mark of his contrition.
61. The Committee did not consider a review was required before the end of the period of suspension. It was a short period and the Registrant had demonstrated, by his actions, full insight and remediation; there was no benefit to his attending a further hearing for a review of his fitness to practise. To be clear, the Committee considered that, whether or not the Registrant attended a professional boundaries course in the future would have no material impact on the extent of his remediation and insight which were already complete. While the Good Decision Making Guidance indicated that a Committee would usually direct that a review hearing take place before the expiry of the suspension period, this Committee found that, in these particular circumstances, a review was not required, necessary or desirable.
62. Given the seriousness of the Registrant's misconduct, the Committee did consider a longer period of suspension and indeed removal of the Registrant's name from the register but determined that, given his full insight and the low risk of repetition, neither was warranted. His misconduct was not fundamentally incompatible with his continuing to remain a registered professional.
63. In summary, the Committee determined, on public interest grounds, to suspend the name of the Registrant from the Council's Register for a period of three calendar months.

Decision on Interim Measure

64. Ms Tomlinson has made an application for interim measures under Article 60 of the Pharmacy Order 2010. The Registrant has no objection to the imposition of such measures. He said he would respect any decision made by the Committee.
65. The decision to suspend the Registrant's registration will not take effect until 28 days after he is formally notified of the outcome, or until any appeal is concluded. Until the conclusion of that period the Registrant would be free to practise without restriction.
66. The Committee has taken account of the Council's guidance of March 2017.
67. The Committee is satisfied that an interim measure of suspension of the Registrant's registration, in similar terms to that imposed in the substantive direction, is not necessary in the interests of public protection or otherwise in the public interest. There are no public or patient protection concerns in this case. In a case such as this where only the wider public interest is engaged, the bar for the imposition of interim measures is high. While the misconduct was serious a fully informed member of the public and/or the profession would not expect this Committee to impose such a measure given the remediation of the Registrant. Such a measure is not desirable in this case. This decision is consistent with the determination of the Committee on the substantive issues.
68. The Committee does not therefore impose an interim measure.
69. This concludes the determination.