

**General Pharmaceutical Council**

**Fitness to Practise Committee**

**Principal Hearing**

**Remote videolink hearing**

**2-3 October 2023**

<b>Registrant name:</b>	Jane Anne Wenyon
<b>Registration number:</b>	2035959
<b>Part of the register:</b>	Pharmacist
<b>Type of Case:</b>	Conviction & Misconduct
<b>Committee Members:</b>	Peter Watkin Jones (Chair) Bukky Giwa (Registrant member) Andrew Popat (Lay member)
<b>Clinical Adviser:</b>	Dr Jennifer Bearn
<b>Committee Secretary:</b>	Adam Hern
<b>Registrant:</b>	Present and represented by Victoria Manning-Rees, Richard Nelson LLP
<b>General Pharmaceutical Council:</b>	Represented by Alex Lawson, Case Presenter
<b>Facts proved by admission:</b>	All
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	Conditions, 12 months

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 1 November 2023 or, if an appeal is lodged, once that appeal has been concluded.

## **Documentation**

Document 1- GPhC hearing bundle

Document 2- GPhC skeleton argument

Document 3- Registrant's bundle

Document 4- Registrant's skeleton argument

1. This Principal Hearing relates to Jane Anne Wenyon ("the Registrant") a Pharmacist first registered with the Royal Pharmaceutical Society on 24 July 1989 and whose registration transferred to the General Pharmaceutical Council ("the Council") with number 2035959. The Registrant is also known under her married name of Jane Anne Pilbury.
2. The Allegations are twofold. The first is that the Registrant was convicted of driving whilst under the influence of alcohol on the 2nd February 2020. This Allegation was amended with the permission of the Committee at the outset of the hearing to reflect that the Registrant pleaded guilty to the offence on the 4th August 2020. She was sentenced in relation to the offence on the 25th November 2020. The second allegation was one of misconduct in that it was alleged that the Registrant attended work on the 2nd February 2020 whilst under the influence of alcohol.
3. The Council was represented by Mr Lawson of Counsel. The Registrant was represented by solicitors, and by Ms Manning-Rees of Counsel. The Registrant was present at the hearing and gave oral evidence. The Committee received clinical advice from Dr Bearn. The Council relied on the evidence in the papers presented, including police statements relating to the arrest of the Registrant. The Registrant also adduced an extensive bundle of evidence including a witness statement, a report from Dr Barrett who had undertaken a zoom review on the 27th January 2022 of the Registrant at the request of the Council, and also a reflective statement from the Registrant. Other evidence of CPD courses and

steps taken to remedy her behaviour was also adduced into evidence. Testimonial evidence on behalf of the Registrant was also presented in written evidence. All these matters and papers were considered by the Committee.

4. The Committee's attention was drawn to rules 24 and 28 of the General Pharmaceutical Council's (Fitness to Practise and Disqualification etc rules) Order of Council 2010 ("the Rules"). The Committee noted that the issues in the case related specifically to a conviction and alleged misconduct arising out of the same events and background, and considered the background leading to the allegations of misconduct and conviction together, noting that the alleged misconduct took place on the morning of the conviction which took place on the afternoon of the 2nd February 2020 and took place earlier in time.

5. The Allegations, as amended, were as follows:

*You, a registered Pharmacist,*

*1. On 4 August 2020, were convicted at Hastings Magistrates' Court of driving a motor vehicle after consuming so much alcohol that the proportion of it in your breath, namely 59 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit, contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988; and*

*2. On 3 February 2020, attended work in a pharmacy setting when you were under the influence of alcohol from your drinking.*

*By reason of the matters set out above, your fitness to practise is impaired by reason of your conviction and / or your misconduct.*

6. The Registrant admitted both the Allegations at the outset of the hearing and both the Allegations were therefore found proved.

**The factual background to the case.**

7. Shortly after 3:00pm on 3 February 2020, two Police Community Support Officers became aware of a road traffic collision involving a Citroen Berlingo Van. This vehicle “was positioned as though it had crashed into the curb of the bus stop and mounted the grass area beyond, with its back wheels still on the road”. The Registrant was found in the driver’s seat with the airbag deployed. She was breathalysed at the scene and again at the police station. The reading in the police station was 59 mcg of alcohol in 100ml of breath. The legal limit in England is 35 mcg. The Registrant provided an account to officers at the scene – a bus had pulled out and another car had also been involved. She also confirmed that the vehicle was a company van and that she worked for her pharmaceutical company. The Registrant subsequently appeared in the Magistrates Court. She pleaded guilty and was sentenced on 25 November 2020. The sentence and ancillary orders imposed were:

- Fine of £1,125
- Victim Surcharge of £112
- Costs of £300
- Disqualified from driving for 36 months (and until extended test of competence has been passed)

The Registrant reported her conviction to the Council on 1 December 2020.

8. The police statements in the bundle of papers, which were accepted into evidence by the Registrant noted that the two officers in attendance stated that they could smell what they believed to be alcohol whilst talking to the Registrant. The Registrant appeared to be slightly confused and her speech was slurred during their conversation with her.
9. The Registrant gave detailed evidence as to the events in question and in particular gave evidence as to how the incidents on 2nd February came about. She was questioned on this evidence by both the Council and the Committee. Some of the evidence relating to sensitive family matters was given in private session.

10. The Registrant's evidence in summary was that in the lead up to the 1st February, the Registrant's parents had both been very unwell. XXXREDACTED On the 1st February 2020, whilst very upset at the unwelcome family news, the Registrant was in the company of her husband and her son and were seeking to try to spend some time relaxing and digesting the family news by watching the first match of that season's six nations rugby. The Registrant stated that her husband, who brewed his own beer and cider, provided her with regular drinks from the end of the afternoon onwards. She was a wine drinker and not in the habit of drinking cider or beer. The Registrant stated that her husband during the course of the late afternoon and evening provided her with at least 6 large drinks, some of which were home brew, and some of which were wine. She was also topped up and could not therefore be sure as to the total extent of drinking that took place.
11. During the course of the evening, the Registrant gave evidence in private as to a very distressing and disturbing family conversation that took place which caused her great upset and concern. As a result of her family illnesses, and her upset as to the discussions which took place, she hardly slept on the evening of the 1st February 2020.
12. On the morning of the 2nd February 2020, the Registrant, whilst exhausted, gave evidence that she felt capable of going to work. She felt obliged to do so as it was the beginning of a new month. Her own company, for which she was the Superintendent and Responsible Pharmacist on the 2nd February, needed to undertake administrative activities and ordering; the company is one that specialises in provision of medication to care homes and others. It is not a pharmacy business that is open to the public. The Registrant gave evidence that she had a headache, felt tired and felt the remnants of an infection from the previous week. Otherwise, she felt able to discharge her duties. She had not considered that she was inebriated from the events of the previous evening.
13. During the course of her work that day, she attended a meeting with a care home client unexpectedly, and drove to that meeting as she felt well. It was after that meeting that

the incident leading to conviction occurred. She gave evidence that the positive breathalyser test was a shock to her.

14. The Registrant accepted at the hearing that given the level of alcohol in her system at the date of the police incident, she must have been inebriated in the morning, despite her subjective and wrongful belief at the time to the contrary. It was on that basis that the Allegation of misconduct was admitted. The Allegation of the conviction was also admitted.
15. The Committee's attention was also drawn to a previous Warning given by the Council's Investigations Committee that was given to the Registrant in 2014 for a conviction (driving with excess alcohol) in 2012. The Registrant gave evidence as to the background of that conviction to the effect that she made a conscious decision, over a bank holiday weekend, to drive to a care home at the behest of a doctor who was concerned as to the non provision of medication to a vulnerable patient, with possible serious consequences. This was at a time when the Registrant's business was in its infancy. She decided, with her young son in the car, to drive to her pharmacy and to undertake the requisite checks and then deliver as necessary.
16. The Committee's attention to this disciplinary history was drawn to show that the Registrant had previously been warned by her professional regulator in September 2012. The Council submitted that this would tend to increase the need, on this occasion, to uphold standards and maintain public confidence in the profession and its regulator by making a finding of impairment. The September 2012 conviction was however a spent conviction and did not form the part of any specific allegation in these proceedings.
17. XXXREDACTED
18. The Registrant gave detailed evidence as to her response to the misconduct and convictions emanating from the events of the 2nd February 2020. She gave evidence as to the impact that her (second) conviction had had on her colleagues. She considered

that she was now viewed with thinly veiled contempt by some colleagues.

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19. XXXREDACTED

### **Impairment Stage**

20. Stage 2 of the Principal Hearing concerns whether the Registrant's fitness to practise is currently impaired by reason of her misconduct. The Order contains no definition of what is meant by impairment of fitness to practise. However, "misconduct" is one of the reasons for impairment specifically provided for by Article 51(1) of the Pharmacy Order 2010. A "conviction in the British Islands for a criminal offence" is also a reason for a finding of impairment under Article 51(1).
21. The Council submitted that by attending work under the influence of alcohol, the Registrant acted without professionalism as required by Standard 6 of Standards for Pharmacy Professionals (2017). Although there is no direct evidence that the Registrant performed any clinical responsibilities, the Council submitted it is clear that being under the influence of alcohol has the ability to affect professional judgement (Standard 5) and the provision of safe and effective care generally. The Registrant also had her duties as the Responsible Pharmacist and, since she attended work under the influence, this, submitted the Council, represented a failure to work in partnership with others (Standard 2) and a failure to demonstrate leadership (Standard 9).
22. The Council submitted that a breach of the law in relation to driving whilst under the influence of alcohol leading to a conviction was also conduct that the public would be concerned with. The Council submitted that both the admitted misconduct and the fact of the conviction were matters that required a finding of impairment in this case. The Council referred to relevant case law, as set out below.
23. The Council was also referred to Rule 5(1) of the Rules, which states that the Committee must have regard to the criteria specified in paragraph (2) when deciding if the requirements as to fitness to practise are met in relation to a registrant.

24. Rule 5(2) provides:

“(2) In relation to evidence about the conduct or behaviour of the registrant which might cast

doubt on whether the requirements as to fitness to practise are met in relation to the registrant,

the Committee must have regard to whether or not that conduct or behaviour –

(a) presents an actual or potential risk to patients or to the public;

(b) has brought, or might bring, the profession of pharmacy into disrepute;

(c) has breached one of the fundamental principles of the profession of pharmacy; or

(d) shows that the integrity of the Registrant can no longer be relied on.”

25. The Council referred to Sir Anthony Clarke MR’s dicta in *Meadow v General Medical Council* [2006] EWCA Civ 1390 [2007] 1QB 462 where he said:

“In short, the purpose of fitness to practise proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FPP thus looks forward not back. However, in order to form a view as to the fitness of a person to practice today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past..... In my judgment this means that the context of the doctor’s behaviour must be examined. In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor’s behaviour both before the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired. The doctor’s misconduct at a particular time may be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe not at all. On the other hand, the doctor’s misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practice Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct”.

26. The Committee’s attention was also drawn to the guidance of Mr Justice Silber in *Cohen v General Medical Council* [2008] EWHC 581 (Admin) at paragraph 65:

“It must be highly relevant in determining if a doctor's fitness to practice is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated. These are matters which the Panel should have considered at stage 2 but it apparently did not do so”

27. Both Counsel referred the Committee to the case of CHRE v NMC and Grant EWHC 927 (Admin) where Mrs Justice Cox noted (at Para 74):

“In determining whether a practitioner’s fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.”

28. By reference to the matters listed in Rule 5(2), the Council submitted that undertaking work as a Pharmacist whilst under the influence of alcohol is inherently dangerous and has the potential to put patients at a risk of harm (subsection a). In this case, no direct or actual harm was identified. Attending work and driving whilst over the legal limit would tend to bring the profession into disrepute and amounts to a breach of a fundamental principal – namely the need to abide by the law and act with professionalism and good judgement (subsections b and c). The basic facts of this matter do not bring the Registrant’s honesty or integrity into question.

29. The Registrant, through her Counsel submitted that the Committee should have the above caselaw in mind, but should note in particular the steps taken by the Registrant over a period of over 3 years since the conviction to completely change her lifestyle. The Registrant emphasised the level of insight and effort shown by the Registrant in the face of difficult personal circumstances that had led to the events of 2nd February 2020. Attention was particularly drawn to the large body of material served by the Registrant demonstrating her reflections on this incident and attempts to learn lessons from it and actively change her life.

30. The Registrant's counsel suggested that the Committee should approach the matter in two stages. First to consider the current competency of the Registrant and whether she had remediated her past conduct and was likely to re-offend; it was submitted that there was no such risk posed any more by the Registrant. Secondly, it was submitted that the Committee should then consider whether the public required protection from the Registrant, and whether the public interest was served, and public confidence in the profession being upheld in the event of a finding of no current impairment.
31. The Committee considered the breaches of standards submitted by the Council. The Committee considered that attending work whilst inebriated showed a clear and obvious lack of judgment and contravention of standard 5. She also attended a meeting on the 2nd February with key clients of her business which would, in the view of the Committee, constitute a breach of her obligation to work only when fit to do so; clearly with her level of blood alcohol at that stage, she was not in a position to work effectively with key stakeholders of the business. As Responsible Pharmacist, she clearly failed to show leadership as required by standard 9.
32. The Committee noted however the material advanced by the Registrant as to the steps she has taken to turn her life around, and in particular to change her harmful drinking practices. The Committee accepted that those steps have been genuine, and effective. The Committee noted the adherence to the Voluntary Arrangement. The Committee did not consider that rule 5 (2) (a) was engaged; the Committee did not think that the Registrant was likely to repeat her conduct- despite the fact that this was her second conviction. The Registrant was therefore considered not to pose an actual or potential threat to the public. Rule 5 (2) (d) was not engaged.
33. The Committee did consider that rules 5 (2) b and c were engaged in this case, as submitted by the Council, and for the reasons advanced in argument. By her own admission, she had brought the profession into disrepute, and had breached the law and standards, which would constitute fundamental principles of the pharmacy profession. The Committee considered that both b and c of rule 5(2) had been breached.

34. Whilst noting the steps taken in remediation, and the insight shown, the Committee did consider that this was a case such as that described in the above noted case of Grant, where the need to uphold professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances. The Committee did not accept the argument advanced that a member of the public, in knowledge of the steps taken to remediate, would not require a finding of current impairment. The Registrant had a “wake up call” in 2012 but did not heed it. Indeed, her drinking in the lead up to the events of February 2nd 2020 had become heavy. The lack of professional judgment shown on the day in question in attending work, and then driving and attending a client meeting prior to getting involved in a car accident with school children in close proximity (despite the personal circumstances leading up to the 1st February), and the fact of a criminal conviction were all circumstances that in the view of the Committee required a finding of current impairment.

### **Sanction Stage**

35. The Committee having made a finding of current impairment, it falls for the Committee to decide what sanction, if any, is appropriate in this case. The Committee’s powers are set out in Article 54(2) of the Order, which provides:

“If the Fitness to Practise Committee determines that the person concerned’s fitness to practise is impaired, it may–

- (a) give a warning to the person concerned in connection with any matter arising out of or related to the allegation and give a direction that details of the warning must be recorded in the person concerned’s entry in the register,
- (b) give advice to any other person or other body involved in the investigation of the allegation on any issue arising out of or related to the allegation;
- (c) give a direction that the person concerned be removed from the register;

(d) give a direction that the entry in the Register of the person concerned be suspended, for such period not exceeding 12 months as may be specified in the directions; or

(e) give a direction that the entry in the Register person of the person concerned be conditional upon that person complying, during such period not exceeding 3 years as may be specified in the direction, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or otherwise in the public interest or in the interest of the person concerned.”

36. The Committee considered the Council’s “ Good decision making: Fitness to practise hearings and sanctions guidance, July 2023” (“The Guidance”). The Committee was reminded that the purpose of sanction is not punishment, though a sanction may be punitive in its effect. The Committee is entitled to give greater weight to the public interest and to the need to maintain public confidence in the profession than the consequences to the Registrant of the imposition of any particular sanction.

37. The following aggravating and mitigating features were drawn to the Committee’s attention, and were considered.

#### Aggravating features

- In respect of the conviction, the reading on the breath test was high.
- The circumstances of her driving whilst over the limit: her vehicle came off the road in the middle of the afternoon and was close to a bus stop where it was subsequently observed that
- school children were waiting to board a bus.
- The Registrant has received a previous IC Warning for a drink drive conviction

- In respect of the misconduct, the Registrant was the Responsible Pharmacist on the day in question and was conducting business and meeting clients whilst under the influence of alcohol.

38. The following mitigating features were considered.

- The Registrant pleaded guilty
- There is no evidence of actual clinical error or patient harm in the course of her work the day in question
- -The Registrant has shown insight into her past behaviour and has substantially remedied and changed her drinking habits. The testing evidence suggests that her drinking has been adequately managed since May 2021.
- -The Registrant has commenced steps to ensure that none of her private or company vehicles will operate unless the driver has undertaken a breath test successfully
- -The Registrant has undertaken relevant CPD courses and training as evidence of her insight and learning
- There have been no incidents of concern relating to the Registrant since the date of her conviction.
- -The Registrant adduced testimonial evidence which corroborated her account of the steps she has taken to remediate her past drinking habits.
- -The Registrant has engaged with the Council in its investigation and these proceedings. She gave extensive evidence upon which she was cross examined.

39. The Committee considered that given its findings in relation to current impairment, it was necessary in considering an appropriate and proportionate sanction to maintain and uphold the professional standards and maintaining of public confidence in regulation of the profession.

40. The Committee noted its obligation to consider the possible sanctions in ascending order of severity. The Committee did not consider that “no action” was appropriate given the seriousness of the misconduct and the conviction. Neither did it think that the imposing of a warning would adequately uphold public confidence in the profession and maintain standards, particularly in the light of the fact that a warning given in 2014 had not had such an effect.
41. The Committee considered paragraphs 8-10 of the Guidance as to when conditions might be proportionately and appropriately imposed on a Registrant’s practice. The Committee noted that conditions might be considered if the registrant has attended a hearing and has shown a willingness to comply with conditions. To impose conditions, the Committee noted that any conditions imposed would need to protect the public and address the public interest in the light of the specific findings made on impairment, and any risks identified. The Committee considered that any conditions would also have to mark to the public and the profession the severity of the Registrant’s conduct, and uphold confidence in the profession. Any conditions must be workable.
42. The Committee noted that the Registrant had worked subject to conditions under the now lapsed Voluntary Arrangements, with no apparent problems or difficulty. The Committee noted that it is over 3 years since the conviction and misconduct in question during which there is no evidence of any difficulties in relation to the Registrant’s conduct and practice. The Committee also took note of the Registrant’s evidence that she would be willing to comply with any conditions imposed on her practice, including a form of mentorship to ensure that work considerations and stresses did not become overwhelming, to the extent of her making bad judgments.
43. Whilst not a health case per se, the Committee accepted that this was a case where appropriate conditions should be considered. The Committee determined that workable conditions could be formulated that would mark the severity of past conduct to the

public and to the profession, and maintain standards and public confidence in the profession.

44. The Committee therefore determined to impose the following conditions of practice:

1. *You must meet with your GP or other medical supervisor every 3 months and obtain a report from that person confirming any directions given to you in relation to your management of the use of alcohol and your compliance with such directions. You must furnish such reports to the Council.*
2. *You must undergo hair and blood testing for alcohol use at your own expense every 3 months and provide the results of such testing to the Council.*
3. *You must ensure that you do not drive any vehicle unless it is fitted with a mechanism to test the driver's alcohol levels, thus ensuring that the vehicle will not function in the event that the test is not passed.*
4. *You must identify a mentor that is acceptable to the Council who will meet you and provide a report to the Council every 6 months as to your ongoing ability to manage your business/work in a way that is not detrimental to your decision making.*

45. The Committee noted the suggestion made by the Council that this case was better dealt with by the imposition of a short period of suspension. The Committee did consider the suggestion, but considered that the imposition of the above conditions was better suited to the needs of the public, the profession and the Registrant in the circumstances of this case. The Committee considered that these conditions should be imposed for a period of 12 months with a review at the end of that period. This would give the public confidence that the Registrant's use of alcohol had been successfully managed over a more extensive period and was far better suited to the circumstances of the case than a short period of suspension which would be more punitive but serve a lesser purpose.