

General Pharmaceutical Council

Fitness to Practise Committee

Principal Hearing

In person at General Pharmaceutical Council,
One Cabot Square, Canary Wharf, London E14 4QJ

9-11 October 2023

Registrant name:	Emran Nadeem Rashid
Registration number:	2065707
Part of the register:	Pharmacist
Type of Case:	Misconduct
Committee Members:	Sarah Hamilton (Chair) Surinder Bassan (Registrant member) Anne Johnstone (Lay member)
Committee Secretary:	Zainab Mohamad
Registrant:	Present and represented by Kevin McCartney
General Pharmaceutical Council:	Represented by Wafa Shah, Case Presenter
Facts proved by admission:	1 and 2
Fitness to practise:	Impaired
Outcome:	Suspension for 8 months with review
Interim measures:	Interim suspension order

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 9 November 2023 or, if an appeal is lodged, once that appeal has been concluded. However, the interim suspension set out in the decision takes effect immediately and will lapse when the decision takes effect or once any appeal is concluded.

Particulars of Allegation

You, a registered pharmacist,

1. On 13 June 2021, while working as a Locum Pharmacist at Tesco Pharmacy Lincoln Extra, attempted to extract and transfer personal sensitive patient data, including patient names, NHS numbers, medication history and GP details from the pharmacy computer onto an external USB SanDisk 3.2Gen1 device;

2. Your actions at 1 above were dishonest in that:

a. you knew that you did not have authority or permission to transfer such data;

b. there was no clinical justification to transfer such data;

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

Documentation

Document 1- GPhC hearing bundle

Document 2- GPhC skeleton argument

Document 3- Registrant's bundle

Document 4 - Character reference from AR

Witnesses

The Committee read the statements of three witnesses for the Council, namely:

- Witness 1 - Superintendent Pharmacist, Tesco
- Witness 2 - Pharmacy Manager at Tesco
- Witness 3 - Security Consultant, ADARMA

The Registrant gave oral evidence at impairment stage.

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:
 - To protect, promote and maintain the health, safety and well-being of the public;
 - To promote and maintain public confidence in the professions regulated by the Council; and
 - To promote and maintain proper professional standards and conduct for members of those professions.
4. The Committee also had 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.

Hearing to be held partially in private.

6. The Committee decided, under Rule 39(3), to hold certain parts of the hearing in private as there would be reference to the health of various members of the Registrant's family.

Registrant's response to Particulars of allegation

7. The Registrant admitted Particulars 1 and 2 of the Allegation.
8. In the light of the above, and by the application of Rule 31(6), the admitted factual particulars were found proved.
9. The Committee then went on to consider whether the Registrant's fitness to practise is currently impaired, which is a matter for the Committee's judgement.

Background

10. On 30 June 2021, the Council received a Concern from Witness 1, the Superintendent Pharmacist at Tesco. The Registrant had been working as a locum pharmacist at Tesco's Lincoln store ("the Pharmacy") on 13 June 2021 (a Sunday). He was the sole pharmacist employed that day and there was one other member of staff supporting him, working on the Pharmacy counter.
11. Tesco's internal monitoring picked up that someone, logged in as "Erfan Rashid", ran 12 management reports using the Pharmacy computer system. According to the monitoring system, three attempts were made to save files of data (an "Item History" report) including patient names, NHS numbers, medication and GP details to a USB stick. One attempt was made at 10.50am and two further attempts were made at 1.50pm. The system blocked the transfer of all the data. CCTV footage of the incident

showed the Registrant inserting something into the computer on that day, but this was from a distance and was unclear.

12. The Council's bundle included a list of the management reports run under the Registrant's name. This shows that an Item History report was run five times on 13 June 2021. Witness 1 confirmed that there *"would be no need for a locum pharmacist covering a weekend shift to delve into the pharmacy's management system"*. He stated that NHS numbers would not be included in the Item History report and therefore the numbers *"must have been added afterwards by looking them up on individual patient records"*.
13. Witness 1 stated that the original data leak report showed an initial attempted transfer of at least 1,800 patient names.
14. Witness 2, the Pharmacy Manager asked the Registrant about the incident on the telephone two days later. The Registrant denied any wrongdoing and *"was adamant"* that he had not tried to transfer or extract any information and had no knowledge of the USB device in question. Witness 2 reviewed CCTV footage, which he said showed the Registrant doing something on the computer: *"It looked as if he was bending down to either take something out or insert something in but I cannot say for sure."*
15. Witness 3, a Security Analyst employed by a security consulting firm and contracted by Tesco, provided a statement confirming that Tesco uses a system called Forcepoint to prevent sensitive data being leaked outside of the organisation. He said that three alerts triggered over the weekend of 13 June 2021 were linked to the Registrant's logged-in workstation. It was noted that the attempt to transfer data onto a USB device was blocked by the Forcepoint agent. The device that had been plugged in was shown as *"USB SanDisk 3.2Gen1"*. Witness 3 said that usually in a case of attempted data transfer, a message will appear in the bottom right corner of the computer screen notifying the user that an action has been blocked, but despite this, the Registrant made a total of three attempts to transfer data.
16. At the time in question, Witness 2 had been under the impression that the Registrant wanted to open his own Pharmacy. In April 2022, it could be seen from the Council's

public-facing website that the Registrant was the owner of a Pharmacy called Prescriptions4u in Nottingham.

Misconduct and Impairment

17. Having found all of the Particulars of Allegation proved, the Committee went on to consider whether they amount to misconduct and, if so, whether the Registrant's fitness to practise is currently impaired.

18. 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."

19. In reaching its decisions on impairment, the Committee considered the documentation listed at the start of this determination, the oral evidence of the Registrant, the written and oral submissions made by the Council and the oral submissions made by Mr McCartney on behalf of the Registrant.

Evidence

20. The Registrant gave oral evidence under oath. In his written statement the Registrant said that towards the end of his time working as a locum at Tesco he began the process of opening his own distance selling pharmacy in Nottingham. As part of the process, he had subscribed to a software package to run the Patient Medication Record (PMR) system called RxWeb, which was also used by Tesco. He said he wanted to investigate the functions of the software as he was unfamiliar with it, so on 13 June 2021 as the dispensary was quiet he had time to experiment and "*get to know the system better.*". He said the system could give data on the number of patients a pharmacy has, and the

number of “nominations” made each week and month by a patient (i.e. when a patient nominates a particular pharmacy to dispense its prescription). The Registrant accepted that nomination by patients *“would be a very important tool when my pharmacy opened”*.

21. The Registrant provides the following explanation as to his actions on 13 June 2021:

“it looked to me as though the number of patients at the pharmacy were fewer than expected in terms of the number of prescriptions dispensed. I did not fully understand RxWeb at that point so I was wondering how to find a report of who is nominated here and who is not. I couldn’t find one which seemed like a flaw in the system. This would just give an indication of how many patients were being retained, and how much patients actually move around from one pharmacy to another.

The closest report I got to this was the nomination log report, which tells you all the recent new nominations in a given time frame. I could not find anything to report loss of nominations. The only way you could check a nomination was manually, in which case you would need either Name, DOB and postcode or the patient’s NHS number. From there I stumbled across something called drug history, and for the first time I could see all the patients that had used the pharmacy within the last 30 day. RxWeb then give an option to view in a Microsoft Excel sheet, and so I copied into Excel.

Although my investigation started with the intention of investigating the functions of the RxWeb system, I accept I did try to extract data.

I was annoyed that the data download was blocked and so tried downloading in different ways. I tried to limit the amount of data downloaded on the subsequent attempts”.

22. In terms of motivation for his actions, the Registrant said in his written statement dated 2 October 2023:

“I have been thinking long and hard, over past year about why I did this. When I stumbled on the Excel download facility, I did think this data could benefit me at a later date too and so attempted to take the data in different ways. I thought this might be useful, I didn’t completely clarify it in my mind, but I accept with hindsight that it could only be for the purpose of nominations.”

23. The Registrant initially denied everything when he was telephoned by Witness 2 two days later. The Registrant said:

“When I was contacted by Tesco about these actions, I was with a family member at a difficult time. The manager insisted that the questions would take only a few moments. I denied the actions out of sheer panic. I recognise that this was wrong. It was my belief that I had not actually transferred any data to the USB stick meaning patient data was not compromised or at risk. At that point I had not appreciated that my own unauthorized handling of the patient data was also an issue.”

24. During his oral evidence the Registrant said that he did not need Tesco’s permission to explore the system. Initially during cross examination he said that it was a “grey area” as to whether he needed permission to look at patient data, but then accepted that there was no clinical justification for looking at the sensitive patient data such as what medication patients had been prescribed. He said that he realised what he did was wrong as soon as he walked out of the Pharmacy at the end of his shift. When he was contacted by Witness 2 on 15 June 2021, he was in the middle of a difficult family situation involving a very sick family member. He said he “denied everything in sheer panic. I thought I hadn’t taken anything so it should be OK.”

25. In both his written and oral evidence, the Registrant showed remorse for his actions. In terms of remediation, he has carried out a peer-to-peer discussion with the Superintendent Pharmacist at Midlands Pharmacy, and has undertaken CPD training on General Data Protection Regulation (“GDPR”), Remediation, Insight, Reflection, Professionalism, Ethics and “How to Ensure a similar Mistake or Misconduct will not

be repeated in Future”. In his bundle he has provided written reflections around this learning.

26. During the hearing, when asked about his actions on 13 June 2021, the Registrant said that he is *“impulsive by nature...I just didn’t stop, I should have stopped. I can’t fully understand it myself...I have done a lot of thinking and have tried to understand myself, I can’t believe I did this”*. When asked about what he would have done with the patient data if he had obtained it, the Registrant said *“I wouldn’t have used it..I know 100% that I would have got rid of it, it was out of character that day.”*
27. The Committee asked the Registrant how his investigations into the various reports on RxWeb would have benefited Tesco but he was unable to explain anything beyond seeing that certain patients had deselected Tesco as their nominated pharmacy.
28. The Registrant said that he had to individually copy and paste the patient’s NHS number into his Excel spreadsheet, and that he did this for around 90 patients. When asked by the Committee why he made two further attempts to obtain the data on 13 June 2021, the Registrant said *“I didn’t get it and I wanted to get it”*.
29. The Registrant said that he admitted his wrongdoing to the Council in June 2022 when he was asked to respond to the Allegation; before then he had been advised by his then representative to make no comment.
30. The Registrant was able to explain during his oral evidence the impact his actions would have had on public confidence in the profession. He said that if patients found out they would distrust Tesco, and it could affect the relationship between a patient and their pharmacist.
31. In answer to questions from the Committee, the Registrant said that he had undertaken annual GDPR training in his previous roles as a Pharmacist for both Asda and Lloyds, and that patient confidentiality was at the heart of this learning.

32. The Registrant opened his own online pharmacy in September 2021 and is the Superintendent Pharmacist. He said that originally his patients were just friends and family, and then his target market was patients within a five-mile radius of Nottingham, and he sent letters to people to let them know that the online pharmacy was open. He told the Committee that two of his friends own online pharmacies and they advised him to keep to local customers, so the patients from Tesco in Lincoln were not his target market, although he accepted that “*I do have the whole of the UK*” as potential customers.
33. The Council inspected the pharmacy in April 2022 and found all standards to be met.
34. The Registrant has provided 12 very positive character references from other pharmacists and friends, all of whom are aware of the nature of the Allegation. These include a police officer and a solicitor.

Council’s submissions on misconduct

35. In terms of misconduct, Ms Shah outlined the case law. There is no strict definition of misconduct, but in the case of *Roylance and General Medical Council (No.2) [2000] 1 A.C. 311* Lord Clyde stated that:

“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed... in the particular circumstances.”

36. In *Meadow v General Medical Council [2007] 1 All ER 1*, the Court of Appeal made clear that “misconduct” should not be viewed as anything less than “*serious professional misconduct*”. At paragraph 200 Auld LJ said:

“As to seriousness, Collins J. in Nandi v General Medical Council [2004] EWHC 2317 (Admin), rightly emphasised at [31] the need to give it proper weight, observing that

in other contexts it has been referred to as “conduct which would be regarded as deplorable by fellow practitioners”.

37. Ms Shah submitted that the Registrant abused his position of trust, attempting to appropriate patient data of a highly personal nature to which he had no entitlement, in contravention of professional and contractual duties. Ms Shah submitted that the Registrant breached the following Standards for Pharmacy Professionals:

- Standard 5- Use their professional judgement
- Standard 6 - Behave in a professional manner
- Standard 7- Respect and maintain the person’s confidentiality and privacy

38. It is submitted that the Registrant’s attempt to extract and transfer data was premeditated (the use of his own data stick), planned (addition of at least 90 NHS numbers) and protracted (a total of three attempts during the course of the shift). Ms Shah submitted that the Registrant’s behaviour was not, therefore, purely opportunistic or ‘a moment of madness’.

39. The Registrant accepted that his actions amount to misconduct.

Decision on misconduct

40. When considering whether the particulars found proved amounted to misconduct, the Committee took into account the *Good Decision making guidance*.

41. The case law is clear that not every failing amounts to misconduct: it has to be serious, the type of conduct that other members of the profession would regard as well below the expected standards.

42. The Committee agreed with the Council that the Registrant breached Standards 5,6 and 7. The Registrant was not entitled to appropriate patient data. The Committee considered that, working for Tesco as a locum at weekends only, there was no legitimate reason for the Registrant to access the nominations report. In his oral

evidence he said that initially he started looking at reports to see how many patients had deselected Tesco, and that he was doing this for Tesco's benefit. However, he was unable to explain what use this would have been to Tesco, and the Committee was unconvinced by this explanation.

43. The Registrant also took the proactive step of manually searching for the NHS numbers of at least 97 patients and individually copying and pasting them into an excel spreadsheet before trying to download the data onto his personal USB stick. This was not simply a case of "stumbling" across various reports on the computer as the Registrant seemed to be suggesting in his oral evidence. On three occasions on 13 June 2021 he attempted to download onto his USB stick patient sensitive data, including names, addresses and medication history for at least 1,800 patients, and NHS numbers for at least 97 of these. This was unprofessional and dishonest. The Registrant had been trained annually in relation to data protection and GDPR. He knew it was wrong to take this information. He knew that he was not entitled to it. If Tesco's security system had not worked, then this would have been a serious breach of GDPR, and could have led to financial penalties and reputational damage for Tesco. It would also have put patients at risk, as their personal information would not have been secure, and they would have had to be notified accordingly. It is likely that this may have caused at least some of the patients distress.
44. Accordingly, the Committee concluded that, in its judgement, the ground of misconduct is established.

Council's submissions on Impairment

45. 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 of the Registrant pursuant to Rule 5(2):

- a) present 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*

d) means that the integrity of the registrant can no longer be relied upon

46. Ms Shah submitted that all four limbs are engaged. She said that the Registrant put his own interests above those of his patients, and that at least his second and third attempts at downloading the data on 13 June 2021 were premeditated, as opposed to impulsive. She submitted that the Registrant's acknowledgement of wrongdoing was superficial, and he had been unable to fully explain the repercussions if the data had been stolen (i.e. reporting to the Information Commissioner's Office and to the patients). Ms Shah submitted that the Registrant was seeking to minimise his actions, and distance himself from the fact that he came back to the computer three hours after his first attempt, to try again. He did not take that time as an opportunity to stop and reflect. She submitted that the Registrant's lack of insight leads to a risk of repetition.
47. Ms Shah also submitted that a finding of current impairment was required on public interest grounds.

Registrant's submissions on impairment

48. Mr McCartney conceded that the limbs (b) and (c) of Rule 5(2) were engaged in this case. He denied that the Registrant continues to present an actual or potential risk to patients, or that his integrity can no longer be relied upon. He took the Committee through the Registrant's detailed reflective statement and his character references, which say that this was totally out of character for the Registrant.
49. In terms of insight, Mr McCartney submitted that the Registrant has thought really hard about why the misconduct occurred, and also the impact upon various patients, such as those with mental health conditions.
50. Mr McCartney referred to the difficult circumstances facing the Registrant when he was called by Witness 2. He said that this did not excuse his client's lies, but it is a factor into why it would have been more difficult to deal with the issue at that time.

51. Mr McCartney conceded that the Committee was likely to make a finding of current impairment on public interest grounds but submitted that his client has well developed insight and that there is no risk of repetition.

Decision on impairment

52. The Registrant's actions clearly presented a risk to patients, in that their confidentiality was breached when the Registrant sought to download their personal sensitive data onto his USB stick. The Registrant's dishonest actions brought the profession of pharmacy into disrepute and breached a fundamental principle of the profession, namely that pharmacists must be honest and trustworthy.
53. At the time of the misconduct the Registrant's integrity could not be relied upon. Integrity includes doing the right thing when no-one is looking; in this case the Registrant was on his own in the Pharmacy, and abused his position of trust by attempting to steal patient data for his own use. In his witness statement the Registrant said that on the day of the incident *"It was not until I walked out of the pharmacy that I began to understand the gravity of what happened"*. In his oral evidence the Registrant said that he did not realise that he had done wrong until after he left work that day. We are not persuaded by this; by his own admission he had undertaken regular training on data protection, and he knew that he was not permitted to take the patients' information. He was telephoned two days later and denied everything. Even allowing for the difficult and upsetting situation at home on 15 June 2021, at no stage did the Registrant later notify Tesco about what he had done. He thought he could just deny everything, and as he had not managed to steal the data, that would be the end of the matter.
54. The Registrant's denials meant that Tesco then had to carry out its own investigation. It submitted evidence to the Council. It was only after this information was sent to the Registrant and he was asked for a response that he admitted his wrongdoing in July 2022, over a year after the misconduct occurred. The Registrant had plenty of opportunities to do the right thing and admit his dishonesty during that period. The Committee is concerned by this lack of candour. Even at this hearing the Registrant appeared, to some extent, to be trying to minimise his active, premeditated role in

the misconduct. The Committee did not find plausible the Registrant's account that his initial reason for looking at and trying to download the data was in order to benefit Tesco. Furthermore, the Committee was not persuaded that the Registrant was simply trying to understand the RxWeb system better in order to help him to use it effectively in his own practice. The Committee therefore finds that the Registrant's integrity cannot be relied upon at the present time.

55. Turning to dishonesty, Section 6.8 of the *Good Decision Making: Fitness to Practise Hearings and Sanctions Guidance* states:

“Regulators ensure that public confidence in a profession is maintained. This is a long established principle and our standards state that registrants should act with honesty and integrity to maintain public trust and confidence in the profession. There are some acts which, while not presenting a direct risk to the public, are so serious they undermine confidence in the profession as a whole. The GPhC believes that dishonesty damages public confidence, and undermines the integrity of pharmacists and pharmacy technicians. However, cases involving dishonesty can be complicated – committees should carefully consider the context and circumstances in which the dishonesty took place.”

56. The Registrant was dishonest on three separate occasions on 13 June 2021 when he tried to obtain patient data to use for his own benefit. He then repeatedly lied to his employer when he was confronted.
57. It is often said that dishonesty is harder to remediate. This is not a case where the Registrant was unaware of data protection policies and law, and through training and CPD undertaken since the misconduct he has learnt that what he did was wrong. The Registrant always knew that he was breaching GDPR by acting in the way he did, attempting to transfer the personal data of at least 1,800 patients onto his USB stick, in the knowledge that this was valuable information which could assist his new business of the online pharmacy. Although it is, of course, hypothetical as the data was not stolen, the Committee was not persuaded by the Registrant's evidence at this hearing that he would definitely have deleted the data and not used it. This was not a

“moment of madness”, but a premeditated action. The Registrant individually copied and pasted at least 97 NHS numbers onto the spreadsheet. If he had managed to take this data, it is likely that he would have used this to benefit his own online pharmacy which he was setting up.

58. The Registrant admitted his wrongdoing once he was asked by the Council to respond to the Allegation. He has shown great remorse since that time, and has been able to demonstrate in his written and oral evidence that he understands the impact that his actions could have had on the profession (including damaging Tesco’s reputation) and the public (who would lose faith in the profession). To that extent he has demonstrated insight.
59. However, as the Council submitted, in order for us to find that the Registrant’s fitness to practise is no longer impaired, we would also need to be satisfied that he has reflected on how a pharmacist of over 10 years’ standing came to undertake the dishonest behaviour, and why he might be relied on not to misuse patient data in future. Having heard the Registrant give oral evidence, the Committee was concerned that he was still unable to demonstrate that he understood why he had acted in the way he did. Even one of his referees states *“He knows why he did it, but doesn’t understand to some degree what drove him to do that”*. This shows that the Registrant’s insight is still not fully developed. If he cannot understand what drove him to behave in this way, then there remains a risk that he may behave in a dishonest way in the future. Although the Registrant has provided a great deal of evidence of remediation in terms of CPD (carried out in the last couple of months), he knew even before the misconduct occurred that attempting to steal patient data was wrong.
60. The Committee has therefore concluded that, on a personal level, the Registrant’s fitness to practise is impaired.
61. The Committee has also considered the public interest when determining impairment. In the case of *CHRE v (1) NMC and (2) Grant [2011] EWHC 927 (Admin) Cox J* stated:

“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 proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances...”

62. The Committee has determined that a finding of impairment is also necessary to mark the seriousness of what has occurred and thereby maintain public confidence and promote professional standards. This will make clear to other professionals what is expected and should deter them from failing to meet standards in this way. The dishonesty involved the attempted misappropriation of data of over 1,800 patients. Public confidence in the profession would be seriously undermined if a finding of impairment was not made.
63. The Committee therefore finds the Registrant’s current fitness to practise to be impaired.

Decision on Sanction

64. 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 should consider the available sanctions in ascending order from least restrictive, take no action, to most restrictive, removal from the register, in order to identify the appropriate and proportionate sanction that meets the circumstances of the case.
65. The purpose of the sanction is not to be punitive, although a sanction may in fact have a punitive effect. The purpose of the sanction is 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 is therefore entitled to give greater weight to the public interest over the Registrant’s interests.
66. The Committee had regard to the Council’s *‘Good decision making: Fitness to practise hearings and sanctions guidance’* to inform its decision.
67. The Committee took into account the written and oral submissions made by the Council and the oral submissions made by Mr McCartney on behalf of the Registrant.

68. The Registrant's witness statement provided details of his family circumstances. He is the father of four and (REDACTED) in recent years. He now owns an online pharmacy and is the main breadwinner in the family.
69. The Council reminded the Committee that in a line of authorities traced back to the well-known case of *Bolton v the Law Society [1994] 1 W.L.R. 512*, it has been observed that personal circumstances and mitigation may count for less in regulatory proceedings than they would, for example, in criminal proceedings. In its skeleton argument the Council stated that removal from the register should not be ruled out. Having heard the Registrant's evidence and having considered the Committee's determination on impairment, Ms Shah submitted that this was still a sanction which the Committee should consider. She said that if the Committee considered that erasure was not required, the Committee may wish to consider imposing a suspension order for 9-12 months, to reflect the seriousness of the misconduct. Ms Shah took the Committee through the aggravating and mitigating features which it should balance in order to come to a decision on sanction
70. On behalf of the Registrant, Mr McCartney also addressed the Committee in relation to mitigation. He reminded the Committee that as soon as the Registrant responded to the Allegation he admitted dishonesty. He submitted that the Registrant is trying to analyse and understand why he acted in the way he did, and he should be given the opportunity to continue upon this journey of reflection.
71. Mr McCartney conceded that a warning is unlikely to be appropriate in this case, and that conditions of practice would not address the Committee's concerns, as the Registrant has already undertaken training and reflection regarding GDPR and probity and ethics. He submitted that a suspension order for a period of less than 12 months with a review is the appropriate and proportionate sanction, and that removal from the register would be disproportionate.

72. The Council's *Good decision making* guidance contains particular guidance in cases involving dishonesty. We have already referred to paragraph 6.8 in our decision on impairment. In addition, paragraph 6.9 states:

"Some acts of dishonesty are so serious that the committee should consider removal as the only proportionate and appropriate sanction. This includes allegations that involve intentionally defrauding the NHS or an employer, falsifying patient records, or dishonesty in clinical drug trials".

73. None of these examples apply in the present case.

74. Paragraph 6.10 of the guidance states:

"When deciding on the appropriate sanction in a case involving dishonesty, the committee should balance all the relevant issues, including any aggravating and mitigating factors. It is important to understand the context in which the dishonest act took place and make a decision considering the key factors. The committee should then put proper emphasis on the effect a finding of dishonesty has on public confidence in the profession".

75. The Committee identified the following aggravating factors:

- The misconduct took place in a pharmacy setting, whilst the Registrant was acting as a pharmacist
- The Registrant attempted to steal extremely sensitive data, including patients' NHS numbers
- There was a degree of premeditation, with the Registrant attempting to download the data onto his own memory stick on three occasions, which included manually copying and pasting NHS numbers for 97 patients
- The misconduct represented a serious breach of trust
- The Registrant denied any wrongdoing when approached by Tesco and lied to his manager, resulting in an unnecessary investigation
- The attempt to take patient data was for the Registrant's personal, and potential financial gain

76. The Committee identified the following mitigating features:
- The misconduct took place on one day only
 - The Registrant was facing difficult family circumstances when he was first approached by Tesco
 - The Registrant has demonstrated great remorse
 - The Registrant has no previous fitness to practise findings, and there have been no complaints about his practice since June 2021
 - 12 character references have been supplied, all of which are very positive
77. The Committee decided that either taking no action or giving a warning would be inadequate responses to such serious misconduct. The public interest would not be served. In addition, warning is not appropriate where there is a risk of repetition.
78. The Committee next considered the imposition of conditions of practice. A conditions of practice order would allow the Registrant to practise albeit with restrictions. The Committee must determine whether a conditions of practice order would be appropriate given the concerns identified regarding the Registrant's practice, in particular whether conditions would be sufficient to mark the seriousness of the matter so as to maintain public confidence in the Registrant, the profession and the regulator, and sufficient to promote professional standards within the profession.
79. In this case the Committee has found impairment on the basis of a risk of repetition as well as on the public interest ground. Conditions of practice are more appropriate in cases where there is some deficiency in a registrant's practice which would be addressed by conditions. That is not the case here. The risk of repetition stems from the Registrant's limited insight into what drove him to act in the way he did, and conditions of practice cannot address that issue.
80. The Committee also considered that conditions of practice would not be sufficient to mark the public interest, taking into account the seriousness of the misconduct, which included dishonesty and a serious breach of data protection law.

81. The Committee next considered whether suspension would be a proportionate sanction. The Committee noted the Council's guidance which indicates that suspension may be appropriate where:

"The Committee considers that a warning or conditions are insufficient to deal with any risk to patient safety or to protect the public, or would undermine public confidence. It may be required when necessary to highlight to the profession and to the public that the conduct of the registrant is unacceptable and unbefitting a member of the pharmacy profession. Also, when public confidence in the profession demands no lesser sanction."

82. The Committee also took into account the Council's guidance on dishonesty as set out above, noting that it should *"put proper emphasis on the effect a finding of dishonesty has on public confidence in the profession"*.
83. The Committee has already remarked in its findings on impairment that this case involves serious misconduct which brought the profession into disrepute. The public interest, specifically confidence in the profession and upholding proper standards of behaviour, suggests that there should be a severe sanction in this case. The sanctions guidance states that some acts of dishonesty are so serious that removal is the only appropriate and proportionate response.
84. However, taking into account the mitigating factors, the Committee has decided that the misconduct falls short of requiring the ultimate sanction of removal from the register. The Committee has seen many positive references confirming that the Registrant is an excellent clinician and has a lot to offer the profession. The Committee has decided that a period of suspension is the appropriate sanction in this case. The public will be protected as the Registrant will not be permitted to practise as a pharmacist during the period of suspension. This sanction will also be sufficient to mark the public interest, but the period of suspension will be eight months to reflect the seriousness of the misconduct. This will send a message out to the profession that pharmacists must never attempt to appropriate patient data for their own purposes. It will also send a message to the public that the regulator takes matters involving data protection breaches very seriously.

85. The Committee acknowledged that this sanction would have an adverse effect on the Registrant. He will need to pay a pharmacist to work in his online pharmacy during this period (although he may still work in his pharmacy in a capacity that does not require professional registration.) However, as case law makes clear, the Committee is entitled to place the public interest ahead of the interests of the Registrant.
86. The Committee did consider removal from the register but decided that this would be unnecessarily punitive when the lesser sanction of suspension would satisfy the public interest.
87. The Committee therefore directs that the Registrant be suspended for a period of eight months.

Review Hearing

88. This decision will be reviewed by a committee before the sanction expires. A future committee may be assisted by:
 - Evidence from the Registrant that he fully understands why the misconduct occurred.

Decision on Interim Measure

89. The Committee heard an application from Ms Shah to cover the appeal period by imposing interim measures on the Registrant's registration, i.e. a suspension order. She submitted that such an order is to protect the public and is otherwise in the public interest.
90. Mr McCartney opposed the application on the basis that interim measures are not required to protect the public, and that there is no imminent risk to the public in the next 28 days. He also submitted that the public interest has already been marked by the imposition of an eight month suspension order, and that any further period of suspension is not required on that ground.

91. The Committee recognised that the power to impose interim measures is discretionary and that the imposition of such measures is not an automatic outcome of fitness to practise proceedings in which a suspension order has been imposed. The Committee took into consideration the impact such measures may have on the Registrant. However, it was mindful of its findings that there remains a risk of repetition. Although Mr McCartney referred to the 28 day period, if the Registrant were to appeal this decision, then he would be free to continue to work as a pharmacist during that appeal period, which would be considerably longer than 28 days. In light of the Committee's decision that the Registrant's integrity cannot be relied upon at this time, and that there remains a risk that he will act in a dishonest way again, then some form of interim measure is required. Public confidence in the profession and the regulatory process would also be harmed if the Registrant were not made subject to an interim order during the appeal period. Thus, interim measures are required on both public protection and public interest grounds.
92. In its decision on sanction the Committee decided that conditions of practice could not be formulated which would address the risk of repetition. The same applies for interim measures.
93. The Committee therefore directs that an interim suspension order is put in place immediately. This measure will expire (if no appeal is made against the Committee's decision) upon the expiry of the period during which such an appeal could be made. If an appeal is made, the interim measures will expire upon the final determination of that appeal.
94. This concludes the determination.