

**General Pharmaceutical Council**

**Fitness to Practise Committee**

**Principal Hearing**

**Remote videolink hearing**

**6 – 7 November 2023**

<b>Registrant name:</b>	Tahir Munir
<b>Registration number:</b>	5102209
<b>Part of the register:</b>	Pharmacy technician
<b>Type of Case:</b>	Conviction
<b>Committee Members:</b>	Louise Price (Chair) Bukky Giwa (Registrant member) Ifat Reader (Lay member)
<b>Committee Secretary:</b>	Chelsea Smith
<b>Registrant:</b>	Not present or represented
<b>General Pharmaceutical Council:</b>	Represented by Lara Oseni, Case Presenter
<b>Facts proved:</b>	All
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	Removal
<b>Interim measures:</b>	Interim suspension

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 5 December 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 4- GPhC proof of service bundle

Document 5- GPhC proceeding in absence bundle

## **Determination**

### **Introduction**

1. This is the principal hearing in the matter of Mr Tahir Munir, a pharmacy technician first registered with the General Pharmaceutical Council [“the Council”] on 15 November 2016 under registration number 5102209.
2. The allegations are as follows:

*‘You, a registered pharmacist,*

*1. On 8 March 2023, were convicted at Manchester Minshull Street Crown Court of adult attempt to engage in sexual communication with a child.*

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

### **Hearing**

3. The hearing took place remotely, by way of video conferencing.

### **Preliminary matters**

4. Two preliminary matters were raised by the Council, an application to proceed in absence and confirmation that notice had been correctly served.

### **Application to proceeding in absence**

5. The Committee has declared itself satisfied that notice of the hearing has been served, or deemed to have been duly served in accordance with rule 3 and rule 16 of the General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010.
6. The notice of hearing was sent on 17 August 2023 to the email address the council have on record for the Registrant via a secure email system called Egress. It was submitted that the notice of hearing was also sent on the same day by post.
7. The Registrant notified the council on 19 September 2023 that he had moved address. Following this the draft bundle for this hearing was sent to the Registrant on 27 September 2023. This included the notice of hearing. This was sent to the Registrant's new address as updated on the register.
8. Given the above the Committee considered that the service requirements set out in rule 3 of the procedural rules governing this Committee had been met. The Committee is satisfied that all reasonable efforts have been made to notify the Registrant of this hearing and that he is aware of the issues to be decided.
9. Proceeding in the absence of a Registrant is a matter within the discretion of the Committee as provided for in rule 25. In deciding whether to exercise this discretion the Committee must consider all the circumstances of the case and it is guided by the relevant case law in how to fairly exercise that discretion. In particular the Committee has had regard to the decisions in *R v Hayward*, *R v Jones and Tait v Royal College of Veterinary Surgeons* and the more recent case of *Adeogba v GMC* to consider a number of factors. The Committee have had regard to the principles set out in those cases, and in particular:
  - a. A Registrant has in general a right to be present and a right to be legally represented.
  - b. Those rights can be waived by the Registrants themselves. They may be waived, if knowing or having the means of knowledge as to when and where

the hearing is to take place, they deliberately and voluntarily absent themselves and/or withdraw instructions from those representing them.

- c. The discretion to proceed in absence must be exercised with great care, and it is only in exceptional circumstances that it should be exercised in favour of a hearing taking place in a Registrant's absence, particularly if the Registrant is unrepresented.
- d. In exercising the discretion, fairness to the defence is of prime importance, but fairness to the Council must also be taken into account.

10. The Committee considered that in all the circumstances, the Registrant was aware of the hearing, had been given an opportunity to attend and had declined to do so, therefore, he had voluntarily absented himself from the proceedings. In forming this view the Committee considered the Registrant's correspondence on 18 July 2023 to the Council saying that he did not intend to attend the hearing and nor did he wish to practise again within the profession. Further the Committee considered the Registrant's very recent correspondence on 3 November 2023, that briefly set out his views on the issues the Committee has to decide, but did not express any desire to join the hearing.

11. The Committee balanced the public interest in hearing the matter expeditiously, against the Registrant's interests in attending.

12. In making its decision as to whether to proceed in the absence of the Registrant, the Committee recognised that, if it were to proceed, the Committee would be obliged to ensure the hearing was as fair as possible to both parties, notwithstanding the absence of the Registrant or any representation for him. It would be obliged to expose weaknesses in the Council's case and to make points on behalf of the absent Registrant as the information before it permitted.

13. The Committee did not consider that an adjournment was likely to secure his attendance, given that he had not sought to adjourn today's proceedings and had said he did not wish to participate in these proceedings.

14. Given that the Registrant voluntarily absented himself from the proceedings, the Committee considered that it was fair and appropriate to proceed in his absence.

### **Amending the allegations**

15. The Committee noted that the allegation stated the Registrant was a pharmacist, but in fact he was registered as a pharmacy technician at all material times and the Committee have proceeded on that basis.

### **Findings on facts**

16. Under Rule 24(4), a copy of the certificate of conviction certified by a competent officer of the court *"is admissible as conclusive proof of that conviction and the findings of fact on which it was based"*.

17. The Committee find as proven that the Registrant was convicted as set out in the certificate of conviction. It further considered the sentencing remarks in coming to that conclusion and the following factual context.

18. By way of background the Registrant was convicted of an attempt to engage in sexual conduct with a minor. The Council helpfully set out the following factual background in their skeleton argument. The Committee has carefully considered the same and concluded that this is an accurate summary of the background context on which the conviction rests.

19. On 31 August 2018, the Council received information from the Registrant's previous employer Boots UK Ltd, that the Registrant had been involved in a Facebook 'sting', which revealed that he had been engaging in conversations of a sexual nature with someone who he believed was a 14-year-old girl. The Registrant was employed as an Accuracy Checking Technician at the relevant time.

20. According to the police MG5 case summary on 29 July 2018 the Registrant entered a conversation with a person who introduced herself to him as 14-year-old Molly

Yates on an online messaging forum called "Meet4U". Molly was in fact, a 28-year-old woman and a member of the paedophile hunter group "Sole Survivors".

21. The conversation was initiated by the Registrant, who sent a message to Molly saying "HI", to which Molly responded saying "HI, I'M MOLLY, 14 FROM DERBY". Despite Molly stating her age, the Registrant continued to engage in conversation with her.

22. Later that evening, the conversation moved from the Meet4U to WhatsApp, the conversation developed into a more sexually oriented conversation which was led by the Registrant. During the conversation, Molly is said to have asked the Registrant if he was sure that he was comfortable with her age and pointed out the large age gap between them. The Registrant asked Molly if she was ok with age gap and that it was for her to decide, before subsequently confirming that he was "happy" and tells her that if she is not happy then he will stop.

23. After Molly confirms that she is ok with the interaction and that she and the Registrant are friends, Molly asks the Registrant what he is up to. The Registrant then responds with a series of messages:

*"I would kiss your neck and have my hands inside your pants."*

*"I am in bed with nothing on."*

*"You taken your clothes off."*

24. The Registrant then proceeds to state that he wants to lick Molly's chest and asks if she would like to lick his penis. Molly attempts to shut down the conversation by stating that she is going to bed, but the Registrant continues to pursue the chat.

25. On 30 July 2018, the Registrant arranged to meet with Molly at the Arndale shopping centre in Manchester on the 4 August 2018. The Registrant stated that he would book a hotel, buy condoms and that he would bring his friend with him.

26. On the day of the 4 August 2018, the Sole Survivors group travelled to Manchester to confront the Registrant, however the Registrant did not show up to the meeting, indicating that he was stuck in traffic and couldn't find anywhere to park. The meeting was rescheduled to 25 August 2018 – the Registrant and Molly continued to exchange messages of a sexual nature during the period 4 - 25 August 2018.
27. On 16 August 2018, a Facebook friend request was received by Molly from the Registrant to her fake Facebook account. Molly accepted the request, however there was no communication between Molly and the Registrant until 23 August 2018, when the Registrant asked Molly why she did not have any of the videos they had spoken about on her Facebook account. The Registrant then removed her as a friend (due to the videos not being on the account) and there was no further contact between them.
28. The Registrant was interviewed under caution by the Police on 25 August 2018. He stated in interview that he had worked at Boots as a technician and had worked in this role for 13 years.
29. When asked about the offence, he stated that: *“he had met a girl on “SKOUT” which is a social app where various types of people of different ages chat to each other. He stated that he initially knew the girl he was speaking to was underage and that they just had a normal conversation which the girl instigated.”*
30. He went on to say that on reflection *“it is bad on him, from his view there were sexual words/phrases used so he never believed she was 14 years old as the profile of SKOUT stated that she was 19 years old”*.
31. The Registrant stated in interview that he had no intention of having sexual contact with the girl even though it was said in text messages. When asked about the meeting that had been arranged in the Arndale Centre, he stated that he had no intention of meeting up with the girl regardless of her age.

32. The Registrant admitted that he did have conversations of a sexual nature but indicated that he did not book a hotel as he had no intention of carrying out the meeting.

33. The Registrant was subsequently convicted at a trial on 8 March 2023, at Manchester Minshull Street Crown Court. His conviction was based on his guilty plea to an “*Adult attempt to engage in sexual communication with a child*”. When sentencing on 30 March 2023, HHJ Baxter said as follows:

*“I accept you were probably going through marital breakdown and difficulty at the time of these offences although you minimised the impact of that and in lots of ways you minimise this offending and try and deny that there was any sexual gratification in it for you. Well, that is nonsense. You knew she was 14. There was sexualised conversation and there was conversation about meeting up although that never actually happened, nor any plans or steps put in place for it to happen. You were clearly doing it for sexual gratification and to continue to say otherwise is delusional and the reality of it is in my judgement you and the public would be better served rather than me sending you to custody for a short period of time, especially in light of the Court of Appeal comments in the case of Allen, in giving you a chance to really deal with your demons by putting you on a community order.”*

34. The HHJ Baxter explained the Registrant’s sentence in these terms:

*“There will be a community order for 2 years, you will do the Horizon programme and you will do 150 hours unpaid work for the community. The Horizon programme is for child sex offenders, that is you, to understand why you have committed the offences and to develop techniques as to why you will stay away from committing further offences [sic]. If you breach this order in any way you will come back to court, and it can be revoked and you can be resentenced or the order can be made more onerous.... In addition, I make the following ancillary orders. There will be a sexual harm prevention order for a period of 5 years in the terms set out, there will be notification*



*requirements for a period of 5 years. If you breach those orders, then there are serious criminal consequences so make sure you understand the requirements of those orders and do not breach them”*

35. The certificate of conviction specifies the Registrant’s sentence as follows:

- 31 days Horizon programme.
- 150 hours unpaid work.
- Sexual harm prevention order - 5 years
- Sex offenders register - 5 years

36. Based on the above the Committee found the facts proven.

### **Finding on impairment**

37. Article 54 (1) of the Pharmacy Order 2010 (‘the Order’) provides that the Committee ‘must determine whether or not the fitness to practise of the person in respect of whom the allegation is made is impaired’. The Order contains no definition of what is meant by impaired fitness to practise. Article 51 (1) of the Order provides:

*A person’s fitness to practice is to be regarded as “impaired” for the purposes of this Order only by reason of:-*

*(e) a conviction in the British Islands.*

37. Consideration of impairment has to be undertaken in two stages. Firstly, the Committee has to consider whether, on the facts proved, one of the statutory grounds for impairment is made out. Then it has to consider whether, as a result, the Registrant’s fitness to practise is currently impaired.

38. The Committee considered both the submissions of Ms Oseni in relation to whether the Registrant’s fitness to practise is impaired by reason of his conviction and the short statement given by the Registrant on both matters.

39. The Committee considered the principles set out in the Standards for pharmacy professionals published by the Council in May 2017. Further, the Committee also considered the Council's Good Decision-Making Guidance, updated as of March 2017, and has taken into account the principles it sets out when making its decision, in particular paragraphs 2.13 to 2.16.
40. The Committee has been assisted by a skeleton argument provided by Ms Oseni which set out a number of helpful authorities of which the Committee has taken note.
41. In considering whether or not a Registrant's fitness to practise is impaired, a Committee should take account of the statutory ground and actions of the practitioner and then to consider it in the light of all the other relevant factors known to them (Mitting J, in *Zygmunt* at [32] approving Silber J's comments in *Cohen v General Medical Council* [2008] EWHC 518). The context of the practitioner's behaviour must be examined. In circumstances where there is misconduct (or, as in this case, a conviction) at a particular time, the issue becomes whether that conduct, in the context of the practitioner's behaviour both before the conviction and to the present time, is such as to mean that his or her fitness to practise is impaired. This approach was set out in *Cheatle v GMC* [2009] EWHC 645 (Admin), which concerned the statutory ground of 'misconduct', but in the Committee's view the approach is equally applicable to the current case.
42. A committee is required to look forward rather than backward when determining the issue of impairment and the Committee was conscious that a conviction in the past does not necessarily mean that there is current impairment of fitness to practise – again in respect of misconduct, a point emphasised in *Cohen* and *Zygmunt*. In looking forward, a committee is required to take account of such matters as the insight of the practitioner into the source of his conduct that led to conviction, any remedial steps which have been taken and the risk of recurrence of such conduct. It is required to have regard to evidence about these matters, which has arisen since the alleged conduct occurred, as set out in *Yeong v GMC* [2009] EWHC 1923 (Admin).

43. The Committee also considered the case of *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (Admin), in which Mrs Justice Cox stated that *'In determining whether a practitioner's fitness to practise is impaired by reason of the misconduct the relevant panel should generally consider not only whether the practitioner continues to present a risk to the members of the public, but also whether the need to uphold professional standards and public confidence in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of the case'*. Again, the Committee considered that this was equally applicable to a case concerning a conviction.

44. The Committee further considered the fitness to practise criteria, which are set out in rule 5 of the General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010 ('the Rules'). 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.*

45. The Committee considered that there was a conviction that was not challenged and so the statutory ground for a finding of impairment was made out on that basis. The Committee then went on to consider whether the fitness to practise of the Registrant was impaired based on the conviction.

46. The Committee agreed with the submissions by the Council's case presenter that the Registrant's criminal convictions have brought, or might bring, the profession of

pharmacy into disrepute. Members of the public expect pharmacy professionals to behave professionally. The conviction is for a very serious criminal offence involving acts that the court found to involve sexual communication with a child. The Registrant admitted this.

47. Additionally, a criminal conviction represents a breach of the requirement that pharmacy professionals behave in a professional manner (Standard 6).

48. The Committee considered the Registrant's acceptance in his very recent communication with the council on 3 November 2023 that his actions were not '*up to GPhC standards*' and his fitness to practise was impaired.

49. The nature of the conviction itself contains a risk to members of the public, as harm could be caused to a child were they to engage in sexual communication of this nature with an adult. The Committee cannot be satisfied that currently there is no risk of repetition or that the Registrant has any level of insight into his conduct and why it was wrong. The Registrant has not made any expression regarding his learning from this incident or any remorse in his submission to the council. Furthermore, although he pleaded guilty in criminal proceedings at the earliest opportunity, he has not provided any details of the Horizon program he attended (or if he has attended). The Committee accepted the description provided in the sentencing remarks that '*The Horizon programme is for child sex offenders, that is you, to understand why you have committed the offences and to develop techniques as to why you will stay away from committing further offences*'.

50. Further, the Committee notes the comments of the HHJ Baxter at sentencing that the Registrant minimised his actions. She commented that '*... and in lots of ways you minimise this offending and try and deny that there was any sexual gratification in it for you. Well, that is nonsense....*' Although the Committee do not have a full transcript of the hearing, or all the evidence before the learned judge, this strongly indicates that the Registrant does not have full insight into his actions and their ramifications.

51. The Committee considered that in not abiding by the law in respect of this element of his private conduct, namely sexual relations, the Registrant has breached a fundamental tenet of the profession. He has conducted himself in a manner that breaches the trust the public have in registered professionals. He has also acted in a manner that undermines his integrity. Integrity is defined by the Oxford English Dictionary as being someone who is honest and has strong moral principles. In the Committee's view it cannot be doubted that the conviction represents conduct which displays a total absence of 'strong moral principles'.
52. Further, and additionally, the Committee found that public confidence in the profession would be undermined if no finding of impairment was made following the imposition of the Registrant's criminal conviction. In particular given, firstly, the possibility for harm caused by the Registrant's actions if they were repeated and secondly, the extremely serious nature of the same.

#### **Determination on sanction**

53. This Committee has made a finding that the Registrant's fitness to practise is currently impaired on the grounds of his conviction. In these circumstances, the Committee's powers are set out in Article 54(2) of the Order. In short, the Committee may do one of five things: take no action, issue a warning, impose conditions on the Registrant's future registration, suspend that registration for a maximum of 12 months or direct that the Registrant's name be removed from the register.
54. In reaching its decision, the Committee took into account a number of matters. Firstly, the purpose of sanction. The purpose is three-fold: the protection of the public, the maintenance of public confidence in the profession, and the maintenance of proper standards of behaviour within the profession. It is to be noted that to punish the Registrant is not one of the purposes of sanction, albeit a sanction may be punitive in its effect. The Committee's primary task is to protect the public interest, which is reflected in the three-fold purpose of sanction. In the relatively recent case of *Professional Standards Authority for Health and Social Care v Nursing and Midwifery Council, Mr D Wilson* [2015] EWHC 1887 (Admin), Laing J reinforced the importance of

the public interest and suggested that the effect of sanction on a registrant is a secondary issue for a Committee to consider.

55. The General Pharmaceutical Council has issued guidance in respect of the determination of sanctions. It is included in the document entitled “Good Decision Making: Fitness to Practise Hearings and Sanctions Guidance” March 2017. Paragraph 5.2 of the guidance listed the ‘key’ factors that a committee should consider in deciding the appropriate sanction. Those factors include:

- The extent to which the Registrant has breached the standards of conduct, ethics and performance published by the GPhC,
- the interests of the Registrant, weighed against the public interest,
- the personal circumstances of the Registrant and any mitigation they have offered,
- that the decision is sufficient to protect the public.
- any testimonials and character references given in support of the Registrant,
- any relevant factors that may aggravate the Registrant’s conduct in the case,
- any submissions made to the committee by the GPhC’s representative, the registrant or their representative.

56. The Committee cannot form the view that the Registrant has an understanding of why his actions were wrong and could have caused harm to others as he has not fully engaged in the proceedings or given any evidence. The Committee consider that the Registrant has limited insight. Although he has recognised that his fitness to practice is impaired, his lack of engagement with this process, and the minimising of his offending at sentencing means the Committee formed the view that he has not developed any meaningful insight.

57. The Committee cannot conclude that the conduct will not be repeated. Indeed, given the lack of any evidence to suggest it won’t be, the Committee conclude there is a real

risk of repetition. If it were, this could occasion serious harm to members of the public who are vulnerable due to their age.

58. Ms Oseni succinctly set out the relevant aggravating and mitigating factors in the following terms in her skeleton argument as follows:

*'The aggravating factors are as follows:*

- *The Registrant has received two criminal convictions for similar offences.*
- *The Registrant's lack of engagement in relation to these proceedings.*

*The mitigating factors are as follows:*

- *The Registrant pleaded guilty on both occasions in the Magistrates' Court.*
- *The Registrant has no previous fitness to practice concerns.'*

59. The Committee accepted the Council's submissions regarding these factors.

60. The Committee considered paragraph 6.3 of the Council's Good decision-making guidance which states:

*'The GPhC believes that some acts of sexual misconduct will be incompatible with continued registration as a pharmacist or pharmacy technician. Removal from the register is likely to be the most appropriate sanction in these circumstances, unless there is evidence of clear, mitigating factors that cause a committee to decide that such a sanction is not appropriate. In particular... if*

- *it involves a child (including accessing, viewing, or other involvement in images of child sexual abuse) or a vulnerable adult;*
- *or the registrant has been required to register as a sex offender or has been included on a barred list'.*

61. Taking this into account, the Committee went on to consider each sanction in turn, starting with the least restrictive first. The Committee considered whether it should issue a warning to the Registrant. However, it decided that this would not be appropriate in the circumstances. The Committee had no doubt that such a sanction would be insufficient and would fail to achieve any of the relevant purposes of sanction.
62. Next, the Committee considered whether it was appropriate to impose conditions of practise order. The Committee decided that an order for conditions of practise was not appropriate. The Committee did not consider that conditions could be formulated that would sufficiently or adequately protect the public from the risk of harm.
63. The Committee then went on to consider whether a suspension order would be sufficient to meet the aims and purpose of sanction. The Committee did not consider that this would sufficiently protect the public, given the level of potential harm were the acts repeated and the extremely serious nature of the conduct involved. Further, the Committee was concerned that the facts upon which the conviction rests, demonstrate a lack of integrity which is not compatible with professional registration as a health care professional.
64. Set against this the Committee is presented with a lack of evidence that the risk of repetition is mitigated. The Committee considered the Registrant's email sent last week stating that he recognises his fitness to practise is impaired. However, this provides little indication of the Registrant's current attitude towards his conviction. His lack of substantive engagement with these proceedings, means that the most significant evidence before the Committee of the Registrant's attitude is the comments of HHJ Baxter at sentencing, who formed the view that the Registrant had '*in lots of ways*' minimised the offending. The Committee also considered the lack of testimonials or other types of evidence speaking to the Registrant's character.
65. The Committee also took into account the guidance provided in *CHRP v (1) GDC and (2) Mr Fleischmann* [2005] EWHC 87 (QB) that as a general principle, where a



practitioner had been convicted of a serious criminal offence or offences, he should not be permitted to resume his practice until he had satisfactorily completed his sentence. The protection of the public would not be served by the application of a different standard at erasure from that which was applied when considering an application for registration.

66. The Committee considered the restrictive impact such an order would have on the Registrant. However, it also considered that the Registrant had expressed a view that he did not want to work in the pharmacy profession anymore, which mitigated the impact such any order preventing him working as a pharmacy technician would have to some degree.

67. For the same reasons that a suspension order was not considered sufficient the Committee formed the view that the only appropriate order was one of erasure.

#### **Determination on interim application**

68. The Council made an application under Article 60 for an interim order to cover the period up to the deadline for appeal and/or until any appeal is concluded. The order was sought on the basis of it being in the public interest and to protect members of the public.

69. The Committee's finding to date include:

- a. the Registrant has a lack of insight;
- b. There is real risk of repetition that could occasion serious harm to vulnerable members of the public; and
- c. that the facts upon which the conviction rests, demonstrate a lack of integrity which is not compatible with professional registration as a health care professional.

70. Without an order the Registrant would be able to work unrestricted in registered practise over the next 28 days or any appeal period. Given the findings set out above,

the Committee consider that an interim order is necessary in order to mitigate the risk to the public and to maintain public confidence in the profession.

71. For these reasons this application is granted.