

**General Pharmaceutical Council**

**Fitness to Practise Committee**

**Principal Hearing**

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

**Monday 6 – Thursday 9 November 2023**

<b>Registrant name:</b>	Witold Ireneusz Bucholc
<b>Registration number:</b>	2064927
<b>Part of the register:</b>	Pharmacist
<b>Type of Case:</b>	Misconduct
<b>Committee Members:</b>	Peter Watkin-Jones (Chair) Surinder Bassan (Registrant member) Wendy Golding (Lay member)
<b>Committee Secretary:</b>	Adam Hern
<b>Registrant:</b>	Present
<b>General Pharmaceutical Council:</b>	Represented by Tom Broomfield, Case Presenter
<b>Facts proved:</b>	1.1, 1.2
<b>Facts proved by admission:</b>	2.1, 2.2
<b>Facts not proved:</b>	2.3,2.4, 3
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	Warning

## Determination

1. This is a Principal Hearing regarding Mr Witold Ireneusz Bucholc ('the Registrant'), a pharmacist first registered with the Royal Pharmaceutical Society of Great Britain on 01 December 2006, where his registration subsequently transferred to the General Pharmaceutical Council ('the Council') under registration number: 2064927.
2. The Registrant faces allegations that his fitness to practise is impaired by reason of his misconduct, in accordance with Article 51(a) of the Pharmacy Order 2010 ('the Order'). The Particulars of Allegation are as follows:

*You, a registered pharmacist, whilst working as a locum pharmacist at Asda Pharmacy, Howley Park Road, Morley, LS27 0BP:*

*1. On or around the 20 May 2020, said inappropriate things to Witness A in that:*

*1.1 you asked her about whether she had piercings in intimate places and about the location of her tattoos;*

*1.2 you said 'feel the relaxation running through your body' or words to that effect whilst touching her arm.*

*2. Between 20 May 2020 and 01 June 2020, engaged in inappropriate behaviour towards Witness A in that on a number of occasions you:*

*2.1 stood too close to her;*

*2.2 physically touched her;*

*2.3 blocked her in;*

*2.4 did not move out of her way when required to.*

*3. Your conduct in respect of allegations 1 and 2 above were sexually motivated, in that it was in pursuit of sexual gratification.*

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

3. This case relates to allegations of sexual misconduct when the Registrant was working as a locum pharmacist at Asda Pharmacy, Morley, Leeds ('the pharmacy'). The behaviour took the form of inappropriate comments, standing too close and touching a female colleague,

Witness A. Witness A was a trainee dispenser who had not worked with the Registrant before the 20th May 2020.

### **Preliminary issues**

4. The Council was represented by Mr Tom Broomfield of Counsel. The Registrant had previously been assisted by VHS Solicitors, but the Registrant represented himself at the hearing. Given the nature of the allegations in the case, the Committee made a direction pursuant to rule 44 of the *General Pharmaceutical Council (Fitness to Practise and disqualification etc) rules of 2010* that the Registrant's intended cross examination of Witness A be undertaken by an independent lawyer. With the agreement of the Registrant, Mr Ralph Shipway undertook that role and was present for the cross examination of Witness A, and thereafter did not join the proceedings.
5. It was agreed between the Council, the Registrant (through his then lawyers) that the Council's witnesses were to give evidence remotely. Witness A therefore gave evidence via videolink, as did two other of the Council's witnesses, Ms 1 and Ms 2. At the relevant times, they were the Pharmacy Safety and Compliance Manager at Asda (the owners of the pharmacy) and the Customer Trading Manager, respectively. All parties had the benefit of the Council's skeleton argument and statement of case, together with a bundle of documents running to 71 pages. The Registrant provided a separate bundle of documents running to 22 pages, including testimonials which he asked the Committee to consider at Stage 1 of the Principal Hearing, together with any other stages of the Principal Hearing, as appropriate.
6. The Registrant also had the benefit of a translator to assist him during the course of the hearing. The Registrant's first language is Polish; whilst he did not require or seek a translation of all of the proceedings, he wished occasional assistance from the translator, which was provided as necessary.
7. The Registrant denied the Allegations, save for allegations 2.1 and 2.2, which were found proved.

### **Relevant legislation**

8. The hearing procedure is governed by The Pharmacy Order 2010 ("the Order").
9. In accordance with Rule 31(1) of the Rules, this hearing is required to be conducted in three stages:
  - (a) Stage 1 - Findings of fact;
  - (b) Stage 2 - Findings on whether, as a result of the facts found proven, the Registrant's fitness to practise is impaired by reason of his misconduct and, or conviction;
  - (c) Stage 3 – Consideration of the appropriate sanction, if any

## **Background**

10. On 06 November 2020, the Council received a concern via email from Ms 1, detailing that an investigation was conducted by the Asda Ethics Team in response to an allegation by Witness A of sexual harassment against the Registrant.
11. In addition, on 20 November 2020, Ms 1 provided further information, stating that the Registrant had made inappropriate comments about their piercings and tattoos and had asked if they had piercings in more intimate places and if such piercings bring them pleasure. Furthermore, it was alleged that the Registrant would stand too close to the colleague and had touched her arm.
12. The Council subsequently commenced an investigation into the concern and witness statements were obtained by the Council. The Council also obtained from Asda four clips of CCTV footage taken from the pharmacy, three of which were from 20th May 2020, and the fourth on the 1st June 2020. These are the two dates that are in issue in relation to Witness A's allegations. The Committee was told in evidence that the clips were the product of a search undertaken by the security staff for Asda seeking relevant material to assist the Asda investigation. It was not known what had happened to the remainder of the footage for the two dates in question.
13. Ms 1 explained in her witness statement, that the Registrant was a locum pharmacist, meaning that he was not a direct employee. Ms 1 confirmed that locums are self-employed and cover the shifts on a more flexible basis, as and when required .
14. Ms 1 stated that Witness A had been upset by inappropriate comments and actions of the Registrant, reporting that he had been too close to her on a number of occasions on both the 20th May 2020 and a subsequent shift on the 1st June 2020. As such these initial concerns were reported by Witness A's Manager on 08 June 2020, by completing the locum of concern form, which was subsequently submitted to the Asda House head office. The concern was then passed onto Ms 1 to investigate, who in turn requested that the pharmacy Store Manager dealt with the matter .
15. Ms 1 reported that it became evident that further action had not been taken following discussions with staff members. Ms 1 explained that Witness A's father contacted Asda to make a complaint of sexual harassment about the Registrant on 06 August 2020. Following this, a wider investigation was commenced, led by Ms 2. The matter was also reported to the Council whose investigation led to this Principal Hearing.

## **The Evidence at the Principal Hearing**

16. Allegation 1 was supported by the evidence of Witness A and the CCTV footage. Ms 1 and Ms 2 also gave oral evidence.

17. The Council obtained copies of the Responsible Pharmacist ('RP') Log for Asda Pharmacy, Morley, store number 4158 ('the pharmacy') for the period of 16 May 2020 to 23 May 2020. The RP Log confirmed that the Registrant worked at the pharmacy on 20 May 2020 between 07:00 am to 15:00. This was accepted by the Registrant.
18. The Council obtained a signed witness statement from Witness A, dated 20 July 2021. Witness A, provided a physically signed copy on 16 October 2023. In addition, the Council obtained a supplementary witness statement from Witness A, dated 16 October 2023. All these documents were introduced and accepted into evidence.
19. Witness A's evidence, in both her statements and her oral evidence, were to the effect that on 20 May 2020, she met the Registrant for the first time during her morning shift. Witness A stated that she commenced her shift on 20 May 2020 at 07:00 am and finished her shift at 13:00. The Registrant was scheduled to work at the pharmacy as a locum pharmacist. Witness A had not worked with the Registrant before and stated that she introduced herself as she ordinarily would to any new locum and tried to make the Registrant feel welcome. Up until around 9 am, the only two members of staff working at the pharmacy were the Registrant and Witness A.
20. In relation to allegation 1.1, Witness A described having a general conversation with the Registrant. This took place around 20/30 minutes after the shift had commenced. Witness A stated that the Registrant began asking Witness A questions regarding her tattoos and piercings on her face and ears, which people often notice so did not find this unusual. As at the 20th May 2020, Witness A stated that she had visual piercings and tattoos around the area of her face, and it was not unusual for third parties to comment on them, or to ask her questions about them. Her evidence was that the general discussion about piercings and tattoos did not therefore surprise her, nor did she initially feel uncomfortable.
21. Witness A stated however that the Registrant then began to ask whether she had piercings in her "private area" and around her clitoris. She said in evidence that the Registrant suggested that he knew someone with such piercings, and that piercings in private parts brought extra pleasure for some people who have piercings there. A note of an interview that Witness A had with Asda on 11th June recorded her alleging that the Registrant had asked to see any piercings/ tattoos around her private parts; Witness A confirmed that the Registrant had never made such a suggestion and that the note (which was not a verbatim record of the interview with her) was incorrect in this regard.
22. Witness A described the Registrant as standing with one leg on a step and his other leg spread quite far apart, looking at her up and down whilst speaking to her.
23. Witness A stated that she felt very uncomfortable discussing piercings in her private parts and sought to bring the conversation to a close on the subject by informing the Registrant that the only piercings she had were those that he could see on her face and ears and attempted to try to change the subject and stop the conversation. Witness A's evidence was that the Registrant proceeded to continue asking the same questions regarding

piercings giving pleasure before eventually changing to questions regarding the locations of her tattoos and whether they hurt.

24. In relation to allegation 1.2 and 2.2, Witness A's evidence was that she wished to work on a computer that was known to be faulty, and where a lead behind the computer needed constant readjustment to enable the computer screen to work. Once the lead had been adjusted, it then took a little while before the computer screen engaged.
25. On the 20th May, Witness A said that the computer was again having technical issues and she started to adjust the lead behind the computer. Without asking for help, she stated that the Registrant sought to assist and he moved behind her, on her right-hand side, standing very close. Her oral evidence was to the effect that the Registrant was not however touching her, or rubbing against her. Witness A stated that she was slightly bent over to allow her to reach for the wire and so felt uncomfortable with the Registrant being so close to her. Her evidence given to Asda at her interview in June 2021, and in her statement to the Council on the 20th July 2021 was given without the benefit of her having had sight of the clips of the CCTV. These clips had, she said, been provided to her by the Council around a month ago. They were also repeatedly played to her, the Registrant and the Committee, during the course of the hearing, and both Witness A and the Registrant answered questions in relation to the content of the video clips.
26. Witness A stated that the computer screen then started working and she recalled that the Registrant touching the top of her right arm and saying-“ feel the relaxation running down your body”, or words to such effect. That evidence was given by Witness A to Asda at the outset, and Witness A confirmed in oral evidence that this was captured in one of the video clips shown in evidence. She stated that this touching only took place on one occasion, and there were no further similar incidents on the 20th May 2021 or on the 1st June. Witness A's evidence was that she did not understand why the Registrant was standing so close to her; that it was unnecessary; and that it made her feel uncomfortable, and somewhat intimidated. She was not a person who was comfortable with being touched by people she did not know, and having her personal space invaded in this fashion. Her memory of the incident was, she stated, clear, including the comments attributed to the Registrant, which she stated were delivered in a whisper.
27. The CCTV footage provided to the Council from Asda, dated 20 May 2020 showing this incident took place at approximately 10:25am, running to 04.08 minutes. Witness A stated that this incident therefore took place after the discussion of piercing and tattoos which had taken place around 0720/30.
28. The Registrant's evidence, in writing and given orally, was that there was indeed a general conversation concerning Witness A's visible tattoos and piercings. He could no longer recall exactly where they were, but thought that the piercings may have been around the ears and nose, and the tattoos possibly behind the ear and hand. He recalled that upon meeting Witness A, she reminded him of someone with whom he had previously worked, and he asked her whether she had family in Cumbria, and could be related to this person. The Registrant denied that the conversation had developed to any comment or question from

him asking whether Witness A had piercings of tattoos in her private parts, or clitoris area. He stated in evidence that he did not make such comments, or ask such questions, and that he did not know of anyone else who had such piercings. He therefore would not have commented that he knew someone else who had derived pleasure from intimate piercings, as he knew no such person.

29. The Registrant suggested that perhaps any comments had been made had been misunderstood. The Registrant gave evidence that English is his second language, and his words may have been misinterpreted, or misunderstood. This was put to Witness A who said that this was not the case.
30. In cross examination, it was put to the Registrant that he had been interviewed on two occasions by Asda in relation to the internal complaint. The first interview took place on 20th August 2020 when the Registrant was questioned by Ms 2. She asked the Registrant whether he had questioned Witness A as to piercings/ tattoos in her private parts? The Registrant replied that "I don't remember a question like this one".
31. The Registrant was interviewed again by Ms 2 a month later, and was asked about the touching of Witness A's arm, and standing too close to her. The video clips were shown to the Registrant at this interview. The Registrant's response was that "she's an adult so should tell me that she feels uncomfortable...If she was uncomfortable she should have told me that she felt bad... No one told me that I needed to keep my distance."
32. In cross examination, it was put to the Registrant that he had not denied having made the comments/ questions in relation to piercings/ tattoos, but had instead stated that he did not recall having made them. In relation to the allegation of standing too close, he had not then accepted that he had done so, but had sought to deflect the responsibility on Witness A.
33. The Registrant stated that the notes of the interview were not a transcript therefore did not fully record what was said. Additionally, he had intended to "answer in the negative", when stating that he did not recall any comments attributed to him. He also said that he may have said something to the effect that Witness A "could now chill and get on with her work" when the computer had been repaired. He stated that he had not intended to cause offence to the Registrant, but he now accepted that he had been too close to the Registrant- hence his admissions on allegations 2.1 and 2.2. He accepted his proximity and invasion of space was inappropriate. He maintained however that he had not said the words attributed to him in Allegation 1.1, and that the comments he made on chilling/ returning to work were not as alleged in Allegation 1.2. He denied the proposition put to him in cross examination that he had only made any concessions once he realised that he had little option, on the production of the video clips.
34. Allegation 2 was supported by the evidence of Witness A and CCTV footage.
35. Allegation 2.1 was admitted and found proved. The Council at the hearing adduced evidence in relation to Allegations 2.1 and 2.2 as being necessary to enable proper consideration of the Registrant's motive, being Allegation 3. Witness A detailed within her

statement that the Registrant begun following her around. If she went to do something, the Registrant would be right behind her. Witness A recalled going to sort the cash out at the counter and the Registrant following her, then if she moved again, he again would follow.

36. During her interview with Asda, Witness A mentioned that she went to work out the front of the pharmacy, however, the Registrant began to follow her, wherever she went the Registrant would be behind her and she would on occasion have to brush past him.
37. In relation to allegations 2.3 and 2.4, which were not admitted, Witness A described that during the day she wished to make a cup of tea and had asked the Registrant if he could move in order for her to be able to reach the kettle. Witness A stated that the Registrant refused to move out of her way. During her interview with Asda, Witness A stated that when she asked the Registrant to move out of the way so that she could get to the sink to fill the kettle, the Registrant responded 'no its ok 'causing Witness A to move across the Registrant to fill the kettle.
38. Witness A gave evidence that she was required to pick medication out of the pharmacy draws, and the Registrant had deliberately stood in her way so that she would be required to lean back towards him. Her "backside" was positioned close to his "groin area". She stated in oral evidence that he did not actually touch her or rub against her.
39. The Council obtained copies of the Responsible Pharmacist ('RP') Log for Asda Pharmacy, Morley, store number 4158 ('the pharmacy') for the period of 30 May 2020 to 05 June 2020. The RP Log confirms that the Registrant worked at the pharmacy on 01 June 2020 between 15:00 hours and 23:00 hours.
40. Witness A gave evidence that on 01 June 2020, she went round the back of the pharmacy to check the rota, and when she done this, the Registrant also came to the back of the pharmacy and stood right beside her, with his arm up against the drawers.
41. In relation to allegation 2.3, Witness A described the layout of the pharmacy detailing that the dispensary is largely out of view to anyone as it is located at the back of the pharmacy. Witness A stated that when she entered the area, the Registrant followed her, causing her to freeze as it felt like he had blocked off the area so that she could not move.
42. Video 1 of the CCTV footage provided to the Council from Asda, dated 20 May 2020 at approximately 10:47am, which runs to 00.37 seconds, was shown to the Committee. Witness A gave evidence that she was working to the left-hand side of the dispensary. The Registrant was working to Witness A's right. At approximately 00:08 seconds, the Registrant walked over to Witness A on her right-hand side and placed himself directly behind Witness A slightly to her right.
43. Witness A stated that the Registrant stayed directly behind her whilst she continued working until 00:16 seconds. Witness A then walked towards the CCTV camera and the Registrant followed her.

44. Video 2 of the CCTV footage provided to the Council from Asda, dated 20 May 2020 at approximately 10:41am, which runs to 02:15 minutes, was viewed by the Committee. Witness A stated that this shows her working at the computer at the front of the pharmacy. The Registrant was standing to her right with his hand up against the wall watching her. The Registrant stayed in this position until 00:40. The Registrant and Witness A then appeared to have a conversation (the clips had no sound) and at 00:55 the Registrant moved and stood behind Witness A slightly to her right. At 01:10 a customer walked past and the Registrant moved slightly away from Witness A. For the remainder of this footage, it appeared that the Registrant and Witness A are having a conversation.
45. In Video 3 of the CCTV footage, at approximately 00:44 seconds, the Registrant re-entered the pharmacy to where Witness A was working on the computer. The Registrant stood to the right of Witness A and at approximately 00:55 seconds into the CCTV footage, it appeared that the Registrant touched the top of Witness A's arm.
46. Video 4 of the CCTV footage provided to the Council from Asda, and played to the Committee, dated 01 June 2020 at approximately 15:05, which runs to 03:40 minutes, initially showed the Registrant leaning against the dispensary bench, possibly on the phone. At approximately 00:30 seconds, Witness A walked into shot with her back to the camera. At approximately 01:07 minutes, the Registrant finished his phone call and approached Witness A where he stood directly next to her on her right.
47. At 02:29 minutes, the Registrant approached Witness A and stood slightly behind her to her right. Witness A then said that the Registrant then leaned over her, with one hand on the dispensary bench. The Registrant remained next to her until 03:10 minutes until he moved further down the dispensary bench to take a phone call.
48. The Registrant, in admitting allegations 2.1 and 2.2, accepted that his behaviour was inappropriate. His evidence was however that he had not intended to cause discomfort to Witness A by standing too close to her. He apologised for infringing Witness A's personal space. The incidents occurred during a period of Covid regulations when there was an expectation that the public would stand 2 metres apart. The Registrant stated however that this was not practical, and that NHS guidance at the time allowed professionals a degree of flexibility, particularly where there was limited space, as he said was the case at the pharmacy.
49. The Registrant denied having blocked in Witness A when she wished to use the kettle, and said that he would have moved out of the way if that was required. He did not recall having been asked to do so.
50. Allegation 3 relates to whether the Registrant's conduct was sexually motivated, in that it was in pursuit of sexual gratification. The Registrant's evidence was that he stood too close to Witness A because he had not worked with her before, and she was only a trainee. It was therefore necessary for him to supervise her work, and that he was doing so in the videoclips that were relied upon by the Council in its case. Witness A had given evidence that none of the tasks that she was undertaking in the four videoclips were tasks that required supervision, as they related to tasks such as checking staff rotas, or doing

invoicing. She had not sought assistance in relation to any of these. The Registrant maintained however that he had a duty to check her work, and he had been doing so in the clips that were relied upon in evidence. Additionally, he had assisted in repairing the computer as part of his role of assisting and being helpful.

51. In another clip when the Registrant was in close proximity to Witness A, he was assisting her in some coursework, which Witness A accepted had happened. He said that if he was watching the screen, he may have needed to be close particularly if he was not wearing his glasses. This was not accepted by the Council who submitted that the Registrant in most of the clip footage was wearing glasses.
52. It was also suggested by the Registrant in evidence that he was standing close to Witness A as there was limited space in the pharmacy, and in the dispensary area. He gave evidence that it was not practical to maintain 2 metres distance.
53. The Registrant therefore submitted that any words that he said, or any standing too close to Witness A were not sexually motivated. He gave evidence that he had no bad intentions, and was not sexually motivated; nor did he derive any sexual gratification from his actions. He gave evidence that he had never had such complaints in relation to his behaviour before or since.
54. The Council submitted that none of the Registrant's explanations were true. The Registrant was not providing any supervision; he had not need to be close as he was wearing glasses at the relevant times; and the space in the pharmacy was not too limited. The Council therefore invited the Committee to draw the inference that the actions complained of in the allegations were sexually motivated.
55. The Council drew attention to Section 78 of the Sexual Offences Act 2003 ("the Act") which states as follows:

"Section 78. "Sexual"

For the purposes of this Part (except section 71), penetration, touching or any other activity is sexual if a reasonable person would consider that—

- whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual,
- or
- because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual". The Council also drew attention to the case of *Harris v General Medical Council (Rev 1)* [2021] EWCA Civ 763 the Court of Appeal which noted: "there is rarely any direct evidence of sexual motivation (though in some cases adverse inferences might be drawn from what was said by the doctor) and in a case like this, the facts speak for themselves". The Council submitted that an absence of any other plausible explanation for the conduct may be a reason to draw inferences that the conduct was sexually motivated. The Council accepted that these authorities were not in the regulatory context, but submitted that the Committee might be assisted by them.

## Determination

56. In accordance with Rule 42, the burden of proving the facts rests on the Council. The standard of proof is the civil standards, the balance of probabilities.
57. The Committee found Allegations 1.1 and 1.2 proved on this standard of proof. The Committee considered all the circumstances relating to the case, and the past investigations and the evidence that was given, in addition to the oral evidence given to the Principal Hearing. The Committee considered the following factors to be persuasive in reaching its determination:

-Witness A's account of the discussion forming the basis of Allegation 1.1 has been consistent throughout. Her evidence given in the Asda interview on 11th June and her statement on 18th June 2021 are consistent in the account of what happened. This evidence was equally consistent in the oral evidence that she gave to the Principal Hearing, and during cross examination.

-Witness A's uncontested evidence is that she raised a complaint in relation to the Registrant's behaviour at the first opportunity with her line manager, who was not in the pharmacy until the 22nd May 2020. He did not proceed to investigate, and Witness A pursued the matter further, leading to the involvement of Ms 1 and Ms 2. The Committee considered that Witness A's persistence in pursuing her complaint is persuasive as to the conduct comprised in allegations 1 and 2 having happened.

-Additionally, Witness A gave evidence that she had reported her discomfort and wish not to work again with the Registrant to her parents. When Witness A was required to work with the Registrant again on the 1st June 2020, her father escalated the matter within Asda so that Witness A would not work with the Registrant again. The Committee considered that it would have been difficult for Witness A to raise this with her parents, and for them in turn to pursue the complaints with Asda, and that this would not have been pursued had Witness A not been clear as to what had happened.

-The Committee also considered that there was no objective reason why Witness A would lie. She had had no past dealings with the Registrant and therefore had no ill will towards him or any scores to settle. Indeed, she was careful in her evidence not to overstate her complaint, noting that she did not allege that the Registrant had asked to see her piercings/ tattoos, as (wrongly) recorded in the notes of one interview.

-Witness A's evidence was initially given at a time when she had not seen the videoclips. Her evidence was then corroborated by the clips when they emerged, and were shown to her.

-Witness A persisted in her complaint, and cooperated with Asda's investigation, and that of the Council throughout. She gave her evidence in a straightforward and fair manner.

-The Registrant's evidence that he had not made comments in relation to piercings/ tattoos was not accepted by the Committee. He admitted a general conversation in

relation to tattoos and piercings. The Committee observed from his own oral evidence that the Registrant easily moves away to talk of matters that were not directly asked of him. The Committee considered that it is more likely than not that the Registrant did discuss matters of an intimate nature, even if he did not intend to, and now has no recollection of so doing. This would be consistent with his tendency to talk “off point”; it is appreciated that English is his second language, but his tendency is not to brief in his explanations and discussions, and if there was a general discussion about piercings and tattoos, the Committee considered it more likely than not that the Registrant strayed into a discussion on the topics set out in Allegation 1.1.

-The Respondent accepts and admits Allegations 2.1 and 2.2, and that he stood too close to Witness A, and that it was inappropriate. This can be seen in the video footage and the clips relied upon by the Council in evidence. Whilst there may have been some tasks of Witness A that required supervision (for example looking at her coursework on screen which Witness A said had been helpful), the Committee considered it more likely than not that the Registrant had no need to be standing so close to Witness A, as seen in the footage. He had no need to be touching Witness A’s arm following the repair of the computer. The Registrant accepts having said something to Witness A following the repair, and the Committee considered that it is more likely than not that he said the words set out in Allegation 1.2, or words to that effect. Again, Witness A’s evidence has been consistent on the point, and the other persuasive factors outlined above are relied upon here. She has no reason to lie; no past history with the Registrant; she has pursued the allegation in a consistent matter throughout, and the Registrant himself accepts that he may have said something to her about “chilling out”. It is more likely than not that the events at Allegation 1.2 occurred and the allegation is found proved.

58. Allegations 2.3 and 2.4 were not found proved, on the balance of probabilities. The Committee accepted the evidence of Witness A that she by the time of these events felt very uncomfortable in relation to the Registrant. The videoclips do show however that the pharmacy and dispensary areas are not particularly cramped, and the footage shows Witness A’s ability to move past the Registrant whenever needed. Witness A may therefore have felt blocked in when trying to access the kettle, and her perceptions at the time are likely to have been coloured by the Registrant’s inappropriate behaviour up until that time. The Committee did not however consider that the evidence is persuasive to show that the Registrant blocked her in, or prevented her from moving out of the way when accessing the kettle, particularly given the space and room available in the relevant area.
59. The Committee considered the Respondent’s motivation in pursuing the inappropriate conduct found proved above. The Council invites the Committee to conclude that Allegation 3 is found proved as an inevitable inference, as there is -in the Council’s submission- no other plausible explanation for the Registrant having behaved as he did. The Council submits that the Registrant’s explanations for his conduct do not hold water; it is submitted he did not need to supervise the Registrant as he did; neither did he need to be close to Witness A to read without glasses; nor was the pharmacy/ dispensary a cramped area. The Council therefore submits that the only reasonable inference is that the Registrant was sexually motivated.

60. The Committee did not consider, on the balance of probabilities, that Allegation 3 was proved. Had the Registrant been sexually motivated, and in pursuit of sexual gratification, it considered that it would be more likely than not that any touching would have been more persistent and would have happened on more than one occasion. In like vein, the wholly inappropriate questioning as to piercings as set out in Allegation 1.1 and the also inappropriate comments in Allegation 1.2 were isolated incidents which were not repeated. The Committee did not consider that the Registrant had any sexual expectations from his conduct, or that it was in pursuance of some present or future gratification.
61. The Committee rather drew the inference that the Registrant had behaved wholly inappropriately and unprofessionally out of a disregard for others, and that he had failed to exercise any judgement in choosing topics for discussion, and had failed to exercise any sieving process before asking questions, or making comments to Witness A. The Committee considered that the Registrant did not respect the boundaries of Witness A, nor respect her personal space, and exercised appalling judgment in the manner in which he treated a more junior employee. He did not appear to reflect at all on the impact of his conduct on Witness A, and appeared oblivious to the impact of his words and actions. The Registrant's response that Witness A could/ should have told him that she was uncomfortable demonstrated a complete inability to respect a colleague's privacy and space, but the Committee felt that this unprofessional behaviour did not result in an inevitable inference that his conduct was sexually motivated. Appalling though his behaviour was, the Committee did not feel on the standard of proof that it could draw the inference invited by the Council, and Allegation 3 was found not proved.
62. Stage 2 of any fitness to practise hearing addresses the concept of whether the Registrant's fitness to practise is currently impaired. Article 54(1) of the Pharmacy Order 2010 ("the Order") provides: "the Fitness to Practise Committee must determine whether or not the fitness to practise of the person in respect of whom the allegation is made (referred to in this article as "the person concerned") is impaired."
63. The Order contains no definition of what is meant by impaired fitness to practise. The Council submit the Committee should find impairment in accordance with Article 51(1) of the Order which provides:-
- "A person's fitness to practice is to be regarded as "impaired" for the purposes of this Order only by reason of:
- misconduct;
64. Consideration of impairment has to be undertaken in two separate stages. Firstly, the Committee has to consider whether on the facts found proved, there is misconduct. Then, it has to consider whether, as a result, the Registrant's fitness to practise is currently impaired. This approach was explained in the Judgement given by Mr Justice Cranston at paragraph 19 in *Cheatle v GMC* [2009] EWHC 645 (Admin):

A Panel must engage in a 2-step process. First, it must decide whether there has been misconduct, deficient professional performance or whether the other circumstances set out in the section are present. Then it must go on to determine whether, as a result,

fitness to practise is impaired. But it may be that despite a [practitioner] having been guilty of misconduct, for example, a Panel may decide that his or her fitness to practise is not impaired.”

## Misconduct

65. The Council submit that the findings made against the Registrant in relation to allegations 1 and 2 constitute misconduct within the definitions set out in the legal authorities. These authorities include the case of *Forz Khan v Bar Standards Board* [2018] EWHC 2184 (Admin) which states that “behaviour must be “seriously reprehensible” before it can amount to professional misconduct”. In *Meadow v General Medical Council* [2007] 1 All ER 1, the Court of Appeal made clear that the “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 ... 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.”
66. The Council also rely upon the dicta of Kerr J in the case of *Shaw v General Osteopathic Council* [2015] EWHC 2721 (Admin), where he stated that “a charge of unacceptable professional conduct does entail conduct that, to some degree, is morally blameworthy and would convey a degree of opprobrium to the ordinary intelligent citizen”
67. In *Remedy UK Ltd v General Medical Council* [2010] EWHC 1245 (Admin) the Court reviewed a number of authorities in relation to misconduct and derived a number of principles which included the following at paragraph 37:

“Misconduct is of two principal kinds. It may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outside the course of professional practice, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.

Misconduct within the first limb need not arise in the context of a doctor exercising his clinical practice, but it must be in the exercise of the doctor’s medical calling. There is no single or simple test for defining when that condition is satisfied.

Conduct falls into the second limb if it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact may be sufficient to bring the profession of medicine into disrepute. It matters not whether such conduct is directly related to the exercise of professional skill”.

The Council submitted that the findings made against the Registrant related to his conduct whilst at his practice, and in relation to another member of staff. The Council submit that the first limb of *Remedy* is therefore engaged, together with the second limb, due to the “morally culpable and disgraceful” conduct of the Registrant.

68. The Council drew the Committee's attention to the dicta of Lord Clyde in *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311 where he stated: "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."
69. The Council submit that the Registrant's particularised conduct falls far below the standards expected of him as a registered pharmacist. In determining misconduct, the Committee was invited to consider the Council's *Standards for pharmacy professionals dated May 2017* ("the Standards"). The Council submitted that the Registrant breached the following standards:
- Standard 1: Pharmacy professionals must provide person-centred care.  
Standard 6: Pharmacy professionals must behave in a professional manner.  
Standard 9: Pharmacy professionals must demonstrate leadership.
70. The Committee considered that Standard 1 related to the provision of care, and was more directed to the care of patients, and possibly colleagues rather than conduct that was not related to the provision of care. The Committee did not consider this standard was engaged in the circumstances of this case.
71. Standard 6 requires pharmacy professionals to behave in a professional manner. A pharmacy professional is required to maintain appropriate personal and professional boundaries with regard to others. The findings made against the Registrant in relation to allegations 1 and 2 show that the Registrant failed to behave in a professional manner, and treat Witness A in a respectful and dignified way leading to Witness A feeling uncomfortable in his presence. The Committee considered that Standard 6 was engaged, and had been clearly breached by the Registrant.
72. Standard 9: Pharmacy professionals must demonstrate leadership. Pharmacy professionals must take responsibility for their practice and demonstrate leadership to the people they work with, assess the risks in the care they provide and do everything they can to keep these risks as low as possible and to not abuse their position. The Council submitted that the Registrant in his conduct relating to Witness A ,who was a more junior member of staff, had abused his position of leadership and position of trust. The Committee agreed that Standard 9 was engaged, and considered that the conduct of the Registrant breached Standard 9.
73. The Registrant accepted that he was guilty of serious misconduct.
74. The breaches of the aforesaid standards, and the facts found proved against the Registrant were considered by the Committee to be serious misconduct, which was "seriously reprehensible", "deplorable" and "morally blameworthy" within the meaning of the case law cited above. The Committee agreed with the Council's submission that the two limbs of the case of Remedy were engaged.

75. The Committee found that the findings against the Registrant did constitute misconduct within the meaning of the Order.

### **Current Impairment**

76. Rule 5 of the Rules sets out the criteria to which the Committee must have regard when deciding, in the case of any registrant, whether or not the requirements as to fitness to practise are met in relation to that registrant. Rule 5(2) of the Rules states:

“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 upon.”

77. The test recommended by Dame Janet Smith in the report to the Fifth Shipman Inquiry essentially mirrors the Rule 5 criteria when considering impairment of fitness to practise and was endorsed in *CHRE v Grant* [2011] EWHC 927 (admin) by Cox J at paragraph 76 as a test equally applicable to other regulatory schemes.

78. In the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin), it was stated that “it must be highly relevant in determining if a doctor’s fitness to practise is impaired that first his or her conduct that led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated.”

79. The Committee was referred 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.”

80. Applying this case law, the Council submitted that the Committee should take into consideration the need to maintain public confidence in the profession in addition to maintaining proper standards of conduct.

81. The Council submitted that the Registrant’s misconduct found proved engaged grounds (a) – (c) of Rule 5(2) of the Rules. It was also submitted that the Registrant’s conduct presents a potential risk to patients, thus engaging Rule 5(2)(a) of the Rules, and in failing to

maintain appropriate boundaries presents a risk of harm should he feel able to take advantage of younger female members of staff in the pharmacy.

82. The Council also submitted that Rule 5(2)(b) was engaged, and that members of the public would be concerned by the Registrant's conduct. The public reasonably expect to receive safe and effective care, however upon learning of the Registrant's conduct it would be assumed that members of the public would feel anything but safe. This also extends to the wider pharmacy team. Staff members expect to be able to come to work and do their job in a safe environment. The Council submitted that the Registrant's conduct poses a future risk that he will not provide a safe environment for staff members to be able to carry out their work.
83. The Council submitted further that the Registrant's conduct has failed to promote and maintain proper standards and conduct for members of those professions, thereby breaching one of the fundamental principles of the pharmacy profession. The Council therefore submitted that Rule 5(2)(c) is also engaged.
84. The Council submitted that the Registrant acted in a wholly inappropriate manner in relation to the allegations that have been found proved. The Registrant, by his actions, had breached one of the standards of the profession, namely treating others with dignity and maintaining appropriate boundaries. The Council submitted that the Registrant's behaviour was damaging to the reputation of the profession and has a detrimental effect on public confidence in pharmacy profession.
85. The Committee's attention was also drawn to the Council's "*Good decision making: fitness to practise hearings and sanctions guidance*" revised edition March 2017. That document was also specifically drawn to the Registrant's attention.
86. The Council submitted that there is a risk of repetition, albeit this is considered to be a moderate risk. The Registrant failed to maintain adequate boundaries within the pharmacy and during his interviews with Asda failed to appreciate the seriousness of his conduct and how his actions may make other staff members feel.
87. Whilst accepting that the allegations found proved constituted misconduct, the Registrant submitted that he was not currently impaired. He submitted that there was no history of similar behaviour. Additionally in the three and half years since the events in this case, the Registrant has been in full time practice with no history of any difficulties. The Registrant referred the Committee to the fact that he had completed a course in respecting professional boundaries, and he stated that he had found that course particularly beneficial.
88. The Registrant stated that he has now modified his behaviour, respects personal space, and does not discuss any personal or private issues with colleagues at work. He apologised for his behaviour towards Witness A, (and did so directly to her at the outset of the Principal Hearing) and said that there would be no repetition of such behaviour towards others in the future.

89. The Registrant had prepared a skeleton argument with the assistance of his past lawyers, and stressed that it needed to be “necessary” to make a finding of current impairment, rather than it being “a good idea”. The Registrant submitted that he had sufficiently remedied his past behaviour, and that he did not present an actual or potential risk to patients or to the public.
90. The Registrant also drew attention to the testimonial evidence that he had presented in his bundle. He stated that those that had provided testimonial had done with knowledge of the allegations that he faces. The Committee carefully considered these testimonials, which included a statement from a GP practice pharmacist, Ms 3; a testimonial from Ms 4, a Pharmacy Manager with Lloyds; a note from Ms 5, a dispenser with Asda, and a testimonial email from Ms 6, a Lloyds Pharmacy branch manager. These testimonials were consistently favourable to the Registrant and the working relationships that the providers of the testimonials had had with him.
91. The Committee considered that rule 5(2) b and c were engaged in this case, and had been breached. The Committee considered that the Registrant’s misconduct, as found proved, had brought the profession into disrepute. He had breached Standards 6 and 9 of the Council’s standards, and had thereby breached fundamental principles of the profession of pharmacy.
92. The Council submitted that the risk of repetition of the conduct was “moderate”. The Registrant stated in evidence that he had learned his lesson, and had remediated his behaviour, and there was no risk of repetition. The Committee considered that the Registrant had indeed taken steps to remediate his behaviour, and noted that he had practised without issues since May and June 2020. The course he had undertaken, and the testimonials provided suggested that he had remediated his behaviour and learned from his mistakes. The Committee considered that the risk of repetition was indeed low.
93. The Committee nevertheless considered that a finding of current impairment was required in this case. The Committee had particular regard to the dicta of Mrs Justice Cox where she stated that whilst a consideration of whether the registrant poses a risk in his current role is required, the Committee should also consider “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.” The Committee considered that professional standards and public confidence in the profession would be undermined if there were no finding of current impairment, even recognising and accepting the remedial steps taken by the Registrant since these events.
94. The Committee therefore found the Registrant to be currently impaired.

## **Sanction**

95. The Committee’s powers in relation to sanction are contained within Article 54(2) of the Order. The Committee must approach the question of sanction with regard to the principles of proportionality and weigh the interests of the public against those of the

Registrant. Public interest considerations include protecting the public, maintaining public confidence in the profession and proper standards of behaviour.

96. The Committee also had reference to the Council's "*Good decision making: fitness to practise hearings and sanctions*" guidance ("the Guidance") in its consideration of the issue of sanction.
97. The Guidance provides that the Committee should consider the aggravating and mitigating factors appearing in the case. Having heard the submissions made by the parties, the Committee noted that there were the following aggravating factors. The Registrant's conduct took place in a pharmacy setting. The conduct related to a more junior colleague for whom he was responsible, and thus constituted an abuse of position and trust. The allegations found proved constituted wholly of inappropriate language and conduct that made Witness A feel uncomfortable and she has thereafter been required to assist both an internal and a regulatory investigation.
98. In mitigation, the events occurred over a short period of time- mainly the 20th May 2020, with additional conduct complained of on 1st June 2020. The Registrant has no history of such conduct prior to those dates, and has practised for over 3 years since then without incident. He has undertaken steps to remediate his conduct, and to better understand and apply professional boundaries. He has provided testimonial evidence as to his competency as a pharmacist, and from females as to his acceptability as a work colleague. The Committee has found that the risk of repetition is low. The Registrant has apologised to Witness A and has shown insight into the shortcomings of his past behaviour. The Registrant has throughout cooperated with his regulatory body.
99. Applying paragraph 5.3 of the Guidance, the Committee considered each available sanction, starting at the lowest, until reaching a particular sanction deemed appropriate. Applying paragraph 5.4 of the Guidance, the Committee then also considered the sanction immediately above to consider whether the more serious sanction was in fact more appropriate.
100. The Committee did not consider that in the light of the misconduct and current impairment found that this was a case that justified the taking of no action. In the light of the finding of current impairment, the option of giving advice to the Registrant was not available.
101. The Committee then considered the sanction of a warning. The Guidance states that this may be an appropriate sanction where there is a need to demonstrate to a registrant, and more widely to the profession and the public, that the conduct of behaviour fell below acceptable standards. The Guidance further states that this may be an appropriate sanction where there is no need to take action to restrict a registrant's right to practise as there is not a continuing risk to patients or the public, but there nevertheless needs to be a public acknowledgement that the conduct was unacceptable.
102. The Committee considered that this case was one where a warning was the appropriate and proportionate sanction. Given the Registrant's absence of prior regulatory history, and the fact that he has practised without incident since June 2020, the Committee considered

that there was a low continuing risk to others that the conduct would be repeated. Given that there was evidence to attest to the Registrant's competence as a pharmacist, the Committee did not think there was any benefit in taking action to restrict the Registrant's right to practise. The issuing of a warning, which will be on the Registrant's record, will mark the unacceptability of the conduct, and ensure that confidence in the profession was maintained.

103. The Committee did consider whether a suspension was more appropriate, but did not think that restricting the Registrant's right to practise for a period of time would achieve anything beyond the marking of his past unacceptable conduct, which is achieved in any event by the issuing of a warning. The Committee did not consider that this was a case where the imposition of conditions was relevant.

104. The Committee therefore decided to issue the Registrant with a warning in the following terms:

- To pay proper and due attention to your professional standards, in particular Standards 6 and 9, and conduct yourself at all times in accordance with those standards.
- At all times to respect professional boundaries; in particular, to respect the privacy and dignity of your colleagues, and others, and to respect their personal space when working around them.
- Not to initiate or conduct any uninvited discussions which are personal or private in nature, to include comments or questions in relation to physical appearance.