

General Pharmaceutical Council

Fitness to Practise Committee

Principal Hearing

Remote videolink hearing

Tuesday 5 – Thursday 7 December 2023

Registrant name:	Gordon James Couper
Registration number:	2037122
Part of the register:	Pharmacist
Type of Case:	Conviction and Health
Committee Members:	Manuela Grayson (Chair) Pat North (Registrant member) Anne Johnstone (Lay member)
Clinical Adviser:	Dr Jennifer Bearn
Committee Secretary:	Chelsea Smith
Registrant:	Present and representing himself
General Pharmaceutical Council:	Mark Millin, Case Presenter
Facts proved:	2
Facts proved by admission:	1 (also by the fact of conviction)
Fitness to practise:	Impaired
Outcome:	Suspension, 12 months, with review
Interim measures:	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 4 January 2024 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

“That you being registered as a pharmacist,

- 1. On 30 November 2021, was convicted at Chester Magistrate’s Court, of driving a motor vehicle when alcohol level above limit, contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988;*
- 2. Suffer from medical condition(s) the nature of which is set out in Schedule 1*

As a result, your fitness to practise is impaired by reason of: a) Conviction and b) Health

Schedule 1

[PRIVATE]

Documentation

Document 1- GPhC hearing bundle, 141 pages

Document 2- GPhC skeleton argument dated November 2023

Witnesses

Witness 1, the Registrant’s business partner

Witness 2, [PRIVATE]

The Registrant gave oral evidence

Determination

Introduction

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

Service of Notice of Hearing

6. The Committee has seen a letter dated 30 October 2023 from the Council headed 'Notice of Hearing' addressed to the Registrant. The Committee was satisfied that there had been good service of the Notice in accordance with Rules 3 and 16.

Application for the hearing to be held in Private

7. The Committee heard an application from Mr Millin under Rule 39(3) to hold parts of the hearing in private, wherever matters of the Registrant's health might be mentioned. The Registrant agreed with the application.
8. The Committee was satisfied that the interest of the Registrant in maintaining privacy in relation to matters concerning his health outweighed the public interest in holding those parts of the hearing in public. It therefore resolved to hold all parts of the hearing which refer to the Registrant's health in private. Other parts of the hearing would be heard in public.

Registrant's response to Particulars of Allegation

9. The Registrant admitted factual particular 1. In relation to particular 2, the Registrant stated that whilst he did not dispute what was alleged, there had been personal matters which aggravated his health in the past and he is now in a better place. The Committee considered that the Registrant ought not to be taken to have admitted all of the facts at particular 2 and determined to hear the evidence in relation to that particular.

Background

10. On 13 July 2020, the Council received a referral from Witness 1, the Registrant's colleague and co-owner with the Registrant of the pharmacy the Registrant was then

working at, informing the Council that, according to information provided by an employee, on 10 July 2020 the Registrant was [PRIVATE].

11. On 15 November 2021 Cheshire Police reported to the Council that the Registrant had been arrested on 10 November 2021 and charged with: 'Driving a motor vehicle when alcohol level above limit. Contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988'. He had been bailed to court on unconditional bail, to appear at West Cheshire Magistrates on 30/11/2021.
12. On 26 November 2021 the Registrant made a self-declaration to the Council informing the Council that he had been charged as set out above.

Conviction- Particular 1

13. On 30th of November 2021, the Registrant was convicted of driving a motor vehicle when over the limit (the limit being 35 micrograms of alcohol in 100 millilitres, the Registrant's lower reading was 142), on 10 November 2021. On 5 January 2022, the Registrant was sentenced to 15 days rehabilitation activity and disqualified from driving for a period of 36 months. In view of the extremely high reading the Registrant also received a prison sentence of 8 weeks suspended for 12 months.

Health- Particular 2 and Schedule 1

14. [PRIVATE]
15. The evidence of this allegation derives from the three assessments performed by Witness 2 on 29 June 2021; 3 May 2022 and 11 November 2023; [PRIVATE]
16. Witness 2's most recent assessment of the Registrant, in November 2023, [PRIVATE]
17. He made the following diagnosis:

[PRIVATE]

18. Witness 2 continued as follows:

[PRIVATE]

19. In relation to the Registrant's insight into his condition, Witness 2 wrote: *"I think that his insight [PRIVATE] is very poor.... I was extremely concerned I heard from him that he has regularly been working as a pharmacist and at times the only pharmacist available in the pharmacy."*

Oral Evidence

20. Witness 1 gave evidence to the Committee. He confirmed the contents of his witness statement. He had suspicions about the Registrant's health as early as 2016 in relation to the way the Registrant conducted himself at a business meeting, but it was not until 2020 when he was alerted by staff at the pharmacy which he jointly owned with the Registrant, that he became sufficiently concerned to refer the matter to the Council.
[PRIVATE]

21. Witness 2 gave evidence on behalf of the Council. He referred to his most recent report of 11 November 2023 [PRIVATE] Witness 2's opinion was that the Registrant's insight [PRIVATE] was very poor and had become poorer over the time since Witness 2 had first assessed him.

22. [PRIVATE]

23. [PRIVATE]

24. Witness 2 told the Committee [PRIVATE] The Registrant would benefit from a period in which he was not permitted to work so that he could focus on his health.

25. The Registrant gave evidence to the Committee. He explained that many of the matters [PRIVATE] were now resolved: [PRIVATE]; he has been working as the Responsible Pharmacist for an old friend who has known him over 30 years. [PRIVATE] He told the Committee that he enjoys working [PRIVATE]. He had no evidence to suggest that his conduct at work had deterred patients from attending his pharmacy [PRIVATE].
26. He told the Committee that he did not wish to detract from anything Witness 2 had said. "It's not nice to read", he admitted, "but there's nothing I would disagree with or question". However, he did not think that [PRIVATE] affected his ability to practise [PRIVATE].
27. He told the Committee that when [PRIVATE] arose some years ago, his wife (a registered pharmacist) had told him that she would never have let him go to work if she thought he would be unsafe.
28. He appreciated that the public would look on his conviction for drink driving negatively and said that two years on from his conviction he remained "mortified" by it: he acknowledged that his driving had put the public at risk however he said it did not put patients at risk as he was not driving to work at the time. He said he never drank alcohol whilst at work.
29. The Registrant told the Committee that although it had been about 3.5 years' waiting, he was glad this hearing was finally happening: it was the last piece of the jigsaw in terms of getting everything in order (apart from regaining his driving licence), and he would abide by any decision of the Committee.

Submissions in relation to the Facts:

30. Mr Millin referred the Committee to his skeleton argument. He submitted that the conviction alleged at particular 1 could be proved by the fact of the certificate of conviction; and the evidence from Witness 2 together with [PRIVATE] the evidence of

Witness 1 could be relied on to prove particular 2 and the accompanying schedule.
[PRIVATE]

31. The Registrant did not seek to dispute the evidence provided in support of the alleged facts.

Clinical Advice

32. Dr Jennifer Bearn provided clinical advice to the Committee. She summarised the reports of Witness 2 and the clinical features he had observed which led him to conclude at the first two assessments that the Registrant had the health conditions set out at schedule 1 of the Particulars of allegation. [PRIVATE].
33. [PRIVATE]
34. [PRIVATE]
35. [PRIVATE]
36. Dr Bearn confirmed the opinion of Witness 2 in relation to the risk to patients and the public from the health conditions he had diagnosed [PRIVATE].

DETERMINATION ON THE FACTS

Particular 1:

“That you being registered as a pharmacist,

1. *On 30 November 2021, was convicted at Chester Magistrate’s Court, of driving a motor vehicle when alcohol level above limit, contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988; “*

37. In relation to particular 1, the Committee noted Rule 24(4) of the Rules provides:

“Where a person concerned has been convicted of a criminal offence in the British Islands (and has not successfully appealed against the conviction), 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 which it was based”.

38. The Committee had sight of the Certified copy (signed and dated 23 November 2023) of the Certificate of Conviction from Chester Magistrates’ Court dated 5 January 2022. It was satisfied that the copy of the Certificate was appropriate confirmation of the facts alleged at particular 1.

39. In the light of the above, and by the application of Rule 31(6) of the Rules, the Chair announced that the admitted factual particular 1 was found proved.

Particular 2:

[You] “Suffer from medical condition(s) the nature of which is set out in Schedule 1

Schedule 1

[PRIVATE]

40. In relation to particular 2, the Committee took into account all of the evidence before it. It took into account that the evidence of Witness 1, who had referred the Registrant to the Council in July 2020, was in the main hearsay from staff members who worked with the Registrant. Whilst Witness 1 had concerns about the Registrant’s presentation on occasion as long ago as 2016, he had not been sure what the issue was. The Committee was satisfied that the hearsay evidence, which was consistent from more than one witness, could be relied on. The Committee accepted the evidence of Witness 2 and the clinical advice of Dr Bearn. It also took into account the comments of the Registrant in his Response of 22 August 2022, in which he wrote:

“I acknowledge that for a number of years I have struggled [PRIVATE] as stated by Witness 2”.

41. [PRIVATE]

42. [PRIVATE]

43. The Committee took into account Witness 2’s oral evidence in which he explained [PRIVATE] One should also take into account that some of the personal issues that had affected the Registrant at the time of the events which led to his referral had been resolved. The Committee also took into account Dr Bearn’s clinical advice to the effect that [PRIVATE] on its own it does not usually affect fitness to practise. [PRIVATE].

44. [PRIVATE]

45. [PRIVATE]

46. The Committee therefore found all of the facts alleged to be proved in their entirety.

Stage 2: THE COMMITTEE’S DECISION ON GROUNDS AND IMPAIRMENT

47. Having found the facts proved, the Committee then went on to the second stage of the proceedings, that is, to determine whether or not the Registrant’s fitness to practise is currently impaired.

48. The Council has set out the meaning of ‘fitness to practise’ in its guidance entitled: “Good decision-making: Fitness to practise hearings and sanctions guidance” (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 our various standards, guidance and advice.”

Submissions

49. Mr Millin on behalf of the Council, submitted that the Registrant’s fitness to practise was currently impaired both on ground of the conviction for driving whilst over the limit for alcohol and in relation to his adverse health conditions. He submitted that the Registrant breached standards 5, 6 and 9 of the Council’s Standard for Pharmacy professionals (2017); that Rule 5(3) (a) and (b) were engaged; and that Rule 24(10) (d) was engaged. In relation to Rule 5, Mr Millin submitted that each of the four sub-particulars of Rule 5(2), (a) to (d) were engaged by the facts of this case.
50. The Registrant confirmed to the Committee that he would abide by and accept any decision of the Committee. He would like the opportunity to continue to be a pharmacist, though he admitted it was unlikely he would go back to full time working. He would be more than happy to continue working for his current employer, who was willing to keep him on. If he was prevented from working as a pharmacist he would seek some alternative work as working was beneficial to his mental health, giving him a purpose and a reason to get up in the morning.

Grounds

51. Article 54(1) of the Order set out the possible grounds or “gateways” to a finding of impairment. The relevant gateways in this matter are:
- *“conviction for a criminal offence”* (Article 54(1)(e) in respect of particular 1); and
 - *“adverse physical or mental health which impairs their ability to practise safely and effectively or which otherwise impairs their ability to carry out the duties of a*

pharmacist...in a safe and effective manner;” (Article 54(1)(c), in relation to particular 2).

52. The Committee considered each of the relevant grounds.
53. It was of the view that the ground of conviction was established on the basis of the Certificate of Conviction dated 5 January 2022.
54. The ground of adverse health was established by the Committee’s finding in relation to particular 2 that the Registrant suffers from the health conditions specified in Schedule 1 of the Allegation.
55. Accordingly, the Committee concluded that both the alleged grounds, of conviction and adverse health, were established by the proven facts of this case.
56. In relation to the Council’s Standards for Pharmacy Professionals (May 2017), the Committee accepted the submissions of Mr Millin and it determined that the Registrant breached standards 5, 6 and 9.
 - (i) **Standard 5:** Pharmacy professionals must use their professional judgement [and] practise only when fit to do so. The Committee was satisfied that [PRIVATE] the Registrant breached standard 5.
 - (ii) **Standard 6:** Pharmacy professionals must behave in a professional manner...Behaving professionally is not limited to the working day. The standard states that the privilege of being a pharmacist and the importance of maintaining confidence in the profession calls for appropriate behaviour at all times. The Registrant, by his conviction for driving whilst so seriously above the alcohol limit, breached this standard.
 - (iii) **Standard 9:** Pharmacy professionals must demonstrate leadership...taking responsibility for their actions and leading by example. The Registrant was the Responsible Pharmacist in a pharmacy that he owned. It would appear from the evidence of Witness 1,

although it is hearsay, that his employees had been concerned for some time about his demeanour at work and finally one of them spoke up. By continuing to work [PRIVATE] he did not demonstrate the leadership and example which would be expected of a registered professional.

57. The Committee bore in mind that the Standards may be taken into account when considering the issues of grounds and impairment but that a breach of the Standards does not automatically result in a finding of misconduct (Rule 24(11) of the Rules).

Impairment

58. Having found that the grounds of conviction and health were established, the Committee went on to consider whether the Registrant's fitness to practise is currently impaired.
59. Guidance on this issue, (echoed the Council's Guidance at Paragraph 2.14), was set out by Mr Justice Silber in Cohen v General Medical Council [2008] EWHC 581 (Admin) at paragraph 65:

"It must be highly relevant in determining if a [practitioner's] fitness to practise is impaired that first ... his 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".

60. The Committee had found particular 2 proved [PRIVATE].
61. Applying the principles in the Cohen case, the Committee was of the view that although both the Registrant's conditions are, [PRIVATE], they are capable of remediation. [PRIVATE].
62. The Committee also took into account Rule 24(10) of the Rules which provides, at Rule 24(10) (b), that the Committee, in determining whether a registrant's fitness to

practise is impaired by reason of physical or mental health, may take into account, amongst other matters,

“(b) the current physical or mental condition of the person concerned”.

63. The Committee observed that Mr Millin had submitted that Rule 24(10) (d) (the Committee may taken into account *“any underlying condition suffered by the person concerned which, although in remission, is capable of causing impairment of fitness to practice if it recurs”*), was engaged by the facts of this case. The Committee however was of the view that [PRIVATE] Rule 24(10(d) was not engaged at the present time.

64. The Committee next turned to consider Rule 5(3) of the Rules which provides:

“In relation to evidence about the registrant’s physical or mental health 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 evidence shows actual or potential –

a) self-harm; or

b) harm to patients or the public”.

65. The Committee concluded that the provisions of Rule 5(3) are currently engaged [PRIVATE]

66. In relation to Rule 5(3) (b), the Committee had regard to the expert medical assessments of Witness 2, and the clinical advice of Dr Bearn. It was abundantly clear to the Committee that, despite the fact that there was no evidence before it of actual harm to patients or the public [PRIVATE], there was a very serious risk of potential harm, both to patients and to the public, from the likely effects of the Registrant’s health condition on his judgement and his conduct. [PRIVATE].

67. The Committee next turned to consider whether any sub-particulars of Rule 5(2) of the Rules are engaged by the Registrant’s conviction and adverse health.

68. Rule 5(2) of the Rules provides:

“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.”

69. The Committee carefully considered and accepted Mr Millin’s submissions in his skeleton argument that all of the above sub-particulars are engaged in this case.

70. In relation to Rule 5(2) (a), the Committee took into account both the Registrant’s health conditions and also his criminal conviction, together with its assessment of his insight into his conditions and into the risks he may present to patients or the public.

71. The Registrant was clearly making an effort to be open and honest for the most part and the Committee did not underestimate the stress he would be likely to have been under, both over the period since his referral to the Council and especially during this hearing. It considered that his willingness to engage so fully with the process, particularly without representation, was a great credit to him and perhaps was a positive sign [PRIVATE]. It took into account that he did not dispute the expert opinions of Witness 2 and Dr Bearn [PRIVATE].

72. Nevertheless, the Committee concluded that the Registrant is very far today from being in a position fully to accept the seriousness of his current health situation. Dr Bearn had commented that it was a common feature of his health condition [PRIVATE]. Whilst the Registrant told the Committee that he has been practising [PRIVATE] with no harm to patients, he did not express any particular insight into the decision-making which led to his conviction, other than to say he is “mortified”.
73. The Committee was concerned that when asked by the pharmacist member of the Committee whether he appreciated the risks of his driving whilst under the influence of alcohol, he accepted that there would have been a risk to the public but added that that there was no risk to patients as he was not driving to work. [PRIVATE]. Such comments demonstrated an apparent lack of understanding [PRIVATE], in the Committee’s view. It appreciated however that at other times the Registrant appeared to imply an understanding of the risks caused by his current health concerns, [PRIVATE], and he admitted in his closing comments that he did not expect to be able to return to work full time.
74. The Committee considers that there remains a risk that, when the Registrant’s period of disqualification from driving comes to an end in a year’s time, [PRIVATE], he could repeat his criminal conduct with the obvious risk to the public that would entail.
75. In these circumstances the Committee has no doubt that Rule 5(2)(a) is currently engaged – the Registrant’s conduct or behaviour presents an actual or potential harm to patients or to the public.
76. Turning to the other sub-particulars of Rule 5(2), the Committee was satisfied that by his conviction, the Registrant has brought the profession of pharmacy into disrepute (Rule 5(2)(b)); and he has breached one of the fundamental principles of the profession of pharmacy, namely the expectation that he will behave professionally including during his personal life (Rule 5(2)(c)).

77. In relation to Rule 5(2)(d), the Committee was of the view that because of the Registrant's incomplete insight [PRIVATE] and also into the risks to patients and the public as a consequence [PRIVATE], it was bound to conclude that his integrity can no longer be relied upon. The Committee wished to be clear in coming to this conclusion however, that it fully understands that the reason for this is likely to be one of the consequences of his adverse health condition which is currently very serious. The Committee has no evidence before it to suggest that, [PRIVATE], he would not then be a man of integrity.
78. The Committee is satisfied, bearing in mind all of the evidence in this case, that the Registrant is currently a risk to public protection and therefore his fitness to practise is currently impaired on the personal component.
79. Turning to consider the public component of impairment, the Committee bore in mind the well-known case of CHRE v NMC and Grant [EWHC] 927 (Admin), in which Mrs Justice Cox stated that a panel must consider 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"* of a case.
80. Whilst it was clear that the Registrant received his criminal conviction because of his underlying unmanaged health conditions, the Committee accepted Mr Millin's submissions as to the seriousness of the conviction. In this case, the fact that a suspended sentence was imposed because of the Registrant's very high reading of alcohol, is a useful indication as to how serious the Court thought the Registrant's offending was. If a finding of impairment were not found in respect of particular 1 in this case, public trust in the profession and the upholding of professional standards would be undermined.
81. The Committee also accepted Mr Millin's submissions to the effect that where, as in this case, the Registrant's driving disqualification for 36 months will not expire until

29 November 2024, the Committee ought to make a finding that the Registrant's fitness to practise is currently impaired.

82. Moreover, the Committee has found that due to his currently unmanaged health conditions, the Registrant is a potential risk to patients, for the reasons explained by Witness 2 in his medical assessments and his oral evidence, as summarised above. It considers that the public would be shocked if a finding of current impairment were not made by the Committee in order to uphold and reinforce professional standards and maintain public confidence in the Registrant's profession.
83. For all the reasons set out above, the Committee finds the Registrant's fitness to practise is currently impaired on grounds of protection and also in the wider public interest, that is, in order 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.

Stage 3: THE SANCTION STAGE

84. Having found that the Registrant's fitness to practise is impaired, the Committee went on to consider the matter of sanction. The Committee's powers in relation to sanction are set out in Article 54(2) of the Order. The Committee should consider the available sanctions in ascending order from the least restrictive, taking no action, to the most restrictive, removal from the register, in order to identify the appropriate and proportionate sanction that meets the circumstances of this case.
85. The purpose of the sanction is not to be punitive, though a sanction may in fact have a punitive effect. The purpose of the sanction is to meet the overarching objectives of regulation, namely to protect the health, safety and wellbeing of the public, to maintain public confidence, and to promote and uphold professional standards. The Committee is therefore entitled to give greater weight to the public interest over the Registrant's interests.

86. The Committee had regard to the relevant law and to the Council's 'Good decision making: Fitness to practise hearings and sanctions guidance (2017)' ("the Sanctions Guidance"), to inform its decision.
87. The Committee took into account the submissions made by Mr Millin and by the Registrant. Mr Millin proposed a number of aggravating and mitigating factors of the case and submitted that the appropriate sanction was one of suspension for a period of 12 months, subject to review.
88. The Registrant said he would co-operate with any decision made by the Committee. He would like to continue working as a pharmacist for his friend, having had a good career for 30 years. He said that no-one was aware of any concerns about his practice raised by the public though he accepted that if the public were to hear of his conviction or his behaviour in his private life, a number of them would not like it. He was aware the findings were serious, and he still has a lot of work to do personally. He had been awaiting this hearing for a long time and now he would like to see an end to it and get his ducks in a row. With regard to patient safety, he said he would not do anything to get him back in this position.
89. The Committee first considered what, if any, aggravating and mitigating factors there may be.
90. The Committee identified the following aggravating factors:
- There was a risk to the public from his driving whilst so seriously above the legal alcohol limit;
 - The alcohol reading by the police was extremely high, as reflected in the imposition by the Court of a suspended sentence imprisonment;
 - [PRIVATE]
91. The Committee identified the following mitigating factors:

- The Registrant made early admissions to the police, and pleaded guilty at Court at the first opportunity;
- He has engaged fully with this regulatory process including [PRIVATE] engaging with Witness 2;
- He has no previous fitness to practise findings against him;
- The Registrant's criminal conviction was inextricably linked to his adverse health.

92. The Committee next turned to consider the sanctions available to it in ascending order.

93. Take no Action: The Committee first considered whether it would be appropriate to take no action, however it was of the view that this outcome would not be sufficient to protect the public from the risk of harm it has identified, nor would it reflect the seriousness of the proven facts.

94. Warning: The Committee next considered whether issuing a warning would be appropriate, but it decided that, for the same reasons as above, a warning would be inappropriate.

95. Conditions of Practice. The Committee next considered whether to impose conditions of practice. The Sanctions Guidance states that conditions may be appropriate where there is evidence of poor performance or of significant shortcomings in a registrant's practice. However, the Committee was of the view that conditions would not be appropriate or relevant in this case since the particulars of allegation relate to his criminal conviction outside of his work and to his adverse health to the extent that it may affect his ability to practise safely and effectively. The Committee was unable to formulate conditions which would adequately deal with the risks it had identified. In any case, the Committee considered that an order for conditions would not be sufficient to mark the seriousness of the matter so as to maintain public confidence in the Registrant, the profession, and the regulator.

96. Suspension Order. The Committee next considered whether suspension would be a proportionate sanction. The Committee took into account that Mr Millin had submitted that a 12 month period of suspension together with a review before it expires, might appropriately deal with the public protection issue and the public interest in this case. The Council's Sanctions Guidance 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 unbecoming a member of the pharmacy profession. Also, when public confidence in the profession demands no lesser sanction."

97. The Committee considers that a period of suspension would be appropriate to mark the public interest issues in this case. As Mr Millin observed, this regulatory process is not intended to punish registrants for any wrongdoing: the Magistrate's Court dealt with the Registrant's criminal offence by imposing a number of sanctions including a suspended sentence of imprisonment, which the Registrant has successfully served. A suspension would also protect patients from the risk of harm should the Registrant's ability to practise be affected [PRIVATE]. The Committee noted in this regard that although the Registrant asserts that he has been able to work without harming or neglecting patients, the expert opinions of Witness 2 and Dr Bearn were that there are significant risks [PRIVATE]. Moreover, the Committee was concerned that the Registrant's conviction for driving his car when four times above the legal limit for alcohol did demonstrate that his decision-making could not be relied on to be safe at all times. It reminded itself of the risks of harm to patients if he were to make similar choices whilst at work.

98. The Committee considered whether removal would be appropriate at this stage given the Registrant's conviction. Balanced against the seriousness of the facts of the case however, the Committee gave due weight to the fact that the Registrant has had an unblemished career of some 30 years. [PRIVATE]. The Committee has been

impressed by his engagement in these proceedings. It is satisfied that were it not for his adverse health condition, he would continue to be a credit to his profession. The Committee considers it would be disproportionate to remove the Registrant on the basis of his conviction without allowing him an opportunity to embark on remediating his health condition during a period of suspension.

99. Turning to consider the appropriate period for the suspension, the Committee took into account the principles set out in the case of CHRE v GDC and Fleischmann [2005] EWHC 87 (Admin) which Mr Millin referred to in his skeleton argument. Mr Justice Newman stated at paragraph 54 of his judgment that:

“as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence”.

100. The Committee took into account that the Registrant’s disqualification from driving is not due to elapse until 29 November 2024: it would not be appropriate for him to be permitted to practise whilst that part of his sentence is still being served, and it ends just under 12 months from today.
101. In any case, taking into account its findings at the impairment stage of this hearing, the Committee did not consider that any shorter period shorter than 12 months would be sufficient [PRIVATE]; and also be sufficient to mark the serious concerns which members of the public would be likely to have about the facts of this case.
102. The Committee is satisfied that a period of 12 months’ suspension from the register is appropriate in this case. It will deal proportionately and appropriately with the public interest: it will send a clear message to professionals and to the public that the Registrant’s conviction was unacceptable and unbecoming a member of the pharmacy profession, [PRIVATE]. The suspension will ensure the maintenance of public confidence in the profession and promote and maintain proper professional standards and conduct.

103. The Committee orders that the suspension be reviewed before its expiry.
104. In considering what information the Registrant can gather which might be useful to the Reviewing Committee, the Committee has taken into account the clinical advice provided by Dr Bearn. [PRIVATE].
105. The Committee was aware that the Registrant has been dealing with a number of challenging personal and business issues over the past years and fully appreciated his relief that this regulatory process is now being resolved: [PRIVATE]. The Committee wishes him all the best in embarking on that task.
106. In view of the above, the Committee considers that the Reviewing Committee would benefit from the Registrant providing the following information:
- A written statement containing the Registrant's reflections demonstrating a developed insight into the risks to patients and to the public (and himself) posed by his behaviour which led to these proceedings;
 - Evidence of any progress made by the Registrant in engaging with structured and appropriately focused professional support [PRIVATE], for example testimonials from professionals he has worked with;
 - Up- to- date medical evidence from any specialists the Registrant has engaged with;
 - [PRIVATE];
 - Any character references or testimonials from employers in relation to any work the Registrant may undertake, whether paid or voluntary, should he decide to do so.

Decision on Interim Measure

107. Mr Millin made an application on behalf of the Council for an interim measure of suspension to be imposed on the Registrant's registration, pursuant to Article 60 of the Pharmacy Order 2010, pending the coming into force of the Committee's

substantive order. He submitted that given that the sanction imposed by the Committee, the public would consider it perverse for an interim measure of suspension not to be imposed to cover the duration of the appeal period.

108. The Registrant reminded the Committee that he has not been subject to any interim order over the 3.5 years since this regulatory process began and there have been no concerns raised about his practice.
109. The Committee carefully considered the Council's application and the Registrant's submission. It took account of the fact that its decision to order the suspension of the Registrant's name from the register will not take effect until 28 days after the Registrant is formally notified of the outcome, or until any appeal is concluded. The Committee also took into account the Council's Sanctions Guidance of 2017.
110. The Committee took into account its findings during the substantive hearing. It had found, based on all the evidence before it, including the expert opinions of Witness 2 and Dr Bearn, that there is a risk to public protection if the Registrant is permitted to practise at the present time. It considered that the public would expect an interim measure of suspension to be put in place from today's date in accordance with Article 60, as it is necessary for the protection of the public and is otherwise in the public interest, given the seriousness of its findings in relation to the Registrant's conduct.
111. The Committee therefore hereby orders that the entry of the Registrant in the register be suspended forthwith, pending the coming into force of the substantive order.