

**General Pharmaceutical Council**

**Fitness to Practise Committee**

**Principal Hearing**

Remote videolink hearing

**Monday 18 – Thursday 21 December 2023**

<b>Registrant name:</b>	Olutomi Olaide Adedeji
<b>Registration number:</b>	2075413
<b>Part of the register:</b>	Pharmacist
<b>Type of Case:</b>	Conviction/Misconduct
<b>Committee Members:</b>	Angela Black (Chair)  Leigh Settington (Registrant member)  Michael Glickman (Lay member)
<b>Committee Secretary:</b>	Adam Hern
<b>Registrant:</b>	Not present or represented
<b>General Pharmaceutical Council:</b>	Represented by Alex Lawson, Counsel
<b>Facts proved:</b>	All
<b>Fitness to practise:</b>	Impaired

**Outcome:** Removal

**Interim measures:** Interim suspension Order

This decision including any finding of facts, impairment and sanction is an appealable decision under *The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010*. Therefore, this decision will not take effect until 18 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 (as amended)**

You, a registered pharmacist,

1. On 3 February 2017, received a conviction for travelling on railway without paying fare on 4 July 2016 contrary to section 5(3)(a) Regulation of Railways Act 1889 at Reading Magistrates Court. **[PROVED]**
2. On 7 August 2017, received a conviction for attempting to travel without paying rail fare on 9 March 2017 contrary to section 5(3)(a) Regulation of Railways Act 1889 at Swindon Magistrates Court. **[PROVED]**
3. On 18 December 2017, received a conviction for travelling on railway without paying fare on 2 July 2017 contrary to section 5(3)(a) Regulation of Railways Act 1889 at Swindon Magistrates Court. **[PROVED]**
4. Did not disclose your convictions at 1, 2 and/or 3 above during the recruitment process for a role at Rowlands Pharmacy at the Park Lane branch in Swindon in or around April and/or May 2020. **[PROVED]**

5. Did not provide a copy of your DBS Certificate to your employer, Rowlands Pharmacy, in or around July 2020. **[PROVED]**

6. **[DELETED]**

7. Did not declare your convictions at 1, 2 and 3 above to the GPhC at the time of applying for readmission / renewing your registration:

7.1. On or around 16<sup>th</sup> January 2019 **[PROVED]**

7.2. In or around January 2020 **[PROVED]**

7.3. On or around 7<sup>th</sup> December 2020 **[PROVED]**

7.4. On or around 31<sup>st</sup> December 2021. **[PROVED]**

8. Your actions at 4, 5, and/or 7 above were dishonest and/or lacking in integrity in that you knew or ought to have known that you had a duty to declare prior convictions to:

8.1. A potential and/or current employer; and/or **[PROVED]**

8.2. The GPhC **[PROVED]**

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

## **Documentation**

Document 1 - Proof of Service Bundle.

Document 2 - Proceeding in Absence Bundle.

Document 3 - GPhC hearing bundle

Document 4 - GPhC skeleton argument

Document 5 – Email from the Registrant to the Council dated 19 October 2023

## **Witnesses**

Mr BV, Regional Leader, Rowlands Pharmacy and the Registrant’s line manager – gave oral evidence at the facts stage.

Ms AR, CST Operations Support Officer, GPhC - gave oral evidence at the facts stage

## **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) of impairment and impairment – the Committee determines whether, on the facts as proved, a statutory ground for impairment is established and, if so, whether the Registrant's fitness to practise is currently impaired.

Stage 3. Sanction – the Committee considers what, if any, sanction should be applied if the Registrant's fitness to practise is found to be impaired.

### **Service of Notice of Hearing**

6. The Committee has seen a letter dated 9 November 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 to proceed in the absence of the Registrant**

7. The Registrant was not in attendance at this hearing, nor was someone attending on her behalf. The Committee heard submissions from Mr Lawson under Rule 25; he applied to proceed in the absence of the Registrant.

8. This hearing was postponed from the original hearing date in October 2023. Following notification by email of the postponement of that hearing, the Registrant responded by email on 19 October 2023 to the Committee Secretary as follows:

“Dear Sir

Thank you for your email. When will the hearing start.

Yours sincerely

Miss Olutomi Adedeji”

9. The Registrant was properly served with notice of this hearing by email using the same email address as on the register and which the Registrant had used to send her email on 19 October 2023. She did not complete the acknowledgement form which was sent to her with the notice of hearing nor has she corresponded with Council about this hearing. Nothing has been heard by the Council from the Registrant since her email of 19 October.
10. The Committee decided to proceed in the absence of the Registrant for the following reasons:
  - The Committee has found good service of the notice of hearing therefore the Registrant is, or should be, aware of today’s proceedings.
  - The Council does not have a telephone number for the Registrant and communication has only therefore been by post and/or email. The email address was that used by the Registrant on 19 October 2023. The Council has made reasonable efforts to contact the Registrant to establish whether she would be attending and/or be represented.
  - The Registrant has not sought an adjournment.
  - There is no information to suggest an adjournment would result in the Registrant’s attendance in future.
  - From the limited information available, the Registrant appears to have voluntarily waived her right to attend.

- There is a public interest in the expeditious disposal of cases. This case has already been adjourned on one occasion (albeit through no fault of the Registrant).
- Not proceeding today would inconvenience witnesses who are ready to give evidence

### **Application to amend the Particulars of Allegation**

11. Prior to the start of the hearing, the Committee had noted inconsistencies in the identification of Magistrates' Courts where the Registrant was allegedly convicted. It proposed to Mr Lawson that this should be corrected as follows:
  - a. Paragraph 1 to refer to Reading Magistrates Court, rather than Berkshire Magistrates Court.
  - b. Paragraph 3 to refer to Swindon Magistrates Court, rather than Wiltshire Magistrates Court.
  
12. The Committee was also concerned that the dates in the sub-paragraphs at 7 did not appear to correlate with the evidence of the GPhC witness concerned. Mr Lawson was therefore invited to cross-check the wording of the allegations in that paragraph to ensure they were grounded in the evidence adduced by the Council. Having done so Mr Lawson applied to amend the particulars at paragraph 7 as follows:
  - a. Paragraph 7.1 From "January 2019" to "On or around 16<sup>th</sup> January 2019".
  - b. Paragraph 7.2 From "January 2020" to "On or around 21<sup>st</sup> February 2020"
  - c. Paragraph 7.3. From "December 2020; and/or" to "On or around 7<sup>th</sup> December 2020; and/or"
  - d. Paragraph 7.4. From "December 2021" to "On or around 31<sup>st</sup> December 2021"

13. The Committee was of the view that these amendments could be made without unfairness or prejudice to the Registrant. Were she in attendance she would not have prepared her case any differently because the proposed amendments reflect the evidence on which the Council relies to support its case. That evidence was in the proposed and final bundles prepared for this hearing, both of which were sent to the Registrant prior to the hearing. It is in the public interest for the allegations to be accurate. The Committee amended the Particulars of Allegation accordingly.
  
14. On the second day of the hearing, having heard the oral evidence of AR, a number of additional potential anomalies in the Particulars of Allegation were identified, as follows:
  - a. It appeared from the documentary evidence that the DBS certificate may not have been available to the Registrant in July 2020 (paragraph 5 of the Particulars of Allegation referred). That paragraph was drafted to refer to July 2020 specifically. It was proposed by the Committee that it would be appropriate to add the words “or around” between “in” and “July” in this paragraph.
  - b. The oral evidence of AR was that the Registrant was not a registered pharmacist in 2017; thus while it might be possible to find paragraph 6 of the allegation proved, it could not ground a finding of dishonesty/lack of integrity or misconduct. The Committee considered it was in the interests of the Registrant that this paragraph be removed. An adverse finding (if found proved) would not be warranted in such circumstances.
  - c. Mr Lawson asked that paragraph 7.2 be re-amended to reflect the oral evidence of AR. He invited the Committee to amend this from “on or around 21<sup>st</sup> February 2020” to “in or around January 2020”.
  
15. The Committee considered there was no prejudice to the Registrant in making these proposed amendments; indeed the deletion of one paragraph was to her advantage.



She would not have prepared her case differently. The proposed amendment to paragraph 5 merely related to the scope of the period; it encompassed the same period as in the original allegation and the substance of the allegation was unchanged. The proposed amendment to paragraph 7.2 was largely a reinstatement of the original version of the paragraph save with the additional words “in or around” before “January 2020”. The Committee considered it was in the public interest for the Particulars of Allegation to reflect the issues correctly and accurately. It amended the Particulars of Allegation accordingly.

### **Registrant’s response to Particulars of Allegation**

16. The Registrant has not responded to the Particulars of Allegation. They were therefore all in dispute.
17. The Committee went on to receive evidence and submissions regarding all the Particulars.
18. Mr Lawson indicated that he intended to rely on the oral evidence of four witnesses: LC, RA, AR and BV. The Committee took the opportunity of considering their evidence and decided that, as they had no questions for two of the witnesses, RA and LC, they could be stood down. The Committee had some clarifying questions for AR and BV and those two witnesses therefore gave oral evidence.

### **Background**

19. The Registrant was referred to the Council on 15 March 2021 by her former employer, Rowlands Pharmacy (“Rowlands”). The referral followed a disciplinary investigation and the Registrant’s subsequent dismissal from Rowlands’ employment.
20. According to Rowlands, the Registrant had applied for and been given a position as a Pharmacist. She was employed from 4 May 2020 until her dismissal on 29 January 2021. It was alleged that, in the course of an initial telephone screening interview by

BV, Regional Leader at Rowlands, the Registrant stated she did not have any criminal convictions.

21. It was alleged that the Registrant was required by Rowlands to produce her Disclosure and Barring Service (“DBS”) certificate and that she did not until reminded on two occasions to do so. It is contended she produced the certificate in December 2020. Upon receipt, BV undertook a disclosure risk assessment. In the course of that assessment the Registrant is said to have admitted there was one conviction on her DBS certificate that Rowlands should be aware of. The Registrant is alleged to have told BV that the Council had informed her she did not need to disclose this to Rowlands. The Registrant disclosed the conviction was for non-payment of one train ticket. However, BV noted “three or four marks on her DBS certificate” and that they were all for non-payment of train tickets.
22. BV conducted an internal investigation and held an investigatory meeting with the Registrant on 21 January 2021. This was followed by a disciplinary meeting between the Registrant and RA, Regional Leader at Rowlands, on 29 January 2021. During that disciplinary interview the Registrant admitted her three convictions. She also stated she had notified the Council of the convictions.
23. The Council’s case is that it has no record of the Registrant’s convictions being reported to it at any time and that the Registrant self-declared on several occasions after 2019 that she had no criminal convictions at all.

#### **Decision on Facts**

24. In reaching its decisions on facts, the Committee considered the documentation listed at the start of this determination, the oral evidence and Mr Lawson’s submissions.
25. When considering each particular of allegation, the Committee bore in mind that the burden of proof rests on the GPhC and that particulars are found proved based on

the balance of probabilities. This means that particulars will be proved if the Committee is satisfied that what is alleged is more likely than not to have happened.

### **Particular 1**

**1. On 3 February 2017, received a conviction for travelling on railway without paying fare on 4 July 2016 contrary to section 5(3)(a) Regulation of Railways Act 1889 at Reading Magistrates Court.**

This paragraph relates to an alleged conviction. The Committee has had regard to Rule 24(4) which provides as follows with regard to evidence:

“(4) 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 on which it was based.”

The Council has produced a Memorandum of Conviction but this is blank in parts. It states as follows:

“I certify the above extract to be a true copy.

Date printed: 24/10/2022 \_\_\_\_\_ of the Magistrates’ Court”

There is no certification by a “competent officer of the court”. The Memorandum is unsigned and there is no identification of the role or name of the person concerned. The Committee is not therefore satisfied that this document is compliant with Rule 24(4). It has therefore considered its evidential weight outside the terms of Rule 24(4).

The Committee took into account the copy of the Memorandum of Conviction printed by the Magistrates’ Court on 24 October 2022. As is clear from the statement of the witness

who exhibits it, this copy Memorandum was obtained by the solicitors representing the Council at the time. As was noted by the author of that statement, the name on the Memorandum is “Olutoni Adedeji” and that person is described as “male”. The author of the witness statement states this:

“On 25 October 2022, I emailed the GPhC to explain that the Registrant’s address was different on all three Memorandums and that on the Memorandum ... dated 3 February 2022, the name was spelt “Olutoni Adedeji” and the gender was listed as male. In my email I explained that that spelling of the name and the address provided ... matched that on the PNC record and that the date of birth on all Memorandums matched that on the PNC record. I asked the GPhC to confirm what name and address details they have on record for the Registrant.

7. On 31 October 2022 the GPhC emailed me to state that they do not have any alias names for the Registrant on record. The GPhC confirmed that they do have three addresses recorded for the Registrant. ...

8. The address details provided by the GPhC correspond with the addresses apparent on the Memorandums of Conviction ...”

The Committee has been provided with a Police National Computer (“PNC”) Record which refers to the existence of this conviction.

It has also been provided with an email dated 29 September 2023 to the Council from the Head of Fraud Investigations at the DBS. This lists the Registrant’s three conviction dates and the nature of the three offences. The content mirrors the information in the Memorandum of Conviction and the PNC record.

The Committee is mindful that the Registrant declared to the Council in 2019, 2020 and 2021 that she did not have any convictions (see below). However, according to the contemporaneous meeting notes of a disciplinary interview held between RA, Regional

Leader at Rowlands, and the Registrant on 29 January 20221, she admitted, at that meeting, to having three convictions.

The Committee is satisfied that the Registrant was convicted as alleged.

**This particular is found proved.**

## **Particular 2**

**2. On 7 August 2017, received a conviction for attempting to travel without paying rail fare on 9 March 2017 contrary to section 5(3)(a) Regulation of Railways Act 1889 at Swindon Magistrates Court.**

The Committee has seen the Memorandum of Conviction which merits significant evidential weight albeit it is not compliant with Rule 24(4). It has also seen the entry in the PNC record regarding this conviction. The email from the DBS refers to this conviction as being on their records. The Committee adopts the reasoning above with regard to the Registrant's position on the existence of this second conviction.

Taking the evidence in the round, it finds that the Registrant was convicted as alleged.

**This particular is found proved.**

## **Particular 3**

**3. On 18 December 2017, received a conviction for travelling on railway without paying fare on 2 July 2017 contrary to section 5(3)(a) Regulation of Railways Act 1889 at Swindon Magistrates Court.**

The Committee has seen the Memorandum of Conviction which merits significant evidential weight albeit it is not compliant with Rule 24(4). It has also seen the entry in the PNC record regarding this conviction. The email from the DBS refers to this conviction as being on their records. The Committee adopts the reasoning above with regard to the Registrant's position on the existence of this third conviction.

Taking the evidence in the round, it finds that the Registrant was convicted as alleged.

**This particular is found proved.**

#### **Particular 4**

**4. Did not disclose your convictions at 1, 2 and/or 3 above during the recruitment process for a role at Rowlands Pharmacy at the Park Lane branch in Swindon in or around April and/or May 2020.**

While the Committee has not been provided with a full copy of the Registrant's application form or her contract of employment, there is no dispute about the approximate date on which she was interviewed and when she started work at Rowlands.

The Committee gives weight to the evidence of BV. He gave clear and concise oral evidence to the Committee about his telephone interview with the Registrant during the recruitment process. BV told the Committee, in response to questioning, that he asked six or seven "screening questions" in every interview he conducted during the process of recruiting pharmacists for employment. He estimated he had interviewed over 60 pharmacists. These routine questions related to notice period, DBS check, when the candidate was available to start and salary expectations. BV was "100% confident" he had asked the Registrant about her DBS check because at around that time he had interviewed another pharmacist who had declared an issue with their DBS at interview and, as a result, Rowlands had looked into it

and, having done so, subsequently made an offer of employment. He recalled that, in the case of the Registrant, there were a few reasons why it was difficult to find a pharmacist but he was “100% certain” he had asked about her DBS and that “she confirmed there was no issue, nothing to declare from DBS”.

The email from DBS (cited above) refers to the existence of the three convictions. It is reasonable to infer that these were on the DBS record in 2020.

The Committee has noted that, when, in December 2020, BV became aware of “marks” (to use his description) on the Registrant’s DBS he initiated a risk assessment. This suggests there was a system in place to address such issues; this is consistent with BV’s evidence that he had undertaken checks when another pharmacist disclosed DBS concerns. The Committee is satisfied that, had the Registrant disclosed potential or actual adverse content in her DBS certificate, BV would have taken the matter further with her because this was the system he used at the time. He did not do so and this is indicative of the Registrant having failed to disclose her DBS record, ie her convictions.

The Registrant referred in interviews to having received advice from the Council that she did not need to declare the convictions but there is no evidence to support this assertion. The Council has no record of such communication. Indeed the Council’s case is that the Registrant declared, from 2019, that she had no convictions.

According to the record of disciplinary interview on 29 January 2021, RA asked the Registrant the following: “on the application form it asks you to declare any unspent convictions, did you declare it?”. The record shows that the Registrant replied “no”.

The Committee has no reason to doubt the evidence of BV or the reliability of the disciplinary interview record, both of which are consistent with the Registrant having not disclosed her three convictions to Rowlands until she provided a copy of her DBS Certificate in about December 2020 (see below).

**This particular is found proved.**

#### **Particular 5**

**5. Did not provide a copy of your DBS Certificate to your employer, Rowlands Pharmacy, In or around July 2020.**

BV told the Committee that it was not his role to obtain a copy of the Registrant's DBS certificate or to keep track of whether it had been produced; this was the responsibility of the human resources team at Rowlands. He said there had been a delay in chasing the Registrant for this document. There are two letters from Rowlands to the Registrant, reminding her to produce her DBS certificate, dated 19 November 2020 and 2 December 2020. These letters refer to Rowlands' records indicating that the Registrant's "DBS application form has been sent and processed by the Disclosure and Barring Service (DBS) on 20-07-2020" but that Rowlands had not been provided with a verified copy of the Registrant's disclosure. The Registrant was asked in those two letters to provide her original DBS certificate.

If the DBS Certificate had been provided in or around July 2020, it can reasonably be inferred that there would have been no need to chase the Registrant for this by letter in November and December 2020. Furthermore, BV would have initiated the risk assessment at that stage because the Registrant's three convictions would have come to light at that time.

The Registrant's evidence in the investigatory and disciplinary interviews conducted by BV and RA is confused and confusing. She appeared uncertain about when she had received the certificate initially stating July but eventually stating it could have been December 2020. The latter date is consistent with BV conducting his risk assessment on 12 January 2021.

The Committee therefore finds, on the evidence of BV, that the Registrant was asked about the content of her DBS record at the screening interview prior to employment. It also notes



that a relevant extract of her contract of employment was shown to her at the investigatory interview on 21 January 2020, as follows:

“section 1.3 – Criminal Record Check ...

Your employment with the Company is conditional upon receipt of a satisfactory Disclosure check.

It will be essential for you to co-operate fully with the application process to obtain future Disclosure checks as and when required.

Your ongoing employment in your current role will be subject to the content of the Disclosure check or basic disclosure, when it is received, being satisfactory to the Company.

It is a condition of your employment that you notify your manager immediately if you are questioned or arrested by the police, or charged, cautioned or convicted in connection with any criminal matter”.

Thus the Registrant was aware, from having been asked by BV at the screening stage, and from the employment contract itself, that she was required to produce a copy of her DBS certificate to Rowlands as part of the recruitment process; her employment was conditional upon Rowlands receiving a copy and finding it satisfactory. She did not provide it in or around July 2020, but later in that year.

**This particular is found proved.**

#### **Particular 6**

6. [DELETED]

#### **Particular 7**

**7. Did not declare your convictions at 1, 2 and 3 above to the GPhC at the time of applying for readmission / renewing your registration:**

**7.1. On or around 16<sup>th</sup> January 2019**

The Committee has been provided with a copy of the application form completed by the Registrant when she applied for restoration of her name to the Register, ie re-admission, following earlier removal for failure to pay the requisite fee. The Registrant dated the form 116 January 2019 (although the counter-signature is dated 6 August 2019).

At 3.5 the Registrant put a “X” in the “No” box in response to the following question:

“Have you previously been convicted or cautioned for a criminal offence in the British Islands or elsewhere (which, if committed in England, Scotland or Wales would constitute a criminal offence) or have you previously agreed to be bound over to keep the peace by a Magistrates’ court in England or Wales?”

Please note that Road Traffic offences in which the person committing the offence has been offered the option of paying a fixed penalty (e.g. certain speeding offences etc) will not be treated as a conviction for the purposes of registration and need not be declared.”

The Registrant’s response to this question is not accurate because she had, in January 2019, three convictions for non-payment of train fares. These are not road traffic offences and the Registrant knew or ought to have known this was the case.

**This particular is found proved.**

**7.2. On or around 21<sup>st</sup> February 2020**

AR told the Committee that the Registrant had re-submitted the application form dated 16 January 2019 when she re-applied for restoration of her name to the Register in 2020 (her application in 2019 having been unsuccessful). Thus the Registrant relied on the same declaration signed on 16 January 2019 to support her application made in 2020.

The Council has provided a screenshot of an entry on the Council's registration records management system. AR told the Committee that this entry was made by a member of staff who had entered on the system the data provided by the Registrant in her application form. While the data entry refers to the "date of declaration" as being 21 February 2020, AR considered that this was more likely to be the date on which the data was entered, rather than the date of the Registrant's declaration, given that she had relied on the application form completed in January the previous year (which she had re-submitted). The timing of this entry is consistent with the Registrant's name subsequently being reinstated on the Register on 1 March 2020. The data entry is also consistent with the content of the application form dated 16 January 2019 in that it refers to the Registrant having declared no "Conviction or Caution Criminal offence". That data entry was made by a member of Council staff in performance of their professional duty and the Committee gives it considerable evidential weight.

**This particular is found proved.**

### **7.3. On or around 7<sup>th</sup> December 2020**

The Committee has been provided with an extract from the Council's registration records management system which, according to AR, reflects the Registrant's application for renewal of her registration in December 2020. AR told the Committee that at this time applications for renewal were made online. The entry refers to the "date of declaration" as 7 December

2020. It lists summaries or topics of various questions and the applicant's responses. It states: "Q3. Conviction Or Caution Criminal Offence No". The screenshot also includes the following: "Declaration Confirmed Yes".

The Registrant's responses are similar in content to earlier declarations made by the Registrant.

The Committee is satisfied that the screenshot is a record of the questions asked of the Registrant in connection with her renewal application together with her online responses to each question (albeit the questions are not set out in full).

**This particular is found proved.**

#### **7.4. On or around 31<sup>st</sup> December 2021.**

The Committee has been provided with an extract from the Council's registration records management system which, according to AR, reflects the Registrant's application for renewal of her registration in December 2021. AR told the Committee that at this time applications for renewal were made online. The entry refers to the "date of declaration" as 31 December 2021. It lists summaries or topics of various questions and the applicant's responses. It states: "Q3. Conviction Or Caution Criminal Offence No". The screenshot also includes the following: "Declaration Confirmed Yes".

The Registrant's responses are similar in content to earlier declarations made by the Registrant.

The Committee is satisfied that this is a record of the questions asked of the Registrant in connection with her renewal application together with her online responses to each question (albeit the questions are not set out in full).

**This particular is found proved.**

**Particular 8**

**8. Your actions at 4, 5 and/or 7 above were dishonest and/or lacking in integrity in that you knew or ought to have known that you had a duty to declare prior convictions to:**

**8.1. A potential and/or current employer; and/or**

The Committee has had regard to the guidance in **Ivey v Genting [2017] UKSC 67** and the test reaffirmed by the Supreme Court in that case. It has borne in mind the standard of proof remains the balance of probabilities but that critical attention is required given the inherent improbability of a registered pharmacist being dishonest and/or lacking integrity.

As regards paragraph 8.1, the Registrant knew or ought or have known from the recruitment interview with BV and from the terms of her employment contract that she was required to provide a DBS certificate to Rowlands and that her employment was conditional upon Rowlands being satisfied with the content of the certificate.

The Registrant admitted to RA in the course of the disciplinary interview on 29 January 2021 that “before the investigation [she] acted dishonestly yes, but during the investigation [she] discussed everything on the DBS.”

The Registrant was not specific about the nature and extent of her admitted dishonesty, but the subject of the Rowlands’ investigation was her failure to disclose her convictions and to produce the DBS certificate in a timely fashion. The Registrant must have known she was withholding highly relevant information from Rowlands. The Committee is in no doubt the Registrant has acted dishonestly in failing to disclose her convictions during the recruitment

process for a role at Rowlands and failing also to provide a copy of her DBS certificate to her employer in or around July 2020.

**This particular is found proved.**

## **8.2. The GPhC**

The application form completed by the Registrant on 16 January 2019 for restoration of her name to the register states the following:

“3.21 the information that I have provided in this application, including my evidence portfolio, is complete, true and accurate – and that I understand that if I am found to have given false or misleading information in connection with my application to return to the register, this may be treated as misconduct, and could result in my removal from the register”

The Registrant signed her name under this paragraph. The Registrant’s account (albeit somewhat muddled) in the investigatory interview on 21 January 2021 is that she was stopped for non-payment of train fares and that fines were issued. She has accepted in the disciplinary process (to her credit) that she was dishonest in failing to disclose the existence of her convictions. This suggests that she knew about their existence and the obligation to disclose them. She was convicted in 2017 and various court orders were made. It is likely that the Magistrates’ Courts communicated with the Registrant in pursuance of the court orders for payment of fines, victim surcharges and compensation. The evidence before the Committee is that the addresses for the Registrant cited by the Court are also on the Council’s records; this demonstrates they were active addresses at the time. It is inconceivable that the Registrant was not aware, in the period from 16 January 2019, of the existence of these convictions albeit they were issued in her absence in 2017.

It is clear from the application form submitted by the Registrant in 2019 and 2020 that only limited types of offences did not require disclosure to the Council. Non-payment of train fares was not one of those. The Registrant is a registered pharmacist and it can be safely concluded that she would have understood this.

The questions posed in subsequent application forms (and answered by the Registrant in the negative) are likely to have been in similar terms, namely seeking to establish whether the Registrant had any convictions (apart from certain road traffic offences). Her responses in 2019, 2020 and 2021 were consistently inaccurate.

While it is highly improbable that a registered pharmacist would breach their professional standards by lying in four applications to their regulator, in this case the evidence is incontrovertible and consistent with the Registrant's admitted dishonesty in the course of the Rowland's recruitment and employment process. The Committee is satisfied the Registrant was dishonest in her four applications to the Council; she knew she was not telling the truth in her four declarations as to her criminal history.

The Committee is in no doubt that ordinary decent people would consider the Registrant's actions, as found proved above, to be dishonest.

**This particular is found proved.**

## **IMPAIRMENT**

26. The Committee heard the oral submissions of Mr Lawson for the Council who adopted his skeleton argument. He referred the Committee to the relevant legal authorities. He submitted the Registrant had breached Standards 6, 8 and 9. The Registrant had not been open or honest about her convictions either with her employer or her regulator. She had not engaged with the regulatory process or

provided reflection. While the convictions were verging on the historic, her failure to declare them was a “continued and sustained act throughout her employment”. Mr Lawson noted there was no evidence of remorse, relevant training or good character to demonstrate that, within the meaning of **CHRE v NMC & Grant [2011] EWHC 927 (Admin)**, the Registrant’s fitness to practise was not currently impaired.

27. The Committee has taken into account these submissions and considered this matter from the perspective of the Registrant albeit it has not heard from her. It has also had regard to the bundle of documents prepared by the Council.
28. The question of whether or not the Registrant’s fitness to practise is currently impaired is a matter for the Committee to determine by applying its judgment to the evidence in the context of the specific findings of fact. It is not a matter of proof. In forming its judgment, the Committee has also borne in mind paragraphs 2.11-2.16 of the Council’s guidance document entitled Good Decision Making (revised March 2017).
29. Consideration of whether the Registrant is fit to practise as a pharmacist is a two-stage process.

### **Misconduct**

30. The Committee has borne in mind the judgment in **GMC v Meadow [2006] EWCA Civ 1390** which sets out the need for conduct to fall seriously below the standards to be expected of a reasonable practitioner before it comes within the category of misconduct. It has also considered helpful the judgment of Collins J in **Nandi v GMC [2004] EWHC 2317 (Admin)** in which he observed that “seriousness” in other contexts has been referred to as “conduct which would be regarded as deplorable by fellow practitioners”. Each case is to be determined on its own individual facts.



31. The Registrant has been convicted of three offences of dishonesty. Her denial of the existence of the convictions to her potential (later actual) employer and to her regulator was not only dishonest but also a breach of the trust placed in her by Rowlands and the Council. Furthermore, her underlying offending behaviour was not only unlawful but showed a palpable lack of professional judgment unbecoming a registered pharmacist. The Registrant committed three similar offences; she did not learn from her previous convictions. She was deliberately dishonest on several occasions over a period of about three years in her professional life regarding the existence of her convictions.
32. The Committee concludes the Registrant has breached two professional standards (as set out in the Council's guidance: Standards for pharmacy professionals issued in May 2017): Standard 6 and Standard 9. The most significant and serious breach is that of Standard 6 which requires pharmacy professionals to be trustworthy and act with honesty and integrity. That said, not all conduct in breach of the Council's Standards will necessarily be sufficiently serious that it amounts misconduct.
33. While these are not offences at the most serious end of the criminal spectrum, the offending behaviour is exacerbated by the Registrant's repeated denial of the existence of the convictions both to Rowlands and to the Council. In the latter case, the Registrant deliberately lied to her regulator on four occasions over a period of about three years.
34. For these reasons, the Committee concludes that the Registrant's actions were deplorable and amounted to misconduct.

## **Conviction**

Article 51(1)(e) of the Pharmacy Order 2010 provides that “A person’s fitness to practise is to be regarded as impaired for the purposes of this Order only by reason of - ... (e) a conviction in the British Islands for a criminal offence”.

35. Thus the issue of impairment is engaged on two grounds: conviction and misconduct.

### **Current Impairment**

36. The Committee has therefore turned to the issue of current impairment.

37. The Committee has noted the requirements of Rule 5 of the Rules which provides that:

*“5(1) The Committee must have regard to the criteria specified in paragraph (2) or, where appropriate, (3), or, where appropriate, paragraphs (2) and (3), 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.*

*(2) In relation to evidence about the conduct or behaviour of the registrant which might cast doubt on whether the requirements as to fitness to practise are met in relation to the registrant, the Committee must have regard to whether or not that conduct or behaviour—*

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

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

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

*(d) shows that the integrity of the registrant can no longer be relied upon”*

38. This rule mirrors the relevant case law and is consonant in particular with the guidance of Cox J in Grant as to the approach to be adopted by healthcare regulators generally to the question of current impairment. Paragraph 74 of that case provides:

*“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.”*

39. The Committee has concluded that a well-informed member of the public, with knowledge of the facts of this case, would consider that the three offences of dishonesty, while not the most serious on the spectrum of criminal offending, are serious because they call into question the current integrity and reliability of the Registrant and other members of the pharmacy profession generally.
40. As set out above the Committee is satisfied that the Registrant has breached two fundamental principles of the profession, as follows:

a. Standard 6

*Pharmacy professionals must behave in a professional manner.*

The Registrant did not behave with honesty and integrity: she committed three offences of dishonesty in 2016 and 2017. She exacerbated that situation by dishonestly denying the existence of her three convictions to a potential employer and in the course of her employment with that employer. She also dishonestly denied the existence of the three convictions to her regulator. Her actions amount to a serious breach of this standard.

b. Standard 9

*Pharmacy professionals must demonstrate leadership.*

As a registered pharmacist the Registrant should have demonstrated leadership to colleagues and staff at her place of work. Her colleagues discovered she had not been honest with them about her criminal history. She did not lead by example.

41. The Registrant has demonstrated a lack of respect for the laws of this country and has failed to abide by two of the fundamental principles of her profession. She abused the trust of her employer and her regulator. She acted without honesty or integrity within the practice of pharmacy (albeit not in a clinical setting).
42. The Registrant was slow to admit the existence of the three convictions when challenged by her employer. She only did so when presented with evidence of them in the course of the disciplinary investigation. She did not make admissions of guilt in the Magistrates' Court proceedings; she did not even attend the hearings according to the three Memoranda of Conviction. In each case she was fined significant sums (£440 each), ordered to pay compensation, a victim surcharge and costs. There is no reference to mitigation having been advanced.
43. The Committee is disappointed that the Registrant has not attended to participate in this hearing. It would expect the Registrant to engage with her regulator.
44. Dishonesty is a state of mind; it is a deep-seated attitudinal issue. In principle, while difficult to remediate, it could potentially be remediated.
45. However, there is no evidence of the Registrant's insight. The Registrant admitted to her employer she had been dishonest prior to its disciplinary investigation. However, that was a bare admission without detail. The Registrant apologised to her line manager at the investigation meeting and that apology was accepted. That said, she continued to deny some of the allegations against her. There is no evidence the

Registrant has reflected at all on why she acted dishonestly in failing to pay her train fares on three occasions. There is no evidence of reflection on the Registrant's subsequent lies to her employer and her regulator. There is no evidence the Registrant has reflected on the detrimental impact of her offending behaviour on the reputation of the profession or public confidence in the pharmacy profession. Although there is no evidence of recurrence of the offending behaviour and subsequent dishonesty, this is not sufficient to demonstrate remediation.

46. The Committee has no evidence as to the Registrant's motive for her dishonesty but finds that her actions were for personal gain.
47. The Committee is unable to find that the Registrant has remediated her offending and subsequent dishonest behaviour. In the absence of evidence of her having addressed the root cause of, or trigger for, her dishonest behaviour, the Committee is not satisfied it will not be repeated if the Registrant finds herself in similar circumstances.
48. In summary, the Registrant has brought the profession of pharmacy into disrepute; she has breached two fundamental principles of the profession of pharmacy and her integrity cannot be relied upon. There is a risk she might again bring the profession of pharmacy into disrepute, breach professional standards and act without honesty and/or integrity.
49. There is no challenge to the Registrant's clinical knowledge and skills in this case.
50. For these reasons, the Committee determines that the Registrant's fitness to practise is currently impaired as a result of her conviction and misconduct on the grounds of Rule 5(2)(b), (c) and (d). A finding of impairment is required to declare and uphold proper standards of behaviour within the profession and to maintain public confidence in the profession.

## Decision on Sanction

51. Having found impairment, the Committee has gone on to consider the matter of sanction. The Committee's powers are set out in Article 54(2) of the Order. The Committee should consider the available sanctions in ascending order from least restrictive, taking no action, to most restrictive, removal from the register, in order to identify the appropriate and proportionate sanction that meets the circumstances of the case.
52. 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 the protection of the public, the maintenance of public confidence and to promote professional standards. The Committee is therefore entitled to give greater weight to the public interest over the Registrant's interests.
53. The Committee had regard to the Council's Good decision making: Fitness to practise hearings and sanctions guidance to inform its decision.
54. The Committee took into account Mr Lawson's submissions. In summary, he submitted that the Registrant's name should be removed from the register.
55. The Committee first considered what, if any, aggravating and mitigating factors there may be.
56. The Committee identified a number of aggravating factors, including:
  - a. The dishonesty occurred in the course of the Registrant's registration with the Council and recruitment and employment as a registered pharmacist.
  - b. The dishonest conduct occurred on several occasions during a period of nearly three years; it was sustained, systematic and deliberate.
  - c. The Registrant's dishonesty and underlying offending behaviour was for personal gain.

- d. There is no evidence of remediation or remorse (apart from a brief apology in the initial investigation interview).
  - e. The Registrant has shown no insight into the impact of her dishonest behaviour on public confidence in her profession or the reputation of the profession.
  - f. The Registrant has failed to engage with these proceedings.
  - g. There is no suggestion from the evidence that the Registrant would have self-disclosed the misconduct and convictions had she not been disciplined by Rowlands and a concern not been raised with the Council.
  - h. The Registrant attempted to cover up her dishonesty during the Rowlands investigatory and disciplinary interviews.
57. The Committee identified some mitigating features including:
- a. There is no challenge to the Registrant's clinical knowledge and skills.
  - b. There is no evidence of patient harm.
  - c. The offences were committed in 2016 and 2017. They are now spent convictions. They were relatively minor on the spectrum of criminal offending.
58. The Committee also considered the following factors to be relevant: the Registrant's failure to engage substantively with these proceedings has led the Committee to conclude the risk of repetition is significant, there being no evidence to the contrary. Her absence demonstrates disrespect to her regulator and this Committee and gives the Committee no confidence the Registrant will not repeat the dishonesty.

59. This is not a case where no action can be taken: members of the public, with knowledge of the Registrant's dishonesty, would be appalled were that to be the case. Her dishonest conduct, including the offending behaviour, warrants action by this Committee to mark its disapproval of the Registrant's behaviour. For similar reasons, a warning is not sufficient to mark the damage done to the reputation of the profession by the Registrant's sustained dishonesty and intentional misleading of her employer and regulator for personal gain.
60. The Committee next considered whether to impose conditions on the Registrant's registration but took the view that this was not appropriate given the nature of the Registrant's misconduct in the course of her employment as a pharmacist and in her dealings with her regulator. This is not a case where retraining or supervision would address the concerns. The Registrant has not participated in these proceedings. Without a commitment by the Registrant to adhering to conditions, they would not be workable. The Committee is not confident the Registrant would comply with them. In any event, conditions would not mark the seriousness of the Registrant's misconduct in the course of her pharmacy employment.
61. As regards the option of suspension, the Committee noted the guidance in "Good decision making: fitness to practise hearings and sanctions guidance" dated March 2017. It noted suspension may be appropriate to highlight to the profession and the public that the conduct of the Registrant was unacceptable and unbecoming a member of the pharmacy profession. It might also be appropriate when public confidence in the profession demanded no lesser sanction. The maximum period of suspension which could be imposed is 12 months.
62. The Committee is mindful of the Council's guidance on decision-making in dishonesty cases:



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

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

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

63. Also highly relevant are the terms of the guidance on the application of Standard 6:

“People expect pharmacy professionals to behave professionally. This is essential to maintaining trust and confidence in pharmacy. ...” [Committee’s emphasis]

64. The Registrant's offending behaviour in 2016 and 2017 was at the lower end of the spectrum of dishonesty. Furthermore, it occurred some years ago. However, it must be considered in the round with the Registrant's subsequent sustained and systematic dishonesty in her dealings with her employer and her regulator. Taken together those dishonesty activities are very serious indeed. The Registrant misrepresented her character for personal gain; she did so to enable her name to be restored to, and renewed on, the register, and to practise as a pharmacist while working at Rowlands. In summary, the Committee finds the Registrant's dishonest conduct to be towards the upper end of the spectrum of dishonesty.
65. Lying to one's professional regulator is a very serious matter. Were this Committee not to impose a significant sanction an informed member of the public would be shocked. Not to do so would be tantamount to condoning the Registrant's actions.
66. The Registrant has failed substantively to engage with her regulator and this Committee. That failure is disrespectful.
67. The Registrant has demonstrated no insight into the impact of her behaviour on the reputation of the profession. She has demonstrated little remorse, merely apologising to her line manager in the course of the disciplinary investigation and at a stage when she had little alternative than to admit her earlier dishonesty, the content of the DBS certificate having been disclosed. She has not apologised to the Council for lying in pursuit of registration with the Council.
68. The Registrant was dishonest for personal gain. There is no evidence she has learned lessons from this or that she will in the future. Importantly the Committee is not confident the Registrant would not be dishonest again if faced with similar circumstances.

69. The Committee has considered the proportionality of its response. It has taken into account the interests of the Registrant and set those against the wider public interest. The Registrant has undoubtedly worked hard to acquire her professional qualifications. Her clinical skills and knowledge are not in question here. If her registration were suspended she could return to practice after a period of up to 12 months.
70. This Committee might have given greater weight to the option of suspension if the Registrant had participated in these proceedings and explained the context of her convictions and subsequent dishonest actions with her employer and regulator. She has not done so and the Committee considers it has no alternative but to conclude that suspension of her registration, even for the maximum period of 12 months, is not sufficient to address the wider public interest in this case. It is not sufficient to mark the seriousness of her misconduct, given the aggravating features identified above, and the risk of reoccurrence.
71. The public interest includes maintaining public confidence in the profession and maintaining proper standards of behaviour. The Committee is entitled to give greater weight to the public interest than the Registrant's own interest in remaining on the register. It recognises the sanction of removal would have a punitive effect in that the Registrant's ability to earn an income as a pharmacist would be curtailed.
72. The Committee recognises that removal of a registrant's name from the register is reserved for the most serious conduct. However, it considers the Registrant's dishonest conduct, collectively and including her convictions, to be fundamentally incompatible with her continuing to remain a registered professional given the risk of repetition which exists here.
73. Removal of the Registrant's name from the register is the proportionate response to her systematic and sustained misconduct, given the considerable adverse impact on

public confidence in the profession. Members of the public and the pharmacy profession can no longer trust the Registrant to act in the public interest rather than her own.

74. The Committee therefore directs that the Registrar remove the Registrant's name from the register.

### **Decision on Interim Measures**

75. Mr Lawson, for the Council, has made an application for interim measures under Article 60 of the Pharmacy Order 2010.
76. The Registrant has 28 days in which to pursue an appeal against the Committee's decision. If she were to do so she would be free to return to unrestricted practice because this Committee's decision would not take effect until the appeal proceedings were concluded.
77. The Committee has found there are no public protection issues. Consideration of interim measures falls to be determined on the basis of the wider public interest alone. Interim measures are by no means the default position and every case must be considered carefully to determine whether the bar for their imposition is met. That bar is high. The Committee takes into account its earlier findings and, in particular, that, while the convictions occurred outside pharmacy practice, the misconduct occurred in the course of the Registrant's registration and employment as a pharmacist. The Committee also identified a risk of recurrence of the dishonest conduct.
78. The Committee is satisfied that, in the particular circumstances of this case, the public interest warrants the imposition of an interim measure of suspension. To find

otherwise would be inconsistent with the Committee's findings on impairment and sanction. Furthermore, an informed member of the public would be surprised if the Registrant were able to return to practise in the interim period before the removal of her name from the register comes in to effect.

79. The effect of this determination is that from today's date the Registrant's registration will be suspended until the substantive order of removal takes effect.