

General Pharmaceutical Council
Fitness to Practise Committee
Principal Hearing Review
Remote Videolink Hearing
17-18 April 2024 and 22 April 2024

Registrant name:	Ismail Essop Nagdi
Registration number:	2034553
Part of the register:	Pharmacist
Type of Case:	Conviction
Committee Members:	Lubna Shuja (Chair) Jignesh Patel (Registrant member) Clare Bonnet (Lay member)
Secretary:	Chelsea Smith / Sameen Ahmed
Registrant:	Present and represented by Mr Kevin McCartney, Counsel
General Pharmaceutical Council:	Represented by Priya Khanna, Counsel
Order being reviewed:	Suspension (6 months)
Fitness to practise:	Impaired
Outcome:	Suspension of 3 months

Documentation

- GPhC Principal Review Hearing bundle (198 pages)
- GPhC Combined Statement of Case and Skeleton Argument dated 27 March 2024
- The Registrant's Supplementary Statement dated 26 March 2024
- Crown Court Judge's Sentencing Remarks dated 20 December 2021
- Transcript of Principal Hearing of 21-22 September 2023

Witnesses

- The Registrant

Determination

Introduction

1. This is the written determination of the Fitness to Practise Committee ('the Committee') of the General Pharmaceutical Council ('the Council'). It is the determination of the Committee of a Principal Hearing Review of a Suspension Order for 6 months imposed by the High Court on 8 February 2024, following an appeal by the Professional Standards Authority in relation to the decision of a Fitness to Practise Committee at a Principal Hearing which took place on 10-11 October 2022, 20-21 March 2023 and 21-22 September 2023. The 6 months Suspension Order imposed by the High Court was pursuant to a Consent Order dated 16 January 2024 agreed between the parties.
2. The subject of the hearing is Ismail Essop Nagdi ('the Registrant') who is registered with the Council as a Pharmacist under registration number 2034553.
3. The review is governed by Article 54(3) of *The Pharmacy Order 2010* ("the Order") and Rule 34 of *The General Pharmaceutical Council (Fitness to Practise and Disqualification etc. Rules) Order of Council 2010* ("the Rules").
4. The Committee also has regard to the guidance contained in the *Good decision making: Fitness to practise hearings and outcomes guidance, March 2024* (the Guidance) and the *Good decision-making: Conditions bank and guidance, July 2023*.

5. A Principal Review Hearing has up to two stages:

Stage 1. Impairment – the Committee determines whether the Registrant’s fitness to practise remains currently impaired based on the original allegation.

Stage 2. Sanction – the Committee considers what, if any, sanction should be applied if the Registrant’s fitness to practise remains currently impaired.

Service of Notice of Hearing

6. The Committee had seen a letter dated 24 February 2024 from the Council headed ‘Notice of Hearing’ addressed to the Registrant. No issue was taken with service by either party. The Committee was satisfied that there had been good service of the Notice in accordance with Rules 3 and 16.

Background

7. The Principal Hearing took place on 10-11 October 2022, 20-21 March 2023 and 21-22 September 2023. At that hearing the Registrant admitted the following allegation which was found proved on his admissions:

“You, a registered Pharmacist,

On 2 September 2021, were convicted at Manchester and Salford Magistrates’ Court of obtaining exemption from liability by deception x 2

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

8. In summary, at the material time, the Registrant was the Managing Director of G Pennant Roberts Limited, which operated pharmacies at 12 Albert Road, Manchester and 137 Ayres Road, Trafford. The Registrant was convicted, by pleading guilty, on 2 September 2021, to the charge of “obtaining an exemption from liability by deception x 2” in respect of small business rate reliefs in respect of these pharmacies between 1 April 2005 and 4 July 2019. On 20 December 2021, he was sentenced at the Crown Court to 16 months imprisonment suspended for 18 months and he

was ordered to pay £5,091 prosecution costs. The fraudulent claims resulted in an overpayment of £56,941.75 which the Registrant repaid in full.

9. The Fitness to Practise Committee at the Principal Hearing (“the Principal Hearing Committee”) noted in its determination:

“3. Small business rates relief can be given to businesses that occupy one property in England which has a rateable value below a threshold (which has changed over the years but started at £12,000). Another key qualifying criterion for the rates relief was that, if the business had more than one property, then the relief was only obtainable if those additional properties’ rateable value was below a [sic] another much lower threshold. G Pennant Roberts Limited was not entitled to the business rates relief that was claimed on either of the premises detailed above. G Pennant Roberts Limited was not entitled to the business rates relief that was claimed on either of the premises. In simple terms the rateable value of one pharmacy disqualified the other”.

10. The Principal Hearing Committee found that the Registrant’s fitness to practise was impaired due to his conviction under:

- Rule 5(2)(b) of the Rules in that the Registrant’s conduct had brought or might bring the profession of pharmacy into disrepute; and
- Rule 5(2)(c) of the Rules in that the Registrant had breached one of the fundamental principles of the profession of pharmacy.

11. The Principal Hearing Committee “*had no difficulty*” in agreeing with the Council’s submissions that the conviction and sentence for “*dishonestly obtaining business rate relief from public funds for a period of 14 years*” would shock the public and the Registrant’s conviction had or might bring the profession of pharmacy into disrepute. The Principal Hearing Committee observed there was a breach of trust in this case and stated:

“58.....The public expect regulated professionals, including pharmacy professionals, to be honest in all their dealings, including in their private and business life. The public are required to place their trust in the hands of pharmacy professionals when seeking advice

and treatment. That necessary and unquestioned trust and confidence in the profession is likely to be seriously damaged” by the Registrant’s conviction for defrauding, substantially, public funds”.

12. The Principal Hearing Committee found the Registrant’s dishonesty was *“connected with the carrying on a pharmacy business”* which directly breached the requirement for a pharmacy professional to act professional *“at all times”*.

13. In respect of Rule 5(2)(d) of the Rules – whether the Registrant’s conduct or behaviour showed that his integrity could no longer be relied upon, the Principal Hearing Committee initially concluded that the Registrant had sought to go behind the facts of his conviction to minimise his culpability to, not only that Committee, but also to his patients. This view was based on the account of the Registrant, in his statement, where he spoke of the disbelief in and shock caused by the conviction to his patients and the local community who felt it was entirely out of character for the Registrant. The Registrant had stated that he had sat and explained the background to the case to patients and felt they were then more sympathetic and forgiving. The Principal Hearing Committee concluded that due to minimising his culpability to both that Committee and his patients in this manner, the Registrant had demonstrated that his integrity *“cannot entirely be relied upon: he is in breach of Standard 9 for not taking responsibility for his actions”*.

14. The Principal Hearing Committee considered the difficulty posed by dishonesty, in that it could not be easily remediated. In the case of the Registrant, that Committee found:

“68..... in seeking to minimise his culpability the Registrant, despite his insight into the damage the fact of his conviction will have caused to the reputation of the profession, the Registrant had not remediated the actions that led to that conviction. Further, that given the nature of the offence of which he was convicted, even if the Registrant had done the utmost to remediate his dishonesty, nevertheless there would be a necessity to make a finding of impairment to restore the public trust and confidence in the reputation of the profession and to maintain standard [sic] of pharmacy professionals.”

15. The finding by the Principal Hearing Committee that Rule 5(2)(d) had been engaged was called into question by the Registrant on the grounds of procedural unfairness. On hearing from the Registrant's representative, that Committee concluded that:

"83..... in its [the Principal Hearing Committee] analysis and reasoning it had made an unwarranted inference by ascribing the views expressed by the Registrant in his statement made in January 2022 – in particular that he had not made an application for the rebate - to be his continuing views and that he had expressed those to patients to seek to minimise his culpability. The Committee recognised that it should have put questions to the Registrant to seek clarification on this particular point, especially in light of the fact that the GPhC had not asked such questions of the Registrant.

84. That being so the Committee acknowledged that it had been unfair in reaching the conclusion that it had about the reliability of his integrity without exploring this matter with the Registrant when he had given evidence."

16. In consequence, the Principal Hearing Committee decided to proceed only on the basis of Rule 5(2)(b) and (c), revoking, in effect, its findings in respect of Rule 5(2)(d). The Committee concluded *"as regards the integrity of the Registrant"*, it *"would play no part on the decision on sanction"*.

17. The Principal Hearing Committee imposed a sanction of 4 months with no requirement for a review. The Professional Standards Authority appealed the decision and on 8 February 2024 the High Court quashed the Principal Hearing Committee's decision and substituted the 4 months Suspension Order with a 6 months Suspension Order with a review. The High Court Order is due to expire on 23 April 2023 and must be reviewed before that date.

18. The High Court set out its reasons for allowing the appeal in Schedule 1 attached to the High Court Order. In Schedule 1 the High Court found the Principal Hearing Committee had:

*“.....erred by failing to have adequate regard to the [Registrant]’s maintenance of his innocence in the face of a conviction which it was not open to the Committee to go behind
.....*

The procedural approach then adopted by the Committee resulted in the removal of findings and reasons in relation to integrity and reliance only upon his conduct bringing the profession into disrepute and breaching one of the fundamental tenets of the profession as grounds for impairment.”

19. The High Court also found in Schedule 1 that the Principal Hearing Committee:

“.....erred by failing to have adequate regard to the [Registrant’s] maintenance of innocence when considering whether he posed an actual or potential risk to patients and the public and whether his integrity could no longer be relied upon”.

The High Court found that there had been a further serious procedural irregularity as the Principal Hearing Committee had failed to sufficiently consider that dishonesty convictions showed:

“3. i) that the registrant may present a risk to patients or the public (in the event of repeated dishonest conduct) and ii) that the integrity of the registrant can no longer be relied upon: they have failed to adhere to the high standards expected of a professional person. Conviction for a dishonesty offence, combined with any identified lack of insight and/or continued denial, may give rise to a real concern about future risk to patients and the public.”

20. Mrs Justice Lang observed that

“4. Lack of integrity has a significant, adverse impact upon the reputation of the pharmaceutical profession, and upon public trust and confidence in the profession. By abandoning the finding of impairment relating to lack of integrity and proceeding on a narrow basis, the Committee failed to have proper regard to the factors relevant to the

sanction required to protect the public and to properly restore public confidence and uphold standards and as a result the sanction ultimately imposed was insufficient.”

21. The High Court also found in Schedule 1 the Committee had failed to take into account the following aggravating factors:

“(i) Whether the [Registrant] had refused to accept his dishonesty and/or lacked insight into his dishonesty.

(ii) The amount of money involved.

(iii) The fact that the fraud would have continued “but for” the victims’ discovery of the fraud.

And in so failing, this amounted to a serious procedural irregularity which means that the ultimate sanction imposed was insufficient.”

22. These factors led the High Court to substitute 6 months suspension with a review, in place of the 4 months suspension with no review.

23. Finally, the High Court made the following directions, in Schedule 2 attached to the High Court Order, which the Reviewing Committee “*must*” consider and “*give reasons for its determination*”:

“(i) The extent to which the [Registrant]’s fitness to practise remains impaired having regard to the matters contained within Rule 5(2). For the avoidance of any doubt, this must include in relation to whether Rule 5(2)(d) is engaged.

(ii) The level of insight shown by the [Registrant] having particular regard to the extent and impact of any continued denial of dishonesty before the reviewing Committee.

(iii) The level of risk or harm posed by the registrant in light of: the conviction for dishonesty, any previous or continued denial and any findings made in relation to the engagement of Rule 5(2)(d).

(iv) Any aggravating or mitigating factors (including those identified in schedule 1 above)”.

24. A Case Administrator from the Council had provided the Monitoring Record dated 26 March 2024 which attached emails from the Registrant dated 7 March 2024 and 26 March 2024 confirming that he had complied with the High Court's Suspension Order.

Evidence and Submissions of the Parties

25. The Registrant had provided a witness statement dated 26 March 2024 in which he stated he did not have any clear view as to how the rates relief was applied to his two pharmacy premises. He had indicated on the forms that the Company did not operate from any other premises and this was not correct. He said that he had pleaded guilty as he did not think anyone would believe the forms had been completed incorrectly in error. He stated:

"3.....My pleas of guilt therefore include acceptance that my actions were dishonest. I do not seek to go behind that acceptance. It is right to say that I've thought an awful lot about this and although I chose to plead guilty, as stated previously I have never been clear in my mind about how it came to be that the rebates were applied and how I filled in the various forms. That is why I stated in paragraph 26 of my original statement that I cannot recall what was said in the original rebate applications."

26. The Registrant stated that he recognised the importance of honesty and integrity in the pharmacy profession and the importance that paperwork is always completed accurately. He stated that if pharmacists were convicted of offences of dishonesty, it undermined the reputation of all pharmacists. He stated the public expected pharmacists to be honest, behave with good character and morals and he accepted that a member of the public would be concerned about a pharmacist who has been found guilty of an offence of dishonesty *"however it came about"*. He stressed the importance of trust placed in pharmacy professionals and that they should only ever claim money they were entitled to, especially as they were responsible for claiming payments from NHS funds. He stated that pharmacists must possess a high level of integrity, be open and honest and behave with good character and morals. He realised his conviction had not only let him down but also the whole profession. He assured the Committee this was not something that will ever happen again. He hoped to be able to return to practice and serve the community he had looked after for many years.

27. The Registrant gave evidence before the Committee. In his evidence the Registrant said that he had pleaded guilty to the conviction mostly because he thought nobody would believe that he had completed them incorrectly. He did not accept his actions were dishonest, but he also said that that he accepted the form was filled in incorrectly so accepted his guilty plea amounted to dishonesty. When asked if he had pleaded guilty because he thought he had made an error or whether he thought he had acted dishonestly, he said *“both”* because he had not planned to do this, he made an error on completing the form but took responsibility for the error so accepted his actions were dishonest. At times he said he accepted his conduct had been dishonest and at other times said there had been errors.
28. The Registrant maintained that he could not remember applying for the rebate relief and he was not clear how the forms had been filled in but also accepted that the three forms he had been shown by the local authority council covering the period *“clearly showed I was dishonest”*. He said that after reading them it was clear they had been filled in incorrectly. He agreed that what he had done was dishonest and accepted responsibility for making the statements on the form. He said that he had tried to obtain all the original application forms, but the local authority council no longer had them.
29. The Registrant accepted that the filling out of the forms was dishonest behaviour and accepted he had not focused his mind on the loss of revenue to public funds. He said that he had paid the money back as soon as he had been told it wasn't due to him. He said he would have done this at any time if he was told he was not entitled, and it wasn't because he had been *“caught”*. He would always pay back the money if told he had been overpaid. He wished the local authority council had picked this up much sooner. He was asked what would have happened if the local authority council had not picked this up. He said that the rates system had changed since the pandemic to zero rates for all retail businesses. Discounts were still provided to small shops.
30. The Registrant accepted that his conduct had brought the pharmacy profession into disrepute as it had impacted on the trust placed in the profession, and members of the public would not be happy to hear about what had happened. He was asked about members of the community and patients who had contacted him, having read about the conviction in the local newspaper, and what explanation he had given to them. He said that *“about 5-7 people”* had contacted him and

he had told them what had happened. He had explained that he had had issues with the council with rebates and said those who had contacted him did not probe too much. He said that he had not tried to find excuses - it was all in the newspaper.

31. The Registrant conceded that he still had work to do to understand how his actions were dishonest and lacked integrity but he also said that he did not know what else he could do to show that this conduct would not be repeated.
32. The Registrant gave some background about his career and explained that there had been no issues from 1994/1995 to 2005 after he had initially bought the two pharmacies. For about 9-10 years he had paid the rates by direct debit each month. Then in 2005, a rate relief scheme for businesses had been introduced. He did not remember applying for that year, he said:

“It was as if the councils’ gave rebates and I just filed away the invoices. The forms used to come and I thought they were asking if I was selling the business..... I didn’t mean to take the rebate dishonestly but I can’t prove that due to the signature on the forms..... Everything was fine until 2005. When this was introduced, I made a mess.”

33. The Registrant accepted the process of the form filling was dishonest but said that if he accepted, he was guilty, that he had planned it, filled in the forms, that was not the truth. The Registrant said:

“I am being honest in one sense. I wish the council had caught me out a lot earlier, I accept I made a mistake. I don’t know what else I can do to show I am not going to carry on doing it again..... I agree what I have done is a dishonest thing.....

The council were asking questions and trying to get out of me that I planned this and did it intentionally. They repeated the same questions again and again. I was trying to explain it wasn’t intentional, that I didn’t understand the scheme and thought that all small businesses received a rebate.... I was shocked that I hadn’t answered the questions truthfully or correctly and how I had missed it when I looked at the questions in detail on the form. I couldn’t understand how I missed it... I spent little time on paperwork in the office so might have rushed all the paperwork... It was such a long time ago. I signed a form to say I had no other pharmacy when clearly I did.”

34. The Registrant maintained that he could not say that his behaviour was deliberate because that was not the truth. He had always been honest when the council had interviewed him, he never hid behind lies then, or when he went to court, as his integrity would be an issue. He was owning up to what he had done and that was the truth. The Registrant said: *"If I said I did it deliberately, needed the money, that would make it easier for the Committee to make a decision, but I can't say that as it's not true. I can't go back, it's just the way I am.... It's about trust. How else can I convince this won't be repeated."*

35. The Registrant was asked about any training he had done to look at acting honestly in the pharmacy profession. He confirmed he had read articles and discussed matters with colleagues which had enlightened him on how important it is to have integrity in the profession. He said that he could seek help from his Local Pharmaceutical Committee (LPC) and had membership of a pharmacy trade membership body which offered support and advice. He accepted he had not provided documentary evidence of his reading or learning.

36. The Registrant explained the changes he had made in relation to form filling to make sure this would never be repeated. He had an accountant dealing with all the paperwork and two family members were double checking all the information before it was submitted to make sure there were no mistakes or errors, and the businesses did not get into any trouble again. He wanted to concentrate on the clinical side of the practice which he enjoyed and give responsibility for the business side to his family member who also worked in the pharmacies. He promised *"100% to take extra care not to take pharmacy into disrepute."*

37. The Registrant said that when he thought about the conviction now, he felt:

".... down, unhappy... lots of emotion, regret, it is painful. I wish it didn't happen, but I take whatever I have done on the chin. I have used the opportunity to highlight to my children and other professionals about how careful you've got to be, step by step, as can easily get into trouble Passing on my dreadful experience..... I filled in the forms incorrectly, tried to be as truthful and honest as possible. I take full responsibility. I have brought the reputation of the profession into disrepute... was shameful... it gives a bad reflection of the profession. 100% it won't be repeated."

38. When asked to reflect on the consequences of his conviction, the Registrant spoke about the criminal record he now had, the damage to his and the pharmacy profession's reputation, that *"it looks awfully bad as it went on for a long period, hurts more. On paper it looks awful. If the council had picked it up earlier, it would have been sorted earlier..... many patients ask about me and my well-being in the pharmacy.... I have not experienced negative comments."*
39. The Registrant was asked why he had pleaded guilty to the conviction, and he replied it was the way the form had been filled in, there could be no other conclusion and the way it looked was that it had been done deliberately and intentionally. He said the forms clearly showed he was dishonest.
40. The Committee heard submissions from Ms Khanna and Mr McCartney.
41. Ms Khanna stated that her submissions on Rule 5(2)(b) and (c) of the Rules remained unchanged from those presented at the Principal Hearing. She did not make any submissions on Rule 5(2)(a). In relation to Rule 5(2)(d), she submitted the Registrant had shown a lack of integrity as he had failed again to accept his conduct was dishonest. She submitted he sought to go behind the offence and had minimised his culpability by seeking to convince others this had been a mistake. She submitted he was diluting the seriousness of the offence and even today was explaining away what had happened. Ms Khanna submitted it was not for the councils to point out what had happened to him so that he could pay the money back sooner and an aggravating factor was that the situation could have continued if the Registrant had not been caught. Ms Khanna submitted Rule 5(2)(d) was engaged – this was a grave case involving a large sum of money over a long period of time but yet the Registrant denied his culpability and distanced himself from dishonesty. She submitted this did not demonstrate integrity and the Registrant's lack of insight continued. She submitted in the absence of insight, there was a risk the conduct could be repeated.
42. Ms Khanna submitted the Registrant had not focused on the public at large and when asked about the impact of his behaviour, he had spoken on the impact on himself. She submitted dishonesty was difficult to remediate and the starting point was insight. Without insight, it was difficult to establish true remediation. The fundamental recognition of dishonesty had not been

accepted other than changes the Registrant had made in dealing with administration in the businesses. Ms Khanna submitted the Registrant had considerable work to do to develop insight. He had not shown insight into the public's perception of what he had done was dishonest. She submitted the Registrant remained currently impaired.

43. On the matter of sanction, Ms Khanna submitted sanction was between a further suspension or removal. Although this was a review hearing, she submitted the Committee could take the view that despite the time that had passed since the High Court Order, the Registrant had not addressed the issues highlighted by the High Court. She submitted, looking at the Registrant's insight today, it may be that this was a case where dishonesty could not be remediated so removal from the Register may be the appropriate sanction.

44. Mr McCartney made submissions and referred the Committee to the cases of Khan v General Pharmaceutical Council [2016] 1 WLR 169 and Yusuff v General Medical Council [2018] EWHC 13 (Admin). He stated that it had been established in Khan v GPhC that the purpose of a review was not to increase sanction because a different view had been taken of the gravity of the conduct. In the case of Yusuff v GMC Mrs Justice Yip had stated:

"18..... At the review stage, things will have moved on. The registrant may be able to demonstrate insight without accepting that the findings at the original hearing were true. The Sanctions Guidance makes it clear that at a review hearing the Tribunal is to consider whether the doctor has fully appreciated the gravity of the offence and must be satisfied that patients will not be put at risk if he resumes practice....."

.....

20. I conclude having reviewed all the relevant authorities that at a review hearing:

- 1. The findings of fact are not to be reopened;*
- 2. The registrant is entitled not to accept the findings of the Tribunal;*
- 3. In the alternative, the registrant is entitled to say that he accepts the findings in the sense that he does not seek to go behind them while still maintaining a denial of the conduct underpinning the findings;*
- 4. When considering whether fitness to practise remains impaired, it is relevant for the Tribunal to know whether or not the registrant now admits the misconduct;*

5. *Admitting the misconduct is not a condition precedent to establishing that the registrant understands the gravity of the offending and is unlikely to repeat it;*
6. *If it is made apparent that the registrant does not accept the truth of the findings, questioning should not focus on the denials and the previous findings;*
7. *A want of candour and/or continued dishonesty at the review hearing may be a relevant consideration in looking at impairment.”*

45. Mr McCartney stated that whilst this case did not fall wholly within those principles, there had been early admissions by the Registrant at the Magistrates Court, at the Crown Court, and at the Principal Hearing. The Registrant had given an explanation as to how he recollected the conviction came about but he had not sought to say it was not a valid conviction. Mr McCartney accepted that the account given by the Registrant did not fit easily with the admission of dishonesty made. He submitted the Committee should take into account that the same explanations had been given by the Registrant in interviews with the local authority councils when repeatedly asked, and before the Crown Court which had also queried the position.

46. Mr McCartney submitted that the Registrant had accepted it would have been a lot easier for him to say what everyone wanted him to say, to admit everything and then his integrity would not be lacking. However, the Registrant had also said that this was not the sort of person he was, and maintaining his recollection as to what had happened was part of his integrity. Mr McCartney submitted that the High Court had made a direction that this Committee must consider and give reasons for the issues it had listed. That did not mean this Committee had to make findings on those issues. He submitted the Registrant was entitled to accept some aspects and not others.

47. Mr McCartney submitted the Registrant had given his evidence in a compelling manner and the relevance of insight was for him to show what had gone wrong and that it would not happen again. The Registrant had accepted, how ever it came about, that the local authority councils had been misled and he had accepted he had received money he was not entitled to. He had accepted that the form should have been obvious to him and he had expressed shock that because the questions should have been so obvious, nobody would believe his innocent

explanation. The Registrant had maintained he did not initiate the rebate form or deliberately fill it in wrong.

48. Mr McCartney submitted that the Registrant had demonstrated insight in that he accepted he had received money he should not have had, and he had filled in the forms wrong. The Registrant had also said several times that he would have paid the money back at any time as soon as he had become aware of it. Mr McCartney submitted that the question for this Committee was not whether the Registrant's account was correct, but rather did it demonstrate a lack of insight. Mr McCartney submitted the Registrant clearly had insight into the importance of dishonesty and had repeatedly accepted the impact of this on the reputation of the profession and on the public.
49. Mr McCartney submitted that the Committee was required to take into account all of the evidence before it, which included the Council's acceptance at the Principal Hearing that there was evidence of insight and remediation previously and that could not be ignored when considering insight today. Mr McCartney submitted that the Registrant had not been a sophisticated witness and at times had not understood the questions. He had given explanations in his own words where he could. There were a number of testimonials and the Crown Court Judge's sentencing remarks which should also be taken into account. It was now four and a half years since the conduct and there had been no suggestion of any repetition. The Registrant had taken steps to ensure he had a network of support to prevent the risk of things going wrong. Mr McCartney submitted the Registrant had given clear evidence to demonstrate insight and that his integrity could be relied upon. This process had been horrendous for the Registrant and indeed today was his fourth hearing relating to this conduct. Mr McCartney submitted the Registrant's fitness to practise was not currently impaired and his integrity could be relied upon.
50. Should the Committee conclude that the Registrant's fitness to practise remained currently impaired, then Mr McCartney submitted that erasure was a wholly disproportionate sanction. He submitted the Registrant should be given an opportunity to further reflect and attend any relevant courses. Mr McCartney submitted the Committee could impose conditions or a very short suspension with a review.

Decision

51. The Committee considered carefully all the documents provided and the submissions of both parties. In conducting this review, this Committee must review the concerns raised in the original finding of impairment as well as those raised by the High Court. It must determine whether or not the Registrant remains currently impaired, and, if so what, if any, sanction to impose. There is a persuasive burden on the Registrant to demonstrate that he is no longer impaired or, if currently impaired, to show why either a lesser sanction should be ordered or no action taken.
52. If the Committee finds the Registrant remains currently impaired, under Article 54(3) of the Order, the Committee, on reviewing the suspension, may direct the removal of the Registrant's name from the Register, extend the period of suspension for a maximum of 12 months, or impose conditions on the Registrant's practice. The Committee may also take no action against the Registrant and thereby allow the current Suspension Order to expire, which would mean that the Registrant would be eligible to resume unrestricted practice on expiry on 23 April 2024.
53. The Committee considered very carefully the evidence given by the Registrant, having had the benefit of hearing from him. The Committee found the Registrant had done his best to answer the questions he had been asked, and that he had been open, candid and honest when giving his evidence. The Committee agreed with Mr McCartney that the Registrant had not been a sophisticated witness and there were times when he genuinely seemed not to understand Ms Khanna's questions, but those matters had been clarified in re-examination and during the Committee's questions.

Decision on Impairment

54. The Committee first considered whether the Registrant's fitness to practise continued to be currently impaired due to his conviction. In doing so the Committee considered Rule 5(2) of the Rules which states:
- Rule 5(2)(a) – presents an actual or potential risk to patients or to the public
 - Rule 5(2)(b) - had brought, or might bring, the profession of pharmacy into disrepute

- Rule 5(2)(c) - had breached one of the fundamental principles of the profession of pharmacy;
- Rule 5(2)(d) – showed that the integrity of the registrant can no longer be relied upon

55. The Committee considered whether the Registrant's conduct had been addressed, whether it was likely to be repeated and whether a finding of impairment was still needed to declare and uphold proper standards of behaviour and/or maintain public confidence in the profession.

56. It was clear from the Registrant's oral evidence that he knew he had made mistakes, he regretted them and was very remorseful. At times he accepted he had acted dishonestly but then also spoke of making errors. The Registrant genuinely appeared to believe he had made mistakes which had led to his conviction. Whilst he accepted his conduct had been dishonest, this seemed to be on the basis that the conviction was one of dishonesty, rather than on the basis that his actual conduct had been dishonest. He repeatedly said that he could not understand how the rebates were applied for and how he had filled in the forms. He did not accept that his underlying conduct, which had led to the conviction, was dishonest because he spoke about making mistakes and errors, which contradicted his acceptance of dishonesty.

57. The difficulty in this case was that the Registrant had a conviction for "*obtaining exemption from liability by deception x 2*". The Committee could not go behind this conviction, which by its very nature was a conviction for dishonest behaviour. Whilst the Registrant accepted that he had been convicted of a dishonesty conviction, this did not reconcile with his explanations that he could not understand how the rebates were applied for or how he had filled in the forms. There was a difficulty in reconciling the Registrant's genuine expression of remorse with his lack of a real admission to dishonesty.

58. The Committee had been referred to the case of Yusuff v GMC. Mc McCartney had conceded that the Registrant's case did not fall wholly within those principles. The Committee felt that the Registrant's case could be distinguished as it related to a Crown Court conviction rather than the findings of a Tribunal. In this case the Registrant had admitted the conviction which formed the

basis of the allegation found proved, whereas Dr Yusuff had denied all the allegations against him at his initial hearing.

59. The Registrant had demonstrated some insight in that he understood the impact his conviction had had on the reputation of the pharmacy profession. He talked about his *“shameful conduct”* giving a *“bad reflection on the profession as a whole”*. He accepted his criminal record had reflected awfully on the reputation of the profession and assured the Committee a number of times that it would never be repeated. Indeed, the Crown Court Judge’s Sentencing Remarks had also stated: *“I do not doubt he will not be near a court again.”*
60. The Registrant had also demonstrated some insight into how dishonesty breached a fundamental principle of the pharmacy profession. He spoke several times about the trust and confidence placed in pharmacy professionals. He spoke about how the public would view a dishonest pharmacist as *“not kindly”* and the public *“expected higher morals and standards from pharmacists”*. He did not, however, give a full explanation of what he had said to the community members and patients who had asked him about the conviction, having read about it in the papers. He said that he had told them there had been *“issues with the council with rebates”* and said they did not probe too much. This seemed to indicate that there was an element of minimising his own culpability.
61. The Registrant spoke of the steps he had taken to ensure he would not find himself in a similar position again but there was limited remediation. Whilst he said he had done some reading on acting honestly in the pharmacy profession and had discussed this with colleagues, he did not elaborate on what he had learnt from this or provide documentary evidence of what he had actually read. It would also have been useful for the Committee to have been informed of any other training or professional development activity the Registrant had undertaken during his period of suspension.
62. The Committee concluded that whilst the Registrant had shown some insight, this was still developing. He had not accepted personal culpability or blame and instead passed responsibility to the local authorities saying that he wished they had *“caught me out a lot earlier”*. He did not consider or address the impact of his conduct on third parties or the fact that public funds had been diverted to him over a long period of time, which meant the local authorities had been

deprived from using them elsewhere. These were very important factors given that the Registrant accepted he had been convicted for two counts of deception as a result of at least 3 forms submitted to the local authorities with false information containing his signatures. This had happened over a very long period of 14 years and he had received a substantial amount of money over that period as a result - £56,941.75. Even though that money had been repaid before the conviction, there was no acknowledgement from the Registrant of the consequences of depriving two local authorities of those funds. When asked what might have happened if the local authorities had not acted when they did, he simply said that the rebate scheme had changed. He did not mention his own role or responsibilities. The Registrant's answers appeared to indicate that he did not appreciate the full gravity and consequences of his conviction and the conduct that had led to it.

63. The High Court had directed the Committee to have regard to the matters contained within Rule 5(2) of the Rules. At the Principal Hearing, the Council had not relied on Rule 5(2)(a) and the Committee had therefore not invited further submissions on it. The Committee was satisfied that there was a low risk of repetition of the Registrant's conduct, which could be a risk to the public, because he had demonstrated a level of insight into the importance of being honest and he understood that it was a fundamental tenet of the pharmacy profession. He had spoken repeatedly of the impact of his conviction on the reputation of the profession. Taking this into account alongside the time lapse since the conviction without any repetition and the impact of the Crown Court proceedings, the Committee concluded there was a low risk of repetition. Even the Crown Court Judge had remarked the Registrant was unlikely to be in court again. The previous testimonials had also indicated that this was out of character for the Registrant. There was no risk to patients as the conviction did not relate to clinical practice.

64. The Committee concluded that not accepting blame for the underlying conduct which led to the conviction was likely to impact on the views of members of the public and the reputation of the pharmacy profession. Accordingly, Rule 5(2)(b) is still engaged due to the Registrant's lack of sufficient insight and understanding, and the resulting impact on the reputation of the profession.

65. In relation to Rule 5(2)(c), there was no doubt the Registrant had breached fundamental principles of the pharmacy profession, indeed, the Principal Hearing Committee had found this. This had been marked by the imposition of the 6 months Suspension Order and the Committee was satisfied Rule 5(2)(c) was no longer engaged.

66. In relation to Rule 5(2)(d), the Committee concluded the Registrant had not shown sufficient insight, understanding and remediation today such as to demonstrate that his integrity could be fully relied upon. As such Rule 5(2)(d) is engaged.

67. The Committee concluded that the Registrant's fitness to practice remained currently impaired due to his conviction. A finding of impairment continued to be necessary to declare and uphold proper standards of behaviour and to maintain public confidence in the profession.

Decision on Sanction

68. The Committee then considered the matter of sanction. It took into account the evidence it had heard and the submissions of both parties.

69. In considering sanction, the Committee recognised the need to act proportionately. Any sanction should be no more than is necessary to achieve its aims. In reaching its decision on sanction, the Committee took into account the purpose of sanctions which is to protect the public, maintain public confidence in the profession and maintain proper standards of conduct. The Committee noted that it was not one of the purposes of sanction to punish the Registrant although a sanction may be punitive in effect. The Committee was entitled to give greater weight to the public interest than to the consequences on the Registrant of any sanction imposed.

70. The Committee first considered the aggravating factors which it identified as follows:

- The Registrant still did not accept his conduct underlying the conviction was dishonest.
- The Registrant had shown limited insight as there was a lack of recognition of personal

culpability.

- He did not address the impact of his conduct on third parties, particularly given the large amount of money involved and the lengthy period of time over which it had taken place.
- In his oral evidence at this review hearing, the Registrant had placed the onus on the councils to inform him of his dishonest claims, rather than accept personal responsibility for this himself.

71. The Committee then considered the mitigating factors which it identified as follows:

- The Registrant had taken steps to ensure the conduct would not be repeated by delegating administrative matters to his accountant and involving other family members in double checking forms before they were submitted.
- There were genuine expressions of remorse and regret in relation to the impact his conviction had had on the reputation of the profession.
- There was a low risk of repetition.
- The Registrant had shown developing insight as he accepted the conviction itself was one of dishonesty.
- The Registrant had undertaken some remediation by reading and discussing issues of honesty with colleagues.

72. The Committee considered, in ascending order, each available sanction. The Committee considered whether it should take no action or issue a warning. The Committee concluded that none of these were appropriate because they would not be sufficient to maintain public confidence in the profession. Nor were they appropriate for a case where it had been found that a registrant's integrity could not be relied upon.

73. The Committee next considered the imposition of Conditions. As this was a case involving a

dishonesty conviction and not clinical practice, the Committee concluded Conditions were not appropriate. Nor would they be sufficient to uphold public confidence in the profession.

74. The Committee then considered whether to impose a further period of suspension. The Committee was of the view that the Registrant's insight was developing, and additional remediation may still be possible. The Committee decided that he should be given a further opportunity to reflect on his conduct which had led to the conviction and the wider consequences of this, to assist with demonstrating his fuller insight and remediation. A short period of 3 months suspension would be proportionate, appropriate, and sufficient to enable him to do this. It would also maintain public confidence in the profession and uphold standards of behaviour expected from pharmacy professionals.
75. The Committee was of the view that at this stage, removing the Registrant's name from the register would be a disproportionate sanction. He had been practising as a community pharmacist for over 30 years with a previously good record. With sufficient insight and remediation, it may be possible that he could return to practice.
76. The Suspension Order of 3 months must be reviewed before its expiry. At a future review hearing, the reviewing committee may be assisted by the Registrant providing the following:
- a. The Registrant's written reflections on the underlying conduct that led to the conviction and the consequences/impact of this, with reference to the GPhC's Standards for pharmacy professionals (May 2017);
 - b. Documentary evidence of any learning or professional development carried out relevant to the dishonesty conviction, including any courses attended and written reflections explaining how he has applied that learning.
77. That concludes this determination.