

General Pharmaceutical Council

Fitness to Practise Committee

Principal Hearing

Remote videolink hearing

19-23 August 2024, 1-2 October 2024

Registrant name:	Nadeem Rafiq
Registration number:	2055528
Part of the register:	Pharmacist
Type of Case:	Misconduct
Committee Members:	Claire Bonnet (Chair until recusal application) Neville Sorab (Chair from recusal application) Jignesh Patel (Registrant member) Paul Barton (Lay member)
Legal Adviser:	Neville Sorab (until recusal application)
Committee Secretary:	Zainab Mohamad
Registrant:	Present and not represented. Mr Ralph Shipway appointed to cross examine Colleague A
General Pharmaceutical Council:	Represented by Gareth Thomas, Case Presenter
Facts proved:	Allegations 1.2, 2, 4 and 5
Facts proved by admission:	Allegations 1.1 and 3

Facts not proved:	None
Fitness to practise:	Impaired
Outcome:	Suspension 12 months with review
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 4 November 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, whilst working at Buchans Chemist, 7 Perry Common Road, Erdington, 823 7AB

1. *On 3 January 2023 you:*
 - 1.1. *sent Colleague A a WhatsApp message, which stated “Don't sit next to me...u turning me on”. **ADMITTED***
 - 1.2. *Squeezed Colleague A's left buttock. **PROVED***
2. *Your actions at 1 above were sexual in nature and/or sexually motivated in that you acted in pursuit of:*
 - 2.1. *sexual gratification **PROVED***
 - 2.2. *a future sexual relationship **PROVED***
3. *On Colleague A's first date back (on or around 14 February 2023) after the incidents mentioned at 1 above:*
 - 3.1. *you shouted at Colleague A with words to the effect of “what the fuck are you talking about all this time”. **ADMITTED***
 - 3.2. *you shouted at Colleague A words to the effect of “ring him back i'll give him your fucking number -you can go out with him”. **ADMITTED***
 - 3.3. *You made comments whilst Colleague A was talking to Patient A to the effect that Patient A was Colleague A's boyfriend. **ADMITTED***
4. *On the second date back (on or around 15 February 2023) you subsequently worked with Colleague A after the incidents set out at 1 above, you:*
 - 4.1. *Challenged Colleague A on why she had made “complaints” about you to “Ash”. **PROVED***
5. *Your conduct at 3 and/or 4 above was:*
 - 5.1. *intended to harass and/or intimidate Colleague A. **PROVED***

5.2. *in retaliation for Colleague A raising concerns about you to others including senior colleagues at the pharmacy. **PROVED***

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

Documentation

Document 1- GPhC hearing bundle

Document 2- GPhC skeleton argument

Document 3- Colleague A email to the Council dated 13 August 2024

Document 4- Registrant submissions (undated)

Document 5- Colleague A email to the Council dated 25 October 2023

Document 6- Statement of Fitness to Work for the Registrant dated 16 August 2024

Document 7- CCTV footage dated 03 January 2023 at 09:59 hours

Witnesses

Colleague A – gave evidence at facts stage

Witness A – gave evidence at 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 outcomes guidance* as revised March 2024.
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 15 July 2024 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.

First Application to adjourn the Principal Hearing

7. On 2 August 2024, by email to the Committee Secretary, the Registrant made an application to adjourn the Principal Hearing by three months due to legal proceedings

taking place concerning the repossession of his property (for which he attached proof), which is causing him *“great distress and anxiety”*.

8. On 5 August 2024, the Committee Secretary forwarded the Registrant’s email of 2 August 2024 to Mr Thomas. On 8 August 2024, Mr Thomas responded to the Committee Secretary and the Registrant *“suggest[ing] that it might assist the Committee if you were to provide a bit more information about the current state of your difficulties.”* In particular:
 - a. Why the date for the hearing concerning the repossession of the Registrant’s property, which was listed as 19 July 2024, makes it difficult for the Registrant to go ahead with the Principal Hearing?
 - b. Why the Registrant will be more ready for the Principal Hearing in three-months’ time?
 - c. Whether there was any more relevant information or supporting documentation concerning the Registrant’s mental health or general wellbeing which may support his application for postponement.
9. The application to adjourn was forwarded to the Chair on 13 August 2024 at 12:40 hours, along with Mr Thomas’ opposition to the application on the basis that *“It is unclear exactly what the difficulties are and whether they will abate within the 3 months sought. We have two external witnesses lined up for the hearing next week.”*
10. In order to better understand the application, on 13 August 2024 at 14:19 hours, through the Committee Secretary, the Chair asked the Registrant the following questions:
 - a. What was the outcome of the county court hearing on 19 July 2024 concerning the repossession of your property? Please provide any order/decision to the Committee Secretary as support of your postponement application.
 - b. Please can you explain why the application for postponement was only made on 2 August 2024 and not earlier?

- c. Please can you provide more information about why your current circumstances make it difficult for you to go ahead with the Principal Hearing on 19-22 August 2024?
 - d. Why is it your belief that you be more likely available for a Principal Hearing following a postponement of three months?
 - e. Is there any more relevant information or supporting documents you wish to rely on to support your application for postponement, in particular, concerning your mental health or general wellbeing? If so, please share evidence of this with the Committee Secretary.
 - f. Are there any special measures that can be put in place to assist your attendance at the Principal Hearing which is currently scheduled for 19-22 August 2024? For example, extra breaks during the proceedings.
11. In addition, on 13 August 2024 at 14:19 hours, through the Committee Secretary, the Chair asked Mr Thomas the following questions:
- a. Whether it would be possible to obtain the availability of the two external witnesses and special counsel for the remainder of 2024.
 - b. Whether any of the external witnesses is vulnerable and/or requires special measures. Have any of these special measures been put in place?
12. The Registrant responded to the Chair's questions on 13 August 2024 at 17:02 hours with a request to postpone matters due to personal matters he wishes to resolve. In particular:
- a. The hearing concerning the repossession of the Registrant's property was postponed until 30 August 2024 (for which he attached proof). The Registrant's children currently reside at this property. He currently resides in a bedsit. His financial situation is uncertain pending the outcome of the Principal Hearing so this has added to the complexity of reaching a payment plan. He may have to give up his property if he cannot make payments.

- b. He has been working as a locum at a variety of pharmacies, but is currently taking a break from working (for which he has to commute 400 miles a week).
 - c. He was admitted to Accident & Emergency Heartlands Birmingham as part of a wellness check.
 - d. He would like to attend this hearing prepared and in good mind with clarity but at the moment this has become difficult.
13. Mr Thomas responded to the Chair’s questions on 14 August 2024 at 12:15 hours with the following:
- a. Colleague A: *“there are no dates in 2024 that I’m unavailable”* The witness has expressed frustration at the prospect of a delay; she has booked 19 August 2024 off work and says she wishes to get this matter over and done with.
 - b. Witness A: no dates to avoid for remainder of year.
 - c. Witness B (Council): unavailable between 25 September 2024 to 15 October 2024. Although it is unlikely that Witness B will be needed to give live evidence.
14. At 13:01 on 14 August 2024, Mr Thomas made the following submissions concerning the Registrant’s application to postpone the Principal Hearing:

“The Council recognises that there are multiple factors in this application for the Committee to weigh very carefully. The application does appear to be made in good faith and the Registrant has a track record of engaging with GPhC proceedings. The Committee will see that the Registrant spoke at greater length about his personal issues in his response to allegations, which appears in the hearing bundle. However, the Committee is not assisted by the absence of current documentary evidence relating to health. We would ask the Committee to give particular weight to our witness’s needs and preferences – i.e. this hearing is now in her diary and she wishes to get it over with. While the Council recognises the Registrant’s financial challenges, it remains unclear when the difficulties will abate so as to give him significantly more capacity for focusing on the fitness to practise matters. There is a public interest in cases being concluded promptly and not entering a cycle of delay.”

The current hearing is listed for four days with witnesses warned, proceedings could be taken slowly if necessary, and it seems that some progress could be made.”

15. The Chair noted Rule 37 which sets out in pertinent part:

“(1) The chair may, of their own motion or upon the application of a party, postpone any meeting or hearing of which notice has been given under these Rules before the hearing begins.

(2) The Committee may, of its own motion or upon the application of a party, adjourn the proceedings at any stage provided that—

(a) no injustice is caused to the parties; and

(b) the decision to adjourn is made after hearing representations from the parties (where present).

(3) In considering whether or not to grant a request for postponement or adjournment, the chair or the Committee must, amongst other matters, have regard to—

(a) the public interest in the expeditious disposal of the case;

(b) the potential inconvenience caused to a party or any witnesses to be called by that party;

(c) the conduct of the party seeking the postponement or adjournment;
and

(d) fairness to the parties.

(4) Where a person concerned applies for a postponement or adjournment on grounds of ill- health—

(a) the person concerned must adduce appropriate medical certification in support of that application; and

(b) the chair or Committee may, if not satisfied by the medical certification produced, require the person concerned to submit to be

examined by a registered medical practitioner approved by the Council.”

16. In light of the submissions received, and Rule 37, the Chair declined the Registrant’s application on the basis that:
 - a. The Registrant has not provided any medical evidence of his health concerns and the possible impact this may have on the proceedings;
 - b. It is unclear to the Chair when the Registrant’s financial problems will abate so as to give him significantly more capacity for focusing on the fitness to practise matters;
 - c. Colleague A, who appears to be a key witness in these proceedings, expressed anxiety about the Principal Hearing. Postponing the Principal Hearing, therefore, is likely to prolong the stress for Colleague A;
 - d. There is a public interest in continuing with the Principal Hearing between 19-22 August 2024; and
 - e. There does not appear to be any unfairness or injustice in continuing with the Principal Hearing between 19-22 August 2024.

Application to recuse the Chair from the Principal Hearing

17. On 19 August 2024, the Committee and both parties became aware that Ms Bonnet, who had sat as the Chair of the Principal Hearing to this point, was the Lay Committee member during the Registrant’s previous fitness to practise Principal Hearing which took place from 21 to 24 February 2023 and 27 March 2023. Further, Ms Bonnet was the Lay Committee member during the Registrant’s Principal Hearing Review on 3 August 2023. Ms Bonnet stated that she cannot recall this Principal Hearing or Principal Hearing Review as she sits on many cases for a number of regulators.
18. Both parties stated that they wished to make an application for Ms Bonnet to be recused as the Chair for this Principal Hearing. Ms Bonnet stated that she did not feel comfortable sitting as an adjudicator in an application which concerned her recusal.

The Legal Adviser provided advice that it may be seen as a conflict of interest for Ms Bonnet to adjudicate upon her own recusal application. This advice was accepted by the parties and the Committee. Consequently, the recusal application was heard solely by the remaining two members of the Committee, Mr Barton and Mr Patel.

19. Mr Thomas submitted that it would be preferable if Ms Bonnet did not sit as the Chair for this Principal Hearing as she heard matters at the Registrant's previous Principal Hearing and Principal Hearing Review which concerned his personal circumstances at the time. Therefore, Ms Bonnet would have formed an impression of the Registrant as a person and made evaluation on this impression. Although the Registrant may be raising similar matters here, the issues may be slightly different and there is a perception that Ms Bonnet may bring some impressions to this Principal Hearing which she formed previously. Mr Thomas made clear that the nature of the allegations from the Registrant's previous Principal Hearing were not sexual in nature and, therefore, were not similar.
20. The Registrant supported the application to recuse Ms Thomas from this Principal Hearing for the same reasons that Mr Thomas set out.
21. The Committee, consisting of Mr Barton and Mr Patel, accepted the Legal Adviser's advice which set out that the common law and European Convention on Human Rights ensure that a committee determining a Registrant's rights and obligations must be independent and impartial. This will include any questions of bias. Further, justice must not only be done, but must also be seen to be done.
22. The Committee, consisting of Mr Barton and Mr Patel, considered that although Ms Bonnet is a professional Chair, it may be difficult for her to put out of her mind what she heard previously concerning the Registrant's personal circumstances at the time. This may cause unintended prejudice and affect her perceived impartiality. Therefore, the Committee, consisting of Mr Barton and Mr Patel, consider that for the Committee to remain to be seen to be independent and impartial, it is in the interests of all parties that Ms Bonnet is recused from this Principal Hearing.

Appointment of Mr Sorab as Chair for the Principal Hearing

23. Following Ms Bonnet’s recusal from the Principal Hearing, the Committee Secretary asked if there was any objection to Mr Sorab vacating his position as Legal Adviser and taking the role as Chair for this Principal Hearing. Mr Sorab set out that he did speak to the parties in the morning of 19 August 2024, in the absence of the Committee, about Ms Bonnet’s potential conflict of interest and other matters which would have otherwise arisen before the Committee during the Principal Hearing. Consequently, he did not see any conflict in vacating his position as Legal Adviser and taking the role as Chair for this Principal Hearing.
24. Mr Thomas had no objection to Mr Sorab vacating his position as Legal Adviser and taking the role as Chair for this Principal Hearing for the following reasons:
- a. He was keen to commence the Principal Hearing on 19 August 2024 given that Colleague A has stated her anxiety over appearing at these proceedings.
 - b. Although Mr Sorab had some discussion with the parties in the absence of the Committee in the morning of 19 August 2024, it was concerning the admissibility of late documentation which would go before the Committee in any case.
 - c. If there is a Legally Qualified Chair, which Mr Sorab is, strictly, there is no need for a separate Legal Adviser. However, given that the Registrant is self-represented, it would be preferable for there to be a Legal Adviser.
25. For the reasons set out by Mr Thomas, the Registrant did not object to Mr Sorab vacating his position as Legal Adviser and taking the role as Chair for this Principal Hearing.

Application to amend the particulars of allegation

26. The Committee heard an application from Mr Thomas under Rule 41 to amend the stems of allegations 3 and 4 as follows (additions in underline and removals in strikethrough):

3. *On Colleague A's first date back (on or around ~~28~~ 14 February 2023) after the incidents mentioned at 1 above:*
 4. *On the second date back (on or around ~~1 March~~ 15 February 2023) you subsequently worked with Colleague A after the incidents set out at 1 above, you:*
27. Mr Thomas submitted that the amendments are made to further accurately reflect the evidence. Colleague A provided evidence that she did not work at the Pharmacy for 6 weeks from 3 January 2023, which would result in the dates of 14 February 2023 and 15 February 2023. Further, the Registrant indicated that the last time he worked at the Pharmacy was towards the end of the week commencing 13 February 2023, and that at the end of February 2023, he was engaged in his previous fitness to practise Principal Hearing. The proposed amendments are not based on new evidence and the dates of allegations 3 and 4 are not material to its substance, and for those reasons, there will be no prejudice caused to the Registrant if the application is granted.
28. The Registrant did not oppose the application.
29. The Committee accepted that, subject to the requirements not to prejudice the fairness of these proceedings, the allegations should reflect the gravity of the Registrant's alleged conduct or behaviour (*PSA v HCPC and Doree [2017] EWCA Civ 319*). However, to introduce late an entirely new case requiring extensive investigation would potentially be unfair (*Bittar v FCA [2017] UKUT 82 (TCC)*). The Committee was of the view that the amendments to the allegations reflect the evidence. The amendments are not based on new evidence and the dates of allegations 3 and 4 are not material to its substance. Consequently, the amendments would not prejudice the fairness of these proceedings.

First application to admit further evidence

30. On 19 August 2024, Mr Thomas made an application for the Committee to admit evidence of an email from Colleague A to the Council, on 25 October 2023, setting out her opinion on whether squeezing a person's bottom is classified as a sexual act. He submitted that:

- a. This email was disclosed to the Registrant on approximately 14 August 2024. Therefore, it would not have been possible for the Registrant to include this email in a bundle in accordance with Rule 18. The email was disclosed by the Council to the Registrant as it provides a complainant’s impression of events concerning a disputed point pertinent to the allegations. In turn, this could assist the Committee.
 - b. Mr Shipway wishes to use this document to cross-examine Colleague A.
31. The Registrant did not oppose the application.
 32. The Committee noted rule 18(5) which set out: *“Any document which has not been served on the secretary by the end of [No later than 9 days before the Monday of the week in which the hearing is to take place] is, except in exceptional circumstances, not to be admitted into evidence at the hearing.”* Should the Committee consider that the *“exceptional circumstances”* have been met, then the evidence needs to be relevant and fair (Rule 24(2)).
 33. The Committee accepted the application on the basis that:
 - a. *“exceptional circumstances”* had been met on the basis that the email was only disclosed to the Registrant on approximately 14 August 2024. Therefore, it would not have been possible for the Registrant to include this email in a bundle in accordance with Rule 18; and
 - b. The email is relevant and fair as it will permit the Registrant’s representative to cross examine Colleague A on disputed points pertinent to the allegations.

Second application to admit further evidence

34. On 19 August 2024, the Registrant made an application for the Committee to admit a document setting out some response to the allegations and mitigating factors. He submitted that he could only submit this document on 19 August 2024 (REDACTED) The Registrant said that the document was created on 16 August 2024 when he was *“fine”*.

35. Mr Thomas did not oppose the application. The Registrant had been under personal difficulties and the admission of the document would not prejudice the proceedings.
36. The Committee noted rule 18(5) which set out: *“Any document which has not been served on the secretary by the end of [No later than 9 days before the Monday of the week in which the hearing is to take place] is, except in exceptional circumstances, not to be admitted into evidence at the hearing.”* Should the Committee consider that the *“exceptional circumstances”* have been met, then the evidence needs to be relevant and fair (Rule 24(2)).
37. The Committee accepted the application on the basis that:
 - a. *“exceptional circumstances”* had been met on the basis that the Registrant is self-representing and may not be fully familiar with the disclosure rules. Further, the Council did not object to the application. It noted that the Registrant was *“fine”* on 16 August 2024 when he drafted the document; and
 - b. The document is relevant and fair as it will permit the Committee a fuller picture of the Registrant’s circumstances.

Second Application to adjourn the Principal Hearing

38. After lunch on 19 August 2024, the Registrant made an application to adjourn the Principal Hearing until the week commencing 26 August 2024 on the basis that he had begun suffering from heart palpitations, migraine and blurred vision, and had not eaten for about 7-8 days prior to this Principal Hearing. (REDACTED). He will seek medical attention after the hearing finishes today. [When questioned by the Committee on what he has done to address his (REDACTED) over the past 18 months, the Registrant said:
 - a. (REDACTED)
 - b. (REDACTED)
 - c. (REDACTED)
 - d. (REDACTED)

e. (REDACTED)

f. (REDACTED)

g. (REDACTED)

39. Mr Thomas provided the following observations to the Registrant's application:

a. He made a postponement application prior to the start of the Principal Hearing, which was refused by Ms Bonnet. He invited the Committee to determine what had changed since. The differences are:

i. When Ms Bonnet made the decision, she had not seen the Council's bundle which included the statements of the Registrant (REDACTED)

ii. The Registrant has now provided the Committee with a note from his GP, dated 16 August 2024, that he is unfit to work. However, being unfit to work is not the same as being unfit to participate in a Principal Hearing.

b. If the Registrant is unwell with the symptoms he claims, this must be taken seriously.

c. Even though Mr Shipway is cross examining Colleague A, he requires instructions from the Registrant, which requires full engagement from the Registrant during Colleague A's evidence.

d. Enquiries made suggest that Colleague A may be available on 21 August 2024 to give evidence. Witness A is available all week to give evidence. Consequently, it is recommended that the Principal Hearing is postponed until 21 August 2024 to allow the Registrant to seek medical attention and update the hearing then on his health.

40. Although the Committee was cognisant of the public interest in the expeditious disposal of the case and the potential inconvenience caused to Colleague A with any postponement, it considered it fair in the circumstances to adjourn the Principal Hearing until 21 August 2024 to allow the Registrant to seek medical attention. The Committee asked the Registrant to provide the following documentation upon the resumption of the Principal Hearing on 21 March 2024:

- a. [Given the Registrant was speaking to his (REDACTED) at the end of the hearing on 19 August 2024, the Committee requested a report from the (REDACTED) as to the Registrant's (REDACTED) to participate in the Principal Hearing; and
 - b. Evidence of the (REDACTED) following his recent visit to the (REDACTED)
41. Upon resumption of the Principal Hearing on 21 August 2024, the Registrant failed to provide the documentation referred to at paragraph 40(a) and 40(b) above.

Third application to admit further evidence

42. Following Colleague A giving her evidence, on 21 August 2024, the Registrant made an application for the Committee to allow a character witness to give evidence. Upon questioning from the Committee, the Registrant said that this witness will not be giving direct information relevant to the fact-find stage of this Principal Hearing.
43. Mr Thomas said that he did not have sufficient information to opine on the application. The Registrant has not set out who the witness is and what is will provide evidence upon. Mr Thomas said it was usual practice for any witness to provide evidence in writing prior to giving oral evidence.
44. The Committee agreed with Mr Thomas' position that it did not have sufficient information to determine the application. It requested that, as a first step, the Registrant provides a written statement from the witness, followed by an application from the Registrant to admit the written statement.

Council's application for special measures concerning the evidence from Colleague A

45. The Council made an application under Rules 44(2) and 44(3) for the Registrant to turn his camera off when Colleague A was giving her evidence. This was because Colleague A would feel vulnerable giving evidence whilst seeing the Registrant. The Registrant did not oppose the application.
46. The Committee accepted the application on the basis that it accepted that Colleague A would feel vulnerable to give evidence in front on the Registrant. Consequently, it

would enable Colleague A, and subsequently the hearing, for her to give evidence without seeing the Registrant. The Committee noted that Rule 44(3) provides an inexhaustive list of measures it may adopt. Therefore, the Committee directed the Registrant to turn his camera off when Colleague A was giving her evidence.

Registrant's response to Particulars of allegation

47. The Registrant admitted allegations 1.1 and 3 (in its entirety). By the application of Rule 31(6) of the Rules, the admitted factual allegations were found proved.
48. The Registrant denied allegations 1.2, 2 (in its entirety), 4 (in its entirety) and 5 (in its entirety). The Committee went on to receive evidence and submissions regarding the remaining disputed allegations.

Background

49. On 3 January 2023, the Registrant worked as the Responsible Pharmacist at Buchans Chemist, Birmingham ("the Pharmacy"). Witness A owned the Pharmacy. Colleague A had worked with the Registrant at the Pharmacy for approximately 18 months to two years prior to this date.
50. While working at the Pharmacy, there would be occasions that Colleague A worked alone with the Registrant, and on other occasions other staff members would be present. According to Colleague A she "*had a good working relationship*" with the Registrant.
51. On 3 January 2023, Colleague A was working in the Pharmacy with the Registrant and another colleague, Colleague B. Colleague A was sitting in the backroom with the Registrant and Colleague B for a coffee break when the Registrant sent Colleague A a WhatsApp message, which reads "*Don't sit next to me...u turning me on*". Colleague A did not read this message until her lunch break.
52. Following the coffee break, Colleague A returned to the dispensary to work on the computer. Colleague A had her back to the entrance/exit of the break room. Colleague

A alleged that when the Registrant left the break room and entered the dispensary, he approached her from behind and squeezed her left buttock with his hand without saying anything. The Registrant cannot recall touching Colleague A's buttocks. He describes any contact as *"unintentional"* and denies trying to make Colleague A feel uncomfortable as he has too much respect for all colleagues to *"ever knowingly cross a line and compromise someone's dignity and security"*.

53. Colleague A describes her shocked response to the Registrant's unexpected actions, which she did not respond to in order to avoid any conflict. Following this incident, Colleague A took her lunchbreak, during which time she read the Registrant's WhatsApp message described at paragraph 51 above. The Registrant also sent her the following further messages during her lunch break:
- a. *"Come back and spend lunch here with me"* (13:01 hours)
 - b. *"Say something...reject me or anything"* (13:41 hours)
 - c. *"Tell me to stop"* (13:41 hours)
 - d. *"I have feelings for you"* (13:41 hours)
54. During her lunchbreak, Colleague A contacted Colleague C, Witness A's wife, to notify her of the day's events. Also during her lunchbreak, Colleague A responded to the Registrant with the following WhatsApp message at 13:45 hours: *"Nad your not in a good place right now"*.
55. Following the incidents, Witness A met the Registrant face-to-face. During this meeting, the Registrant suggested that he was in an *"on-again, off again"* relationship with Colleague A. Witness A had not been aware of this relationship. Colleague A disputes the suggestion that her relationship with the Registrant was anything other than professional, noting *"he sent me texts...and it is clear that he was the one trying to pursue me which totally came out of the blue for me"*.
56. The Registrant further told Witness A that he felt embarrassed and ashamed as this was completely out of character. He was *"in a state of confusion"* and needed an opportunity to speak to Colleague A and apologise. He wished he had an opportunity to speak to Colleague A and make amends.

57. Following Witness A's internal investigation, the Registrant was issued with a verbal warning and *"informed that any further incidents would not be tolerated"*. While Witness A undertook an investigation of this incident, Colleague A stopped working at the Pharmacy and instead worked at a neighbouring branch for six weeks.
58. Colleague A describes the Registrant's conduct towards her when she returned to the Pharmacy, on or around 14 February 2023, as *"vile"*. After two shifts of working with the Registrant, she informed Witness A she would not work in the Pharmacy again due to the Registrant's behaviour. Colleague A provides examples of the Registrant's conduct during these two days:
- a. On one occasion an elderly patient attended the Pharmacy during which time the Registrant made comments suggesting the patient was Colleague A's boyfriend;
 - b. Colleague A also recalls an occasion where she was on the phone with a patient during which time the Registrant raised his voice stating *"what the fuck are you talking about this time"*. Following this conversation, the Registrant said *"ring him back ill give him your fucking number -you can go out with him"*.

Following these incidents Colleague A returned to the neighbouring branch of the Pharmacy where Witness A was located, and remained there for the rest of the day.

59. Colleague A returned to the Pharmacy the next day, on or around 15 February 2023. The Registrant asked her why she was complaining to Witness A about his behaviour. Colleague A refused to discuss this in front of Colleague B who was also present in the Pharmacy. Colleague A found the Registrant continued to behave in a challenging manner towards her and criticised her work practises. Colleague A asked not to work in the Pharmacy following this shift.
60. An incident log from West Midlands Police dated 03 March 2023 indicates that that Colleague A called 101 to report the Registrant's actions. She explained that she did not report the incident immediately because she did not think she would be taken seriously. However, this has been affecting her mental health and causing her anxiety.
61. The Registrant describes several comments made to him by other members of staff at start of 2022 that Colleague A *"fancied"* him, and that he should *"stay away from*

Colleague A etc and that she wanted me". The Registrant reflects on the several comments made by Colleague B and Colleague D that Colleague A liked the Registrant. This is disputed by Colleague A who confirms staff at the Pharmacy had not commented to her about the Registrant's feelings towards her or vice versa.

62. The Registrant explains that one day after work he had received a message from Colleague A stating "*I could not take my eyes off you all day*". He is not able to provide evidence of this message, as he has not used the number this message was sent to since April 2023. The Registrant felt Colleague A had "*come on strong*" towards him when she would make comments such as that he looked "*dapper*".
63. The Registrant recalls occasions where his relationship with Colleague A was "*intimate*". This includes hand holding. However, both the Registrant and Colleague A felt it was not the right time to continue with this relationship. One barrier to this relationship included Colleague A's struggle to find childcare arrangements so she could stay overnight with the Registrant. Colleague A questions the accuracy of this account, noting she would not require childcare as all of her children are adults.

Evidence

64. Colleague A provided the following evidence:
 - a. When she started working at the Pharmacy, she began working with the Registrant, who was the usual pharmacist at this pharmacy. She considered that they had a good working relationship, when she was working at the Pharmacy. There were times when Colleague A worked at the Pharmacy when it was just herself and the Registrant in the Pharmacy. She would never share or show photos, for example of family, with the Registrant. Colleague A would sometimes text the Registrant if he was late for work and she was waiting for him outside the Pharmacy.
 - b. In general, Colleague A considered that the Registrant was not in a good place mentally. He frequently came into the Pharmacy upset and crying and would share a lot about his personal life with all colleagues at the Pharmacy, however, this was not the case on 03 January 2023. Colleague A denies putting her arms around the

Registrant on 03 January 2023. At times, Colleague A considered that the Registrant came into work at the Pharmacy under the influence of alcohol, due him smelling of alcohol. At times, Colleague A considered that the Registrant was not fit to work.

- c. During the period that the incidents occurred, the Registrant was under investigation by the Council and this meant that he was not in the best place (REDACTED). The Registrant was open when talking to staff about the Council investigation and was also open about his personal problems (REDACTED).
- d. On 03 January 2023, Colleague A was working at the Pharmacy from 9am to 6pm and her lunch was at 1pm. Colleague B was also working on this day at the Pharmacy. Colleague A would not say that the Registrant seemed any different than usual on this day.
- e. The Pharmacy is pretty small. There is a pharmacy front with a till area, then a small dispensary area and then past the dispensary is an area where staff can have a break with two chairs in the area. This also has the fridge and the controlled drug store. From where you sit in this area you cannot see into the dispensary. Off this area is also the toilet.
- f. Colleague A, Colleague B and the Registrant had been in the back room having a coffee break. Colleague A cannot recall the time of this coffee break. The Registrant and Colleague B were sat on the two chairs and Colleague was stood. During this break period, the Registrant sent Colleague A a WhatsApp message stating *"Don't sit next to me...u turning me on"*. Colleague A did not see this message until she went home for lunch.
- g. Colleague A left the rest area first and went back into the dispensary and started to work on the computer. Due to where Colleague A was positioned, anybody who was left in the rest area would not be able to see her. The Registrant then came through and whilst Colleague A was stood at the computer with her back to him, the Registrant squeezed Colleague A's left buttock with one of his hands without saying anything to her. This was the first time the Registrant had done anything like this to Colleague A. Colleague A felt quite a bit of pressure from the squeeze;

she felt the Registrant's hand squeezing her buttocks. Colleague A does not consider the squeeze to be accidental.

- h. Colleague A was so shocked and taken aback. Her first thought was "*what the hell?*" She did not know what to do as this action by the Registrant came out of the blue. She did not react because she did not want to make a scene. She just wanted to get out of the Pharmacy to decide what she wanted to do.
- i. Colleague A took her lunchbreak at 1pm and that is when she saw the text message that the Registrant had sent her at 11:49 hours that day. The Registrant also sent Colleague A some more texts whilst she was at lunch including:
 - i. "*Come back and spend lunch here with me*" (13:01 hours)
 - ii. "*Say something...reject me or anything*" (13:41 hours)
 - iii. "*Tell me to stop*" (13:41 hours)
 - iv. "*I have feelings for you*" (13:41 hours)

When Colleague A received these messages, she thought the Registrant was "*crazy*" and she "*didn't know where he was coming from*" as nothing like this had happened beforehand. The Registrant had always treated Colleague A no different to anyone else working in the Pharmacy.

- j. Whilst she was on lunch, Colleague A rang Colleague C, who is Witness A's wife, and made her aware of what had happened. Although she has a good relationship with both Witness A and Colleague C, due to the nature of the incident, she felt more comfortable going to Colleague C, who was a female. Also, during her lunchbreak, Colleague A responded to the Registrant with the following WhatsApp message at 13:45 hours: "*Nad your not in a good place right now*". Colleague A referred, at times, to the Registrant, as "*Nad*". Colleague A did not return to the Pharmacy on 3 January 2023 after her lunch and blocked the Registrant on WhatsApp so that she did not receive any further calls or messages from the Registrant.

- k. Although dispensers are not allowed to use their phones when working at the Pharmacy, the Registrant used his phone when at work in the Pharmacy.
- l. Witness A, the Pharmacy owner, then later spoke to Colleague A regarding the incident, to collate the information and deal with the Registrant regarding the allegation. Colleague A knew Witness A as "*Witness A*". In the meantime, whilst Witness A undertook this process, Colleague A stopped working at the Pharmacy so that she did not come into contact with the Registrant. The result of the internal process conducted by Witness A was that the Registrant received a verbal warning. Colleague A was happy about this outcome.
- m. Although Witness A said that the Registrant has apologised for his actions, he never apologised directly to Colleague A.
- n. Colleague A did not work at the Pharmacy for six weeks, but at Witness A's other pharmacy. She went back to work at the Pharmacy because she was asked to by Witness A. Although Colleague A was not okay with this initially, she received reassurance that the Registrant told Witness A that nothing similar would happen again and that there would be another member of staff present.
- o. When she did go back to work at the Pharmacy, approximately six weeks after 03 January 2023, the Registrant was angry and really vile towards her. Colleague A considers that the Registrant was not in a good place at the time. She only endured his behaviour for two shifts before she told Witness A that she would not be working at the Pharmacy again because of the Registrant.
- p. On her first morning back, Colleague A was on the phone helping a patient. After five or six minutes on the phone, the Registrant started raising his voice saying, "*what the fuck are you talking about all this time*". The Registrant then said after Colleague A had finished the call, "*ring him back I'll give him your fucking number-you can go out with him*". The Registrant's tone was raised and "*nasty and angry*".
- q. Again, on Colleague A's first day back, an elderly male patient, Patient A, came into the Pharmacy. He regularly comes into the Pharmacy for a chat. Whilst Colleague

A was talking to Patient A, the Registrant was making comments suggesting that Patient A was Colleague A's boyfriend.

- r. Colleague A thinks that the Registrant was being vindictive towards her for reporting the sexual assault that he carried out on her. Colleague A did not expect this behaviour, after the Registrant had been given a verbal warning by Witness A. Colleague A rang Witness A at lunchtime to make him aware of the Registrant's behaviour that morning, following which Colleague A went to see Witness A. Colleague A explained to Witness A what had happened that morning. Colleague A worked at another one of Witness A's pharmacies that afternoon rather than going back to the Pharmacy.
- s. Colleague A had another shift at the Pharmacy the following day. When Colleague A went in, Colleague B asked her what had happened the day before to upset her. The Registrant then challenged Colleague A asking what her issue was with him by complaining to "Witness A", who is Witness A, about him. Colleague A told the Registrant that she had spoken to Witness A because of how he was with her, but that she was not going to discuss it in front of Colleague B as she did not want everyone knowing about what had happened. At this point, Colleague B said that a patient entered the Pharmacy, so the interaction between Colleague A and the Registrant needed to stop.
- t. Even on that day, Colleague A perceived that the Registrant had a go at her. Colleague A was making up a dosette box and she had stapled the information sheet in one of the corners, where everyone usually puts them. The Registrant said that the staples should not go there as he had cut his thumb on the staple.
- u. The Registrant's conduct during the incidents on the two days following Colleague A's return to the Pharmacy made Colleague A feel upset, threatened and intimidated.
- v. Colleague A cannot recall anything else happening on the second day, but she then asked not to work at the Pharmacy again so as to avoid any future issues with the Registrant. Just after this, the Registrant left the Pharmacy.

- w. Colleague A never have had any sort of relationship with the Registrant, apart from as a colleague within the pharmacy. She has never sent the Registrant a flirtatious message.
- x. Colleague A considers the Registrant's actions on 03 January 2024 to be sexual assault as he put his hands on her, touched her inappropriately and without consent.
- y. On 6 March 2024, Colleague A was provided with the following extracts from the Registrant's response to the allegations:
 - i. *"On a number of occasions, it was brought to my attention that [Colleague A] had 'fancied me' and I should stay away from [Colleague A] etc and that she wanted me."*
 - ii. *"One evening after work had received a message from [Colleague A], it read 'I could not take my eyes off you all day'. This message was sent on the day [Colleague A] had worked with me at [the Pharmacy]."*
 - iii. *"We both attempted to kindle a relationship and by her own admission it was on and off. It was briefly intimate with some touching and holding hands but nothing substantial and absolutely everything was consensual."*
 - iv. *"The relationship did not flourish although we did discuss going out to dinner or to the movies it just didn't materialise. It's a fact that [Colleague A] was willing to stay over with me and said to give her at least a few days' notice so that she could make childcare arrangements."*
 - v. *"I don't think our hearts were in it, we didn't go out as planned several times, we just shared lunch together at work during lunchtime. [Colleague A] would never make it clear to me if the relationship was on or off, I feel this was a reflection of the nature of our relationship, nothing serious but casual or an attempt at a relationship."*
- z. On 7 March 2024, Colleague A responded with the following:

- i. *"I am stunned to be honest and don't quite know what to say. None of the extracts provided to me are true. [The Registrant] is deluded in stating these points."*
 - ii. *"He sent me texts which you have seen, and it is clear that he was the one trying to pursue me, which totally came out of the blue for me."*
 - iii. *"I never had any idea how [The Registrant] felt towards me, and no member of staff at the pharmacy ever said anything to me about him liking me or me liking him."*
 - iv. *"Sometimes I would stay at work for lunch, but [The Registrant] used to eat his lunch in the consultation room, as he was usually talking on his phone."*
 - v. *"Why would I need to arrange childcare to meet up with him when my children are all grown up."*
- aa. Colleague A denies sending the Registrant a text message saying *"I could not take my eyes off you all day"*.
 - bb. Colleague A considered that there was not much gossip at the Pharmacy as there were only about 3-4 members of staff.
65. Witness A provided the following evidence:
- a. Witness A is a pharmacist and also a Company Director of Relinquo Holdings Limited who owns the Pharmacy. The Registrant had worked for Witness A at a previous pharmacy for a period of 7-8 years. The Registrant was then asked by Witness A to work at the Pharmacy on a permanent basis to set it up, which the Registrant did. At the start of the Registrant's time working at the Pharmacy, Witness A saw the Registrant approximately once a week. As the Pharmacy became more established, the frequency with which Witness A saw the Registrant fell to approximately once a month.
 - b. Witness A was made aware by Colleague C, his wife, of the incident of inappropriate behaviour between Colleague A and the Registrant that had occurred at the Pharmacy. Witness A cannot recall the date and time his wife

informed him. The incident was explained as unwanted physical touching where the Registrant, the Responsible Pharmacist at the Pharmacy on that day, had touched the bottom of Colleague A, who is a dispenser.

- c. Colleague A had also received a WhatsApp message from the Registrant, in which he made sexual inappropriate comments. Colleague A had sent the screenshot of these messages to Colleague C.
- d. Witness A arranged for Colleague A to move to another one of his pharmacies, which is located near to the Pharmacy until the investigation of the incident had been completed. Witness A also spoke to the other member of staff who was present when the incident occurred, but she had not witnessed anything.
- e. The CCTV from the dispensary area at the Pharmacy was reviewed and the footage of the incident involving the Registrant and Colleague A was downloaded by one of Witness A's colleagues and is exhibited. Witness A is not sure if the time stamp would be accurate as it was not an auto-updating time and the system was not connected to the internet. Although it was not brought to Witness A's attention that the time may be incorrect, if it was incorrect, it was likely to be by an hour either way due to the annual change to and from daylight savings time.
- f. Witness A had a face-to-face meeting with the Registrant the week the of 03 January 2023 in his car to discuss what had occurred. Witness A described the Registrant as quite shaken and showed a lot of remorse. Further, the Registrant was not himself in that he had not shaved, was dishevelled and his behaviour was erratic. This was different to when Witness A last saw the Registrant some 3-4 weeks prior. The Registrant usually presented very well to Witness A as smartly dressed and wearing a blazer.
- g. During his conversation with the Registrant in his car on the week of 03 January 2023, the Registrant alleged that parties were engaged in an "*on-again, off-again*" relationship that had not been disclosed to the business/Pharmacy. The Registrant assured Witness A that anything of this nature – that being the touching of Colleague A's buttock – would not happen again. He admitted that the incident was regrettable and unprofessional at work. He also assured Witness A that he would

send a sincere apology to Colleague A. Witness A issued the Registrant with a verbal warning as part of this meeting and informed that any further incidents would not be tolerated. Witness A also told the Registrant that he needed help and considered that the Registrant could be going through a nervous breakdown.

- h. Witness A then saw Colleague A and told her that the Registrant wanted to apologise for what he had done. However, Colleague A did not want to see the Registrant. Witness A told Colleague A that he had given the Registrant a verbal warning regarding his unwanted physical touching of her. Colleague A said that she was happy with what had been done and that she did not want the matter taking any further. However, Witness A understands that Colleague A reassessed what had occurred and, after discussing it with her family at the end of February 2023, decided to report the incident to the Police and Council.
- i. Colleague A did say that she still did not want to work with the Registrant, so staff were changed around at the pharmacies to facilitate this.
- j. At some stage, Colleague A returned to work at the Pharmacy. The Registrant was still working at the Pharmacy when she returned. When Witness A spoke to Colleague A at the end of her first day back, he asked her how things had gone. Colleague A had said that the Registrant would not engage in conversation with her, but was also blunt when speaking to her. Witness A subsequently spoke to the Registrant about his bluntness towards Colleague A and told him that he needed to be more grown up and put the incident behind him so that everyone could move on.

66. The Registrant provided the following pertinent points in his response to the Council's allegations:

- a. He was the self-employed pharmacist at the Pharmacy, a branch owned by Witness A from late 2018 to February 2023.
- b. He had been working as a community pharmacist since November 2002 and has undertaken various roles throughout his career including senior management, superintendent, Clinical Pharmacist, Locum and a general Pharmacy Manager.

- c. He has recently been reinstated back on the Council register after a 4-month suspension from April 2023.
- d. (REDACTED)
- e. Colleague A was aware of the Registrant's (REDACTED). She was also aware of his FTP hearing which was very near its date.
- f. On 3 January 2023, the Registrant came in to work and broke down. He was in tears because Colleague A and Colleague B had asked him if anything was wrong and, to his embarrassment, he started to cry and Colleague A had put her arms around the Registrant to console him and offer some support. The Registrant felt incredibly isolated, unwanted and a failure. He felt that he had failed his family, children and the profession and its standards. The Registrant had decided not long ago that he was going to speak the absolute truth word for word on the day of his hearing which would make him a whistle blower. This frightening prospect and the weight of it all was soul crushing. It is a once in a lifetime event, an experience most likely never to be repeated and he had anticipated that it would have repercussions. To stand before a committee and expose some hard truths and realities about a company that he had worked for without any representation or understanding of any ramifications was extremely difficult emotionally. Everything was at stake, his whole life as a pharmacist was on the balance and a career of 20 years potentially been put to rest.
- g. Colleague A knew that the Registrant was not himself, hence her message "*Nad your not well*" (REDACTED) The Registrant was not thinking straight was not focussed. He just needed to be comforted and consoled and assured that all will be well.
- h. The Registrant approached Colleague A and stood by her side in the dispensary, but he cannot recall touching her bottom. Any contact was unintentional; he would never make Colleague A feel uncomfortable. Her physical boundary had been breached as it appeared the Registrant was standing next to her. Colleague B was in the dispensary and the Registrant has too much respect for all colleagues to ever knowingly cross a line and compromise someone's dignity and security. The

Registrant has never acted this way all his life both at work or outside of work. The Registrant and Colleague A are over 40 and have had broken relationships in the past but the Registrant would never approach a staff member and dishonour their dignity and self-respect or self-worth.

- i. After Lunch, Witness A had messaged the Registrant to see him. Witness A said that Colleague A had spoken to him about a touching incident that had occurred in the morning. The Registrant was speechless and did not know what to say. The Registrant was embarrassed and could not recall any inappropriate touching. The Registrant did not know what to say and felt embarrassed for Witness A for having to ask him about this. Witness A focussed his attention on the Registrant's state and expression and said that the Registrant needed to get some help (REDACTED).
- j. A verbal warning was issued and advice was given regarding the incident. The Registrant felt embarrassed and ashamed and this was completely out of character. He was in a state of confusion. The Registrant needed an opportunity to put things right between him and Colleague A and to apologise and explain that there was absolutely no intent or malice to make her feel uncomfortable or in distress. However, no staff meeting was set up and nothing was said or mentioned about it again.
- k. Colleague A came to work the following day, 4 January 2023, and she was alone in the dispensary with the Registrant. The Registrant was upset and shocked at the allegation; it was a very sobering experience. As a very good friend and colleague who shared many lunches, snacks and deep conversations about personal life together over the past year, the Registrant wanted to know why Colleague A could not talk to him about it, when that very morning she was supporting and caring and consoling him when she had her arms around him.
- l. Certain rumours that were propagated through the company from the start of 2022. These rumours made the Registrant feel uncomfortable and upset at times. On a number of occasions, it was brought to the Registrant's attention that Colleague A had "*fancied me*" and that she wanted him and that he should stay away from her. Colleague D would quite often say this very blatantly and in front

of staff and the Registrant used to shrug this off as hearsay and rumours and just office banter. But this became all too frequent and annoying.

- m. The Registrant asked Colleague E if she was being serious and was he missing anything, she said *“are you serious Nad of course she fancies you the signs are so obvious duh!!”* He remained quiet and dismissed this as nothing but empty rumours. The Registrant debated whether he should say something and approach Colleague A and put an end to the rumours because he was beginning to feel uncomfortable.
- n. (REDACTED)
- o. One evening after work the Registrant had received a message from Colleague A, it read *“I could not take my eyes off you all day.”* This message was sent on the day Colleague A had worked with the Registrant at the Pharmacy. The number to which this message was sent is no longer active and the Registrant has not used this number since April 2023.
- p. Colleague A also made a number of comments about the Registrant’s appearance. Every time the Registrant wore a suit, Colleague A would comment that he looked *“Dapper”*.
- q. The Registrant feels that Colleague A had come on strong to him. They both attempted to kindle a relationship and, according to the Registrant, Colleague A said it was *“on and off”*. The relationship was briefly intimate with some touching and holding hands but nothing substantial and absolutely everything was consensual. The Registrant felt it was not the right place and nor the right time. It was perhaps an attempt to connect with someone on an emotional level and to have some companionship but two troubled middle-aged adults with past baggage and traumas and experiences was always going to be a struggle. The relationship did not flourish although the Registrant and Colleague A did discuss going out to dinner or to the movies, but it did not materialise. Colleague A was willing to stay over with the Registrant, and she told the Registrant to give her at least a few days’ notice so that she could make child care arrangements.

- r. The Registrant does not think their hearts were in it. The Registrant and Colleague A did not go out as planned several times. Both just shared lunch together at work during lunchtime. Colleague A would never make it clear to the Registrant if the relationship was on or off. The Registrant felt this was a reflection of the nature of the relationship, nothing serious but casual or an attempt at a relationship. The timing was awful too, the Registrant was not well (REDACTED) and awaiting a Fitness to Practice Hearing since November 2020 where he had convinced himself of the worst possible outcome and no amount of advice of or support or encouragement would change his mind.
 - s. Colleague B had told an individual who is not associated with the Pharmacy the following: “*She’s all over him*” meaning Colleague A is all over the Registrant and they are very “*pally-pally*”.
67. Prior to giving his evidence, the Registrant indicated to the Committee that he may not give evidence. The Chair provided the Registrant with the following indication from *R (Kuzmin) v General Medical Council (GMC) [2019] EWHC 2129 (Admin)*:
- a. Unless it would be unfair to do so, tribunals are entitled to draw an adverse inference when a practitioner does not give evidence at their tribunal hearing;
 - b. Whether an adverse inference should be drawn will be highly fact dependent and the tribunal will need to ensure that the relevant criteria are met before doing so.
Relevant criteria
 - c. A *prima facie* case to answer has been established;
 - d. The Registrant has been given appropriate notice and warning that, if they do not give evidence, then an adverse inference may be drawn;
 - e. The Registrant must be given an opportunity to explain why it would not be reasonable for them to give evidence and, if it is found that there is no reasonable explanation, be given an opportunity to give evidence; and
 - f. There were no other circumstances which would make it unfair to draw an adverse inference.

68. In light of the *Kuzmin* indication, the Registrant gave oral evidence. The Registrant supplemented his written response with the following oral evidence:
- a. On 03 January 2024, the Registrant did send the text message which read “*Don't sit next to me...u turning me on*”. He further put his hand around the waist of Colleague A and accidentally touched her buttocks. He was not aiming for Colleague A’s buttocks. This was not for sexual gratification. He stood next to Colleague A for comfort, consolation and reassurance. The Registrant regrets the incident and that he caused Colleague A distress. It fell short of the standards that the Registrant expects of himself. The Registrant said that he behaved in an irrational and inappropriate way, and that he has never been so ashamed. He regrets crossing a professional barrier. The Registrant was ashamed as he breached Colleague A’s personal space and made inappropriate contact with her by holding her around her waist.
 - b. The Registrant said that if he did squeeze Colleague A’s buttock, this can be interpreted as sexual conduct, but his intention was not sexual.
 - c. On 03 January 2024, the Registrant was consoled by Colleague A; this was witnessed by another colleague. (REDACTED)
 - d. The Registrant said that when he sent the text messages on 03 January 2023, he was in a confused state. These texts were a response to his irrational behaviour that day. The Registrant considered that Colleague A knew this, hence her message back to him “*Nad your not in a good place right now*”. The text messages were regrettable and inappropriate. The Registrant said that the messages could be interpreted as sexual in nature, but that he was not motivated in a sexual way.
 - e. The text message “*tell me to stop*” was sent by the Registrant in order to clarify whether Colleague A had feelings for him following the gossip and the previous exchanges that they had. The Registrant described his relationship with Colleague A as a WhatsApp/messaging relationship. The Registrant described leaving his relationship with Colleague A as “*mutual friends*”. The Registrant said that he was not “*compos mentis*” when he was speaking with Witness A and said that the relationship was “*on again, off again*”.

- f. The Registrant said that he was not aroused on 03 January 2023 as he was under such emotional stress that there was zero probability of being aroused. Sex was the last thing on his mind, especially when he was being consoled that day.
- g. When the Registrant spoke to Witness A following the incidents on 03 January 2023, he told Witness A that nothing of this nature would ever happen again in order to reassure Witness A.
- h. The Registrant had a good working relationship with Colleague A and they did exchange family pictures. The Registrant felt that he could open up to Colleague A as they were the same age, had been working together for a year. He used to buy lunch for her. Sometimes Colleague A would remain in the Pharmacy over lunchtime so that they could have lunch together. They also exchanged text messages. The messages sent by Colleague A messed with the Registrant's mind. Colleague A sent the message "*I can't take my eyes of you*" in September or October 2022. This was not the only flirtatious message that he received, but was the first flirtatious message, which surprised the Registrant. The Registrant said that he cannot retrieve this message as the phone had "*gone*". When asked where the phone had gone, the Registrant declined to answer.
- i. There was a lot of gossip in the Pharmacy. The rumours emanating from the gossip put the Registrant under stress. The Registrant said that he did not have feelings for Colleague A and wanted to dispel this rumour.
- j. In December 2022, Colleague A texted the Registrant that she had COVID. Consequently, Colleague A was off work for 3 weeks. However, Colleague A was in Lapland. Therefore, a lot of what Colleague A said cannot be taken on face value.
- k. The Registrant was not pursuing a relationship with Colleague A as he was already in a relationship. The Registrant said that he had no romantic or sexual feelings towards Colleague A. The Registrant said that he never wanted a relationship with Colleague A at all. Colleague A was also in another relationship.
- l. The Registrant said that the comments in allegation 3 came out in a burst of unprofessional anger. He was facing an upcoming Council fitness to practise

Principal Hearing and was in no state to work. He took this frustration out on Colleague A. He would never harass or intimidate Colleague A, who would not stand for it in any case. Although the Registrant can see why Colleague A may consider that she was being bullied. In hindsight, the Registrant considers that he should have apologised to Colleague A rather than his actions as described at allegation 3. The Registrant wishes that Witness A would have allowed the Registrant and Colleague A to speak about the 03 January 2023 incidents to clear the air.

- m. The Registrant accepted that he conducted the actions set out in allegation 4, but that he was not intending to harass or intimidate her.
- n. The Registrant said that he was not retaliating following his actions set out in allegations 3 and 4. He was just under a lot of stress and frustrated, and projected this towards Colleague A.
- o. (REDACTED)

Decision on Facts

- 69. The Registrant admitted allegations 1.1 and 3. Consequently, the admitted allegations were found proved.
- 70. The Registrant denied allegations 1.2, 2, 4, and 5. When considering each particular of allegation, the Committee bore in mind that the burden of proof rests on the Council 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.
- 71. In reaching its decisions on facts, the Committee considered the documentation listed at the start of this determination, oral evidence and the submissions made by the Council and the Registrant.

72. At the outset, the Committee noted that it found the evidence of Colleague A and Witness A to be consistent and credible. It found the Registrant's evidence to be muddled, unsupported and contradictory. In particular:
- a. The Registrant's claim that he had no romantic or sexual feelings towards Colleague A and that he never wanted a relationship with Colleague A at all. However, this appears to be contradictory to:
 - i. the text messages that he sent Colleague A on 03 January 2023;
 - ii. his claim that he was in an "*on again, off again*" relationship with Colleague A; and
 - iii. his push to resolve Colleague A's uncertainty over whether they were in a relationship.
 - b. The Registrant's adverse health claims, for which he has not provided any evidence (other than one GP note signing him off work for three months) despite such information being requested on two separate occasions by the Committee.
 - c. The Registrant's claim that, on 03 January 2023, he was unwell (REDACTED) and that his faculties were compromised. However, this does not appear to align with the evidence from the CCTV footage which, in the Committee's opinion, shows:
 - i. The Registrant walking confidentially towards Colleague A; and
 - ii. The Registrant being smartly presented, with tidy hair and wearing a blazer.
 - d. The Registrant's claim that, on 03 January 2023, he put his arm around Colleague A's waist seeking comfort and support. However, the CCTV footage shows:
 - i. The Registrant walking confidentially towards Colleague A;
 - ii. The Registrant conducting a pre-meditated action of putting his arm away from his body, with an open palm at the same height as Colleague A's buttocks
 - iii. Colleague A having her back to him;
-

- iv. The Registrant looking around the Pharmacy, including twice at the CCTV camera; and
 - v. The Registrant ending up standing so close to Colleague A that his body is touching hers.
- e. The Registrant claims that Colleague A was the instigator of the flirting between them. However, he has provided no proof of this.

Allegation 1.2 – On 3 January 2023, the Registrant squeezed Colleague A’s left buttock

73. Colleague A provided evidence that, on 3 January 2023, following the coffee break she had with the Registrant and Colleague B, she left the rest area first, went back into the dispensary and started to work on the computer. Due to where Colleague A was positioned, anybody who was left in the rest area would not be able to see her. The Registrant then came through and, whilst Colleague A was stood at the computer with her back to him, the Registrant squeezed Colleague A’s left buttock with one of his hands without saying anything to her. Colleague A felt quite a bit of pressure from the squeeze; she felt the Registrant’s hand squeezing her buttocks. Colleague A does not consider the squeeze to be accidental.
74. Witness A exhibited CCTV evidence. The Committee considers that the CCTV evidence shows:
- a. The Registrant walking confidentially towards Colleague A;
 - b. The Registrant conducting a pre-meditated action of putting his arm away from his body, with an open palm at the same height as Colleague A’s buttocks;
 - c. Colleague A having her back to him;
 - d. Colleague A moving her pelvic area forward when touched by the Registrant; and
 - e. The Registrant ending up standing so close to Colleague A that his body is touching hers.
75. In his evidence, the Registrant set out that he approached Colleague A who was standing in the dispensary, putting his hand around the waist of Colleague A and accidentally touched her buttocks. The CCTV footage does not align with the

Registrant's evidence as it demonstrates that the Registrant placed his arm away from his body, with an open palm at the same height as Colleague A's buttocks, not her waist. The Committee does not consider the timing of CCTV footage to be relevant to the allegation.

76. The Registrant provided evidence that he stood next to Colleague A for comfort, consolation and reassurance. For the reasons set out in paragraph 72(d), the CCTV footage does not align with the Registrant's evidence. Furthermore, the Committee considers that the Registrant's action was intentional for the following reasons:
- a. The Registrant appears to be "*testing the waters*" to see if Colleague A is interested in him. This is backed up by the Registrant's text messages to Colleague A on 03 January 2023, which set out:
 - i. "*Don't sit next to me...u turning me on*"
 - ii. "*Come back and spend lunch here with me*"
 - iii. "*Say something...reject me or anything*"
 - iv. "*Tell me to stop*"
 - v. "*I have feelings for you*"
 - b. The Registrant was looking around the Pharmacy, including twice at the CCTV camera, which the Committee considers the Registrant checking if anyone can see his actions.

77. In light of this evidence, the Committee considered that it is more likely than not that on 03 January 2023, the Registrant intentionally squeezed Colleague A's left buttock.

This particular is found proved.

Allegation 2 – The Registrant's actions at 1 above were sexual in nature and/or sexually motivated in that you acted in pursuit of sexual gratification and/or a future sexual relationship

78. The definition of "*sexual*" in section 78 of the Sexual Offences Act 2003, sets out:

“For the purposes of this Part (except section 71), penetration, touching or any other activity is sexual if a reasonable person would consider that (a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, or (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.”

79. The case law of *The General Medical Council v Dr Raied Haris [2020] EWHC 2518 (Admin)* defines the term “sexual”:

“47. In the present case it is in my judgement clear beyond argument that the intimate touching of Patients A and B was sexual and that answering a question as to the motivation of the toucher, the only available answer, is yes, the motivation must have been sexual. This is another way of saying the only reasonable inference from the facts is that the behaviour was sexual. This derives from;

- a. The fact that the touching was of the sexual organs*
- b. The absence of a clinical justification*
- c. The absence of any other plausible reason for the touching.*

48. The absence of any suggestion of accident and the absence of any consent gives further colour to the acts.”

80. The legal test for sexual motivation which is set out in the case of *Basson v GMC [2018] EWHC 505*: *“A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.”*
81. The Registrant said that if he did squeeze Colleague A’s buttock, this can be interpreted as sexual conduct, but his intention was not sexual. As set out in the Committee’s findings in relation to allegation 1.2, Colleague A’s buttocks was intentionally squeezed by the Registrant.

82. No clinical justification, or other plausible reason, for the touching has been raised by the Council or the Registrant, and has not surfaced through the evidence before the Committee.
83. The Registrant provided evidence that if he did touch Colleague A's buttocks, it was "*unintentional*". Having seen the CCTV evidence, and as set out at paragraph 76 above, the Committee considers that the Registrant's touching of Colleague A's buttocks was intentional. Colleague A provided evidence that she did not consent to the Registrant touching her buttocks.
84. The Registrant touched Colleague A's buttocks under the following circumstances:
- a. The Registrant sent Colleague A the following WhatsApp message on the same day as squeezing her buttocks:
 - i. "*Don't sit next to me...u turning me on*".
 - ii. "*Come back and spend lunch here with me*"
 - iii. "*Say something...reject me or anything*"
 - iv. "*Tell me to stop*"
 - v. "*I have feelings for you*"

Although the Registrant said that the messages could be interpreted as sexual in nature, he said that it was not motivated in a sexual way. However, the Committee finds there to be no other satisfactory explanation for the text messages other than being sexual in nature ("*Don't sit next to me...u turning me on*"), sexually motivated ("*Don't sit next to me...u turning me on*"), and in pursuit of sexual gratification ("*Don't sit next to me...u turning me on*") and a future sexual relationship ("*Don't sit next to me...u turning me on*"; "*Come back and spend lunch here with me*"; "*Say something...reject me or anything*"; "*Tell me to stop*"; "*I have feelings for you*").

- b. The Registrant claimed that he had no romantic or sexual feelings towards Colleague A and that he never wanted a relationship with Colleague A at all. For the reasons set out in paragraph 72(a), the evidence does not align with the Registrant's claim.

- c. The Registrant said that when he sent the text messages on 03 January 2023, he was in a confused state. These texts were a response to his irrational behaviour that day. For the reasons set out in paragraph 72(c), the CCTV footage does not align with the Registrant's evidence.
- d. As set out in paragraph 76(a), the Registrant appears to be "*testing the waters*" to see if Colleague A is interested in him.
- e. The Registrant claims that the text message "*tell me to stop*" was sent by the Registrant in order to clarify whether Colleague A had feelings for him following the gossip and the previous exchanges that they had. However:
 - i. The Registrant claimed that there were rumours from staff within the Pharmacy that Colleague A liked the Registrant. Apart from his oral testimony, there is no supporting evidence of the Registrant's claim.
 - ii. The Registrant claimed that he received a message from Colleague A that read "*I could not take my eyes off you all day.*" Apart from his oral testimony, there is no supporting evidence of the Registrant's claim.
 - iii. The Registrant claimed that he was in an on-off relationship with Colleague A. This is completely refuted by Colleague A, and apart from his oral testimony, there is no supporting evidence of the Registrant's claim. Witness A's evidence of this stems from the Registrant.
 - iv. The Registrant claimed that Colleague A had come on strong to the Registrant. He based this on Colleague A paying a compliment that he looked "*dapper*". Notwithstanding the lack of independent evidence that Colleague A called the Registrant "*dapper*", a compliment such as this, in the consideration of the Committee, does not amount to "*coming on strong*".
- f. On her first morning back, on or around 14 February 2023, Colleague A was on the phone helping a patient. The Registrant then said after Colleague A had finished the call, "*ring him back I'll give him your fucking number- you can go out with him*". Again, on her first morning back, whilst Colleague A was talking to Patient A, the

Registrant was making comments suggesting that Patient A was Colleague A's boyfriend. The Registrant has admitted to this allegation. The Committee considers these actions to demonstrate an element of frustration from the Registrant towards Colleague A for not accepting his advances.

85. Given the evidence set out above, the Committee considers that, on a balance of probabilities, the Registrant's actions proved at allegation 1 were sexual in nature, sexually motivated, and in pursuit of sexual gratification and a future sexual relationship.

This particular is found proved.

Allegation 4 – On the second date back (on or around 15 February 2023) the Registrant subsequently worked with Colleague A after the incidents set out at 1 above, the Registrant challenged Colleague A on why she had made “complaints” about you to “Ash”.

86. The Committee notes that it is not in dispute from Colleague A or the Registrant that “Witness A” is Witness A.
87. Colleague A provided evidence that on her second day back, on or around 15 February 2023, that when she entered the Pharmacy, Colleague B asked her what had happened the day before to upset her. The Registrant then challenged Colleague A asking what her issue was with him by complaining to “Witness A” about him. Colleague A told the Registrant that she had spoken to Witness A because of how he was with her, but that she was not going to discuss it in front of Colleague B as she did not want everyone knowing about what had happened. In evidence, the Registrant accepted that he conducted the actions set out in allegation 4.
88. In light of this evidence, the Committee considered that it is more likely than not that on or around 15 February 2023, the Registrant challenged Colleague A on why she had made “complaints” about the Registrant to “Witness A”.

This particular is found proved.

Allegation 5 – The Registrant’s conduct at 3 and/or 4 was intended to harass and/or intimidate Colleague A and/or in retaliation for Colleague A raising concerns about you to others including senior colleagues at the pharmacy

89. During the Council’s case opening, Mr Thomas set out that the words “*harass*”, “*intimidate*” and “*retaliation*” in this allegation was meant by an ordinary dictionary definition. In order for transparency, the Committee has used the following definitions:
- a. Harass: “*subject to aggressive pressure or intimidation*”;
 - b. Intimidate: “*frighten or overawe (someone), especially in order to make them do what one wants*”; and
 - c. Retaliation: “*the action of harming someone because they have harmed oneself; revenge.*”
90. The Committee considered the following to be context surrounding the Registrant’s conduct at allegations 3 and 4:
- a. The Registrant had been accused of sexual misconduct for which he received a verbal warning from Witness A. This is likely to have angered the Registrant;
 - b. The Registrant was frustrated with Colleague A for not accepting his advances;
 - c. He did not see or contact Colleague A from the incident at allegation 1 on 03 January 2023 until 14 February 2023. This is likely to have built up his frustration and embarrassment towards Colleague A;
 - d. Following his actions set out at allegation 3, Colleague A again complained to Witness A about the Registrant, which is likely to have further angered him; and
 - e. The Registrant said that the comments in allegation 3 came out in a burst of unprofessional anger. He admitted to allegation 4 whilst giving his evidence. He was facing an upcoming Council fitness to practice Principal Hearing and was in no state to work. He took this frustration out on Colleague A. The Registrant can see why Colleague A may consider that she was being bullied. The Registrant provided evidence that he was not intending to harass or intimidate Colleague A.

91. Colleague A provided evidence that following her return to the Pharmacy, the Registrant's actions as set out in allegations 3 and 4 made Colleague A feel upset, threatened and intimidated. This resulted in Colleague A asking Witness A not to work at the Pharmacy again so as to avoid any future issues with the Registrant.
92. Given the context set out above, the Committee considers that, on a balance of probabilities, the Registrant's frustration, embarrassment and anger is likely to have manifested in him intending to frighten Colleague A. Given the context set out above, the Committee considers this to be retaliation for Colleague A raising concerns about the Registrant to others including senior colleagues at the pharmacy. The Committee also considers that the Registrant was under pressure due to his upcoming Council fitness to practise Principal Hearing, but that any pressure from this was not mutually exclusive to his actions to harass, intimidate and retaliate against Colleague A.

This particular is found proved.

Prior to the commencement of Stage 2: Registrant's request that Colleague A be charged with perjury

93. Following the handing down of facts at the end of Stage 1 and prior to the commencement of Stage 2, the Registrant requested the Committee to arrest and charge Colleague A with perjury on the basis that:
 - a. There was previous contact between Colleague A and the Registrant caught on CCTV which was not put before the Committee; and
 - b. There were numerous messages between Colleague A and the Registrant which were not extracted by the police from the Registrant's previous phone. Colleague A lied to the Committee under affirmation that these messages did not exist.
94. Further, when asked by the Registrant about character references, the Registrant alleges that Mr Thomas made the comment that they would "*state what a wonderful chap you are*". The Registrant considered the word "*chap*" to be derogatory and unprofessional, and made the Registrant embarrassed to obtain a character reference.
95. Mr Thomas responded to the Registrant's application by setting out:

- a. The Registrant had opportunities to participate in the investigation and provide evidence during the principal hearing;
 - b. The Registrant had the opportunity to call and question Witness B who led the Council investigation; the Registrant did not use the opportunity to question Witness B; and
 - c. Mr Thomas received a character reference from Mr K which he put in PDF form and asked the Registrant whether he wished to submit this evidence at impairment stage. Mr Thomas sought to explain to the Registrant the difference between producing evidence going to the facts and character evidence (which is more appropriate at the impairment stage). Mr Thomas said that he may have used the word “*chap*”, but this was not meant in any way to be derogatory.
96. The Committee considers that it is not the appropriate body to arrest and charge Colleague A with perjury and refers the Registrant to the police if he considers that perjury has been committed. The Committee notes that it has handed down its decision on the facts stage. Further:
- a. The Registrant had opportunities to participate in the investigation. He could have requested the Council to obtain any relevant material, including:
 - i. further CCTV footage he considered to be relevant.
 - ii. obtaining messages from Colleague A’s phone.
- The Registrant has failed to provide evidence before the Committee that he made these requests.
- b. The Registrant had the opportunity to call and question Witness B who led the Council investigation, but he did not take this opportunity.
 - c. The Committee provided the Registrant the opportunity to produce character references, as set out in paragraphs 42-44 above. To date, none have been forthcoming.

Submissions on Grounds and Impairment

97. Having found all the particulars of allegation proved, the Committee went on to consider whether they amounted to misconduct and, if so, whether the Registrant's fitness to practise is currently impaired.
98. In relation to the misconduct, on behalf of the Council, Mr Thomas submitted:
- a. The conduct, as set out in the facts, took place in a pharmacy environment. The Registrant's conduct, as set out within the particulars of allegation, falls far below the standards expected of a registered pharmacy professional. It is submitted that the Registrant's particularised conduct breached the Standards for Pharmacy Professionals dated May 2017, in particular:
 - i. Standard 2 – Pharmacy professionals must work in partnership with others;
 - ii. Standard 6 – Pharmacy professionals must behave in a professional manner;
 - iii. Standard 8 – Pharmacy professionals must speak up when they have concerns or when things go wrong; and
 - iv. Standard 9 – Pharmacy professionals must demonstrate leadership.
 - b. The Registrant was a Pharmacist and Colleague A was a dispenser and junior member of staff. The Registrant failed to behave in a professional manner (Standard 6). His actions of intentionally squeezing Colleague A's buttock resulted in a failure to maintain his appropriate personal boundaries. The WhatsApp message sent the same day also failed to adhere to Standard 6.
 - c. The Registrant should have led by example (Standards 9 and 2) towards a pharmacy professional. He should have also promoted effective team working.
 - d. The Registrant's conduct following Colleague A's return to the Pharmacy around 14 and 15 February 2023 failed to uphold Standard 8. Instead of speaking up following the events on 03 January 2024, he chose to engage in conduct that amounted to harassment or intimidation towards Colleague A, even after he was told not to by Witness A

- e. The Registrant's sexual motivation, as found, further calls into question his professionalism and meant that he was putting his interests above those of his professionalism. Whilst it is acknowledged that Colleague A was a colleague rather than a patient or customer, it is submitted that fellow practitioners would consider the Registrant's behaviour to be deplorable.

99. In relation to impairment, on behalf of the Council, Mr Thomas submitted:

- a. The essence of the wrongdoing in this case is sexualised behaviour towards a female colleague that was inappropriate in itself (by reference to professional standards) and that had the effect of making her feel uncomfortable. It therefore had the potential to negatively impact effective teamworking in a pharmacy setting.
- b. The Registrant brought sexualised conduct and motivation into the workplace and behaved inappropriately towards another member of the Pharmacy team. This would tend to bring the profession into disrepute, as informed patients relying on the Registrant for pharmacy services would lose confidence in his professionalism. The blurring of professional boundaries in the workplace is arguably a breach of fundamental principles of the profession.
- c. While it should be recognised that the Registrant's conduct had the potential to undermine safe and effective teamworking and care generally, it is accepted that there is no evidence of patient harm in this case. In the same way, although the Registrant failed to maintain high standards expected of members of his profession, and appears to have prioritised his own interests, this is not a case where his wider integrity as a pharmacist is called into question (and dishonesty does not arise).
- d. The Registrant has not shown relevant reflection and insight into the nature of his alleged misconduct, nor has he shown effective remediation of the issues identified. In particular, the Registrant has:
 - i. denied the core of the allegations.

- ii. not taken ownership of the allegations despite the passage of time that has passed.
- iii. resisted the findings made by the Committee and considers that the complainant, Colleague A, should be arrested.
- iv. Attacked the complainant, Colleague A's, character, even though his defence was an accidental touch, rather than that Colleague A consented.

The Registrant's oral evidence, submissions and written response to the allegations focuses on his recent health problems.

- e. Further, public confidence and the maintenance of proper professional standards would be undermined if no finding of impairment was made.
 - f. The Registrant's previous fitness to practice history demonstrates that he is capable of restoring any faults. In that previous fitness to practise principal hearing, the committee gave weight to the Registrant's fulsome evidence and willingness to act as a whistleblower.
100. The Registrant did not give evidence in relation to misconduct and impairment. He made the following submissions:
- a. Working for a company as a whistleblower was the most difficult period of his life. It affected his mental health, but he was concerned that patient safety was being put at risk.
 - b. He has insight and remediation as what he did will stay with him for the rest of his life. He regrets what took place. Not a day goes past without him thinking about what happened. He does not know what led him to conduct himself in that way. He is saddened, remorseful and filled with shame.
 - c. Every single day, he respects every single individual and respects every boundary.
 - d. He wants to uphold standards of pharmacy.
 - e. He had four months off work following the outcome of his previous fitness to practice principal hearing.

- f. He can get through this and become a better person.
- g. He is back engaging with his children.
- h. A lot of friends and colleagues see him as professional and he draws on his experience to get over this incident.
- i. He would like the Committee to give him some hope to cling to so that he can make a future for himself and his children.
- j. He is no longer contesting the facts and considers it is up to the Committee to decide his future.

Decision on Grounds

- 101. The Committee took account of the guidance given to the meaning of “*fitness to practise*” in the Council’s publication “*Good decision-making*” (Revised March 2024).
- 102. The Committee accepted and applied the following definition of “*misconduct*”:

“...some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word ‘professional’ which links the misconduct to the profession. Secondly, the misconduct is qualified by the word ‘serious’. It is not any professional misconduct which will qualify. The professional misconduct must be serious.”
- 103. The Committee also took into account the observation of J Collins in *Nandi v GMC* [2004] EWHC 2317 (Admin) that: “The adjective ‘serious’ must be given its proper weight and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners.”
- 104. The Committee considered that Registrant’s actions reached the threshold of misconduct as he:

- a. Sent inappropriate text messages to a colleague, which were sexual in nature and sexually motivated in pursuit of sexual gratification and a future sexual relationship;
 - b. Intentionally squeezed a colleague's buttock without her permission, which was sexual in nature and sexually motivated in pursuit of sexual gratification and a future sexual relationship;
 - c. Shouted at a colleague intending to harass, intimidate and retaliate against her, when he was warned against such actions; and
 - d. Challenged a colleague on complaints that she made against him, with intent to harass, intimidate and retaliate against her.
105. Further, such actions damage public confidence in the profession, as it would convey a degree of opprobrium to the ordinary intelligent citizen (*Shaw v General Osteopathic Council [2015] EWHC 2721 (Admin)*).
106. The Committee considered whether the Registrant had breached any of the Council's Standards for Pharmacy Professionals (May 2017). The Committee determined that there had been a breach of the following Standards as a result of the misconduct:
- a. Standard 2 – Pharmacy professionals must work in partnership with others (in particular, take action to safeguard people, particularly children and vulnerable adults, and demonstrate effective team working). In particular, the Registrant made Colleague A, a team member, feel unsafe by:
 - i. sexually assaulting her;
 - ii. sending inappropriate, sexually, motivated, messages;
 - iii. shouting at her; and
 - iv. intending to harass, intimidate and retaliate against her.
 - b. Standard 6 – Pharmacy professionals must behave in a professional manner (in particular, treat people with respect and safeguard their dignity, and maintain appropriate personal and professional boundaries with the people they provide care to and with others). In particular, the Registrant failed to respect and

safeguard Colleague A's dignity and maintain appropriate professional boundaries with her by:

- i. sexually assaulting her;
- ii. sending inappropriate, sexually, motivated, messages;
- iii. shouting at her; and
- iv. intending to harass, intimidate and retaliate against her.

c. Standard 8 – Pharmacy professionals must speak up when they have concerns or when things go wrong (in particular, are open and honest when things go wrong, and say sorry, provide an explanation and put things right when things go wrong). In particular, the Registrant failed to:

- i. be open and honest to Witness A about what happened with Colleague A; and
- ii. apologise to Colleague A following his conduct towards her in January and February 2023.

d. Standard 9 – Pharmacy professionals must demonstrate leadership (in particular, do not abuse their position). The Registrant abused his position towards Colleague A, a junior member of staff at the Pharmacy, by:

- i. sexually assaulting her;
- ii. sending inappropriate, sexually, motivated, messages;
- iii. shouting at her; and
- iv. intending to harass, intimidate and retaliate against her.

107. The Committee bore in mind that the Standards may be taken into account when considering the issues of grounds and impairment but that a breach of the Standards does not automatically establish that the Registrant's fitness to practise is impaired (Rule 24(11)).

108. Accordingly, the Committee concluded that, in its judgement, the grounds of misconduct are established.

Decision on Impairment

109. Having found that the particulars of allegation amounted to misconduct, the Committee went on to consider whether the Registrant's fitness to practise is currently impaired.

110. At the outset, the Committee considered the Registrant's insight, remorse, and remediation.

111. The Committee considers that the Registrant has no insight and remorse. Although the Registrant submitted that he has insight and remorse given:

- a. what he did will stay with him for the rest of his life. He regrets what took place.
- b. not a day goes past without him thinking about what happened.
- c. he is saddened, remorseful and filled with shame.

The Committee considers that the Registrant's submissions do not match his actions. Notably, two hours prior to making his submissions on misconduct and impairment, the Registrant questioned Colleague A's integrity, and requested the Committee to arrest and charge Colleague A with perjury, following her evidence during the facts stage. The Registrant failed to accept the findings of the Committee until the end of his submissions. Further, the Registrant has set out that he does not know what led him to conduct himself in that way. Nevertheless, the Committee considers that the Registrant's submissions can lay a foundation for his insight.

112. The Committee considers that the Registrant has completed limited remediation, given that he has read several journals, articles and a handbook around this matter of inappropriate behaviour and harassment at work. However, the Committee considers that his actions during this Principal Hearing, as set out in paragraph 111 above, demonstrate that his practice still requires further remediation to put the reading into practice.

113. The Committee considered whether the particulars found proved show that actions of the Registrant:
- a. present an actual or potential risk to patients or to the public;
 - b. have brought, or might bring, the profession of pharmacy into disrepute;
 - c. have breached one of the fundamental principles of the profession of pharmacy;
or
 - d. mean that the integrity of the Registrant can no longer be relied upon.

Whether the Registrant's conduct or behaviour present an actual or potential risk to patients or to the public

114. The Committee considers that the Registrant's conduct and behaviour presented an actual risk of harm to colleagues given:
- a. sexually assaulting Colleague A;
 - b. sent inappropriate, sexually, motivated, messages;
 - c. shouting at Colleague A; and
 - d. intending to harass, intimidate and retaliate against Colleague A.
115. The Committee considers that the Registrant's conduct and behaviour presented a potential risk to patients and the public given that his sexualised behaviour towards a female colleague had the effect of making her feel uncomfortable. It therefore had the potential to negatively impact upon both standards and effective teamworking in a pharmacy setting. In turn, this presents a potential risk to patients and the public.
116. Given the lack of insight and remorse, and limited remediation completed by the Registrant, the Committee considers that the Registrant's conduct or behaviour may be repeated, which presents an actual or potential risk to patients or to the public. In particular, the Committee was concerned that the Registrant, at this Principal Hearing, continued to question Colleague A's integrity rather than accept responsibility for his actions.

Whether the Registrant's conduct or behaviour have brought, or might bring, the profession of pharmacy into disrepute

117. The Committee considered that the Registrant's misconduct has brought the profession of pharmacy into disrepute on the basis that he:
- a. Sent inappropriate text messages to Colleague A, which were sexual in nature and sexually motivated in pursuit of sexual gratification and a future sexual relationship;
 - b. Intentionally squeezed Colleague A's buttocks without her permission, which was sexual in nature and sexually motivated in pursuit of sexual gratification and a future sexual relationship;
 - c. Shouted at Colleague A intending to harass, intimidate and retaliate against her; and
 - d. Challenged Colleague A on complaints that she made against him, with intent to harass, intimidate and retaliate against her.
118. Given the lack of insight and remorse, and limited remediation completed by the Registrant, and risk of repetition, as set out in paragraph 116 above, the Committee considers that the Registrant's conduct or behaviour might bring the profession of pharmacy into disrepute in the future.

Whether the Registrant's conduct or behaviour have breached one of the fundamental principles of the profession of pharmacy

119. The Committee considered that the Registrant's conduct and behaviour has breached one of the fundamental principles of the profession of pharmacy, namely the requirements to treat others (a colleague) with dignity and respect.
120. Given the lack of insight and remorse, and limited remediation completed by the Registrant, and risk of repetition, as set out in paragraph 116 above, the Committee considers that the Registrant's conduct or behaviour might breach one of the fundamental principles of the pharmacy profession in the future.

Whether the Registrant's conduct or behaviour show that the integrity of the Registrant can no longer be relied upon

121. The Committee considers that this is not a case where the Registrant's integrity as a pharmacist is called into question.

Committee's conclusion on impairment

122. In light of the above, the Committee considered the Registrant's fitness to practise to be impaired on the personal element.
123. Further, members of the public would be appalled to learn that a pharmacist had conducted the actions set out at paragraph 117 towards a colleague. Consequently, the Committee considered the Registrant's fitness to practise to be impaired on the wider public interest element, namely maintaining public confidence in the pharmacy profession and upholding professional standards.

Sanction

124. 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 Pharmacy Order 2010. The Committee should consider the available sanctions in ascending order from least restrictive, take 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.
125. 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 in the profession and to promote professional standards. The Committee is therefore entitled to give greater weight to the public interest over the Registrant's interests.
126. The Committee had regard to the Council's "*Good decision making: Fitness to practise hearings and outcomes guidance*", published in March 2024 ("*Guidance*"), to inform its decision.

127. Mr Thomas submitted:

a. The mitigating factors in this matter consist of the following:

- i. The Registrant is a pharmacist with over 20 years' experience;
- ii. The Registrant has demonstrated previous remediation following his previous fitness to practise suspension. Further, he was praised by the previous fitness to practise principal hearing panel for his whistleblowing efforts;
- iii. The Registrant has provided one character reference in support of him;
- iv. The Registrant has offered an apology of some sort and has said that "*he no longer contests the allegations*"; and
- v. The Registrant has said that such misconduct will never happen again.

b. The aggravating factors in this matter consist of the following:

- i. The Registrant does not have an unblemished record, having already been suspended for four months following a fitness to practise principal hearing;
- ii. The Registrant sexually assaulted Colleague A by squeezing her buttock without consent;
- iii. The Registrant sent Colleague A text messages which she found distressing; and
- iv. The Registrant intended to harass, intimidate and retaliate against Colleague A.

c. Any reflection from the Registrant has been focused upon himself, rather than on the victim. This further underscores that he has limited, if any, insight. Further, if the Committee considers that the Registrant has gratuitously attacked Colleague A, this also detracts from his claims of having insight.

d. A warning would not be suitable to mark to the seriousness of the Registrant's misconduct.

- e. Conditions of practice are unlikely to be appropriate due to the seriousness of the allegations which involve the Registrant's sexually motivated behaviour.
- f. A 12-month suspension would be appropriate to mark the seriousness of the misconduct given the Registrant's acutely aggravated behaviour following his initial sexually motivated conduct.
- g. Removal should only be considered where there is no prospect of remediation. The Committee may want to consider whether the significant aggravating factors are attitudinal in nature which will make remediation more difficult.

128. The Registrant submitted that:

- a. He is not in a position to challenge the Committee's findings;
- b. He is willing to pay compensation to Colleague A;
- c. He is willing to receive a warning and be monitored;
- d. His actions were a lack of judgement which will not be repeated again;
- e. He wants to move on from this incident and be a better person;
- f. He does not recognise himself to the person that he was 3-4 years ago;
- g. A 12-month suspension order is a too heavy price to pay for him; and
- h. His house has been repossessed and he is in an extremely dire financial situation. He has no savings, no business and no assets. He is living pay-cheque to pay-cheque.

129. The Committee agrees with the mitigating and aggravating factors set out by Mr Thomas at paragraph 127 above. The Committee notes, however, its concern at the Registrant's continued poor behaviour towards Colleague A which continued throughout this Principal Hearing; the Committee considers this to be the main and highly influencing aggravating factor.

130. The Committee notes the Registrant's submissions on poor mental health, but has received little, if any, evidence of it, despite providing him the opportunity to do so (see paragraphs 40-41 above).

131. The Committee considers that the Registrant’s proven misconduct, coupled with no insight and limited remediation, makes taking no action or imposing a warning insufficient to protect the public. Further, these sanctions would not adequately meet the wider public interest of maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour. Therefore, the Committee finds that taking no action or issuing a warning to be inappropriate.
132. The Committee next considered the imposition of conditions of Registration. The Committee did not consider that conditions would be appropriate given:
- a. the seriousness of the allegations which involve the Registrant’s sexually motivated behaviour and continued poor attitudinal behaviour towards Colleague A; and
 - b. no relevant or proportionate conditions could be formulated, or enforced, to mitigate risk from the Registrant repeating his misconduct, given his lack of insight and limited remediation.

Further, the Committee considered that conditions would not adequately meet the wider public interest of maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.

133. The Committee next considered whether suspension would be a proportionate sanction. The Committee noted the Council’s Guidance which indicates that suspension may be appropriate where:

“The committee considers that a warning or conditions are not sufficient to deal with any risk to patient safety or to protect the public, or would undermine public confidence.

When it is necessary to highlight to the profession and the public that the conduct of the professional is unacceptable and unbefitting a member of the pharmacy profession. Also when public confidence in the profession demands no lesser outcome.”

134. The Committee considered that a suspension is appropriate and proportionate as:

- a. Although the Registrant has no insight, his submissions on impairment demonstrated that he can form insight which a period of suspension would permit him to do. The Registrant has previously demonstrated his ability to form insight.
 - b. Although the Registrant has only completed limited remediation, the Committee considers the Registrant's found misconduct to be remediable over time.
 - c. A suspension would instil public confidence in the profession as it would adequately protect the public, sufficiently uphold public confidence, and maintain professional standards.
135. The Committee considered that any future Committee would be assisted by the following actions from the Registrant:
- a. A submission of a reflective piece in which the Registrant reflects on his conduct, sets out how his sustained conduct affected the victim, engaged professional standards, and how his conduct has affected public confidence in himself as a pharmacist;
 - b. Proof that he has been on courses to improve his inappropriate behaviour;
 - c. CPD courses to demonstrate that he has kept up with pharmacy practice; and
 - d. His attendance at any review.
136. The Committee considers that the recommended actions as set out at paragraph 135 above would go a long way to developing the Registrant's insight and completing his remediation, which in turn, would reduce any risk of repetition of similar incidents. The Committee considers that a period of 12 months would give the Registrant sufficient time to complete the recommended actions as set out at paragraph 135 above.
137. The Committee gave serious consideration to the removal of the Registrant given the Registrant's lack of insight and attitude towards Colleague A. However, given the Registrant's submissions setting the foundation for insight to be developed and his previously demonstrated ability to form insight, the Committee considered removal to

be disproportionate in the circumstances. The Committee also considered paragraph 6.3 of the Guidance which sets out:

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

- there is a conviction for a serious sexual offence*
- there is an abuse of the special position of trust that a professional has*
- it involves a child (including accessing, viewing, or other involvement in images of child sexual abuse) or a vulnerable adult*
- the professional has been required to register as a sex offender or has been included on a barred list.”*

However, the Committee was satisfied that the sexual misconduct was a one-off incident (notwithstanding the Registrant’s continued poor attitude towards Colleague A) and did not amount to serious sexual misconduct and did not involve a child or a vulnerable adult.

138. The Committee therefore directs that the Registrant is suspended from the Council’s Register for a period of 12 months. The suspension order will be reviewed prior to its expiry.

Decision on Interim Measure

139. Mr Thomas made an application for an interim measure of suspension to be imposed on the Registrant’s registration, to take effect from today’s date, pursuant to Article 60 of the Pharmacy Order 2010, pending the coming into force of the Committee’s substantive order. He submitted that in a case of sexual misconduct, such as this case it is sensible for the Committee to consider imposing an interim measure to cover the

appeal period because the Registrant's ongoing impairment places patients, colleagues and public at risk of harm and directly impacts upon the confidence of the public in the profession. He submitted that an interim measure would be consistent with the substantive order imposed by the Committee. The Registrant opposed the application on the basis that:

- a. He needs to give notice to his employers;
- b. He understood the gravity and seriousness of the misconduct;
- c. He cannot understand why he is a risk;
- d. He has been working prior to this Principal Hearing as a pharmacist. He would like the 28 days to gather his thoughts and put in place a plan for his professional and family life during his 12-month suspension;
- e. (REDACTED)
- f. The 28-days would allow him time to reflect and learn from his action.

140. In considering Mr Thomas' application and the Registrant's response, the Committee took account of the fact that its decision to suspend the Registrant will not take effect until 28 days after the Registrant is formally notified of the outcome, or until any appeal is concluded.

141. The Committee has found that there remains a risk that the Registrant might repeat his conduct, if permitted to return to work unrestricted. It accepted the submissions of Mr Thomas that the Registrant's unrestricted registration would place patients, colleagues and the public at risk of harm and have an impact on public confidence, and it was satisfied that it was necessary for an interim measure to be put in place to protect the public and safeguard the public interest during the appeal period.

142. The Committee considered the Registrant's submissions, but given the finding that that the Registrant's unrestricted registration would place patients, colleagues and the public at risk of harm and have an impact on public confidence, it would be incompatible to allow him to practice during the appeal period. As set out in paragraph 130, the Committee notes the Registrant's submissions on poor mental health, but has

received little, if any, evidence of it, despite providing him the opportunity to do so (see paragraphs 40-41 above). The Committee considers that one of the purposes of the 12-month suspension is to allow the Registrant to reflect and learn from his actions. The Committee notes that an immediate suspension will impact upon the Registrant's professional and personal life, but this impact is outweighed by the need to protect patients, colleagues and the public and the wider public interest.

143. The Committee is satisfied that it is therefore appropriate for an interim measure to be in place prior to the taking effect of the substantive order.
144. The Committee hereby orders that the entry of the Registrant in the register be suspended forthwith, pending the coming into force of the substantive order.
145. This concludes the determination.