

General Pharmaceutical Council

Fitness to Practise Committee

Principal Hearing

Remote videolink hearing

16-17 January 2025

Registrant name:	Dushyant Manibhai Patel
Registration number:	2023109
Part of the Register:	Pharmacist
Type of Case:	Conviction
Committee Members:	Suzanne McCarthy (Chair) Susannah Ladds (Registrant member) Joanna Bower (Lay member)
Legal Adviser:	Gerard Coll
Committee Secretary:	Ivana Raimundova
Registrant:	Not present and not represented
General Pharmaceutical Council	Represented by Mr Ben Schofield, Case Presenter
Facts proved:	Particular 1 in its entirety
Fitness to practise:	Impaired
Outcome:	Removal
Interim measures:	Interim suspension

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

effect until **14 February 2025** 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 as shown by strike-through to delete and bold typeface to substitute text)

You, a registered pharmacist

1. *On 26 August 2022, were convicted at Norwich Crown Court for the following offences:*

- 1.1. *Between 1 March 2020 and 2 August 2020, you were concerned in the supplying of a quantity of Zopiclone, a controlled drug of Class C, to ~~others~~ **another** in contravention of section ~~4(1)~~ **4(3)(b)** and schedule 4 of the Misuse of Drugs Act 1971.*

- 1.2. *Between 1 March 2020 and 2 August 2020, you were concerned in the supplying of a quantity of Zolpidem, a controlled drug of Class C, to ~~others~~ **another** in contravention of section ~~4(1)~~ **4(3)(b)** and schedule 4 of the Misuse of Drugs Act 1971.*

*By reason of the matters set out above your fitness to practise is impaired by reason of your ~~Convictions~~ **conviction**.*

Documentation

The General Pharmaceutical Council (the Council)

Document 1 – Council’s hearing bundle of 136 pages

Document 2 – Council’s combined statement of case and skeleton argument of 7 pages

Document 3 – Council’s Service bundle of 2 pages

Document 4 – Council’s proceed in absence application bundle of 10 pages.

Witnesses

There were no witnesses called for or on behalf of the GPhC. The GPhC relied upon the certificate of conviction dated 27 July 2023.

Determination

Introduction

1. This is the written determination of the Fitness to Practise Committee of The General Pharmaceutical Council (‘the Council’).

2. This 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 wellbeing 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 (the guidance).

5. A Principal Hearing has up to three stages:

Stage 1. Findings of Fact – the Committee determines any disputed facts.

Stage 2. Findings of ground(s) and impairment – the Committee determines whether, on the facts as proved, a statutory ground for impairment is established and, if so, whether the Registrant’s fitness to practise is currently impaired.

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

Service of Notice of Hearing

6. The Committee has seen a letter dated 29 November 2024 from the Council headed ‘Notice of Hearing’ addressed to the Registrant and sent to their registered email address as noted on the Council’s Register. The Committee understood from Mr Schofield on behalf of the Council that the Registrant had agreed the email address for all communications prior to this date. The Committee had copies of the correspondence advising the Registrant of the date, time, and remote link for this hearing together with all of the necessary supporting papers in accordance with the Rules.

7. The Committee was satisfied that there had been good service of the Notice of Hearing (‘Notice’) in accordance with Rules 3 and 16.

Application to proceed in the absence of the Registrant

8. The Registrant was not in attendance at this hearing, nor was someone attending on their behalf. The Committee heard submissions from Mr Schofield on behalf of the Council to proceed in the absence of the Registrant under Rule 25. Mr Schofield pointed out that the Registrant had been regularly using the service email address in responding to the Council including as recently as this

current week. The Committee, he asserted, could therefore be satisfied that all reasonable steps had been taken to effect service within the Rules.

9. Mr Schofield also told the Committee that the Registrant's former legal advisers had agreed the dates of this hearing in principle on 6 November 2024, before later advising on 10 November 2024 that they were no longer instructed to act on his behalf. Mr Schofield pointed the Committee to certain email correspondence from the Registrant (using the same email address as before) in which the Registrant had stated on 13 January 2025 that he was unable to represent himself at the hearing as he was feeling unwell. He referred to his written statement which contained the opening sentence;

10. *'With regards to the above hearing I am sorry that I won't be able to represent myself PRIVATE'.*

11. On 14 January 2025, the Council wrote to the Registrant by email asking if he was or was not asking the Committee to adjourn the hearing to a later date. If he was asking for an adjournment, the Registrant was asked if he had medical evidence of ill-health that would support an application to adjourn proceedings to a future date.

12. On 14 January 2025, the Registrant responded in an email to the Council in which he said:

'I have thought very carefully and decided that I am not asking for an adjournment, and I am content for the Committee to continue the hearing in my absence without any representative on 16th and 17th January 2025 with the Committee taking account of the written letter I have provided.

PRIVATE I need a conclusion to this matter as soon as possible'..

13. Mr Schofield submitted that this email made clear that the Registrant was not making an application to adjourn the hearing. In any event, the Registrant had not submitted any medical evidence that would support such an application. Furthermore, the Registrant had expressed the view that the process had already been a lengthy one. An adjournment would, Mr Schofield submitted, probably have an adverse impact on the hearing of other cases waiting to be listed, and this impact was a relevant factor, he argued, for the Committee to consider.
14. The Committee accepted the advice of the Legal Adviser. Rule 25 provides a discretion to proceed which must be exercised with care and caution (*R v Jones* [2002] UKHL 5). The potential for unfairness to the Registrant is an important consideration. The Court of Appeal in the cases of *General Medical Council v Adeogba* and *General Medical Council v Visvardis* [2016] EWCA Civ 162, reminded Committees that there is no power to compel the Registrant's attendance or participation. The Committee must therefore proceed in a practical way, although always observing the need for fairness to the Registrant. If there is no real confidence that any delay in proceedings would result in the Registrant's attendance or written participation, then the public interest in resolving matters as early as possible becomes a prominent factor in deciding the issue.
15. The Committee was entitled to come to the view that no application for a medical reasons-based adjournment application had been made which satisfied the evidential requirements referred to by the High Court in *General Medical Council v Hayat* [2018] EWCA Civ 2796. This includes a certificate setting out a specific diagnosis and prognosis on which the Committee could assess whether an adjournment was justified, and for how long.
16. The Committee decided to proceed in the absence of the Registrant for the following reasons:

- The Committee has found good service of the Notice; therefore the Registrant is, or should be, aware of today's proceedings.
- The Registrant's email of 14 January 2025 explicitly stated that he was content for the hearing to proceed without him or his representative provided that his written representations would be taken into account, which the Committee acknowledged they would. The Committee therefore considered that the Registrant had chosen to voluntarily absent themselves from this hearing.
- Correspondence from the Registrant dated 13 and 14 January 2025 indicated that they would not be in attendance at this hearing and (on 14 January 2025) that they did not ask for an adjournment.
- There was no information to suggest an adjournment would result in the Registrant's attendance in future.
- There is a public interest in the expeditious disposal of cases.
- Not proceeding today would have an impact on other cases waiting to be heard.

Application to amend the particulars of allegation

17. The Committee heard an application from Mr Schofield on behalf of the Council under Rule 41 to amend particulars 1.1, 1.2, and the succeeding sentence of the narrative by:

- correcting the precise section of the Misuse of Drugs Act 1971 contravened and
- the fact that despite there being two contraventions of section 4(3)(b) of that Act, they amounted to only one conviction as they were dealt with on the same day.

18. Mr Schofield explained that the Registrant had in fact already been supplied with a true copy of the proposed corrected particulars in advance of the hearing and so was not placed at any disadvantage.
19. The Committee accepted the advice of the Legal Adviser.
20. The Committee was of the view that there was no unfairness to the Registrant in making the amendments proposed. The substance of the case was unaltered and the case against him not made any more serious by the amendments. The amendments were intended to correct typographical errors only and brought the particulars into line with the evidence. Accordingly, the Committee exercised its discretion under Rule 41 to permit the proposed amendments to be made.

Registrant's response to Particulars of Allegation

21. The Registrant was not present to admit or deny the allegations. In an email dated 12 January 2025 the Registrant included the detailed submissions to be taken into account by the Committee, that he referred to in his email of 14 January 2025. The Registrant stated under the heading 'Conviction' *'I was convicted in Court of Supplying Quantity of class C Drugs'*. He expanded, however, on his approach to the circumstances. The Committee concluded that this approach was at some variance from an unqualified admission of the facts. Accordingly, the Committee considered that although the admission of conviction was made, it was a qualified admission and in any event was an informal admission, having been made outside of the hearing. Consequently, the Committee went on to receive evidence and submissions regarding the allegation in order to be completely fair to the Registrant and to the Council..

Background

22. The Registrant is a pharmacist, who at the material time, was the Superintendent Pharmacist of Blakeberry Pharmacy, 6 High Street, London, E6 3RL (the Pharmacy).
23. On 1 August 2020, Person A (then aged 38) was found unresponsive by her husband (Person B) at their family home. The emergency services attended the address and tragically, Person A was declared deceased at that location. An investigation into the circumstances of her death was commenced by Norfolk Police.
24. On 2 February 2021, the Council received a fitness to practise referral from Norfolk Police. The referral advised that the Registrant was suspected of unlawfully supplying controlled drugs without a prescription to Person A.
25. Person B, Person A's husband had concerns about Person A's misuse of prescription drugs. Person B informed Norfolk Police that Person A had previously informed him of having a private prescription with the Pharmacy, which was owned and ran by the Registrant (and his wife). In the days following Person A's death, Person B has formed the view that the Pharmacy might be implicated in her death. He stated that he made arrangements to meet with the Registrant. During their exchanges, he bought prescription only, and Class C controlled drugs. Person B said he did this in order to 'prove' that the Pharmacy was involved.
26. As part of the police enquiries, Person A's phone was examined. It revealed extensive WhatsApp exchanges with a contact saved as 'pharmacy' and appeared to discuss repeated requests and sales of prescription only and controlled drugs. The police were able to link the phone to the Registrant and the messages appeared to show the Registrant diverting a number of pharmacy medications outside of the safe supply chain.

27. When the Registrant was questioned by the Police on 17 March 2021, he answered 'no comment' to questions asked apart from confirming length of time at his current address, his profession, the location of the pharmacy, and the length of his marriage.

28. In the coronial proceedings, Person A's death was recorded as a 'drug related death', with the medical cause of death being recorded as being from 'mixed drug toxicity'. The police report in the inquest noted:

'Norfolk Police cannot show a causal link between the actions of [the Registrant] and the death of [Person A] and as such there is no criminal prosecution being mounted in respect of this. The criminal prosecution is purely for the offence of being concerned in the supply of Class C drugs'.

29. In July 2021, the Crown Prosecution Service authorised charges against the Registrant and the criminal proceedings were initiated.

30. At his criminal trial in the Crown Court in Norwich, the Registrant accepted that he failed to mention any of the facts during the police interview which he later relied on, namely that:

- Person A repeatedly asked him to supply the two Class C drugs (Zolpidem and Zopiclone),
- which he agreed to on the assumptions she would have a prescription,
- but she was never able to provide a prescription for them, so he never supplied them to her.

31. The police investigation centred on WhatsApp exchanges between the Registrant and Person A which appeared to show that the Registrant was supplying medication to Person A outside of the safe supply route.
32. The Registrant was charged with two counts of being concerned in the supply of Class C drugs (namely Zopiclone and Zolpidem) to Person A. While the supply to Person B was evidentially raised in the criminal trial, it was not subject to a separate criminal charge.
33. The Registrant pleaded not guilty to both counts. On 26 August 2022, following a Crown Court trial, the Registrant was convicted on both counts, and the case was adjourned for a sentencing hearing. On 13 December 2022, the Registrant was sentenced to a custodial sentence of 18 months' immediate imprisonment.
34. A copy of the certificate of conviction from Norwich Crown Court dated 27 July 2023 was provided to the Committee.

Decision on Facts

35. The allegation in this case is a conviction. The Committee had sight of the certificate and memorandum of conviction as set out above and therefore found the facts proved in accordance with Rule 24(4).

Conviction and Impairment

Conviction

36. Having found the particulars of allegation proved; the Committee went on to consider whether the Registrant's fitness to practise is currently impaired by reason of their conviction.

37. The Committee took account of the guidance given to the meaning of ‘fitness to practise’ in paragraph 2.12 of the guidance which reads:

‘A pharmacy professional is ‘fit to practise’ when they have the skills, knowledge, character, behaviour and health needed to work as a pharmacist or pharmacy technician safely and effectively. In practical terms, this means maintaining appropriate standards of competence, demonstrating good character, and also keeping to the principles of good practice set out in our various standards, guidance and advice’.

38. The Committee took into account the submissions made by Mr Schofield on behalf of the Council that, in accordance with Article 51(1)(e) of the Order, “*a conviction in the British Islands for a criminal offence*” is a reason for a finding of impairment.

39. Mr Schofield referred the Committee to Rule 5(2) which states that:

‘In relation to evidence about the conduct or behaviour of the Registrant which might cast doubt on whether the requirements as to fitness to practise are met in relation to the Registrant, the Committee must have regard to whether or not that conduct or behaviour –

- a) *presents an actual or potential risk to patients or to the public;*
- b) *has brought, or might bring, the profession of pharmacy into disrepute;*
- c) *has breached one of the fundamental principles of the profession of pharmacy; or*
- d) *shows that the integrity of the Registrant can no longer be relied on’.*

40. Mr Schofield submitted that the Registrant's convictions render him currently unfit to practise by reason of Rule 5(2)(a) to (d), as set out above.
41. Mr Scofield submitted that pharmacists have a duty to ensure that medication is supplied only in accordance with a prescription. This applies to all prescription only medications but is especially important in relation to controlled drugs known to have addictive properties. Zopiclone and Zolpidem are controlled drugs of Class C and are well known to be highly addictive.
42. Mr Schofield said that in this case, the Registrant's actions show a clear and demonstrable pattern of a complete disregard to the law on controlled drugs and pharmacy regulation. Mr Schofield said that a regrettable common feature shared by pharmacists and criminals who unlawfully supply drugs is that each provide the public with access to dangerous pharmaceuticals. The critical difference is that pharmacists offer a safe supply route, regulated by a professional commitment to the wellbeing and safety of patients as a first priority. Pharmacists work in teams and with other regulated professionals to ensure that potentially harmful drugs are provided in known doses and quantities and by receipt of a prescription which has been issued based on a patient's informed consent, current health status, and best interests. Criminals are concerned only with profit and self-interest. They have no regard for the harm that might follow from their actions.
43. Mr Schofield submitted that the Registrant has very limited insight into his actions as shown during his trial and also in his written submissions dated 12 January 2025.
44. Mr Schofield said that the Registrant continued to present an actual risk to members of the public, and in particular, to those persons at risk from their disposition to seek illicit supply of under the counter controlled drugs. This is

evidenced by the Registrant's conviction. He reminded the Committee that the Registrant had denied the allegation throughout his trial and, he submitted, it appears from his written submissions of 12 January 2025, that he continues to do so today. In such circumstances it cannot be said that he is no longer impaired. He has shown no remediation, remorse or insight and therefore the risk of repetition was not reduced.

45. In her sentencing remarks, HHJ Robinson noted:

'Although the pre-sentence report speaks of shame and embarrassment, in my judgement, it is self-pity for the position in which you find yourself. There is not a shred of recognition by you in the pre-sentence report of the risks posed to vulnerable persons of the sale of under the counter prescription drugs'.

46. Mr Schofield submitted that the Registrant's actions in making at least five surreptitious and irregular back-door supply of controlled drugs for cash in hand demonstrated an attitude of mind that was fundamentally in opposition with the central principles of the profession of pharmacist. This includes patient safety and the prioritising of patients' best interests as well as acting lawfully at all times and in all contexts.

47. Mr Schofield submitted that the Registrant's conduct gives rise to concerns as to patient and public safety should such conduct reoccur. Moreover, there is a significant public interest in the proper application of the restrictions related to the supply of controlled drugs such that public confidence in the profession and the need to declare and uphold proper professional standards require a finding of current impairment.

48. Mr Schofield submitted that the facts of the Registrant's immediate sentence to 18 months in custody signalled to the public the degree of concern for public safety shown by the courts. The public and patients generally are entitled to regard pharmacists as role models and as persons of a high degree of integrity and probity. The Registrant's actions were wholly at odds with this. The Registrant had brought the reputation of the profession into disrepute by his conviction, arising from his criminal activities. In all of these circumstances, the public would expect that a finding of impairment would be made.
49. Mr Schofield submitted that the Registrant's fitness to practise was currently impaired both by reason of his conviction and also in the wider public interest. The Regulator would be expected to take action to mark the Registrant's breach of professional standards.
50. The Registrant did not appear to accept that their fitness to practise is currently impaired.
51. The Registrant submitted in his written submissions of 12 January 2025 that there had never been any photographic or other objective proof of him having actually supplied drugs without a prescription to Person B. Further, he believed, his evidence had been disregarded by the court. He could supply CCTV evidence which would have shown that it contradicted the evidence of irregular back-door supply. Further, he could provide evidence of his drug stock levels that would negative the prosecution case.
52. The Registrant offered the Committee a detailed narrative which invited the Committee to look with scepticism on the prosecution evidence. However, the Committee, while taking full account of what had been written by the Registrant, was not empowered to take the approach asked by the Registrant.

The Committee (and the Registrant) were not permitted to 'go behind' the conviction and re-assess the evidence. The Committee must accept the evidence which the jury found sufficiently compelling to return a guilty verdict beyond a reasonable doubt.

53. The Committee accepted the advice of the Legal Adviser.

Decision on Impairment

Grounds

54. Article 51(1) of the Order set out the possible grounds or 'gateways' to a finding of impairment. The relevant gateway in this matter is Article 51(1)(e); conviction for a criminal offence.
55. The Committee determined that the ground of conviction was established on the basis of the copy Certificate of Conviction from Norwich Crown Court dated 27 July 2023.
56. The Committee considered whether the Registrant had breached any of the Council's Standards for Pharmacy Professionals (May 2017). It took into account paragraph 6 of the standards document which states that the standards:
- '...need to be met at all times, not only during working hours. This is because the attitudes and behaviours of professionals outside of work can affect the trust and confidence of patients and the public in pharmacy professionals'..*
57. The Committee accepted the submissions of Mr Schofield to the effect that the Registrant had shown;

- a complete disregard for the law
- for patient safety
- had taken advantage of the opportunity to make illicit supplies of dangerous drugs on at least 5 occasions for money, and in doing so
- had committed a very serious criminal offence
- had brought the reputation of the profession into disrepute.

58. These actions reflect an attitude of mind that is at odds with the expectation that pharmacy professionals must provide person-centred care, use professional judgement and act in a professional manner. The Registrant's conduct lacked empathy, compassion or consideration for this vulnerable patient and her family members. He had failed to act with integrity.

59. The Committee determined that the Registrant, by his conviction in particular, had breached:

- Standard 1 – Pharmacy Professionals must provide person-centred care. The Standard requires that the Registrant ought to have listened to the person (Person A) and understood their needs and what mattered to them. Further, it requires that the Registrant ought to have given to Person A all relevant information in a way that she could have understood, so that she could make informed decisions and choices. He had not involved and supported others to make decisions about Person A's health, care and wellbeing. He had not considered the impact of his unlawful practice.

- Standard 2 - Pharmacy professionals must work in partnership with others. The Registrant had not alerted the appropriate care and civil authorities to the requests for unlawful supply of drugs, such as social workers and other health professionals. He had not worked with Person A who was receiving his care and he had not demonstrated effective team working. The Standard requires that the Registrant should take action to safeguard people, particularly vulnerable adults, which he had failed to do.
- Standard 3 - Pharmacy Professionals must communicate effectively. The Registrant had not asked appropriate questions of Person A. He had not communicated effectively with her. The Standard required the Registrant to check that the person understood the information they had been given.
- Standard 5 - Pharmacy professionals must use their professional judgement. They must make the care of the person their first concern and act in their best interests. The Registrant had not exercised any real and measured professional judgement in regard to the care of Person A. The Registrant had not managed his professional interests professionally by accepting money for the illegal supply of drugs. The Registrant was not in possession and did not act to secure the information needed to promote the care of Person A.
- Standard 6 - Pharmacy Professionals must behave in a professional manner. The Registrant had not acted with honesty ... integrity. He had disregarded appropriate professional boundaries. He had not shown empathy and compassion to Person A as required by the Standard.

- Standard 8 – Pharmacy Professionals must speak up when they have concerns or when things go wrong. The Registrant knew that he did not have a prescription for the drugs that he supplied. He did not show the required openness and honesty required. He has not shown any remorse or offered an apology to Person A’s family.
- Standard 9 – Pharmacy Professionals must demonstrate leadership. Among other things, the Registrant had singularly failed to assess the risks for Person A in the care that he had provided and had done nothing to minimise or control these risks. The Registrant was the Superintendent Pharmacist and was bound not to abuse his position of trust.

60. The Committee observed that the standards require that behaving professionally is not limited to the routine working day. The standard states that the privilege of being a pharmacist and the prominent importance of maintaining the public’s confidence in the profession call for appropriate behaviour at all times. The Registrant was expected to be trustworthy and act with integrity and show empathy and compassion.

61. The Committee next turned to consider whether any sub-particulars of Rule 5(2) is engaged by the Registrant’s conviction and misconduct. Rule 5(2) provides:

62. *‘In relation to evidence about the conduct or behaviour of the Registrant which might cast doubt on whether the requirements as to fitness to practise are met in relation to the Registrant, the Committee must have regard to whether or not that conduct or behaviour –*

- *presents an actual or potential risk to patients or to the public;*
- *has brought, or might bring, the profession of pharmacy into disrepute;*
- *has breached one of the fundamental principles of the profession of pharmacy; or*
- *shows that the integrity of the Registrant can no longer be relied upon’.*

63. Guidance on this issue was set out by Mr Justice Silber in *Cohen v General Medical Council* [2008] EWHC 581 (Admin) at paragraph 65, where it was said that:

64. *‘It must be highly relevant in determining if a [practitioner’s] fitness to practise is impaired that first ... his conduct that led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated’.*

65. Those principles are echoed (and adapted in different words) in the guidance at paragraph 2.15 where it states that:

‘The Committee should also consider whether:

- *the conduct which led to the complaint is able to be addressed*
- *the conduct which led to the complaint has been addressed*
- *the conduct which led to the complaint is likely to be repeated*
- *a finding of impairment is needed to declare and uphold proper standards of behaviour and/or maintain public confidence in the profession’*

66. Given the seriousness of the Registrant's conviction, which was reflected in his immediate custodial sentence of 18 months' imprisonment, the Committee is satisfied that all four sub- particulars of Rule 5 are engaged.
67. Having regard to Rule 5(2)(b), the Committee is also satisfied that the Registrant has:
- brought the profession of pharmacy into disrepute; and
 - he has breached one or more of the fundamental principles of the profession of pharmacy, for example, the expectation that he will behave ethically and professionally including during his personal life and treat people with respect and dignity.
68. Having regard to Rule 5(2)(c), the Committee is also satisfied that the Registrant has failed to act in accordance with the law.
69. Furthermore, having regard to Rule 5(2)(d), the Committee had no doubt that the Registrant's integrity can no longer be relied on.
70. The Committee next turned to consider Rule 5(2)(a), whether the Registrant presents an actual or potential risk to patients or the public.
71. The Committee observed that the Registrant denied the offences at his trial. In his written submissions of 12 January 2025, the Registrant appears to have maintained the stance that he is the victim of a miscarriage of justice at the hands of persons, such as Person B, who, he argued, had themselves committed criminal offences. The Registrant has not shown to this Committee

any sign of understanding the risks of harm to Person A as a consequence of his actions, or the damage caused to public trust and confidence in the profession by his conviction. The Registrant has currently demonstrated no insight into the seriousness of his convictions, nor any empathy whatsoever for Person A.

72. In these circumstances the Committee agrees with the submissions of Mr Schofield on behalf of the Council to the effect that the risk of repetition is in no way diminished today, and the risk of repetition and level of insight go hand in hand. At the criminal trial, the Judge noted that there was '*...not a shred of recognition by [the Registrant] ...of the risks posed to vulnerable persons...*' and there has been no evidence since to show that the Registrant has demonstrated any insight or remorse. As such, the Registrant presents an actual risk to members of the public. In addition, the conviction and immediate imprisonment of the Registrant was considered by the Judge as necessary to protect members of the public. The Committee was satisfied that Rule 5(2)(a) is engaged in this case.
73. The Committee has found that the Registrant has failed to demonstrate that he had considered the impact of his conduct on Person A, her family, other service users, other members of the public or his colleagues. The Committee cannot say with any confidence that the conduct is unlikely to be repeated. Applying the principles set out in the case of Cohen, which are at paragraph 2.15 of the guidance, the Committee considers that the Registrant's conduct which led to the charge indicates a dangerous attitude to the safety of people receiving medication. This attitude has not been remedied or addressed and is not easily remediable or able to be addressed.
74. The Committee therefore finds the Registrant's fitness to practise impaired in relation to the protection of public.

75. Turning to consider the question of impairment in the wider public interest, the Committee held in mind what was said by the court in the case of *CHRE v NMC and Grant* [EWHC] 927 (Admin), that a Committee must consider whether

'...the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances' of the case.

76. The Committee also took into account the principles set out in the case of *Fopma v General Medical Council* [2018] EWHC 714 (Admin), in which it was said that:

'...the tribunal must bear in mind that a key aspect of its overarching aim is to uphold the reputation of the profession. A finding of impairment is the gateway to the jurisdiction to impose sanctions. Put the other way round, a failure to find impairment in any given case, while warnings as to future conduct can still be issued, is tantamount to an indication on behalf of the profession that conduct of the kind in question need not have regulatory consequences. If that, depending on the nature of the conduct in question, would itself be an unacceptable conclusion, then that can in any given case be a sufficient basis in itself to justify or indeed compel a conclusion of impairment.'

77. The Committee considered the nature of the conduct in question, namely a conviction for the unlawful supply of drugs. The Committee had little difficulty in concluding that the public would misconstrue a failure to find impairment in this case as being tantamount to an indication on behalf of the profession that

conduct of the kind in question need not have regulatory consequences. That would be an unacceptable conclusion.

78. The Committee is satisfied that members of the public if they were fully appraised of the facts of this case, would be shocked and surprised if a finding of impairment were not made in this case. Accordingly, the Committee considered that the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.
79. For all the reasons set out above, the Committee finds the Registrant's fitness to practise is currently impaired, both for reasons of protection of the public and in the wider public interest, that is;
- in order to promote and maintain public confidence in the pharmacy professions, and
 - to promote and maintain proper professional standards and conduct for members of those professions.

Decision on Outcome

80. Having found impairment, the Committee went on to consider what was the appropriate, necessary, and proportionate outcome in the circumstances of this case and in the public interest. The Committee had regard to the guidance which sets out that when deciding on outcome, key factors to consider include the public interest and an assessment of mitigating and aggravating factors. The Committee recognised that it should give appropriate weight to protecting the public, maintaining public confidence in the profession, and maintaining proper standards of behaviour.

81. The Committee's powers are set out in Article 54(2) of the Order, as follows:

'If the Fitness to Practise Committee determines that the person concerned's fitness to practise is impaired, it may–

- (a) give a warning to the person concerned in connection with any matter arising out of or related to the allegation and give a direction that details of the warning must be recorded in the person concerned's entry in the Register;*
- (b) give advice to any other person or other body involved in the investigation of the allegation on any issue arising out of or related to the allegation;*
- (c) give a direction that the person concerned be removed from the Register;*
- (d) give a direction that the entry in the Register of the person concerned be suspended, for such period not exceeding 12 months as may be specified in the directions; or*
- (e) give a direction that the entry in the Register of the person concerned be conditional upon that person complying, during such period not exceeding 3 years as may be specified in the direction, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or otherwise in the public interest or in the interest of the person concerned!.*

82. The Committee is required to consider the available outcomes in ascending order taking each available outcome in turn beginning with the least restrictive. In doing so, it should progress incrementally and only consider a more restrictive outcome if it decides that the public would not be fully protected by a less restrictive outcome. The outcomes available are therefore considered in the sequence of outcomes:

- first (a) and only if necessary,
- second, (b) and only if necessary,

- third, (e) and only if necessary,
- fourth, (d) and only if necessary,
- fifth (c).

83. The purpose of the outcome is not to punish a Registrant for their actions leading to the finding of current impairment, although an outcome may regrettably appear to have a punitive effect upon them. This is set out in the guidance at paragraph 5.1 which involves considering:

- the protection of the public,
- the maintenance of public trust and confidence and
- to promote professional standards.

84. The Committee in coming to its decision recognised the need to balance any outcome by reference to fairness to the Registrant, but the priority for the Committee is the protection of the public. Accordingly, less weight attaches to the Registrant's own personal interests which, as a registered pharmacist, must always give way to the public interest where these elements are in opposition.

85. The Committee took into account the written and oral submissions made by Mr Schofield.

Submissions on Outcome

86. Mr Schofield, on behalf of the Council, invited the Committee to make a direction to remove the Registrant's name from the Register. He submitted that only a removal order would adequately protect the public from the unacceptable risks created by the Registrant's current impairment of fitness to practise. Further, it would mark the gravity of the Registrant's actions and the

degree of his departures from the standards and the conduct expected of a registered pharmacist. He said that this was the only available outcome which would, in the circumstances, serve to address the risks which the Registrant continues to present to patients and to the wider public interest including the reputation of, and confidence in, the profession.

87. Mr Schofield submitted that the Registrant had acted in a pre-meditated way which had been sustained and repeated over a number of months. This was shown by the extensive record of WhatsApp messages. He had taken advantage of a vulnerable person. His actions were clandestine, as noted by the sentencing Judge. There was no evidence to support a direct causal link between the Registrant's actions and the tragic death of Person A but the risks of harm that he had exposed her to were self-evident. Money had changed hands. There was a thread running through the case which illustrated the Registrant's deep lack of integrity and a deep-seated attitudinal antipathy with the fundamental tenets of the profession of pharmacist. This all amounted to a significant breach of the trust placed in a Superintendent Pharmacist. In conclusion, the Registrant's actions showed a flagrant and purposeful disregard for professional regulation. His actions were fundamentally incompatible with continued registration. A removal direction was, Mr Schofield submitted, the only realistic option.

88. In Mr Schofield's submissions, he submitted that the following were relevant aggravating features in this case:

- a. The Registrant maintained a plea of not guilty at the trial. He maintained his position in his written submissions to the Committee of 12 January 2025. Accordingly, he has shown a fundamental lack of insight throughout the police investigation, and the Council's investigation, and in this process;

- b. The supply of controlled and addictive drugs to Person A without a valid prescription over a prolonged period of time; and
- c. The risks of harm to Patient A.

89. In terms of mitigating features, Mr Schofield submitted that it could be said that there was no prior fitness to practise history over a lengthy career. The Registrant's first registration was in 1978. The Registrant had not sought to frustrate the regulatory process and had engaged consistently with the Council although he had decided not to attend the hearing.

The Committee's decision

90. The Committee first considered what, if any, aggravating and mitigating factors there may be.

91. The Committee identified the following aggravating factors:

- The Registrant's conduct was at the high end of seriousness for which he received a criminal conviction in the Crown Court and was immediately sentenced to a term of 18 months' imprisonment.
- The conduct was repeated over a prolonged period.
- The exchanges were conducted in a clandestine manner to conceal his actions from others.
- There was a serious breach of position of trust.
- There was financial gain.
- His conduct presented a serious risk of harm to a vulnerable person, which would have been known to him.

- The Registrant had shown no real insight into the extent of his failures and the impact they had on the safety of the public and on public trust and confidence.
- The Registrant had still offered no apology to Person' A's family or expression of remorse for his actions. Instead, the Registrant had repeated his defence that had been rejected by a jury. He criticised the police enquiry and that of the Council. He still sought to blame others.
- The conduct was premeditated as evidenced by the lengthy exchanges of WhatsApp messages.
- The Registrant's actions created the potential for serious harm to the public and a significant degree of loss of public trust and confidence in the profession.

92. In relation to mitigating factors, the Committee noted that the Registrant had no previous regulatory findings against him over a 45-year long career. He had engaged with the process.

93. The Committee also took into account, in determining the appropriate outcome, that the Registrant has not provided any reflections in relation to the impact of his conduct on Person A, or her family, or the wider public. There was no expression of recognition of the effect that his conviction must have on confidence in his profession of pharmacy.

94. The Committee had regard to the principles of proportionality and weighed the interests of the public against those of the Registrant. It took into account the principles set out in the case of *Bolton v Law Society* (1994) 1 WLR 512 CA (Civ) in which it was said that:

'The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.'

95. The Committee had regard to the guidance which set out key factors for it to consider at paragraph 5.2. All of the factors were taken into account, but prominent among them for the Committee's decision was the grievous extent to which the Registrant had breached the standards, as set out above.
96. In respect of the circumstances of the Registrant's conduct, this was not an isolated or one-off event as shown by the substantial number of WhatsApp exchanges available to the Committee. This was an abuse of trust placed in the Registrant and an abuse of his professional position. There was a measure of financial gain by him in selling the drugs surreptitiously.
97. In respect of the Registrant's behaviour and attitude, the Committee was satisfied that he had not shown any real remorse and had not offered any apology. There is no evidence of any real insight on the Registrant's part. His written submissions of 12 January 2025 did not exhibit the required honesty and openness.
98. In respect of the Registrant's insight and remediation, there was no evidence that the Registrant had accepted and understood what he should have done differently. There was no commitment by him to take effective steps to avoid any repeat of his actions.
99. There were no testimonials supplied to the Committee on behalf of the Registrant.

100. In regard to the Registrant's actions, the Committee was satisfied that the Registrant had thought clearly about the illicit nature of his transactions with Person A. He had taken steps to conceal his activities and had arranged for transactions to take place secretly and outside of (although close by) the pharmacy. There was repeated conduct in at least 5 such transactions having taken place and he had taken advantage financially of a vulnerable person.
101. The Committee next turned to consider the outcomes available to it in ascending order of severity.

Take no Action

102. The Committee first considered whether it would be appropriate to take no action. However, it was of the view that this outcome would not be sufficient to reflect the seriousness of this case and protect the public from the continuing serious risk. It would not sufficiently protect the public who might otherwise place trust in the Registrant as a professional person. Moreover, it would not protect the wider public interest by sending out a message to the profession and the public that the Registrant's conduct has breached the professional standards expected of a registered pharmacist.

Warning

103. The Committee next considered whether issuing a warning would be appropriate but it decided that, for the same reasons as above, a warning would not sufficiently mark the seriousness of the Registrant's conviction. Neither would it serve to restore public trust and confidence in the pharmacist profession.

Conditions of Practice

104. The Committee next considered the imposition of conditions of registration. A conditions of registration order would allow the Registrant to practise albeit with restrictions. The Committee had to determine whether a conditions of registration order would be appropriate given the concerns identified regarding the Registrant's actions while in practice. In particular, whether conditions would protect the public from harm, be sufficient to mark the seriousness of the matter so as to maintain public confidence in the Registrant, the profession and the Regulator, and sufficient to promote professional standards within the profession.
105. The Committee recognised that if conditions are to be imposed, the conditions must be relevant and proportionate to the concerns identified regarding the Registrant's practice. Conditions must be workable and susceptible to being monitored. The Committee must also be satisfied that the Registrant will comply with any conditions imposed. The Council's guidance states that conditions may be appropriate where there is evidence of poor performance or of significant shortcomings in a Registrant's practice.
106. The Committee concluded that conditions would not be appropriate or relevant in this case since the Particulars of Allegation involves a serious criminal conviction which depended on his misuse of his professional registration. The lack of insight and expressions of remorse were highly material to whether the Committee could have confidence that the Registrant would respect and remain within the bounds of any conditions which the Committee might contemplate. In any event, the Committee considered that the Registrant's actions reflected a deep-seated fundamental attitude of disregard to the limitations under which pharmacists must practice in order to keep the public safe and to justify the public's trust and confidence. In such circumstances, any conditions which the Committee could devise would be so restrictive as to be unworkable in practice.

107. In any event, the Committee considered that an order for conditions would not be sufficient to mark the seriousness of the matter so as to maintain public confidence in the profession and the Regulator.

Suspension Order

108. The Committee next considered whether suspension would be a proportionate outcome. The Council's guidance 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. [It may also be appropriate] [w]hen it is necessary to highlight to the profession and to the public that the conduct of the professional is unacceptable and unbecoming a member of the pharmacy profession. Also, when public confidence in the profession demands no lesser sanction.'

109. The Committee took into account the Registrant's criminal sentence, as set out in the Certificate of Conviction. It bore in mind that the Registrant had served an 18 months' custodial sentence which began on 13 December 2022. That sentence had now concluded and so the conventionally expected bar on a return to practise until the criminal sentence had satisfactorily been completed did not act as an impediment to the Registrant's return to practise in this case. However, the Committee considered that there was no evidence available to it to suggest that the criminal sentence had the effect of prompting the Registrant to begin to earn back his good standing, once released from prison. The Committee considered that the deep-seated attitudinal issues demonstrated by the Registrant were difficult to remediate.

110. The Committee did not consider that a suspension, even for the maximum period available of 12 months, would satisfy the need to adequately mark the seriousness of the Registrant's conviction, and the Registrant's serious breaches of personal and professional standards which it represented. A direction to suspend would not be sufficient, in the Committee's view, to send out a clear message, both to practitioners and to the public, of the gravity of the findings in this case.

Removal Order

111. The Committee next considered whether this case was one in which the most serious outcome, that of a direction for removal, was appropriate and proportionate. The guidance states that removal is '*reserved for the most serious conduct*' and that it should be considered '*when the Registrant's behaviour is fundamentally incompatible with being a registered professional*'..
112. The Committee considered that the Registrant had demonstrated clearly by his actions and lack of remediation that his integrity could no longer be relied upon. His actions and his attitude as shown in his lack of insight and remediation or apology were those of a person whose fundamental attitudes were at odds with continued professional registration. This was a serious case that called for an outcome which was appropriate and proportionate to the degree of departure from professional standards and the impact on the statutory objective of public protection.
113. The Committee was in no doubt that the public would consider a person subject to an immediate 18-month custodial sentence imposed by the criminal court to be an entirely unsuitable person to remain on the Register. The public would be appalled if this Committee were to impose any lesser outcome than removal. For all of these reasons, the Committee concluded that no other

outcome would sufficiently protect the public, support the trust and confidence in the profession of pharmacist held by the public and declare and uphold standards for pharmacists.

114. The Committee therefore decided to give a direction that the Registrant's entry in the Register be removed.

115. The Committee hereby revokes the Interim Order of suspension which was in place in respect of the Registrant.

Decision on Interim Measure

116. Mr Schofield, on behalf of the Council, made an application for an interim measure of suspension to be imposed on the Registrant's registration, under Article 60 of the Pharmacy Order 2010 pending the coming into force of the Committee's substantive order. He submitted that such a measure was necessary to protect the public and, separately, was also in the public interest.

117. The Committee carefully considered the Council's application. It took account of the fact that its decision to order the removal of the Registrant's name from the register will not take effect until 28 days after the Registrant is formally notified of the outcome, or until any appeal is concluded. As a result, there would be no order in place to protect the public pending the removal direction coming into effect. The Committee also took into account the Council's guidance.

118. The Committee found that for the reasons already provided above, the necessary, appropriate and proportionate order was a direction for removal of the Registrant from the Register. In particular, the Committee noted the nature

and serious circumstances of this case, the criminality of the Registrant, his lack of integrity, and his breach of a number of the standards. It found that there remains, among other concerns, a risk of repetition by the Registrant. The Committee is satisfied that it is therefore necessary for an interim measure of suspension to be in place from today's date, both because it is necessary to protect the public who might otherwise place trust in the Registrant as a professional person, and also in the public interest, to uphold proper professional standards and maintain confidence in the profession and the Regulator.

119. The Committee therefore hereby orders that the entry of the Registrant in the register be suspended forthwith, both on grounds of public protection and in the public interest, pending the coming into force of the substantive order.

120. That concludes this determination.