

General Pharmaceutical Council

Fitness to Practise Committee

Principal Hearing

Remote videolink hearing

Monday 17- Tuesday 18 February 2025

Registrant name:	Robert Davies
Registration number:	2019028
Part of the register:	Pharmacist
Type of Case:	Misconduct
Committee Members:	Neville Sorab (Chair) Jignesh Patel (Registrant member) Joanne Hird (Lay member)
Committee Secretary:	Adam Hern
Registrant:	Not present and not represented
General Pharmaceutical Council:	Represented by Tom Daniel, Counsel
Facts proved:	1, 3, 4, 5
Facts proved by admission:	None
Facts not proved:	2
Fitness to practise:	Impaired
Outcome:	Suspension – 1 month
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 19 March 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)

You, a registered pharmacist, at the relevant time

Whilst working as a locum pharmacist at Knights Willaston Pharmacy, Neston Road, Willaston, Wirral, Merseyside, CH64 2TL on 20 January 2023,

- 1. received a telephone call from Patient A to discuss her prescription, and during the call you referred to her as a “nutter”; OR in the alternative*
- 2. used the word nutter within the hearing of Patient A*
- 3. when challenged by Patient A, you denied use of the word “nutter”*
- 4. your behaviour in particular 3 amounted to a breach of the duty of candour and / or a lack of integrity in that you knew you had referred to her as a “nutter”*
- 5. when asked by Patient A if you were going to apologise you declined to do so*

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

Documentation

Document 1- Council hearing bundle

Document 2- Council skeleton

Document 3- Council Proof of Service bundle

Document 4- Proceeding in Absence Bundle

Document 5- Audio recordings of two telephone calls on 20 January 2023

Document 6- Unused Material Bundle

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. Outcome – the Committee considers what, if any, outcome 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 2 January 2025 from the Council headed “*Notice of Hearing*” sent by email to the Registrant. The Notice of Hearing was sent more than 28-days prior to the commencement of the hearing, stated the date, time and venue of the hearing, and also contained the finalised particulars of the allegation. The Notice of Hearing was sent to the email address registered for the Registrant at the Council. The Committee was satisfied that there had been good service of the Notice in accordance with Rules 3 and 16.

Application to proceed in the absence of the Registrant

7. The Registrant was not in attendance at this hearing, nor was someone attending on their behalf. The Committee heard submissions from Mr Daniel, on behalf of the Council, to proceed in the absence of the Registrant under Rule 25, on the basis that:
 - a. There has been good service;
 - b. Significant efforts have been made from the Council to engage the Registrant;
 - c. The Registrant has expressly told the Committee Secretary, via telephone on 14 February 2025, that he will not attend the Principal Hearing. The Registrant has voluntarily absented himself;
 - d. No adjournment has been sought by the Registrant and, in any case, an adjournment would not secure the attendance of the Registrant; and
 - e. It is in the public interest to proceed in the absence of the Registrant.
8. The Committee decided to proceed in the absence of the Registrant for the following reasons:
 - a. The Committee has found good service of the Notice. The Registrant is aware of today's proceedings and has expressly stated that he will not attend. The Committee has therefore considered that the Registrant has chosen to voluntarily absent themselves from this hearing.
 - b. There was no information to suggest an adjournment would result in the Registrant's attendance in future.
 - c. There is a public interest in the expeditious disposal of cases.

Preliminary matter – part of the hearing to be heard in private

9. The Committee was cognisant that the audio recording of the two telephone calls from 20 January 2023 (the "Recordings") have Patient A's name and also her voice, from which she may be recognisable. The Committee considered that it was minded to, subject to the representations of the parties, hear the Recordings in private, pursuant to Rule 39(3). This was due to the Recordings making Patient A's identity known, which in turn, could exacerbate Patient A's health concerns. The Committee considers this can outweigh the public interest to hear the Recordings in public.
10. On behalf of the Council, Mr Daniel did not oppose the approach of the Committee to hear the Recordings in private for the same reasons as set out by the Committee. The Registrant was not present to make submissions on this matter.
11. Consequently, the Committee decided, pursuant to Rule 39(3), to hear the Recordings in private given the Recordings make Patient A's identity known, which in turn, could exacerbate Patient A's health concerns.

Application to amend the particulars of allegation

12. The Committee, of its own motion, was minded to amend the stem of the allegations to remove the word "*Thursday*", so the stem of the allegations would read: (removals in strikethrough): "*Whilst working as a locum pharmacist at Knights Willaston Pharmacy, Neston Road, Willaston, Wirral, Merseyside, CH64 2TL on ~~Thursday~~ 20 January 2023*". The Committee considered that amendment would not prejudice the fairness of the proceedings as:
 - a. 20 January 2023 was a Friday and the amendments of the removal of the day would correct a typographical error and make the allegations clearer; and
 - b. The amendment is not a substantive change to the allegations, as nothing materially turns on the date of the allegations.
13. Through Mr Daniel, the Council did not oppose the amendment. Mr Daniel submitted that along with the point made by the Committee:
 - a. The parties agree that the allegations occurred on 20 January 2023;
 - b. The date of the allegations was received from the Pharmacy's systems; and
 - c. There was an issue concerning the date of the allegations early on in the investigation. The date in the allegations was changed from 19 January 2023 to 20 January 2023, but it may be that the word "*Thursday*" was not removed.
14. The Registrant was not present to make submissions on this matter. The Registrant, in his call with the Council on 20 May 2024, noted that "*the allegation is wrong as the incident occurred on 20 January 2023 and not 19 January 2023*".
15. Consequently, the Committee amended the stem of the allegation for the reasons set out in paragraphs 12-14 above.

Background

16. On 20 January 2023, the Registrant was working as a locum pharmacist at Knights Willaston Pharmacy ("the Pharmacy").
17. Patient A, who suffered from chronic PTSD and chronic anxiety, was having difficulty in securing her prescription medication. She called the pharmacy to query this and it appears the problem was as a result of finding her surname on the system. The Committee has been provided with a recording of this call ("Call Recording 1").
18. During a second phone call, Patient A was passed over to the Registrant. In general terms, Patient A was complaining at the level of service she had received. The Registrant was put on notice during the call by Patient A that she was suffering with her mental health. It is alleged that, during this telephone call, the Registrant used the

term “*nutter*”. When challenged by Patient A, the Registrant denied calling Patient A a “*nutter*”. At 4 minutes and 39 seconds into the phone call, Patient A asked if the Registrant was going to apologise, and he declined to do so. The Committee has been provided with a recording of this call.

19. Peter Horrocks, who at the material time was the Superintendent Pharmacist, has provided a log to prove that the Registrant was on duty that day and Mr Horrocks recognised the Registrant’s voice from the recording (“Call Recording 2”).

Evidence

20. The Committee has been provided with Call Recording 1 and Call Recording 2.
21. The Committee received evidence, both written and in person at the Principal Hearing, from Mr Horrocks who stated the following:
 - a. He provided Call Recording 2, which took place on 20 January 2023, to the Council. Mr Horrocks further states:
 - i. *“within this call recording [the Registrant] is heard to use the work ‘nutter’ at 3 minutes and 5 seconds into the recording.”*
 - ii. *“When I listened to [Call recording 2], I was already aware that [the Registrant] had been the [Responsible Pharmacist] on 20 January 2023, but immediately recognised his voice, when he spoke to the patient. I can therefore confirm that it was [the Registrant] who spoke to the patient on 20 January 2023 and during this conversation used the word, ‘nutter’.”* This was confirmed by Mr Horrocks in his oral evidence.
 - b. He provided a copy of the Responsible Pharmacist Log from the Pharmacy for 20 January 2023. The Responsible Pharmacist Log provides information that the Registrant was the Responsible Pharmacist at the Pharmacy on 20 January 2023 between 0910 hours and 1815 hours.
 - c. He provided Call Recording 1, which took place in the morning of 20 January 2023, to the Council.
 - d. The Registrant was the locum Pharmacist at the Pharmacy on 20 January 2023.
 - e. He conducted an investigation into the allegations, but cannot recall whether he spoke to other staff of the Pharmacy who were present and around when the phone call took place.
 - f. He took the decision that he was not happy with the Registrant to continue to locum at the Pharmacy.
22. The Committee has had sight of an email from Cameron Peberdy to the Council dated 12 January 2024 in which he confirms reviewing the transcript of Call Recording 2 and sets out:

“Whilst I am not able to say with 100% certainty that the transcript is of my conversation without hearing the call itself, I do believe that it is highly unlikely that anybody other than myself would have identified themselves as the 'pre-reg' in the pharmacy on the date in question. You should now have a clearer idea having heard my voice on the phone this week.

With the incident in question being almost 12 months ago I really can't remember specifics about this case. At the time I was probably answering the phone maybe 30-40 times per day, I do not even remember the patient name. I won't be able to offer any more details of the incident without speculation.

I do not recall ever hearing [the Registrant] call the patient a 'nutter'. Had I been in earshot I'm sure this is something that would be memorable, though there is a good chance I would have handed the phone over and got on with work in our busy pharmacy.”

23. In a telephone call with the Council on 17 May 2024, the Registrant is recorded as saying that:
 - a. he is now retired.
 - b. The incident was a problem that had started on the Thursday and which he came in on the tail end of; it all started from a mix up the day before.
 - c. [Patient A] had reduced one of the dispensers to tears as they could not get a word in to explain what had happened.
24. In a telephone call with the Council on 20 May 2024, the Registrant is recorded as saying that the use of the word “nutter” was not directed at Patient A, but he was speaking to member of the pharmacy team about something else.
25. In an email to the Council on 29 May 2024, the Registrant set out that:

“the patient called into the pharmacy Thursday evening. Her prescription had been dispensed and was ready. For some reason it was not given to her. On the Friday morning the dispenser who took her first call could not access her records due to confusion over her surname. The dispenser was not happy with the way she was being spoken to and put the phone down on the patient. This call is not included in the package you sent to me. During her second call the patient over heard the word nutter and assumed it referred to herself; it was actually directed at the dispenser who was still trying to access the correct patient's record. None of the people involved in the phone conversations on Friday have been interviewed by Knights to give their versions of the events. I have had over 52 years of unblemished service in community pharmacy and would never treat a patient in the way suggested.

The patient also states that she always had problems with Willaston pharmacy and indeed had she been properly attended to and given her meds

on the Thursday evening then none of this awful trauma would have happened.”

Decision on Facts

26. 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.
27. In reaching its decisions on facts, the Committee considered the documentation listed at the start of this determination, and the submissions made by the Council.
28. Having seen a copy of the Responsible Pharmacist Log from the Pharmacy for 20 January 2023, the Committee finds that, on 20 January 2023, the Registrant was the Responsible Pharmacist at the Pharmacy. The letter from the Pharmacy to Patient A sets out that the Registrant was a locum pharmacist. There is no evidence to dispute this. Further, Mr Horrocks provided evidence that the Registrant was the locum pharmacist at the Pharmacy on 20 January 2023. Therefore, the Committee considers that the Registrant was working as a locum pharmacist at the Pharmacy on 20 January 2023.
29. Call Recording 2 was a call from Patient A to the Pharmacy. Mr Horrocks provided evidence that it was the Registrant to whom Patient A spoke about her prescription, following her chat with the pre-reg pharmacist. In his email to the Council on 24 May 2024, the Registrant sets out that he spoke to Patient A in Call Recording 2. Therefore, the Committee considers that in Call Recording 2, the Registrant received a telephone call from Patient A to discuss her prescription.
30. The Committee has heard Call Recording 2. At 3 minutes and 6 seconds, the Registrant is heard to say *“nutter, yeah”*. Although he denied calling Patient A a *“nutter”* on two occasions during Call Recording 2 (at 3 minutes and 20 seconds and 5 minutes and 24 seconds), in his email to the Council on 24 May 2024, the Registrant set out: *“During her second call the patient over heard the word nutter and assumed it referred to herself; it was actually directed at the dispenser who was still trying to access the correct patient's record.”* The Committee, therefore, considers that the Registrant used the word *“nutter”* during Call Recording 2.

Allegation 1: The Registrant received a telephone call from Patient A to discuss her prescription, and during the call he referred to her as a “nutter”

31. As set out above, the Committee has found that the Registrant spoke to Patient A to discuss her prescription whilst working at the Pharmacy on 20 January 2023, and during this call, he said *“nutter, yeah”*. The Committee considers, on a balance of probabilities, that the Registrant was referring to Patient A for the following reasons:

- a. The Committee has determined that the context behind the use of the term “*nutter*” indicates that the term was directed towards Patient A. In particular:
 - i. Patient A was raising a complaint, which she continues with once the Registrant tells her that her medication is ready.
 - ii. Patient A is not accepting what the Registrant is telling her.
 - iii. As provided by the Registrant in a telephone call with the Council on 17 May 2024:
 1. the incident was a problem that had started on the Thursday and which he came in on the tail end of; it all started from a mix up the day before.
 2. [Patient A] had reduced one of the dispensers to tears as they could not get a word in to explain what had happened.

The Committee considers that this context would have likely frustrated the Registrant into directing the term “*nutter*” towards Patient A.

- b. The Committee has given limited weight to the Registrant’s claim that the term “*nutter*” “*was actually directed at the dispenser who was still trying to access the correct patient’s record*”. This is because:
 - i. During the call, the Registrant denied calling Patient A a “*nutter*” on two occasions during Call Recording 2 (at 3 minutes and 20 seconds and 5 minutes and 24 seconds). The Committee considers that if the term was directed toward the dispenser, the Registrant would have likely explained the situation to Patient A, especially when she requested an apology.
 - ii. The Registrant’s explanation was received approximately four months after the incident, rather than provided at the time of the use of the term “*nutter*”, or soon thereafter.
32. The Committee is not assisted by the lack of investigation into the context surrounding the use of the term “*nutter*” by the Registrant. The Committee has received limited information before it from others working at the Pharmacy when the phone call took place. Mr Peberdy sets out that “*I do not recall ever hearing [the Registrant] call the patient a ‘nutter’. Had I been in earshot I’m sure this is something that would be memorable*”. Mr Peberdy does not mention the Registrant using the word “*nutter*” in any other context. The Committee considers Mr Peberdy’s evidence of limited value as he did not hear the word “*nutter*”, when it has been found that the Registrant did use the word “*nutter*”. The Committee has not received any information from anyone else working at the Pharmacy during the call between the Registrant and Patient A on 20 January 2023.
 33. Consequently, the Committee finds, on a balance of probabilities, allegation 1 found proved.

Allegation 1 is found proved

Allegation 2 [as an alternative to allegation 1]: The Registrant used the word nutter within the hearing of Patient A

34. Given allegation 1 is found proved, and allegation 2 is pleaded in the alternative to allegation 1, the Committee considers that allegation 2 does not need to be considered by the Committee.

Allegation 2 is found not proved

Allegation 3: when challenged by Patient A, the Registrant denied use of the word "nutter"

35. The Committee has heard Call Recording 2. When challenged by Patient A, the Registrant denies use of the word "nutter" on two occasions:
- a. At 3 minutes and 20 seconds:
 - i. Patient A: "Did you just call me a nutter?"
 - ii. Registrant: "No, I'm sorry, I didn't."
 - b. At 5 minutes and 24 seconds:
 - i. Patient A: "You fully understand and then you do decide to call me a nutter"
 - ii. Registrant: "I didn't do that, I'm sorry."
36. Consequently, the Committee finds allegation 3 proved.

Allegation 3 is found proved

Allegation 4: The Registrant's behaviour in particular 3 amounted to a breach of the duty of candour and / or a lack of integrity in that the Registrant knew he had referred to Patient A as a "nutter".

37. The case of Wingate v Solicitors Regulation Authority [2018] EWCA Civ 366 sets out:
- "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse."*
38. The Committee has found that when challenged by Patient A, the Registrant denied use of the word "nutter". However, the Committee has also found that the Registrant

used the word “*nutter*” in a telephone call with Patient A, which referred to Patient A as a “*nutter*”. Further, the Registrant admitted in May 2023, on two occasions, that he used the word “*nutter*” in this phone call with Patient A, but provided context in which he did so.

39. Consequently, the Committee considers that the Registrant’s behaviour in allegation 3 amounted to a breach of the duty of candour and a lack of integrity in that the Registrant knew that he had referred to Patient A as a “*nutter*”.

Allegation 4 is found proved

Allegation 5: when asked by Patient A if he was going to apologise, the Registrant declined to do so

40. The Committee has heard Call Recording 2. When asked by Patient A if he was going to apologise, the Registrant declined to do so on two occasions:

a. At 4 minutes and 38 seconds:

- i. Patient A: *“But there is no apology”*
- ii. Registrant: *“[Nervous laughter] You asked if it’s ready, and it is ready for you.”*

b. At 4 minutes and 51 seconds:

- i. Patient A: *“But you’re not going to apologise [...] You fully understand and then you do decide to call me a nutter”*
- ii. Registrant: *“I didn’t do that, I’m sorry.”*

41. Consequently, the Committee finds allegation 5 proved.

Allegation 5 is found proved

Submissions on Grounds and Impairment

42. Having found particulars of allegation proved, the Committee went on to consider whether the allegations amounted to misconduct and, if so, whether the Registrant’s fitness to practise is currently impaired.

43. In relation to the misconduct, on behalf of the Council, Mr Daniel submitted that:

- a. It is clearly misconduct for a pharmacist to either refer to a person with mental health difficulties as a “*nutter*” or even to make such a reference within her hearing.

- b. Such language is likely to be extremely distressing for a vulnerable person and to provoke an adverse reaction. In this case, Patient A reacted badly, which was foreseeable.
 - c. The context is important, as the Patient was calling their pharmacy to chase up their medication as she was struggling with her mental health.
 - d. Mental health can amount to a “Protected Characteristic” under the Equality Act 2010. This conduct falls squarely within “*attitudes or behaviour from which that person can reasonably expect to be protected*”, as set out in Article 51(2) of the Order.
 - e. The Registrant’s particularised conduct breached the following standards of the Standards for pharmacy professionals dated May 2017 (“Standards”):
 - i. Standard 1 – Pharmacy professionals must provide person-centred care.
 - ii. Standard 3 – Pharmacy professionals must communicate effectively.
 - iii. Standard 5 – Pharmacy professionals must use their professional judgement.
 - iv. Standard 6 – Pharmacy professionals must behave in a professional manner.
 - v. Standard 8 – Pharmacy professionals must speak up when things go wrong.
 - vi. Standard 9 – Pharmacy professionals must demonstrate leadership.
44. In relation to impairment, on behalf of the Council, Mr Daniel submitted that:
- a. The Registrant’s denial to Patient A seemingly caused her to doubt what she had heard. This compounded the severity of the incident.
 - b. The circumstances of this case illustrate a breach of the standards expected of pharmacy professionals and brings the profession of pharmacy into disrepute. As such, a finding of impairment is necessary to ensure that public confidence in the profession is maintained. The Registrant failed to adhere to the ethical standards of his own profession or of society more generally.
 - c. The Registrant’s actions are such a departure of the standards expected of a pharmacy professional. Confidence in the profession would be undermined if the public came to learn that, in light of these actions, a pharmacy professional was permitted to remain on the Register without any restriction or censure.
 - d. In order to uphold the standards and ensure the public interest is met, the Committee should make a finding of current impairment of the Registrant’s fitness to practise.
45. The Registrant was not present to make submissions on grounds and impairment.

Decision on Grounds

46. 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).
47. 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.”
48. 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.*”
49. The Committee considers that the following actions of the Registrant fall short of what would be proper in the circumstances, and would be regarded as deplorable by fellow practitioners:
 - a. Calling Patient A a “*nutter*”, especially when he was on notice that Patient A suffered with her mental health.
 - b. Denying calling Patient A a “*nutter*” when the Registrant was asked whether that is what he said, knowing that he had called Patient A a “*nutter*”.
 - c. Declined to apologise to Patient A after calling her a “*nutter*”.
50. 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)*).
51. 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 1 – Pharmacy professionals must provide person-centred care. In particular:
 - i. Respect and safeguard the persons dignity. The Registrant called Patient A a “*nutter*”, when he was on notice that Patient A suffered with her mental health. The Registrant showed Patient A a lack of respect and did not safeguard her dignity.

- ii. Consider the impact of their practice on patients. It does not appear that the Registrant considered the impact of calling Patient A a “*nutter*” on Patient A, especially when he was on notice that Patient A suffered with her mental health.
 - b. Standard 6 – Pharmacy professionals must behave in a professional manner. In particular:
 - i. Are polite and considerate, and show empathy and compassion. By calling Patient A a “*nutter*”, and denying an apology to Patient A when one was requested, the Registrant was not being polite and considerate.
 - ii. Are trustworthy and act with honesty and integrity. The Registrant did not act with honesty and integrity when he denied calling Patient A a “*nutter*” when he knew he did.
 - iii. Treat people with respect and safeguard their dignity. The Registrant failed to do so towards Patient A for all the reasons set out in paragraph 49.
 - c. Standard 8 – Pharmacy professionals must speak up when things go wrong. In particular:
 - i. Are open and honest when things go wrong. The Registrant was not open and honest when he denied calling Patient A a “*nutter*” when he knew he did.
 - ii. Say sorry, provide an explanation and put things right when things go wrong, and reflect on feedback or concerns. The Registrant failed to do so when he denied an apology and failed to provide an explanation for his actions to Patient A when requested.
 - d. Standard 9 – Pharmacy professionals must demonstrate leadership. In particular, lead by example. The Registrant was the Responsible Pharmacist at the Pharmacy where other members of staff, most of whom would have been junior to him, were present. Calling a patient a “*nutter*” in a place where he could have been overheard, does not demonstrate how a pharmacist or a person working in a pharmacy should behave.
- 52. 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)).
- 53. Accordingly, the Committee concluded that, in its judgement, the grounds of misconduct are established.

Decision on Impairment

54. 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.
55. At the outset, the Committee considered the Registrant's insight and remediation.
56. The Committee considers that the Registrant has shown no insight, given:
 - a. Although the Registrant has provided an explanation for his actions – that the term “*nutter*” was directed to a Pharmacy staff member – he has not provided any reflection on the impact of using that word in a pharmacy, within earshot of patients and other members of staff.
 - b. There is no reflection on how his actions impacted upon Patient A.
 - c. There is no reflection on how his actions impact upon the pharmacy profession and those around him.
 - d. The Registrant has not provided a formal apology.
57. The Committee considered that the Registrant has not completed any remediation, given it has not seen any evidence of remediation.
58. 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 presents an actual or potential risk to patients or to the public

59. The Committee considers that the Registrant's conduct and behaviour presented an actual risk of harm to patients given the actual harm his comments had on Patient A. At 4 minutes and 20 seconds in Call Recording 2, after explaining that she is suffering from anxiety, Patient A tells the Registrant: “*Number 1, ask for you to be more respectful. Or number 2, I'm going to have to ask my doctors to transfer my prescriptions to somewhere; I'm not going to be able to be treated like that.*”
60. Given the lack of insight and remediation completed by the Registrant, as set out in paragraphs 56 and 57 above, 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.

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

61. The Committee considered that the Registrant's misconduct has brought the profession of pharmacy into disrepute on the basis of his actions detailed in paragraph 49 above, and the consequent complaint raised. The impact of the Registrant's actions has brought damage to the pharmacy profession and also to the Pharmacy itself, given that Patient A has taken her custom elsewhere.
62. Given the lack of insight and remediation completed by the Registrant, as set out in paragraphs 56 and 57 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 has breached one of the fundamental principles of the profession of Pharmacy

63. The Committee considered that the Registrant's conduct and behaviour has breached more than one of the fundamental principles of the profession of pharmacy, namely the failure to treat everyone with respect and dignity, a lack of integrity, and a failure to apologise, especially where the patient in question was vulnerable.
64. Given the lack of insight and remediation completed by the Registrant, as set out in paragraphs 56 and 57 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 shows that the integrity of the Registrant can no longer be relied upon

65. The Committee considers that the Registrant's actions in denying calling Patient A a "nutter" when he did, demonstrates a lack of integrity. Given the lack of insight and remediation completed by the Registrant, as set out in paragraphs 56 and 57 above, the Committee considers that the Registrant's conduct or behaviour shows that the integrity of the Registrant can no longer be relied upon.

Committee's conclusion on impairment

66. In light of the above, the Committee considered the Registrant's fitness to practise to be impaired on the personal element.
67. Further, members of the public would be appalled to learn that a pharmacist had conducted the actions set out in the proven allegations. 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.

Outcome

68. Having found impairment, the Committee has gone on to consider the matter of outcome. The Committee's powers are set out in Article 54(2) of the Pharmacy Order 2010. The Committee should consider the available outcomes in ascending order from least restrictive, take no action, to most restrictive, removal from the register, in order to identify the appropriate and proportionate outcome that meets the circumstances of the case.
69. The purpose of the outcome is not to be punitive, though an outcome may in fact have a punitive effect. The purpose of the outcome 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.
70. 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.
71. On behalf of the Council, Mr Daniel submitted:
 - a. The following are to be considered as aggravating factors:
 - i. The Patient was vulnerable;
 - ii. The Registrant was aware of her vulnerability;
 - iii. The Registrant denied his actions to the Patient;
 - iv. The Registrant's denial caused a vulnerable patient to question herself; and
 - v. The Registrant refused to apologise.
 - b. A mitigating factor is that the Registrant has no previous fitness to practise concerns.
 - c. That a warning would be insufficient to mark the seriousness of the misconduct and impairment.
 - d. Conditions of registration would be insufficient to mark the seriousness of the misconduct and impairment. In any case, as the Registrant has retired, conditions of registration would not be workable.
 - e. A suspension of at least 3 to 4 months is necessary and proportionate. The outcome imposed should reflect the importance of the public interest and the need to maintain proper professional standards.
72. The Registrant did not attend to give evidence or provide oral submissions in relation to outcome.
73. The Committee agreed with the aggravating and mitigating factors set out by Mr Daniel at paragraph 71 above.

74. The Committee considers that the Registrant’s proven misconduct, coupled with the lack of insight and remediation, makes taking no action or imposing a warning insufficient to protect the public. Further, these outcomes 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.
75. The Committee next considered the imposition of conditions of registration on the Registrant. The Committee did not consider that conditions would be workable given:
- a. the Registrant’s retirement from the pharmacy profession making conditions unenforceable; and
 - b. no relevant or proportionate conditions could be formulated to mitigate risk from the Registrant repeating his misconduct, given his lack of insight and 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.
76. The Committee next considered whether suspension would be a proportionate outcome. 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.”*
77. The Committee considered that a suspension, for a period of one month, is appropriate and proportionate to mark the seriousness of the Registrant’s actions, namely:
- a. Calling Patient A a “nutter”, especially when he was on notice that Patient A suffered with her mental health.
 - b. Denying calling Patient A a “nutter” when the Registrant was asked whether that is what he said, knowing that he had called Patient A a “nutter”.
 - c. Declined, when given the opportunity, to apologise to Patient A after calling her a “nutter”.
78. The Committee considered that, although the Registrant has a lack of insight and remediation, this can be developed should the Registrant wish to do so. The Committee considered that any future committee reviewing the suspension would be assisted by the following actions from the Registrant:

- a. A submission of a reflective piece in which the Registrant demonstrates his understanding of the impact of his actions (as set out at paragraph 77), on patients, the Pharmacy and the wider pharmacy profession. The reflective piece should also set out why the Registrant considers he fell short of the Council's relevant Standards for Pharmacy Professionals (May 2017).
 - b. A letter of apology to Patient A, provided through the Council.
 - c. That he undertakes, and provides evidence of, relevant training to the allegations, which may include areas such as:
 - i. Non-discrimination;
 - ii. Leadership; and
 - iii. A pharmacist's duty of candour.
79. The Committee considers that the recommended actions as set out at paragraph 78 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 one month would give the Registrant sufficient time to complete the recommended actions as set out at paragraph 78 above.
80. The Committee considered removal of the Registrant to be unnecessary and disproportionate. Removal would deprive the public of a pharmacist whose misconduct is remediable.
81. The Committee therefore directs that the Registrant is suspended from the Council's Register for a period of one month.

Decision on Interim Measure

82. The Committee informed Mr Daniel that it was minded to impose interim measure of suspension 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. The Committee considered that an interim measure would be consistent with the substantive order imposed by the Committee. Mr Daniel did not oppose the consideration of the Committee.
83. The Committee took account of the fact that its decision to suspend the Registrant from the Council register will not take effect until 28 days after the Registrant is formally notified of the outcome, or until any appeal is concluded.
84. The Committee has found that there remains a risk that the Registrant might repeat his conduct, if permitted to return to work unrestricted. For the reasons set out in this decision, the Registrant's unrestricted registration would place patients and the public at risk of harm and have an impact on public confidence and upholding standards. The

Committee is satisfied that it is necessary for an interim measure to be put in place to protect the public and safeguard the public interest during the appeal period.

85. 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.
86. 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.
87. This concludes the determination.