



IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

AC-2023-LON-003344 LONDON

AC-2023-LON-003344

THE PROFESSIONAL STANDARDS AUTHORITY  
FOR HEALTH AND SOCIAL CARE

Appellant

- and -

(1) GENERAL PHARMACEUTICAL COUNCIL

(2) MUHAMMAD FAROOQ

Respondents

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ORDER BY CONSENT

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**UPON** the Appellant and First and Second Respondents having agreed to the terms of this Order, in particular that it is just and convenient for the Court to make the Order set out below

**AND UPON** no party being a child or protected party and the appeal not being an appeal from a decision of the Court of Protection

**AND UPON** the Second Respondent being a Pharmacist on the register established and maintained by the First Respondent

**AND UPON** the First Respondent's Fitness to Practise Committee ("the Committee") having heard allegations that the fitness to practise of the Second Respondent was impaired by reason of misconduct ('the proceedings')

**AND UPON** the Committee, at a hearing held between 4 and 7 December 2023, having imposed an order that the fitness to practise of the Second Respondent was impaired by reason of misconduct and that his registration as a pharmacist be suspended for six months ('the decision')

**AND UPON** the Appellant having lodged an appeal on 10 November 2023 against the decision pursuant to Section 29 of the National Health Service Reform and Health Care Professions Act 2002 (as amended)

**AND UPON** the First and Second Respondents conceding that the appeal should be allowed on the basis of the reasons set out in schedule 1

**IT IS ORDERED THAT:-**

1. The appeal is allowed.
2. The decision is quashed and the proceedings remitted to a differently constituted panel of the First Respondent's Fitness to Practise Committee subject to the directions as set out in schedule 2.
3. The First Respondent is to pay the Appellant's reasonable costs of the appeal, in the sum of £7,200.



For the Appellant

  
Helen Fleck  
Principal Lawyer

For the First Respondent



For the Second Respondent

~~January 2024~~

Dated: 16 April 2024

MBS HADLEY  
VHS FLETCHERS  
for the 2<sup>nd</sup> Respondent  
2<sup>nd</sup> April 2024

### Schedule 1 – statement of reasons

1. The findings and penalty imposed by the Committee were insufficient to protect the public and were wrong and/or arrived at following serious procedural irregularities within the meaning of CPR 52.21(3), for the following reasons.
2. **Ground 1: Failure to investigate and ‘under-charging’**. In the papers placed before the GPhC’s Investigating Committee, reference was made to a previous incident involving the Registrant at the GP Surgery at which he worked as a locum Clinical Pharmacist. This was an incident which was described briefly as involving:  
  
*“Previous episode where clinician called a patient with Vaginal discharge for examination and swabbing himself discussed.  
Was felt by all to be inappropriate/unusual given swab usually taken by nurse.  
Clinician was spoken to about inappropriateness by ZP and appointment was cancelled, and patient dealt with separately”*.
3. This incident was potentially highly material, involving (i) the Registrant’s apparent willingness to conduct vaginal examinations/vaginal swabs on patients; and (ii) the Registrant receiving specific feedback from the Practice that it was inappropriate for him to do so. The incident was potentially relevant to a number of issues in the case, including but not limited to: potential sexual motivation; the credibility of any defence that he did not realise that it was inappropriate for him to carry out such intimate internal examinations; a pattern of behaviour; and the Registrant’s ability or willingness to learn from previous incidents (and thus, issues of insight and future risk of repetition).
4. Despite this, this incident was erroneously not further investigated by the GPhC and/or, wrongly, did not form part of the allegations (and therefore the evidence) that were before the Committee.
5. **Ground 2: Failure to Allege Continuance of the Examination when the Patient was in Pain.** The account of the internal examination given by the patient and her mother included the allegation that the internal examination caused serious pain while it was being conducted, but that the Registrant had ignored the patient’s distress, and continued with his examination nonetheless. This was denied by the Registrant, whose account was that he had stopped immediately once the patient had shown that

she was in pain. This was a conflict of evidence that needed to be resolved; the matter should have formed part of the factual allegations before the Committee, and should, therefore, have been the subject of findings of fact.

6. Whilst it was plainly not necessary for each and every aspect of the interactions between the Registrant and the patient to be the subject of specific allegations, in this case the matter summarised above was a prominent feature of the complaint and considered sufficiently significant as to be relied upon by the GPhC's Case Presenter when making submissions on both (i) Misconduct; and (ii) Sanction. However, given that the absence of an allegation and resulting factual finding on the point, the Committee was precluded from considering or taking the matter into account in its Determinations. This was a serious procedural irregularity.

7. **Ground 3: Procedural Irregularities in the Handling of the Allegation of Sexual Motivation**. Allegation 6.2, which was the only factual allegation that was not admitted by the Registrant, read as follows:

*"6. Your conduct ..., was:*

*.....*

*"6.2: inherently sexual in nature and / or sexually motivated in that it was in the pursuit of sexual gratification;"*

8. This allegation was found "not proven" by the Committee. However, its assessment of the facts, and its findings, were flawed by way of serious procedural irregularities, namely:

- a. The patient and her mother were asked, when they should not have been, their opinion on whether the Registrant appeared to have sought any sexual gratification from the examination; further
- b. Based on the answers given by the patient and her mother, the GPhC through its Presenting Officer, then wrongly conceded that there was insufficient evidence to establish that the examination had been made in pursuit of sexual gratification;
- c. Whilst the Committee still considered both limbs of allegation 6.2, its consideration of this issue was / can only be reasonably be perceived to have been, heavily influenced by the concession made on behalf of the GPhC.

9. As to the first point:-

- a. The patient was asked in cross-examination (see Transcript Day 1, p16) whether she accepted that the Registrant's behaviour indicated that "he did not derive any sexual benefit" from the internal examination; she accepted that proposition. To the extent that this question invited her to speculate on his motivation, it should never have been asked of a witness of fact. If it was, rather, intended to elicit whether she had noticed any physical signs of sexual excitement or arousal, its purpose should have been made clear (which it was not). Further, it should only have been asked if had first been established that the patient had actually been in a position to, and had observed, the Registrant – throughout the course of a painful internal examination. Without that factual 'grounding', her answer could not have carried any weight.
- b. The patient's mother was asked whether she "... form[ed] the view that [the Registrant] might have gained any sort of sexual benefit from what he was doing to your daughter?" and answered "No, I don't think so." That too was not a question that should have been asked at all, inviting as it did the witness' opinion rather than evidence of what she had seen (see Transcript Day 1, p25).

10. As to the second point at para 17(b) above, the GPhC Presenting Officer conceded, in the submissions on allegation 6.2, that "*it is more than likely than not that [the examination] was not sexually motivated, as we do not have supporting evidence from the patient herself and her mother, who was present*" (see the Submissions at Transcript Day 2, pages 19-20; also para 58 of the Determination which records that concession).

11. This was a concession that should never have been made, given, first, the status of the evidence relied on (see point 17(a) and para 18 above) and second, the fact that sexual motivation was a matter to be proved by a holistic consideration of all the evidence. It was an inference to be drawn, rather than something that would be based on direct observation of the Registrant.

12. As to the third point at para 17(c) above, the approach of the Committee: it is accepted that the Committee did give some consideration to the issue of sexual motivation; it did not accept the concession made by the GPhC without giving further reasons. But:

- a. It is apparent from those reasons that, as might be expected, the decision on allegation 6.2 was heavily influenced by the concession: see paragraph 62 of the Determination, which specifically gave particular weight to the evidence of the patient and her mother; further or alternatively, there must remain a reasonable suspicion that it was so influenced;
- b. In any event, the approach taken by the Committee failed to adopt the correct approach, which was to assess the Registrant's state of mind noting that it is not something that can be proved by direct observation but can be proved only by inference or deduction from the surrounding evidence. Further, that deduction should have been made from all the facts and circumstances of the case and looking at the material in the round (see paragraphs 48 and 49 of the Determination and the case law referred to therein). Such matters included the absence of clinical justification for the examination, the failure to offer a chaperone and the failure of the Registrant to record the internal examination in the clinical notes made. The reasons given by the Committee fail to demonstrate that such a rounded assessment was made, and, rather, demonstrate the pervasive influence of the procedural irregularities summarised above.

13. The assessment of the Registrant's sexual motivation (or lack thereof) was the sole 'live' issue at Stage 1; further, the findings made upon it were key to the approach to be taken when considering the issues of misconduct, impairment and sanction. The effect of the errors summarised at paragraph 17 above, and further developed at paragraphs 18 – 21, is such that the decisions made in relation to allegation 6.2 were tainted by serious procedural irregularity; alternatively, those decisions were wrong.

14. **Ground 4: Inadequate Exploration of the Registrant's Evidence**. As set out above, the Registrant gave oral evidence. The Authority has serious concerns about the nature and extent of the questioning carried out regarding the Registrant's evidence about the *bona fides* of his decision to carry out an internal examination, including but not limited to:

- a. His account that, at the time of the examination, he believed it be clinically justified – this was not tested by reference to any medical or training literature that would have supported (or disproved) the Registrant's contention, or the contents of the "online learning" that the Registrant said that he had completed (see the Registrant's Bundle at p13 for a list);
- b. His evidence that, although he was aware of the potential cultural sensitivities of carrying out an internal examination on a young woman who was not sexually active (see, on this, the evidence of the GP, Day 2 Private Session, p3-4), the Registrant regarded such thinking as "old thought" (see Day 2, Private Sessions, pages 13 and 17 – 18) and/or that this issue did not occur to him when he decided to, or conducted a vaginal examination of Patient A. The credibility of such evidence should have been tested, and/or been taken into account more generally in relation to the Registrant's credibility;
- c. The links between the (claimed) absence of thought regarding this issue, and the Registrant's lack of understanding of the need for patient consent and patient-centred care (see his evidence upon his focus on "solving the problem" for the patient at Day 2, p13, Private Transcript, which wholly failed to engage with the need to provide patient-focussed care, to understand her priorities and concerns and to obtain informed consent).

15. These were issues that required more careful and thorough exploration, both before the hearing (by way of the GPhC's investigation and evidence gathering), in relation to issue (a); and/or at the hearing. The failure(s) to do so amounted to serious procedural irregularities.

16. **Ground 5: Sanction**. Further or alternatively, the determination on sanction failed to protect the public. The sanction imposed was insufficient, having regard to the serious

features of the case even as found by the Committee including the impact on the patient and/or the aggravating features set out at paragraphs 23(b) and 23(c) above, which went to the seriousness of the violation represented by the intimate examination conducted without consent, for the patient; and the fundamental lack of understanding demonstrated by the Registrant of the principles of informed consent.

17. In the alternative, the Committee's reasons did not demonstrate that it had given proper consideration to these matters.



## Schedule 2– directions

1. The proceedings brought by the First Respondent against the Second Respondent to be remitted to a differently constituted panel of the First Respondent's Fitness to Practise Committee as soon as reasonably practicable.
2. The First Respondent to prosecute an additional allegation against the Second Respondent relating to his continuance of the examination despite it being evident that the patient was being caused pain and/or distress.
3. The First Respondent to place before the Committee:
  - a. a copy of this consent order and attached schedules;
  - b. witness evidence from Dr Patel and any other appropriate person that deals with previous discussions had with and/or advice given to the Second Respondent about any previous incident(s) when he had expressed or demonstrated a willingness to conduct vaginal examinations and/or about his competence and the appropriateness of carrying out such examinations;
  - c. any evidence corroborating that witness evidence;
  - d. evidence and/or submissions as to the credibility of the Second Respondent's account and evidence as to the bona fides of his decision to carry out an internal examination, the online learning that he claimed to have completed and his understanding of the need for patient consent and patient-centred care.
4. In relation to the allegation that the Second Respondent's conduct was sexually motivated:
  - a. The First Respondent to properly advance its case in support of that allegation;
  - b. The Committee to adopt the correct approach to that allegation: namely to assess the Second Respondent's state of mind noting that it is not something that can be provided by direct observation but can be proved

only by inference or deduction from the surrounding evidence, paying particular regard to:

- i. The absence of any clinical justification for the examination that was conducted;
- ii. The failure to offer a chaperone;
- iii. The failure of the Second Respondent to record the internal examination in the clinical notes made.

Approved by CMG Ockleton sitting as Deputy High Court Judge on 27th May 2024

BY THE COURT