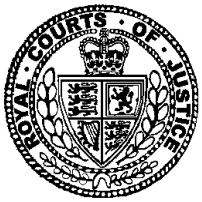

Neutral Citation Number: [2021] EWHC 415 (Admin)

Case No: CO/905/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/03/2021

Before :

THE HONOURABLE MR JUSTICE LANE

- -

Between :

JOSEPH ACHINA	**Appellant**
- and -	
GENERAL PHARMACEUTICAL COUNCIL	**Respondent**

- -
- -

The appellant:	In person
For the respondent:	Mr T Hoskins (instructed by The Senior Lawyer, General Pharmaceutical Council)

Hearing date: 17 February 2021

- -

Approved Judgment

Mr Justice Lane:

1. The appellant appeals against the decision of the respondent's Fitness to Practise Committee ("the Committee") to remove the appellant from the Register of Pharmacists maintained by the respondent. The Committee announced its decision on 3 February 2020, having concluded that the appellant's fitness to practise was currently impaired.

2. The proceedings before the Committee arose because on 27 October 2017 the appellant was convicted at Ipswich Crown Court of theft from a shop or store and on 30 July 2018, the appellant was convicted at Ipswich Crown Court of absconding. On 16 November 2018, the appellant was sentenced to two years six months' imprisonment in respect of the offence of theft. An order was made under section 27 of the Misuse of Drugs Act 1971 for the forfeiture/destruction/disposal of drugs seized. In respect of the offence of absconding, the appellant was, on the same date, sentenced to one month imprisonment, consecutive with the sentence of two and a half years.

3. The appellant was released after serving half of his sentence. The full sentence expires in May 2021.

4. The appellant had been working at the Stowmarket, Suffolk branch of Boots since 2011. Between October 2016 and June 2017, the appellant stole medications belonging to Boots. The appellant was the Responsible Pharmacist and Manager of the store. The theft of medications came to light following a routine comparison of purchasing and ordering of stock. The analysis showed a loss of approximately 140 packets of diazepam, amounting to 4,000 tablets. The loss was valued at £3,333.

5. In his interview with a representative of Boots, the appellant admitted ordering stock and stated that he had been sending it to a family member in Ghana. It is said that on this occasion the appellant also admitted taking other drugs from the store, being items of stock which had been returned, or unwanted medications, including diamorphine and temazepam, which had also been sent to Ghana. He said there was no stock held at his home address.

6. Following the appellant's arrest, a search took place of his home address. Various medications were seized, including diamorphine (a Class A drug). In all, the drugs seized at the appellant's home were valued at approximately £1,083.

7. The prosecution case was that, following interrogation at the appellant's electric devices, evidence was discovered that the appellant had offered medications for sale and that he had been removing medications to order, in return for payment.

8. The absconding offence arose as follows. On 12 July 2018, an application was made to Ipswich Crown Court for a variation of the appellant's bail, so as to enable him to travel to Ghana for a funeral. Initially, the judge was minded to grant the application but, when it became apparent that the logistics were such that the appellant would not get to Ghana, the application was effectively withdrawn and the bail conditions remained. Those conditions prevented the appellant from leaving the United Kingdom. He nevertheless chose to leave and fly to Ghana.

9. On 10 July 2017, the appellant had attended Ipswich Crown Court in respect of the theft offence and entered a plea of not guilty. On 27 October 2017, the appellant entered a

guilty plea, on a basis of plea. The prosecution did not accept that basis; and the matter was, accordingly, adjourned for a "Newton" hearing, at which the Crown Court would establish the facts, in order to be able to sentence the appellant. The "Newton" hearing was listed for 11 October 2018 but, on that day, the appellant withdrew his basis of plea. This meant that the appellant fell to be sentenced on the full facts of the prosecution case.

10. The Committee had before it a transcript of the sentencing proceedings before HHJ Overbury at Ipswich Crown Court on 16 November 2018. In his mitigation submissions, Counsel for the appellant pointed to the many years that he had been a qualified pharmacist, occupying that position of responsibility and carrying out his job properly. Some years ago, the appellant had suffered financial difficulties, which resulted in him being declared bankrupt and losing his home. It also led to mental health problems. In addition, Counsel said that the appellant's position within Boots was "a difficult and stressful one and one in which he found himself considerably under pressure". There was a history of complaints or concerns that the appellant had raised about his workload and the conditions in which he was expected to perform his duties.

11. Counsel submitted that it was clear from the case "that those that were supplied with medication by [the appellant] were people that either needed or at the very least thought they needed that medication". In this regard, Counsel pointed to "some of the text messages". These were all from people known to the appellant and a qualified pharmacist would therefore be aware of the effect of the drugs on these individuals. At this point, HHJ Overbury interjected to say that he was unable to see at the moment what evidence there was that these individuals actually needed the drugs. Counsel confirmed that his submission was that the people to whom the appellant was selling the drugs either needed those drugs or thought they needed them. In further exchanges, HHJ Overbury observed that, because the appellant was a pharmacist, and was in a position to get drugs to sell to people, this did not mean the people to whom he was selling the drugs needed them or thought they needed them.

12. On the absconding, Counsel for the appellant said that, from reading the notes that HHJ Overbury had placed on the court's digital case system, the latter was minded to grant the variation application, until it became apparent the logistics were, in fact, such that the appellant could not reach Ghana for the funeral. Counsel said that the appellant's decision nevertheless to travel to that country was a result of him not thinking straight and being concerned about his own family and his partner.

13. Counsel stated that the appellant was a dual national of the United Kingdom and Ghana. HHJ Overbury responded that that was something which had never been said at any earlier hearing, when the appellant's passport was removed; but the judge noted Counsel's submission that the appellant returned on his own accord.

14. Having taken instructions from the appellant, Counsel addressed the judge further. He said that the diamorphine found at the appellant's home was his own medication, as he had been prescribed diamorphine when he had broken his foot. It was legitimate medication of his own. The diazepam, on the other hand, was something which was supplied to other people, albeit that the appellant contested the suggestion that this was supplied to people who had no legitimate need for it.

15. HHJ Overbury's sentencing remarks were also before the Committee. In them, the judge observed that the appellant was in a significant position of trust, particularly with regard

to the handling, dispensing and disposal of prescription medication. The sentencing remarks continued as follows:-

> "You admitted ordering the diazepam which you [stole] – stole and sent to your family in Ghana. Well, looking at the text messages it wasn't to your family, so that was a lie. You further admitted taking other drugs from the store, including returned stock and unwanted medication, sending these to Ghana, and all these drugs included diamorphine, zopiclone, which is a sleeping tablet, and temazepam".

16. HHJ Overbury referred to the "numerous hearings in this case where you have, in my judgement, deliberately prevaricated admitting the full extent of your guilt". That had led to a substantial delay in the appellant being sentenced, which was "all of your own making". There had been a number of "wasted court hearings and, in my view, any credit for your plea that you might have earned has been drastically reduced. There remains now no basis of plea you having withdrawn it at an earlier hearing. Thus, you will be sentenced on a full facts prosecution case".

17. The judge was satisfied that a high degree of trust had been deliberately breached by the appellant over a period of time. The appellant had engaged in significant planning in order for the enterprise to succeed, without other staff members becoming immediately aware. The judge reiterated that he was satisfied, looking at the contents of the appellant's iPad and iPhone, as set out on the digital case, that these drugs were stolen to order. The judge was not satisfied that the drugs were given to an ailing relative abroad. The amount of drugs stolen contradicted personal use by one patient and the text messages supported onward sale of drugs to a number of individuals. It had been said on the appellant's behalf for the first time on the day of sentencing that these drugs were sold to those who needed them or thought they needed them. HHJ Overbury was not satisfied that there was any evidence to substantiate that and "coming from you, who has acted thoroughly dishonestly throughout these proceedings, I am unable to accept that". He found that the appellant had not been given any permission to dispose of any returned or unsold drugs and was satisfied that the appellant saw a potential loophole in the auditing process at Boots and stole drugs in order to profit himself.

18. So far as the absconding offence was concerned, HHJ Overbury said "you never told anybody that you held dual nationality, otherwise this court would have prevented you from using or applying for travel documents through the Ghanaian Embassy and that is exactly what you did". The judge considered that this deceitful behaviour continued when the appellant went to the Ghanaian Embassy, persuading them to give him travel documents "in complete and utter defiance of this court".

19. The proceedings before the Committee took place on 6 and 15 November 2019 and 20 February 2020. I have before me a transcript of these proceedings. During them, the appellant produced a number of documents, upon which he sought to rely. The Committee gave reasons why the excluded documentation was not regarded as relevant to the issue before them; namely, whether, as a result of the criminal convictions, the appellant's fitness to practise was impaired; and, if so, whether a sanction should be imposed and, if so, what that should be.

20. On day 1, the independent Legal Adviser reminded the Committee that "this is a conviction case". As a result, rule 24(4)(5) of the General Pharmaceutical Council (Fitness to Practise and Disqualification, etc Rules) (SI 2010/231) applied:-

> "(4) Where a person concerned has been convicted of a criminal offence in the British Islands (and has not successfully appealed against the conviction), a copy of the certificate of conviction certified by a competent officer of the court … is admissible as conclusive proof of that conviction and the findings of fact on which it was based.
>
> (5) The only evidence which may be adduced by the person concerned in rebuttal of a conviction certified or extracted in accordance with paragraph (4) is evidence for the purpose of proving that the person concerned is not the person referred to in the certificate or extract."

21. Before the Committee, the appellant was concerned to tell them how, in his view, Boots had organised a campaign against him for being a "whistle blower" as regards the problems he and other staff members faced at the Stowmarket branch. The main disputed document was one described by the Legal Adviser as a "grievance statement". This was presented to me by the appellant on 17 February 2021. Although undated, it appears to have been produced several years ago. It complains of harassment and victimisation by the area manager of Boots. It describes asserted under-staffing, under-resourcing, overtime issues, using other store managers to undermine the appellant; and circumstances concerning two suspensions of the appellant. He also provided what appeared to be contemporaneous, or near contemporaneous, emails relating to the appellant's grievance. There was also material, including a letter from Mr Peter Gibbs, an Inspector of the General Pharmaceutical Council, concerning an incident in September 2013, when the appellant supplied certain medication to a patient, against a prescription authorising different medication. In the letter, Mr Gibbs stated that the Council would not be taking any further action in respect of this complaint and that the case was now closed.

22. The Committee declined to admit the grievance statement, on the basis that it was not relevant. It was also in the nature of a "self-report rather than an independent evidence of health concerns" regarding the appellant. The Committee considered the question of fairness, in deciding whether to admit the material in question. The Committee concluded that it would not be unfair to the appellant to exclude it. The Committee noted that the respondent had made no objection to a testimonial from the appellant being placed before a committee, which referred to a period of ill-health suffered by the appellant in 2014. The appellant was free to refer to this testimonial at later stages of the proceedings.

23. Shortly before the appellant was sworn and gave evidence-in-chief, he was asked by the Committee whether he admitted the convictions for theft and absconding. The appellant replied that he did. The Committee said that it was accordingly necessary for it to turn its mind "to whether or not, in the light of the fact that you have these two convictions, your fitness to practise is currently impaired".

24. The appellant denied that he was impaired, as at the first day of the hearing before the Committee. The Committee said it would be helpful for the appellant to tell them why he thought he was not impaired, despite the fact that he had been convicted and sent to prison. The appellant said that he had made "a silly mistake in my life; I have recovered from it; I have been rehabilitated; I have come back into the community and I am fully prepared to be a fit and proper person again".

25. During cross-examination of the appellant, however, he stated that he disagreed with the Sentencing Judge's finding that the stolen drugs had not been sent to his family in Ghana

but sold to unknown individuals. The appellant said he did not take the stand at the Crown Court and wished that he had done so, as he could have made his representations to the Judge. The appellant stated he had no choice but to accept the Judge's summary. The appellant said that he had given some of the drugs to his uncle; and that was true. The appellant stated, in terms, "I did not actually sell any drugs to anybody". The drugs were meant for his dying uncle in Ghana.

26. Asked by the respondent's representative how the appellant thought the public would view a pharmacist being convicted of the theft of drugs, the appellant said he did not know. Asked if he had reflected on how this was going to affect the profession of pharmacy and its reputation, the appellant said that he had, adding:-

> "I am human. I have made a terrible error in life but that does not mean that you are punished for life. I have served the sentence. I was given two years and seven months and I have been ill and served one year or so in prison."

27. Shortly afterwards, the appellant told the Committee-:

> "If a pharmacist has been rehabilitated, gone through the normal procedure of punishment, accepted his stupidity and the errors of his ways, undergone training and discipline, I think that it should end there. It does not mean that he cannot be a human being again. I do not have to take my life because of that. I have served the sentence."

28. The appellant then denied it was true that "over a period of just shy of a year, [you] stole medications from your employer".

29. The appellant stated that "I took some diazepam from my company and I sent it to [my uncle]. I was not thinking straight at the time and that is very much out of character".

30. The appellant also gave further evidence to the Committee about his various problems, while he had been working in Stowmarket. These were both personal and professional. The Legal Adviser noted that, in mitigation in the Crown Court on behalf of the appellant, Counsel had referred the Judge to the appellant's severe financial difficulties, being declared bankrupt and losing his house, and his mental health problems.

31. In the course of retirement to determine the issue of current impairment, the Committee received a handwritten document from the appellant. This included reference to his not having worked for two years, as well as documents concerning the appellant's health. The note was admitted by the Committee.

32. On 15 November 2020, the Committee reconvened, in order to continue to consider the issue of impairment. The appellant made an application to adduce yet further documentation. The Committee, having considered the matter, decided to admit five of the nineteen documents. The Committee gave detailed reasons for its decision on this application. At paragraph 65 of its determination on impairment, the Committee set out the gist of the documents included. At paragraph 69, the Committee listed the documents it was admitting. These were a statement drafted by the appellant regarding various personal and professional historic matters, on the understanding that the appellant would give further evidence and so be able to be cross-examined; a photograph of some textbooks that the appellant claimed to have used to teach fellow prisoners; a series of certificates for courses completed by the appellant whilst in prison; a letter of reference

dated December 2018 from the Chaplin at Norwich Prison; and a testimonial from a currently registered pharmacist.

33. In its decision on impairment, the Committee found that the appellant, when giving evidence, was not seeking to be evasive. He had, however, been inconsistent in his evidence. Although he had accepted the convictions he had received, following his plea of guilty, the appellant had nevertheless repeatedly sought to challenge the facts of his conviction in substantive ways. For example, he did not accept he had absconded but at the same time accepted he had travelled abroad in direct defiance of the court. He challenged the fact that he had supplied drugs to others, despite the Sentencing Judge's finding, having examined the evidence, that he did not believe the appellant's account that he had only supplied drugs to an ailing uncle in Ghana. The appellant did not accept that he had stolen over a period of many months, which is what is detailed in the indictment, describing the matter as "an isolated incident".

34. Overall, the Committee considered it to be "a notable feature of the [appellant's] evidence … that he sought repeatedly, both during his evidence and in his submissions on impairment, to go behind the convictions and the Judge's sentencing remarks".

35. The Committee considered that the appellant was genuinely nursing a grievance about the facts upon which he had been convicted and that he appeared genuinely to believe that he had not been selling the drugs he stole from his employer to others but had only supplied them to family members in Ghana. The Committee found it "quite startling that the [appellant] stated before the Committee that he had not supplied drugs to others in the UK". His own Counsel in Ipswich Crown Court had sought to advance in mitigation and argument, albeit given short shrift by the Judge, that supplying others in the UK who were known to the appellant was not so serious as it might appear because he was using his professional pharmacy knowledge to minimise the harm that might cause. The Committee found all this was hard to square with the appellant's stance before the Committee, which was "that he was not supplying others in the UK at all".

36. The Committee noted that it had been often asked to accept the appellant's uncorroborated account of various matters. For example, he stated that the diamorphine found at his home was only there because he had suffered a leg injury. However, instead of providing a prescription for the appellant for the diamorphine, or a letter from a health professional attesting to the injury, all the Committee had been shown was a photograph of a bandaged foot.

37. The Committee found that a further notable aspect of the appellant's live evidence was his strong sense of past grievances, a sizeable portion of which was directed towards his employer, regarding such matters as staffing levels, the non-provision of a consulting room, the delay in providing a microwave, etc. Although the Committee had no difficulty in accepting that these grievances were heartfelt, they were "beside the point as regards to whether the [appellant's] fitness to practise is presently impaired as a result of his convictions". The appellant himself posited no direct causal link between these grievances and his later conduct in stealing from his employer. Nor did the appellant provide any credible explanation for his dishonest conduct. The Committee did not accept that the health condition, which had been diagnosed in 2014, had led the appellant to engage in a course of dishonest conduct over an extended period in stealing from his employer. There was no evidence to show that the appellant's health condition was of a

type or severity that clouded his judgement, such that he could not tell right from wrong. The appellant had mischaracterised his behaviour as "an error of judgement".

38. The appellant had also changed his position as regards whether he considered himself currently to be impaired. Initially, he had said unequivocally that he was not currently impaired; but then when giving evidence a second time, he recognised that the fact of his convictions did bring the profession of pharmacy into disrepute and, as a consequence, meant that he was impaired. But when this was put to him again, the appellant remained of the view that because he had "been punished" and "served his sentence", the public would consider now that he had been rehabilitated.

39. The Committee did not share that view. In its opinion, the appellant's "evidence and sense of grievance has precluded the development of genuine insight". The Committee concluded that the appellant "has developed no proper insight at all into the impact his conduct and the fact of his conviction will have upon the reputation of the profession". Although his apologies appeared to be genuine, the Committee found that the appellant was, in fact, more expressing regret for the position he found himself in at the present time, making much of how unpleasant his stay in prison had been. His saying that he did not blame anybody else for his present predicament was seriously undermined by other aspects of the appellant's evidence, where he sought to blame others, including his employer, the respondent and his legal representative in the Crown Court. The fact that the appellant believed he had "served his time" only further served to underline the very limited insight he had demonstrated. In answer to a question from the Chair, the appellant did, however, admit that his conviction for dishonesty had breached one of the fundamental principles of the profession.

40. The Committee then looked at aggravating and mitigating features. It noted that the appellant had helped people in prison, according to his evidence. The Committee was prepared to give the appellant credit for that. The various testimonials, however, were given only very little weight, given that only two of the 21 made any mention at all of the present proceedings, amongst other problematic matters.

41. Aggravating features were "stark". The appellant had used his privileged position as a pharmacist, responsible manager and long- time employee to steal controlled drugs and other drugs and items of stock from his employers over an extended period of time, in order to supply to others and to sell for personal gain, knowing that he was diverting a controlled drug outside of legitimate supply and apparently heedless of the harm to others that might cause. The appellant's behaviour was "a gross breach of trust placed in him by his employer". It was also a gross breach of trust placed in him "by the public who trust pharmacy professionals to be the custodians of safe and legitimate access to controlled drugs".

42. The Committee referred to the lack of insight displayed by the appellant, including failing to address the causes of his dishonest conduct. This meant the Committee could not be assured that the appellant would not repeat the conduct in similar circumstances in the future. No evidence was before the Committee to show the appellant had remediated his behaviour since his conviction for theft.

43. So far as the absconding offence was concerned, the Committee noted that the appellant had employed deception to do so, using his dual nationality, which he chose not to reveal to the court. This behaviour of blatantly defying the court would, in the Committee's

judgment, also bring the profession of pharmacy into disrepute. Overall, the public "rightly would be utterly appalled by the [appellant's] conduct". The Committee accordingly had "no hesitation" in concluding that the appellant's behaviour leading to the convictions, in particular for the theft of controlled drugs for personal gain, meant that a finding of impairment was required.

44. On 3 February 2020, the proceedings involved the appellant and the respondent's representative making submissions as to sanction. The appellant highlighted the relevance of his continued professional development, his engagement with the proceedings and the fact that he had insight. He pointed to the length of time he had been suspended from practice and submitted that it would be grossly unfair to prevent him from returning to practice.

45. On this occasion also, the Committee allowed further documentation to be adduced by the appellant. These were continuing professional development materials, some of which dated back as far as 2001. None dated from the period of the appellant's convictions. Whilst they might indicate the appellant had been acting professionally in keeping his knowledge and skills up-to-date in the past, the Committee considered they were of no assistance in considering the appellant's present insight and remediation.

46. The Committee also considered two new testimonials, accepting these were genuine and that they displayed knowledge of the appellant's conviction. They were, however, from friends, neither of whom were pharmacy professionals and neither of whom spoke about what the appellant had done by way of remediating his behaviour. They could therefore be given only limited weight.

47. A further document adduced on day 3 was one which the appellant had submitted to the High Court, in connection with the respondent's application for an extension of the interim order made against the appellant. The Committee considered that this did the appellant's case more harm than good. Although it had been prepared by the appellant in his full knowledge of the Committee's determination on impairment, its contents indicated that the appellant continued to seek to go behind the facts of his conviction, sought to evade responsibility for his actions and sought to minimise the seriousness of his actions. The document thus served further to undermine the already extremely limited insight that the respondent had displayed at the previous stage of the proceedings.

48. The Committee then reviewed the factors noted in reaching its conclusion on impairment, along with what it had heard by way of the appellant's submissions on sanction.

49. The Committee concluded that the appellant had displayed no insight into the reasons for the conduct which led to his conviction. Indeed, he had failed to explain the conduct, which appeared to the Committee to be connected to his lack of acceptance of responsibility for his actions. He had displayed no insight whatsoever into the potential consequences for patients and the public from diverting controlled drugs outside of the legitimate supply chain.

50. Although there was some recognition by the appellant that his conviction would impact upon the reputation of his chosen profession, the Committee did not hear any expressions of remorse as regards the impact of his actions upon patients and other members of the public who might have taken the controlled drugs that he diverted.

51. The Committee took account of its finding on impairment, part of which was due to the risk that the appellant continued to pose to patients and the public because of his lack of insight. There was, in the Committee's view, a real risk that the appellant would repeat his behaviour, despite his protestations to the contrary. No sanction short of suspension could, therefore, adequately protect the patient and the public safety in this case.

52. Nor would any sanction short of suspension adequately protect the public interest, given that the appellant had grossly betrayed the trust placed in pharmacists by the public to be the gatekeepers of controlled drugs. Any sanction short of suspension would significantly undermine public trust in the profession. The Committee noted that any suspension could be for a maximum of twelve months; but the twelve months was less than the remaining period of the appellant's current release on licence, which was due to run until May 2021.

53. In considering whether suspension was the appropriate sanction, the Committee reminded itself of the key features of the case. This included conviction for offences of dishonesty; it being a fundamental tenet of the profession of pharmacy to be honest; that the thefts were pre-meditated; that they included controlled drugs which were diverted into black market supply; the dishonest conduct had been sustained and repeated over many months; he had stolen from his employer, the thefts being made possible because of his trusted position; and that he had been less than open, and arguably misleading, when he stated that he had no stolen medication at home.

54. All of this, coupled with the lack of insight and absence of evidence of remediation, meant that the Committee concluded suspension would not be a sufficient sanction to satisfy the public interest in upholding confidence in the profession and upholding professional standards. It noted that removal from the register was reserved for the most serious cases. It was in no doubt that a sanction of removal would have a punitive effect upon the appellant, noting that the appellant had already been suspended for a lengthy period:-

> "However, in all the circumstances of the case the Committee had no hesitation in concluding that the [appellant's] behaviour was fundamentally incompatible with continued registration and therefore removal from the Register was necessary and wholly proportionate in order to uphold public confidence in the profession and the regulator."

The appeal

55. The appellant's grounds of appeal against the Committee's decision can be summarised as follows:-

    (a) There was a lack of legal representation available to the appellant;

    (b) The Committee failed to have regard to relevant evidence and permit the appellant to adduce evidence and call witnesses;

    (c) The Committee was wrong to make adverse credibility findings, including adverse findings regarding the appellant's insight;

    (d) The Committee imposed an excessive sanction of removal because it failed to have regard to the mitigating material put forward by the appellant; failed to conclude that the public interest had been served by the criminal proceedings; and failed to

take into account the length of time the appellant had already been suspended, by virtue of the imposition of an interim order; and

(e) That the appellant had been denied a fair hearing as a result of the presence on the Committee of individuals whom the appellant considered were adherents of Islam, and so were biased against the Black, Christian appellant. A similar point is made in respect of the Legal Adviser.

56. At the hearing on 17 February 2021, the appellant was unrepresented. I gave him appropriate assistance to present his case. This included rising to enable the appellant to scrutinise Mr Hoskins's skeleton argument, which the appellant said that he had not received. As well as the grievance statement and other documentation to which I had made reference, the appellant asked me to view a YouTube video, which he said was relevant to his complaint of bias. In chambers, I viewed some 25 minutes of this video, approximately half of its stated total length. I considered that this enabled me to form a sufficient view of the nature of the video. It is a recorded speech, apparently given in Australia by a man who was originally from Iran and who, having grown up as a Muslim, subsequently converted to Christianity. The speaker contends that it is, in effect, a tenet of Islam to behave with hostility towards Christians and Jews.

57. I heard submissions from the appellant and Mr Hoskins; and from the appellant in reply. I reserved my judgment.

Legal background

58. The appellant's appeal is brought under article 58 of the Pharmacy Order 2010 (SI 2010/231). The notice of appeal was submitted within the period mentioned in article 58(3). Article 58(5) empowers the court, having considered the appeal, to dismiss it; allow it and quash the direction in respect of which the appeal is made; substitute the Committee's direction and any other direction that the Committee could have given; and make such order as to costs as the court thinks fit.

59. CPR 52.21(1) provides that every appeal is to be limited to a review of the decision unless a practice direction makes a different provision for a particular category of appeal or the court considers that in the circumstances, it would be in the interest of justice to hold a re-hearing. There is no suggestion in the present case that such a re-hearing would be in the interest of justice.

60. CPR 52.21(3) states that the appeal court will allow an appeal where the decision of the lower court (or, here, the Committee) was:-

> "(a) wrong; or
>
> (b) unjust because of a serious procedural or other irregularity in proceedings in the lower court."

61. In deciding whether the decision of the Committee is "wrong", I am required to give appropriate weight to the Committee's decision on impairment and on sanctions because:-

(i) the legislature has seen fit to give the Committee the function of determining, in the first instance, what the pharmacy profession expects of its members;

(ii) the Committee had the benefit of hearing and seeing witnesses (including the appellant); and

(iii) the issues involved value judgements, so that the fact this court might have decided the matter differently is not, on that account, a reason to disturb the Committee's conclusions.

62. I do not consider that any of the above considerations are relevant in respect of CPR 52.21(3)(b). So long as the court is aware of the provisions of the particular procedural rules, it must form its own view of whether there was an irregularity that made the decision of the Committee unjust.

63. In Cheatle v General Medical Council [2009] EWHC 645 (Admin), Cranston J articulated the issue of "weight" or "deference" as follows:-

> "15. … The test on appeal is whether the decision of the Fitness to Practise Panel can be said to be wrong. That to my mind follows because this is an appeal by way of rehearing, not review. In any event grave issues are at stake and it is not sufficient for intervention to turn on the more confined grounds of public law review such as irrationality. However, in considering whether the decision of a Fitness to Practise Panel is wrong the focus must be calibrated to the matters under consideration. With professional disciplinary tribunals issues of professional judgment may be at the heart of the case. Raschid was an appeal on sanction and in my view professional judgment is especially important in that type of case. As to findings of fact, however, I cannot see any difference from the court's role in this as compared with other appellate contexts. As with any appellate body there will be reluctance to characterise findings of facts as wrong. That follows because findings of fact may turn on the credibility or reliability of a witness, an assessment of which may be derived from his or her demeanour and from the subtleties of expression which are only evident to someone at the hearing. Decisions on fitness to practise, such as assessing the seriousness of any misconduct, may turn on an exercise of professional judgment. In this regard respect must be accorded to a professional disciplinary tribunal like a Fitness to Practise Panel. However, the degree of deference will depend on the circumstances. …"

64. In Meadow v General Medical Council [2006] EWCA Civ 1390, Sir Anthony Clarke MR said:-

> "In short, the purpose of [Fitness to Practise] proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FPP thus looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past." (paragraph 32).

65. In Council for the Regulation of Healthcare Professionals v General Dental Council [2005] EWHC 87 (Admin), Newman J said:-

> "I am satisfied that, as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practise until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise. … The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but the good standing in

> the profession must be earned if the reputation of the profession is to be maintained." (paragraph 54)

Discussion

66. I address each of the grounds in turn. The first ground complains that, in effect, the proceedings before the Committee were procedurally unfair because the appellant lacked legal representation.

67. Before me, the appellant said that he had contacted a support group; but the outcome was that, in order to be legally represented, the appellant would have to expend a considerable sum of money. The appellant told me he accepted that there was, in the circumstances of his case, no right to be afforded legal representation, if he could not pay for this himself. Asked if there was anything more that the Committee could have done to assist him in this regard, the appellant began to talk about what had transpired in the Crown Court.

68. I am satisfied that there is no merit in this first ground. A reading of the transcript of the Committee proceedings shows quite plainly that the Committee took full account of the fact that the appellant was not legally represented and that they provided him with all appropriate assistance. In this respect, I am entirely satisfied that the proceedings were fair.

69. The appellant was repeatedly permitted to discuss matters of procedure. Relevant questions were highlighted to him by the Committee and the Legal Adviser. The Chair of the Committee showed an ongoing awareness of the need to keep the appellant abreast of the proceedings, so that he could fully engage in them. The Legal Adviser provided appropriate assistance to the appellant.

70. The respondent's written submissions were provided to the appellant ahead of the hearing, together with a bundle of documents. As I have noted, the appellant, during the proceedings, made various applications to adduce further documentation. I shall come in due course to the appellant's contention that documents were improperly excluded. So far as process is concerned, there is no suggestion from the transcript that the Committee did anything other than consider each of the appellant's applications in detail, and with care.

71. The Committee was aware of the need for sufficient breaks, during the hearing, in order to assist the appellant. Indeed, it appears that, for all these reasons, the pace of the proceedings was such that the appellant was able to adduce evidence over a number of days, as well as to make submissions. The transcript indicates that, from time to time, the Committee had to explain to the appellant the difference between giving evidence and making submissions. In all the circumstances, I consider that the Committee adopted a suitably flexible approach to this matter, so as to enable the appellant to put his full case.

72. I turn to the second ground, which contends that the Committee failed to admit relevant evidence and to have due regard to the evidence in the case.

73. We have seen that rule 24(4) provides that a copy of the Certificate of Conviction, certified by a competent officer of the court, "is admissible as conclusive proof of that

conviction and the findings of fact on which it was based". I shall return in due course to what is meant by the reference to the findings of fact on which the conviction was based. So far as the present ground is concerned, however, I do not find that the Committee was wrong in its approach to the evidence adduced, and sought to be adduced, by the appellant. A comparison of the documents proffered by the appellant, as described in paragraph 65 of the Committee's "impairment" decision, and the list at paragraph 69 of what the Committee agreed to admit, shows not only the care that the Committee took in this regard but also the fact that, if it erred, it was in favour of the appellant. This is evident from the admission of his statement regarding various personal and professional historic matters. Although the appellant was anxious to make the Committee aware of the personal and work-related difficulties he had faced whilst working in Stowmarket, it appears he accepted that these did not provide a justification for his criminal offending. The Committee was entitled, in my view, to find that there was no nexus between the appellant's complaints about his employer and his decision to steal drugs from that employer, of a kind that could assist the appellant's case.

74. I have already recorded that I examined the grievance statement, which is the document most relied on by the appellant in connection with this ground. I find the Committee was not wrong to characterise this document as, in effect, providing a set of unsubstantiated assertions made by the appellant. If the grievance document was sent to Mr Peter Gibbs, there is no record of any adjudication of the grievance by him. The letter from Mr Gibbs to the appellant was in respect of a complaint received by the respondent about an incident when the appellant mis-prescribed drugs. As I have recorded, that incident was closed by Mr Gibbs. It has no relevance to the matters that were before the Committee.

75. The appellant's complaint about the Committee's refusal to let him call witnesses appears to relate to Mr Gibbs. In view of what I have said, it is quite evident that the Committee did not act unfairly in failing to afford the appellant an opportunity to call Mr Gibbs. There was nothing that Mr Gibbs could say about the appellant's grievances against his employer, that would have advanced his case. Insofar as the appellant has in mind calling some or all of those who provided testimonials, there was, again, nothing before the Committee to show why their physical presence was at all necessary.

76. Before me, the appellant suggested that, if Mr Gibbs had been called, he could have given evidence to the effect that the appellant could not have stolen drugs from his employer, given the safeguards on the handling of drugs at the store. The obvious problem with this contention, however, is that it involves going behind the appellant's conviction for theft of drugs, which is not permitted by the statutory scheme.

77. After he received the Committee's decision on impairment, the appellant prepared a document for the High Court, in connection with the respondent's application for an extension of the interim order made against the appellant. At paragraph 31 of its decision on sanction, the Committee found that the respondent's decision to adduce this document to the Committee "had done him more harm than good. … Its contents indicated that the [appellant] continued to seek to go behind the facts of his conviction (which was on the basis of a guilty plea, sought with a responsibility for his actions and sought to minimise the seriousness of his actions)". All this served further to undermine the "already extremely limited insight" that the appellant had displayed at the previous stage of the proceedings before the Committee.

78. The appellant complains of the use made by the Committee of the document he prepared for the High Court. It was, however, for the Committee to construe the evidence before it. The Committee was under no obligation to place upon any evidence only the construction which the party adducing that evidence wished the Committee to put on it.

79. All of this takes me to the third ground, which alleges that the Committee was wrong to make adverse credibility and "insight" findings in respect of the appellant. It is also here that I must return to the issue of what is meant in rule 24(4) by "the findings of fact on which [the conviction] was based".

80. The impairment decision was heavily influenced by the Committee's finding regarding the limited insight of the appellant into his conviction for theft. Although the appellant, at various points, expressed remorse for what he had done, there were huge problems with the appellant's stance. At points, his remorse appeared to the Committee to be concerned with the fact that he had found himself in prison. More particularly, it was evident that the appellant was denying that he stole drugs from his employer for any other reason than to send them to his aged uncle in Ghana. He denied that he had stolen drugs for profit. That stance was maintained on appeal to this court. The appellant said to me, in terms, that he did not sell drugs to anyone or give them to anyone other than his uncle.

81. On its face, the Certificate of Conviction contains little in the way of facts. It states the offences as being theft from a shop or store and absconding. It gives the sentences in respect of those offences. On the obverse of the certificate, there is the indictment in respect of the theft offence which gives, as particulars, that the appellant "between the 31st day of October 2016 and the 10th day of June 2017 stole medication belonging to Boots Pharmacy, Stowmarket Health Centre, Stowmarket, Suffolk".

82. In Wray v General Osteopathic Council [2020] EWHC 3409 (QB), Collins Rice J heard the appeal of an osteopath, who had been found guilty by a Committee of the General Osteopathic Council of unacceptable professional conduct. The osteopath had been given a conditional discharge by the Magistrates, following a guilty plea for having an offensive weapon. Section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 provides that on expiry a conviction "shall be deemed not to be a conviction for any purpose". The osteopath's conditional discharge had expired after six months.

83. For this reason, Collins Rice J held that she was not dealing with "a conviction case", which would proceed on the basis that "the facts of conviction need not be proven" (paragraph 29). Counsel for the respondent, however, submitted that, nevertheless, the principles applicable to conviction cases should apply:-

> "31. Mr Wray expressly invited the PCC to go behind his plea. He said it was a mistake, explained how it happened, and recounted his unsuccessful efforts to undo it via an appeal. There is no sign in the PCC decision, nor in what exists of the transcript, that they took any notice. Mr Faux says that is just as it should be.
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> 32. It is certainly so in conviction cases. The authorities have consistently held that where statutory provision is made for disciplinary bodies to attach professional consequences to a criminal conviction, the effect of the statute has been to preclude the practitioner from denying the truth of any facts necessarily implied in the conviction. In such cases, the decision of the disciplinary body is properly based on the fact of the conviction, and the practitioner cannot go behind it and endeavour to show that he was innocent of the charge and should have been acquitted (*Kirk v The*

> *Royal College of Veterinary Surgeons* 2004 WLUK 267, paragraph 6; *General Medical Council v Spackman* [1943] AC 627, 634–635). That includes cases where conviction is based on a guilty plea (*Royal College of Veterinary Surgeons v Samuel* [2014] UKPC 13). Additional evidence about the underlying facts on which the conviction is based may be adduced and relied on in relation to the disciplinary *consequences*, provided the facts are not inconsistent with the finding that the practitioner was guilty of the offence. What the practitioner cannot do is to relitigate the conviction as to the *facts*.
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> 33. That is why regulatory regimes, including the one in this case, make special provision for conviction cases. It is both unnecessary and undesirable to re-try a criminal case – unnecessary where the facts have already been pleaded and established to the criminal standard, and undesirable because of the public interest in the finality of criminal procedure. The only issue left for a disciplinary body is the relevance of conviction and sentence to the professional standing of the participant.
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> 34. But this was not a conviction case. Mr Faux says that the same consequences nevertheless flow from a guilty plea in its own right. I was not shown any authority to that effect. On the one hand, it might be said (and Mr Faux did say) that similar public policy considerations are in play. It might be wrong, for example, if a practitioner could take the benefits of an early guilty plea in criminal proceedings, knowing that he had an imperfect answer to a criminal charge, but was then able to resile from that and put a regulatory body (and witnesses) to the trouble of relitigating the facts to which he pleaded. The Privy Council in the *Samuel* (conviction) case doubted whether, on one of the charges to which the practitioner had pleaded guilty, the prosecution would have been able to prove the necessary intention in the end, but it did not go as far as finding the contrary."

84. These important policy considerations in my view inform the way in which the court should approach the final nine words of rule 24(4). In framing those words, the legislature is, I find, treating as conclusive, not only the "bare" facts to be found in the Certificate of Conviction, but also the broader factual matrix on which the convicted person has been sentenced. One finds that factual matrix in the sentencing remarks of the judge.

85. As we have seen, the transcript of the sentencing remarks, and of the exchanges leading to them, make it plain that the findings of fact of HHJ Overbury, upon which he sentenced the appellant, included that the appellant had sold drugs to third parties. We have seen how that was accepted by the appellant's Counsel. Before the Committee, the appellant denied this important factual finding. He also denied it before me. He blamed inadequate legal representation in the Crown Court, stating that if he could have spoken to the Judge, the position would have been different.

86. The appellant has, however, not overturned his conviction or successfully appealed against his sentence. It appears he has made an attempt to put the matter before the Criminal Cases Review Commission. Nevertheless, as matters stood at the time of the Committee's decisions – and as they currently stand – the convictions and sentences are undisturbed.

87. Even if I am wrong in my interpretation of the last part of rule 24(4), the appellant must still show that, in the particular circumstances of his case, the Committee was wrong to ascribe the importance it did to the findings of HHJ Overbury. He has failed to do so.

The process leading to the sentencing of the appellant was, as we have seen, a protracted one. This was down to the actions of the appellant. A "Newton" hearing had been arranged, only for the appellant to withdraw his basis of plea and accept sentencing on a full facts basis. In these circumstances, for the Committee to have permitted the appellant to go behind the finding that he did sell drugs to third parties for profit, and that the story about his uncle was "a lie", would have endangered public confidence in the regulatory regime under which the Committee was operating, and the proper relationship between that regime and the criminal jurisdiction. The Committee was, therefore, not wrong to adopt the approach it did. On the contrary, it would have been wrong had it done otherwise.

88. The appellant complains that the Committee unfairly took into account that certain drugs were found at his home. He says that these were prescribed to him. The Committee, however, was entitled to reach the contrary conclusion. It was of significance that the appellant did not put forward any prescription or other evidence to show an entitlement to the drugs which he said were needed to treat his injured foot. The appellant had clearly been sentenced on the basis that he had not shown an entitlement to the relevant drugs.

89. In the circumstances, the third ground is not made out. The Committee was entitled to place the weight it did on the striking lack of insight shown by the appellant, who continued to deny that he had procured drugs for profit.

90. This leads to the fourth ground; namely, that the sanction was excessive. The Committee was entirely justified in finding that the appellant's "extremely limited insight" had, in fact, diminished still further, at the time of its sanction decision. The appellant's lack of insight was of considerable significance to the issue of sanction. The Committee was fully entitled to find that the appellant "had displayed no insight whatsoever into the potential consequences for patients and the public from diverting drugs outside of the legitimate supply chain" (paragraph 33).

91. Lack of insight went directly to the issue of future risk. Given that the appellant had displayed no insight into why he had acted as he had done, by selling drugs to third parties, the Committee was entitled to find that there existed "a real risk that the [appellant] would repeat his behaviour". This led the Committee to find that no sanction short of suspension could adequately protect patient and public safety. In so finding, the Committee also had regard to the fact that the appellant had "grossly betrayed the trust placed in the pharmacists by the public to be the gatekeepers of controlled drugs" (paragraph 36).

92. At paragraph 38, the Committee set out the factors that indicated that suspension would not be adequate. These factors, including the element of dishonesty and the diversion of controlled drugs into the black market, fell to be seen in the light of the appellant's lack of insight and absence of evidence of remediation. This persuaded the Committee, at paragraph 39, that suspension would not be sufficient. Thus, the Committee arrived at the conclusion that removal from the register was the only appropriate sanction.

93. The appellant contends that the Committee did not take account of the fact that he had been suspended from practice for a period of over three years. There is no merit in this submission. It is manifest that the Committee was aware of that fact. The real point, however, was that it had no material bearing on the forward-looking reasons why the Committee concluded that suspension was an inadequate remedy.

94. The final ground relates to the composition of the Committee. There is no merit in this ground. The appellant made no complaint about the composition of the Committee during the proceedings. Nor did he complain about the Legal Adviser. There is nothing in the transcript that begins to suggest any hostility on the part of the Committee or any of its members towards the appellant. Applying the well-known dictum in Porter v Magill [2002] 2 AC 357, the facts are not such as to raise, in the mind of a fair-minded and informed observer, the perception that the Committee, or some of its members, or the Legal Adviser, were racially or religiously biased against the appellant.

Decision

95. The appellant's appeal is, accordingly, dismissed. I am inviting Counsel for the respondent to draft the appropriate order. This should include provision for the appellant to make written submissions, no later than seven days from receipt of the order, as to why he should not pay the respondent's costs, which the respondent asks to be summarily assessed in the total of £6,681.64. Once that period has elapsed, I shall consider any submissions by the appellant and decide whether (and if so what) costs order to make.