GENERAL PHARMACEUTICAL COUNCIL

FITNESS TO PRACTISE COMMITTEE

PRINCIPAL HEARING

25 Canada Square, London E14 5LQ

8 - 10 October 2019

Chairman: Mr Philip Geering

Committee Members: Dr Frances Akor
Ms Nalini Varma

Committee Secretary: Ms Shirley Krodua

CASE OF

TORKU, Vincent Kwadzo
(Registration Number 2047435)

IN PUBLIC

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MR DAVID ABRAHAMS, Case Presenter, appeared on behalf of the General Pharmaceutical Council

MISS CATHERINE RABAIOTTI, Counsel, instructed by Charles Russell Speechlys LLP, Solicitors, appeared on behalf of Mr Torku, who was present

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Transcript from the Shorthand Notes of T A Reed (Wiltshire) Ltd
Tel No: 01793 764614

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Determination 1

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(The determination was handed down)

DETERMINATION

Introduction

1. This is the written determination of a panel of the Fitness to Practise Committee following a Principal Hearing concerning the Registrant, Mr Vincent Kwadzo Torku.

2. The Registrant is registered with the General Pharmaceutical Council ('the Council') as a pharmacist, registration number 2047435.

3. It is alleged that his fitness to practise is impaired by reason of misconduct.

Preliminary Matters

4. Representation: the Registrant attended the hearing, confirmed his registration number as 2047435, and was represented by Miss Rabaiotti, Counsel instructed by Ms Charlotte Healy of CRS Solicitors. The Council were represented by Mr David Abrahams, Counsel.

5. Service: the Panel was shown a copy of a letter dated 10 September 2019 and a letter dated 23 September 2019, each headed 'Notice of Hearing', being posted to the Registrant's registered address and emailed to him.

6. No issue was taken on the Registrant's behalf regarding service.

7. In the light of the above, the Panel was satisfied that proper service within the relevant Rules had been effected (in particular, Rule 3 of The General Pharmaceutical Council (Fitness to Practise and Disqualification etc Rules) Order 2010) ('the Rules').

8. Papers: prior to the hearing the Panel was provided with:

   a. A bundle of documents marked 'Principal Hearing Bundle' paginated to page 75 containing (a) the Particulars of Allegation, witness
statements and exhibits adduced on behalf of the Council and (b) a statement and documents adduced on behalf of the Registrant; and


9. During the hearing Miss Rabaiotti provided the Panel with a copy extract from the *Hamer* textbook on professional regulation relating to the case of *Newell-Austin v SRA* [2017] EWHC 411 (Admin).

10. In addition, the Panel was provided with a copy of the Council’s *Standards of conduct, ethics and performance* July 2012 edition, being the edition in force at the relevant time.

The Allegation – application to amend

11. The Allegation is presented as follows:

Particulars of Allegation

You, a registered pharmacist, were the Superintendent and/or owner at XXXXXXXXXXXXXXXX (redacted) (‘the Pharmacy’) when:

1. You failed to ensure that you had the appropriate indemnity arrangements in place in respect of the service provided by the Pharmacy during a period from on or about 1 May 2013 to 16 February 2017.

2. You made renewal declarations to the General Pharmaceutical Council that you had in place appropriate indemnity arrangements on the following dates:
   a. 21 October 2013
   b. 27 October 2014
   c. 24 October 2015
   d. 19 October 2016.
3. That you were dishonest, in that:
   a. You knew the appropriate indemnity arrangements in place had expired on or about 1 May 2013;
   b. You knew that no other appropriate indemnity arrangements had been put in place between 1 May 2013 and 16 February 2017.

   By reason of the matters above, your fitness to practise is impaired by reason of your Misconduct.

12. On behalf of the Council, an application was made under Rule 41(1) of the Rules to amend the Particulars of Allegation. Since serving the Allegation the Council had received the Registrant’s witness statement. In the light of his statement, the Council took the view that it was no longer appropriate to pursue an allegation of dishonesty but instead to pursue an allegation that the Registrant had failed to act with integrity.

13. Notice of the application to amend had been given to the Registrant. On behalf of the Registrant, no objection was given to the proposed amendments.

14. On behalf of the Panel, it was proposed that the amendment at paragraph 3(a) might not read “failed to check that appropriate indemnity arrangements were in place” but might better read “failed to **ensure** that appropriate indemnity arrangements were in place” to better reflect the allegation in this case that the Registrant had been (a) practising without indemnity insurance, and (b) had not checked he had that insurance. The Panel also suggested that an amendment which read “failed to ensure” would better reflect the text of the relevant standard and the terms of paragraph 1 of the allegation.
15. Having considered the matter, both parties accepted that an amendment that read “failed to ensure” would better reflect the evidence and would not prejudice the fairness of the proceedings.

16. Having heard the application and submissions, the Panel concluded that the Particulars of Allegation should be amended to more accurately reflect the nature of the case and that the amendments could be made that would not prejudice the fairness of the proceedings: the amendments fairly reflect the evidence available, do not substantially change the nature of the case or raise any new issue of fact.

17. Accordingly, the Allegation was amended by removing the former paragraph 3 and replacing it with a new paragraph 3 so that the Allegation as a whole reads as follows:

**Particulars of Allegation**

You, a registered pharmacist, were the Superintendent and/or owner at XXXXXXXXXXXXXXX (redacted) (‘the Pharmacy’) when:

1. You failed to ensure that you had the appropriate indemnity arrangements in place in respect of the service provided by the Pharmacy during a period from on or about 1 May 2013 to 16 February 2017.

2. You made renewal declarations to the General Pharmaceutical Council that you had in place appropriate indemnity arrangements on the following dates:
   a. 21 October 2013
   b. 27 October 2014
   c. 24 October 2015
   d. 19 October 2016.
3. By your conduct referred to at paragraphs 1 and 2 above you acted without integrity in that on each of the four occasions referred to at paragraph 2(a) to 2(d), you:
   a. Failed to ensure that you had appropriate indemnity arrangements in place;
   b. Misled the Council by informing the Council that appropriate indemnity arrangements were in place.

By reason of the matters above, your fitness to practise is impaired by reason of your Misconduct.

Admissions

18. On behalf of the Registrant, the factual particulars as given in paragraphs 1 and 2 of the Allegation were admitted.

19. The Panel also had available to it statements and documentary exhibits which include evidence from the National Pharmacy Association (‘NPA’) and NPA Insurance Limited. The documentary exhibits show that the Registrant resigned from the NPA on 1 May 2013 and as a consequence his indemnity insurance ceased with effect from 1 May 2013. In addition, within the Registrant’s documentary exhibits there is a document showing that he renewed his NPA membership, and the indemnity insurance that came with it, with effect from 17 February 2017.

20. In the light of the above, and by the application of Rule 31(6) of the Rules, the factual particulars at paragraphs 1 and 2 were found proved.

21. On behalf of the Registrant it is was further accepted that he accepted the facts as alleged at paragraph 3(a) and (b) but that he did not accept the stem of paragraph 3 insofar as it alleged he “acted without integrity”.

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22. Accordingly, the Panel went on to receive evidence and submissions regarding the remaining element of the factual particular of the allegation, namely ‘acting without integrity’.

Application to hold part of the hearing in private

23. The Panel raised with the parties the issue of whether part of the hearing should be heard in private, specifically that aspect of the case relating to the Registrant’s personal life at the relevant time as set out in his statement and which impacted on third parties.

24. Having considered the issue neither party objected to the proposal that part of the hearing should be in private and indeed, on behalf of the Registrant, the Panel was encouraged to take that approach.

25. The Panel is very well aware of the public interest in regulatory hearings being held in public. This public interest is reflected in the Rules: Rule 39(1) provides that “Except as provided for in this rule, hearings of the Committee must be held in public.” Rule 39(3)(b) provides that the Committee may hold the hearing in whole or in part in private if it “is satisfied that the interest of the Registrant in maintaining their privacy outweighs the public interest in holding the hearing ... in public.”

26. The Allegation in this matter is one of misconduct and there is no dispute about the core issue in this case, namely that the Registrant practised without indemnity insurance over approximately four years and in each of those years misled the Council about his insurance cover. The personal circumstances referred to by the Registrant provide, in his submission, context to his admitted failings.

27. Having weighed the Registrant’s right to privacy regarding his private life against the public interest in open justice, the Panel is satisfied that the Registrant’s right to a private life outweighs the public interest in this regard. The Panel is further satisfied that given the nature of the evidence and the allegation brought against this Registrant, it has
determined that the greater part of the hearing should be heard in public whilst the aspects of the evidence, submissions and the written determination that relate to his personal life should be dealt with in private. In reaching this balance, the public can be reassured that the Registrant is held to account, the profession more generally will be able to take account of this case when standards are considered whilst the detail of the Registrant’s personal life can properly be kept private.

28. Accordingly, the Panel directed that any such part of this hearing as relates to the detail of the Registrant’s personal life should be dealt with in private, the remainder of the hearing being heard in public. In the course of the hearing the Panel made it clear that this direction covered not only private matters relating to his personal life at the time of the facts alleged, but also private aspects of his personal life currently as impacting on third parties.

**Background**

29. For some years the Registrant has been the Responsible and Superintendent Pharmacist at TT Pharmacy, Penge, London (‘the Pharmacy’).

30. On 9 February 2017, SD, an Inspector and registered Pharmacist with the Council, attended the Pharmacy for a routine inspection of the practice against the published Standards expected. He met the Registrant there.

31. As part of the inspection, SD sought to check that indemnity insurance was in place for the practice. SD’s written statement records that the Registrant said that he was covered by NPA “*but seemed uncertain and was unable to locate the indemnity insurance certificate*” though he did produce a certificate for Public Liability Insurance.

32. On 14 February 2017, SD telephoned NPA to be told that the indemnity insurance for the Pharmacy “*ceased around 2014*”. 
On the same day, SD telephoned the Registrant to advise him what he had been told by the NPA. SD’s statement records that the Registrant “did not seem certain who he had current indemnity insurance with, but said that he had looked at other providers... He told me that his NPA membership had expired or been cancelled, but that he believed that the liability insurance covered him for indemnity.” SD advised the Registrant urgently to ensure adequate indemnity insurance was in place.

It is worth noting here that, in broad terms, Public Liability Insurance relates to the business and covers accidents that may occur to staff or customers on the pharmacy premises whilst Professional Indemnity Insurance provides cover for harm arising out of clinical errors by the pharmacy staff.

Having identified a concern that the Registrant was practising without indemnity insurance, SD alerted the Council. A fitness to practise investigation followed leading to these proceedings.

As part of the Council’s investigation, relevant evidence has been produced. This includes renewal documentation. Pharmacists, to continue practising, are required to renew their registration with the Council annually. The renewal can be undertaken online.

The renewal requires the Pharmacist to make a declaration confirming specifics about their practice including the declaration “I have in place appropriate indemnity arrangements.”

Council records show that the Registrant confirmed that he had appropriate PII when he completed the declaration as part of his annual renewal in October of 2013, 2014, 2015, and 2016 despite the fact that his NPA indemnity insurance had ceased and was not in place.
Evidence considered by the Panel

39. The Panel had available to it a copy of the Principal Hearing Bundle which contains statements and documentary exhibits provided by both the Council and the Registrant.

40. Some of the Council’s evidence is referred to above in setting out the background to this case.

41. The Registrant has provided a written statement, attached to which are documentary exhibits. During the hearing the Registrant gave evidence having affirmed. He was questioned by both advocates and by the Panel.

42. His written and oral evidence included, as a summary, the following.

43. He first registered as a qualified Pharmacist in 1997, initially working as a locum Pharmacist before buying the Pharmacy in 2001. From that time, he became a member of the NPA.

44. He described how the Pharmacy was quite “run down” when he bought it, how he had it re-fitted and modernised, and how he developed the business to provide services to the local community. He worked full time as the main Pharmacist and manager. He described how up until 2013 he had always been insured with the NPA, renewing when the NPA sent him a renewal form and paying either by cheque or by card over the telephone.

45. Following questions from the Panel, he described how with his NPA membership he received a Certificate of Professional Indemnity Insurance (PII) which he put on the wall in the Pharmacy office next to the Certificate of Public Liability Insurance.

46. The Registrant gave evidence, in his statement and in his oral evidence, regarding his personal life as affecting the circumstances of this case spanning the years 2010 to 2015 and impacting up to the year 2017.

(The determination continued in private – see separate transcript)
50. The Registrant gave evidence that as part of his personal difficulties he was required to sell the Pharmacy. His statement reads in part “it seems that the professional indemnity insurance for the pharmacy lapsed because I stopped being a member of the NPA. I did not appreciate at the time that you had to be a member of the NPA in order to have the NPA’s professional indemnity insurance.” He further states that “I had throughout the relevant period continued to pay for and had public liability insurance, which I erroneously believed covered me for the insurance I needed.” He has produced documentary evidence of the relevant Public Liability Insurance that he held. He goes on in his statement “I regret that I was not really clear what the different types of insurance were. This was an omission by me for which I am extremely sorry but it was not done deliberately in any way and I genuinely but mistakenly believed I was covered.”

51. He gave evidence that after ending his membership of the NPA he did not receive renewal forms but did not follow that up because he “had so much going on at this time” and in any event “In my mind there was no connection between membership renewal and professional indemnity insurance.” In his oral evidence he described being under “enormous pressure and strain” because of his personal circumstances.

52. He gave written evidence that he could afford to have paid for the indemnity insurance. In his written statement he said that it was important to him not to have done anything that might have “jeopardised [the Pharmacy] sale and/or compromise the sale price”, for example by not having indemnity insurance.

53. He gave evidence of recalling the inspection visit by SD in February 2017, a time when the sale of the Pharmacy was still going though, not being completed until April 2017. He explained that the Council gave notice of the fact a visit would occur but not the date, which was unannounced.
In his written statement he describes being asked by the Inspector about indemnity insurance and how he went to the certificate on the wall which the Inspector then pointed out was a certificate for Public Liability Insurance, not Professional Indemnity Insurance (PII). He describes in his statement how “I was confused about what insurance policy I had with NPA and was trying to remember.”

He recalled the telephone call from SD on a later date after which he liaised with NPA and subsequently obtained Professional Indemnity Insurance.

The Registrant was questioned at length about how and when he was “confused”. He gave evidence that over the relevant period he had “genuinely” believed he had the relevant insurance because he had his Public Liability Insurance and that because of his belief he had no cause to make checks with the NPA as to what insurance he did have. He explained in his written statement that it was when the Inspector attended and explained that he realised he was “confused” as to the nature of the insurance he was supposed to have and whether he had that insurance. He accepted that now he knows that he did not have the appropriate insurance.

Under cross-examination he accepted that if he was confused the professional thing to do would have been to check what insurance he had with the NPA.

Following questions from the Panel, the Registrant gave evidence that in the years before 2013 when he had NPA membership he had received the PII certificate but that he “never understood what it stood for”; that Professional Indemnity Insurance “was not something I understood” at the time and “I didn’t understand I needed it at all. I didn’t have it in mind that I needed” PII. He gave evidence that after his NPA membership ended he stopped receiving the PII certificate but left the old one on the wall.
59. He described how it was only after the Inspector attended that PII was explained to him. When asked by the Panel what the purpose of PII was he said that he now understood that PII “covered any mistake you make in day-to-day working, dispensing, advising in pharmacy”.

60. In re-examination he reiterated that it was only when the Inspector visited that he realised he was confused about insurance but that during the period in question he had genuinely believed he had the necessary insurance. He said that having that genuine belief he had not considered making checks with the NPA as to what insurance he had.

61. In relation to his Registration renewal, he gave evidence of recalling doing this online and whilst having no specific recollection of confirming having PII, accepts that he did do so and explained in evidence that he did so because of his genuine but mistaken belief that his Public Liability Insurance covered him for his PII. He accepted in cross-examination that he should have taken more care when renewing his registration.

62. Under cross-examination he accepted that he had failed to ensure that he had PII and over three years nine months and had misled his Regulator on four occasions. He referred to these matters as “a mistake”. He accepted that he had breached Standard 6.5 (meet accepted standards of conduct), Standard 6.6 (comply with legal and professional requirements…) and Standard 7.9 (make sure that all your work…is covered by appropriate professional indemnity cover).

63. He confirmed that there had been no claim against him. In his written statement he described how not having PII meant that had a patient brought a claim against him there would have been no insurance to pay it.

64. In oral evidence when asked what the consequences might be of not having PII, he said that he would have to “put my hand in my pocket” to pay any claim. He suggested that if he did not have insurance he might have to sell his home to pay any claim. When asked if he had looked at his current PII documents to see what it covered or how much the
maximum payouts might be, he gave evidence that he had not looked and did not know. When pressed by the Panel, he accepted that patients who could not claim financial recompense through insurance might suffer from not being able to work, obtain treatment or receive care.

When questioned about the risk to patients he gave evidence that “no patient had been put at risk because we had no patients complaining” and there had been no claim against the Pharmacy. He said that he “would not willingly put patients at risk”. He accepted that “in hindsight” patients would not have been able to claim on his insurance as he had no insurance “but no patient was at risk”. When pressed further on patient risk he described it as “hypothetical”.

He gave evidence accepting that after 13 years of running the Pharmacy “smoothly” he should have separated the running of his business from the difficulties he experienced in his personal life and taken steps to ensure that he had the necessary insurance.

He gave evidence regarding his current position. In his written statement he states he has retained control of the overarching pharmacy company but handed over the role of superintendent pharmacist in 2017, handing over first to his daughter and then on to his son. In his oral evidence he described how, shortly after the Inspection and the issue of his insurance arose, he had “unilaterally chosen” to step away from working as a pharmacist in the shop. He described how he bought another pharmacy in 2018 and his daughter is the superintendent pharmacist there. Both pharmacists are insured through NPA which “reduces the risk of something getting missed.” He stated that he no longer works as a pharmacist in either pharmacy.

In his oral evidence, having accepted that he made a mistake he “did not take this lightly”. He described how the profession “had been very good to me”, how he was committed to observing the rules and he realised he “needed to be very careful” in the future. In his oral evidence, he
described how he now had a process to ensure that his insurance is kept up to date. In his written statement he described how “Important dates are put in a book in each pharmacy so that nothing is missed. I also now get all the insurance from one place – the NPA – so that it is all done through one company which reduces the risk of something getting missed.”

69. In his oral evidence the Panel asked him about his current arrangements. He described how he was “in charge” of paying bills for the pharmacies and he runs things from home now that he does not work in the pharmacies. He described how he kept a notebook, approximately 8 cm by 15 cm, in which he wrote down future renewal dates when each insurance was renewed. He explained that he looked at this book to check when insurance was due for renewal. When asked how often he looked at the book he said that he “didn’t look at it very often as I know when insurance is due – due for summertime so I look at it just before. If I don’t get a renewal request I look.” Asked if his daughter came to the house to look at the book he said “No” but added that his daughter has the insurance certificates on the wall at the pharmacy where she works. Asked if he kept a diary into which renewal dates could be put, he said “No”, and when asked about electronic diaries with automated reminders he said he would “probably do that soon”. He explained that a diary was kept at the pharmacy but this was his daughters for “day-to-day work.”

70. He gave oral evidence that “It would never happen again!” and “I don’t think it [not having PII] would ever happen again” even if he was again in personal difficulties and that he had “learnt a lesson”. He gave an example of how in October 2018 he and his wife had received “very serious” news about a health issue “but not withstanding that I have kept a check” on the insurance “because of the procedure now in place to ensure insurance is in place.” It was put to him that he is now “proactive” in making sure he had insurance and he agreed.
71. He expressed regret at his "mistake", how "deeply sorry" he was that his oversight had led to regulatory proceedings, and that it would never happen again.

72. He referred to his unblemished career and the testimonials made in knowledge of these proceedings and which refer to him as a dedicated pharmacist who had devoted himself to serving the public.

73. He gave evidence that he did not accept that he lacked integrity. He gave an example of a drugs supplier sending him, unordered and undocumented, several packets of dangerous drugs and how he had taken action by telephoning the supplier. He gave this as "one example of so many" of his integrity. He said that as humans people can make mistakes but "that does not make them untrustworthy".

**Submissions of facts – “acted without integrity”**

74. The advocates made submissions on the issue of facts, specifically, the issue of whether the Registrant had as alleged “acted without integrity”.

75. On behalf of the Council, it was submitted that the Registrant had acted without integrity given the factual admissions he had made and his own admissions that he had breached relevant Standards expected of pharmacists. In summary, it was the Council’s submissions that acting without integrity could be found on three grounds taken individually, namely that he had failed to ensure that he had PII in place, that he had failed to check that he had PII in place, and the four instances of misleading the Council. Relying on *Wingate v SRA* [2018] EWCA Civ 366 and *Brett v SRA* [2014] EWHC 2974 it was submitted that the Registrant had failed to meet the high standards expected of a Pharmacist and that this was underscored by the Registrant recklessly misleading his Regulator on an issue that was of significant importance. It was emphasised that whatever sympathy there may be for the Registrant regarding his personal
circumstances, circumstances that might be taken into account at a later stage of these proceedings, those circumstances could not be a reason for concluding that he did not act without integrity.

76. On behalf of the Registrant it was submitted that he had not acted without integrity. In summary, it was emphasised that he genuinely believed he had PII, that his mistake was genuine and that he had had an honestly held belief that he had insurance. It was submitted that it was a genuine and unwitting misunderstanding on his part not to realise that his PII would end when he ended his NPA membership. It was submitted that in his belief he could not be expected to double-check his insurance and that it was in that genuine albeit mistaken belief, that he had as a matter of fact, misled the Council.

77. It was further submitted that it was significant that the two legal authorities cited by the Council related to lawyers in the context of our legal system that could not function if lawyers were not "honest and frank", and that their conduct found to represent a lack of integrity was undertaken knowingly by the lawyers whereas in the Registrant’s case he had not acted knowingly. Further reference was made to the case of Wingate including "102 Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public."

78. It was submitted that professionals can make mistakes but this does not have to amount to a lack of integrity. Reference was made to the scenario of a professional who properly relies on others – a PA or the firm within which he works – to arrange his PII and is not expected to check each time, and should not be found to have lacked integrity when the person he relies on fails one year to arrange for PII and the person continues practising not knowing they have no PII. The Registrant had
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not been double-checking his PII before 2013 and should not be criticised for not double-checking after 2013 when, he genuinely believed, albeit incorrectly, that he had PII.

79. It was submitted that the test for a lack of integrity was an objective test but that the Panel should have in mind the Registrant’s state of mind and context. Reference was made to an extract from the Hamer textbook in relation to the case of Newell-Austin v SRA [2017] EWHC 411 (Admin) in which it was said that a "person’s state of knowledge or intention in relation to the underlying conduct (said to demonstrate lack of integrity) is a relevant consideration in assessing whether, in carrying out such conduct, a person demonstrated a lack of integrity. At one extreme, if the person is unaware of the relevant conduct, there can be no lack of integrity. At the other extreme, actual knowledge or recklessness in the sense of being aware that the conduct posed a risk and consciously taking it, will be highly likely to give rise to a finding of lack of integrity...Lack of integrity does not necessarily involve risk taking."

The Panel’s finding on ‘acting without integrity’

80. The Panel had in mind that as with other factual particulars the burden of proving ‘acting without integrity’ rested on the Council, and the standard of proof was the balance of probabilities.

81. The Panel accepted that the test for acting without integrity was an objective one, which involves a registrant not meeting the higher standards that society and other professionals expect of the registrant. The Panel also accepted that the Registrant’s state of knowledge or intention in relation to the underlying conduct said to demonstrate lack of integrity is a relevant consideration in this regard, along with the context within which the conduct occurred.
The Panel first of all considered what weight it should attach to the Registrant’s evidence, in particular his oral evidence. He answered questions, making admissions and gave answers that were against his own interests including an admission that he did not fully or carefully read the declaration and warning on his registration renewal form. He was consistent in his statement that his belief was genuine regarding having appropriate insurance. This was consistent with the fact that he was, in 2013, trying to sell the pharmacy since not having PII in place may have jeopardised the sale.

The Panel accepted his evidence as being the Registrant’s best and honest account of what he understood had happened and why. In particular, the Panel therefore accepted that over the relevant period the Registrant genuinely, albeit mistakenly, believed he had the relevant insurance for his business.

The Panel next considered what the Registrant’s state of mind was at different stages of events to resolve what had been referred to as the Registrant’s state of being “confused”.

There is good evidence that the Registrant for 12 years ran the pharmacy without apparent difficulty, in particular that, along with other insurance cover including Public Liability Insurance, he had PII cover and regularly renewed his PII cover when sent a renewal form.

It was evident that the Registrant was less clear in his mind as to his understanding of PII. His written statement included “I regret that I was not really clear what the different types of insurance were.” In his oral evidence he said that he received the PII certificate from the NPA while he had membership but that he “never understood what it stood for”, that Professional Indemnity Insurance “was not something I understood” at the time and “I didn’t understand I needed it at all. I didn’t have it in mind that I needed” PII. He went on to say that it was only after the Inspector visited in 2017 when PII was explained to him that he understood.
87. The Registrant gave evidence that he used to place the PII certificate on an office wall next to the certificate of Public Liability Insurance and that after his NPA insurance ended he no longer received the PII certificate and had left the old certificate in place.

88. The Panel concludes from this evidence that in 2013 the Registrant knew he was running a business, knew he needed various sorts of insurance (he separately referred to Public Liability Insurance, motor insurance for deliveries, building and content insurance) but did not adequately understand about PII insurance and what it was for; and that whilst he knew the PII certificate had stopped arriving he did not understand why it had stopped or the significance of it having stopped.

89. It is notable at this point to observe that even now, the Registrant is not clear of the terms of his current PII, what it covers or what the maximum pay-outs can be.

90. In terms of the context within which the Registrant was working, he was the Superintendent Pharmacist and Responsible Pharmacist running his community high street Pharmacy dispensing medicines and advice to patients. He accepted that mistakes can happen, referring to the fact that pharmacists “are human”.

91. A reasonably informed patient would expect him, as a professional dispensing advice and potentially harmful medicines, to have PII: having PII means that in the event of a clinical error patients may have recourse to recompense for any loss of earnings, treatment and care that they require.

92. The importance of Pharmacists having PII is illustrated by the fact that it is a specific stand-alone Standard, is a specific and stand-alone aspect of an inspection, and is a specific paragraph in the declaration at the end of the renewal of registration form. In this context, insurance is not an ancillary or secondary priority, but a fundamental and essential part of any person professing to act professionally and in a professional context.
93. Given this context, the Panel is satisfied that it can reasonably be expected of a Pharmacist that they act responsibly, inquire into and understand what insurance is needed for the running of their business. On the Registrant’s own account, evidenced in both his written statement and in his oral evidence, he did not in 2013 understand what PII insurance was or why it was needed. This alone, in the Panel’s view, gives rise to criticism of the Registrant. His lack of understanding also goes some way to explaining why he did not make inquiries in 2013 to ensure that his PII continued after he ended his NPA membership. When the PII certificate did not arrive as it had in previous years he either, in ignorance of its significance, did not question its absence or, in his ignorance he mistakenly assumed that PII was part of his Public Liability Insurance but did not ensure that it was.

94. What he did not do in 2013 was take sufficient responsibility, consistent with his status as a professional, to inquire into PII. He made a change to his relationship with the NPA, ending his membership, but did not then make the obvious inquiry into what impact this would have on his business, in particular his insurance. He accepted in oral evidence that it would only have taken a single telephone call to NPA to have clarified his insurance position. In response to a question from the Panel he accepted that he “made inquiries after the inspector came”.

95. In the Panel’s view, a responsible professional would have made inquiries in 2013 and the fact that the Registrant did not leaves him open to criticism.

96. However, the Panel does not conclude that he was reckless in 2013. He had had PII over the preceding years; the Panel concludes he would have wanted to have PII had he realised he did not have it; he has given evidence that he genuinely believed he had appropriate insurance; the Panel concludes that in his ignorance he did not consciously take a risk in assuming that he had insurance but continued as he had over previous
years. Accordingly, whilst the Panel is satisfied that he is open to criticism for not acting as a responsible pharmacist would, he did not act recklessly.

97. The Panel acknowledges that at the time the Registrant was facing a challenging time in his personal life in a way that touched significantly on his business. However, these difficulties cannot excuse him failing to ensure that a fundamental and essential element of his Pharmacy business was in place. He continued to run the business, was able to set up another company in the relevant period, and continued to serve patients. There may well have been aspects of his business that were optional and could properly be put on a ‘back burner’ during the years when he had personal difficulties. PII, however, is not an optional aspect of running a business or being a professional. It is fundamental and essential. In choosing to continue to run his Pharmacy he also had to run it professionally, ensuring that the fundamental and essential elements were in place. In submissions it was indicated that integrity involves, in part, an adherence to an ethical code. That adherence must apply in good times and difficult times if integrity is to be maintained.

98. Each of the four occasions when he renewed his registration could have acted as a prompt for him to check that he had PII. He had a certificate referring to Public Liability Insurance; he did not have a certificate expressly referring to PII.

99. The Panel has concluded that it was as a consequence of the Inspector’s visit on 9 February 2017 the Registrant’s lack of understanding came to prominence in the Registrant’s mind. He may well have had, to some lesser degree, some awareness of his lack of understanding before then, but it was the attention of the Inspector’s visits that brought his lack of understanding into his own focus. This is evidenced by the Inspector’s own contemporaneous email to the Council describing the Registrant as someone who “did not seem certain” about his insurance and the fact that the Inspector reports the Registrant reaching for his Public Liability
Insurance when his PII certificate had been asked for. This is consistent
with the Registrant’s own admission to not being clear about insurance
beforehand but, by 16 February 2017, had contacted NPA to clarify his
actual insurance position and to then take out PII cover. As a result, it
can be concluded that by 16 February 2017 he understood that he had not
had PII cover and he had an understanding that there is a difference
between PII and Public Liability Insurance.

100. Having reviewed the Registrant’s conduct, his state of mind in 2013 and
up to the time of the Inspector’ visit, and the context, the Panel has gone
on to consider what conclusions may be drawn.

101. In essence, the Panel accepts that he believed he had the necessary
insurance in place and that he was mistaken in doing so and bears some
responsibility for the failings that led to his incorrect belief. He failed to
act as a responsible professional would have done. He is to be criticised
for the mistake he made, a mistake that led him to his erroneous belief of
having appropriate insurance. This represents a lack of professionalism.

102. The Panel further finds him subject to criticism for having misled his
Regulator when he indicated four times that he had PII. The system of
regulation depends, as the Registrant accepted in evidence, on a degree
of trust between Regulator and the regulated professional. Inspectors
cannot be checking every professional all the time. In response to
questions from the Panel the Registrant accepted that regulators exist to
ensure professionals are competent, and to protect the public and to
maintain standards; regulators have to be able to rely on professionals to
be scrupulously accurate in the information that they provide.

103. In this case, the Registrant was not reliable and was not scrupulous. As
outlined above, he did not act as a responsible pharmacist would have
done leading him to not having PII and this has led him into misleading
his Regulator albeit not deliberately. The criticism of him is added to by
the fact that, on his own admission, he did not read fully or carefully the
declaration and warning on the registration renewal form. The Panel concludes, therefore, that he is subject to criticism for having misled his Regulator. This represents a further lack of professionalism.

104. In essence, therefore the Panel accepts that he had a genuinely held but mistaken belief that he had PII but finds that his mistakes are not ones that a responsible professional Pharmacist would have made and they led him to misleading his regulator. Given the nature and extent of the criticism it amounts to a lack of professionalism.

105. In the examples given by Miss Rabaiotti of when professionals would not have been found to lack integrity were when the professionals would not have been held accountable for the failings of others because they were not open to criticism.

106. In this case the Panel takes the view that the Registrant should be held accountable for what has happened. This conclusion is based on the nature and extent of the Registrant’s failings, and the criticism he faces for those failings, the fact that they amount to breaches of the Standards of Conduct, ethics and performance, and a lack of professionalism. This is set in the context of the fundamental and essential nature of PII to a practising pharmacist.

107. The Panel is satisfied that he has not met the high standards expected of him as a pharmacist by the public and the profession. He has shown a disregard for his professional obligations.

108. With these conclusions the Panel finds as a fact that the Registrant acted without integrity in the way alleged.

109. In reaching this conclusion, the Panel makes it clear that the Registrant is not at the top end of the spectrum regarding lack of integrity. There is no allegation of dishonesty and the Panel accepts that he did not act deliberately by consciously choosing not to have PII. There is no evidence of any patient suffering actual harm. It is also apparent that for many
years he did maintain PII insurance. Nonetheless, the Panel’s findings also mean that he is not at the lowest end of the spectrum either: being a professional responsible for running a pharmacy comes with it obligations to know what is expected and ensure that those expectations are in place. The Registrant’s failings led to him not having PII in place for a protracted period, and put patients at risk of significant financial loss.

**Ground of Misconduct and Impairment**

**The Law and Guidance**

110. Article 51(1) of the Order provides: “A person’s fitness to practise is to be regarded as impaired for the purposes of this Order only by reasons of...(a) misconduct;...”

111. Thus, misconduct provides a gateway to considering impairment. If that gateway is passed, then by way of Article 54(1) of the Order the Panel must then consider whether the Registrant’s fitness to practise is impaired.

112. The Panel took account of the guidance given to the meaning of ‘fitness to practise’ in the Council’s publication *Good decision-making* (Revised March 2017). Paragraph 2.11 states: “A pharmacy professional is ‘fit to practise’ when they have the skills, knowledge, character, behaviour and health needed to work as a pharmacist...safely and effectively. In practical terms, this means maintaining appropriate standards of competence, demonstrating good character, and also adhering to the principles of good practice set out in your various standards, guidance and advice.”

113. In the Panel’s view this is a case concerning aspects of the Registrant’s character and behaviour. There have been no concerns expressed regarding his clinical skills.

114. There was agreement between the parties as to the relevant and well-established case law that was adequately set out in the Council’s skeleton argument.
Submissions on grounds of misconduct and impairment

115. On behalf of the Council it was submitted that the Panel should find misconduct and should find current impairment.

116. In relation to misconduct, it was submitted that PII is a basic professional requirement, reflected by the fact that it is a specific expectation of the published Standards. It was further submitted that the Registrant had put patients at risk by not having PII and that this risk had extended over a lengthy period of time, which, in the Council’s submission, was highly relevant.

117. In relation to impairment, and with Rule 5(2) in mind, it was submitted that the Registrant had, as he had admitted in oral evidence, brought the profession into disrepute and had not met the fundamental principles of the profession, specifically by not putting patients first and by not having PII. It was further submitted that because of the finding of acting without integrity the Registrant’s integrity could no longer be relied upon.

118. On behalf of the Council, and consistent with how they had put their case to the Registrant, they accepted that he had now obtained PII and the Council do not submit that there is likely to be a repeat by the Registrant of his misconduct, but that the wider public interest did require a finding of impairment.

119. With regard to insight it was submitted that there was evidence the Registrant had learnt his lesson. However, it was acknowledged on behalf of the Council that the Panel had asked questions related to insight with answers that meant it was open to the Panel to conclude that there was cause for concern, that the Registrant had limited insight and that this could impact on an assessment of the risk of repetition.

120. On behalf of the Registrant, it was submitted that not every breach of Standards leads to a finding of misconduct and, it was submitted that the Panel’s findings in this case did not justify a finding of misconduct but that
it was necessary to look to the Registrant’s culpability for what happened. It was submitted that the Registrant had acknowledged what had happened and the seriousness of it. However, it arose out of his honestly held belief that he had insurance and even though the Panel had found that he was subject to criticism for having that belief it should be seen in the context of his personal circumstances at the time which meant that other professionals would not regard the breaches as so serious as to be regarded as deplorable. The fact that the lack of PII had endured for over three years would be an aggravating feature had it been deliberate but not in the context of a genuinely held belief. It was therefore submitted that misconduct was not made out.

121. With regard to impairment it was submitted that if a member of the public knew that the Registrant, passionate and dedicated to his profession with 22 years’ practice, at a time when he was in personal difficulties, had made a mistake and remedied it as soon as he was aware, the member of the public would not demand a finding of current impairment.

122. On the issue of insight and the risk of repetition, it was submitted that the Registrant had shown insight, had expressed regret, acknowledged the consequences of his failing and taken immediate steps to remedy it once he was aware, and now has in place a process to avoid repetition, then the Panel could conclude that there was no risk of repetition. Reference was made to Bevan v GMC [2005] EWHC 174 (Admin). This was demonstrated by the fact that since the events of this case, when he had bought a new pharmacy, he had contacted and chased the NPA to ensure that appropriate insurance was in place. It was submitted that he had learnt his lesson and there would be no repetition.

The Panel’s decision on the ground of misconduct and impairment

123. The Allegation brought by the Council relied on impairment being found by reason of misconduct. The Panel understood that there is no burden or standard of proof at this stage but that it is expected to exercise its own
professional judgement, keeping at the forefront of its consideration the overarching objectives of these regulatory proceedings. The Panel took account of the submissions by both parties.

Grounds

124. The Panel was aware that misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The Panel was aware that not every instance of failing short of what would be proper in the circumstances, and not every breach of professional standards, would amount to misconduct. The failing must be serious if it is to amount to misconduct.

125. The Panel therefore had careful regard to the context, circumstances and seriousness of the matters found proved when deciding if misconduct was established.

Professional Standards

126. The Panel considered whether the Registrant had breached any of the Council’s Standards in force at the time of the facts of this allegation (the July 2012 document referred to above). The Registrant admitted breaches of Standards. As part of its consideration of the issue of integrity the Panel has already concluded that he breached Standards. These Standards are as follows.

127. The Panel determined that there had been breaches of the following Standards of conduct, ethics and performance (July 2012 edition in force at the relevant time):

a. **Standard 6.5** requires registrants to “Meet accepted standards of personal and professional conduct”;

b. **Standard 6.6** requires registrants to “Comply with legal and professional requirements and accepted guidance on professional practice”;

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c. **Standard Paragraph 7.9** requires the Registrant to “Make sure that all your work, or work that you are responsible for, is covered by appropriate professional indemnity cover”;

d. **Standard 1** which requires registrants to “Make patients your first concern”; and

e. **Standard 6.1** which requires registrants to “act with...integrity to maintain public trust and confidence in your profession.”

128. Indemnity insurance enables patients to get redress in the event that harm is caused through the professional services provided by the Registrant. All practising registrants are required to have appropriate insurance: even the best clinicians can make errors and be liable to patients. Any harm suffered by a patient is likely to be aggravated if they are unable to claim appropriate redress from registrants if the indemnity insurance is not in place. Whilst there is no evidence of any patient having a claim against the Registrant, he has put patients at risk of not being able to get appropriate redress.

129. Accordingly, by not having PII in place and by misleading his Regulator he has not put patients first, not complied with his professional obligations and not met acceptable standards of professional conduct.

130. The failure to have PII in place amounts to a breach of trust with his patients by the Registrant. His patients expect him to act professionally. They will expect him to have appropriate insurance in place in case errors arise causing harm. The Panel has found that he is subject to criticism for not having PII as set out earlier in this determination. The Panel takes account of the personal circumstances in which he found himself. However, he kept practising and should have ensured that he practised safely. Having PII in place is a fundamental and essential element of professional practice. He did not have PII in place and is responsible for that failure. His failure extended over nearly four years and only came to an end when an inspector visited.
131. The regulatory framework depends in part on registrants acting with integrity, that when they report something as fact that it is a fact. The Registrant had a responsibility to ensure that when he indicated to the Council that he had indemnity insurance that this fact was true. His failure to ensure that he had appropriate insurance and his repeated acts of misleading his regulator represent conduct that falls significantly below the standards expected.

132. The Panel is also satisfied that other professionals would regard the conduct as deplorable. The Registrant may attract some sympathy for the personal difficulties that he was in at the time but nonetheless professionals would regard not having PII in place as a serious breach of a fundamental element of professional practice and the consequences for patients can be very grave. In choosing to continue to practise professionals would conclude that he should also have ensured that he was meeting basic expectations whatever his circumstances. Other professionals would also regard misleading the Regulator as very serious given the importance of being scrupulous in the information provided.

133. In the light of the above, the Panel is satisfied that his conduct is serious enough to amount to misconduct.

134. Accordingly, the Panel was satisfied that the ground of misconduct was established.

Impairment

135. The Panel went on to consider what are referred to as the Personal and Public Components of impairment.

The Personal Component

136. The Panel has considered whether the Registrant has insight in relation to the circumstances of his misconduct.

137. The Panel is satisfied that the Registrant has shown insight into his misconduct for the following reasons.
138. In his written statement and in his oral evidence to the Panel, it was clear that he accepted that he had failed in his professional obligations. He has not disputed not having PII and has not disputed misleading his regulator. He has repeatedly expressed regret and remorse for what has happened.

139. The Panel concludes that his regret and remorse appear as genuine for the following reasons. There is evidence that for many years he maintained appropriate insurance. There is evidence that he was able and willing to maintain appropriate insurance and would not have wanted to be without PII cover had he realised he was not covered. His were not deliberate acts. In addition, he has given evidence of understanding the consequences of not having PII, namely that patients who may have suffered harm may not get appropriate redress. He has also recognised the adverse consequential impact on public confidence and professional standards. He has given evidence recognising the need for professionals to be accurate in the information provided to their Regulator and the consequences that may follow if Regulators are misled.

140. The Panel is also satisfied that he has understood how he came to fail in the way that he did. The reasons are two-fold: first, the personal circumstances in which he found himself which impacted on his performance at work; and secondly, his lack of understanding of insurance matters and in particular PII.

141. The Panel has concluded that he has taken adequate steps to address the reasons why he failed. First, he has acknowledged that he should have separated out his personal life from the running of the Pharmacy. He has given an example from within the last year of how he has maintained his administration of the Pharmacy even when he was in personal difficulties regarding serious news of ill-health affecting him and his wife. Secondly, he has gained understanding of the nature of PII, that it is different from Public Liability Insurance, that his PII depends on his NPA membership,
and his understanding of why PII is important in case there is a claim against him by a patient.

142. The Panel had some concerns about his current level of understanding of PII given his oral evidence. First, he was unable to recite the terms of his current PII certificate. The Panel was concerned that this might indicate a lack of concern or attention to his PII. However, the Panel has concluded that it would be unfair to draw this inference. It is clear he understands what PII is, why he needs it, and that it is a professional requirement. This is an adequate understanding for present purposes. Secondly, the Panel was concerned when, in answer to a question regarding risk to patients if PII is not in place, he described this as “hypothetical”. It caused the Panel to be concerned about the Registrant’s understanding of the importance of insurance. However, the Panel has concluded by interpreting his reference to “hypothetical” in the context of the Registrant being caring about the service he provides to the community and his commitment to sound clinical procedures to avoid clinical errors. Interpreted in this way, the Registrant can be regarded as someone who does understand the need for insurance but is committed to high standards of clinical service such that he does not anticipate a claim.

143. Having considered the positive evidence available, and addressed the concerns the Panel had, the Panel has concluded that he has addressed the causes of how he came to not have PII and to then mislead the Regulator.

144. The Panel has then come to consider the risk of him repeating his failing, in particular by again not having PII in place. The Registrant has been very clear that he has learnt a lesson and that these events will not be repeated. The Panel has no doubt that these proceedings have had a significant impact on the Registrant. Nonetheless, the Panel has looked behind his assertions to consider the risk of repetition.
145. The Panel has considered again how it came about that he did not have PII. The Registrant had for 13 years or so maintained PII: there is evidence of him renewing his NPA membership and therefore his PII regularly year-on-year. His failure came about in large measure because of his admitted lack of understanding about his insurance arrangements, not because he is unreliable in administering an annual renewal. The Panel has already concluded above that he has gained an adequate understanding of PII, what it is, why it is needed and that it is a professional obligation. Having gained that understanding, the Panel concludes that he is now unlikely to repeat his failure to maintain PII.

146. The Panel was underwhelmed by his description of his process for reminding himself about renewal: he described a notebook kept by him at his home in which he kept a note of renewal dates and which he looked at when he knew renewal was due and if he had not received a renewal notice. There are other steps and other people he could involve to be more robust in his administration of insurance renewals. However, as noted above, he has in the past demonstrated a consistent approach to managing the administration of renewals and, underwhelmed as the Panel was by his process, it does not conclude that it is so inadequate as to give rise to a risk of repetition.

147. With the above conclusions in mind, the Panel has concluded that the Registrant has shown sufficient insight and taken sufficient action to conclude that the risk of repetition is low. He has learnt a lesson in a meaningful way.

The Public Component

148. The Panel then turned to consider the public component of impairment, which has three parts to consider: a risk of causing future harm; the maintenance of public confidence; and the upholding of professional standards.
Having concluded that the risk of repetition is low the Panel has concluded that the risk of future harm is also low.

The Panel has considered the maintenance of public confidence. The public must be assured and reassured that Pharmacists maintain PII. They are entitled to assume that appropriate insurance is in place. If the public were not assured about this those in need may be inhibited from seeking appropriate health care services. Members of the public must be able to attend pharmacies not worrying about whether appropriate insurance is in place but able to focus on their concerns. The Registrant’s conduct is such as to undermine public confidence in that regard and the Panel regards this as a serious concern.

The public must be reassured that misconduct of this sort is not acceptable and, whatever the personal circumstances may be, safe practice will be maintained. That reassurance comes, in the Panel’s judgement, by a finding of impairment.

The Panel has considered the need to uphold professional standards. The message to other professionals must be clear: whatever your personal circumstances, if you choose to run a practice you must have an understanding of the appropriate insurance to have and must not mislead your regulator; and that misconduct as found in this case is not to be tolerated because of the risks that arise. The Panel is clear that the need for this message is sufficiently serious that there should be a finding of impairment.

Accordingly, the Panel concludes that the Registrant’s fitness to practise is impaired by reason of the public component on the basis of the wider public interest and not the risk of future harm.
**Sanction**

154. Having found impairment, the Panel has gone on to consider the matter of sanction.

**The Law and Guidance**

155. The Panel’s powers are set out in Article 54(2) of the Order.

156. In determining the appropriate sanction, the Panel should consider the range of sanctions in Article 54 in ascending order from least restrictive to most restrictive to identify the appropriate and proportionate sanction that meets the circumstances of the case.

157. The Panel must also have regard to the Council’s *Good decision making: Fitness to practise hearings and sanctions guidance* to inform its decision.

158. The Panel is entitled to give greater weight to public interest over the consequences to the Registrant of the imposition of any particular sanction. Sir Thomas Bingham MR (with whom Rose and Waite LJJ agreed) said in *Bolton v Law Society* (1994) 1 WLR 512:

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

**Council’s submissions on sanction**

159. On behalf of the Council, having identified aggravating and mitigating features, it was submitted that the Panel should consider a sanction of suspension. It was submitted that the misconduct was so serious, and persisted for so long that no lesser sanction would be adequate and that it should be suspension for six months. The Council accepted that personal circumstances could amount to a mitigating feature but questioned whether in this case, given that the misconduct persisted for so long over a time when he was operating his business, the personal circumstances
could actually amount to a mitigating feature. The Council expressly did not argue for the more severe sanction of removal.

The Registrant’s submissions on sanction.

160. On behalf of the Registrant, it was submitted that the Panel should consider a warning. It was submitted that, as the Panel had found, the Registrant had had a genuine belief that he had appropriate insurance, albeit a belief based on a mistake, and that in that context the fact that the mistake continued over time was not the aggravating feature it would be had he deliberately misconducted himself. In addition, the misconduct should be set in the context of the personal circumstances which were particularly difficult and persisted over the whole of the relevant period.

161. It was further submitted that the Panel should have in mind the Registrant’s 22 years’ unblemished practice, the testimonials that showed he was held in high esteem as a caring community pharmacist, that he has admitted what happened, shown insight, and the Panel had found a low risk of repetition of his misconduct.

162. It was submitted that in the light of these matters the Registrant had taken himself out of practising pharmacy, handing over to his daughter who is a pharmacist, to undertake the day-to-day operation of the pharmacy. As a result whilst it could not be argued that he would suffer a financial impact with a restrictive sanction, but he had already been affected on a personal level by these events and would be affected on a personal level by any sanction that was imposed, feeling as he does that he has let down the profession which, in his own words, has been so good to him. It was submitted that the case fell squarely in the guidance for a warning to be the appropriate and proportionate sanction.
163. If the Panel did not agree with a warning, then it was submitted that the Panel should give close consideration to a Conditions of Practice Order and not dismiss it as an option in this case.

The Panel’s decision on sanction

164. When considering sanction, the Panel recognised the need to act proportionately, in other words that the sanction should be no more serious than it needs to be to achieve its aims. The Panel was mindful that the purpose of sanction in regulatory proceedings is not to punish a registrant but to protect patients and the wider public interest consistent with the overarching objectives of regulation.

165. The Panel bore in mind the Council’s publication Good decision-making: Fitness to practise hearings and sanctions guidance (revised March 2017).

166. The Panel first considered the aggravating and mitigating factors.

167. The Panel identified a number of aggravating factors, including:

a. He is open to criticism for, in 2013, not, as a responsible pharmacist would do, having an understanding what insurance he was required to have and in particular not understanding about PII;

b. He is open to criticism for not making the inquiries a responsible pharmacist would have made after leaving the NPA to ensure he did understand his insurance position;

c. His genuine belief that he had appropriate insurance was therefore based on a mistaken understanding, a mistaken understanding for which has a responsibility and represents a failing on his part;

d. Not having PII represented a breach of trust with his patients who could legitimately expect and rely on him to have appropriate insurance in place;
e. As a result of his failing, he then misled his regulator on an aspect of his practice that is fundamental, by completing a formal declaration made as part of his registration renewal. This then was not some minor act of misleading. It went to the heart of effective regulation and breached the trust that Regulators depend on to a significant degree that professionals can be relied upon to tell the truth and to be scrupulous in so doing;

f. The Panel has found that he breached five Standards and the breaches were not minor. They include not putting patients first and a lack of integrity. That noted, the Panel has also recorded above that the lack of integrity was not at the top end of acting without integrity, such as when it is based on deliberate and/or dishonest conduct. The Panel also recorded that the acting without integrity was not at the bottom end of the spectrum given that he was the pharmacist responsible for running the business which brings with it obligations to know what is expected, obligations he did not meet and which led him into misleading his regulator;

g. He put patients at risk of harm;

h. The lack of PII insurance only came to a stop when the Inspector visited.

168. The Panel has given careful consideration to whether the length of the failing over three years and nine months is an aggravating factor. The Panel is satisfied that in one sense it is: practising without PII for even a brief while would be serious because of the risk to patients that arises; for that to persist over nearly four years is even more serious simply because, objectively assessed, numerically many more patients are put at risk. However, in this case the lack of PII arose because the Registrant genuinely believed he had appropriate insurance. He is open to criticism for being mistaken but once he genuinely believed that he was covered the error was likely to persist until the error was discovered. The Panel has
already found that the four occasions when he renewed his registration, confirming he had PII, were prompts to check his PII status that he missed. However, while the Registrant is to be criticised for not paying greater attention to those prompts, they were less of a prompt than might otherwise have been the case had he, for example, been required to produce his PII certificate. In addition, it is not the case that he consciously and deliberately decided to maintain his lack of PII over four years, rather it is a case that has arisen by his mistake, albeit a mistake for which he has to carry responsibility.

169. Accordingly, the Panel finds that the duration of the failing is an aggravating factor because, objectively, it means a significant number of patients were put at risk, but less of an aggravating factor subjectively since the Registrant is culpable for his mistakes, but not as culpable as might otherwise have been had he, for example, acted deliberately.

170. The Panel identified a number of mitigating features including:

i. There is no evidence that any patient was actually harmed by his misconduct;

ii. He rectified the situation very quickly after it came to his attention by obtaining PII and shortly afterwards chose to step back from the front-line of delivering his pharmacy practice;

iii. He has renewed his PII twice in the period that he has been subject to these proceedings, underscoring the Panel’s earlier finding of a low risk of repetition and demonstrating personal remediation;

iv. The evidence overall indicates that he values his role as a Pharmacist, and values his membership of the profession and wishes to comply with the Standards expected;

v. He has shown insight, not least of all by educating himself to some degree about the need for PII;
vi. He has expressed remorse and regret which the Panel finds to be genuine;

vii. He has engaged fully with these regulatory proceedings;

viii. There is no evidence of a lack of clinical skills;

ix. He has practised for 22 years without blemish;

x. The testimonials, given in the knowledge of these proceedings, indicate that the Registrant is a caring Pharmacist who has gone beyond what might have been necessary to serve his local community and who is much respected by others, including professionals and patients. The testimonials indicate that he has provided a valued public service.

171. The Panel has given consideration as to whether the personal circumstances that existed over the period with which this case is concerned, provide mitigation. The Panel has already made it clear that the personal circumstances cannot provide an excuse for not having PII: the Registrant chose to continue his business and, whatever else may have been going on, had a professional obligation to ensure that the fundamental elements of safe practice, including PII, were in place.

172. However, his personal circumstances do provide a context to what occurred. It is clear that the personal circumstances presented him with considerable difficulties over the whole of the relevant period and impacted on his work as a Pharmacist over the whole of that period. Thus, while the personal circumstances cannot provide an excuse for what occurred, they provide some explanation for why the Registrant was not as diligent or scrupulous as he is expected to have been, contrasting with a registrant who consciously and deliberately chooses to misconduct themselves. To this extent the personal circumstances are a mitigating feature.
173. However, the personal circumstances that, to some extent, explain his lack of diligence over the period, do not explain his initial lack of understanding of the nature of insurance he was expected to have.

174. Accordingly, the Panel has concluded that the personal circumstances may provide some mitigation for his lack of diligence over the whole period, but provide little mitigation for his initial lack of understanding of insurance. It was this initial lack of understanding from which so much else has flowed.

175. When deciding the appropriate sanction, the Panel must balance the public interest against the interests of the Registrant to be proportionate, noting that the public interest carries more weight than the Registrant’s interests.

176. The Panel records that it has found there to be a low risk of future harm and as such this aspect of regulatory proceedings will not impact on the decision regarding sanction. This is a case that concludes solely on the wider public interest concerns, namely the maintenance of public confidence and the upholding of professional standards.

177. The Panel has already identified that there is a public interest in marking the seriousness of the misconduct in this case by its finding of impairment. This requires a clear and unambiguous message that reassures the public they can expect pharmacists to have appropriate insurance, and a clear message to other professionals that if they choose to practise as a pharmacist they have an obligation to understand what insurance is needed and to ensure that they have that insurance. There is also a need for a message that professionals must be careful and scrupulous in the information that they provide to their Regulator.

178. Regarding the interests of the Registrant, the Panel has concluded in the light of the submissions that he is likely to suffer a minimal financial impact as a result of any sanction imposed but that a sanction is likely to impact on his own self-esteem and standing within his community.
The Panel approached the issue of sanction by considering, in turn, each available sanction in ascending order.

The Panel first considered whether it should take no action. The Panel concluded that this would not be appropriate as it would not be adequate to maintain confidence in the profession or the regulatory process, nor would it be sufficient to declare and uphold professional standards.

The Panel next considered the option of a warning. The guidance for when warnings may apply is when there is a need to demonstrate to a registrant, and more widely to the profession and the public, that the conduct fell below accepted standards. Further a warning may be appropriate when there is no need to take action to restrict a Registrant’s practice, there is no continuing risk to patients or the public, and when there needs to be a public acknowledgement that the conduct was unacceptable.

The Panel concluded that to some degree these factors apply in this case. It does not under-estimate the significance of a warning on a registrant’s record. The issue for the Panel is whether a warning would be appropriate and proportionate, that is to say sufficiently adequate to send an unambiguous message that the conduct in this case is unacceptable. The Panel concludes that the misconduct involved in this case is so serious that a warning would not provide a sufficiently adequate or unambiguous message either to maintain public confidence or to uphold professional standards. In reaching this conclusion the Panel has particularly in mind that the misconduct involved breaches of a number of fundamental Standards, arose because on the Registrant’s own evidence he did not ensure he had an appropriate level of understanding of his insurance obligations, and persisted for so long that, on an objective measure, many patients were put at risk.

The Panel has therefore concluded that a warning would not be the right, appropriate, or proportionate sanction in this case.
The Panel went on to consider a Conditions of Practice Order. This is not a case in which the Registrant’s clinical skills are in question. It is a case that involves the Registrant not meeting fundamental Standards and professional obligations. The Panel has found that he now has insight on the Standards and obligations and there is a low risk of repetition: there is no re-training that is required. In these circumstances, the Panel has concluded that it cannot formulate relevant or appropriate conditions that would meet the issues identified at this stage, namely to mark the wider public interest concerns.

Accordingly, the Panel has considered the option of suspension. The guidance indicates that a suspension may be appropriate when there is a need to highlight to the profession and the public that the conduct is unacceptable and unbefitting a member of the pharmacy profession, when a warning or conditions would be insufficient and would undermine public confidence, and when the maintenance of public confidence demands no lesser sanction.

The Panel is satisfied that suspension is appropriate in this case as it is a sufficiently severe sanction to mark the seriousness of the misconduct, to send a sufficiently unambiguous message that such misconduct is not acceptable and not befitting a pharmacist, and to maintain public confidence and uphold professional standards.

In reaching this conclusion the Panel reminds itself of observations made earlier in this determination. The importance of PII is illustrated by the fact it is a stand-alone Standard, a stand-alone inspection criterion, and a specific element of the renewal declaration. PII is not an ancillary or secondary priority but a fundamental and essential part of a professional’s practice. Not having PII puts patients at risk should there be a clinical error causing harm. Not having it undermines public assumptions that professionals have insurance and thereby undermines public confidence which can result in those in need of healthcare support not seeking that
support. A professional misleading their regulator will always tend to be regarded as a matter of seriousness. Regulation depends in part on professionals being relied upon to be accurate in the information they provide. Not being reliable and not providing accurate information undermines the objectives of regulation, namely the protection of the public, the maintenance of public confidence and the upholding of Standards.

188. Accordingly, practising professionals are under a professional obligation to ensure that they understand what insurance cover is required, ensure that they have that insurance cover, and to ensure that they are scrupulously accurate in their communications with the regulator.

189. The Panel has considered the length of the suspension order. The maximum period is one of twelve months. Taking account of the aggravating and mitigating circumstances identified above, particularly that the Registrant did not act deliberately and there is no evidence of actual harm arising, the Panel has concluded that the appropriate period of suspension is one of three months.

190. The Panel considered an order of removal but concluded that this would be disproportionate, particularly having in mind the years of unblemished work, the fact that there are no concerns regarding his clinical skills, the fact that he has been valued by his local community, his regret, insight and personal remediation and the low risk of repetition.

191. **Accordingly, the Panel directs the Registrar to suspend the registration of Vincent Kwadzo Torku for a period of three months starting from when this order comes into force.**

192. The Panel does not direct that a review is required in this case. This is not a case in which the Registrant has to return to demonstrate developing insight or address a risk of repetition. This was a case in which the seriousness of the misconduct needed to be marked, and a message given
to the public and the profession. The sanction marks the seriousness and the message has been given. No review is required.

193. No further application was made on behalf of the Council.

194. Accordingly, this determination is concluded.