General Pharmaceutical Council

Fitness to Practise Committee

Principal Hearing

Remote videolink hearing

Monday 7- Wednesday 9 February 2022

Registrant name:	Mr Sarfraz Hussain
Registration number:	2045922
Part of the register:	Pharmacist
Type of Case:	Conviction
Committee Members:	Mr Peter Wrench (Chair)
	Miss Gail Curphey (Registrant member)
	Mr Michael Glickman (Lay member)
Legal Adviser:	Miss Gillian Hawken
Clinical Adviser:	Mr Sabarigirivasan Muthukrishnan
Secretary:	Mr Adam Hern
Registrant:	Present and not represented
General Pharmaceutical Council:	Represented by Mr Peter Lownds, Case Presenter
Facts proved:	1
Fitness to practise:	Impaired
Outcome:	Suspension for 12 months, with a review
Interim measures:	Interim suspension

This decision including any finding of facts, impairment and sanction is an appealable decision under our rules. Therefore, this decision will not take effect until Thursday 10 March 2022 or, if an appeal is lodged, once that appeal has been concluded. However, the interim suspension set out in the decision takes effect immediately and will lapse when the decision takes effect or once any appeal is concluded.

Introduction

1. This is a Principal Hearing relating to Sarfraz Hussain, a pharmacist who was first registered with the Royal Pharmaceutical Society of Great Britain in 1996 and is currently registered with the General Pharmaceutical Council with registration number 2045922.

2. The registrant is present and is not represented. The Council is represented by Mr Lownds.

Preliminary matters

3. The registrant's wife had previously asked for the whole of the hearing to be conducted in private on the basis that a public hearing would cause additional stress to the registrant, given that she could not be with him as a supporter because she would be a witness in the case. After preliminary discussion with the legal adviser and case presenter, Mrs Asghar-Hussain decided not to give evidence and so has been able to act as a supporter.

4. At the start of the hearing the registrant applied for the whole of the hearing to be conducted in private, on the basis that health matters were closely intertwined with the conviction allegation. Mr Lownds said that the Council objected to the whole of the hearing being private, but would be ready to agree that matters specifically relating to the registrant's health should be heard in private. The registrant then said that if any matters were to be heard in public, he would prefer the entire hearing to be public, noting that there had already been press reporting about his health at the time of his trial. The clinical adviser said that in the majority of the cases he was involved in, health matters were heard in private. He commented that the public availability of discussion of health issues could subsequently be stressful for registrants. The registrant maintained his position.

5. The Committee accepted legal advice and went on to balance the issues of proper protection for the registrant's private life with the public interest in the regulatory findings which will be made in relation to the conviction, taking account of the registrant's preference that the entire hearing should be either public or private. We concluded that the hearing should be conducted wholly in public. We are satisfied that there are insufficient grounds for overriding the normal presumption

that matters relating to the conviction will be heard in public. We would normally have been ready to grant an application for matters specific to the registrant's health to be heard in private, but, given his clear and reasoned wish for the whole hearing to be either public or private, we do not have a sufficient basis for taking that course here. Rule 39(3) of the *Fitness to Practise Rules* allows us to conduct part of a hearing in private if we are satisfied that "…*the interest of the person concerned…in maintaining their privacy outweighs the public interest in holding the hearing…in public*". Given the registrant's clear expression of his preference in this matter, it would be unreasonable for us effectively to overrule him and take a different view of his interests. Exceptionally, therefore, the entire hearing, including health matters, will be in public.

Allegation

6. The allegation is as follows:

You, a registered pharmacist,

1. On January 2020, were convicted at Birmingham Crown Court of,

1.1 Supplying a Controlled Drug of Class C to another, between 20 August 2015 and 13 September 2016, contrary to section 4(3)(a) of the Misuse of Drugs Act 1971;

1.2 Supplying a Controlled Drug of Class C to another, between 9 July 2015 and 13 September 2016, contrary to section 4(3)(a) of the Misuse of Drugs Act 1971

1.3 Supplying a Controlled Drug of Class C to another, between 8 February 2016 and 13 September 2016, contrary to section 4(3)(a) of the Misuse of Drugs Act 1971

1.4 Supplying a Controlled Drug of Class C to another, between 21 April 2016 and 13 September 2016, contrary to section 4(3)(a) of the Misuse of Drugs Act 1971

1.5 Possessing a Controlled Drug of Class C with intent, on 13 September 2016, contrary to section 5(3) of the Misuse of Drugs Act 1971;

1.6 Possessing a Controlled Drug of Class C with intent, on 13 September 2016, contrary to section 5(3) of the Misuse of Drugs Act 1971;

1.7 Possessing a Controlled Drug of Class C with intent, on 13 September 2016, contrary to section 5(3) of the Misuse of Drugs Act 1971;

By virtue of the matter set out above your fitness to practise is impaired by reason of your convictions.

Admissions

7. After the allegation had been read out, the registrant made full admissions to the facts alleged. On the basis of those admissions, and in accordance with the rules, we found the facts alleged to be proved in their entirety.

8. The rules also state (at rule 24(4)) that a certificate of conviction is admissible as conclusive proof of the findings of fact on which the conviction is based. In accordance with the case law, we have proceeded on the basis that the underlying facts are as set out in the sentencing remarks of the judge at the registrant's trial. We therefore found those underlying facts proved and went on to consider whether, in the light of his conviction, the registrant's fitness to practise is currently impaired.

Evidence and submissions on impairment

9. The Committee has before it the following written material:

    - the main bundle from the Council;
    - a statement of case from the Council;
    - a registrant's bundle, which includes a witness statement from his wife, testimonials and medical records; and
    - a medical report submitted by the registrant, which was prepared for him by Dr 1 and is dated 24 March 2021.

    We heard submissions from Mr Lownds on the background to the case before the registrant gave oral evidence to us on affirmation. Mr Lownds then made his closing submissions and the registrant responded to them.

10. In opening, Mr Lownds said that at the relevant times the registrant had been a director of a company which was the parent company for the operation of three community pharmacies in Birmingham. One of those pharmacies held a wholesale dealer's authorisation (WDA) but did not have a Home Office licence which would have allowed the wholesaling of controlled drugs (CDs). The Medicines and Healthcare products Regulatory Agency (MHRA) became concerned about apparent irregularities in the ordering of controlled drugs by the registrant and began to investigate them. The WDA was suspended in July 2016. On 13 September 2016 the MHRA conducted an unannounced inspection of one of the pharmacies operated by the registrant's company and found very large quantities of Class C CDs which could not properly be accounted for. The police then arrested the registrant and interviewed him under caution. The lengthy MHRA investigation which followed eventually resulted in seven criminal charges. The registrant pleaded guilty to all those charges and was convicted on 20 January 2020. He was sentenced on 19 February 2020 to 28 months' imprisonment. He was subsequently released on home detention curfew and is currently on a licence which will expire at the end of his sentence on 18 June 2022.

11. The judge's sentencing remarks make clear that very large quantities of tranquilisers were diverted from properly controlled distribution channels by the registrant over a period of some 14 months, from July 2015 to September 2016. There was a total of some 1,443,000 individual tablets involved, comprising Diazepam, Nitrazepam, Zopiclone and Zolpidem. There is an illegal market for those medicines and the trial heard an estimate that the quantities involved could have had a street value of between £854,000 and £1.4 million. The judge said this:

> *… the [of]fences relate to the supply and possession with intent to supply of very large quantities of class C controlled tranquilisers, drugs that may only be supplied to those who require them on prescription. The drugs involved were zopiclone, diazepam, nitrazepam and zolpidem. Any person or company wishing to supply wholesale quantities of such a drug requires a licence under the MHRA and a Home Office controlled drug licence. You were well aware of that, not only because you are a pharmacist but at one stage, one of your three pharmacies held such a licence. It is well recognised that within the United Kingdom there is a huge demand for such drugs and a considerable illicit or illegal market through which they are supplied. As I said, one of your pharmacies did hold a licence to supply such drugs on a wholesale basis. But following an enquiry by the MHRA, that licence was withdrawn due to your unsatisfactory practices.*

From 2015 through to 2016, you routinely ordered significant quantities of these drugs from a number of legitimate wholesale companies. The drugs were ordered and delivered to the three pharmacies. Taken together, of course, the quantities ordered vastly exceeded the amount that you required to legitimately dispense to patients through prescription. When these drugs were delivered to the pharmacies, often you would attend, or you would telephone staff and tell them that a delivery was due and then you would arrange to be there on collection. On other occasions, the courier driver would be met at the pharmacy and asked to deliver the products to a different location. Spurious explanations for such conduct were given and it is said that people wholly unconnected with your business were on occasions involved in unloading boxes from the courier.

On 13 September of [2016], police officers and officers of the MHRA attended your pharmacy in Small Heath, where a delivery had been made. Initially, you were difficult with them. Inside the pharmacy, a significant number of boxes of such drugs were found and a wider and more in-depth investigation revealed the quantities of such drugs that had been supplied to you. As an example of how you over ordered the quantity of drugs you needed, in a sample 12-month period from 2015 through into 2016, the pharmacy, as a whole, over its three branches, legitimately supplied on prescription [323] packets of zopiclone. In contrast, 60,000 packets were in fact ordered. In total, 588,000 tablets of zopiclone, 337,000 tablets of diazepam, 238,000 tablets of nitrazepam and 27,000 tablets of zolpidem were supplied to you by the wholesalers. The street value on the illicit market of such drugs is somewhere between £854,000 and £1.4 million. It is accepted by the prosecution that you sold these drugs on wholesale. But the money that you received from such sales must have been very considerable indeed. The sum that you received is not known because you have never disclosed how much money you received for the onward sale of the drugs, nor have you ever disclosed the identity or any information leading to the identity of those people to whom you sold them. In your interview, despite accepting that you did not hold a Home Office licence, you were non-committal about your guilt of the offences. Nonetheless, on that topic when it comes to sentence, I will give you full credit for your plea.

12. Mr Lownds made clear that Council does not dispute that the registrant was suffering from Bipolar Affective Disorder at the time he committed these offences, and continues to do so. A psychiatric report was prepared for the trial by Dr 2. It concluded that the registrant was fit to plead but made clear that his health condition would have impacted on his behaviour. The judge said this:

> *I turn now to the psychiatric evidence and I have read the psychiatric report and a further letter that details your present position. It appears plain, and I accept, that you fell into mental illness in the sense that you developed Bipolar Affective Disorder. This affected your behaviour significantly over the period of time of the indictment and you are still under medication for that disorder. I have read a letter from your wife describing the way in which you behaved. You became more aggressive at home, difficult to deal with. You began to lead a chaotic business and home life. But much, if not all of this money, was squandered on what are described by your counsel as business pipe dreams, much of which fell apart, buying expensive motor cars and trying to portray yourself to others as a very successful businessman. I have read the effect that your behaviour had on your marriage and family life but nonetheless your wife stands by you. I recognise that you are now vulnerable due to your illness and the time in custody will be difficult for you*

13. In the letter from Dr 2, which was before the court, he had said:

> *I can clarify that the defendant stated that in the back of his mind, at the time of the offences he was aware that what he was doing was wrong. However, he carried on as his mental state was fragile and allowed his over confidence and elated mood to get [the] better of him and didn't appreciate the consequences of his poor decisions and reckless behaviour, which have placed his livelihood at risk. And has resulted in his inability to practice as a pharmacist. [In] hindsight, he feels devastated due [to] his actions*

14. The judge explained the sentence of 28 months' imprisonment in this way:

> *Your counsel has urged upon me a course which would involve a significant reduction in your sentence, to take account of your guilty pleas and your medical difficulties, such as I could then suspend the sentence of imprisonment upon you which is, in my judgment, inevitable.*

I have considered carefully whether I can do that. You were a pharmacist. You carried a considerable amount of responsibility and you abused that. Whilst the amount of money that you obtained from your behaviour cannot be accurately quantified, personally benefitting from your conduct cannot accurately be quantified because you have told no one what it was. It must have been considerable. In my judgment, this offending is so serious that only a custodial sentence is appropriate. Bearing in mind that this falls between category 1 and category 2, leading role within the guidelines, in my judgment the starting point for sentence after a trial would have been no less than 51 months' imprisonment. That will be reduced by nine months to take account of your character and how the illness affected your behaviour. From that, some will be deducted, a full one third discount for your pleas, despite the fact that you were equivocal in your interview, but I will give you the one third credit. Therefore, the sentence, in my judgment, the least sentence that can be imposed is one of 28 months' imprisonment. That will be concurrent on each count on the indictment, making a total of 28 months' imprisonment. You will serve up to one half of your sentence in custody before being released on licence.

15. In his evidence to us, the registrant said that his illness and conviction were intertwined. He had had an unblemished record as a pharmacist prior to his offences, but when he was in a manic phase his judgement was impaired. He was critical of the report prepared by Dr 2 and also pointed out that a psychiatric assessment conducted on him on behalf of the Council in 2016 had failed to diagnose his condition. We made clear to the registrant that, for the purposes of our assessment of his current fitness to practise in the light of his conviction, we could not look behind the conclusions which the judge had reached as to the extent to which his health had impacted on his behaviour. His health, in itself, was not part of the allegation against him.

16. In answering questions from the legal adviser and Mr Lownds, the registrant said that his condition had now been stabilised by medication, but said that his mood still "cycled". He said that he still had hypomanic moments but was now mostly depressed. He said that he would never now think of the sort of behaviour which had led to his conviction and that, looking back, he was shocked and appalled. He said that pharmacists were the custodians of medicines and that he had let himself and his family down: the medicines should never have left the legal supply chain. When asked about the consequences of his behaviour for patients and the public, he said he had been a small cog in a big chain of events. He said that he was not a street-level drug dealer but had "just

opened the gate". When asked about the risk of repetition, he said that his illness was currently under control, and he now had a multidisciplinary team around him who would intervene if his mental health deteriorated. He noted that he had been "sectioned" and had received inpatient treatment for a month in September 2021, after his condition had deteriorated at that time.

17. The registrant said that he had made no personal gain from the offences and was not even aware of the margin on the resale of the medicines. When it was put to him that the judge had commented on his failure to say how much money he had made from his offences, he said that he had not been fit to be interviewed by MHRA investigators. He went on to say that investigators under the Proceeds of Crime Act (POCA) had now had access to all his bank accounts. POCA proceedings were continuing, with a hearing due to be held in March 2022. The registrant said that a wholesale value of the medicines had not yet been agreed, but this was under discussion.

18. In his closing submissions, Mr Lownds drew on his written statement of case in arguing that a finding of current impairment was necessary. The Council accepted that the registrant had learned and reflected from his time in prison, but that his emphasis was still on his mental health problems: because he was not taking full responsibility for his actions, his conduct could not be said to have been remedied and his insight was lacking. Mr Lownds went on to say that the wider public interest required a finding of current impairment in order to maintain public confidence in a properly regulated profession.

19. In response, the registrant accepted that his fitness to practise was impaired by his conviction. However, he believed firmly that justice had not been done because his mental health had not been adequately taken into account during the investigation and trial. He said it would be a double punishment if he was now struck off. He said that he was not yet sufficiently stable to work as a pharmacist, but might in future be able to do so, perhaps working with his wife in the first instance, in the one pharmacy they had been able to retain.

20. After hearing submissions from the parties, the Committee took advice from the clinical adviser. He made clear that it was not his role to question the assessments of doctors who had been able to examine the registrant. He was able to provide generic advice on the impact of Bipolar Affective Disorder and commented that doctors could only ever give an opinion as to how it might impact on an individual: no definitive test was available, nor any 100% answers.

21. The Committee then accepted advice from the legal adviser.

Consideration of impairment

22. The *Pharmacy Order 2010* sets out at Article 51 the potential grounds for regarding fitness to practise as impaired, and the list includes convictions. We need to consider the conviction in the light of the fitness to practise criteria which are set out at rule 5(2) of the Rules. This states that in relation to evidence about the conduct or behaviour of the registrant, the Committee must have regard to whether or not that conduct or behaviour:
    a. presents an actual or potential risk to patients or the public;
    b. has brought or might bring the profession of pharmacy into disrepute;
    c. has breached one of the fundamental principles of pharmacy; or
    d. shows that the integrity of the registrant can no longer be relied upon.

23. Mr Lownds submitted that all four limbs are engaged here, and we agree. The risks to the public inherent in the behaviour which led to the registrant's convictions are obvious. CDs need to be held securely in accordance with the regulations and only provided to patients when a prescription has properly been issued. Both the registrant's actions in flouting those requirements and the fact of his conviction have undoubtedly brought the profession into disrepute. The Committee is satisfied that he has breached fundamental principles of the profession. Mr Lownds listed a number of specific provisions of the Council's Standards of Ethics, Conduct and Performance which the registrant can be said to have breached – namely standards 1.6, 2.1, 2.2, 5.3, 6.1. 6.3 and 6.5. We do not dissent from that analysis. However, we consider that it is unnecessary given that the blatant circumvention of proper controls on the distribution of such a massive quantity of CDs is so grossly at odds with the basic expectations of the profession as gatekeepers of potentially dangerous medicines. This was manifestly a breach of the fundamental principles. As to the final limb of rule 5(2), integrity has been defined as adherence to the ethical standards of a profession. The registrant's behaviour clearly fell well short of those standards, in ignoring the regulatory responsibilities of the profession and possessing and supplying unlawfully these controlled drugs. This means that, without remediation, his integrity can no longer be relied upon.

24. The Committee has to assess the registrant's current fitness to practise, as of today, which means that we must assess the extent to which he has remediated his behaviour. The serving of his prison

sentence is a factor in that. He has now almost completed that sentence and there is no evidence of any issues with it, or of any subsequent cause for concern – albeit that the POCA proceedings remain unresolved. We accept the registrant's evidence that, looking back, he is shocked and appalled by what he did. But we also accept Mr Lownds' submission that the registrant's insight is limited and that he is placing too much emphasis on his illness, and what he sees as others' failures to intervene to stop him sooner, rather than taking unequivocal personal responsibility for his actions. We are also concerned that his emphasis on being a "small cog" in the diversion of the medicines to the illegal market misses the point that, without the part he played, no such diversion would have been possible.

25. In weighing the potential risk of repetition, we recognise that it is now over five years since the offending behaviour occurred, and that the registrant's interim suspension from the register and prison sentence have meant that there has been no possibility of him demonstrating that he can now work reliably as a pharmacist. The still limited insight which we have identified gives some cause for concern, but the registrant has clearly made considerable progress as a result of accepting his diagnosis and working with professionals to manage his condition. Nevertheless, we have heard that he required inpatient treatment for a month less than six months ago. If we accept the registrant's contention that his offending and his disorder were inextricably linked, it would seem that, despite his progress, the risk of repetition has not yet been removed.

26. We are conscious that the fact that no separate health allegation has been brought in this case means that there has been no recent examination of the registrant by a doctor instructed by the Council. The report prepared by Dr 1 for the registrant in March 2021 includes the comments that:

> *Mr Hussain has attained sufficient symptom improvement and regained a good level of insight which certainly reduces the risk of relapse. However, it is important to note that his illness is of relapsing nature and he will need regular supervision to maintain his level of wellness and to mitigate the risk of relapse. While it is clear that he was suffering from an untreated mental health problem during the time of his index offence, it appears that he has made significant recovery with treatment and professional support in the last year.*

27. We can draw no final conclusions as to the risks his health poses for the potential repetition of offending behaviour. Nevertheless, we can be clear that, even if there was now only a negligible risk of repetition, the public interest concerns from the nature of this conviction are such as to

make a finding of current impairment of fitness to practise inevitable. Such a finding is necessary in order to reinforce proper standards in the profession of pharmacy, and to maintain the public's confidence in the profession and in its effective regulation.

Determination on impairment

28. On that basis, we are satisfied that the registrant's fitness to practise is currently impaired.

Submissions on sanction

29. At this stage of the hearing, we have heard submissions from Mr Lownds and the registrant, and have taken advice from the clinical adviser and legal adviser. We have also taken account of all the written evidence that is before us and have looked carefully at the Council's *Good Decision Making* guidance.

30. Mr Lownds highlighted key points from his written statement of case. He listed a number of mitigating and aggravating factors. As mitigating factors, he pointed to:

    - the registrant's previous good character;
    - his long service as a community pharmacist;
    - the testimonials he has submitted;
    - that his mental health was clearly a significant factor in his offending;
    - his sincere expression of remorse; and
    - the degree of insight he had demonstrated, in recognising that there had been a very serious abuse of his position as a pharmacist.

31. As aggravating factors, Mr Lownds referred to these:

    - the conduct occurred over a period of months;
    - the registrant ordered the medication for the purposes of supplying it to a third party without a prescription, in the knowledge that it may well be supplied to others by the third party;
    - the medication included POMs and CDs - which are capable of abuse and are habit forming;

- the registrant's actions were financially motivated;
- the registrant continued his actions despite being subject to investigation;
- the registrant's actions put patients/the public at risk of harm; and
- the registrant put his own needs/the needs of his business ahead of patient/public safety.

32. In considering the range of sanctions available to the Committee, Mr Lownds essentially saw the choice as being between removal from the register and suspension for the maximum period of 12 months. The Council considered that suspension for 12 months would be an insufficient response to the seriousness of the offences, and therefore submitted that removal was the appropriate sanction. Mr Lownds said that the very large quantity of medications involved, and the continuing nature of the offending, combined to make this behaviour which was incompatible with future registration.

33. In his submissions, the registrant described the gravity and seriousness of his crimes as "horrendous". He said that even one pack of controlled drugs being diverted from lawful supply routes was unacceptable and that he deeply regretted what he had done. He emphasised that he would not have committed the offences had it not been for his illness, an illness that was now a part of him and would be for the rest of his life. The illness was difficult to diagnose, and he noted that the Council's medical examiner in 2016 had failed to diagnose it. But the diagnosis had now been made. The registrant said that this diagnosis and the treatment he was now receiving meant that the risk of any repetition was now significantly reduced. He also said the facts that he no longer held a WDA and that CD controls had been tightened since 2016 meant that comparable circumstances could not in any event arise again. He told us that he was now 51 years old and felt that he still had something to offer as a pharmacist. He wanted a chance to redeem himself, and said that if he was removed from the register, he thought it unlikely that he would seek restoration in the future.

34. Our clinical adviser confirmed that Bipolar Affective Disorder is a lifelong condition, remaining liable to remission and relapse. He said that it requires psychosocial treatment as well as medication and that "nothing is bullet-proof". However, he confirmed that people with the disorder can be capable of working successfully in demanding jobs, responding to the warning signs as necessary, and sometimes having years between episodes of illness.

35. The Committee heard submissions and advice on sanction on day two of the hearing. Before it had finalised and delivered its determination on day three, the registrant's supporter, his wife, Mrs Asghar-Hussain, asked to make a statement to the Committee. She had been unable to attend the hearing on day two and we agreed to hear from her.

36. Mrs Asghar-Hussain set out her experience of living with her husband's condition and the difficulties there had been in getting a clear diagnosis of it. She highlighted material in the registrant's bundle, including medical records and articles about the links between Bipolar Affective Disorder and criminality. Mrs Asghar-Hussain said that there had been missed opportunities for health professionals to intervene sooner in a way which might have been able to prevent the registrant's offending, or stop it sooner. She pointed in particular to an assessment in January 2016 by a medical examiner appointed by the Council which concluded that her husband was mentally well. She said that she wanted the Committee and the Council to learn from the case, particularly in considering how medical investigations were carried out. Mrs Asghar-Hussain said that her husband might not be well enough to work as a pharmacist for some years, but urged the Committee to suspend him from the register, and not to remove him, so as to keep the option open for the future.

37. After hearing Mrs Asghar-Hussain's statement the Committee again made clear the limitations of its current role in hearing a case brought on the basis of the registrant's conviction, rather than his health more widely. For the Council, Mr Lownds repeated that there was no dispute that the registrant was a man of previous good character, nor that his illness had been a significant contributory reason for his offending. Nevertheless, the Council's submission remained that removal was required, given the commercial quantities of CDs which had been diverted to the illegal market over a sustained period. Mr Lownds made clear the Council's view that it would not be appropriate for this Committee to make any criticism of the medical report of January 2016.

Consideration of sanction

38. We have followed our Legal Adviser's advice on the issues to be addressed at this stage, and we have looked very carefully at the Council's Good Decision Making Guidance, as well as considering all the submissions that have been made and the evidence that is before us.

39. We should say at this point, as is customary, that the prime purpose of any sanction is not to punish a registrant, although a sanction may be punitive in its effect. The purpose is to protect and further the public interest; the public interest in protecting the safety of the public, in maintaining the reputation of the profession, and in maintaining proper standards of conduct and behaviour by members of the profession.

40. The public interest is paramount in that we are entitled to give greater weight to it, and the need to maintain public confidence, than to the consequences to the registrant of the sanction. However, we must take account of the registrant's interests. The sanction must be fair, reasonable and proportionate. That means the sanction imposed is no greater a restriction on his right to practise his profession than is absolutely necessary to achieve its objectives.

41. There are four sanctions available to us. In order of severity, at the bottom of the list is the issue of a warning. The next is the imposition of conditions of practice. Above that is suspension for a maximum period of 12 months. Finally, there is the ultimate sanction of removal from the register. We are required to consider sanctions in ascending order of gravity.

42. We accept Mr Lownds' submission that the real choice for us lies between removal and suspension for the maximum period. However, we note for completeness our agreement that either to impose no sanction or to give a warning would be wholly disproportionately lenient, when set against the seriousness of the registrant's offences, and would not protect the public or the public interest. Furthermore, the imposition of conditions could not be an appropriate response to criminality on this scale.

43. It is important to emphasise again the constraints that this Committee is under because of the way in which the allegation has been framed. This is solely a conviction case, with no charge before us that the registrant's fitness to practise is currently impaired because of his health. As we have said, this means that, looking back, we are essentially bound by the trial judge's findings on the extent to which the registrant's health was a factor in his offending. And, looking forward, we are limited to considering the implications of the registrant's current health for remediation and the risk of repetition in relation to his conviction. We were grateful for Mrs Asghar-Hussain's candid account of the difficulties in getting the registrant's condition diagnosed, and of her experience of living with his fluctuating moods and behaviour. However, as we made clear to her, the statement she gave was somewhat to one side of the issues which we need to decide in this hearing. It may well

have been helpful for us to have been able to take a more holistic view of the offending behaviour and the registrant's health – and that is a point which we will return to later.

44. We accept that most of the aggravating factors Mr Lownds has identified are significant, but would question whether the registrant's continuation of his offending while under investigation really fits into that category. It might be seen, rather, as an indication that the registrant was not behaving rationally and that he was unwell. Mr Lownds fully and fairly drew out a range of mitigating factors in the case, which we accept. To them we would add the fact that the registrant has now almost completed a substantial sentence of imprisonment, without any evidence of any further issue arising.

45. The key question for the Committee is whether it is necessary, so as properly to mark the undoubted seriousness of the registrant's offences, for him to be removed from the register at this point. Could anything less be sufficient to maintain public confidence in the effective regulation of the profession?

46. We fully accept that these are offences which are, in themselves, capable of justifying removal – and if one were to look at the sentencing remarks alone, such a course might seem almost inevitable. But it is important to set the conclusions reached by the judge two years ago in their full current context. The registrant has now almost completed the 28-month prison sentence he was given. But we must also recognise that he has spent over five years subject to an interim suspension order, while the MHRA and the police made their investigations, and the Council then brought this matter to a principal hearing. It is normal for the Council to wait until criminal proceedings are concluded before finalising their own investigation, but we do not have a full picture of why it took three years to get to a criminal trial and then another two years for us to be considering the case today. Regardless of the reasons, we are satisfied that the delay and the very lengthy period of interim suspension can properly be taken into account in assessing the proportionality of the sanction we impose today.

47. In our view, a fully informed member of the profession or the wider public, in weighing the sufficiency of the sanction we impose, would want to take account of the facts that the registrant has now served his sentence and has been prevented from practising as a pharmacist for five years already. If we removed him from the register today, it would be well over ten years since he last practised before he could even make an application for restoration. The informed observer would

also be conscious of the further evidence we have heard about the relationship between the registrant's offending and his serious mental health condition, and of the progress he has made in understanding and managing that condition. We have therefore concluded that removal is not necessary in all the circumstances of this case and that suspension for 12 months from this point will satisfactorily mark the seriousness of his offending.

48. There will be a review before the end of the period of suspension and the reviewing Committee will have available to it the range of sanctions that have been available to us, and we cannot and do not seek to constrain the choices they will make. That said, the case law is clear that it will not be open to the reviewing Committee to decide that we have not properly assessed the gravity of the registrant's conviction and that a further period of suspension is needed on wider public interest grounds. But a reviewing Committee focused solely on the conviction allegation would still be able to look at the issues we have identified with the registrant's current lack of full insight and assess whether there continues to be a residual risk of repetition which might need to be managed by means of a further sanction.

49. However, there is scope now for the Council to take steps to ensure that a reconsideration of this case in 12 months' time goes rather wider than the continuing impact of the conviction. We encourage the Council to consider making a new allegation of impaired fitness to practise on grounds of adverse health. There has been general acceptance at this hearing that the registrant has Bipolar Affective Disorder; that this is a serious, relapsing and remitting, lifelong condition; and that it is a condition that is capable in itself of impairing fitness to practise. The view may hitherto have been taken that bringing such a charge might have been an unnecessary complication of a straightforward conviction case, when the conviction alone might have led to the registrant's removal from the register. But we are now past that point. We judge that it would be in both the public interest and in the interest of the registrant for a single Committee in 12 months' time to be able both to review the suspension order we are making and to decide such a health allegation. That Committee could then go on to consider, if necessary, a sanction which could fit all the issues which are then in play in an integrated way.

50. Whether or not the Council choses to act as we have suggested, we consider that it will be helpful for the Committee which reviews the direction we are making today to have the following:

    a. continued engagement from the registrant;

b. updated information about his health;

c. further reflections on his offences, in the light of this Committee's findings;

d. information about any plans he is making for a return to practice; and

e. information about what he has been doing, or plans to do, to update his skills and professional knowledge.

Determination on sanction

51. We direct that the registrant's entry in the register should be suspended for a period of 12 months, with a review before the end of that period.

Interim measures

52. Following the Committee's decision on sanction, the Council made an application for interim measures. Further to our substantive decision, we are obliged to revoke the interim order of suspension which has been in force until now. In these circumstances, and given the logic of our decision on impairment, we are satisfied that both public protection and the wider public interest require that the suspension we have imposed should take effect forthwith. We direct that the registrant's entry in the register is suspended pending the coming into force of our substantive decision.