

**STATUTORY COMMITTEE OF THE PHARMACEUTICAL SOCIETY OF NORTHERN
IRELAND**

- In the matter of:** Mr James Gerard Maginn (2159)
- Location:** Pharmaceutical Society of Northern Ireland's Offices, 73
University Street, Belfast, BT7 1HL
- Date:** 20 September and 23 October 2019; 6 March 2020 and, as a
result of restrictions brought about by the coronavirus
(COVID-19) pandemic, via Zoom video conferencing on 7
August 2020
- Committee:** Mr Conor Heaney (Chair), Mr Paul Archer (Lay), Ms
Catherine Glover (Registrant)
- Persons Present and Capacity:** Mr Gerard Maginn (Registrant), Mr Patrick Lyttle QC
instructed by Shean Dickson Merrick Solicitors (Registrant's
Legal Representatives), Mr JonPaul Shields, Barrister,
instructed by CFR Solicitors (PSNI's Legal Representatives)
- Order:** **Suspension Order 6 months' duration**
1. The Committee heard allegations of misconduct in respect of Mr James Gerard Maginn, a registered pharmacist. The Registrant was in attendance and was represented by Mr Patrick Lyttle QC. The Pharmaceutical Society of Northern Ireland ('the Society') was represented by Mr JonPaul Shields, Barrister.
 2. The Committee had a hearing bundle numbering pages 1a-1e and 1-170. In the course of the hearing, the Committee admitted in evidence the following additional documents:
 - Exhibit A: Statement of Case dated 9 August 2019;
 - Exhibit B: Registrant's Response to Statement of Case dated 29 August 2019;
 - Exhibit C: Fitness to Practise; Statement of case by the Pharmaceutical Society of Northern Ireland dated 16 September 2019;
 - Exhibit D: Booklet of Authorities produced by the Registrant;
 - Exhibit E: Judgment of Mitting J in R(Zygmunt) v GMC [2008] EWHC 2643 produced by the Registrant;
 - Exhibit F: Judgment of Cox J in CHRE v NMC and Grant [2011] EWHC 927 (Admin) produced by the Society;
 - Exhibit G: Skeleton Argument on behalf of the Registrant with attached judgment of McCloskey J In the matter of an application by Hawthorne and White for Judicial Review [2018] NIQB 5;

- Exhibit H: Skeleton Argument on behalf of the Society;
- Exhibit I: Statement of James Gerard Maginn, the Registrant, dated 6 March 2020.

BRIEF BACKGROUND

3. The Registrant registered as a pharmacist on 5 November 1981.
4. The parties, at the outset of the proceedings, agreed the following facts in a Case Statement (Exhibit A):
 1. *The Registrant, at the time of the incident, was a director of a company called Clanua Limited. This company owned Hart's Pharmacy, 50 Main Street, Newcastle.*
 2. *The Registrant also had an interest in Maginn's Pharmacy, 5-7 Main Street, Newcastle.*
 3. *On 24th March 2017, both pharmacies were open between 09.00hrs and 18.00hrs. Both premises operated as registered pharmacies.*
 4. *Between 09.00hrs and 18.00hrs on 24th March 2017, Hart's Pharmacy was open as a registered pharmacy for the supply of medicinal products in the absence of a Responsible Pharmacist.*
 5. *The Registrant knew that the pharmacy was open in the absence of a Responsible Pharmacist and allowed the pharmacy to stay open and operate as a registered pharmacy dispensing medicines.*
 6. *Additionally, the Registrant completed the Pharmacy Record, maintained pursuant to the Responsible Pharmacist Regulations 2008, for Hart's Pharmacy. He falsely represented that he was the Responsible Pharmacist at Harts Pharmacy on 24th March 2017 between 09.00hrs and 18.00hrs when, in fact, he was acting as the Responsible Pharmacist at Maginn's Pharmacy during this period. The Pharmacy Record for both premises recorded "Gerard Maginn registration number 2159" as being the Responsible Pharmacist during the same period. A pharmacist is not permitted to be the Responsible Pharmacist for more than one premises at the same time. This false representation was designed to conceal the irregularity.*
 7. *The Registrant permitted and allowed Hart's Pharmacy to operate as a registered pharmacy on 24th March 2017 under the care of Gordon Thompson, an employee of the business and the company secretary for Clanua Limited. At the time, Gordon Thompson was not a qualified pharmacist and was not registered with the Pharmaceutical Society of Northern Ireland. This remains the case.*
 8. *Gordon Thompson improperly assumed the role of Responsible Pharmacist and unlawfully made:*
 - i. *An emergency supply of medicine (without a prescription) on 3 occasions;*

- ii. *A supply of a schedule 2 controlled drug (namely methadone) on 2 occasions; and*
 - iii. *A supply of prescription only medicine (POM) on 10 occasions.*
9. *All of the medicines were supplied in the absence, and without the supervision, of a Responsible Pharmacist.*
10. *The Registrant authorised the opening of Hart's Pharmacy, on 24th March 2017 for the whole day, with the full knowledge that the registered pharmacy was open for the supply of controlled, and prescription only, medicines without a Responsible Pharmacist being present at all.*
11. *The Registrant was convicted at the Crown Court in Downpatrick of 18 offences and was sentenced on 17th October 2018 to 100 hour's community service and a fine of £5,000 was imposed.*

ALLEGATION

5. The Registrant faced the following Allegation:

It is alleged that your fitness to practise as a registered pharmacist may be impaired, pursuant to Paragraph 4(1)(a) and (d) of Schedule 3 to the Pharmacy (Northern Ireland) Order 1976 by reason of misconduct and relevant criminal convictions.

The particulars of the misconduct and the relevant criminal convictions from which it is alleged that impairment arises are as follows:

Misconduct:

1. *That on or about 24 March 2017 you completed the Pharmacy Record, maintained pursuant to the Responsible Pharmacist Regulations 2008, falsely representing that you were the Responsible Pharmacist at Harts Pharmacy on 24 March 2017 between 09.00hrs and 18.00hrs when, in fact, you were acting as the Responsible Pharmacist at Maginns Pharmacy during this period.*
2. *Otherwise than as particularised in the criminal convictions, you knowingly and deliberately caused, allowed, or permitted a registered pharmacy, namely Harts Pharmacy, situate at 50 Main Street, Newcastle, to be open for the supply of medicinal products in the absence of a registered pharmacist on 24 March 2017 between 09.00hrs and 18.00hrs.*

Criminal Convictions:

3. *That on 5 September 2018 at the Crown Court at Downpatrick you pleaded guilty to and were convicted of 18 separate offences contrary to The Human Medicines Regulations 2012, particularised below: -*

There being three offences that:

- (i) *On 24 March 2017, Prescription Drugs were unlawfully sold or supplied by Clanua Limited and that this offence was committed with your consent or connivance or was attributable to your neglect, you being a director of the said company, contrary to Regulations 214(1), 255(1)(a) and 338(1) of the Human Medicines Regulations 2012*

There being 15 offences that -

- (ii) *On 24 March 2017, medicine was unlawfully supplied by Clanua Limited and that this offence was committed with your consent or connivance or was attributable to your neglect, you being a director of the said company, contrary to Regulations 214(1), 255(1)(c) and 338(1) of the Human Medicines Regulations 2012.*

4. *You were sentenced on 17 October 2018 to 100 hours community service and a fine of £5,000 was imposed.*

Professional standards:

5. *For the purposes of Paragraph 1(3) of Schedule 3 to the Pharmacy (Northern Ireland) Order 1976 as amended and Regulation 26(11) of The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (Northern Ireland) 2012, the following principles and obligations (contained in the Pharmaceutical Society of Northern Ireland's Code of Professional Standards of Conduct, Ethics and Performance for Pharmacists in Northern Ireland (2016)) are regarded by the Pharmaceutical Society of Northern Ireland as being relevant to the proceedings. Further, the Pharmaceutical Society of Northern Ireland alleges that you are in breach of these principles and associated obligations by reason of the impairment particularised above.*

- *The general principle of Registration as a Pharmacist that requires you to act to promote and maintain public confidence in the pharmacy profession.*
- *Principle 1 – Always put the patient first (including Standards 1.1.1 and 1.1.5)*
- *Principle 2 – Provide a safe and quality service (including Standards 2.1.2, 2.1.6, 2.2.3 and 2.3.3)*

- *Principle 3 – Act with professionalism and integrity at all times (including Standards 3.1.1, 3.1.2, 3.1.6 and 3.2.2)*
 - *Principle 4 – Communicate effectively and work properly with colleagues (including Standards 4.4.2 and 4.4.3)*
5. *By your acts or omissions, it is alleged that you have (a) created a clear risk to the safety of patients, (b) brought the profession into disrepute, (c) failed, on a professional basis, to observe the principles set out above; and (d) undermined public confidence in the profession.*

DECISION ON THE FACTS AND ALLEGATION

6. The Registrant accepted the facts as set out in Allegations 1 and 2. The Committee found the facts proved by reason of that admission under regulation 34(6) of The Council of the Pharmaceutical Society of Northern Ireland (Fitness to Practise and Disqualification) Regulations (NI) 2012 ('the Regulations').
7. With regard to Allegations 3(i), 3(ii) and 4, the Committee noted the certificate of conviction contained in the hearing bundle. It also noted the Registrant's admission to Allegations 3(i), 3(ii) and 4. In accordance with regulation 26(4) of the Regulations, the Committee admitted the certificate as conclusive proof of the conviction and the underlying facts.
8. Accordingly, the Committee found the entirety of the Allegation proved.

DECISION ON IMPAIRMENT

9. In approaching the question of impairment, the Committee reminded itself that the test is expressed in the present tense: 'is impaired'. The Committee derived assistance from the guidance provided by the Court of Appeal in GMC v Meadow [2006] EWCA Civ 1319:

'...the purpose of FTP procedures is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The [Panel] thus looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past.'

10. As for the factors to be taken into account at the impairment stage, the Committee also had regard, in particular, to the remarks of Silber J in Cohen v GMC [2008] EWHC 581 (Admin) and the guidance provided by Cox J in CHRE v NMC and Grant [2011] EWHC 927 (Admin).
11. The Committee heard a submission from Mr Shields on the question of impairment. He submitted that the Committee should make a finding of current impairment against the Registrant. As the director of Clanua Limited, for all practical purposes, the Registrant was responsible for the safe and proper operation of Hart's Pharmacy on 24 March 2017. The Registrant knew that the pharmacy was open without a pharmacist being present for the whole day. The Registrant also knew that a non-pharmacist would be performing the role of a pharmacist for the entire day. Mr Shields submitted that, by his actions, the Registrant had

caused, allowed and permitted a serious breach of The Medicines (Pharmacies) (Responsible Pharmacist) Regulations 2008 ('the Responsible Pharmacist Regulations').

12. Mr Shields told the Committee that, in addition to the high volume of non-prescription items sold at the pharmacy, the Registrant had also caused or permitted the supply of controlled drugs and prescription only medication without a pharmacist's supervision on the day in question. These comprised making three emergency supplies of medicine without a prescription, the supply of a class A controlled substance (methadone) on two occasions and the supply of prescription only medication on ten occasions. To compound these serious breaches, the Registrant falsely completed the Pharmacy Record for Hart's Pharmacy to give the misleading impression that he was the Responsible Pharmacist on duty on 24 March 2017, from 0900 to 1800 hours, when in fact he was not.
13. Mr Shields submitted that the nature of the Registrant's conviction and his misconduct was so serious that a finding of impairment was also necessary in the public interest.
14. Mr Lyttle made a submission to the Committee in opposition to the making of a finding of impairment. He submitted that the Registrant had fully remedied his misconduct. The Registrant had been open and frank with the authorities who had interviewed him under caution. Although not a defence to the breaches of the Responsible Pharmacist Regulations, the Registrant had entrusted the running of Hart's Pharmacy on 24 March 2017 to a person, although unqualified, who had long experience of pharmacy practice. The day before, the Registrant had made extensive contact with a range of locum pharmacists in a bid to obtain cover. He had been unsuccessful. On the day, 24 March 2017, the Registrant continued to hope that he would get a locum at the last minute. Instead of closing Hart's Pharmacy, as he ought to have done in compliance with the Responsible Pharmacist Regulations, the Registrant had allowed the pharmacy to remain open without appropriate cover in place. Mr Lyttle characterised the Registrant as having acted 'on the spur of the moment' and 'completely stupidly'. The Registrant had, on 31 March 2017, completed the sale of Maginn's Pharmacy so that, since that time, he operated Hart's Pharmacy and no other. The circumstances in which the Registrant found himself would never arise again as he was now the owner of only one pharmacy premises.
15. Mr Lyttle accepted, on the Registrant's behalf, that he should not have completed the Pharmacy Record to show that he was the Responsible Pharmacist for Hart's Pharmacy on 24 March 2017. He completed it so that he would have been the person held responsible should something have gone wrong. He could have left it blank and the fact that he completed the record demonstrated a lack of thought and naivety on the Registrant's part, Mr Lyttle submitted.
16. Mr Lyttle contended that, although a risk of harm had been created, there was no evidence of actual harm to patients as a result of the Registrant's breach of the Responsible Pharmacist Regulations. It was a one-off occurrence in an otherwise unblemished career spanning 35 years.
17. Mr Lyttle submitted that, in light of what the Committee knew about the Registrant, the facts that resulted in the absence of cover on 24 March 2017 and the remedial actions taken subsequently, it would be wrong for the Committee to find that the Registrant was likely to repeat his misconduct. The Registrant had fully remedied the conduct which had resulted in his referral to the Society.
18. Mr Lyttle also contended that there were no grounds to find current impairment, on public interest grounds, in respect of the Registrant. The Committee was told that, unusually, the Registrant had been prosecuted in the Crown Court. The Committee was taken to records of

previous prosecutions which showed that, in Mr Lyttle's submission, it was usual for pharmacists to be prosecuted in the magistrates' court and not the Crown Court for offences committed during the course of their duties as pharmacists. The Registrant had pleaded guilty in the Crown Court to the charges preferred against him. He had received a 'swingeing' fine which, in spite of advice, he did not appeal. He had personally paid the fines which totalled £26,000; these represented fines imposed on the Registrant himself in the sum of £5,000, the unqualified person left to cover Hart's Pharmacy on the day in question in the sum of £1,000 and on Clanua Limited in the sum of £20,000. The Registrant had admitted the facts of the Allegation at the outset of these proceedings. Mr Lyttle submitted that the Registrant had paid a heavy price, both professionally and financially, as a result of his guilty plea before the Crown Court and in his referral to the Society. The Registrant had damaged his reputation on account of his actions on one day, which reputation it had taken many decades of dedicated pharmacy practice to build up.

19. The Committee's attention was drawn by Mr Lyttle to a large number of character references, contained in the hearing bundle. These spoke highly of the Registrant both personally and professionally. The Committee was told that the references had been used by the Registrant in the Crown Court proceedings in addition to the proceedings before the Committee. In support of his argument that there was no need to find impairment in the public interest, Mr Lyttle focussed on a reference written in support of the Registrant by the GP partners, past and present, of the Donard Family Practice dated 20 April 2019. The reference described the doctors' experience of working closely with the Registrant over many years. It further stated, '*We would count Mr Maginn as a close colleague and have always found him to be hardworking and reliable, with the patients' best interests at heart. We have found him to be of the highest integrity and are happy to be able to support him...*'.
20. In summary, Mr Lyttle submitted that the significant penalty imposed upon the Registrant in the Crown Court, for offences directly connected to pharmacy practice, was a highly relevant factor that ought to result in the Committee concluding that the public interest had been satisfied and that there was no need to make a finding of current impairment on public interest grounds.
21. The Committee exercised its independent judgement on the question of whether, in light of the Registrant's conviction and established misconduct, he was currently impaired.
22. The Committee considered whether the Registrant's actions, as set out in Allegation 1 and 2, amounted to misconduct. The Allegation concerned the sale of medicinal products at Hart's Pharmacy on the day in question in the absence of a responsible pharmacist. Further, that the Registrant had recorded that such a pharmacist was present when, in fact, there was not. The Registrant had allowed Hart's Pharmacy to remain open for the entire day without a properly qualified pharmacist. He had allowed the sale of medicinal products to take place unchecked and had falsely represented on the Pharmacy Record that a qualified pharmacist was present. The Registrant had wilfully breached the Responsible Pharmacist Regulations. The Committee was in no doubt that the Registrant's actions had brought discredit to himself and the pharmacy profession. The Registrant's actions were serious and had crossed the threshold of what amounted to misconduct.
23. The Committee considered those elements of professional standards, to which all registered pharmacists were expected to adhere, which had been breached by reason of the Registrant's misconduct and conviction. The Committee had regard to 'The Code: Professional standards of conduct, ethics and performance for pharmacists in Northern Ireland' ('the Code') (effective from 1 March 2016) issued by the Society. In the Committee's judgement, the Registrant had breached the following provisions of the Code:

- The general principle of Registration as a Pharmacist that requires you to act to promote and maintain public confidence in the pharmacy profession;
- Principle 1 – Always put the patient first (including Standards 1.1.1-1.1.5) and in particular Standard 1.1.5 which states:
 - Standard 1.1.5: if, for any reason, you are unable to provide a professional service, you have a professional responsibility to take reasonable steps to refer the patient or service user to an appropriate alternative provider for the service they require;
- Principle 2 – Provide a safe and quality service (including Standards 2.1.2, 2.1.6, 2.2.3 and 2.3.3) and in particular Standard 2.1.2 which states:
 - Standard 2.1.2: Effectively control and manage the sale or supply of medicinal and related products paying particular attention to those with a potential for abuse or dependency;
- Principle 3 – Act with professionalism and integrity at all times (including Standards 3.1.1, 3.1.2, 3.1.6 and 3.2.2);
- Principle 4 – Communicate effectively and work properly with colleagues (including Standards 4.4.2 and 4.4.3).

24. Regulation 4(2) of the Regulations required the Committee to consider whether the actions of the Registrant:

- (a) Presents an actual or potential risk to patients or to the public;
- (b) Has brought, or might bring, the profession of pharmacy into disrepute;
- (c) Has breached one of the fundamental principles of the profession of pharmacy as defined in the standards; or
- (d) Shows that the integrity of the registered person can no longer be relied upon.

25. First, the Committee considered regulation 4(2)(a). This regulation, like the others, required an assessment by the Committee of the level of the Registrant's insight, remedial steps undertaken by him and the risk of repetition of the type of conduct which had resulted in the referral.

26. A very great deal had been said by Mr Lyttle about the manner in which the Registrant had met the criminal prosecution, the heavy financial penalty he had suffered by having to pay significant fines imposed by the Crown Court and the deleterious effect that the criminal prosecution and regulatory proceedings had had on the Registrant's reputation as a pharmacist. The Committee had received a number of positive character references attesting to the Registrant's personal and professional qualities. At this stage of the proceedings the Committee treated these general character references with some caution. However, in light of Mr Lyttle's invitation during the hearing, the Committee paid particular attention to the reference written by the GPs – former and present – of the Donard Family Practice. The Registrant was described as 'of the highest integrity', 'hard working' and 'reliable'. The reference spoke well of the Registrant in general terms. It did not, however, address the risk of harm to which the public and patients had been undoubtedly exposed by the Registrant's deliberate decision to keep the pharmacy open without appropriate cover.

27. The facts which led to the breach of the Responsible Pharmacist Regulations were unlikely to recur. The Registrant had sold a pharmacy and was the sole operator of the remaining one. However, the Committee in addressing regulation 4(2)(a), was required to look at the underlying conduct which had resulted in the Registrant's referral to the Society in the first place. To the Committee's mind, the essence of the case was the Registrant's decision, when

confronted with a professional dilemma, to make the wrong choice and to keep the pharmacy open. In so choosing, the Registrant had committed a serious breach of his professional code, failed to uphold the law and exposed patients and the public generally to the risk of harm. The Registrant, at the impairment stage, did not provide evidence – either written or oral – to persuade the Committee that he was insightful into his misconduct and that it would not be repeated. The Committee was satisfied that the criminal and regulatory proceedings had had a salutary effect on the Registrant. However, in the absence of evidence of insight and remedial action, the Committee considered that the risk of repetition of the behaviour complained of could not be discounted. The Committee therefore concluded that while there was no evidence of actual risk, the Registrant currently presented a potential risk to patients and the public. Regulation 4(2)(a) was engaged in part.

28. Second, the Committee considered regulations 4(2)(b) and 4(2)(c) together. Manifestly, to the Committee’s mind, the Registrant’s conviction for offences directly related to the pharmacy profession and his admitted misconduct established that he had, in the past, brought the profession into disrepute and breached fundamental principles of the pharmacy profession. For the same reasons as those raised in respect of the consideration of regulation 4(2)(a) – lack of insight and evidence of remedial action- the Committee considered that the Registrant could be liable to act in a similar manner in the future.
29. Finally, the Committee considered the question of the Registrant’s integrity – regulation 4(2)(d). The Committee derived guidance from Wingate v SRA [2018] EWCA Civ 366 where it was observed, at [95]-[102] (per Jackson LJ):

‘Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty...’

‘Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted. In professional codes of conduct, the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which professions expect from their own members...The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards...’

‘Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty...’

30. The Committee was in no doubt that, by reason of his conviction and misconduct, the Registrant had failed to act with integrity. There was no evidence of insight and no evidence of remedial action to assuage the Committee’s concern that the Registrant would not act in a similar fashion in the future. Nonetheless, the Committee was required to consider the strict wording of the regulation. The Committee concluded that, while the Registrant’s actions fell seriously below the standards to be expected of a registered pharmacist, they were not such as to establish that his integrity could no longer be relied upon. The Committee, on balance, decided that regulation 4(2)(d) had not been engaged.
31. The Committee considered the formulation provided by Dame Janet Smith in her Fifth Report to the Shipman Inquiry (cited with approval by Cox J in Grant). The circumstances of the case, in the Committee’s judgement, established that the Registrant’s actions had engaged the following limbs:

- (a) Has in the past acted and is liable in the future so as to put a patient or patients at unwarranted risk of harm;
 - (b) Has in the past brought and is liable in the future to bring the pharmacy profession into disrepute; and
 - (c) Has in the past breached and is liable in the future to breach one of the fundamental tenets of the pharmacy profession.
32. The Committee considered whether a finding of current impairment was required in the public interest. The Committee recalled that the public interest encompassed, amongst other things, the protection of patients and the declaring and upholding of proper standards of conduct and performance. It was evident to the Committee that its function was quite distinct from that of the Crown Court. In sentencing the Registrant, the Court was concerned with punishment and deterrence. The Committee, in deciding impairment, was concerned with neither. The Committee considered that a failure to make a finding of current impairment on public interest grounds, in addition to those identified which were personal to the Registrant, would undermine public trust and confidence in the pharmacy profession.
33. For these reasons, the Committee decided that the Registrant is currently impaired.

RECUSAL APPLICATION

34. After it had handed down its decision on impairment, Mr Lyttle made a submission that the Committee should recuse itself. Mr Shields made a submission in response. At the conclusion of the submissions, the Committee directed that the parties file skeleton arguments and then retired. These were duly served on behalf of the Registrant (Exhibit G) and the Society (Exhibit H) and were fully considered by the Committee, in addition to the parties' oral submissions.
35. On 6 March 2020, the Committee reconvened and announced its decision on the recusal application as follows:

'The Committee paid careful attention to the parties' oral submissions made on 23 October 2019.

In addition, the Committee read and considered the skeleton argument (with an attached authority, In the Matter of an Application by Thomas Ronald Hawthorne and Raymond White for Judicial Review v PONI [2018] NIQB5 (Exhibit G) submitted by Mr Lyttle on behalf of the Registrant, and a replying skeleton argument submitted by Mr Shields on behalf of the Society (Exhibit H). The Committee, in its deliberations, considered in detail the test for bias which was set out in the authorities. Having given the matter anxious attention, the Committee could find no basis in law on which it ought to recuse itself.

The Committee therefore refuses the application.'

SANCTION AND REASONS

36. At the outset of the hearing, Mr Lyttle placed before the Committee a statement made by the Registrant, dated 6 March 2020 (Exhibit I).
37. The Committee invited submissions on the question of what, if any, sanction ought to be imposed on the Registrant's registration as a pharmacist.

38. Mr Shields, in his submission, invited the Committee to recall the allegations to which the Registrant had made admissions. He had permitted the dispensation and dissemination of medication to take place from his premises for an entire day without a responsible pharmacist being present. The Registrant had been found to have breached the Code in a number of fundamental aspects. Mr Shields referred the Committee to the Indicative Sanctions Guidance ('the Guidance'), effective from 27 March 2019, which had been published by the Society. He referred the Committee to the mitigating and aggravating factors set out at paragraphs 2.14 and 2.15 of the Guidance. Mr Shields addressed each of the available sanctions set out at Figure 1, paragraph 2.9. Mr Shields made no submission on any particular sanction and instead left the matter, paying proper regard to the Guidance, to the independent judgement of the Committee.
39. Mr Lyttle made a submission on the question of sanction. He asked the Committee to have regard to the very considerable period which the Registrant had spent in practice during which, with the exception of this referral, he had had an unblemished record. The testimonials, which had been placed before the Committee at the outset of the hearing, spoke highly of the Registrant both personally and professionally. The Registrant had paid a heavy price, both financially and in terms of the damage to his reputation, by being convicted and sentenced before the Crown Court and also as a result of being the subject of proceedings before the Committee. The proceedings to which he had been subject had fully addressed the public interest.
40. The Registrant, in Mr Lyttle's submission, had fully engaged with the regulatory proceedings. Furthermore, he had cooperated with the investigation into his actions on the relevant date at the very earliest opportunity. He had made CCTV available and accepted, from the outset, that he had made entries as being the responsible pharmacist at both pharmacies when he clearly should not have done. He had not concealed his actions. The Registrant was in no doubt about the seriousness of his actions and that they would be treated as being of the utmost seriousness by the Committee. His actions could properly, in Mr Lyttle's submission, be described as 'stupid and thoughtless'. There had been no concerted effort, on the Registrant's part, to act dishonestly.
41. Mr Lyttle also commended to the Committee the statement made by the Registrant on 6 March 2020. The statement demonstrated that the Registrant was genuinely remorseful for his actions and that he was fully insightful into the seriousness of his misconduct. He had not come to any adverse attention in respect of his professional duties since the date in question and had divested himself of the second pharmacy, leaving him in control of only one. Mr Lyttle submitted that the risk of repetition had diminished to 'a vanishing point'.
42. In his principal submission, Mr Lyttle contended that evidence of insight and there being no risk of repetition meant that, exceptionally, the Committee could give a warning to the Registrant. If the Committee was not satisfied that such a sanction would be adequate, Mr Lyttle submitted that a short suspension would be sufficient to safeguard the public interest.
43. In deciding what, if any, sanction to impose the Committee exercised its independent judgement. The Committee reminded itself that, while a sanction was not meant to be a punitive measure, its application could have a punitive effect on the Registrant. The primary purpose of a sanction was to uphold and protect the public interest. The public interest encompassed not only the protection of the public and patients but also the declaration of proper standards of conduct and propriety in the pharmacy profession. The Committee was required to act proportionately; it should commence by considering whether, in the first instance, it would be appropriate to conclude the case against the Registrant by taking no further action. If the Committee decided that the public would not be protected by adopting such a course, the Committee should next move to consider each available sanction in ascending order of severity. Acting proportionately meant that when the Committee identified a sanction which, in its

judgement, adequately protected the public interest it should not move on to consider a further, more restrictive, sanction.

44. The Committee considered all the documentary evidence contained in the hearing bundle and all the Exhibits submitted in the course of the hearing. Careful regard was also paid by the Committee to the oral submissions made by the parties.

45. The Committee, in accordance with paragraphs 2.10 to 2.16 of the Guidance, first considered the aggravating and mitigating factors.

46. The Committee considered that the following matters amounted to aggravating factors:

- *'The circumstances leading to the incident in question'*: the Registrant had permitted the pharmacy to remain open all day, with medicines (including controlled drugs and prescription only medication), being dispensed without any supervision by an appropriately qualified person present on the premises;
- *'The incident in question resulted in potential harm or actual harm to a patient'*: there was no evidence that actual harm had been caused to any patient as a result of the Registrant's breach of the Regulations. However, in permitting the pharmacy to remain open in these circumstances, the Registrant had acted in a manner so as to create a risk of harm to patients;
- *'Actions were premeditated'*: there was no evidence to suggest that the Registrant had pre-planned the opening of the pharmacy without a Responsible Pharmacist. However, when it became apparent that no Responsible Pharmacist would be obtainable on the date in question, the Registrant nevertheless permitted the pharmacy to open without one. That was a deliberate – and wrong – decision for the Registrant to have taken. This decision was compounded by the Registrant's decision to sign the Responsible Pharmacist log for Hart's Pharmacy to convey the impression that the Registrant was fulfilling that function on the premises when he was not.

47. The Committee considered that the following matters amounted to mitigating factors:

- *'The circumstances leading to the incident in question'*: the Committee accepted that the Registrant had made significant efforts, in the lead up to the day in question, to secure the services of a locum pharmacist who would act as Responsible Pharmacist. His efforts were fully set out in the interview transcripts contained in the hearing bundle. He had cooperated with the investigation into the incident conducted by the Pharmacy Inspectorate of the Department of Health. He had also engaged fully with his regulatory body and had made early admissions at the outset of the hearing;
- *'Evidence of the registrant's good character' and 'The incident in question being a one off'*: the Committee considered both these matters were relevant and considered them in the Registrant's favour;
- *'Evidence of insight from the registrant' and 'Evidence of remedial action taken by the registrant after the incident'*: the Registrant had sold one of the pharmacy businesses in the aftermath of this incident and had retained, since that time, an interest in only one pharmacy. The Registrant, in the course of the proceedings at sanction stage, had furnished the Committee with a statement which demonstrated insight and evidence of remedial action.

48. The Committee, in light of the aggravating and mitigating factors identified, turned to consider which sanction would be proportionate and would adequately protect the public interest.

49. In light of the findings of fact and the seriousness of the Registrant's misconduct, the Committee decided that it would be neither proportionate nor in the public interest to conclude the matter by taking no further action.
50. The Committee next considered whether a warning was an appropriate and proportionate sanction to impose. The Guidance stated that a warning might be appropriate where there *'is no risk to the public and/or there is no significant impact upon public confidence in the pharmacy profession and/or the breach of the Standards has been of a more minor nature.'*
51. The Committee considered the risk to the public and risk of repetition of the Registrant's actions. The Registrant had provided the Committee with a statement, at the sanction stage of the proceedings, which the Committee fully considered. He admitted that his decisions to keep the pharmacy open and to sign the log were *'completely stupid'* and *'idiotic'*. The Registrant detailed the efforts he had made to secure the services of a locum pharmacist for the date in question. The Registrant described his decision to open the pharmacy without appropriate cover as being *'the worst decision I have ever made.'* The Registrant was explicit in acknowledging that, given the clear risk to patient safety, he should not have opened the pharmacy without a Responsible Pharmacist being present. The Registrant also outlined in his statement the measures – which included the employing of three pharmacists in the intervening period - to ensure that there would be no repeat of the incident that had resulted in his referral to the Committee. The Registrant stated: *'I have learnt my lesson and fully realise the gravity of what I have done.'* Further, the Registrant stated:
- 'No amount of words can express the regret and remorse that I feel for what I have done. I unreservedly apologise for my actions and inactions on 24th March 2017, which were the worst and sorriest decisions that I have ever made. I have had a significant amount of time, nearly three years, to think about the stupidity of my actions and the potential harm this could have caused the public. I think about what I did every day and am extremely thankful that no one was injured or suffered harm as a result of my actions.'*
52. In his statement, the Registrant also accepted the potential which his actions had to cause damage to the pharmacy profession.
53. The Committee, having carefully considered the Registrant's statement, determined that it could attach weight to it. Although provided at a relatively late stage of the proceedings, it was a detailed document which comprehensively set out the Registrant's reflections on what he had done wrong. The Registrant was insightful; he demonstrated remorse and had candidly acknowledged the impact which his actions could have had so as to undermine the public's trust and confidence in the profession. The Committee also attached weight, as outlined in the statement, to the steps the Registrant had taken to ensure that there would be no repeat of his actions. The Committee concluded that the risk of the Registrant repeating his past misconduct was negligible.
54. The Committee considered the impact on public confidence having regard to the Registrant's breach of the Code. The Registrant's breach of the Code was not minor. His actions had resulted in a busy community pharmacy being allowed to open for a full day and dispense medication – including controlled drugs and prescription only medication - without a Responsible Pharmacist being present. The Registrant had compounded this error by signing the log to give the misleading impression that he was on the premises as the Responsible Pharmacist when he subsequently admitted that he was not. In his statement, the Registrant had accepted the seriousness of his actions.
55. In the judgement of the Committee, the breaches of the Code that had been found were serious and fundamental. They had the potential to significantly erode the public's trust and confidence

in the pharmacy profession. It could not be said that the Registrant's actions had had no significant impact upon public confidence in the profession, nor could it be said that the breaches found were of a minor nature. The Committee, accordingly, concluded that while the Registrant had demonstrated considerable insight and remorse, the issuing of a warning was insufficient to uphold the public interest.

56. The Committee next considered the imposition of conditions. The Committee noted that the Guidance provided that conditional registration might be appropriate where areas of the Registrant's practice and/or conduct had been identified by the Committee as being in need of assessment and improvement. To the Committee's mind, this was not such a case. The Registrant was the owner of a sole pharmacy business and had recruited additional staff for the remaining pharmacy to remove the possibility that an incident, such as that contained in the Allegation, could arise in the future. There was no concern about his competence as a clinician. The Committee concluded that no conditions could be formulated that would address the misconduct identified in the circumstances of this case.
57. The Committee next considered a suspension order. The Guidance stated that a suspension order might be appropriate to highlight to the profession and the public that the Registrant's conduct was unacceptable and unbecoming a member of the pharmacy profession. The Committee was satisfied that the Registrant had developed significant insight into his actions. Furthermore, he had taken steps, as set out above, at his remaining pharmacy to ensure it was adequately staffed. As a result, to the Committee's mind, patients and the public at large were not at risk from the Registrant, nor was it likely that there would be a repetition of the behaviour that had resulted in his referral.
58. While the Committee noted the length of his career in the pharmacy profession, the Registrant's actions were nonetheless serious. He had departed from the standards expected of him as a registered pharmacist. A clear signal needed to be sent out to the profession and the public in general that such behaviour was not acceptable and would not be tolerated. The Committee concluded that a suspension order was a proportionate sanction to address these concerns and to provide the necessary assurance to the public and patients as to the importance of registered pharmacists adhering, at all times, to fundamental standards of professional conduct. The Committee determined that, in the circumstances, a suspension order of six months was the appropriate and proportionate duration. Such a period of suspension would, in the Committee's judgement, be sufficient to adequately protect the public, declare and uphold proper standards and maintain public confidence in the pharmacy profession.
59. The Committee decided to impose a suspension order on public interest grounds. The Committee had not identified any risk to the public posed by the Registrant, given his insight, remedial steps and all the circumstances of the case. The Committee considered, on that basis, it was not necessary to require the Registrant to undertake any further remedial steps, nor was it necessary to make a direction to hold a review hearing in advance of the expiry of the suspension order imposed by the Committee.
60. The Committee considered the appropriateness of a striking off order. Such an order, in the Committee's view, would be disproportionate. In light of the evidence presented, the Committee was satisfied that, while serious, the Registrant's conduct was not such as to be fundamentally incompatible with remaining on the Register.
61. The Committee, in accordance with paragraph 7(2)(d) of Schedule 3 of the Pharmacy (NI) Order 1976 as amended, makes a direction that the registration of James Gerard Maginn, a registered pharmacist, be suspended from the Register for a period of six months.

INTERIM MEASURE

62. The Society did not apply for an interim measure to cover the appeal period before the suspension order took effect or to cover that period, if an appeal was lodged, for it to be fully disposed of by hearing or otherwise.
63. In exercising its independent judgement, the Committee, for the same reasons as set out in its determination on sanction, did not consider that an interim measure was necessary to protect the public.
64. The Committee reminded itself of the authorities that stressed the high bar that ought to be crossed before an interim order could be imposed in the public interest. Furthermore, the authorities also made clear that imposing such an order solely on public interest grounds would be relatively rare.
64. The Committee could see no basis, in all the circumstances of the case, on which to make an interim measure on grounds of the public interest.

COSTS

65. There was no application for costs.

Conor Heaney

Deputy Chair

Statutory Committee

7 August 2020