

**General Pharmaceutical Council
Fitness to Practise Committee**

Principal Hearing

General Pharmaceutical Council, 25 Canada Square, Canary Wharf, London E14 5LQ

26 October – 5 November 2020

Registrant name:	Mr Nazim Hussain Ali
Registration number:	2041615
Part of the register:	Pharmacist
Type of Case:	Misconduct
Committee Members:	Mr Alastair Cannon - Chair Mr Raj Parekh- Registrant member Ms Claire Bonnet – Lay member
Legal Adviser:	Ms Sadia Zouq
Secretary:	Mr Mark Mallinson & Mr Adam Hern
Registrant:	Present and represented by David Gottlieb instructed by Abed Choudhry, IHRC Legal
General Pharmaceutical Council:	Represented by Andrew Colman, 2 Hare Court
Facts proved by admission:	1a, 1b, 1c, 1d and 2b.
Facts not proved:	2a
Fitness to practise:	Impaired
Outcome:	Warning
Interim measures:	N/a

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(The following determination was handed down)

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1. This is a Principal Hearing regarding Mr Nazim Hussain Ali ('the Registrant'), a Pharmacist first registered in August 1993 and currently registered with the General Pharmaceutical Council ('the Council') under registration number 2041615.

The allegations

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That you, a registered Pharmacist, during the Al Quds Day rally on 18 June 2017:

1. Made the following comments, or words to the same effect:

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a. *'It's in their genes. The Zionists are here to occupy Regent Street. It's in their genes, it's in their genetic code.'*;

b. *'European alleged Jews. Remember brothers and sisters, Zionists are not Jews.'*;

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c. *'Any Zionist, any Jew coming into your centre supporting Israel, any Jew coming into your centre who is a Zionist. Any Jew coming into your centre who is a member for the Board of Deputies, is not a Rabbi, he's an imposter.'*;

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d. *'They are responsible for the murder of the people in Grenfell. The Zionist supporters of the Tory Party.'*

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2. The above comments were:

a. Anti-semitic

b. Offensive

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And by reason of the matters above, your fitness to practise is impaired by reason of your misconduct.

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Background

2. The background to the case can be summarised as follows.
3. The Registrant is a Pharmacist, who is the managing partner of Chelsea Pharmacy in London. He also performs as a stand-up comedian.
4. The Al Quds rally is an annual march in Central London in support of Palestinian rights. The Registrant has been an active participant in the annual rally for a number of years, leading the rally through the use of a loudhailer.
5. The allegations in this case arise from the 2017 rally on 18 June. Although the Registrant was not acting in his professional capacity during the rally, he was identified as a Pharmacist by means of social media. The Registrant made a number of comments whilst leading the rally through London.
6. The Registrant disputes that his words were anti-Semitic. The Council maintain that they were anti-Semitic and offensive, applying the working definition of anti-Semitism as provided by the International Holocaust Remembrance Alliance (IHRA), and as such that his words amounted to misconduct and adversely affected the reputation of the pharmacy profession.

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Stage 1: The Facts of the Case.

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7. The procedure for principal hearings before the Fitness to Practise Committee is set out in Rule 31 of the Rules. In accordance with Rule 31(1) of the Rules this hearing is required to be conducted in three stages:

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- (a) Stage 1 – Findings of fact;
- (b) Stage 2 – Findings on whether, as a result of the facts found proven, the Registrant’s fitness to practise is impaired by reason of his misconduct and/or adverse health; and
- (c) Stage 3 - Consideration of the appropriate sanction, if any.

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8. In preparation for the hearing the Committee was furnished by the Council in advance with a combined Skeleton Argument and Statement of Case, dated 17 September 2020, along with a bundle for the hearing comprising 83 pages which included: witness statements; a schedule of video evidence available on YouTube of the Al Quds Day rally of 18 June 2017; a transcript of this video footage; and a copy of the International Holocaust Remembrance Alliance’s working definition of anti-Semitism.

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9. The Committee had received in advance from the Registrant a bundle comprising 84 pages containing a number of witness statements, including two from the Registrant, the first dated 14 October 2020 and a further supplementary statement dated 22 October 2020. The bundle also contained 33 character references/testimonials in support of the Registrant.

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10. On the day of the hearing the Committee was further provided by the Registrant with a short skeleton argument accompanied by a series of responses by the Registrant to the Council’s statement of case and skeleton argument.

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11. Later on the day of the hearing – there being no objection by the Council - the Committee received from the Registrant a copy of a High Court judgement [2019] EWHC 9 (Admin), which was the outcome of a judicial review by the Campaign Against Antisemitism (CAA) against a decision by the Director of Public Prosecutions to discontinue a private prosecution brought by the CAA against the Registrant for a Section 5 Public Order Act 1986 offence.

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12. In the course of proceedings – prior to the determination on the application to stay proceedings on the grounds of an abuse of process - with the agreement of both parties, the Committee was provided with the ordinary dictionary definitions of both ‘anti-Semitic’ and ‘offensive’ by the Legal Adviser.

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13. ‘Anti-Semitic’ was defined as: *‘Hostile to or prejudiced against Jewish people’*

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14. ‘Offensive’ was defined as: *‘Causing someone to feel resentful, upset, or annoyed’*

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15. Again, with the agreement of both parties the Committee was provided with a full copy of Article 8 and Article 10 of the Convention on Human Rights as given effect in the UK by the Human Rights Act 1998. The wording of those Articles appears below at paragraph 68 below.

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16. The Committee referred to the following other publicly available documents during the course of the hearing and in its deliberations:

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- The GPhC 'Standards for pharmacy professionals May 2017'
- The Pharmacy Order 2010 ('The Order')
- The General Pharmaceutical (Fitness to Practise and Disqualification etc. Rules) order of Council 2010. ('The Rules')
- The GPhC 'Good decision making: Fitness to practise hearings and sanctions guidance, March 2017'
- The High Court judgment in *Forz Khan v Bar Standards Board* [2018] EWHC 2184 (Admin)

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Admissions

17. The Registrant confirmed at the outset that he wished to make the following admissions:

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- Particular 1a: admitted
- Particular 1b: admitted
- Particular 1c: admitted
- Particular 1d: admitted
- Particular 2b: admitted

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18. In accordance with Rule 31(6), having been admitted, the Chair announced these facts to have been found proved.

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A | **The Council's Case**

B | 19. In his opening comments Mr Colman for the Council explained that the Committee would be asked to consider at this stage of proceedings, it having been admitted that the comments were offensive, whether the comments made by the Registrant were anti-Semitic, when judged objectively. He later expanded upon this to say that this should be taken to mean whether they would be considered anti-Semitic by any ordinary reasonable person, not a person with particular characteristics. So not an ordinary Jewish person but any ordinary member of the British public.

C | 20. The Committee heard live evidence from Mr David Collier who in his statement described himself as 'an independent researcher engaged in research into Middle eastern history'. In that statement he stated that he had attended the Al Quds rally in June 2017 with his (then 15-year old) daughter. In his statement Mr Collier describes his thoughts and feelings about what he heard that day from the Registrant as follows:

D | *'I cannot recall what the registrant was wearing, he had long dark hair. I have seen E | him before, I do recognise him by sight. I did not know he was a pharmacist, this is what scares me. I would not go anywhere near him because of the hate he has. This is a free country and people are free to say what they like but knowing what he does professionally and knowing what he thinks I would be worried about a F | Jewish person going to him with a prescription. Someone told me he was a pharmacist I do not recall who. I am not a patient of the registrant'.*

G | 21. Mr Collier recorded some footage of the rally that day on his camera, a segment of which lasting some 2 mins 41 seconds was watched later by the Committee. (This footage was not the much longer footage available on YouTube and also shown to the Committee later).

H | 22. Mr Collier, having adopted his statement and affirmed its truth was asked no substantive questions by Mr Colman. Mr Collier was then cross-examined.

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23. Mr Collier was asked to explain in what way he was independent. He confirmed that he answered to no group and had no connection with the Campaign Against Anti-Semitism. It was put to him that he had close connections with Israel, indeed that he had lately returned from a visit to Israel. Mr Collier confirmed he had and also confirmed that his daughter had recently gone to live in Israel and had volunteered to serve in the Israeli Defence Force (the IDF).

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24. Mr Collier was then asked if he was aware that the Registrant had made an apology and had admitted that his comments had been “grossly offensive”. Mr Collier was given to read a copy of both statements made by the Registrant for the hearing. Mr Collier was asked if the making of the apology by the Registrant was sufficient to satisfy Mr Collier. Mr Collier queried why the apology had not been made earlier, for example in 2018.

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25. Mr Collier then was asked if being made aware that the Registrant had received legal advice to the effect that he should not make an apology, whether that fact would make a difference. Mr Collier did not address that point specifically but went on to say:

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‘No, the idea of trying to play it out like I’m unforgiving, or I’m extreme, it’s not going to work because it’s not true. This is a case where somebody has stood in the centre of London trying to wind up a crowd – that’s what he was doing at the time – trying to wind them up with stories about Jewish power, killing people at Grenfell. So I’m angry about that; I’m not angry about someone saying Israel is a terrorist state. Let’s deal with what was said rather than trying to smokescreen and blur things so it becomes, shall we say, a little bit less harsh? It was awful what was said’

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26. The Committee next heard live evidence from Mr Jonathan Hoffman, who in his statement described himself as ‘of the Jewish faith’ and who had attended the Al Quds Day rally on 18 June 2017. As with Mr Collier, beyond being asked by Mr

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Colman whether he adopted his statement and whether he attested to its truth (which he did) he was asked no further questions by Mr Colman.

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27. In his statement Mr Hoffman had stated that he had attended the Al Quds rally in June 2017 because: *'It is the worst event of the year in London from the point of view of open antisemitism. I was therefore present to protest.'*

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28. Mr Hoffman went on to say the following in his statement:

'What the Registrant said was Anti-Semitic which means racist against Jews. This registrant has therefore brought the profession into disrepute. That goes not just for his pharmacy practice, but for the health business he runs in Chelsea. I certainly would not wish to have any professional dealings with this man. Hearing his words made me feel very angry and sad. I find it incredible that a registered pharmacist can be so openly racist.'

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29. Mr Hoffman was then cross-examined.

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30. Mr Hoffman was asked whether he had visited the Registrant's pharmacy. He replied that he had but not for the purpose of receiving advice on medications. He had visited as 'an ordinary member of the public' because the Registrant was antipathetic towards Israel and he wanted to check whether he stocked medicines manufactured in Israel. He found that he did stock a children's medicine made in Israel.

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31. Mr Hoffman was then asked whether he had a Public Order Act conviction. He confirmed he had arising from being at a demonstration where he said he was provoked. It was then put to Mr Hoffman that he was not applying the same standards to the Registrant as he applied to himself.

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32. In reply Mr Hoffman stated that neither his visiting the Registrant's shop nor his taking part in a demonstration was racist.

A 33. The Committee then were shown as series of excerpts from video footage
[separate from and much more extensive footage than that referred to above from
Mr Collier] of the Al Quds day rally on 18 June 2017 to be found on YouTube. The
footage on YouTube had a running time of 2 hours 41 minutes. The Committee
B were shown those excerpts which Mr Colman considered relevant – which
included the segments containing the comments made by the Registrant
contained in the allegation - along with other excerpts which Mr Gottlieb wished
the Committee to see in order that it might fully appreciate the nature of the event
and the atmosphere on the day of the rally.
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The Registrant's case

D 34. The Committee next heard live evidence from the Registrant. The Registrant had
indicated at the outset that he intended to give evidence only once during the
hearing, and so the Committee kept in mind that it may choose to ask questions
of him that might be more relevant to later stages of the proceedings, if reached.

35. The Registrant read out the following from his written statement:

E *'In the last three years I have had time to reflect and understand the impact of my
words on my friends, my family, public confidence in the pharmacy profession and
the wider community. I fully understand the pain and hurt my words have caused.
I deeply regret what has happened. I wish to apologise unreservedly to anyone
F who does not know me and who was offended by my comments on 18 June 2017.
This includes members of the Committee, fellow members of the profession, and
any ordinary members of the public who might want to use a pharmacist. Anti-
Semitism: I am not, and have never been, anti-Semitic. I oppose all forms of
G prejudice. I never intended to say anything that was anti-Semitic on 18 June 2017.
Specifically, I never wanted or intended to cause pain or offence to Jewish people
by my comments on 18 June 2017. This includes anyone not present at the
demonstration, anyone who does not know me, and anyone who may have heard
H about my comments from news reports. I apologise unreservedly to them.'*

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And added also the following, which was the total of his further written statement:

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'I wish to make the following clarification to my statement dated 14 September 2020: (1) I unreservedly accept that the words I used were grossly offensive; (2) It was appallingly insensitive of me to have said such things; (3) I profusely apologise for the great hurt caused thereby; (4) apart from this one isolated occasion, I have never had any complaints of being anti-Semitic, including from my Jewish customers; (5) however highly charged any meeting may be, I know appreciate the importance of ensuring that I choose my language carefully; (6) pharmacy is my professional life. Going forward, I wish to ensure that everyone can benefit without fear or prejudice from my services as a pharmacist and there will be no distraction caused by me expressing myself inappropriately in any setting'.

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36. The Registrant detailed his background experience of growing up as the only Asian family on a council estate in Bolton; dealing with racism as a daily event; of receiving racist taunts and of being beaten up; of being a debater and activist for Palestinian rights from an early age including debating vigorously with a Jewish schoolfriend; he studied pharmacy having been deflected from studying medicine by a interview which he said focussed entirely on his ethnicity; that he was married and had two children; had managed a retail pharmacy and had bought a pharmacy in London; was a superintendent for a pharmacy company in Luton; and was the registered manager for a private health clinic in Chelsea registered with the Care Quality Commission.

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37. The Registrant confirmed that he had previously never had any formal complaints made against him as a Pharmacist, either by Jewish customers (of which he had many, given the areas of London in which he had worked) or any other customers.

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38. The Registrant confirmed that he had never again uttered the comments complained of, even after being told previously that there would be no GPhC proceedings against him. He had led the Al Quds Day rally in 2018 and 2019 and had not repeated his comments.

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39. When asked what had been his intention that day on the rally, he stated that he wished only to highlight oppression against the Palestinian cause; he had never intended any offense or anti-Semitism. His comments had not been scripted in advance; they were unguarded comments, some of which were made by the Registrant in response to those made by members of a counterdemonstration. The reaction he had faced was unexpected and very unpleasant, for example being described as 'Preacher of Hate' on the front pages. Because he had fought his whole life against prejudice and abhorred racism, that was particularly upsetting. He had not expected his words to be reported: he had taken a leading part in Al Quds Day rallies for 20 years without receiving this attention.

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40. The Registrant was asked why he had not previously offered an apology for his offensive comments and replied that he had not been brought before a Court previously to apologise publicly and had received legal advice not to apologise when criminal proceedings had been pending i.e. until after January 2019 when the judicial review against the decision of the DPP to discontinue the private prosecution had been concluded.

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Cross-examination of the Registrant

41. The Registrant was then cross-examined by Mr Colman.

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42. The Registrant in answer to questions confirmed that:

- Not all Jews are Zionists;
- Some secular and religious Jews do not support all the actions of the State of Israel;
- That not all Zionists are Jews, and so cannot be conflated;
- That Jewish persons' ethnicity can be identified genetically, but not so Zionists.

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43. The Registrant was then asked why he had said of Zionists '*It's in their genes*' if he was not referring to Jews at this point. To which he answered that it was a figure

A of speech and likened it to David Cameron having said of the Conservative Party
that it was in the Party's DNA to be Zionist, or like saying it is in a striker's blood to
score goals and denied he was conflating Zionists and Jews. When it was put to
B him by Mr Colman, he denied that the majority of Zionists were Jews, either
internationally or in the UK, there being many supporters of Zionism including
some fundamentalist Christian sects.

C 44. Mr Colman put to the Registrant to explain his use of his comment *'European
alleged Jews'* to which the Registrant replied at some length but in essence said
that he was not sure; they were unguarded words, he had heard these words
uttered by a Rabbi Beck; he repeated these in the heat of a hot day when also
fasting.

D 45. Mr Colman asked the Registrant to explain his comment:

*'Any Zionist, any Jew coming into your centre supporting Israel, any Jew coming
into your centre who is a Zionist. Any Jew coming into your centre who is a member
for the Board of Deputies, is not a Rabbi, he's an imposter.'*

E 46. The Registrant replied that these comments were referring only to interfaith
dialogue taking place in Islamic centres and mosques and in that regard who
should be recognised as representing Judaism, whether from the Jewish
F mainstream or from the Neturei Karta (an anti-Zionist sect of Judaism), pointing
out that, in the context of a Jewish counter-demonstration, that there are differing
strands of Jewish faith, opinion and representation.

G 47. It was put to the Registrant that in the same way that he had said during the
demonstration that denying Jewry to people is anti-Semitic, the Registrant had
done exactly that when he said that Zionists are not real Jews.

H 48. The Registrant accepted that he did not have the right to decide or say who were
real Jews, and apologised again for that comment, which was said in the heat of

A | the moment, was a repetition of what he had heard Rabbis from Neturei Karta say, which he had not since repeated and had no intention to repeat.

B | 49. The Registrant's comment about the Grenfell Tower fire was put to the Registrant and he was asked to explain why it was offensive, as he had admitted. The Registrant stated that it was offensive because he had accused all supporters of the Conservative Party and all Zionists of being responsible for austerity and thus directly responsible for the fire.

C | 50. The Registrant agreed that tropes about Jewish people controlling the media and secretly controlling the world are anti-Semitic tropes but denied that his comments, in Mr Colman's words, "*fitted all too neatly*" into those tropes.

D | 51. The Registrant denied again that his comments were intended to be anti- Semitic or in fact were anti-Semitic.

E | 52. In answer to questions from the Panel, the Registrant:

- Confirmed that he was not able to say what 'European' connoted in his comments about European alleged Jews;
- That when he called some Rabbis 'imposters', this was only in relation to who should speak for Judaism in interfaith dialogue and that there are some they would be talking to and those they would not.

F | 53. The Registrant was asked by the Panel whether he thought that in making his comments he had breached the 'Standards for pharmacy professionals'. Initially he stated in reply that he did not think so but also said that if he had used offensive language then he had breached them. However, he had no intention to be
G | offensive and was not acting as a Pharmacist at the time.

H | 54. He was then asked about one aspect of Standard 1, namely that Pharmacists should 'Recognise their own values and beliefs but do not impose them on other

A | people'; in particular, how visiting customers who recognised him might react in
light of his comments.

B | 55. The Registrant replied that *"once they know the whole context is, I think a fair-
minded person would say, 'Well, okay, we understand you're passionate about
your cause', and so on and so forth"*.

C | 56. The Chair asked the Registrant to confirm whether or not he considered that
Standard 6 – 'Pharmacy professionals must behave in a professional manner'
applied to him on that day when he made his comments, in particular the section
headed 'Applying the Standard' and the requirement for 'appropriate behaviour
at all times'.

D | 57. The Registrant replied:

E | *'As a pharmacist it does. Because it's part of the code of conduct that I need to
abide by. But I'm speaking to now at this very moment. I can see it does but at the
time that – you know, maybe it's failing on most of us pharmacists, we don't read
all our code of conducts and so on and so forth. I'll be quite frank, I'll be surprised
if many do. We only read it when it applies to us in this matter'.*

F | 58. The Registrant was then asked what impact he thought his comments had upon
the profession and his fellow professionals. In reply he stated that it was
embarrassing to be brought before a Fitness to Practise committee and:

G | *'I think when people are making this moral judgment about my case, I think, if I've
understood you correctly – forgive me if I'm wrong – they will see that people will
have their own opinions and some will be upset with this, yes, as pharmacists, that
being dragged into this whole quagmire of Palestine and Israel'.*

H | 59. In re-examination Mr Colman then asked the Registrant, in relation to the
application of the Standards, whether he had the right as a Pharmacist to be

A offensive or anti-Semitic in public. The Registrant rejected that he had been anti-Semitic, admitting that his comments had been offensive in a “broader context” regardless of whether or not he was a Pharmacist.

B **Abuse of process application**

C 60. After both parties had closed their cases at the ‘Facts’ stage, Mr Gottlieb for the Registrant asked the Committee to hear and resolve two matters. Firstly, what was the correct test in law for anti-Semitism: it being submitted that the basis being put forward by the Council was incorrect. Secondly a submission to the effect that continuing proceedings is now incompatible with the Human Rights Act, particularly Article 8 (private life) and Article 10 (freedom of expression).

D 61. However the Committee decided that it would be illogical to go on and hear and determine the first point before the second because if the Registrant’s application to proceed no further was acceded to, then the basis of determining whether the comments made were anti-Semitic would no longer be relevant.

E 62. Mr Gottlieb outlined that he wished to put to the Committee in detail that to proceed to a decision on the facts on the outstanding particulars (of alleged anti-Semitism) would be unfair because having heard the full evidence, heard from witnesses, viewed the video footage, and been made aware of the context and having received the Registrant’s public apology on oath for his comments, - which he admitted to being ‘grossly offensive’ – the public interest in maintaining confidence in the profession had thereby been upheld and to proceed further was not justified, and thus was unnecessary and unfair and would amount to a breach of the Registrant’s Convention rights. Mr Gottlieb further put to the Committee that there is no risk that the Registrant will repeat such words and that the Registrant fully understands the gravity and significance of using such words.

H 63. It was agreed between the parties that such a submission would amount to an abuse of process application. There was no objection from the Council that the

A Committee should hear such an application. Both parties helpfully provided skeleton arguments in advance of the Committee hearing the application.

B 64. Mr Gottlieb stated, for the avoidance of any doubt and in response to a query from the Chair, that he made no complaint of the proceedings up to this point and stated they had been scrupulously fair, appropriate and necessary, justified and in the public interest. However, proceeding now to a decision on the facts, given the consequences for the Registrant as regards *'restrictions on his private life and freedom of expression'* provided by Article 8 and Article 10 of the Convention (his *'Convention rights'*) resulting from pursuing the hearing, was not justified.

C 65. The key passages which, it seemed to this Committee, summed up Mr Gottlieb's lengthy application are as follows:

D *"So the question that I suggest needs to be determined by the committee is 'Would continuing the hearing now, given the evidence you've heard, which would include hearing submissions on the evidence, now amount to an unjustifiable interference in the exercise of those rights, bearing in mind there had to be some margin of appreciation in exercising those rights?'"*

E 66. And:

F *"In particular, there is no risk that a member of the public, sitting at this hearing, hearing all of the evidence and the committee's reasoned decision not to proceed, could conclude anything other than Mr Ali has and always will provide services in a completely professional manner, without discrimination, including any Jewish customers or workmates. Two, that there's no danger at all that Nazim Ali will repeat such words or has failed to understand the gravity or significance of using such words, and by that I mean the sense that they may be considered grossly offensive, reflect badly on the pharmaceutical profession and not only could but would be considered anti-Semitic in any future hearing. Three, that the public interest in maintaining the standards of the pharmaceutical profession has been upheld by his public apology and the investigation to date, including the hearing.*

A | *And finally, that his integrity, which I suggest is the most important quality in a professional, is beyond reproach”.*

B | 67. And:

C | *“And so really, in summary, I’m saying that, as a consequence, the restrictions on his private life and his freedom of expression, although they are justified at the beginning of this hearing and were justified through his evidence, have, by now, evaporated, and the hearing should cease after the committee makes a ruling on this application. And I make it clear that, to decide this matter, the committee should take into account all evidence. That includes the length of time this matter took to take to a disciplinary hearing, which may be quite exceptional, and his conduct throughout this hearing, in both his professional and personal life”.*

D | 68. The Convention rights cited in support of the application by Mr Gottlieb as being relevant are as follows:

E | *‘Article 8;*

- F | *1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- G | *2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.’*

H | *‘Article 10*

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article*

A | shall not prevent States from the licensing of broadcasting, television or
cinemas enterprises.'

B | 2. *The exercise of freedoms, since it carries with it duties and responsibilities, may
be subject to such formalities, conditions, restrictions or penalties as are
prescribed by law and are necessary in a democratic society in the interests of
national security, territorial integrity or public safety, for the prevention of
disorder or crime, for the protection of health or morals, for the protection of
C | the reputation or rights of others, for preventing the disclosure of information
received in confidence, or for maintaining the authority and impartiality of the
judiciary.'*

D | 69. In support of this application Mr Gottlieb took the Committee through the
documentary and witness evidence that had been put before the Committee to
demonstrate that:

- E |
- The Registrant's behaviour before and after 18 June 2017 shows that the events of that day *"shed no light at all on his ability to provide a professional service to customers"*;
 - There is no risk that the Registrant will repeat the words he uttered on that day because *"he understood the gravity and significance of using such words in the sense that they may be considered grossly offensive and not only could but would be considered anti-Semitic in future"*;
 - And that the public interest in maintaining standards in the pharmacy profession *"have been upheld by his public apology and the investigation to date, including this hearing"*.
- F |

G | 70. In addition, it was submitted that in determining whether 'restrictions on
Convention rights are justified' the Committee should also take into account all
the evidence; the length of time taken to bring his matter to the hearing; and take
into account the Registrant's conduct throughout the hearing which *"is beyond
H | exemplary"*.

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71. Mr Gottlieb submitted that as regards regulatory law, interference in terms of an investigation or a hearing could only be justified if it might shed light on a registrant's ability to provide a professional service, or was necessary to uphold the standards of the profession. It was submitted that *"further action* [meaning reaching a decision on the alleged anti-Semitic comments] *would have a chilling effect on a professional's ability to take any meaningful part in public life"*.

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72. Mr Gottlieb then undertook a detailed analysis of all the evidence put before the Committee including the witness testimony from Mr Collier and Mr Hoffman and the statement of Ms Caplan and the video footage transcript making the following points:

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- that the Council witnesses were not wholly accurate in what they heard, and that itself undermined the Council's position that the Committee should determine whether ordinary people or onlookers would think the comments were anti-Semitic;

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- that whilst the Registrant was cross-examined at length about the comment 'European alleged Jews' Mr Collier has made no reference to this comment in either his statement or oral evidence;

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- That Ms Caplan had stated that she had heard between 15-20 minutes of the words of the Registrant, so this was only a partial hearing of what was said and that if that her timing was taken literally – because actual timing of the video footage were available - she could not have heard all the words she claimed to have heard from the Registrant;

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- That the context, including that there was ongoing simultaneously an organised counterdemonstration, of all the comments uttered by the Registrant during the demonstration captured on the video footage indicated that he was distinguishing between Zionists and Jews;

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- That he was standing next to a Rabbi (from Neturei Karta) who appeared to have no objection to any comments made by the Registrant;

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- That the Registrant knew he was being video-recorded which makes it an 'inherent improbability' that he would be recklessly or internationally anti-Semitic;

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- That the Registrant was being provoked by members of a counterdemonstration and insulted;

- That members of the counterdemonstration arguably were themselves making comments that were racist or anti-Semitic;

C

- That the Registrant was seeking to de-escalate and calm things down in his utterances, not 'wind people up';

- That the number and quality of testimonials provided, which mainly were from other health professionals, was exceptional and it was unlikely that such number or quality will have ever been seen previously by this Committee in regulatory proceedings.

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73. In answer to questions of clarification from the Chair, Mr Gottlieb stated that:

- That to proceed any further (beyond deciding this application in the Registrant's favour) was unfair because it was unnecessary, meaning unnecessary in the context of the use of that word in his Convention rights: it was not necessary in a democratic society;

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- That if the Committee did decide to proceed any further then the fact of continuing these proceedings themselves would amount to a unwarranted restriction upon the Registrant's private life and an unwarranted restriction upon his freedom of expression because of the 'chilling effect' it would have to proceed any further.

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74. Mr Gottlieb went on to submit that the Committee must take into account also the judicial review proceedings against the DPP's discontinuation of the private prosecution against the Registrant where he (the DPP) decided that it was not more likely than not that a Court (to the criminal standard) would find comments

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A made by the Registrant abusive¹. The DPP had not found the Registrant's comments to be abusive in relation to a Section 5 Public Order Act offence.

B 75. Mr Gottlieb examined the IHRA definition of anti-Semitism stating this was controversial to some extent and in any event most of the examples cited in that document were not relevant to the facts of this case. There was no GPhC guidance for pharmacists about anti-Semitism.

C 76. He submitted that the Committee should note the Judge's view in the judicial review – in relation to the 'Grenfell' comments - that any sentence uttered by the Registrant needed to be examined in context.

D 77. Mr Gottlieb submitted that in light of all of the above the Committee no longer had the power to proceed because doing so would unfairly impinge upon the Registrant's Convention rights. Mr Gottlieb went on to expand upon how this was so as regards each potential ground for an abuse of process which are:

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- a. That an individual cannot receive a fair hearing,
 - b. That it would be unfair to hear a case at all because it would constitute an affront to justice.

F 78. It was not sufficient that the Committee simply rely on the fact that there is a Rule governing its proceedings, Rule 31: this must be applied in a way which is consistent with Convention rights. The Committee should not bow to the "*the austerity of tabulated legalism*" and simply follow rules for their own sake.

G 79. Mr Gottlieb submitted that the Committee as a statutory body must consider proportionality when considering any restriction upon Convention rights, in particular (as contained in his written submission):

- Whether the objective pursued is significantly important to justify

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¹ The comments complained of in that private prosecution were not the comments contained in the allegations in this case.

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limitation of a fundamental right;

- Whether the measure is rationally connected to the objective;
- Whether a less intrusive measure could have been adopted;
- Whether a fair balance has been struck between individual rights and the

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interests of the community.

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80. Mr Gottlieb took the Committee to the testimonials provided in support of the Registrant and submitted that the sheer number was impressive, as was their quality and all those who had written them were aware of the allegation faced by the Registrant, indeed most had appended the allegations to their testimonial by way of proof of this. It was submitted that these testimonials were such to prove that the Registrant had never before made such comments or acted in a discriminatory manner in his work as Pharmacist; that therefore there was no doubt about his ability to provide professional services; that therefore there was no risk of repetition.

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81. There was no need to examine whether the comments made 'were' anti-Semitic, the Registrant has stated that he accepted they 'could be' capable of being interpreted as anti-Semitic. Why the need to make such a determination? In seeking to do so Mr Gottlieb submitted that *"this hearing has gone off the rails"* because the GPhC was at risk of becoming a party on one side of a controversial debate.

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82. The Registrant did not advertise himself as a pharmacist on the rally and did not expect to be identified. If the Committee were to proceed, part of the possible consequence in future might be that pharmacists would only take part in public debate wearing balaclavas and that would hold the profession up to ridicule.

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83. This hearing thus far has ensured that the evidence and apology have been heard and this is all now a matter of public record, and sufficient. Mr Gottlieb submitted that *"no reasonable Committee"* could come to any other conclusion than that standards have been upheld. To proceed to determine the facts and say that this Registrant is anti-Semitic would be only a lever *"to get at"* the Registrant: to

A proceed further therefore would be vindictive. These are moral issues and not for
this Committee to determine.

B 84. In answer to a question of clarification from the Committee, Mr Gottlieb explained
that delay in bringing these proceedings referred to in his submission was not cited
as a ground for abuse of process. On the contrary the delay has been positively
C helpful to the Registrant because it had allowed him to demonstrate that there
had been no repetition since, and because he had continued to work as a
pharmacist in the interim period without any evidence that his ability to provide
professional services was in question.

The Council's response to the Abuse of Process application

D 85. Mr Colman in response to the Registrant's application stated that the Council's
response was couched in terms of an application to stay proceedings because it
did not fit neatly under either limb of the traditional grounds of an abuse of
process application. In any event it was submitted that:

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- any such stay of proceedings should only be in exceptional circumstances;
 - it is for the Registrant to show on the balance of probabilities that
proceedings should be stayed as an abuse of process;
 - fairness to both sides must be considered by the Committee;
 - the hearing process itself is equipped to deal with the bulk of complaints
F on which applications for a stay are founded.

G 86. Mr Colman noted that there was no submission that any delay was a reason to
stay proceedings, nor that there had been any alleged procedural unfairness thus
far. The application was solely based on alleged infringement of Convention rights.

H 87. Mr Colman did not accept the Registrant's submission that shedding light on the
Registrant's ability to provide professional services and upholding the standards
of the profession were exhaustive legitimate reasons for infringing Convention
rights. There was, in addition, the need to uphold public confidence in the

A profession and public confidence in the regulation of the profession. These
additional considerations are supported by the requirement contained in the
Rules, at Rule 5(2)(b): ‘...the Committee must have regard to whether a registrant’s
conduct or behaviour ‘has brought, or might bring, the profession of pharmacy
B into disrepute’. The Council’s ‘Good decision making’ guidance enjoins the
Committee to consider whether ‘...a finding of impairment is needed to declare
and uphold proper standards of behaviour and/or maintain public confidence in
the profession’.

C 88. Mr Colman submitted that Mr Gottlieb appeared to accept that it was legitimate
that there had been an investigation of the Registrant’s comments but that it was
not permissible to decide upon the comments actually made. On that point Mr
Colman asked the Committee to consider the case of *Forz Khan v Bar Standards
D Board* [2018] EWHC 2184 (Admin) where a barrister had been found guilty of
professional misconduct in relation to repeating potentially slanderous comments
to colleagues in the robing room about another colleague, suggesting he might be
guilty of rape. One of the grounds of appeal at the High Court was that there had
E been an infringement of his Convention rights. It was submitted that because that
case was about a public authority considering comments made by a professional
in private it was of relevance in these proceedings.

F 89. The judge in that case had concluded that disciplinary proceedings were an
infringement of Convention rights but that such an infringement was legitimate
under both articles 8(2) and 10(2) because a central function of the Bar Standards
Board’s (BSB) regulatory regime was ‘the protection of the reputation and rights
of others’. Further, Mr Colman submitted, that paragraph 66 of the judgment was
G particularly relevant because it confirmed that the public’s confidence in the
regulator determining allegations was important and that meant hearing cases
unless there was a compelling reason not to do so. Mr Colman also commended
H paragraph 68 where the judge concluded that the interference was justified
because it pursued legitimate aims prescribed by law and was a proportionate
measure in upholding and maintaining standards in a profession of critical

A importance to public welfare.

B 90. Mr Colman submitted that the GPhC accepted that it needed to act in a way that was compatible with Convention rights, especially those of freedom of speech. However, he submitted that it was at the misconduct/impairment assessment stage of proceedings – if reached – that the balancing of rights needed to take place: the hearing process was equipped to deal with these matters. There was no need for a stay: the Registrant can receive a fair hearing.

C 91. Following Rule 31 was normal procedure in hearings and not a manipulation. Any finding of fact can be put into context in the reasoned determination that the Committee is required to provide. The questions which Mr Gottlieb invited the Committee to address, namely:

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- Whether the objective pursued is significantly important to justify limitation of a fundamental right;
 - Whether the measure is rationally connected to the objective;
 - Whether a less intrusive measure could have been adopted;
 - Whether a fair balance has been struck between individual right and the interests of the community.
- E

F should be properly addressed at subsequent stages of these proceeding, not before a decision on the facts.

G 92. Decisions on impairment cannot be made before decisions on fact and misconduct. Mr Colman submitted that to say now that there was no need for any regulatory action was premature. The Committee needed to ensure fairness to both parties.

H 93. Mr Colman stated that Mr Gottlieb’s submission was misplaced in claiming that the Registrant was at risk of misreporting or overreporting if the Committee was to find as fact that the Registrant had made comments found to be anti-Semitic

A but that despite that and his admission to offensive remarks, found no misconduct
or that he was not impaired. The Committee could not be responsible for such
misreporting or overreporting. The Registrant has rights in defamation if that was
B to be the case. It would not be right that fear of unlawful damage to the Registrant
was enough to stay proceedings where it was the case that regulatory action might
be required: that is not proportionate.

C 94. Mr Colman then referred the Committee to the case of *Bolton v The Law Society*
in which it was established that the public interest in maintaining confidence in
the profession outweighs the impact of any proceedings or regulatory action upon
a registrant.

D **Mr Gottlieb's response to Mr Colman's submissions on the Abuse of Process
application**

95. Mr Gottlieb made a number of points in response:

- E • The case of *Bolton* did not mean that the regulator's rights trumped those
of the Registrant, they needed to be balanced;
- F • The Council say that the Committee is not responsible for misreporting but
states that the Registrant is responsible for any misreporting of his
comments. The effect of that would be that the members of the profession,
which has a high proportion of ethnic minorities, would be deterred from
engaging in democratic debate;
- G • The GPhC had "*lost all sense of proportion*" and in pursuing its case it was
like a driver of a train insisting that he had to continue driving down a track
into a hole caused by 'a human rights explosion';
- H • In the case of *Forz Khan v Bar Standards Board*, the Court had considered
all the facts of the case – which were different from this case – and it was
not a decision made on pure principle.

96. At the conclusion of both parties' submissions there was then some further brief
oral submissions from Mr Gottlieb on the matter of whether the Committee, as
part of its determination on the abuse of process application, was required a) to

A define the meaning of anti-Semitism and b) determine the lawfulness of the
Council’s proposed test for anti-Semitic at the Facts stage (should the Committee
proceed to that stage), namely that an observer would find the comments anti-
B Semitic. It was submitted by Mr Gottlieb that there was no basis in law for a test
that an ‘ordinary observer’ ‘would’ find them anti-Semitic.

97. Mr Colman submitted that he considered that this would be to “*put the cart,
indeed the whole parade, before the horse*”. If the Committee decided that it
would do so, then so be it. The GPhC role is to set standards, the Fitness to Practise
C Committee’s role is to uphold them, hence the need to have an objective test of
the comments, not one that relied upon either the intention of the speaker nor
the susceptibility of a particular person who heard them.

98. There were then some questions of clarification on this topic from the Chair to Mr
D Gottlieb.

99. It emerged as an agreed way forward – Mr Gottlieb resolving that he was content
to leave it to the Committee without the need for a separate ruling - that if the
E Committee considered that it needed either a) to define the meaning of anti-
Semitism and/or b) determine the lawfulness of the Council’s proposed test for
‘anti-Semitic’ at the ‘Facts’ stage in deciding the application, it would do so, but if
it considered it did not, it would not.

F **Legal Advice regarding the Abuse of Process application**

100. The Legal Adviser outlined the law by stating that the Council, as a
G regulatory body, is a public authority for the purposes of section 6(3) of the Human
Rights Act 1998. The Council therefore is subject to the duty imposed on all public
authorities not to act incompatibly with Convention rights.

101. She summarised that the Registrant’s case is that his comments, as alleged
H at particulars 1 (a) to (d), are comments protected by Articles 10(1) and Article
8(1). Both Article rights are, however, qualified rights by virtue of section (2) of

A | each Article, which allow a public authority to interfere with rights in order to pursue a legitimate aim. The legitimate aims are set out in section (2).

B | 102. Having set out the law, the Legal Adviser stated that it was for the Committee to decide whether there had been an infringement or interference of the Registrant's Convention rights. Infringements of both Article rights are allowed if they are 'in accordance with the law' or 'prescribed by law', and are 'necessary in a democratic society'. The Committee would need to decide whether these proceedings are prescribed by or in accordance with the law.

C | 103. The Legal Adviser referred the Committee to the following sections of the Pharmacy Order 2010 ("the Order"):

D | Section 6(1) of the Order states that: The Council's over-arching objective in exercising its functions is the protection of the public.

Section 6 (1A) states that the pursuit by the Council of its over-arching objective involves the pursuit of the following objectives:

- E | (a) to protect, promote and maintain the health, safety and wellbeing of the public;
(b) to promote and maintain public confidence in the professions regulated under this Order;
(c) to promote and maintain proper professional standards and conduct for members of those professions; and
(d) to promote and maintain proper standards in relation to the carrying on of retail pharmacy businesses at registered pharmacies.

F | The Order allows for the creation of Rules and Standards. Rule 5(2)(b) states that when deciding, in the case of any registrant, whether or not the requirements as to fitness to practise are met in relation to that registrant the Committee must have regard to whether or not that conduct or behaviour has:

- G | (a).....
(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;
(d).....

H | 104. The Committee must decide whether these proceedings are necessary in a democratic society in order for the Council to achieve one or more of the legitimate aims as set out in Articles 8(2) and 10(2).

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105. In the assessment of the test of necessity in a democratic society, the Committee were advised of the need to balance the Registrant's interests as protected by both Articles with the Council's interests in its aim of public protection, and the wider public interest. The test of necessity implied a 'pressing social need'. The interference by the Council of the Registrant's rights must be no more than what is absolutely necessary to achieve one or more of the legitimate aims set out in Articles 8(2) and 10(2). The Legal Adviser stated that the Committee should consider both Articles 8 and 10 in relation to fairness and all the circumstances of this case including the oral, documentary and visual evidence, and the written and oral submissions of the parties.

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106. In practical terms, the Legal Adviser stated that should the Committee conclude that the interference of the Registrant's rights are not in accordance or prescribed by the law and are not necessary in a democratic society, then the Committee need not go on to consider and make a finding on the second limb of both Articles, and the proceedings should be stayed. However, if the Committee concluded that the interference is prescribed or in accordance with the law, and necessary in a democratic society, then the Committee will need to consider whether there is a legitimate aim for the interference of the Registrant's rights, as set out in section (2) of each Article, and will apply the principle of proportionality. Should the Committee find there is a legitimate aim for these proceedings to continue, then it will have concluded that there has been no infringement of the Registrant's rights. The Committee were advised to consider each Article separately in line with all the evidence, and submissions from both parties.

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107. The Legal Adviser summarised that the Registrant's application is that, should the Committee conclude that there has been an infringement of the Registrant's right under Articles 8 and/or 10, then proceedings should be stayed, because continuing these proceedings would amount to an abuse of process. She detailed the law on abuse of process, reminding the Committee that there are two categories of abuse; first, when it will be impossible to give a registrant a fair

A hearing, and second, when continuing a hearing would offend the Committee's sense of justice and propriety in the particular circumstances of the case. Mr Gottlieb submitted that the Registrant relies on both categories. The Committee was reminded of the following principles regarding abuse of process applications:

- B
- the discretion to stay proceedings should only be exercised in exceptional circumstances;
 - the burden of establishing an abuse of process under either limb is upon the Registrant, and the standard of proof is on the balance of probabilities;
 - fairness to both the Registrant and GPhC must be considered;
 - that the Committee will bear in mind that often the hearing process is equipped to remedy the concerns raised by the Registrant.
- C

D 108. The Legal Adviser addressed the following points raised by the parties. She reminded the Committee that the Council bring this case on the basis that the Registrant's conduct has the potential of undermining the reputation of the profession, public confidence in the profession, and that there is a need to reaffirm and uphold standards.

E 109. Character References: it is for the Committee to decide what weight to attach to the references, having considered their content and the Registrant's reasons for their submission.

F 110. Standards: the Committee was reminded that adherence to standards can extend to life outside of professional practise. Standard 6 of the Council's Standards for Pharmacy Professionals states that 'pharmacy professionals must behave in a professional manner', and this includes being polite, considerate and treating people with respect. The expectation of professionals to behave professionally is essential to maintaining trust and confidence in the profession. Behaving professionally is not limited to the working day and extends to behaviour at all times'.

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H 111. In the case of *Pitt v GPhC [2017] EWHC 809 (Admin)* the Court acknowledged that the Council's function in setting standards is not confined to

A preventing misconduct, however, the Court made clear that standards of practice
apply not only in the traditional workplace environment and during working hours,
but also beyond. Clearly, there are some matters which take place outside of work
which will be too trivial to be considered a breach of standards of practice, but
B there are occasions, as per the example in paragraph 38 of the judgment, where
conduct unrelated to professional work as a pharmacist reinforces the need to
maintain proper standards of conduct and behaviour at all times such that public
confidence is not diminished. In this case the Court determined that it could not
C be determined that the standards themselves were inherently incompatible with
Articles 8 and 10, as it was accepted that there is some conduct outside of work
which is relevant to a pharmacist's fitness to practise.

D 112. The Legal Adviser referred the Committee to paragraph 2.13 of the
Council's 'Good decision making guidance' (March 2017), which states that a
Committee may consider allegations that occur in a registrant's personal or
professional life. The guidance reminds the Committee that it must keep in mind
the overarching objectives of the Council when deciding whether a pharmacy
E professional's fitness to practise is impaired, and must also take into account
relevant factors, which include whether or not the conduct or behaviour has
brought or might bring the profession of pharmacy into disrepute and has
breached one of the fundamental principles of the profession of pharmacy (Rule
F 5(2) referred to earlier in the advice).

113. In their submissions to the Committee, the Council referred to the
following case law. The Legal Adviser advised the Committee as follows:

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- In the case of *Bolton v Law Society* [1994] 1 WLR 512, the then Master of the Rolls Sir Thomas Bingham said:

At paragraph 15: A profession's most valuable asset is its collective reputation and the confidence which that inspires.

H *At paragraph 16: The essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness... The reputation of the profession is more important than*

A | *the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.*

- In the case of *Khan v. BSB* [2018] EWHC 2184 (Admin), the Legal Adviser stated that although this case is fact specific, it is a helpful judgment for the Committee to read as it details the approach the judge adopted when considering breaches of Articles 8 and 10 of the Convention.

- In the case of *R (on the application of NGOLE) v University of Sheffield* [2019] EWCA Civ 1127, the Committee were referred by the Council to paragraphs 105 and 106. The Legal Adviser referred the Committee also to paragraph 104 which turned to the question of maintenance of confidence in a profession and whether this falls within the legitimate aim of professional regulation.

C | 114. Finally, the Legal Adviser reminded the Committee to consider all the submissions as well as the factors referred to above, and to provide reasons for its decision.

D | **Determination of the Abuse of Process application**

E | 115. The Committee accepted in full the legal advice received. It took into account all of the evidence placed before it and the submissions of both parties.

F | 116. The Committee examined the Legal Adviser's suggested approach to reaching its decision on the application. It noted that neither party had raised any issue with the advice. It appeared to the Committee to be a logical and sensible approach and so adopted it.

G | 117. Accordingly, the Committee began by considering whether the further continuation of these proceedings was an unwarranted infringement of either of the Registrant's Convention rights cited. This required the Committee to determine whether the proceedings were both lawful and necessary in a democratic society. It began by considering first whether the proceedings were lawful.

H | 118. It noted that the GPhC is a statutory body and a public authority

A established by virtue of the Pharmacy Order 2010. It noted further that under that
Order the GPhC has the power to conduct fitness to practise proceedings and
under S4(3)(f) ‘...to ensure the continuing fitness to practise of registrants’. S4(6)
B requires the Council to form a Fitness to Practise Committee. Part 6, S54 of the
Order makes detailed provision for fitness to practise arrangements and prior
sections detail the manner in which any allegation must be investigated before
being placed before the Fitness to Practise Committee. Rules have been made
under the Order to govern the proceedings at Fitness to Practise hearings (‘The
C Rules’ cited above) and this is laid out in detail at Rule 31.

119. The allegation before the Committee was that the Registrant was impaired
by reason of his misconduct. S51(1)(a) of the Order states:

D ‘A person's fitness to practise is to be regarded as “impaired” for the purposes of
this Order only by reason of— (a) misconduct;.....’

120. The Order also makes provision for the making of Standards for pharmacy
professionals. The present Standards (effective from May 2017) make clear at
E Standard 6 that ‘..the importance of maintaining confidence in the professions, call
for appropriate behaviour at all times.’ Rule 5(2)(b) makes clear that the
Committee must have regard to whether or not conduct or behaviour has brought
or might bring the profession of pharmacy into disrepute.

F 121. The allegation in the present hearing therefore was clearly within the scope
of the Fitness to Practise provisions under the Order. In fairness to the Registrant
there had been no submission made on his behalf that this process had not been
followed, nor that there was some legal deficiency in the Order or the Rules.
G Indeed, the submissions on the Registrant’s behalf had positively stated that no
issue had been taken with the process of bringing these proceedings, nor with any
aspect of the hearing up to this point.

H 122. In assessing this particular element, the Committee found the case of *Khan
v Bar Standards Board* of assistance. It noted that part of the Registrant’s

A submissions (in responding to the Council’s submissions on the application) was
that this was a case on different facts. It might be thought remarkable if any such
two cases were on the same facts. But nevertheless the *Khan* case was one where
B a professional was seeking to argue essentially the same point which is that
regulatory proceedings were an unjustified infringement upon that professional’s
Article 8 and Article 10 rights. In his judgment in that case the judge stated:

C ‘.a, if not the, central function of the BSB regulatory regime is the ‘protection of
the reputation and the rights of others. Core duty 5, which the Tribunal found to
have been breached in this case, is expressly aimed at maintaining public
confidence in barristers and the profession generally. Other barristers have a
proper and legitimate interest in ensuring that their reputations are not tarnished
D by association with those who misconduct themselves professionally’.

E 123. The judge went on to say: ‘Although the pursuit of regulatory proceedings
was an interference with Mr Khan’s Convention rights under Articles 8 and 10, it
was a justified interference. It pursued legitimate aims prescribed by law, and was
a proportionate measure, corresponding to a pressing social need to uphold and
maintain standards in a profession of critical importance to the public welfare.’

F 124. The Committee saw no good reason not to consider that similar principles
could be applied in the Registrant’s case. The only reason put forward by Mr
Gottlieb for not doing so was that the underlying facts of the case were different.
The Committee could not see, and were not persuaded, that there was anything
in the facts of the present hearing such as to justify not adhering to these
principles. Indeed, the Committee considered that it was significant that the judge
G stated that ‘Other barristers have a proper and legitimate interest in ensuring that
their reputations are not tarnished by association with those who misconduct
themselves professionally’. To assess whether there has been professional
misconduct in the present hearing requires that this Committee make a
determination at the ‘Facts’ stage.

H 125. In light of this, the Committee determined that that there was no question

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that these proceedings by the GPhC were lawful.

126. The Committee then moved on to consider whether these proceedings were necessary in a democratic society. In doing so it had regard to the principle of proportionality and four bullet-pointed ‘test’ set out in the submissions on the Registrant’s behalf as follows:

- Whether the objective pursued is significantly important to justify limitation of a fundamental right;
- Whether the measure is rationally connected to the objective;
- Whether a less intrusive measure could have been adopted;
- Whether a fair balance has been struck between individual rights and the interests of the community.

127. Sections 2 of Articles 8 and 10 set out what might constitute necessity in this regard. Section 2 of Article 8 allows that (*inter alia*) it may be necessary for reasons of public safety, protection of health or morals, or for the protection of the rights and freedoms of others. Section 2 of Article 10, in addition, sets out that it might be necessary for the reason of protection of the reputation or rights of others.

128. The overarching purpose of the GPhC is set out in the Order at Section 6:

‘The over-arching objective of the Council in exercising its functions is the protection of the public. (1A) The pursuit by the Council of its over-arching objective involves the pursuit of the following objectives— (a) to protect, promote and maintain the health, safety and wellbeing of the public; (b) to promote and maintain public confidence in the professions regulated under this Order; (c) to promote and maintain proper professional standards and conduct for members of those professions; and (d) to promote and maintain proper standards in relation to the carrying on of retail pharmacy businesses at registered pharmacies’.

129. These purposes are squarely within the reasons set out in section 2 of both

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Articles.

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130. The Committee was satisfied therefore that there were legitimate aims, in principle, for the necessity of these proceedings. The Committee then went on to consider the competing interests of the Registrant and the Council in this particular case, applying the principle of proportionality.

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131. Submissions on behalf of the Registrant were that because of the airing of evidence, and the Registrant's apology 'no reasonable Committee' could come to any conclusion other than that the Registrant was at no risk of repeating his comments, had and could provide professional pharmacy services to customers and had shown insight and therefore it was not necessary to proceed further.

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132. The Committee noted that the Registrant faced serious allegations, which were capable of amounting to misconduct, and which could therefore adversely affect the reputation of the profession. Further, the Registrant had admitted making the comments – which were made over a period of some hours in a public arena in which he was drawing attention to himself whilst leading a demonstration in central London - and had admitted that they were offensive.

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133. The Committee determined therefore that because of the potential risk of damage to the reputation of the profession, the Council's objective in seeking to protect the reputation of the profession by these proceedings was significantly important such as to justify an infringement of Articles 8 and 10.

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134. The Committee then went onto examine the second bullet point in the test above: 'Whether the measure is rationally connected to the objective'. It paused first to consider what in fact was meant by those words. It determined that 'the measure' could only logically refer in the context of this application to these proceedings continuing. 'The objective' caused slightly more difficulty. The Committee considered that this might refer to either the Council's overarching objective or the objective of the Registrant's Article rights. It therefore proceeded to examine both interpretations.

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135. The Committee considered the first of the two possible interpretations. The Registrant's submission is that it was not 'rationally connected' to the objective because it is claimed that the continuation of the proceedings is not necessary for the Council to serve its overarching purpose. And this in turn was because it was submitted that the airing of the evidence and the Registrant's apology was sufficient of itself and no other purpose could be served by proceeding further.

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136. The Committee now has determined above that the proceedings do meet the test of necessity. It then went on to determine that continuing the proceedings was rationally connected to the Council's overarching objective because:

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- i) allegation 2a had not yet been determined on the facts, and;
- ii) particulars 1a – d and 2b had been admitted but the Committee had not yet been given the opportunity to assess and weigh the evidence it had heard and seen, nor had assessed the Registrant's apology in light of the facts admitted. Therefore, the Committee determined, on the first interpretation, that the measure was rationally connected to the objective.

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137. The Committee proceeded to consider the second interpretation, namely, whether continuing proceeding was 'rationally connected' to the objective underlying the Convention rights.

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138. The Committee determined that the proceedings were 'rationally connected' to the objective underlying both Article 8 and Article 10 because proceedings such as these were allowed, for the reasons made explicit in the qualifications to those rights, in particular provided for under the qualification to Article 10 rights for the protection of the reputation of others.

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139. The Committee then went on to examine the third bullet point in the 'test' above: 'Whether a less intrusive measure could have been adopted'. The Committee noted that aside from stopping proceedings now no other 'less intrusive' measure had been suggested.

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140. Setting aside for the moment particular 2a, which had not been admitted nor yet assessed by the Committee, stopping of proceedings now – the ‘less intrusive measure’ - would prevent the Committee determining whether the facts which had been admitted amounted to misconduct. On that ground it determined that the less intrusive measure of stopping proceedings now could not be adopted because if the Committee did not go forward to complete its function, as required by Rule 31(10), at the “Facts’ stage it could not properly address misconduct, as it is required to do under Rule 31(11) and (12), and thus the overarching purpose of the Committee to uphold standards would not have been discharged. The Committee rejected the Registrant’s assertion that to do so would be a surrender to the “austerity of tabulated legalism”, i.e following rules for rules sake.

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141. The Committee then went on to examine the fourth bullet point in the ‘test’ above: ‘Whether a fair balance has been struck between individual rights and the interests of the community’. Again, the Committee paused to consider the meaning. It took ‘the community’ to mean both the wider public interest and the interests of the GPhC as the regulator. The Committee considered whether the impact of the infringement of the Registrant’s Article rights in continuing proceedings is disproportionate to the purpose of continuation. The Committee referred to the leading case of *Bolton v The Law Society* in particular the paragraphs of that judgment cited in the legal advice given to the Committee:

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At paragraph 15: A profession's most valuable asset is its collective reputation and the confidence which that inspires.

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At paragraph 16: The essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness... 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 a part of the price.

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142. The Committee considered the argument put forward in the Registrant’s

A submissions that he was at risk of unfair damage to his reputation if the
proceedings were to continue, and that was a reason to stay proceedings. It was
not persuaded on the balance of probabilities that this was a real risk. And it noted
the Council's argument that firstly, this was not a matter that this Committee can
B either control or take responsibility for, and secondly should the Registrant end up
as a victim of misreporting that caused damage to his reputation, he would have
rights in defamation to address that.

C 143. Given the overarching role of the GPhC and the public interest in upholding
and maintenance of confidence of the public in the pharmacy profession, the
Committee determined that a fair balance would be struck by continuing these
proceedings.

D 144. The Committee determined therefore that, on the balance of probabilities,
the case made on behalf of the Registrant to stay proceedings because of an
unwarranted infringement of his Article 8 and 10 rights had not been established.

E 145. The Committee then went on to consider whether it should accede to the
Registrant's application that there has been an abuse of process. There are two
possible limbs upon such applications may be founded; firstly, that no fair hearing
is possible because of particular features of a case and secondly and separately,
that because of other factors, typically, 'prosecutorial misconduct' it would be an
F affront to justice to proceed.

G 146. As it deliberated on the abuse application the Committee kept in mind the
legal advice that for such an application to succeed there would have to be
'exceptional circumstances' and that the burden lay with the Registrant to
demonstrate this.

H 147. The Committee considered first whether there were circumstances in this
case which meant that a fair hearing was not possible. The submissions on behalf
of the Registrant had sought to argue that because there was no agreed and
binding definition of anti-Semitic and no specific GPhC guidance on that topic this

A Committee could not make a decision upon particular 2a as to whether the comments by the Registrant were anti-Semitic.

148. The Committee was not persuaded by this argument.

B 149. Juries make decisions of fact on a regular basis without the benefit of legally binding case law or agreed definitions. The Committee did not think it was less well equipped to deal with and determine matters of fact than a jury. In addition to the, to some extent disputed, IHRA working definition of anti-Semitism provided by the Council as guidance, the Committee also had to hand the dictionary definition of 'anti-Semitic' to guide it to the extent that it was required (the definition had been provided by the Legal Adviser and neither party had objected to it); and it was common place in law to use dictionary definitions when there was nothing else, and when and if in doubt. As and when required the D Committee had available to it a legal adviser assigned to advise upon the law. The Committee determined therefore that it could make a fair determination on the facts in this case.

E 150. The submissions on behalf of the Registrant argued, additionally, that to proceed would be unfair because the test proposed by the Council at the 'Facts' stage – namely, that an ordinary person would find the comments anti-Semitic - was unlawful.

F 151. The Committee considered that there was a considerable logical inconsistency in the Registrant's submission on this point. The Registrant has admitted that ordinary people not only would, but did, find his comments offensive; the Committee was asked to accept this admission and the connected G apology as evidence of insight such that 'no reasonable Committee' could consider that he was not impaired. It appeared to the Committee that it was simultaneously being asked to accept the test of 'were/would' and 'ordinary people' when it suited the Registrant's purpose but to reject it when it did not suit his purpose.

H 152. To say that to proceed is unfair, on the basis of the test proposed by the

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Council, presupposes that the Committee will straightforwardly adopt that test. What the test is, or should be, would be open to the parties to put to the Committee during closing submissions at the 'Facts' stage. The Committee concluded therefore that the hearing process was equipped to deal with this matter. And the process was also equipped to seek to ensure that there was no misreporting of the outcome to the Registrant's disadvantage because the process – as set out in Rule 31 - required that the Committee give reasons for its findings.

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153. The Committee also kept in mind that nothing in the hearing process thus far was complained of. Further, there had been no new evidence presented during the hearing thus far to indicate that the evidence relied upon by the Council was deficient or flawed or inadmissible.

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154. Keeping in mind that the standard of proof for this application is on the balance of probabilities, the Committee concluded that it was possible for the Registrant to receive a fair hearing in this case.

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155. The Committee next considered whether to proceed further would be an affront to justice – the second limb in an abuse of process application.

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156. The Committee had not been provided with any evidence as part of the Registrant's submission that there had been serious misbehaviour (nor indeed any misbehaviour) by the Council in the proceedings thus far. As the Committee had noted previously, the Registrant's submissions were that the process thus far had been scrupulously fair.

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157. Toward the end of the Registrant's submissions, in what might be termed a final, broad-brush and catch-all ground for not proceeding, it had been alleged that the Council's case "*had gone off the rails*"; that it had entered an arena of private-life moral judgements that the Council had no locus to deal with.

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158. The Committee did not accept this argument. This regulator of professionals, as do most others, regularly consider ethical matters that arise out of the private, non-professional lives, of professionals. The case of *Pitt* had

A established that this was a legitimate arena to enter for a regulator, indeed this very regulator, and was covered explicitly in Standard 6 of the Standards for Pharmacy Professionals. The Committee did not accept therefore that in bringing this case the GPhC had *“gone off the rails”*.

B 159. To conclude, on the balance of probabilities, the Committee does not find that either limb of the test for an abuse of process application to stay these proceedings has been established by the Registrant, and therefore that application too is rejected.

C 160. The Committee invited the parties’ closing submissions at the Facts stage.

Rule 41 Application to amend the allegation

D 161. On receipt of the Registrant’s skeleton argument for his submission on the Facts, it seemed to the Committee that where it stated:

E ‘.. the registrant asked at the hearing orally and in writing if the Council would accept an amendment to the particulars...to include ‘could’ rather than ‘would. This was refused by the council at the public hearing’

F that Mr Gottlieb was under the misapprehension that he had made an application to amend the allegations.

G 162. No such application had been made; there was no reference to such in the lengthy submissions on the Abuse of Process application. Had there been, the Committee would have sought a formal response from the Council and would have been required to obtain legal advice from its Legal Adviser.

H 163. Mr Gottlieb responded by saying that this had been the whole thrust of his Abuse of Process application and that, in effect, he had asked the Committee to amend the allegation of its own volition. This was not how it seemed to the Committee: it had been made evident during the hearing that the Registrant had

A | accepted that his comments could have been taken to be anti-Semitic to some
people, and that if the allegations had been worded in that manner he would have
made admissions. It was also evident to the Committee from earlier dialogue
B | between the advocates in front of the Committee that there had been some
discussion outside of the hearing room about whether there could be an
agreement between the parties to amend the allegation, and that it was equally
evident that Mr Colman having taken instruction on this, that had been rejected.

C | 164. This was far from a Rule 41 application to amend the allegations. The Chair
pointed out further that had the Committee decided to amend on its own volition
then – as was plain from the requirement of Rule 41- it would have been required
to make that explicit, seek submissions from the parties on a proposed
amendment and receive Legal Advice.

D | 165. Mr Gottlieb was asked by the Chair if he wished now to make an
application. Mr Gottlieb suggested that the Chair had indicated to him previously
that such an application would fail. This was categorically denied by the Chair.

E | 166. Mr Gottlieb then stated that he saw no point in making an application that
he believed would not succeed. The Legal Adviser intervened to confirm that no
application had been made and no indication had been given, nor could ever
properly be given in proceedings such as these, that such an application would
F | succeed or fail.

G | 167. The Chair asked Mr Gottlieb again if he wished to make such an application.
He stated he did not wish to use up time to no effect. The Chair stated that the
matter of time was secondary and that Mr Gottlieb must decide at this juncture
whether he wished to make an application and time would be given to reflect and
or consult with his client if that was necessary.

H | 168. Mr Gottlieb resolved to make an application and one was received which
proposed that particular 2a be amended from:

‘The above comments were: a. Anti-semitic’

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To

‘The above comments were: a. Capable of being interpreted as anti-Semitic’

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169. In support of the application Mr Gottlieb referred the Committee to his earlier arguments: namely the unfairness to his client as regards the impact upon his Convention rights; the objections he had made to the test of the ‘ordinary person’ test, which the Council proposed that the Committee apply when making its decision on this particular which he described as unlawful.

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170. Mr Gottlieb stressed that if the proposed amendment was acceded to by the Committee then the Registrant would admit to that particular, but in doing so he would not be admitting to any intention to be anti-Semitic.

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171. In response, Mr Colman for the Council opposed the application giving the following as reasons.

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172. The amendment would create lack of clarity: many things ‘are capable’ of being anti-Semitic, for example opposing the existence of the State of Israel. Bearing in mind the need to respect the Registrant’s right of freedom of political expression, it would not be appropriate to frame an allegation in terms of ‘capable of being interpreted...’.

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173. A Registrant is entitled to know what specifically is alleged to be anti-Semitic, not merely what could be anti-Semitic. Hence the wording of the particular as it currently stands because that is a set standard for everyone and depends upon neither intentionality of the speaker nor susceptibility of the ‘ordinary person’ hearing it.

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174. Hence also the proposed test which, it was submitted, the Committee should adopt, namely whether most reasonable people/bystanders would

A consider – on balance - the comments to be anti-Semitic. The Council accepted
that the operative burden and standard of proof in proceedings such as these do
not easily fit in with the interpretation of words. However, to accept the proposed
B change would be to create a lower threshold, and would make the assessment of
whether the comments did or did not amount to misconduct more difficult, and
thus unfair to the Registrant.

Legal Advice on the Rule 41 application

C 175. The Legal Adviser referred to Rule 41 and advised the Committee to
consider whether the proposed amendment will cause prejudice and unfairness
to the Registrant. She stated that minor amendments, such as typographical errors
and matters of clarification, were less likely to cause unfairness than substantial
D alterations or amendments that widen the scope of the allegation. The Committee
were advised to consider whether the proposed amendment heightened the
seriousness of the allegation or represented a material change in some other
respect. If the amendment does not, then this would be a strong indicator that
E amending the allegation as suggested would not cause any injustice to the
Registrant.

Determination on the Rule 41 application to amend the allegation

F 176. The Committee accepted the legal advice in full.

G 177. The Committee set aside from its deliberations that the amendment, if
made, would, it was stated, lead to admissions by the Registrant. It did not
consider that potential admissions by the Registrant were a relevant
consideration. These proceedings are not criminal proceedings and there is no
provision within the Order or the Rules for the Committee to indulge in ‘plea
bargaining’.

H 178. The Committee considered first whether the proposed amendment
‘heightened’ the allegation. It concluded that it did in the sense that it considerably
widened the allegation such that it would make it much more likely that this

A Registrant (or indeed any Registrant facing such an allegation) would be ‘captured’
by it.

B 179. The proposed amendment would change the threshold considerably from
the current need to prove to at least a probability, being reduced to a mere
possibility. In other words, as drafted presently and applying the Council’s
proposed test, in order to find the present allegation proved the Committee would
C need to conclude that most reasonable people would find the comments anti-
Semitic. If the amendment was accepted, then the Council would need only to
prove that a single reasonable person would find the comments anti-Semitic. Such
a lowering of the threshold of proof would constitute a fundamental change to the
standard of proof currently operative in GPhC Fitness to Practise proceedings.

D 180. The Committee concluded therefore that this would be ‘a material change’
with potentially profound public interest implications, particularly in relation to
this Registrant’s (or indeed any Registrant’s) Article 10 rights of freedom of
E expression. It was mindful of the comments made earlier in the hearing, in
submissions on the Registrant’s behalf, about the potential ‘chilling effect’ that
any finding of Fact on particular 2a (as presently drafted) would have upon the
profession and more widely. Namely that trepidation about being brought before
F a Fitness to Practise Committee would deter pharmacy professionals from taking
part in legitimate controversial political debate and exchanges, and that would
both bring the profession into disrepute and be undesirable in a democracy.

G 181. The Committee had not accepted that argument because it considered that
because of the clear and established threshold in the balance of probability test
and the burden of proof upon the Council, the feared ‘chilling effect’ would not be
a likely result. By contrast the Committee considered that if it was to become
H apparent that the standard of proof might be lowered by a Fitness to Practise
Committee to a mere possibility, then such a ‘chilling effect’ was much more likely.
This had the potential to bring the regulation of the professional into disrepute.
The message likely to be sent and received by such a material change would be
that any political comment by a Registrant was capable of resulting in being

A investigated for misconduct. The effect of this would be to seriously undermine
the public confidence in the regulation of the pharmacy professional and therefore
would run counter to the regulator's overarching objective of public protection
objective. On this ground the Committee rejected the application.

B
Closing submissions on the Facts

The Council's submissions

C 182. In advance of oral submissions, the Committee helpfully had been provided
with written outline submissions by both parties and the paragraphs below draw
upon those as well as the oral submissions.

D 183. Mr Colman for the GPhC submitted that it was for the Committee to decide
whether it was satisfied on the balance of probabilities that the admitted
comments set out in the allegations were objectively anti- Semitic: not how they
were intended by the Registrant but how they would be heard by a reasonable
observer. An ordinary bystander would not know of the Registrant's excellent
E references and abundant testimonials, they would just hear his unvarnished
words.

F 184. The Regulator should set standards and the Fitness to Practise Committee
should uphold them.

G 185. In relation to the individual comments made by the Registrant, Mr Colman
submitted in relation to particular 1a,

*'It's in their genes. The Zionists are here to occupy Regent Street. It's in their
genes, it's in their genetic code.'*

that Zionists don't have genes. Jews do so that most reasonable people would
equates that reference to Zionists to mean Jews.

H 186. And in relation to particular 1b,

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'European alleged Jews. Remember brothers and sisters, Zionists are not Jews.'

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that the Registrant could not explain what 'European alleged Jews' meant. But denying Jewry to any Zionist who supports Israel regardless of their religious beliefs or ethnicity is anti-Semitic, by the Registrant's own definition.

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187. And in relation to particular 1c,

'Any Zionist, any Jew coming into your centre supporting Israel, any Jew coming into your centre who is a Zionist. Any Jew coming into your centre who is a member for the Board of Deputies, is not a Rabbi, he's an imposter.';

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that this conflates Jewish supporters of Israel with Zionists and that most people hearing this would not pick up on a fine distinction that it related to community engagement. It suggests that any Jew who supports either Israel or Zionism is an imposter, not a real Jew.

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188. And in relation to particular 1d,

'They are responsible for the murder of the people in Grenfell. The Zionist supporters of the Tory Party.'

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that the IHRA guidance regarding anti-Semitic 'tropes' might assist here, in particular regarding Jews controlling the media, economy, government or other societal institutions or being responsible for wrongdoing by non-Jews. Such tropes are 'well known' and all too frequently deployed.

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189. Finally, Mr Colman submitted that the case of *CAA V DPP*, of which Mr Gottlieb had made much, was actually of limited assistance to the Committee because that case was about the meaning of the word 'abusive', and that offence

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A under the Public Order Act required an element of *mens rea*, namely intention and awareness at the time. The case did not decide, because it was not required to, if the words in question were anti-Semitic, and in any event the words in question in that case were different from those in this case.

B The Registrant's submissions

C 190. Mr Gottlieb for the Registrant submitted that in coming to a decision, the Committee should think of 'the reasonable person' as someone who was in possession of all the relevant evidence, i.e. someone who was in the same state of knowledge as the Committee.

D 191. It was further submitted that the testimonials on behalf of the Registrant showed that he was not an anti-Semite. The writers of the testimonials were aware of the allegations facing the Registrant. They were relevant to take into consideration at this stage because they were relevant to the likelihood that the Registrant would have said anything that was anti-Semitic. On the basis of the number and quality of testimonials that was 'inherently improbable'.

E 192. It was submitted that as regards the 'reasonable person', the GPhC say that it is sufficient that most 'reasonable people' would find the comments anti-Semitic, however a 'reasonable person' would also allow for the fact that other 'reasonable people' might conclude differently. The Registrant has allowed that his words were capable of being construed as anti-Semitic, as his apology admits.

F 193. Mr Gottlieb submitted that there was no authority for the GPhC's suggestion that the Registrant's explanations were not evidence for the Committee to consider. Whilst the particulars of allegation did not include 'intention', if someone does not at the time intend to be anti-Semitic, the normal conclusion is that it is inherently implausible that they were being anti-Semitic.

G 194. As regards definitions of anti-Semitism, Mr Gottlieb submitted that the dictionary definition provided was accepted by both parties, namely 'hostility to
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A Jews'. The IHRA guidance has not been adopted by the GPhC nor has it been drawn
to the attention of registrants.

B 195. It was submitted that the Committee should look at the whole of the
evidence and follow the High Court in the case of *CAA v DPP*. In particular that the
comments made should be examined in context. Throughout the video-footage
the Registrant is standing near a banner saying 'Free Palestine – against
antisemitism and Zionism' and a Rabbi is standing beside him without showing
C annoyance or frustration. The Committee should look also at other things said by
the Registrant during the rally: he led a Saudi-Zionist chant and these words are
inexplicable if when the Registrant talks about Zionists he means in fact, Jews.

D 196. As regards the individual comments in the particulars, Mr Gottlieb
submitted that as regards 1a, the Registrant had provided an explanation of this
and that he was deploying a figure of speech in the mould of David Cameron saying
that it is in the DNA of the Conservative Party to be Zionist. As regard 1c, this is in
the context of what had been said by those in the counterdemonstration who
E were attacking the Jews taking part in and supporting the pro-Palestine
demonstration led by the Registrant. As regards 1d these comments are consistent
with an anti-austerity message, and the Committee was commended to follow the
reasoning of the detailed analysis by the judge in the High Court *CAA v DPP* case.

F 197. Mr Gottlieb submitted that as regards 1b, the GPhC say that in the absence
of a compelling explanation the comments must be anti-Semitic. The Registrant
himself was at a loss to explain the meaning of these words and had been open to
the Committee about that. The Committee was asked not to jump to conclusions
G and instead ask itself where is the 'hostility to Jews' in that comment.

H 198. At the conclusion of his submissions Mr Gottlieb was asked by the Chair
about a comment made by the Registrant when giving evidence which later was
repeated by Mr Gottlieb in submissions which was that the comments by the
Registrant could be interpreted as anti-Semitic and "*would be in the future*". Mr

A | Gottlieb replied saying that given what he now knows and the offense he has caused, this meant that any repetition of those words in future could only be seen as deliberate and intended to be anti-Semitic.

B | **Legal Advice on the Facts**

C | 199. The Committee was reminded of the burden and standard of proof, and that the more serious an allegation, the more cogent is the evidence required to find it proved. The Committee was advised to assess the evidence from all witnesses and the Registrant. With respect to particular 2(a) the Committee was advised to consider whether each comment, individually, at particulars 1(a) to (d) were more likely than not to be anti-Semitic. The Committee were assisted by a dictionary definition of “anti-Semitic” and the Council’s submission that it considers, as guidance, the IHRA definition of “anti-Semitism”.

D | 200. Regarding the IHRA definition, the Legal Adviser stated that: the definition is that of “anti-Semitism” and not “anti-Semitic” which is what is pleaded in the allegation; that the definition is not legally binding; that the IHRA commentary provided states that the examples of anti-Semitism “*could, taking into account the overall context...include but are not limited to*” then a list of non-exhaustive examples of what could amount to anti-Semitism follows.

E | 201. In his submissions, Mr Gottlieb had referred the Committee to the High Court decision of Judicial Review proceedings brought by the CAA against the DPP. The Committee was advised that the Registrant’s comments in that case differed from those in the allegation brought by the Council; that those proceedings concerned the elements of a section 5 Public Order Act 1986 offence which includes an intentional element; and that the parts of the judgement referred to by Mr Gottlieb centred on whether the Registrant’s comments were “abusive”, not whether they were offensive or anti-Semitic.

F | 202. The Committee was reminded that regulatory proceedings are concerned with ensuring public protection, public interest and the upholding and
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A maintenance of professional standards and behaviour by pharmacy professionals.

B 203. In coming to its decision, the Committee was advised to consider the
C Registrant's comments in the context in which they were said, having regard to all
the relevant circumstances. The video footage and transcript were helpful in this
regard. The Committee was advised to take into account all the oral and
documentary evidence, the two video footages viewed, and the character
references submitted on behalf of the Registrant. It was for the Committee to
decide what weight to attach to these references, taking into account everything
it had heard about the Registrant and his evidence. The Committee was reminded
of the Registrant's good character and that it was relevant at this stage of the
proceedings.

D 204. Finally, the Committee were referred to the Council's Good Decision
Making: Fitness to Practise hearings and sanctions guidance dated March 2017,
and to the Council's Social Media guidance 2016 which Mr Gottlieb had referred
to in his submissions.

E **The Committee's determination on the Facts**

F 205. The Committee accepted the advice of the Legal Adviser in full. The
Committee took into account all the evidence before it and the submissions made
by both parties.

G 206. The Committee commenced its task by first considering the witnesses from
whom it had heard live evidence. It found Mr Collier and Mr Hoffman both to be
genuine and credible witnesses who sought to assist the Committee with truthful
answers and were genuine when describing what they had seen and heard and
their feelings about that.

H 207. However, despite Mr Collier describing himself as an independent
researcher with no connection to the Campaign Against Antisemitism, given his
recent visit to Israel and the fact that his daughter had recently volunteered for
the Israeli Defence Force, it concluded that he was not an entirely impartial

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observer but was one who held clear views and expressed them firmly, as he is perfectly entitled so to do.

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208. Mr Hoffman described himself as 'of the Jewish faith' and as it emerged in his evidence that he had attended a previous demonstration and had received a Public Order Act conviction (he was commendably open and transparent about this fact when cross-examined) and had visited the Registrant's pharmacy to see if it stocked medicines manufactured in Israel, again he could not be said to be a wholly impartial observer.

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209. Ms Caplan did not give live evidence , but her statement was accepted and later referred to in submissions. In that statement she stated that she is of the Jewish faith, had not attended either the rally or the counterdemonstration but had happened across it whilst out with two friends. Mr Gottlieb has submitted that, comparing her timings to that contained within the video footage, it is evident that she could not have heard all she claimed to have heard, if those timings were correct, and that some of the words she claimed to have heard are not captured on the footage. The Committee concluded that she might not be a totally reliable witness but had no reason to doubt her truthfulness or the genuineness of the feelings expressed in her statement.

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210. Overall however the Committee concluded that these witnesses were of little assistance to it in reaching its decisions on the facts because – as will be explained below – none of these witnesses were or could be (through no fault of their own) the 'reasonable person' which it had in mind when assessing whether the comments made were anti-Semitic.

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211. The Committee then went on to assess the Registrant as a witness. The Committee found the Registrant to be truthful, thoughtful, passionate in his views, reliable and honest in what he told the Committee; he had tried his best to assist the Committee and had said he did not know, when he did not know an answer to a question. The Committee found his apology that his comments were 'grossly offensive' to be genuine and heartfelt. The Committee noted that the many

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testimonials provided on his behalf were uniformly positive, came from a number of health professionals and others all of whom had seen the allegations against him. The Committee noted his good character and unblemished regulatory record.

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212. The Committee then went on to consider what the characteristics would be of the 'reasonable person' it was asked to use as a yardstick in reaching its decision. Mr Colman for the Council has said the reasonable person was someone akin to the 'man on the Clapham omnibus' (although that now is an archaic, and gendered term) invoked historically in legal cases. Someone with no particular characteristics, so for example not a reasonable Jewish person. Mr Gottlieb for the Registrant submitted that the Committee should have in mind a person who knew the context, and all the facts; someone who was in the position of the Committee now having heard and seen all the evidence.

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213. The Committee considered that it would adopt features of both submitted 'profiles' noting that those submitted were not in any way mutually exclusive.

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214. The 'reasonable person' in the Committee's mind therefore is someone who is in possession of all the facts and knows the context; someone with no particular characteristics (and so someone who is an imaginary construct for this purpose rather than any particular real person). This reasonable person therefore would know what a Zionist is and how that is defined; would know the IHRA definition of anti-Semitism and its associated guidance; would know the dictionary definition of 'anti-Semitic' etc. This reasonable person would have no strong views on the Israel / Palestine question; would not otherwise be unduly sensitive; would be openminded, balancing what they had heard and seen before reaching a conclusion.

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215. That means that the 'reasonable person' is not any of the bystanders on the day with a selective view of events, nor indeed someone who had only subsequently watched the YouTube footage.

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216. The Committee saw no sensible and practical alternative to considering

A | that the reasonable person would know what the Committee now knows having heard the evidence and submissions.

217. | The Committee checked its 'reasonable person' against the legal advice it had received and decided that it met those requirements, in particular that:

B | 'In coming to its decision, the Committee was advised to consider the Registrant's comments in the context in which they were said, having regard to all the relevant circumstances.

C | 218. | The Committee considered that its 'reasonable person' was in accordance with that advice.

D | 219. | The Committee then moved on to consider what it should understand by the term 'Zionists'. This term is central and appears in each of the particulars 1a to 1d.

E | 220. | Having been provided with no alternative and there having been no submissions from either party taking issue with it, the Committee turned to the definition provided in the High Court case of *CAA V DPP*. At paragraph 25 of that judgment the following working definition is given by the judge: '...Zionists i.e. those who support the establishment and maintenance of Israel as a state.' The Committee adopted this definition for its purposes.

F | 221. | The Committee then turned to consider particular 1a.

G | *'It's in their genes. The Zionists are here to occupy Regent Street. It's in their genes, it's in their genetic code.'*

H | 222. | The Committee noted the context of the Al Quds day rally: it was a pro-Palestine, anti-Zionist rally, at which there was a counterdemonstration by supporters of the State of Israel. The Committee concluded that most reasonable people knowing this would not be surprised to hear the term 'Zionists' used that

A day by the Registrant. It would only be thought anti-Semitic by most reasonable
people if they believed additionally that when using this term what actually was
meant was 'Jews'. However the evidence was that the Registrant had repeatedly
B during the rally used words to the effect that 'Zionists' and 'Jews' must not be
conflated, not least because some Jews who were not Zionists were taking part in
the Al Quds day pro-Palestinian rally, and this too was part of the context that day.
And, as Mr Gottlieb had pointed out, the Registrant had led a chant equating
C Saudis and Zionists, something that was "inexplicable" if Zionists were equated
with Jews.

223. The Committee then looked at the use of 'Zionist' in the context of the
other comments in 1a, particularly the use of the words 'genes' and 'genetic code'.
D The Registrant had accepted when cross-examined that Zionists are those holding
political beliefs, not sharing an ethnicity, and cannot therefore be said to possess
a genetic identity. The Registrant stated that when using the expressions 'genes'
and 'genetic code' these were figures of speech, in the same way that David
E Cameron had said that Zionism is in the DNA of the Conservative Party, or when
people say that scoring goals is in a striker's blood.

224. The Committee concluded that most reasonable people would consider
the use of those words highly ill-advised, and certainly readily capable of being
F misinterpreted. However, the Committee, bearing in mind his good character,
believed the Registrant's explanation that he had been using a figure of speech
when making those comments and that his explanation was not simply a post hoc
G rationalisation. Therefore the Committee concluded that most reasonable people
having heard and seen the Registrant's evidence would not think it more likely
than not that that comment at 1a was anti-Semitic, in context of an anti-Zionist
rally protesting against the occupation of Palestine. Accordingly, the Committee
found not proved that the comment at 1a was anti-Semitic.

H 225. The Committee then moved onto consider the comment at 1b.

'European alleged Jews. Remember brothers and sisters, Zionists are not

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Jews’.

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226. Despite a number of questions in cross-examination and then from the Committee, the Registrant had not been able to explain what the phrase ‘European alleged Jews’ connoted. He had attempted to explain it as best he could, but was obviously at a loss to explain it. The Committee was left none the wiser. The Committee concluded that most reasonable people would not find anti-Semitic a part of a comment they could not understand when it appeared to make no sense. It moved on to consider remaining element of the comment at 1b, ‘Zionists are not Jews’.

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227. The Committee considered that this phrase was open to two possible interpretations. Either it was a statement de facto denying Jewry to anyone who was a Zionist, i.e. if you are a Zionist you cannot be a Jew. The Registrant himself had accepted that denying Jewry to someone of the Jewish faith who was a Zionist would be anti-Semitic and had said as much publicly during the rally.

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228. However, it could equally be a statement to the effect that Zionists and Jews should not be conflated. Given that the Registrant had made other statements on the rally emphasising the distinction between Zionists and Jews the Committee concluded that most reasonable people would not think that was an anti-Semitic phrase in this context. Accordingly, the Committee found not proved that the comment at 1b was anti-Semitic.

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229. The Committee then moved onto consider the comment at 1c.

‘Any Zionist, any Jew coming into your centre supporting Israel, any Jew coming into your centre who is a Zionist. Any Jew coming into your centre who is a member for the Board of Deputies, is not a Rabbi, he’s an imposter.’

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230. The Committee considered that this comment required more context and further details to begin to properly fathom before a conclusion could be formed. The Registrant’s explanation of this comment was that he was talking about who should be allowed into mosques and Islamic centres as legitimate representatives

A of the Jewish faith as part of interfaith community dialogue: Jews who were Zionists were not welcome in that regard.

B 231. It was submitted by Mr Gottlieb that, in addition, the comment needed to be understood in the context of the day and what had been said by those in the counterdemonstration who were attacking the Jews taking part in and supporting the pro-Palestine demonstration led by the Registrant. Mr Colman had submitted that most reasonable people would not pick up on such fine distinctions, and therefore would simply consider the comment anti-Semitic.

C 232. The Committee thought that its 'reasonable person' would trouble to seek to understand the underlying context. It concluded that whilst many reasonable people could indeed find the use of the term 'imposter' to describe a Rabbi as straightforwardly anti-Semitic, nevertheless in the context of the day and the explanation provided by the Registrant, it concluded that most reasonable people would not conclude that it was anti-Semitic. Most reasonable people would want to know and understand the context of a comment before making a judgment about both its meaning and significance. They would not jump to conclusions simply on hearing alone "the unvarnished" words, as Mr Colman had put it. Accordingly, the Committee found not proved that the comment at 1c was anti-Semitic.

D 233. The Committee then moved onto consider the comment at 1d.

E *'They are responsible for the murder of the people in Grenfell. The Zionist supporters of the Tory Party.'*

F 234. The Committee asked itself why the Registrant was referencing the Grenfell Tower tragedy at all at a pro-Palestine rally, but reminded itself that the fire had occurred a handful of days earlier so was prominent in the news at the time.

A 235. The GPhC position was that the Registrant here was playing on or deploying anti-Semitic tropes, and by implication that the Registrant was taking the [then recent] Grenfell fire as an opportunity to do just that.

B 236. The Committee examined, as submitted by Mr Gottlieb that it should have regard to the judge's analysis and conclusions on these comments in the *CAA v DPP* judicial review case. The comments at 1d are quoted in full paragraph 41 of that judgment and at paragraph 43 the judge states:

C 'I infer that Mr Ali is alluding to the policy of austerity as a cause of the fire. This is strident criticism of the Government. Mr Ali also described the victims as 'those poor souls who perished in the fire, caused by corporate Tory greed'. Again, another implied reference to the policy of austerity. I do not consider these
D comments abusive so as to bring them within the ambit of the criminal law.'

E 237. The last sentence of that excerpt demonstrates that the judge was engaged in a different specific purpose to this Committee (and Mr Colman submitted that we should be aware of that and so counselled caution in drawing conclusions from that case), but given the evidence which the judge had before him in reaching that view, the Committee considered that the judge had to be treated as a 'reasonable person' as defined by the Committee. That particular 'reasonable person' was
F persuaded that in fact what the Registrant was doing was criticising the government for the policy of austerity. There is nothing in his judgment to indicate that the judge thought that the Registrant was deploying tropes.

G 238. In any event, the Committee considered that there was a degree of inconsistency in the Council inviting the Committee to conclude that the Registrant was deploying or playing to anti-Semitic 'tropes'. To suggest that he was, it
H seemed to the Committee, was to invite an analysis of the Registrant's intentions behind making the comments and to conclude that he was doing so deliberately and knowingly: whereas the Council had submitted that intention formed no part of the allegation and therefore it was not open to the Committee to make findings

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about his intention when making the comments that he did at 1a -1d.

239. However, setting that observation aside, the Committee looked then at the full words used by the Registrant immediately preceding the words in 1d. This was available from the video transcript where the Registrant states;

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‘As we know, in Grenfell, many innocents were murdered by Theresa May’s cronies many of which are supporters of Zionist ideology. Let us not forget that. Some of the biggest corporations who are supporting the Conservative Party are Zionists’

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240. These instances of the use of the word ‘Zionist’ are consistent with the definition which distinguishes it from Jews, in the way the Registrant had done in other remarks - not those complained of - on the rally that day.

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241. Taking into account all of the above the Committee concluded that most reasonable people would not find the comment to be anti-Semitic. Accordingly, the Committee found not proved that the comment at 1d was anti-Semitic.

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242. Having found none of the comments in 1a -1d to be anti-Semitic the Committee found 2a not proved.

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Stage 2: Impairment

243. The Registrant having made admissions to particulars 1a- 1d and 2b, the Committee then moved on, as it is required to do under Rule 31, to consider whether the Registrant is currently impaired by the statutory ground of misconduct. It received submissions from both parties.

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The Council’s submissions on impairment

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244. Mr Colman for the Council submitted that whilst the matter of misconduct

A was one for the Committee’s judgment, he submitted that the facts found proved
did amount to serious misconduct because the nature of the offensive comments
which were such that “they crossed the line”. The Registrant’s rights to freedom
of speech are constrained by the requirement to uphold the standards of the
B profession in both his professional and private life, as the Standards for Pharmacy
Professional make clear at Standard 6. That this is so, has been established by the
case of *Pitt* referred to previously.

C 245. Pharmacy professionals need to mind what they say. It is all too easy when
making pronouncements on matters where there are firmly held and long-
standing beliefs to lapse into patterns of speech which constitute offensive
language despite no intention of so doing. That, it was submitted by the Council,
is what had happened here. But professionals need to be mindful of that risk and
D ensure that they adhere to the standard required of them.

E 246. As regards impairment, the Council submitted that the Council’s ‘Good
decision making guidance’ at 2.13 makes plain that the Committee must decide
whether the Registrant’s fitness to practise is currently impaired, not at the time
the incident occurred, bearing in mind the overarching objectives of the GPhC. The
Committee should consider whether the Registrant:

- F
- 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;*
- or
- d) *shows that the integrity of the registrant can no longer be relied upon.”*

G 247. The Council submitted that the Committee then should, as laid out at
paragraph 2.14 of the guidance, consider whether:

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- the conduct which led to the complaint is able to be addressed;
 - the conduct which led to the complaint has been addressed;
 - the conduct which led to the complaint is likely to be repeated;

- A
- a finding of impairment is needed to declare and uphold proper standards of behaviour and/or maintain public confidence in the profession.

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248. The Committee will consider insight. It was submitted that the Committee may feel that the Registrant's insight is stronger now. However, the Council submitted that even taking the degree of insight into account the Committee would need to consider whether a finding of impairment nevertheless was required because reasonable right-minded members of the public would have an expectation of a finding of impairment, such that if there was no such finding public confidence in the profession and the regulation of the profession would be undermined.

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The Registrant's submissions on impairment

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249. Mr Gottlieb informed the Committee that, whilst the judgments on misconduct are for the Committee, the Registrant, on the grounds of the need for a finding of impairment in the public interest, did not challenge that his behaviour amounted to misconduct and that he is currently impaired.

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250. That being so, Mr Gottlieb for the Registrant, in his very brief submission simply agreed with the submissions made by the Council.

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Legal advice on Misconduct and Impairment

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251. The Legal Adviser reminded the Committee that in exercising its judgment as to whether the facts found proved amounted to misconduct, that there was no burden or standard of proof.

252. The Committee was referred to the case of *Roylance v GMC* (2000) 1 AC 311 which states that the "*misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards*

A ordinarily required to be followed by a medical practitioner in the particular
circumstances”.

B 253. The Committee was also referred to the case of *Remedy UK v GMC* [2010]
EWHC 1245 (Admin) which qualified misconduct in the following two ways: “First,
it may involve sufficiently serious misconduct in the exercise of professional
C practice such that it can properly be described as misconduct going to fitness to
practise. Second, it can involve conduct of a morally culpable or otherwise
disgraceful kind which may, and often will occur outwith the course of professional
D practice itself, but which brings disgrace upon the Registrant and thereby
prejudices the reputation of the profession.....Conduct falls into the second limb if
it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact
may be sufficient to bring the profession of (medicine) into disrepute. It matters
not whether such conduct is directly related to the exercise of professional skills”.

E 254. The misconduct must be serious. In the case of *Nandi v GMC* [2004] EWHC
2317 (Admin) Justice Collins stated that “The adjective “serious” must be given its
proper weight, and in other contexts there has been reference to conduct which
would be regarded as deplorable by fellow practitioners...”.

F 255. The Committee was reminded of the Pharmacy Standards of conduct and
performance and Article 48 (3) of the Order:

(3) Where any registrant is alleged to have failed to comply with standards set
under this article, that failure—

(a) is not, of itself, to be taken to constitute misconduct on the registrant’s part;
but

G (b) is to be taken into account in any proceedings against the registrant under this
Order.

H 256. Therefore, whilst it was correct to say that not every breach of the
standards would result in a finding of misconduct, the standards set were those
which Registrant’s were expected to adhere to. The Court made clear in the case
of *Pitt v GPhC* that the Standards of practice applied, not only in the traditional

A workplace environment and during working hours, but also beyond. The relevant obligation in the standards was for pharmacists to behave **appropriately** at all times.

B 257. The Committee was reminded that when deciding misconduct, it was important to take into account the overall context and circumstances in which the comments were made by the Registrant.

C 258. The Legal Adviser stated that if the Committee decided that the facts found proved amounted to misconduct, they must go on to decide whether in consequence the Registrant's fitness to practise is currently impaired. Impairment was a matter for its judgment and was expressed in the present tense.

D 259. The Committee was referred to the case of *GMC v Meadow* [2006] EWCA Civ 1390 which stated that:

E 260. *"...the purpose of fitness to practise 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".*

F 261. When deciding whether the Registrant's fitness to practise is currently impaired, the Committee was advised not to lose sight of the fundamental considerations of professional regulation, namely to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession. In the case of *Grant v NMC* [2011] EWHC 927 (Admin) it was observed by Mrs Justice Cox that:

G *"In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."*

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262. The Committee was directed to the criteria in Rule 5(2) which they must have regard to when assessing current impairment, and also to consider the Registrant's insight, remediation and whether there had been any harm caused from his misconduct.

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263. The Committee was reminded of the Registrant's good character and to consider what weight they attached to the testimonials submitted on his behalf.

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264. In reaching a decision on the issue of current impairment, the Committee was advised to have regard to the GPhC's overriding objective and the Good decision making guidance (March 2017), and to provide reasons for its decision on misconduct and/or impairment in its determination.

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265. Finally, the Legal Adviser reminded the Committee that whilst the Registrant did not challenge that he was guilty of misconduct and that he is currently impaired, that was a decision that the Committee was required to make for itself despite any admissions by the Registrant.

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The Committee's decision on Misconduct and Impairment

266. The Committee accepted in full the advice of the Legal Adviser and took into account the submissions of both parties.

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267. The Committee began by considering the matter of misconduct. It looked in the round at the comments made by the Registrant and admitted by him to be not just offensive but "grossly offensive".

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268. The Committee noted that these were comments made in his private life not in his professional life but that he was required, under Standard 6 of the Standards for Pharmacy Professional, to behave '...appropriately at all times'.

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269. The comments were not made as a Pharmacist, but they were made in a public arena. He had been 'broadcasting' his comments to the public at large, and was aware that he was being recorded/filmed whilst doing so, and in addition the

A | comments were directed at people he knew to be present on a
counterdemonstration.

B | 270. The Committee concluded that it was close to inevitable that he would be
identified as a Pharmacist, and in due course was. His comments therefore
brought disgrace upon the profession. The comments at 1d regarding Grenfell
Tower were particularly offensive then and now, alleging as they do, without no
foundation, that specific groups of people had ‘murdered’ the victims of the fire.

C | 271. The Committee accordingly judged that the Registrant’s comments did
amount to serious misconduct.

D | 272. The Committee having found misconduct then went on to consider
whether the Registrant currently is impaired. It considered that the Registrant had
demonstrated good levels of insight. It noted that during his evidence the
Registrant initially resisted the idea that he was constrained in his private life when
making comments that could and would be offensive. However, during the giving
of his evidence he did later accept that he was under a duty to adhere to and
E | comply with all the Standards for Pharmacy Professionals, including Standard 6.
That late realisation aside, the Committee considered that in all other respects his
insight was reasonably well founded.

F | 273. The Committee noted that there had been no repetition of the comments
since 18 June 2017, including during taking part in and leading two further Al Quds
Day rallies in London, and a further event on-line.

G | 274. The Committee accepted that the testimonials on the Registrant’s behalf
were numerous and of uniformly high quality. Many of those giving testimonials
had known the Registrant over many years and spoke very highly of his character
and integrity and that they had never heard him make any such offensive
H | comments in a work or other context before or since.

275. The Committee concluded that there was no risk of the Registrant

A repeating his comments; there was no risk of repetition.

276. The Committee considered that given the apology he had made, which as stated already above, it found to be genuine and heartfelt, there was little, if anything further that the Registrant could do to remediate his misconduct.

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277. However, the Committee considered that given the very public nature of his comments, the degree of offense caused to very many people, including to those who did consider his comments to be anti-Semitic, that he had caused real harm through that offense including real harm to the reputation of the profession. That being so the Committee considered that ordinary right-minded people would have their confidence in the profession, and the regulator, undermined if there was no finding of impairment. Therefore, the Committee determined that a finding of impairment is required to maintain public confidence in the profession. Accordingly, the Committee found the Registrant to be impaired on the public interest ground.

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278. Having found the Registrant impaired the Committee moved on, as it is required to do, to the Sanction stage.

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Stage 3: Sanction

279. Mr Colman for the Council submitted that the appropriate sanction to impose is a decision for the Committee's independent judgment. The Committee will take into account the overall context and circumstances of the case. The Committee will take into account what it considers to be the Registrant's level of insight and remorse shown for the offense caused.

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280. It was submitted that the Committee might consider that the following factors could constitute aggravation:

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- That the conduct took place in a public arena on the streets of central London;

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- The circumstances were highly charged with protest and counter protest;
- The potential for offence was obvious.

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281. As to mitigation it was submitted that the Committee might find that:

- the Registrant during the rally was seeking to distinguish between anti-Zionist and anti-Semitic remarks;
- in making the offensive comments there was no intention to incite violence or aggression.

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282. Given what the Committee has stated regarding the remediation already achieved and the insight gained, it was submitted that a Warning might be the appropriate sanction.

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283. Mr Gottlieb, for the Registrant, submitted that he did not disagree that a Warning might be the appropriate sanction. **He stated that he did not consider any higher sanction to be appropriate.** The Registrant accepted the damage that his comments had caused to the pharmacy profession and did not challenge the finding of impairment. Further, the Registrant did not challenge that some form of public statement would be appropriate in terms that made clear that his behaviour had been disgraceful.

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Legal Advice on Sanction

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284. The Committee was reminded that its powers of sanction were contained in Article 54(2) of the Order, and that in exercising their powers with respect to sanction, it must have regard to the statutory overarching objective and the following principles of the GPhC, which are:

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- a) to protect, promote and maintain the health, safety and well-being of the public,
- b) to promote and maintain public confidence in the medical profession, and
- c) to promote and maintain proper professional standards and conduct for members of that profession.

H

285. The Committee was referred to the Council's Good Decision Making:

A Fitness to Practise Hearings and Sanctions Guidance (March 2017) to assist it in
making a fair, consistent and transparent decision. The Committee should exercise
its own judgement when deciding on what sanction to impose. If the Committee
decided not to follow the guidance, it should explain why it has not done so in its
B reasons.

286. The Committee was advised to consider the least severe sanction first and
to work up incrementally through each sanction in turn until the most appropriate
and proportionate sanction was reached. It was advised to also consider the
C sanction immediately above the one it had decided to impose, and give reasons
why a more serious sanction was not appropriate and proportionate.

287. The Committee must bear in mind any aggravating and mitigating factors
as well as the Registrant's insight, remorse, remediation, practice history,
D character references and reputation, and the potential effect of any sanction on
him, while bearing in mind the purpose of sanction, the public interest and the
overarching objective.

288. The Committee was referred to the key factors it should consider in the
guidance at paragraph 5.2, and was reminded that it is entitled to give greater
weight to the public interest, than to the consequences of any sanction on the
E Registrant, and that even if a sanction had a punitive effect, it may still be
appropriate if its purpose is to achieve the outcomes of protection of the public
F and GPhC's over-arching objective. Public interest considerations should be
reflected in the Committee's reasons for deciding a particular sanction. The public
interest included the reputation of the profession and the regulator and the
maintenance and upholding of professional standards and behaviour.

G **The Committee's decision on Sanction**

289. The Committee accepted in full the advice from the Legal Adviser and took
into account the submissions of both parties.

H 290. The Committee commenced its deliberation by identifying the aggravating

A and mitigating factors relevant in this case. As to aggravating factors, it accepted those submitted by the Council but in addition also identified the following:

- That the Registrant was not only a part of the rally, he was leading it when he made his comments;
- That the comment relating to the Grenfell Tower fire was utterly appalling and not just offensive but (as the Registrant admitted) grossly offensive and particularly aggravating given it was said in the days immediately following the event when emotions were very raw.

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C 291. The Committee identified the following mitigating factors:

- He had not repeated the comments since;
- The Registrant had no known regulatory findings.

D 292. The Committee then turned to consider the sanctions available to it. It noted that even though impairment had been found nevertheless it was open to the Committee to take no further action. The Committee therefore considered that option. However in light of the harm caused to the reputation of the profession by the Registrant's comments and keeping in mind the need to maintain confidence in the profession it determined that taking no action would fall some way short of what was necessary to mark the gravity of the misconduct.

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F 293. The Committee noted that having found impairment it was not open to the Committee to offer advice.

G 294. The Committee then considered a Warning. It found that the circumstances of the case matched closely that given in the guidance; in particular as follows:

'There is a need to demonstrate to a registrant, and more widely to the profession and the public, that the conduct or behaviour fell below acceptable standards.

H There is no need to take action to restrict a registrant's right to practise, there is no continuing risk to patients or the public and when there needs to be a public

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acknowledgement that the conduct was unacceptable’.

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295. As the legal advice stated it should, the Committee then considered the next highest sanction, that of Conditions. However, looking at the GPhC Sanctions guidance it was clear to the Committee that Conditions were not a sanction that was relevant to a case of this nature. Conditions were designed and intended to apply in cases where there was an identified shortcoming or poor performance in a registrant’s practise. That was not so here. Accordingly, the Committee considered instead the sanction of suspension.

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296. However, because the Committee considered that a Warning would send the appropriate message to the public and the profession that the Registrant’s conduct fell below acceptable standards, and would satisfy the public interest by maintain public confidence in the profession and the regulator, it considered that a sanction of suspension would be disproportionate.

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297. Having taken into account the impact upon the Registrant and bearing in mind the purpose of sanction, the public interest and the overarching objective the Committee directed that the Registrant should be issued with a Warning in the following terms:

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‘The Registrant, for all the reasons set out in the Committee’s decision, is hereby given a Warning that his future behaviour must at all times avoid undermining the reputation of the profession, or the reputation of the regulator and must uphold the required standards of the pharmacy profession’.

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298. That concludes this hearing.

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