Neutral Citation Number: [2024] EWHC 577 (Admin)

Case No: AC-2023-LON-003168

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/03/2024

Before :

MR JUSTICE CHAMBERLAIN

- -

Between :

PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE	**Appellant**
- and -	
(1) GENERAL PHARMACEUTICAL COUNCIL	
(2) NAZIM HUSSAIN ALI	**Respondents**

- -
- -

Fenella Morris KC and David Hopkins (instructed by **Browne Jacobson**) for the **Claimant**
Andrew Colman (instructed by **the General Pharmaceutical Council**) for the **Defendant**

Hearing dates: Thursday 7th March 2024

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Approved Judgment

This judgment was handed down remotely at 10am on 14 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain :

Introduction

1 This is an appeal by the Professional Standards Authority for Health and Social Care ("the Authority") against a decision of the General Pharmaceutical Council ("GPhC") in disciplinary proceedings against a registered pharmacist. The GPhC's Fitness to Practise Committee ("the Committee") found that the registrant had committed misconduct which impaired his fitness to practise and imposed a warning by way of sanction. The Authority appeal against the sanction, which they submit was not sufficient.

Background

2 Al Quds is the Arabic name for Jerusalem. Since 1980, the Al Quds Day rally has been held annually in central London to demonstrate support for the Palestinian cause. For some years, it has been led by Nazim Hussain Ali, a registered pharmacist, stand-up comedian and political activist. In 2017, the Al Quds Day rally was held on 18 June, four days after the fire at Grenfell Tower, which resulted in 72 deaths. Participants marched from Duchess Street along Regent Street, Oxford Street and Duke Street to Grosvenor Square. Mr Ali addressed the rally at length using a loudhailer and led chants. There were interjections from counter-demonstrators supportive of Israel.

3 The Campaign Against Antisemitism brought a private prosecution against Mr Ali for an offence under s. 5 of the Public Order Act 1986 in respect of some of his comments at the rally. The Director of Public Prosecutions decided to take over and discontinue the prosecution. A claim for judicial review challenging that decision failed before the Divisional Court: *R (Campaign Against Antisemitism) v Director of Public Prosecutions* [2019] EWHC 9 (Admin). In his judgment, Hickinbottom LJ (with whom Nicol J agreed) summarised what Mr Ali had said:

> "25. Mr Ali's address had a number of recurring themes. He repeatedly emphasised that the rally was a peaceful event. His address was, of course, pro-Palestinian, and supportive of a Palestinian state. It was equally antagonistic to Israel as a state, and to Zionists i.e. those who support the establishment and maintenance of Israel as a state. He repeatedly said and suggested that Israel is a 'terrorist state', responsible for the deaths (the 'murders') of Palestinian men, women and children. That antagonism extended to those who support – or those who Mr Ali perceived as supporting Zionism. He referred to specific corporations and other states which he considered did so, and to the British Prime Minister and the President of the United States.
>
> 26… the rally was only a few days after the Grenfell fire. During the course of the parade, Mr Ali held a minute's silence for those who lost their lives. A recurring theme in his address was that they were the 'victims of Tory policies, the victims of policies of the Tory council and the Tory government, of Theresa May'…; and the loss of life was 'caused by corporate Tory greed'... In

> developing this theme, he said that, not only were many of the Prime Minister's 'cronies' supporters of Zionism, but Zionist corporations were supporters of the Conservative Party. Zionists were thus 'responsible for the murder of the people in Grenfell'…
>
> 27. Another theme that regularly recurred was, in seeking their own state, Zionists had been responsible for 'murdering British soldiers' in the 1946 bombing of King David Hotel at a time when the hotel housed the British administrative headquarters for the mandated territories. Mr Ali referred to that bombing at the beginning of his address…, and regularly thereafter."

4 Criminal proceedings (which, as indicated, were ultimately discontinued) were not the only consequence of Mr Ali's comments on 18 June 2017. He was also subject to disciplinary proceedings brought by the GPhC before the Committee in respect of four unscripted comments:

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

5 These were alleged to be antisemitic and offensive. There was a hearing between 26 October and 5 November 2020 before a panel consisting of Alastair Cannon (Chair), Raj Parekh (registrant member) and Claire Bonnet (lay member). At the hearing, Mr Ali accepted that he has said these things and that they were grossly offensive. He gave a full apology. He did not, however, accept that any of the comments was antisemitic. On 5 November 2020, the Committee found that they were offensive but not antisemitic. They found serious misconduct proven and issued a warning by way of sanction.

6 That decision was successfully challenged in this court by the Authority: *Professional Standards Authority for Health and Social Care v General Pharmaceutical Council* [2021] EWHC 1692 (Admin). Johnson J found that the Committee had applied the wrong approach to the question whether Mr Ali's comments were antisemitic. By taking account of Mr Ali's intention and good character, the Committee had had regard to matters not relevant to whether he was guilty of the conduct alleged (though relevant in principle to impairment and sanction). In determining whether Mr Ali was guilty of the misconduct alleged the Committee should have concentrated exclusively on the objective meaning of the words that Mr Ali admitted using, bearing in mind the cumulative effect of the words taken together: [23]-[34].

7 Giving judgment in June 2021, Johnson J noted that the underlying allegation dated back four years and related to events when Mr Ali was not acting as a pharmacist. He also noted that Mr Ali had recognised that his remarks were offensive and expressed remorse. All this made him "in principle, sympathetic to the suggestion that, if it could be shown that the ultimate sanction would not be different if the case were remitted back to the FPC, I should… simply dismiss the appeal". Ultimately, however, Johnson J concluded that the case engaged significant questions of public confidence and so should be remitted to the Committee: see at [35]-[38].

8 Accordingly, a further hearing was held between 29 and 31 August 2023 before the same Committee. After that hearing, the Committee decided that comments (a) and (b) were offensive but not antisemitic and comments (c) and (d) were both antisemitic and offensive. They went on to find that the comments amounted to serious misconduct, which impaired Mr Ali's fitness to practise. The Committee imposed a warning by way of sanction.

Legal framework

9 Part 6 of the Pharmacy Order 2010 (SI 2010/231) ("the Order") makes provision for pharmacists' discipline and fitness to practise. Article 54(2) provides as follows:

> "(2) If the Fitness to Practise Committee determines that the fitness to practise of the person concerned is impaired, it may—
>
> (a) give a warning to the person concerned in connection with any matter arising out of, or related to, the allegation and give a direction that details of the warning be recorded in the Register;
>
> …
>
> (c) give a direction that the entry in the Register of the person concerned be removed;
>
> (d) give a direction that the entry in the Register of the person concerned be suspended, for such period not exceeding 12 months as may be specified in the direction; or
>
> (e) give a direction that the entry in the Register of the person concerned be conditional upon that person complying, during such period not exceeding 3 years as may be specified in the direction, with such requirements specified in the direction as the Committee thinks fit to impose for the protection of the public or otherwise in the public interest or in the interests of the person concerned."

10 The introduction to the GPhC's *Standards for pharmacy professionals* (May 2017) ("the Standards") includes this:

> "The standards need to be met at all times, not only during working hours. This is because the attitudes and behaviours of

> professionals outside of work can affect the trust and confidence of patients and the public in pharmacy professionals."

11 Standard 6 provides:

> "Pharmacy professionals must behave in a professional manner
>
> Applying the standard
>
> People expect pharmacy professionals to behave professionally. This is essential to maintaining trust and confidence in pharmacy. Behaving professionally is not limited to the working day, or face-to-face interactions. The privilege of being a pharmacist or pharmacy technician, and the importance of maintaining confidence in the professions, call for appropriate behaviour at all times…"

12 The GPhC's *Good decision making: Fitness to practise hearings and sanctions guidance*, (revised, March 2017) ("the Guidance") explains the circumstances when each sanction may apply. For warnings, it says this:

> "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.
>
> 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 acknowledgement that the conduct was unacceptable."

13 For conditions, it says this:

> "There is evidence of poor performance, or significant shortcomings in a registrant's practice, but the committee is satisfied that the registrant may respond positively to retraining and supervision.
>
> There is not a significant risk posed to the public, and it is safe for the registrant to return to practice but with restrictions."

14 For suspensions, it says this:

> "The committee considers that a warning or conditions are insufficient to deal with any risk to patient safety or to protect the public, or would undermine public confidence.
>
> It may be required when necessary to highlight to the profession and the public that the conduct of the registrant is unacceptable and unbefitting a member of the pharmacy profession. Also when public confidence in the profession demands no lesser sanction."

15 The GPhC's *Good decision- making: Conditions bank and guidance* (July 2023) is the "standard bank of conditions that is made available to the committee". Standard conditions 16, 17 and 20 are as follows:

> "16. You must name and ask the GPhC to approve a suitable pharmacist or technician to act as your mentor within [number of weeks] weeks of the date this order takes effect.
>
> You must be in contact with your mentor, [insert how often] about the following:
>
> • [area/issue]
>
> 17. You must arrange for your mentor to write to the GPhC every [number of months] months to confirm that meetings are taking place.
>
> …
>
> 20.You must undertake training in the following areas:
>
> • [area of practice]
>
> The training is to be paid for by you. You must send the GPhC evidence of completion within 10 days of the course."

16 Under s. 29(4) of the National Health Service Reform and Health Care Professions Act 2002 ("the 2002 Act"), the Authority may refer a case to the High Court where it considers that "the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public". By s. 29(4A), the question whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient:

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

17 Where a case is referred to the High Court, it is to be treated as an appeal: see s. 29(7) of the 2002 Act. Under s. 29(8), the Court may:

> "(a) dismiss the appeal,
>
> (b) allow the appeal and quash the relevant decision,
>
> (c) substitute for the relevant decision any other decision which could have been made by the Panel or other person concerned, or

> (d) remit the case to the Panel or other person concerned to dispose of the case in accordance with the directions of the court,
>
> (e) and may make such order as to costs… as it thinks fit."

18 The legal principles applicable to appeals to the High Court were set out by Foster J in *Professional Standards Authority for Health and Social Care v Health and Care Professions Council & Roberts* [2020] EWHC 1906 (Admin), at [3], as follows:

> "(a) A court will allow an appeal if the appeal decision is 'wrong' or 'unjust because of a serious procedural or other irregularity in the proceedings in the lower court' (CPR Part 52.21(3) and see *GMC v. Meadow* [2006] EWCA Civ 390 at paras 125-128);
>
> (b) The court, as any appeal court, will correct material errors of fact and law but be very cautious about upsetting conclusions of primary fact particularly when dependent on an assessment of credibility of witnesses, whom the Tribunal has had the advantage of seeing and hearing (see *Assicurazioni Generali SPA v. Arab Insurance Group (Practice Note)* [2002] EWCA Civ 1642); *Southall v GMC* [2010] EWCA Civ 407; [2010] 2FLR 1550), although
>
> (c) An appeal court may draw any inferences of fact which it considers justified on the evidence (CPR 52.11(4)).
>
> (d) An appellate court approaches Tribunal determinations about what constitutes serious misconduct or what impairs a person's fitness to practise or what is necessary to maintain public conference and proper standards in a profession with diffidence (*Fatnani and Raschi v GMC* [2007] 1WLR 1460, *Khan v General Pharmaceutical Council* [2016] UKSC 64; [2017] 1WLR 1693).
>
> (e) This approach applies also to questions of sanction, which are similarly evaluative (ibidem, and see *Bawa-Garba* [2018] EWCA Civ 1879); although
>
> (f) Certain matters such as dishonesty or sexual misconduct may enable a court to assess what is needed to protect the public or maintain reputation more easily for itself and, therefore, attach less weight to the Tribunal's expertise (*Council for the Regulation of Healthcare Professionals v. The GMC and Southall* [2005] EWHC 579 (Admin); [2005] Lloyd's Rep Med 365, para. 11; *Khan* at para. 36).
>
> (g) Personal mitigation is likely to be of much less significance to regulatory proceedings than to a court of criminal jurisdiction because the overriding objective of the professional regulators is to protect the public (*Bolton v. The SRA*; *Dr Cheng Toh Yeong v. The GMC* [2009] EWHC 1923 (Admin)); although, it is

nonetheless relevant when deciding whether fitness to practise is impaired (*Yeong* at para. 47)

(h) Regimes of regulation in the healthcare context are concerned with the practitioner's current and future fitness to practise rather than with imposing penal sanctions for things done in the past. However, in order to form a view of the fitness of a person to practise today, a panel will have to take account of the way in which the person concerned has acted or failed to act in the past (*Meadow* at paras 28 to 32).

(i) A panel has to assess the current position looking forward not back. A finding of misconduct does not necessarily mean that there is impairment of fitness to practise (*Yeong* at para.21, citing *Cohen v The GMC* [2008] EWHC 581 Admin. paras.63 to 64; *Zygmunt v. The GMC* [2008] EWHC 2643 Admin. at para. 31.

(j) There must always be situations in which a panel can properly decide that the act of misconduct was, on the part of the practitioner, isolated and the chance of it being repeated in the future is so remote that his or her fitness to practise has not been impaired. Indeed, the rules have been drafted on this basis (see Articles 21.1, 27 and 29 in the instance case).

(k) It must be highly relevant, at least in cases involving clinical error, when determining whether a doctor's fitness to practise is impaired, that first his or her conduct which led to the charges is easily remediable; second, that it has been remedied; and, third, it is highly unlikely to be repeated (*Cohen* para. 64 to 65). Nonetheless,

(l) When considering the meaning of impairment of fitness to practise a regulator is entitled to have regard to the public interest in the form of maintaining public confidence both in the profession generally and in the individual practitioner. Thus, if there is a sense that misconduct involving, for example, violation of a fundamental rule governing doctor/patient relationships by engaging in a sexual relationship may be indulged in with impunity, then the public's confidence in engaging with a particular practitioner may be undermined (*Yeong* at para.50).

(m) In such a case, such as violating the therapeutic relationship by engaging in a sexual relationship, efforts of remediation may be of far less significance than those cases, for example, involving clinical error or incompetence (ibidem, para.51).

(n) The court's judgment, however, even where relating to matters such as dishonesty, is still to an extent a secondary one (*PSA v. The GMC and Hilton* [2019] EWHC 1630). And, finally,

> (o) The concept of fitness to practise is ultimately a flexible one (*CHRE v. NMC and Grant* [2011] EWHC 927 and *Khan v. General Pharmaceutical Council* [2017] 1WLR 169)."

19 I was referred to two professional discipline cases where registrants were found to have made racist comments outside the context of their professional practice. In *Lambert-Simpson v Health and Care Professions Council* [2023] EWHC 481 (Admin), Fordham J rejected the submission that the committee had been wrong to regard a racist comment on a private (or apparently private) Facebook page as "racially motivated" in circumstances where the registrant claimed not to hold racist views: see at [23]-[24]. In *Diggins v Bar Standards Board* [2020] EWHC 467 (Admin), at [82], Warby J considered and rejected the submission that a racist tweet could be justified or excused because it had been tweeted "casually, without thought or inhibition". He concluded: "As everybody knows, some of the most damaging and hurtful statements are those made casually, without proper forethought or self-restraint".

20 In *Professional Standards Authority for Health and Social Care v General Optical Council & Rose* [2021] EWHC 2888 (Admin), Collins Rice J emphasised the importance of professional regulators giving adequate reasons for their decisions. At [82], she said this:

> "…the duties that expert tribunals have to the public – to ensure that the public can understand why certain decisions have been reached in its name; can be reassured that healthcare professionals on whom they must depend are well and fairly regulated; and can know that the overarching obligation professionals have to deserve the trust the public places in them, and to discharge their professional duties with the interests and safety of patients uppermost, has a secure foundation."

The Committee's reasons

21 The Committee began at para. 4 of their reasons by considering a dictionary definition of "antisemitic": "hostile to or prejudiced against Jewish people". They recorded at para. 43 that they had read the whole of the transcript of the video footage of what happened on 18 June 2017 to discern the "the objective context of the events that day". They gave this summary:

> "…the Al Quds march was a pro-Palestinian, anti-Zionist rally that lasted several hours processing through central London; that there was that day, in response to the rally, a pro-Israel/pro Zionist counter demonstration; that in addition to the comments made by the Registrant there were chants taken up by those in attendance with him on the march following the lead given by the Registrant; and there were a number of offensive comments in highly charged and emotive language directed at the Registrant and the marchers emanating from those in the counter-demonstration; and that a 'reasonable person' knowing this would not be surprised to hear the term 'Zionists' used that day by the Registrant. It would only be thought anti-Semitic by a 'reasonable person' if they believed additionally that when

> using this term what actually was connoted, ie would be understood, was 'Jews'."

22 The Committee went on to examine in detail the International Holocaust Remembrance Alliance ("IHRA") Working Definition of Antisemitism and its non-exhaustive list of illustrations of antisemitic conduct. They found only two of these illustrations relevant:

> "Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions."
>
> "Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews".

23 The Committee then went on to consider the four comments which formed the basis of the charges against Mr Ali.

24 As to comment (a), the Committee recorded at para. 47 the submission that saying of Zionists "it's in their genes" was an obvious reference to Jews. However, at para. 48, they noted that Mr Ali had made numerous other comments (such as "Judaism: yes! Zionism: no!" and "Judaism is okay. Zionism: no way!"), which made clear that Jews and Zionists were not the same. At para. 53, the Committee concluded that comment (a) would be understood as "a straightforward criticism of those blocking the march's way ahead", "drawing a parallel between that behaviour and the State of Israel occupying lands claimed by others". Therefore, in this instance, "Zionists" was not being used as a synonym for Jews. The Committee revisited this finding in the light of their other findings, but did not alter their view (see para. 54). Thus, comment (a) was not antisemitic.

25 As to comment (b), the Committee again put the remark in the context of everything else Mr Ali had said on 18 June 2017. On the balance of probabilities, the Committee concluded that the remark meant that Zionists and Jews were not the same. This comment was not, therefore, antisemitic (para. 61). Again, the Committee revisited this in the light of their other findings and remained of the same view (para. 62).

26 Comment (c) was considered to be antisemitic on the ground that a reasonable person would conclude that the use of the word "impostor" – describing categories including Zionists who were also Jews and Rabbis who were Jews and Zionists – displayed hostility towards Jewish people (para. 69). This remained the Committee's view when the findings were considered cumulatively (para. 70).

27 Comment (d) was considered in detail. The Committee said this:

> "76. At the time the comment was made, which was shortly after the tragic events at Grenfell, it was not at all clear if there was blame to be apportioned, and if so to whom. The connection submitted on the Registrant's behalf was that there are Zionists who support the 'Tory party' and that the 'Tory party' was 'to

> blame' for the policy of austerity and thus indirectly connected to the events at Grenfell. The Committee found this not to be persuasive because it considered that the connection was highly tenuous, if extant at all. The Committee therefore considered what else the comment would convey to the 'reasonable person'.
>
> 77. Whilst the Committee could see a connection between the use of the term Zionist and the 'occupation of Regent Street' in relation to Particular 1a) above, it could discern no reasonable or persuasive connection between the events at Grenfell and the anti-Zionist viewpoint."

28 The Committee reminded themselves of the two illustrations they regarded as relevant from the IHRA's Working Definition of Antisemitism and said this at para. 79:

> "The Committee considered that the 'reasonable person' would consider the use of the term 'Zionist' in this instance to be a synonym for 'Jew' because the events at Grenfell had no connection with Zionism, which is defined as, the development and protection of the State of Israel. Accordingly, it concluded the use of the word Zionism in this instance would be heard by the 'reasonable person' as an instance of the anti-semitic trope of there being a world Jewish conspiracy and of the trope that Jews controlled the UK government or other societal institutions. It concluded also that the 'reasonable person' would consider this an instance of the antisemitic trope of '…Jews being responsible for real or imagined wrongdoings committed by a single Jewish person or group, or even for acts committed by non-Jews'. Accordingly, the 'reasonable person' would find this to be anti-semitic."

29 Again, the Committee revisited this finding in the light of their other conclusions and adhered to it (para. 80).

30 The Committee then moved on to deal with misconduct and impairment. The GPhC had invited the Committee to find that Mr Ali's fitness to practise was impaired by his misconduct on the ground that such a finding was necessary to maintain public confidence in the profession and to uphold professional standards, and expressly not on the basis of public protection. The Committee said this:

> "94. The comments were not made whilst acting as a Pharmacist, but they were made in a public place. He had been 'broadcasting' his comments to the public at large, and was aware that he was being recorded and filmed whilst doing so. It was highly likely therefore that he would be identified as a Pharmacist, and in due course he was. His comments therefore brought the profession into disrepute and likely would have caused distress to many members of the public. At the original hearing the Committee had heard evidence from witnesses who described their distress and how the comments had undermined their confidence in the

> Registrant as a Pharmacist and that they would not wish to use his services.
>
> 95. The comments at 1d) regarding Grenfell Tower were particularly offensive then and now, alleging as they do, without foundation, that specific groups of people had 'murdered' the victims of the fire. And the Committee found further that the comments were anti-semitic.
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> 96. The Committee considered that Standard 9 of the Standard was engaged, in particular the following taken from the section on how to apply that Standard:
>
> > 'Every pharmacy professional can demonstrate leadership, whatever their role. Leadership includes taking responsibility for their actions and leading by example.'
>
> 97. The Committee judged that the Registrant's comments did not lead by example on that occasion and that he had breached the standards required of Pharmacy professionals; accordingly, the Committee determined that his conduct amounted to misconduct and that the nature of what was said amounted to serious misconduct."

31 As to impairment, the Committee noted that the misconduct took place in Mr Ali's private life rather than in the course of his practice as a pharmacist. They bore in mind the many positive testimonials submitted on Mr Ali's behalf. Nonetheless, should the comments be repeated, there was a risk to the public because such comments were likely to cause distress (para. 100). Additionally, Mr Ali's conduct in making comments which were offensive and in two cases antisemitic had caused damage to the public's confidence in the profession and had undermined professional standards (para. 101). He had also breached one of the fundamental principles of the profession, namely Standard 6 (para. 102).

32 The Committee then reminded themselves of para. 2.14 of the Guidance, which requires consideration whether the conduct which led to the complaint "is able to be addressed", "has been addressed" and/or "is likely to be repeated" and whether "a finding of impairment is needed to declare and uphold proper standards of behaviour and/or maintain public confidence in the profession".

33 The Committee's conclusions on impairment were as follows:

> "106. The Committee accepted the evidence given at the fact stage by the Registrant that he had no intention to make comments that were offensive and anti-semitic. Nor did the Council suggest that he had made the remarks with the intention of being either offensive or antisemitic. The Committee noted that when he gave evidence, before the Committee's findings of fact, he had apologised for being offensive and had accepted and understood that many people had considered that what he had

said could be interpreted as being anti-semitic and regretted that fact.

107. The Committee considered that, notwithstanding that the Registrant put forward a defence of the remarks in respect of them being anti-semitic, nevertheless he had demonstrated a considerable degree of insight into the nature of the remarks, how they had been received by many, and the nature of the offense and distress which they had caused.

108. In light of the above the Committee determined that the fact that he had made such remarks, none of which were scripted, during the course of a politically charged event that he was leading, which took place over the course of a number of hours, on a hot day during which he had been fasting, and facing abuse from counter-demonstrators was not indicative of an underlying attitudinal failing and therefore that the misconduct could readily be remediated.

109. The Committee noted that the Registrant had not repeated the comments, even when leading the march in subsequent years. The Committee considered that these proceedings, particularly given their protracted nature, would have had a considerably chastening effect. The Committee concluded that, consequently, there was no risk whatsoever of repetition of the conduct. The Committee considered therefore that the conduct had been remediated, despite the Registrant denying up to and in this hearing that his remarks were objectively anti-semitic. Given that the Committee had thereby decided that there was no risk of repetition, and therefore no risk of future public harm from a repeat of the behaviour, it concluded that there was no need for a finding of impairment on the grounds of public protection.

110. However, that all being said, the Committee considered that the Registrant's conduct in making the remarks would have caused harm to the reputation of the Pharmacy profession and will have undermined professional standards of professional behaviour. Notwithstanding that there was no risk of repetition, and notwithstanding the insight demonstrated by the Registrant into the impact of his comments, the Committee determined that the nature of the harm caused was such as to require a finding of impairment in the wider public interest to maintain public confidence in the profession and to uphold professional standards by making clear to other professionals what is expected and deterring other professionals from failing to meet standards.

111. The Committee therefore finds the Registrant's current fitness to practise to be impaired on public interest grounds."

34 In considering sanction, the Committee said that the purpose of a sanction was not to be punitive, though a sanction may have a punitive effect. Rather, its purpose was to meet the overarching objectives of regulation, namely the protection of the public, the maintenance of public confidence in the profession and to promote professional standards. The Committee were therefore entitled to give greater weight to the public interest than to the registrant's interests.

35 The GPhC's counsel submitted that sanction was a matter for the Committee but that the committee may consider a warning to be appropriate, given that the tenor of the remarks found to be antisemitic were inconsistent with the other remarks made by Mr Ali at the rally.

36 The Committee accepted in full (para. 122) the advice of the Legal Assessor, which had included this:

> "You may consider the conditions which are attached to a registration, in cases for example, performance, are wholly inappropriate here so that the next available sanctioning, if you did not consider a warning to be appropriate or proportionate, would be a suspension and you would have to consider whether that was appropriate if you did not consider that a warning was."

37 The Committee then set out the aggravating factors: Mr Ali had not only been participating in the Al Quds Day rally but leading it, which inevitably gave his remarks more salience; and the remark about the Grenfell Tower tragedy was made shortly after it had happened when feelings and emotions were at their rawest and this would have deepened the hurt, harm and offence they caused (para. 124). The mitigating factors were these (para. 125):

> "There had been no repeat of the misconduct, including when leading the Al Quds rally in subsequent years, and not at any time in the 6 years since the comments were made.
>
> The numerous uniform positive testimonials from a wide range of people attesting to the character of the Registrant.
>
> That the Registrant expressed genuine remorse and had apologised unreservedly.
>
> That the Registrant had demonstrated insight."

38 The Committee then considered each possible course of action. Taking no action would not be appropriate because there was a need to mark the serious misconduct and consequent impairment with a sanction and not to impose a sanction would undermine public confidence in the profession and the regulator and would serve to undermine professional standards (para. 126). The Committee noted what the Guidance said about the circumstances where a warning would be appropriate (para. 127) and concluded that a warning was appropriate to the circumstances of the case (para. 128).

39 Next, the Committee considered imposing conditions and said this (para. 129):

> "The Committee considered that Conditions were not applicable in a case such as this, being a sanction more suitable for matters where a clinical or performance deficiency had been identified as the reason for impairment. The Committee therefore considered the sanction of suspension."

40 At para. 130, the Committee said that they had given the sanction of suspension "very careful consideration". At para. 131, they noted what the Guidance said about the circumstances in which suspension would be appropriate and then continued as follows (para. 132):

> "However having considered a period of suspension as a sanction, in light of the mitigation which it had identified, which it considered to have outweighed the aggravating factors, and because the comments made by the Registrant was not premeditated nor made with any intent to either offend or be anti-semitic, the Committee considered that a Warning was the sufficient sanction in order to maintain public confidence and uphold professional standards. That being so the Committee concluded that a period of suspension would be a disproportionate sanction."

41 The Committee therefore considered that a warning was the appropriate and proportionate sanction (para. 133). The warning was in these terms (para. 134):

> "The Registrant, for all the reasons set out in the Committee's decision, is hereby given a Warning that his future behaviour and comments that he makes 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. He is reminded in particular that 'behaving professionally is not limited to the working day, or face to face interactions. The privilege of being a Pharmacist and the importance of maintaining confidence in the profession calls for appropriate behaviour at all time."

The scope of the appeal

42 The Authority now appeals to this Court again, this time against the Committee's decision on sanction only. Its grounds of appeal are that:

> "a. a warning was an insufficient sanction where:
>
> i. the Registrant had made anti-semitic comments in the circumstances set out above;
>
> ii. the Registrant denied that the comments were anti-semitic;

> b. the Committee wrongly dismissed the option of imposing conditions of practice on the Registrant;
>
> c. the Committee failed to give sufficient reasons for its decision, in particular it failed to grapple with:
>
> i. how and why public confidence in the profession was affected by the Registrant making anti-semitic statements in the circumstances set out above, and therefore
>
> ii. what sanction would be required to restore and/or ensure public confidence in the profession."

43 The Authority could in principle have challenged the regulator's charging decision: for a summary of the principles, see *Professional Standards Authority for Health and Social Care v General Medical Council and Onyekpe* [2023] EWHC 2391 (Admin), at [73]-[89] (Linden J). But there was and is no challenge to the way Mr Ali's conduct was charged and, specifically, to the decision not to charge his conduct as intentionally antisemitic.

44 There was also no challenge to the Committee's conclusion that comments (a) and (b) were not antisemitic.

Submissions for the Authority

45 Fenella Morris KC for the Authority advanced three grounds of appeal.

46 First, she argued that a warning was an insufficient sanction. Racism was a serious problem in healthcare, which had a deleterious effect on the provision of care and deterred those entitled to care from accessing it. Reference was made to the NHS Race and Health Observatory report *Ethnic Inequalities in Healthcare: A Rapid Evidence Review* (February 2022). There could be no clearer expression of antisemitic (i.e. racist) views than these, made at a public rally, through a loudhailer, while being filmed and leading attendees in chants. The comments attributing blame for the deaths of the residents of Grenfell Tower to "Zionists" were deeply offensive and promoted damaging stereotypes. A reasonable observer would infer that the registrant held views about Jewish people that were capable of affecting the care he might provide to Jewish patients. A sanction more serious than a warning was indicated.

47 The Committee should have considered the Guidance and concluded that this was a case where public confidence in the profession demanded no lesser sanction than suspension. Given that Mr Ali had maintained throughout the hearing that his comments were not antisemitic, the Committee gave undue weight to its finding that Mr Ali had shown insight and expressed remorse. It also gave too much weight to its finding that the comments were not premeditated or made with intent to harm or be antisemitic. Even statements made without any racist intent may impact on public trust and confidence, as Fordham J's judgment in *Lambert-Simpson* shows. In this case, the terms of the warning were particularly anodyne and did not adequately reflect the gravity of the conduct found proved.

48 Second, Ms Morris argued that the Committee wrongly dismissed the option of imposing conditions of practice. These are suitable not only in cases of clinical or performance failings but also in other cases. Conditions requiring attendance at a suitable course may, for example, be imposed where a registrant has engaged in sexually inappropriate behaviour. By analogy here, where the registrant did not recognise his own behaviour as antisemitic, a condition requiring some form of training could have been imposed.

49 Third, the Committee erred by giving inadequate reasons. Here, the committee failed to address anywhere in their decision the central reason why the making of antisemitic comments meant that Mr Ali's fitness to practise was impaired – i.e. the damaging effect of racism on the provision of healthcare. A reader of the decision would not understand why a warning was a proportionate response.

Submissions for the General Pharmaceutical Council

50 Andrew Colman for the GPhC submitted in response to ground 1 that it was important to consider Mr Ali's comments in the context in which they were made: a lengthy expression of impassioned, anti-Zionist, pro-Palestinian political speech, during which he repeatedly sought to distinguish between Judaism and Zionism. Mr Ali had not been charged with making intentionally antisemitic remarks. This was a deliberate and carefully considered decision on the part of the GPhC, which was a public authority with a duty to have regard to Article 10 of the European Convention on Human Rights ("ECHR"), as incorporated into domestic law by the Human Rights Act 1998 ("HRA"). This was of particular importance when considering the importance of the right to freedom of political speech.

51 Thus, the GPhC expressly put its case on the basis that "the passion of [Mr Ali's] political speech propelled him beyond the boundaries of professional propriety" but "to suggest intentional antisemitism would have been inconsistent with the tenor of the rest of his remarks on that day". The Committee endorsed this approach by finding that the remarks were not "premeditated" or made with "intent" and were "not indicative of an underlying attitudinal failing". This was consistent with the other evidence the Committee heard about Mr Ali.

52 To sanction Mr Ali on the basis that he held damaging antisemitic beliefs, when this was contrary to the Committee's findings, would itself undermine public confidence in the profession and its regulation. It would give the false impression that antisemitism is a more widespread problem than it is; and it could be taken as evidence of unfair bias on the part of a regulator towards one side of the political divide on a highly contentious issue.

53 The Committee was entitled to glean support for their finding that Mr Ali had insight and had expressed genuine remorse from the fact that there had been no repetition of any antisemitic conduct in the several years since the index events. Nevertheless, the Committee took into account the seriousness of the comments and their potential impact on the public. They also had regard to the fact that Mr Ali had maintained that the comments were not antisemitic, alongside their own findings that he nonetheless had demonstrated a considerable degree of insight into the nature of the remarks and the distress which they had caused.

54 Mr Colman criticised the Authority's submission that "there can have been no clearer public expression of anti-semitic views" than what Mr Ali said here. Given the "extraordinary litany of vicious and inventive falsehoods that have been levelled against 'the Jews' over millennia", the Authority's submission was "either hyperbolic or historically ignorant".

55 As to ground 2, it was open to the Committee to say that conditions were "more suitable" for cases where the failing identified was in clinical practice or performance. This was in line with what is said in the Guidance about the circumstances in which conditions may be appropriate. In any event, the Committee had found as a fact that there was "no risk whatsoever" of a repetition of the conduct, notwithstanding Mr Ali's stance at the hearing that the comments were not antisemitic. There was accordingly no proper basis for the imposition of conditions.

56 As to ground 3, the Committee explained adequately, and indeed fully, why they considered a warning to be the appropriate sanction.

Discussion

Antisemitism and anti-Zionism

57 Antisemitism is hatred or hostility towards Jews as a racial and/or religious group. That hatred or hostility can be manifested in different ways. As the IHRA Working Definition points out, contemporary examples include "mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective – such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions". There are many conspiracy theories circulating, based on these kinds of stereotypical allegations. These conspiracy theories are expressions and instruments of racism, not just crackpot musings. It is important to recognise them as such.

58 Zionism is a label given to a group of political beliefs about the legitimacy of the foundation and subsequent policy and conduct of the state of Israel. Since its foundation in 1948 as the only Jewish nation state, Israel has been consistently criticised. Some of that criticism has focussed on the fact that its foundation involved the displacement of peoples of mainly Arab ethnic origin (although large numbers of Jews were also displaced from majority Arab countries at about the same time). Other criticism focuses on the subsequent conduct of Israel, particularly towards the Palestinian inhabitants of the West Bank and Gaza Strip. It has included the claims that Israel's policy and conduct is contrary to international law (including international humanitarian law and international human rights law), motivated by racism, or otherwise morally objectionable. These claims have come from various sources (including Jews and indeed Israelis) and are vigorously disputed.

59 The line between antisemitism and legitimate opposition to political Zionism can in some cases be difficult to draw with confidence and accuracy.

60 In the first place, the word "Zionist" (or in some contemporary discourse the contraction "Zio") is sometimes used by people who regard themselves as progressive, and would be ashamed to use the word "Jew", to mean exactly that. Deciding whether language is being used in this way requires a careful and contextual analysis of what is being said.

Sometimes it will be obvious that a statement using the word "Zionist" conveys an objectively racist meaning, sometimes less so.

61 Second, even when "Zionist" is not used euphemistically as a synonym for "Jew", some criticisms advanced against Zionists as supporters of the state of Israel may reflect underlying antisemitic attitudes. The IHRA's non-exhaustive list of examples of antisemitism includes "[a]pplying double standards by requiring of [Israel] a behaviour not expected or demanded of any other democratic nation". Whether a particular criticism of Israel or its supporters involves this kind of double standard, and if so whether it reflects underlying antisemitism, may be highly controversial.

62 Third, accusations of antisemitism can be used to malign and discredit those engaging in legitimate criticism of the policy and conduct of the state of Israel and thereby to suppress such criticism. Foreign policy decisions by the United Kingdom and other governments may affect that policy. In a liberal democracy such as ours, there is a strong public interest in allowing such decisions to be informed by criticisms of Israel and the responses to those criticisms. To that end, legal frameworks, whether in the criminal or in the regulatory sphere, must be interpreted and applied so as to avoid the "chilling" of legitimate political speech, which attracts the highest level of protection under Article 10 ECHR, as given effect in this jurisdiction by the HRA: in relation to criminal legal frameworks, see the comments of the Divisional Court in *R (Campaign Against Antisemitism) v Director of Public Prosecutions*, at [4]-[11].

The scope of this appeal

63 Against this contested conceptual backdrop, the GPhC had to decide how to frame the charges against Mr Ali and how to put its case, consistently with its obligations as a public authority under s. 6 of the HRA. They decided to charge comments (a)-(d) as antisemitic and offensive, but not intentionally so. As noted at para. 43 above, the Authority could have challenged the way the GPhC framed the charges and put its case, but chose not to do so, either in response to the Committee's first decision of 5 November 2020 or in response to its second decision of 31 August 2023.

64 The way the GPhC put its case against Mr Ali had consequences for the findings the Committee could properly make. It would not have been fair for the Committee to attribute to Mr Ali a state of mind which had formed no part of the case against him. In any event, the Committee's findings about Mr Ali's state of mind were reached having had the benefit of hearing and observing him give evidence. Perhaps for these reasons, the Authority did not challenge the Committee's findings about Mr Ali's intention.

65 It was against the same contested background that the Committee had to decide whether any or all of comments (a)-(d) were antisemitic. I have set out above the analysis the Committee undertook to reach the conclusion that comments (a) and (b) were offensive but not antisemitic and comments (c) and (d) were both antisemitic and offensive. In each case, the Committee's conclusion was based on a close reading of the words used, in context. Comment (d), which the Committee regarded as the most egregious, was in its view an example of the word "Zionist" being used as a euphemism for "Jew" and an instance of two antisemitic tropes.

66 Again, the Authority could have challenged the conclusion that comments (a) and (b) were not antisemitic, but, in its challenge to the 31 August 2023 decision, chose not to do so.

67 In those circumstances, the issues before me do not include the correctness of the Committee's decision that comments (a) and (b) were not antisemitic. For the purposes of this appeal, I must assume that the line falls where the Committee drew it. It is important to emphasise that this is an assumption made for the purposes of this appeal. Nothing in this judgment should be taken as either an endorsement or a criticism of the Committee's approach to this question.

68 The question for this Court is therefore a limited one: given the Committee's findings that Mr Ali had made four offensive comments, of which two were antisemitic, and that he had not intended to say anything that was either offensive or antisemitic, did the Committee err in any of the ways alleged by the Authority?

Ground 1

69 The thrust of the Authority's case under the first ground was that the Committee placed too much weight on the fact that Mr Ali's remarks were not premeditated and he did not intend to express a view that was antisemitic or offensive. There are two elements to this complaint.

70 In the first place, the Committee's findings that Mr Ali's comments were unscripted and not premeditated were, in my judgment, clearly relevant to the question of sanction. The same is true of their findings that these comments were made while leading a politically charged event, which took place over the course of a number of hours, on a hot day during which he had been fasting – and in the face of abuse from counter-demonstrators. None of these matters provided any justification for what Mr Ali had said, but they were all part of the relevant context in which the seriousness of his conduct had to be judged. The point can be tested by asking whether it would have been relevant to sanction if, contrary to the Committee's actual findings, the comments had been carefully scripted with a view to inflicting the maximum possible injury. The only possible answer is "Yes". That answer demonstrates the relevance of the Committee's findings that, in this case, the comments fell at the other end of the scale of premeditation.

71 The second element to this ground of challenge concerns the Committee's finding that Mr Ali did not intend his comments to be either antisemitic or offensive. Insofar as this was intended as a separate factor attenuating the seriousness of the comment, there is force in Ms Morris' submission that it was given more prominence than was warranted.

72 Where a regulated individual makes a comment which, objectively construed, is obviously racist, it will rarely count much in his favour that he did not intend it to be racist. The lack of understanding that or why it was racist may, indeed, give rise to a separate concern. Antisemitism may sometimes be more difficult to spot than other forms of racism, in part because of the circumlocutions used to disguise it. But in my judgment, comment (d) fell into the obviously racist category. The word "Zionist" was a euphemism for "Jew": otherwise, it made no sense. The comment was an instance of two well-worn, racist conspiracy theories: that Jews control the government and that

they use that control to commit acts of murder. It is a matter of concern that, even by the time of the second hearing, in August 2023, Mr Ali did not recognise that.

73 It is, however, a separate question whether the undue prominence which the Committee gave to this aspect of their findings vitiated its decision on sanction. In my judgment, it did not. As noted above, the Committee were right to regard as relevant the fact that the comments were not premediated and the circumstances in which they were made. Moreover, the Committee did recognise and give full weight to the distress which comment (d), in particular, was bound to cause and did cause, made as it was so soon after the Grenfell Tower tragedy. Despite Mr Ali's failure to accept that comments (c) and (d) were antisemitic, the Committee were entitled to conclude that he had expressed genuine remorse for the distress they caused; and that a combination of that remorse, the chastening effect of the various proceedings to which they had led and the absence of any repetition in the six years since 2017 meant that there was no risk whatsoever that these or similar comments would be repeated in future.

74 This latter point would not have been available to the Committee if they had been considering sanction in 2017 or soon after, but the question for them in 2023 was what sanction was appropriate at that stage, when Mr Ali had been working as a pharmacist and leading the Al Quds Day rally without incident for several years.

75 Ms Morris placed great emphasis on the importance of maintaining public confidence in the profession and its proper regulation. I accept that that this was a key factor for the Committee to consider, but the Committee were aware of it. They made express reference to it in para. 110 and gave it full weight.

76 Given their factual findings, I cannot conclude that the Committee were wrong to decide that a warning was appropriate; and that a greater sanction (including suspension) was not. If I had been the decision-maker, I would have taken the same view, though I would not have attributed as much significance to the fact that Mr Ali did not intend his comments to be antisemitic or offensive.

77 Ms Morris's complaint about the terms of the warning does, however, have some force. Reference should have been made to the fact that Mr Ali had been found to have made comments that were not only grossly offensive but also antisemitic and must take care not to do so again. But there would be little point in substituting a differently worded warning when the gravity of the registrant's conduct has been identified in a public judgment of the High Court.

78 It is right to note that Mr Ali's comments have now been considered many times in the nearly seven years since 2017: he was initially prosecuted for them; there were proceedings before the Divisional Court challenging the discontinuance of that prosecution; and there were disciplinary proceedings, which have now resulted in two separate hearings before the High Court. No objective observer could doubt that the underlying misconduct was serious – and has been regarded as such by both the regulator and the courts.

Ground 2

79 Ground 2 complains about the Committee's rejection of the possibility of imposing conditions. In my view, there is nothing in this complaint. The Committee were entitled

to take the view that conditions were "more suitable" for cases where the failing identified was in clinical practice or performance. The passage from the Guidance cited in para. 13 above is consistent with this view.

80 The Committee did not say that conditions could never be appropriate in any other case. They found as a fact that there was "no risk whatsoever" of a repetition of the conduct found proven, notwithstanding Mr Ali's stance at the hearing that the comments were not antisemitic, which they had well in mind. This was a finding open to them on the evidence. In those circumstances, it is difficult to see how the imposition of conditions would perform any useful function. It would not have been appropriate to impose a requirement to attend a course of the kind sometimes imposed in sexual misconduct cases, given the Committee's finding that there was no risk of repetition.

Ground 3

81 The complaint about inadequate reasons is not, in my judgment, made out. I have set out the Committee's reasoning in some detail. They approached their task in a methodical and logical way. They made findings of fact for which they gave comprehensible reasons. They explained the inferences they drew from these findings. Although they attributed greater significance than they should have done to one of their findings, their conclusions were adequately, and indeed amply, reasoned.

Conclusion

82 For these reasons, the appeal is dismissed.