

# Professional discipline—the importance of the factual matrix in conviction cases (*Achina v General Pharmaceutical Council*)

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**Corporate Crime analysis: The decision in *Achina v General Pharmaceutical Council* reaffirms that those with convictions cannot seek to go behind the facts before their professional regulator. The appellant in this case was sentenced to two years and six months for theft of medications while employed as a pharmacist. Addressing the Committee of the General Pharmaceutical Council (GPhC), he made many attempts to go behind his conviction, flying in the face of the evidence he had accepted in the Crown Court. His lack of insight into the offending was key to the Committee, who ordered his removal from the register. The appeal against that removal was dismissed by the High Court. Written by Aleksandra Manning-Rees, barrister at 5 St Andrew's Hill.**

*Achina v General Pharmaceutical Council* [\[2021\] EWHC 415 \(Admin\)](#), [\[2021\] All ER \(D\) 15 \(Mar\)](#)

## What are the practical implications of this case?

In this decision, Mr Justice Lane once again restated the importance of the policy considerations made by professional regulators (as stated in the case of *Wray v General Osteopathic Council* [\[2020\] EWHC 3409 \(QB\)](#)) in making special provisions for conviction cases, and that it is both 'unnecessary and undesirable to retry a criminal case'. Lane J explained the importance of rule 24(4) of The General Pharmaceutical Council (Fitness to Practise and Disqualification etc Rules) Order of Council 2010, [SI 2010/1615](#)) and in particular the specific wording of that provision:

'(4) Where a person concerned has been convicted of a criminal offence in the British Islands...a copy of the certificate of conviction certified by a competent officer of the court...is admissible as conclusive proof of that conviction and the findings of fact on which it was based.'

The final nine words of para (4) were emphasised by Lane J in his judgment, stating at para [84]:

'In framing those words, the legislature is, I find, treating as conclusive, not only the "bare" facts to be found in the Certificate of Conviction, but also the broader factual matrix on which the convicted person has been sentenced. One finds the factual matrix in the sentencing remarks of the judge.'

## What was the background?

On 16 November 2018, a pharmacist, the appellant, was sentenced to two years and six months' immediate custody for the offences of theft from a shop and absconding. The appellant had been the responsible pharmacist and manager at a branch of Boots. Between October 2016 and June 2017, he stole prescription medication from the store to the value of £3,333.

In his interview with Boots, he outlined that he had been ordering stock and sending it to family in Ghana and that there was no medication held at his home. He was arrested, and his home searched. Various medications, including diamorphine, were found, and, following interrogation of the appellant's electronic devices, it was discovered that he had been offering medication for sale.

## Criminal proceedings

The appellant did not plead guilty immediately, and later entered a basis of plea which was not accepted by the Crown Prosecution Service. The matter was set down for a Newton hearing. On that date, the appellant accepted the full facts of the prosecution case, importantly for the hearings before his regulator and the High Court, withdrawing his basis of plea. Between the date of the initial hearing in July and October 2018, the appellant also travelled to Ghana against the conditions of his bail.

The sentencing judge was satisfied that the appellant was selling the drugs and that the drugs were stolen to order. He outlined that the appellant had engaged in a significant degree of planning and a

high breach of trust. Furthermore, the judge felt that the return to Ghana was deceitful and ‘in complete and utter defiance’ of the court.

### Regulatory proceedings

In November 2019 and February 2020, the appellant appeared before his regulator, the GPhC, in respect of these proceedings. Notwithstanding his admissions of the fact of the conviction, he sought to go behind his conviction by seeking to blame his employer because he had been a whistleblower within the company, despite acknowledging that this had nothing to do with his offending. He disagreed with the sentencing judge’s summary, outlining that he had given some of the drugs to his uncle but he ‘did not actually sell drugs to anybody’, contrary to the facts of the conviction.

The Committee found that the appellant had used his position as a pharmacist to undertake this theft for personal gain with no consideration as to the harm this may cause others. They stated it was a gross breach of trust for which he had displayed no insight and they could not be assured that he would not repeat this behaviour in the future. The Committee decided to remove the appellant from the register.

### What did the court decide?

The appellant brought an appeal under The Pharmacy Order 2010, [SI 2010/231, art 58](#). His appeal was summarised by Lane J at para [55].

In determining his assessment of the case, Lane J outlined that an appeal will only be allowed where the decision of the committee can be demonstrated as either wrong or unjust because of a serious procedural or other irregularity, as outlined in [CPR 52.21\(3\)](#).

Dismissing the appellant’s appeal in full, most of the discussion centred on the appellant’s efforts to seek to go behind the facts of his convictions.

At para [87], Lane J makes the important finding in this case that, the appellant having pleaded guilty on the full facts, if the Committee had permitted him to go behind the finding, this:

‘...would have endangered public confidence in the regulatory regime under which the Committee was operating, and the proper relationship between that regime and the criminal jurisdiction. The Committee was, therefore, not wrong to adapt the approach it did. On the contrary, it would have been wrong had it done otherwise.’

It is plain then that regulators, combining this case with those that have come before, have a firm footing for ensuring the evidence placed before them is relevant and does not seek to undermine the facts of a conviction.

### Case details

- Court: Administrative Court (Queen’s Bench Division), High Court of Justice
- Judge: Lane J
- Date of judgment: 1 March 2021

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