BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL

GENERAL OPTICAL COUNCIL

F(21)15

AND

SULEMAN PATEL (D-12116)

DETERMINATION OF A SUBSTANTIVE HEARING
16-24 FEBRUARY 2022
17-25 AUGUST 2023
20 DECEMBER 2023
4-5 JANUARY 2024

Committee Members:	Mr James Kellock (Chair/Lay) Ms Amanda Webster (Lay) Ms Diane Roskilly (Lay) Mr Philip Cross (Dispensing Optician) Mr Ian Taylor (Dispensing Optician)
Legal adviser:	Mr David Mason (16-24 Feb 2022) Ms Emma Boothroyd (17 Aug 2023) Mr Ashraf Khan (18-25 Aug 2023 & 4-5 Jan 2024)
GOC Presenting Officer:	Ms Reka Hollos Ms Rebecca Hadgett (Aug 23)
Registrant present/represented:	Yes and represented
Registrant representative:	Mr Dele Ogun
Hearings Officer:	Mr Terence Yates
Facts found proved:	Particular 1 Particular 2 Particular 3a Particular 3c Particular 5 (in part) Particular 6 (in part)
Facts not found proved:	Particular 3b Particular 4a Particular 4b

	Particular 4c Particular 5 (in part) Particular 6 (in part)
Misconduct:	Found
Impairment:	Found
Sanction:	9 Months suspension (with review)
Immediate order:	None

ALLEGATION

The Council alleges that you, Suleman Patel, a registered dispensing Optician:

1. Between 2010 to 2016 knowingly:
    a. Allowed [Company A] to supply [Company B] with goods in quantities above what was reasonably required by [Company B]; and/or at falsely and/or inflated prices amounting to approximately £32,000;
    b. Misrepresented personal expenditure as legitimate business expenditure of [Company B] and/or misappropriated property belonging to [Company B] for your own personal use in relation to items ordered from [Company A], namely:
        i. Givenchy purse/bag; and/or
        ii. Red Letter Day Vouchers amounting to nearly £9,000; and/or
        iii. Sky Club vouchers amounting to nearly £4,000.
    c. Authorised false and/or inflated invoices from [Company A] to be paid by [Company B] in order to personally receive Sky Club and/or Red Letter Day vouchers and/or other products from [Company A].
2. In relation to the matters set out above at 1(a), (b) and/or (c) your actions were dishonest in that you acted to make a personal gain to which you were not entitled.

By virtue of the facts set out above, your fitness to practise is impaired by reason of misconduct.

Background

1. The Registrant is a Dispensing Optician and is registered with the General Optical Council. At the material time for the purposes of this case, he was engaged in the operation and management of the Specsavers Store in [redacted].

2. Specsavers is a brand operating Stores nationally and internationally in the supply of optical and other services to the public. Most of the Stores operating under that brand are in the form of a joint venture between Specsavers and individuals, who are either practitioners and GOC registrants or others interested in operating and managing Specsavers Stores. They are described as Joint Venture Partners (JVP).

3. The standard corporate structure for each Store is a company the shares of which are divided into A and B shares. The A shares are held by those operating the Stores, who are responsible for their day-to-day management. The B shares are held by Specsavers Operating Group (SOG), or its nominees. The B shareholders are responsible for the banking of the Stores and for their branding. The relationship between the A and B shareholders is governed by a Standard Shareholders Agreement (SSA) which is supplemented by various subsidiary documents, including a Store Manual.

4. A shareholders are rewarded by receipt of the distributable profits of the company. B shareholders, and therefore SOG, are rewarded by a levy on the turnover of the Store and the profits on goods and services it provides to the Store.

5. Registrants who are A shareholders may also be employees of SOG or a joint venture company under service agreements, from this they are entitled to a salary.

6. All financial receipts are paid to SOG and Stores do not have individual bank accounts. SOG is also responsible for the payment of the expenses of running the Stores. The latter is achieved by Stores submitting invoices from suppliers and others to a central department operated by SOG.

7. Operational and management decisions which are not under the Shareholders Agreement day-to-day activities, are made and implemented by Store board resolutions, on which A and B shareholders vote, but over which the B shareholders have a casting vote.

8. On 28 February 2011, the Registrant became a JVP in [Company B]. As a result, he held the A shares jointly with another JVP, who was replaced in 2013 by Mr A, a GOC registrant.

9. Mr A departed from [Company B] on 2 April 2015. This followed an investigation by SOG's Financial Risk Support team (FRS), over issues raised in a 'whistleblowing' disclosure sent anonymously by the Registrant over Mr A's clinical and other activities within the Store.

10. One of the issues investigated by FRS was the examination and treatment of patients. As a result, the [Company B] board resolved to recall a large number of patients for clinical assessment. The cost of this was to be considerable. In addition, the cost of the investigation by FRS fell to be paid by [Company B]. As a result of concerns raised over these expenses by the Registrant, SOG entered into an agreement in June 2015 with him to waive its entitlement to certain profits on the A shares it had acquired from Mr A. It left the Registrant solely responsible for day-to-day management of [Company B], which then included the provision of a recall clinic as well as the normal Store services provided by [Company B].

11. A Store manager, Mr B was nominally responsible for managing the Store under the Registrant's direction. The Registrant had sole responsibility for ordering stock and supplies for the Store. One of the suppliers was [Company A], which traded as [redacted]. Goods supplied by [Company A] were not limited to ink and toners. The salesperson at [Company A] with whom the Registrant had contact was Mr C.

12. Responsibility for the processing of invoices was delegated by the Registrant to Mr D, a Dispensing Optician. Invoices were received in paper form and by email to the Registrant's Director's email account. Mr D's task was to check invoices against delivery notes and to send invoices to SOG for payment. SOG was responsible for processing payments.

13. As a result of an anonymous whistleblowing disclosure received by SOG about [Company B], a Preliminary Remote Analysis report was prepared by a member of the FRS in February 2017 into financial issues. This was followed by a resolution of the [Company B] store board, which included the Registrant, which authorised a full enquiry by the FRS. The lead investigator was Mr E, who had been employed by SOG as an investigator over several years. The main issues for investigation were the reported supply of goods by [Company A] to [Company B] at inflated prices and in abnormal quantities and the supply of goods for the Registrant's use and charged to [Company B].

14. On 7 March 2017, Mr E had a telephone conversation with Mr C. On 8 March 2017, he met with the Registrant for a preliminary discussion, which was noted. On the same day he had two "without prejudice" discussions with the Registrant, one of which was covertly recorded by the Registrant. Following from this, there were formal interviews with the Registrant by Mr E, which were overtly recorded, on 15 March 2017 and 29 March 2017.

15. Mr E took photographs and an inventory of stock held at [Company B] as part of his investigation on 8 March 2017. He had a meeting with [Company A] on 17 March 2017.

16. Mr E reported on his investigation formally on 17 May 2017. As a result, a Store board resolution was passed on 5 July 2017 suspending the Registrant, which was followed by a disciplinary hearing and the dismissal of the Registrant on 2 November 2017. The Registrant had raised a grievance over the way he had been investigated and treated by SOG. This was investigated and rejected by SOG. The Registrant brought an unfair dismissal claim against SOG which was subsequently rejected by an Employment Tribunal on 2 July 2018.

17. On 16 February 2018, SOG served a purchase notice under the Shareholders Agreement for the purchase of the Registrant's shares at a price which was unfavourable to the Registrant but favourable to SOG (par value).

18. As a result of SOG reporting the Registrant to the GOC, proceedings were instigated against him which has resulted in this hearing.

Preliminary issues

Application to amend

19. Ms Reka Hollos of counsel, who represents the GOC in this hearing, applied under the General Optical Council (Fitness to Practise) Rules Order of Council 2013 to amend the particulars of the Allegation. She said that this was intended to reduce the period of time to which the Allegation related, and to clarify the issues before the Committee. This application was not opposed by Mr Dele Ogun, solicitor, who represents the Registrant. The Committee accepted the advice of its Legal Adviser and decided that the amendment could be made without injustice. The application was therefore upheld.

The Allegation (as amended)

The Council alleges that you, Suleman Patel, a registered dispensing Optician:

1. *Between 2014 and 2017 knowingly allowed* [Company A] *to supply* [Company B] *with goods in quantities above what was reasonably required by* [Company B]*; and/or*

2. *Between 2014 and 2017 knowingly allowed* [Company A] *to supply* [Company B] *with goods at falsely and/or grossly inflated prices amounting to approximately £32,000; and/or*

3. *Between 2014 and 2017 knowingly misrepresented personal expenditure as legitimate business expenditure of* [Company B] *in relation to items ordered from* [Company B]*, namely:*
   a. Givenchy purse/bag; and/or
   b. Red Letter Day Vouchers amounting to nearly £9,000; and/or
   c. Sky Club vouchers amounting to nearly £4,000.

4. *Between 2014 and 2017 knowingly misappropriated property belonging to* [Company B] *for your own personal use, in relation to items ordered from* [Company A]*, namely:*
   a. A 'Givenchy' purse/bag; and/or
   b. Red Letter Day Vouchers; and/or
   c. Sky Club vouchers.

5. *Between 2014 and 2017 authorised false and/or grossly inflated invoices from* [Company A]*to be paid by* [Company B] *in order to personally receive Sky Club and/or Red Letter Day vouchers and/or other products from [Company A].*

6. *In relation to the matters set out above at 1,2,3a,3b,3c,4a,4b,4c, and/or 5, you were dishonest in that you knew when you ordered the items from* [Company A] *that they were for the personal use and/or personal gain of you and/or others and not for company use.*

And by virtue of the facts set out above, your fitness to practise is impaired by reason of misconduct.

Submission under The General Optical Council (Fitness to Practise) Rules Order of Council 2013 Rule 46(8)

20. Mr Ogun has made a submission under The General Optical Council (Fitness to Practise) Rules Order of Council 2013 Rule 46(8) (a) and (b).

    Rule 46(8) states:

    Before opening the registrant's case, the registrant may make submissions as to—

    (a) whether sufficient evidence has been adduced upon which the disputed facts could be found proved;

    (b) whether the facts, whether they are disputed or proved, could support a finding of impairment.

21. The Committee heard submissions from Mr Ogun on behalf of the Registrant and from Ms Hollos in reply on behalf of the GOC.

Legal Advice

22. The Committee **accepted** the advice of the Legal Adviser. It was referred to the case of Galbraith [1981] 2 All ER 1060 per Lord Lane CJ.

    Lord Lane stated:

    "How then should the judge approach a submission of 'no case'?

    (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

    (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.

        (a) Where the judge comes to the conclusion that the Crown's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.

        (b) Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

23. The Committee accepted the Legal Adviser's advice that it should consider whether at the close of its case, when its case is at its highest, that the GOC has advanced evidence upon which it could find the GOC's case proved and/or whether the facts if proved could amount to impaired fitness to practise.

    Submissions

24. Mr Ogun submitted that the GOC had not presented evidence upon which the Committee could find the case against the Registrant proved, and that on the facts

alleged the Committee could not find misconduct and therefore impaired fitness to practise.

25. Mr Ogun referred to his extensive cross examination of Mr E and Mr D over their credibility and integrity. He also referred to various documents in support of his submission.

26. It was submitted in relation to Mr E that he is now head of SOG's Financial Risk Support team, which is the most recent iteration of SOG teams which had been involved over several years in investigating financial and other irregularities for SOG. He submitted that Mr E had throughout his investigation been pursuing an agenda by which SOG had dismissed the Registrant and obtained his shares in [Company B] at a grossly reduced value. It was submitted that the 'without prejudice' conversation he had held with the Registrant before the formal investigation began demonstrated this. Mr Ogun referred at length to three High Court cases involving SOG and other JVPs which he said showed a pattern of deceit by SOG, which had resulted in it acquiring shares at a price advantageous to itself and in which investigations had been conducted improperly. He submitted that Mr E featured as part of the investigation in each of these cases.

27. Mr Ogun referred the Committee to documents which showed that a business in which Mr E was financially involved was found by SOG to have been supplying it with cameras for covert observations without disclosing this to SOG. He referred the Committee to a report into this prepared by KPMG as independent investigators which he said did not absolve Mr E, as he claimed it had.

28. Mr Ogun submitted that Mr E had in discussions with [Company A] colluded in it changing its explanation for the oversupply and overpricing of items to [Company B] from there being an error in invoicing, to there being a conspiracy between the Registrant and Mr C, the effect of which was that items would be supplied to Specsavers at inflated prices and in excess of requirements in exchange for vouchers and luxury items which had been supplied to the Registrant. In support of this he said that [Company A] still supplied [Company B] with goods and disputed that SOG had reported [Company A] to the police via the Action Fraud website.

29. Mr Ogun submitted that the responsibility for the proper authorisation of payments of invoices lay upon SOG under the SSA and not upon the Registrant. He also submitted that the Registrant had delegated the responsibility for checking and authorising invoices to Mr D, as he was entitled to do.

30. Mr Ogun submitted that Mr D was a flawed individual who had failed to inform the Registrant that [Company B] was overstocked with goods, in particular printer cartridges and that prices charged by [Company A] were grossly inflated. He drew the Committee's attention to documents showing that Mr E had been the subject of complaints over his conduct with staff and to his inappropriate comments about his line manager, Mr B. He submitted that like Mr E his evidence was unreliable and should not be relied upon by the Committee.

31. Mr Ogun submitted that as the sole A shareholder it was unlikely that the Registrant would want to financially damage [Company B]. He told the Committee that it was also unlikely that he would exchange £50,000 in over priced items for £14,000, the value of the vouchers he received.

32. Mr Ogun submitted that there was no case for the Registrant to answer and that even if the facts were found proved they could not amount to misconduct and therefore could not result in a finding that the Registrant's fitness to practise was impaired.

33. Ms Hollos made submissions on behalf of the GOC. She referred the Committee to the case of Galbraith and submitted that there was evidence upon which it was possible for the Committee to find the Allegation proved.

34. She said that the heart of the Allegation was the state of mind of the Registrant. There was no challenge to the existence of the invoices which, as analysed by the FRS showed there had been oversupply of goods at inflated prices. She said they also showed the supply of vouchers and a Givenchy bag which could only have been for private, not company, use.

35. Ms Hollos said that the Registrant knew of the contents of invoices because they were sent to his director's email address to which only he had access, as well as to the Store. The vouchers, she submitted, had also been sent to the Registrant's email address. She said it was flying in the face of reality not to assume that the Registrant looked at the volume and prices of items.

36. Ms Hollos pointed to the Registrant chasing up the payment of invoices at the request of [Company A] as showing that he was aware of the amounts involved and further said that this was evidence of the Registrant, in effect, authorising payments.

37. Ms Hollos submitted that the Registrant must have known about the volume of stock held at the Store. He placed all of the orders and knew the amount and frequency of orders. Ms Hollos said that Mr D's evidence, and the photographs taken by Mr E, illustrated that the excessive stock was clearly to be seen in the Store. She submitted that as the staff of the Store had access to the areas where goods were kept, so would the Registrant as Director.

38. Ms Hollos submitted that there was evidence that the Registrant went on ordering stock after the oversupply had been brought to his attention by Mr B.

39. It was submitted by Ms Hollos that the Registrant had obtained items from [Company A] in the form of a luxury bag and vouchers which were used for his purposes and not the Store's and which were evidence of collusion between the Registrant and [Company A]. There was she said, no proof of payment by the Registrant for these.

The Committee's approach and reasoning

40. The Committee was throughout its deliberations careful to apply itself to its task of deciding whether the evidence placed before it by the GOC was capable of supporting the Allegation and whether the facts could, in any event, amount to impaired fitness to practise. It was careful to avoid speculation over evidence that the Registrant might place before it and concentrated on the evidence presented by the GOC.

41. It was apparent to the Committee that the main thrust of the case put by Mr Ogun in cross examination and submissions was that Mr E and Mr D were so unreliable as witnesses, that their evidence could not be relied upon.

42. The Committee considered carefully the role of Mr E in the investigation of the issues which led to the Registrant's dismissal, the purchase of his shares and SOG's complaint to the GOC.

43. The Committee looked carefully at the material placed before it by the Registrant relating to earlier litigation in which Mr E had figured as part of the investigation. It did not find the transcripts of the evidence in those cases helpful and it noted they concerned events many years prior to 2014. It noted that the transcripts were primarily concerned with questions put by counsel for JVPs and submissions on their behalf. They did not contain findings on the issues. At its highest, the judgement of the Court in the one case in which the Committee was shown a judgement, was inconclusive over Mr E' role in the investigation. The Committee could not conclude from the material, as submitted by Mr Ogun, that there had have been a pattern of misconduct by SOG, aided by Mr E, to obtain A shares at an advantageous price.

44. The Committee considered the issues raised by the Registrant over what was discussed between [Company A] and Mr E. It considered that the issue of how [Company A] may have changed its explanations for the anomalies in supplying [Company B] inconclusive, as was the evidence in relation to the report to the police.

45. In relation to Mr D, the Committee considered his role in the receipt and processing of invoices, his state of knowledge of the quantity and price of goods supplied, his apparent lack of respect for his line manager and for at least one colleague.

46. The Committee found in relation to both of these witnesses that there may be issues over their probity and reliability which might have to be resolved at a later stage of the hearing. However, for the purpose of deciding upon the submission presently before it, the Committee concluded that it was preferable to look for incontrovertible evidence contained in invoices and other documents in deciding the issues it had to rule upon. In other words, the Committee looked to see if there was 'hard' evidence which was sufficient for it to conclude that the GOC had presented a case which could support the Allegation. This did not require it to decide upon the credibility of the evidence of Mr E and Mr D.

47. The Committee also considered carefully the submission made by Mr Ogun in relation to the financial interest of the Registrant in [Company B]. It accepted that at the material time, and within the scope of the waiver of its right to certain profits by SOG from the A shares it held, the Registrant was the sole recipient of the distributable profits up to a limit agreed with SOG. However, the Committee recognised that [Company B] is a legal entity separate from the Registrant, who did not hold a controlling share in it, and it therefore considered the Registrant was not free to conduct the company's affairs solely by reference to his rights to profits. From that the Committee further concluded that evidence of his management of [Company B] and its finances could support the Allegation before it.

The Committee's decision on the Allegation in relation to the submissions under Rule 46(8)

48. The Committee was aware that it was open to it to accede to Mr Ogun's submission in full or in part, and therefore considered each of the Particulars of the Allegation carefully and individually.

Particular 1

Between *2014 and 2017 knowingly allowed* [Company A] *to supply* [Company B] *with goods in quantities above what was reasonably required by* [Company B]

49. The Committee considered there was evidence that the Registrant personally ordered supplies for the Store. Quotations and emails containing the invoices went to his email address. The Committee considered the analysis of stock on the premises agreed by the Registrant, including the photographs. It considered that the Registrant could not have been unaware of the volume of stock.

50. The Committee concluded that the GOC had advanced sufficient evidence upon which it could find this particular proved.

Particular 2

Between 2014 and 2017 knowingly allowed* [Company A] *to supply* [Company B] *with goods at falsely and/or grossly inflated prices amounting to approximately £32,000

51. The Committee found there was no dispute over the overcharging for goods by [Company A] to [Company B]. The issue therefore was whether this may have been done to the knowledge of the Registrant. It noted, for instance, the grossly excessive charges for coffee and window cleaning spray. The Committee considered that the Registrant had access to the invoices for goods supplied by [Company A] and therefore to the prices it was charging [Company B]. Some of the prices were manifestly excessive.

52. The Committee concluded that the GOC had advanced sufficient evidence upon which it could find this particular proved.

Particular 3

Between 2014 and 2017 knowingly misrepresented personal expenditure as legitimate business expenditure of* [Company B] *in relation to items ordered from* [Company A]*, namely:

a. Givenchy purse/bag; and/or

b. Red Letter Day Vouchers amounting to nearly £9,000; and/or

c. Sky Club vouchers amounting to nearly £4,000.

53. The Committee concluded that these items were clearly not for use in the business of the Store. They could therefore be described as personal expenditure which on the face of the evidence was being charged to [Company B]. It noted that the Registrant had asked [Company A] to change the invoices for some of the expenditure to show different items for the same invoiced amount. The Committee could not discount an inference that the items were a reward for the purchases made by [Company B] from [Company A]. The Committee noted that Mr E had asked the Registrant on more than one occasion for evidence that he had personally paid for these items, as he claimed, but that this was not forthcoming, although presumably obtainable.

54. The Committee concluded that the GOC had advanced sufficient evidence upon which it could find this particular proved.

Particular 4

Between 2014 and 2017 knowingly misappropriated property belonging to* [Company B] *for your own personal use, in relation to items ordered from* [Company A]*, namely:

a. A 'Givenchy' purse/bag; and/or

b. Red Letter Day Vouchers; and/or

c. Sky Club vouchers.

55. The Committee considered that there was evidence that these items were purchased by, or supplied to [Company B], but were utilised by the Registrant. There was evidence that the Registrant chased SOG for payment to be made to [Company A] for some of these items. There was evidence, referred to above, suggesting that the Registrant had asked [Company A] to alter the invoices for some of these items.

56. The Committee concluded that the GOC had advanced sufficient evidence upon which it could find this particular proved.

Particular 5

***Between 2014 and 2017 authorised false and/or grossly inflated invoices from* [Company A]*to be paid by* [Company B] *in order to personally receive Sky Club and/or Red Letter Day vouchers and/or other products from* [Company A].**

57. The Committee noted Mr Ogun's submission that Mr D authorised the invoices referred to, and that in any event SOG had a role in authorising invoices under the SSA when it processed them. The Committee has previously noted that all of the invoices were capable of being accessed by the Registrant. There is evidence that he chased [Company A] for payment. The Committee concluded that this was capable of amounting to authorisation as the Registrant must have been aware of the contents of the invoices and the amounts involved.

58. The Committee concluded that the GOC had advanced sufficient evidence upon which it could find this particular proved.

Particular 6

In relation to the matters set out above at 1,2,3a,3b,3c,4a,4b,4c, and/or 5, you were dishonest in that you knew when you ordered the items from '*[Company A]*' that they were for the personal use and/or personal gain of you and/or others and not for company use.

59. The Committee considered this particular in the round, as it encompasses all of the other parts of the Allegation faced by the Registrant. It concluded that taken together, it could result in a finding of dishonesty.

60. The Committee concluded that the GOC had advanced sufficient evidence upon which it could find this particular proved.

61. The Committee went on to consider whether under Rule 46(8)(b) the Allegation could result in a finding of impaired fitness to practise. As the Allegation is serious, and contains an allegation of dishonesty, the Committee concluded that this could result in a finding that they amounted to misconduct and of impaired fitness to practise if found proved.

62. The Committee therefore rejects the submission made under Rule 46(8) in its entirety.

RESUMED HEARING 3-7 OCTOBER 2022

Preliminary issues

Application to adjourn

Submissions

63. Mr Ogun made an application under Rule 36 that the hearing be adjourned. He told the Committee that the Registrant's [redacted] unexpectedly on 17 September 2022. He reminded the Committee that during the hearing earlier in the year the Registrant's [redacted] was an issue and that the Registrant had, with the Committee's agreement, absented himself at times from the hearing because of his [redacted]. Mr Ogun said that the application was made on compassionate grounds and that he did not rely on any [redacted] evidence. He informed the Committee that his client was able to give him instructions, but had said that he would be unable at present to face cross examination and to give his evidence to his best advantage.

64. Ms Hollos made submissions on behalf of the GOC. She said that the GOC was neutral on the issue of the application to adjourn. She submitted that in considering the application the Committee should take into account the reasons for the application, the stage the proceedings had reached and the length of any adjournment.

Legal Advice

65. The Legal Adviser advised that the burden of persuading the Committee to grant the application was upon the Registrant. He advised that at common law, and under Article 6 of the ECHR, the Registrant was entitled to a fair hearing. The Legal Adviser advised that the right to a fair hearing included a right to 'participate effectively' in the proceedings. He advised that the Committee should take the GOC's neutral position into account. The Legal Adviser also advised that the Committee should take into account the public interest in the expeditious hearing and disposal of cases.

The Committee's decision on the application to adjourn

66. The Committee took fully into account the submissions of the parties and accepted the advice of the Legal Adviser.

67. The Committee noted that the application was made on compassionate grounds and that no [redacted] evidence had been produced in support of the application. It also noted that the application was made on the basis that whilst the Registrant was able to instruct his legal representative, he had, through Mr Ogun, said that he felt unable to face cross examination. The Committee took into account the stage the hearing had reached and that the Registrant was in the normal course of events to have begun his evidence today.

68. The Committee considered the public interest in the expeditious disposal of cases. It noted that the Allegation related to events between 2010 and 2016 and did not contain allegations of clinical concern which might indicate a risk to patients. It also noted that there was no interim order in the case and that if there were a risk to patients it would have been open to the GOC to make an application for an interim order.

69. The Committee considered the lack of [redacted] evidence to support the application. However, it considered that the distress and distraction of a recent [redacted] was a proper factor to take into account without the necessity of [redacted] advice. It accepted what Mr Ogun had told it about the Registrant's subjective belief that he was not in a position today to give evidence to his best advantage. The Committee also accepted

that an adjournment would be for at least two months, which Mr Ogun had indicated would enable the Registrant to be in a position to face cross examination.

70. The Committee weighed the public interest against that of the Registrant and concluded that there was a public interest in a fair hearing and that as there was no clinical risk to the public as a result of its decision, the Registrant's interests outweighed the public interest. It considered that proceeding with the case today would prejudice the right of the Registrant to participate effectively in a crucial stage of the case. The Committee took into account that the case was based on an allegation of dishonesty by the Registrant, the consequences of which might be serious to him if proved. It considered that in those circumstances it was important that the Registrant was able, and felt able, to give his evidence effectively. The Committee therefore acceded to the application under Rule 36 to adjourn the hearing to a date to be fixed.

RESUMED HEARING 17 AUGUST 2023

Findings in relation to the facts

71. The Committee was provided with a large volume of documents to consider by both parties. These included four witness statements from the Registrant (the last of which was admitted by the Committee following an application, not opposed by the GOC, on 17 August 2023). The Committee heard oral evidence from Mr E and Mr D on behalf of the GOC. The Committee also heard oral evidence from the Registrant.

72. At the conclusion of the evidence, both the GOC and the Registrant's representatives filed helpful and detailed written submissions, which the Committee considered carefully in conjunction with oral submissions.

73. The Committee heard the advice of the Legal Adviser. The Committee was advised the burden of proving each of the particulars is on the Council and remained on the Council throughout. The Committee was advised the standard of proof is the civil standard, namely on the balance of probabilities - whether it is more likely than not that the alleged particular(s) occurred. The Committee was also advised to consider each particular separately in turn.

74. The Committee was advised 'knowledge' and 'dishonesty' were at the heart of this case. To show that the Registrant had knowledge, the Council must prove on the balance of probabilities that he knew he was committing the acts alleged in each of the particulars and that his conduct in relation to each of those particulars was dishonest.

75. The Committee was advised that before considering the question of dishonesty, it must satisfy itself whether the acts to which the dishonesty was said to attach have been proved.

76. The test that the Committee should apply when considering if the Registrant's conduct was dishonest is set out in the Supreme Court case *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*. The Committee's attention was drawn to Lord Hughes' judgment at paragraph 74 where he said:

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When

once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

77. Accordingly, the Committee was advised to first decide the actual state of the Registrant's knowledge or belief as to the facts. Once his actual state of mind as to knowledge or belief as to the facts has been established, the Committee should apply the objective standards of ordinary decent people to answer whether the conduct complained of is dishonest by those standards.

78. The Committee was also advised to approach the interview records between Mr E and the Registrant with caution. The Committee was reminded that the Registrant asserted he lied during his interviews because he was fearful of Mr E and felt that he had no choice but to co-operate. He said he had previous experience of Mr E and knew the latter was capable of mounting a case at any cost. He did not feel he could fight his corner and decided the best tactic was to appear to co-operate and play along, otherwise Mr E would find a way to have him dismissed from the company. As a measure to protect himself, he decided to record some of his conversations so a future decision maker could consider this issue in the context the Registrant asserts.

79. The Committee was also reminded that Mr E denies any form of wrongdoing in the manner alleged by the Registrant. The Committee was advised to take into account the cross examination of Mr E and the evidence given by the Registrant in this regard.

80. The Committee was advised credibility is a matter for the Committee, having regard to all the evidence it has heard and read in this case. The Committee was advised that if it found the Registrant lied in interview to protect himself for the reasons he has explained, it should not hold those lies against the Registrant. By contrast, if the Committee found the Registrant was not being honest in his evidence, it can also take this into account. The Committee was advised this feature of the evidence alone should not be determinative in the Committee's findings of fact. Rather, the Committee should consider the evidence in the case as a whole.

81. The Committee was reminded the Registrant was born in [redacted], he is a family man and engages in charity work in [redacted]. He has no criminal cautions, convictions or previous disciplinary findings recorded against him. He is of good character.

82. The Committee was advised the Registrant's good character cannot by itself provide a defence but when deciding whether the Council had proved its case against him on the balance of probabilities, the Committee should take this evidence into account in his favour in the following ways: Firstly, the Registrant gave evidence and therefore, as with any man of good character, it supports his credibility. Secondly, the fact that the Registrant is of good character may mean that he is less likely than otherwise might be the case, to commit that which is alleged against him. The Committee was advised these are matters to which the Committee should have regard in the Registrant's favour. It is for the Committee to decide what weight to attach to them having regard to all the circumstances.

83. The Committee accepted the Legal Adviser's advice.

84. In reaching its decision the Committee noted that in relation to both the GOC's witnesses the Registrant raised extensive issues over their probity and reliability. The Committee also heard oral evidence from the Registrant, which the GOC said in large

part was unreliable, if not incredible. The Committee paid careful attention to all the documentary evidence submitted on behalf of both parties. The Committee noted these issues in its assessment of the evidence whilst remaining mindful that the burden of proof was on the Council at all times.

85. The Committee has made the following findings of fact:

Particular 1

Between 2014 and 2017 knowingly allowed **[Company A]** ***to supply*** **[Company B]** ***with goods in quantities above what was reasonably required by*** **[Company A]**

86. The Committee found the Registrant personally generated the orders with [Company A] over the telephone. This was confirmed by Mr B, Mr C, Mr D and by the Registrant himself during his interview with Mr E.

87. The Committee noted the Registrant's change of position during his oral evidence that he did not place all of the orders and that someone else, most likely Mr D, must have been placing orders as well or, alternatively, that [Company A] were simply sending stock to the company which had not been ordered. The Registrant's earlier position was that he had placed all the orders. The Committee did not find his second version credible in light of the evidence presented by the GOC.

88. The Committee heard from Mr D and determined that his evidence was credible, and it could rely on his evidence. Whilst he was critical of the Registrant, he said he quite liked him. Mr D became responsible for processing invoices in the middle of 2016 and brought to the Registrant a concern he had about an invoice which apparently showed overpricing. Following a further period towards the end of 2016, he then decided to report his concerns about the goods being ordered for [Company B] to external Specsavers staff.

89. The Committee noted that there were multiple and frequent orders for toners and other consumables in the period alleged by the Council. For example, there were four orders in a single week on 18, 19, 22 and 26 August 2016, totalling £5,198.62. This is a significant number of orders and amount. The Registrant denied any knowledge of this. However, the Committee found his answer incredible considering the accounts given by Mr C and Mr D in particular.

90. The Committee found the Registrant's explanation that he was not aware of the over ordering incredible. It determined that the sheer volume of stock, and the lack of storage available for it, would have been obvious to the Registrant when he attended the store. The Committee also noted that the storage cupboard was right opposite the office and seemingly visible from the staircase. The Committee also noted there was further storage opposite the toilets used by the Registrant. The photographs taken by investigators clearly showed the state of storage at the time of their attendance on 8 March 2017 and a stock list of the same day showed 78 toner cartridges in the stock room as well as others stored elsewhere. The Committee determined the account of Mr D was clear as to how obvious the over-stock of toner cartridges was. If the over-stock had been a genuine mistake, or more stock was received than was ordered, the Registrant would have taken steps to address the issue before it got out of hand.

91. The Committee also noted that during a conversation with Mr D, when asked about the large quantity of toner, the Registrant appeared to indicate it was an intentional decision to buy in bulk to reduce costs.

92. A key element of the Registrant's case was that Specsavers had for some time determined to get rid of him as a director and shareholder. Further he alleged that Mr E had wrongly and improperly put pressure on [Company A] to supply evidence that would help Specsavers achieve its aim. He said that in his view he was the only person to have suffered from the investigation by Mr E (both financially and personally), he believed that Mr C had been promoted and far from [Company A] losing any contracts with Specsavers stores, it had continued as a supplier.

93. The Committee determined the written account of Mr C was clear. He stated that the cost of the Registrant's orders correlated with personal benefits the latter would receive. In addition, the value of orders affected Mr C's commission. He described how he had agreed with the Registrant how the value of the orders could be deliberately inflated.

94. The Committee was mindful of the fact that Mr C did not give oral evidence, let alone be cross examined. However, it considered that he had given a self-incriminating statement which could have potential serious consequences for his employment at the very least. The Committee decided he would have no reason to incriminate himself by admitting he was in a dishonest agreement unless he was telling the truth. The Committee also decided it was highly improbable that Mr C would take the action of inflating prices and processing excessive orders without the knowledge or agreement of the Registrant. The Committee therefore concluded the most reasonable inference in those circumstances is that the Registrant deliberately over-ordered stock in order to receive additional personal benefits.

95. In all the circumstances, the Committee found on the balance of probabilities, the evidence, when looked at together, demonstrates that the Registrant knowingly allowed the supply of goods from [Company A] in quantities above what was reasonably required.

Particular 2

Between 2014 and 2017 knowingly allowed* [Company A] *to supply* [Company B] *with goods at falsely and/or grossly inflated prices amounting to approximately £32,000

96. The Committee determined the Registrant placed the orders with [Company A]. Despite the Registrant's protestations, the Committee noted it would be remarkable for neither the Registrant to have asked, nor the supplier to have provided, the cost of goods at some stage during the calls. The Committee noted that Mr C, in his account, confirmed that the prices were conveyed to the Registrant at the beginning of their arrangement at least. The Committee accept this account as true for the reasons given above.

97. The Committee determined there was strong evidence the Registrant also had knowledge of the invoices provided by [Company A] which recorded the over-charging. The Committee noted the following:

- The Registrant had overall responsibility as sole director and by virtue of his role as JVP to ensure that every invoice submitted to accounts was checked before being submitted to Accounts Payable as a legitimate business expenditure.
- The invoices were sent to the Registrant's Director's email address at [Company B] and, in some cases, to his personal email address as well as in hard copy.
- Quotations for the supply of goods by [Company A] to [Company B] were sent to the [Company B] Director's email address and/or to the Registrant's personal email address.

- The Registrant was the only individual known to have access to the Director's email address. This was confirmed by Mr B and appeared to be accepted by the Registrant in evidence, albeit he also speculated about whether staff at SOG head office could access the account if they wished.
- The Registrant was involved in the chasing up of payment of invoices with the Specsavers Finance Customer Response department. According to Specsavers call logs, the Registrant personally contacted them to chase payment of invoices on several occasions between 1 March 2016 and 24 January 2017.
- The evidence of Mr R with reference to paragraphs 94 and 95 above.

98. The Registrant gave evidence that he had either never opened his director's email account or had only very rarely accessed it. He gave evidence that Specsavers had the technical ability to analyse his director's email account but had produced no evidence to show that he had accessed it.

99. In relation to the Specsavers call logs, the Registrant gave evidence that he had only ever phoned to chase payment when told to do so by the Specsavers senior management. He claimed that on some of the occasions when the call logs reflected a conversation with "[redacted]", the person at [Company B] might well have been another member of staff, not him. He also denied the handwritten notes on the relevant invoices were his.

100. The Committee determined there was clear evidence that the Registrant actually entered into an explicit agreement with Mr C to inflate the prices of items charged on invoices so that the Registrant would receive personal benefits based on the higher values of orders. Whilst the Committee accepted the Registrant was under some pressure, particularly in 2015 when the recall clinic was running, the Committee found the Registrant's explanation that he never opened the director's email address incredible. As the responsible officer at [Company B], it is inconceivable that he would not check his director's email address. Further, the Registrant produced in his own evidence, correspondence he had with senior Specsavers staff via the director's email address. Some of the quotations were sent to his personal email address. The Committee did not accept the implication that because he did not respond to the emails sent to his personal account, he was somehow unaware of them.

101. In all the circumstances, the Committee determined on the balance of probabilities, the evidence, when looked at together, demonstrates that the Registrant knowingly allowed the goods supplied by [Company A] to be charged at falsely and grossly inflated prices and that these amounted to approximately £32,000.

Particular 3

Between 2014 and 2017 knowingly misrepresented personal expenditure as legitimate business expenditure of* [Company B] *in relation to items ordered from* [Company A]*, namely:
a. Givenchy purse/bag; and/or
b. Red Letter Day Vouchers amounting to nearly £9,000; and/or
c. Sky Club vouchers amounting to nearly £4,000.

102. Having found the Registrant was a knowing participant in over-ordering and over-stocking, the Committee went on to consider the evidence alleging the Registrant has also misrepresented personal expenditure as business expenditure.

103. The Committee noted the invoices issued by [Company A] to [Company B] itemising Red Letter Day Voucher Days. The Committee also noted the invoices by [Company A]

to [Company B] itemising Sky Club Vouchers. The Committee noted an invoice issued by [Company A] to [Company B] itemising a Givenchy Pandora bag/purse. These invoices were emailed by 'Accounts' at [Company A] to the Registrant's director's email address at [Company A] According to Mr C, three of the invoices for Red Letter Day vouchers were manipulated at the Registrant's request to instead show goods for the store and were subsequently paid by SOG.

104. The Committee noted the Red Letter Day vouchers were initially physically posted to the store. However, from mid-2016, the voucher codes were emailed to the Registrant's work and personal email addresses. This would have required the Registrant to open the emails in order to use the vouchers.

105. The Committee noted that the Registrant said that the Red Letter Day Vouchers, the Sky Club Vouchers and the Givenchy purse represented personal expenditure for his personal benefit, albeit he ordered the items from [Company A]. He said that none of the staff at [Company B] were provided with the Red Letter Day vouchers. The Registrant stated that none of the items should have been included on the business expenditure invoice and that they should have been put through his personal account with [Company A]. He asserted that because Mr C was greedy and dishonest, the Red Letter Day vouchers were invoiced to [Company B] at a cost. He claimed that he expected to have to pay for the personal expenditure himself. He denied there was an agreement with Mr C and stated he did not know why Mr C would give that version of events. He speculated Mr C has done this to cover his own back and to curry favour with Specsavers, in particular Mr E. The Registrant also said, even if he had put the items through the business he thought he was entitled to do this as the sole A shareholder. He said he had never been told he couldn't.

106. Furthermore, the Registrant submitted that invoices should have been scrutinised by Mr D and SOG before payment.

107. The Committee determined that the Registrant was responsible for misrepresentations to SOG by the submission of the invoices for the following reasons:

- he personally placed all orders with [Company A];
- as Director and JVP, he had ultimate responsibility for authorising the payment of invoices before they were passed on to Accounts Payable;
- he was responsible for understanding and complying with the systems and processes for financial control as set out by Specsavers;
- the Red Letter Day vouchers represented the Registrant's benefit from the oral agreement he had entered into with Mr C;
- the Givenchy bag/purse and Sky Club vouchers were items that the Registrant asked [Company A] to source and he intended [Company B] to pay for;
- the invoices and latterly the e-vouchers were emailed to the Registrant's director's email address and/or to his personal email address; and
- the Registrant had asked [Company A] to change the invoices for three of the Red Letter Day invoices to show different items for the same invoiced amount.

108. Given all the circumstances, on the balance of probabilities, in respect of particulars 3a and 3c, the Committee concluded that the Givenchy purse/bag and the Sky Club Vouchers were clearly not for business use. The Givenchy purse/bag was purchased by the Registrant as a gift for another and the Sky Club Vouchers were used by the Registrant for the purchase of return flights to India. The Committee concluded these were personal expenses which the Registrant knowingly misrepresented as business expenditures so that they could be improperly charged to [Company B].

109. The Committee did not believe the Registrant's account that the items in particular 3 were always intended to be items of personal expenditure, that he intended to pay through his personal account with [Company A] and that it was an error on behalf of [Company A] and they should have invoiced his personal account rather than the company.

110. The Committee has noted that it has seen no evidence to show that the Registrant has in fact paid for these expenses out of his own pocket. The Registrant submitted a third witness statement dated 4 October 2022 on which he relied. Exhibited were two emails from [Company A] dated 4 April 2017 and 9 May 2017 (attached to the former were 6 invoices for Red Letter Day vouchers, the Givenchy bag/purse and Sky Club vouchers all to a personal account for the Registrant). The emails suggested that the invoices attached had been paid. The Committee noted that the Registrant had chosen not to submit any evidence of payment from his bank or credit card company claiming that these were personal matters and he could not see why he needed to produce them. The Committee noted the evidence from Mr F (the Finance Director at [Company A]) who had stated in a written statement of truth provided to Specsavers that the Registrant's personal account with [Company A] was only set up at the Registrant's request in February 2017. The Committee could see no reason why Mr F would be mistaken or would lie as to when the personal account was set up. Mr C supported Mr F's account as to when the account was set up. The Committee also noted that the personal account appeared to have been set up shortly after Specsavers preliminary investigation report was completed. As a director of [Company B] the Registrant was provided with a copy of this report. The Committee also noted the late submission of the third witness statement and exhibits. The Committee concluded that it could place no reliance on this evidence of the Registrant.

111. So far as particular 3b is concerned, the Committee could not discount a reasonable inference that the Red Letter Day vouchers were a promotional item/reward for the purchases made by [Company B] from [Company A], as a significant proportion were shown on invoices at zero cost. Of those that were subsequently charged to [Company B], Mr C said this was firstly a mistake which he then continued to do when not challenged. Mr C also stated the Registrant questioned him when he discovered he had been charged for the vouchers which supports that the Registrant did not expect them to be charged. However, Mr C said the Registrant told him he would help him 'sort it'.

112. The Committee considered the wording of charge 3b carefully. It concluded that the evidence in relation to the Red Letter Day vouchers was not clear. It noted the Registrant's assertion that he always intended to pay for these as items of personal expenditure, however, it preferred Mr F's evidence that these would never have been sent as a personal purchase. Mr C's account was that Red Letter Day vouchers were issued in proportion to orders placed with [Company A] and that his charging for the vouchers had been a mistake, albeit one that the Registrant had later endorsed. The Committee's view was that it was more likely the Registrant had intended [Company B] to pay any charge imposed by [Company A] for Red Letter Day vouchers based on invoices submitted by [Company B] especially as his personal account does not appear to have been created until February 2017. The Committee was not persuaded on the balance of probabilities that it was more likely than not that the Registrant ever considered Red Letter Day vouchers were personal expenditure and therefore as this was key to the charge, 3b was found not proved.

Particular 4

Between 2014 and 2017 knowingly misappropriated property belonging to* [Company B] *for your own personal use, in relation to items ordered from* [Company A]*, namely:
a. A 'Givenchy' purse/bag; and/or
b. Red Letter Day Vouchers; and/or
c. Sky Club vouchers.

113. The Committee considered the account of Mr F, Finance Director at [Company A]. In his witness statement to the investigators, he confirmed that promotional items supplied to businesses by [Company A] are "*supplied to the business who had purchased from us. They are never intended for the personal use of any individual placing the order."* The rationale for the limitation is to ensure that [Company A] does not fall foul of the provisions of the Bribery and Corruption Act.

114. The Council submitted that the promotional items supplied by [Company A] to [Company B] were used by the Registrant for his personal use and it relies on the Registrant's admissions at interview that the aforementioned items were intended for his personal use.

115. The Committee noted that the Registrant said that the Red Letter Day Vouchers, the Sky Club Vouchers and the Givenchy purse represented personal expenditure for his personal benefit from [Company A]. He contended that none of these items should have been included on a business invoice and that they should have been put through his personal account.

116. The Committee considered this particular carefully. Having regard to all the evidence it could not be satisfied on the balance of probabilities that particular 4a had been proven to the required standard by the Council. In reaching its decision, the Committee had regard to an email dated 14 February 2017 from Mr C to the Registrant at page 568 of the GOC Bundle. In that email, Mr C confirms the Givenchy bag had not yet been paid for and a credit note had been issued, accordingly, it could not be said that it was the property of [Company B].

117. So far as the Red Letter Day vouchers are concerned, the Committee's view was that the vouchers had been supplied to [Company B] by [Company A] as a reward for the placing of orders. The Red Letter Day vouchers therefore became the property of [Company B]. The Registrant told the Committee that he felt entitled to make the decision to take the vouchers for himself as the sole A director at the time, in the same way that he would have made a decision in relation to any other 'freebies'. The Committee was not persuaded that the GOC had proved on the balance of probabilities that when the Registrant took the vouchers for his own benefit that he was knowingly misappropriating them from [Company B]. Accordingly, the Committee found particular 4b was not proved.

118. In relation to the Sky Club Vouchers, whilst the Registrant did receive and use them, there does not appear to be any evidence that these were paid for by [Company B]. The invoice was put on hold due to the investigation. Therefore, the Committee could not be satisfied that particular 4c was proved to the required standard either.

Particular 5

***Between 2014 and 2017 authorised false and/or grossly inflated invoices from [Company A] to be paid by* [Company B] *in order to personally receive Sky Club and/or Red Letter Day vouchers and/or other products from* [Company A].**

119. The Committee noted the account of Mr C in which he confirmed that he entered into an arrangement whereby he would artificially inflate the unit price of various items so that the Registrant could be provided with Red Letter Day vouchers as desired. The Committee noted that such vouchers represented promotional items and therefore the ordinary practice might have been to include them on the invoices but to record the unit price as zero. Mr C stated that there came a time when by accident he put the vouchers through the system at £5 each without reducing them to zero. As nothing was said, he continued to charge for the vouchers.

120. Again, the Registrant said that the Red Letter Day Vouchers, the Sky Club Vouchers and the Givenchy purse represented personal expenditure for his personal benefit from [Company A]. He stated that these items should not have been included on the business expenditure invoices and that they should have been put through his personal account. He stated Mr C was greedy and dishonest and that led to the Red Letter Day vouchers being invoiced to [Company B] at a cost. He denied any agreement with Mr C and did not know why he would give that version of events. He speculated Mr C was covering his own back. If any invoices relating to his personal expenditure have been paid by SOG, the Registrant maintained that it was for them to scrutinise any inappropriate items on the invoices submitted for payment.

121. The Committee found there was no proper evidential basis for suggesting the invoices authorised by the Registrant for the Sky Club Vouchers were false or that they were grossly inflated. Unlike the Red Letter Day vouchers the Sky Club vouchers did not appear to be linked to orders from [COMPANY B] but arose as a result of a direct request from the Registrant to [Company A] for the latter to obtain them for him. This part of this particular is not proved.

122. The Committee found that many invoices for toners and consumables were grossly inflated in order to generate higher value orders which in turn would lead to more Red Letter Day vouchers being provided by [Company A]. This was a system set up by the Registrant for his benefit. In making this agreement with Mr C, the Registrant had in effect authorised the inflation of these invoices, additionally whilst the Registrant delegated the checking of the invoices to Mr D as director he could not abdicate his overall responsibility. The Committee considered that by placing the orders himself he was giving authority for invoices to be generated and paid by the business. Furthermore, the Committee determined there was credible evidence supporting the suggestion that three invoices were falsely created and submitted for payment, to disguise Red Letter Day vouchers. Mr C said he did this at the Registrant's request. The Committee found this evidence compelling. Mr C would not self-incriminate unless he was telling the truth. The Committee therefore found this part of this particular, relating to Red Letter Day vouchers, proved.

123. The Committee decided the Council's case on 'other products' was unclear as the Council did not specify what products were being referred to. It found this part of this particular was not proved.

Particular 6

In relation to the matters set out above at 1,2,3a,3b,3c,4a,4b,4c, and/or 5, you were dishonest in that you knew when you ordered the items from '**[Company A]'*****that they were for the personal use and/or personal gain of you and/or others and not for company use. And by virtue of the facts set out above, your fitness to practise is impaired by reason of misconduct.***

124. The Registrant's case was that he had never been dishonest. He emphasised the stress that he was under at the relevant time due to staff conflict and most importantly an extensive recall clinic, that [Company B] had to conduct as a result of concerns about Mr A's performance as an optometrist. Since Mr A had left the business, he was the sole A director and had to run the business on his own, albeit with staff to help him. At the same time he was under pressure from Specsavers. There were pressures in his personal life too.

125. The Registrant gave evidence that as well as being the sole A director, he was also the sole holder of A shares, A shareholders being entitled to dividends if there were profits in the business. He said he had no reason to misrepresent personal expenditure as business expenditure and was not aware of any prohibition against personal expenses of a director being put through the business. The Registrant submitted why would he do the things alleged against him when he was the only person who would be affected by any wasted costs. He said it made no sense for him to saddle the business with around £50,000 worth of unnecessary expense purely to received £14,000 worth of vouchers in return.

126. The Committee concluded particular 1 was proved on the balance of probabilities. Consequently, it considered whether the proven acts were dishonest on the balance of probabilities.

127. In coming to its conclusion, the Committee found that when orders were placed for unnecessary stock they were to secure vouchers for the Registrant's personal gain and were not made for the company's use. Whilst some of the goods may be used by [Company B], given the quantity involved, it was clear to the Committee the principal reason for the oversupply was for the benefit of the Registrant and not the company. At the time that he allowed the over ordering of stock he did this to generate more Red Letter Day vouchers for himself and not for any benefit to the company. He would have known that over ordering would have saddled [Company B] with additional unnecessary expenditure of cash and staff time dealing with the stock at both [Company B] and SOG. The Committee considered that ordinary decent people would consider this dishonest, and it therefore found particular 6 proved on the balance of probabilities in relation to particular 1.

128. The Committee took a similar view in relation to particular 2. The Registrant knowingly entered into a private arrangement with Mr C and therefore knowingly allowed [Company A] to supply [Company B] with goods at falsely and grossly inflated prices amounting to approximately £32,000, simply to obtain more Red Letter Day vouchers for himself. The Committee determined this act was dishonest and was initiated for the Registrant's personal gain and not for the company. The Committee considered that ordinary decent people would consider this dishonest, and it therefore found particular 6 proved on the balance of probabilities in relation to particular 2.

129. The Committee found particulars 3a and 3c proved on the balance of probabilities in that the Registrant knowingly misrepresented personal expenditure as legitimate business expenditure of [Company B].

130. The Committee determined the Registrant knew these acts were dishonest and for his personal gain as he always intended for the company to pay for these personal items instead of himself and at the time of ordering he knew he did not hold a personal [Company A] account. The Committee carefully considered the Registrant's argument that as the sole A shareholder and A director, he was entitled to spend the company's money as he wished. The Committee decided that not only was this wrong but that the Registrant knew that it was wrong. The Committee had noted the correspondence from Specsavers with the Registrant in which the former made it very clear that at some stage they were taking over A shares from Mr A and the discussion around their entitlement to dividends. Furthermore, since the Registrant was at no stage the only shareholder in the company, and as a responsible director he had a responsibility to safeguard the company's assets and financial position. The Committee considered that ordinary decent people would consider his conduct dishonest, and it therefore found particular 3a and 3c proved on the balance of probabilities in relation to particular 6.

131. The Committee did not find the act in particular 3b proved. Consequently, it did not find dishonesty proved.

132. The Committee did not find the acts alleged in particular 4 a, b and c proved. Consequently, it did not find dishonesty proved.

133. In relation to particular 5, the Committee found the Registrant authorised false and grossly inflated invoices from [Company A] to [Company B] in order to personally receive Red Letter Day vouchers.

134. In considering the question of whether the Council had proved that he acted dishonestly when doing this, the Committee took into account its previous finding that the Registrant knew he had been party to an agreement with Mr C at [Company A] to supply goods to [Company B] at falsely and grossly inflated prices. In considering the Registrant's state of mind the Committee had regard to the evidence that the Registrant had asked Mr C to create three misleading and false invoices to disguise the supply of Red Letter Day vouchers to him, amongst other evidence.

135. In relation to any suggestion that the Registrant believed he acted honestly as regards particular 5 because of his position as sole director and A shareholder, the Committee rejects that suggestion for the reasons set out above at paragraph 131.

136. The Committee considered that ordinary decent people would consider the Registrant's conduct dishonest, and it therefore found particular 6 proved on the balance of probabilities in relation to particular 5.

Application by Registrant to admit further evidence on 25 August 2023

137. Before the Committee proceeded to consider misconduct and impairment, the Registrant asked to place four documents before the Committee; these were a reference from his current place for work, [Company C]; a reference from the Chair of the Trustees of [redacted], a religious charitable organisation in [redacted]; a reflective statement from the Registrant; and a bank statement.

138. The Council had no objection to the Committee receiving the first three documents but objection was raised as to the admissibility of the bank statement. The Council submitted that the statement should have been introduced at the fact finding stage. It was not relevant for the next stages of these proceedings.

139. On behalf of the Registrant, it was submitted that he had exercised his right to privacy and decided not to produce this bank statement at the fact finding stage. The Committee was told the statement shows payment from his personal bank account to [Company A], which was contested. It was submitted the Registrant should not have to prove that he made the payments but as the Committee have found against him, for the purposes of impairment and possibly sanction, he has decided to disclose a bank statement demonstrating that payments have actually been made.

140. The Committee considered whether it was necessary to see the bank statement before deciding admissibility. The Council did not think it was necessary as submissions were made in sufficient detail for the Committee to make a decision on this issue. On behalf of the Registrant, it was submitted the Committee should see the document.

141. The Committee listened to legal advice. The Committee was advised that rule 40 of the Fitness to Practise Rules 2013 permitted the Committee to admit any evidence it considers fair and relevant and if it felt necessary to inspect the document first, then it should.

142. The Committee accepted the Legal Adviser's advice.

143. The Committee decided to look at the document before determining whether the bank statement should be admitted into evidence.

144. Having looked at the document, the Committee invited any further submissions from the parties. No further submissions were made.

145. The Committee received Legal advice. It was advised that pursuant to rule 40, if, having inspected the document it determined it was relevant and fair to admit the evidence at this stage, it could do so.

146. The Committee accepted the legal advice of the Legal Adviser.

147. The Committee decided the bank statement should be admitted into evidence at this stage. The Committee felt the document should have been made available at the fact finding stage but acknowledged that going forward, it would be a helpful document in fairness to the Registrant.

Findings in relation to Misconduct and impairment

148. The Committee heard representations on behalf of the Council and the Registrant. No evidence was called at this stage of the proceedings.

149. On behalf of the Council, it was submitted that the proved particulars amounted to misconduct due to their serious nature and the involvement of dishonesty on the part of the Registrant.

150. The Committee was referred to the GOC's Standards of Practice for Optometrists and Dispensing Opticians. The Council submitted that through his conduct, the Registrant was in breach of Standards 16.1, 16.5, 17.1 and 19.2.

151. The Committee was also referred to the GOC's Hearings and Indicative Sanctions guidance ('the guidance') and its attention was directed to Section 17.1 which states that dishonesty is particularly serious as it may undermine confidence in the profession.

152. In relation to impairment, the Council submitted that due to the Registrant's past conduct, he is liable to bring the profession into disrepute. He has breached a fundamental tenet of the profession and is liable to act dishonestly again in future. The Committee was reminded that whilst it must look forward, the Committee will also need to take his past conduct into account. The Registrant engaged in serious dishonesty over a sustained period. He has made serious allegations against others, including Mr E and sought to distract from his own responsibility. The Council also submitted that the Registrant does not show insight into dishonest conduct and continues to seek to put blame on others in his reflective piece.

153. Addressing the Committee on the public element of impairment, the Council submitted this was serious dishonesty and public confidence would be undermined in the profession if the Registrant was not found to be impaired. It was necessary to reaffirm clear standards of professional conduct to maintain public confidence in the profession. The Registrant, due to his lack of insight, continues to present a risk to the public.

154. On behalf of the Registrant, it was submitted that in his reflective statement, the Registrant stated he now accepts the Committee's criticisms of his conduct. He told the Committee he fully recognises the importance of maintaining public trust and confidence in the profession.

155. It was submitted that having reflected on the findings of the Committee, the Registrant will also pay greater attention to his legal responsibilities as a director of a company and would not place as much trust and confidence in staff to whom he delegated responsibilities. He also stated he would also keep a greater distance between his personal and business affairs.

156. The Committee was also referred to the reference from the Chair of the Trustees of [redacted], a religious charitable organisation based in [redacted]. The reference speaks positively about the Registrant and his charitable work in the community. The Committee's attention was also directed to the reference from his current place of work. The Registrant's manager speaks highly of the Registrant's professionalism at work.

157. On behalf of the Registrant, it was submitted this was a very unusual case as no one lost money other than the Registrant.

158. The Committee's attention was taken to the Registrant's bank statement and it was told that £11,890.00 had been paid to Company A's to cover the cost of his personal orders.

159. It was further submitted SOG was not within the definition of the shareholder agreement. It was not registered as an owner of those shares. It had no entitlement to any dividends, therefore the Registrant has not taken from SOG. In summary, his benefit was 'zero'.

160. Further, it was submitted the Registrant is not a risk to anybody other than himself in terms of the management of his finances. There is no public interest in finding that the Registrant is impaired.

161. It was submitted that the Committee's findings were accepted.

162. At the conclusion of the submissions on behalf of the Registrant, when the Committee asked whether there were any submissions in relation to misconduct, it was submitted 'there is no misconduct'.

163. The Committee received and accepted legal advice from its Legal Adviser.

164. In relation to misconduct, the Committee was reminded that in *Cheatle v General Medical Council [2009] EWHC 645 (Admin)* Mr Justice Cranston said (at paragraph 19):

> *"A Committee must engage in a 2-step process. First, it must decide whether there has been misconduct. Then it must go on to determine whether, as a result, fitness to practise is impaired. But it may be that despite a practitioner having been guilty of misconduct, the Committee may decide that his or her fitness to practise is not impaired."*

165. In determining misconduct, the Committee was advised there was no burden or standard of proof and that it was entirely a matter for the Committee's judgement.

166. The Committee was reminded that misconduct is not defined in the legislation but there is guidance available in the case law.

167. In *Roylance v GMC (No.2) [2001] 1 AC 311*, it was described as:

> *"a falling short by omission or commission of the standards to be expected among practitioners and such falling short must be serious. It is of course possible for negligent conduct to amount to serious professional misconduct, but the negligence must be to a high degree".*

168. This approach was confirmed more recently in *Nandi v General Medical Council [2004] EWHC 2317 (Admin)* Mr Justice Collins:

> *"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…….. Obviously dishonest conduct can very easily be regarded as serious professional misconduct."*

169. Further guidance was available in *Lawrence v General Medical Council [2015] EWHC 586* Collins J stated (at para.38):

> *"Dishonesty by a doctor can undoubtedly amount to misconduct. Indeed, it usually will, even if it has nothing to do with professional competence. Maintenance of public confidence in the profession and the upholding of proper standards of behaviour and conduct is important."*

170. As to whether something is to be considered "serious", in *Johnson & Maggs v NMC [2013] EWHC 2140 (Admin)* the courts have said the question that should be asked is:

> *"would the facts found proved be considered deplorable by other members of the profession?"*

171. The Committee was advised to have regard to the *Council's Standards for Optometrists and Dispensing Opticians*. The Committee was asked to consider whether the Registrant is in breach of Standard 16 and Standard 17. The Committee was asked to bear in mind that not every instance of falling short of what would be proper in the circumstances, and not every breach of a standard, would be sufficiently serious that it could properly be regarded as misconduct and careful regard must be had to the context and circumstances of the matters found proved. This is a matter entirely for the Committee's judgement.

172. The Committee was advised to take into account all the evidence that it has read, heard and the submissions made.

173. In relation to impairment, Committee was reminded that the High Court in *Cohen v GMC [2008] EWHC 581*, stated that in determining impairment, relevant factors for the Committee to take into account include:
    a. whether the conduct which led to the allegation is remediable;
    b. whether it has been remedied; and
    c. whether it is likely to be repeated.

174. In coming to a conclusion on impairment, the Committee has been advised it must look forward, not back. However, it is reminded that the conduct may be so bad that even looking forward the Registrant may not be fit to practice without restrictions or at all. On the other hand, his misconduct may be such that, seen within the context of an otherwise unblemished record, the Committee could conclude that, looking forward, his fitness to practice is not impaired, despite the misconduct.

175. The Committee has been advised the level of insight shown by the Registrant is central to a proper determination of impairment.

176. The Committee was advised that the approach which it should adopt in determining issues of impairment is as follows:

    a) Has the registrant in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
    b) Has the registrant in the past brought and/or is liable in the future to bring the profession into disrepute; and/or
    c) Has the registrant in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession; and/or
    d) Has the registrant in the past acted dishonestly and/or is liable to act dishonestly in the future.

177. The Committee has been advised it should also have regard to public interest considerations. In *Yeong v General Medical Council [2009] EWHC 1923 (Admin)*, by Lord Justice Sales at para 48 said:

> *"Where a Fitness to Practise Panel considers that the case is one where the misconduct consists of violating such a fundamental rule of the professional relationship between medical practitioner and patient and thereby undermining public confidence in the medical profession, a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession. In such a case, the efforts made by the practitioner in question to address his behaviour for the future may carry very much less weight than in a case where the misconduct consists of clinical errors or incompetence."*

178. In *Council for Healthcare Regulatory Excellence v NMC and Grant [2011] EWHC 927 (Admin),* the High Court said the Committee should consider:

> "*not only whether the registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence*

in the registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case".

Misconduct

179. The Committee considered each allegation in turn.

180. In relation to particular 1, the Committee determined that knowingly over ordering stock for [Company B] is not in the business's interests and could have a detrimental financial impact on SOG who have to meet the payments for the orders. The Registrant had drawn in Mr C from outside of the Optical profession to conspire with him and had sought to blame others when he was found out. In the Committee's judgement, the Registrant's behaviour falls short of the standards expected amongst practitioners, however, merely to over order did not, in the Committee's judgement, meet the test for serious misconduct.

181. In relation to particular 2, in the Committee's judgement, the Registrant's conduct in knowingly allowing [Company A] to supply [Company B] with goods at false and grossly inflated prices amounting to approximately £32,000 would be considered deplorable conduct. The amount involved was substantial, the conduct was pre-meditated and involved sophisticated planning which was sustained over a period of time. The Registrant involved another organisation outside his practice. SOG were forced into conducting a complex investigation into the behaviour of the Registrant and innocent people were implicated, which would no doubt have caused some distress. The Registrant's conduct risked damaging the profession's reputation amongst people and organisations outside of the profession. The Committee determined there was an agreement between the Registrant and Mr C to falsify and grossly inflate prices to the tune of approximately £32,000. In the Committee's judgement, this is serious misconduct.

182. In relation to particular 3a, the Committee noted that the bank statement produced by the Registrant at this stage shows that he transferred £11,890.00 to [Company A]. The Committee noted the transfers were made on 25 and 26 April 2017, after the investigation commenced. In the Committee's judgement, this is evidence of the Registrant trying to cover up once he realised he had been caught out. In the Committee's view, it does not make any difference that the Registrant paid for the bag retrospectively. In the Committee's judgement it is clear the Registrant attempted to put a designer bag with a value of £500 through the business. The Committee take the view this is a large sum of money and cannot, under any circumstances, be considered a business expense. Members of the profession would consider the Registrant's behaviour deplorable and in the Committee's judgement, his conduct breaches standards of behaviour expected of a Registrant in the profession. The Committee decided this is serious misconduct.

183. Similarly, in relation to particular 3c, in the Committee's judgement, it is deplorable conduct to try and put through Sky Club vouchers amounting to nearly £4,000 as a business expense when it was in fact plainly personal expenditure. Members of the profession would regard this conduct as deplorable. The Committee determined this is serious misconduct.

184. In relation to particular 5, the Committee found the Registrant authorised false and grossly inflated invoices in order to receive Red Letter Day vouchers. The Committee noted the Registrant encouraged Mr C to amend invoices to hide the dishonesty. This behaviour falls far short of what is expected of a Registrant. It is behaviour which would

be regarded as deplorable by fellow professionals and the Committee determined this conduct to be serious misconduct.

185. So far as particular 6 is concerned, the Committee noted the authorities and Section 17 of the guidance. In the Committee's judgement, the proved dishonesty is serious misconduct as it would undermine confidence in the profession and fellow members of the profession would regard this behaviour as deplorable.

186. In reaching these decisions the Committee determined that the Registrant had breached standard 16, 16.1, 17 and 17.1.

Impairment

187. The Committee gave careful consideration to the documents lodged on behalf of the Registrant at this stage as well as the other evidence.

188. In relation to the Registrant's reflective piece, the Committee felt the insight shown by the Registrant was very limited. Whilst the Registrant says he accepts the Committee's findings, he continues to blame others for his wrongdoing. There is no apology for his conduct or for smearing the reputation of others. The Committee considered the testimonials submitted on behalf of the Registrant. However, the Committee could only place limited weight on the testimonials as they did not show that the authors were aware of the allegations the Registrant faced. The Committee determined the Registrant has shown very limited insight into his own conduct and no insight into the impact his behaviour may have had on other individuals or the organisations which have been affected by the Registrant's conduct or on the reputation of the profession.

189. The Committee noted that the Registrant has not shown any insight into the relationship with [Company B] and SOG. The Committee have seen very limited reflection that the Registrant has learnt from his past conduct contained in his witness statement of three paragraphs of 25 August 2023. There is no other evidence of remediation and no evidence of remorse or apology.

190. The Committee determined the Registrant, through his conduct, has brought the profession into disrepute. A lot of trust was placed in the Registrant by SOG, as well as his employees, and he has breached that trust. SOG took for granted the invoices were true and accurate when they were sent in for payment. These invoices were paid with little or no scrutiny based on that trust. The Registrant had abused that trust.

191. The Committee have noted that the Registrant has been working as a locum for the last 6 years and his current employer speaks highly of him. No further issues have been reported since this incident and they have given him a management position. They put him in charge of money and they appear to have no reason to distrust him. However, for the reasons above, the Committee could not place much weight on the testimonials.

192. The Committee acknowledged the Registrant was under a lot of personal and business related stress at the time. This was an unusual situation which the Registrant struggled to cope with. This may have affected his judgement at the time. Whilst the Committee felt the reflection statement was very limited in many ways, it noted the Registrant had accepted the Committee's findings.

193. The Committee noted the Registrant was of previous good character. He had another business partner imposed upon him who the Registrant believed did not have the required professional competence. The Registrant had to deal with the aftermath of that

situation, the Registrant lost his business, and his shares and since 2017 there is nothing to suggest that he has acted in this way again.

194. The Committee has noted above points which are favourable to the Registrant, however, given the importance of insight and the Committee's findings on lack of insight and remediation, the Committee is not assured that the Registrant is not liable to bring the profession into disrepute, breach fundamental tenets of the profession and act dishonestly in the future. Accordingly, the Committee finds that the Registrant's fitness to practise is currently impaired.

195. The Committee went on to consider whether the public interest required a finding of impairment.

196. The Committee determined that a finding of impairment is required on public interest grounds. In reaching this decision the Committee noted the sustained period, the authorising of false and grossly inflated invoices and dishonesty were all elements of the serious professional misconduct it had identified. The Registrant's conduct has risked undermining trust and public confidence in the profession and it is therefore necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the profession. His conduct over a sustained period of time would affect the reputation of and confidence in the profession.

197. In the circumstances, the Committee determined that the Registrant's fitness to practise is currently impaired.

Sanction

198. The Committee heard submissions from Miss Hadgett on behalf of the GOC. She submitted the Registrant had engaged in serious misconduct which involved dishonesty and involved substantial sums of money. She further submitted the dishonesty was premeditated, sustained over a long period of time, encompassed others outside of the organisation and who the Registrant sought to blame. She further submitted the recent reflection document submitted by the Registrant continues to demonstrate limited insight. The Registrant has not shown any insight into how his actions have harmed the reputation of the profession. Miss Hadgett submits erasure is the most appropriate and proportionate sanction in cases involving serious dishonesty.

199. The Committee also heard from Mr Ogun on behalf of the Registrant. Mr Ogun submitted this was an unusual case against the background of a difficult commercial context. He submitted the incident took place 6 years ago and since then the Registrant has continued to work as a locum Dispensing Optician without any further incident and without the need for an Interim Order.

200. Mr Ogun submitted the Registrant was remorseful and had paid a high price; he had lost his position, his business and investment and his reputation has been damaged. The Committee were told the finding of impairment was a wakeup call for the Registrant. Since then, he has reflected on his conduct and gone through a period of intense self-examination. The Registrant has prepared a further reflective piece which was submitted today for the Committee to consider. Mr Ogun accepted insight has come late but this should not extinguish his efforts or minimise the genuineness of the reflection.

201. Mr Ogun referred the Committee to the cases of *GMC v Choudhury [2017], Hassan v GOC [2013], Bijl v GMC [2002]* and *Igboaka v GMC [2016].* He submitted that whilst this case did involve dishonesty, it did not follow that an otherwise competent professional

should be erased from the register. The Committee had to look at the context and background.

202. Mr Ogun submitted there are no proper grounds for concluding that the Registrant's behaviour was fundamentally incompatible with being a registered professional. Therefore, he submitted erasure is inappropriate. On the contrary, he submitted the Committee should take no further action, given the circumstances outlined above and a finding of impairment would be sufficient to mark the misconduct. In the alternative he submitted a very short period of suspension.

203. So far as the Registrant's financial means are concerned, in short, he submitted the Registrant's income is limited and he has no assets now.

204. The Committee received and accepted the legal advice of the Legal Adviser.

205. The Committee was advised it must take into account the facts (including aggravating and mitigating features of the case) and all matters relating to personal mitigation, as well as the references relied upon on his behalf. The Committee was advised it was entirely a matter for it to decide what weight to attach to references and testimonials.

206. The Committee was reminded that the purpose of any sanction is not to punish the Registrant but to:

    a) protect members of the public;
    b) maintain public confidence in the profession and the regulator; and
    c) declare and uphold proper standards of conduct and performance within the profession.

207. The Committee was reminded that the following sanctions are available to the Committee:

    a) order that no further action be taken;
    b) impose a financial penalty order (which may also be imposed in conjunction with another sanction);
    c) impose conditional registration for up to 3 years;
    d) impose a period of suspension for up to 12 months; or
    e) erasure.

208. The Committee was advised to have regard to the guidance issued by the Council.

209. The Committee was advised to take a proportionate approach, weighing the interests of the public against the interests of the Registrant.

210. The Committee was advised any sanction imposed must be appropriate. The Committee should start with the least severe and only move on to consider the next sanction if the one under consideration does not sufficiently protect the public, maintain public confidence in the profession and maintain proper professional standards, having regard to all the circumstances of the case and the over-arching objective of the Council.

211. The Committee accepts that the facts of this case were unusual. It considered the earlier reflective piece and the piece provided today. The Committee was of the view that the Registrant has started to take on board the Committee's findings and begun to reflect on his behaviour, albeit late. However, the reflective pieces are still limited in detail. The Committee did not hear any oral evidence from the Registrant. It would have

valued any evidence of what action the Registrant has actually taken following his reflections. In particular, the Committee would have been interested to hear how the Registrant would have dealt with being under pressure in future, how he was proposing to grow and develop and how such improvements might help to prevent similar misconduct in the future. In addition, the Committee did not have some explanation of the role of the mentor to date and in the future. Furthermore, evidence of reflection on the impact the Registrant's behaviour has had on others and on what members of the public and the profession will think about his behaviour would have been very useful to the Committee. In all the circumstances, the Committee determined insight is still limited, although it accepts the Registrant has made a start.

212. The Committee considered the aggravating features of this case. It determined the dishonesty was premeditated and prolonged over a period of years. The Registrant attempted to cover up his dishonesty with false invoices and sought to blame Mr E for his investigation. During the substantive hearing he then sought to blame Mr D and Specsavers. The Committee determined that he was only able to instigate his misconduct because he was a director of the company. This is a position he had abused to his advantage. The amount of money involved was substantial.

213. The Committee considered the mitigating features of the case. He had issues in his home life and a very difficult situation within his business. The Committee acknowledged the pressure the Registrant was under at the time. The Committee accepts the Registrant has lost his reputation, business and investment and took into account the testimonials (although for reasons expressed previously it placed little weight on them), that these matters took place 6 years ago and the Registrant has been in locum work as a Dispensing Optician without incident subsequently. The Committee acknowledged that the Registration had no previous fitness to practise history.

214. The Committee noted that the Registrant has apologised for his behaviour and regrets his actions.

215. The Committee went on to consider sanction.

216. The Committee considered whether taking no further action was proportionate or appropriate. This was a serious case of dishonesty and there were no exceptional circumstances. Action has to be taken as not to do so would not protect the public interest.

217. The Committee next considered whether to impose a financial penalty order. The Committee determined the Registrant did not have the ability to pay a financial penalty. It determined such an order would not be proportionate or appropriate in the circumstances.

218. The Committee considered whether to impose a conditions of practice order. The Committee determined such an order is not appropriate or proportionate given the nature of this case.

219. The Committee considered suspension and the guidance. The Committee determined this was a serious instance of misconduct and a lesser sanction would not suffice. It considered that there was no evidence of harmful deep-seated personality or attitudinal problems and noted, in support of that, that there had been no suggestion of any similar conduct in the lengthy period since 2017 when the Registrant had been practicing without restriction and without complaint. Whilst the Registrant demonstrates only limited insight there has been some improvement and the Committee did not regard the Registrant as posing a significant risk of repeating his misconduct.

220. The Committee considered erasure and the guidance, as Miss Hadgett suggested this was the appropriate sanction. The Committee noted the prolonged nature of the dishonesty and that there was some evidence of an attempt to cover up parts of it. As regards insight, the Committee judged that whilst the Registrant's insight remained limited it did not amount to a persistent lack of insight into the seriousness of his actions or the consequences of them for the reasons set out above. However, the Committee was mindful that erasure is only likely to be appropriate if the Committee determines the Registrant's behaviour is fundamentally incompatible with being a registered professional. The Committee did not regard his behaviour as constituting a risk to people and while he had exploited his position as a director that had not led to any identified risk to patients.

221. In balancing all the features of this case, the Committee determined erasure would be disproportionate. In the Committee's judgement, the Registrant's behaviour was not fundamentally incompatible with being a registered Dispensing Optician. Patients could be protected and public confidence could be maintained with an order of suspension for a period of 9 months, with a review before the order expires. The Committee determined this is the most appropriate and proportionate order and marks the seriousness of the Registrant's behaviour. In the Committee's judgement, preventing the Registrant from practising his profession for such a long period will maintain public confidence in the profession and his regulator and declare and uphold proper standards. This period will also allow the Registrant time to further develop his insight and provide him with an opportunity to present the reviewing Committee with further evidence of his reflections, evidence from his mentor and others he has received support and advice from. It may also be helpful if the Registrant could reflect on why honesty is so important to the profession and on how his behaviour has impacted on patients, his colleagues and the public. The reviewing Committee may also be assisted by hearing oral evidence from the Registrant at the review hearing.

Immediate Order

222. On behalf of the Council, Miss Hadgett submitted an immediate order should be imposed. She said this was a serious case of misconduct involving dishonesty and referred to her previous submissions at sanction stage. She reminded the Committee that this case has been ongoing for a considerable period of time. She submitted that the public interest required an immediate suspension order.

223. On behalf of the Registrant, Mr Ogun submitted an immediate suspension order was not necessary. He submitted the Registrant had been working for the last 6 years as a locum Dispensing Optician without any issues and the public interest did not require an immediate suspension.

224. The Committee heard and accepted the legal advice of the Legal Adviser. The Committee was advised that paragraph 23.1 of the guidance reminds committees that suspension orders cannot take effect for 28 days or, if there is there is an appeal, until the appeal is resolved. In those circumstances, the Committee has the power to impose immediate suspension to cover the intervening period pursuant to S.13I of the Opticians Act 1989. The Committee was advised it must be satisfied such an order is necessary for the protection of members of the public, is otherwise in the public interest or in the best interests of the Registrant.

225. The Committee noted this case has been ongoing for some time and that the Registrant has been working without any restriction for the last 6 years and without posing a risk to the public. The Committee felt this was to the credit of the Registrant, who has demonstrated he is not a risk to the public. In any event, the Council did not rely on this ground. It therefore determined an immediate order of suspension was not necessary to protect the public.

226. The Committee considered whether an immediate suspension order was necessary in the public interest. The Committee was mindful that there would be a time lapse of at least 28 days or more, if an appeal is lodged. However, the Committee is mindful that the Registrant has been working without restriction for the last 6 years and it did not judge that the circumstances of the case, including the period since 2017, meant that the public interest required an order of immediate suspension. The public interest would be satisfied by the sanction of suspension for 9 months.

227. The Committee did not feel an immediate order was necessary in the interests of the Registrant nor did the Council submit an immediate order was required on this ground.

228. In the circumstances, the Committee have determined not to impose an immediate order.

Chair of the Committee: James Kellock

Signature  **Date: 5 January 2024**

Registrant: Suleman Patel

Signature *present and received via email* **Date: 5 January 2024**

FURTHER INFORMATION
Transcript
A full transcript of the hearing will be made available for purchase in due course.
Appeal
Any appeal against an order of the Committee must be lodged with the relevant court within 28 days of the service of this notification. If no appeal is lodged, the order will take effect at the end of that period. The relevant court is shown at section 23G(4)(a)-(c) of the Opticians Act 1989 (as amended).
Professional Standards Authority
This decision will be reported to the Professional Standards Authority (PSA) under the provisions of section 29 of the NHS Reform and Healthcare Professions Act 2002. PSA may refer this case to the High Court of Justice in England and Wales, the Court of Session in Scotland or the High Court of Justice in Northern Ireland as appropriate if they decide that a decision has been insufficient to protect the public and/or should not have been made, and if they consider that referral is desirable for the protection of the public. Where a registrant can appeal against a decision, the Authority has 40 days beginning with the day which is the last day in which you can appeal. Where a registrant cannot appeal against the outcome of a hearing, the Authority's appeal period is 56 days beginning with the day in which notification of the decision was served on you. PSA will notify you promptly of a decision to refer. A letter will be sent by recorded delivery to your registered address (unless PSA has been notified by the GOC of a change of address). Further information about the PSA can be obtained from its website at www.professionalstandards.org.uk or by telephone on 020 7389 8030.
Effect of orders for suspension or erasure
To practise or carry on business as an optometrist or dispensing optician, to take or use a description which implies registration or entitlement to undertake any activity which the law restricts to a registered person, may amount to a criminal offence once an entry in the register has been suspended or erased.
Contact
If you require any further information, please contact the Council's Hearings Manager at 10 Old Bailey, London, EC4M 7NG or, by telephone, on 020 7580 3898.

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