

**BEFORE THE FITNESS TO PRACTISE COMMITTEE
OF THE GENERAL OPTICAL COUNCIL**

GENERAL OPTICAL COUNCIL

F(22)36

AND

RUPIN RACH (01-27632)

**DETERMINATION OF A SUBSTANTIVE HEARING
27 SEPTEMBER – 04 OCTOBER 2023**

Committee Members:	James Kellock (Chair) Victoria Smith (Lay) Sarah Hamilton (Lay) Gemma O'Rourke (Optometrist) Amit Jinabhai (Optometrist)
Legal adviser:	Anand Beharrylal KC
GOC Presenting Officer:	Nutan Fatania
Registrant present/represented:	Present and represented.
Registrant representative:	Trevor Archer on behalf of the AOP
Hearings Officer:	Nazia Khanom
Facts found proved:	Allegations 1, 3 and 4 (admitted)
Facts not found proved:	Allegation 2 (withdrawn)
Misconduct:	Allegation para 1 Found (in part), paras 3 and 4 Not Found
Impairment:	Impaired
Sanction:	No Order
Immediate order:	None

ALLEGATION

1. The General Optical Council (“GOC”) originally preferred an allegation particularised in six (6) particulars against the Registrant as follows:

ORIGINAL ALLEGATION

The Council alleges that you, Rupin Rach (01-27632), a registered optometrist:

1. *On the following dates you left Boots premises for a period of time knowing that your pre-registration Optometrist was testing patients and pre-examinations:*
 - a. *25 September 2020; and/or*
 - b. *22 January 2021; and/or*
 - c. *29 January 2021; and/or*
 - d. *8 February 2021*
2. *Your conduct in 1 above was inappropriate as you:*
 - a. *were the sole clinician in the store; and/or,*
 - b. *failed to ensure appropriate supervision was available for a pre-registrant optometrist*
3. *Between December 2020-January 2021 you allowed pre-screening to take place by a pre-reg when an optometrist was not on the premises; and/or*
4. *On one or more occasions, on unknown dates, you:*
 - a. *Failed to appropriately check a paediatric dispense carried out by a student optometrist; and/or*
 - b. *Failed to appropriately supervise a paediatric dispense of spectacles carried out by a student optometrist and/or*
 - c. *Were not on site to intervene for pre-screening*
5. *On unknown dates you retrospectively signed record cards after patients had left the practice including child patients; and/or*
6. *You provided your OPS number to colleagues to sign off child dispenses; and/or*
 - a. *Shared your OPS with everyone in the store by writing it on a post-it note stuck to the computer at the front till; and/or*
 - b. *Shared your OPS with staff members so that they could do the checks; and/or*

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

2. On 27 September 2023 (Day 1) the GOC applied to amend the allegation particularised in four (4) particulars as follows:

AMENDED ALLEGATION

The Council alleges that you, Rupin Rach (01-27632), a registered optometrist:

1. *On the following dates you, the only registered optometrist in store and the manager, left Boots, Redacted premises for a period of time knowing or believing that your pre-registration Optometrist was or would be testing patients and/or conducting pre-examinations:*
 - a. *25 September 2020;*
 - b. *December 2020 – January 2021;*
 - c. *22 January 2021;*
 - d. *29 January 2021; and/or*
 - e. *8 February 2021*
2. *On one or more occasions, on unknown dates, you:*
 - a. *Failed to appropriately check a paediatric dispense carried out by a student optometrist; and/or*
 - b. *Failed to appropriately supervise a paediatric dispense of spectacles carried out by a student optometrist.*
3. *On unknown dates you retrospectively signed record cards after patients had left the practice.*
4. *You provided your OPS number to colleagues; and/or*
 - a. *Shared your OPS with everyone in the store by writing it on a post-it note stuck to the computer at the front till; and/or*
 - b. *Shared your OPS with staff members enabling them to have access to your level of authorisation; and/or*

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

3. The Committee considered submissions from the GOC in support of its application to amend the allegations and from the Registrant, the latter who did not oppose the amendment. The Committee also considered advice from its Legal Adviser as to the power to amend allegations pursuant to The General Optical Council (Fitness to Practise) Rules Order of Council 2013 rule 46(20), with which the parties agreed.
4. The Committee decided that the amendment sought could be made without injustice and granted the GOC's application.

DETERMINATION

Admissions in relation to the particulars of the allegation

5. The Amended Allegation against the Registrant was read by the Hearings Officer. The Chair inquired whether the Registrant wished to make any admissions. The Registrant admitted the facts particularised in the Amended Allegation at particulars 1, 3 and 4. He disputed the facts at particular 2.

Background to the allegations

6. The Registrant first registered with the GOC as a student optometrist on 18 September 2009 and became a fully qualified registrant on 1 October 2013.
7. On or around 16 March 2021, the GOC received an email from Boots Professional Services (Boots) in relation to the Registrant's alleged conduct and dismissal.
8. The email from Boots informed the GOC that the Registrant worked for Boots Opticians Professional Services Ltd as an Optometrist Practice Manager at the **Redacted** practice. On 12 February 2021, there was information received that the Registrant had been leaving the premises whilst his pre-registration optometrist was testing patients. On 13 February 2021, the Registrant was suspended.
9. On 26 February 2021, the Registrant was summarily dismissed by Boots following a disciplinary interview.

Findings in relation to the facts

10. The Committee, upon the Registrant's admission to the Amended Allegation particularised at particulars 1, 3 and 4, found those facts proved. This was announced by the Chair in accordance with rule 46(6).
11. The GOC then opened its case. It indicated that it would be calling one witness, Mr A, as relevant to the Amended Allegation at particular 2. However, he was not conveniently available until 29 September 2023 having been warned to attend on that date.
12. The Committee considered an application to adjourn by the GOC to 29 September 2023, which was not opposed by the Registrant. The Committee considered submissions from the parties as to the length of the witness's evidence and decided that the GOC's application should be granted.
13. The hearing resumed on 29 September 2023 (Day 2) with the GOC calling Mr A and he was cross-examined on behalf of the Registrant. Following the completion of his evidence the GOC sought time to take instructions as to how to further proceed, which the Committee granted.
14. On resumption of the hearing the GOC indicated that, in light of the evidence that was given, it would not resist an application by the Registrant pursuant to rule 46(8) that there was insufficient evidence to support particular 2 of the Amended

Allegation. The Committee considered advice from its Legal Adviser as to rule 46(8) and the parties sought time to consider their positions, which the Committee granted.

15. On resumption of the hearing the GOC applied to amend the Amended Allegation to withdraw and remove the allegation particularised at particular 2 in its entirety. The GOC's submissions in support of this application were essentially the same i.e. there was insufficient evidence to support it. The Registrant did not oppose the application. The Committee considered advice from the Legal Adviser in relation to the amendment as to rule 46(20), with which the parties agreed.
16. The Committee considered the application to amend and decided the amendment could be made without injustice and granted the application. Consequently, particular 2 of the Amended Allegation was removed from the Committee's further inquiry.
17. The Committee then invited submissions from the parties as to whether they wished to proceed to deal with misconduct and impairment at the same time or separately. The parties' agreed position was that they would wish to deal with misconduct and impairment separately. The GOC and Registrant confirmed they would not be calling any evidence at this stage. The Committee considered advice from its Legal Adviser in relation to rule 46(12) and that it could consider all written material placed before it, including the Registrant's witness statement dated 22 September 2023. The parties agreed with the advice.
18. The Committee considered the parties' submissions and decided to deal with misconduct and impairment separately.

Findings in relation to misconduct

19. The Committee heard submissions on behalf of the GOC and the Registrant.
20. The GOC, in summary, submitted that in relation to particulars 1, 3 and 4 of the Amended Allegation serious misconduct was made out because the Registrant had acted contrary to the Standards of Practice for Optometrists and Dispensing Opticians (April 2016) and the Registrant's behaviour fell far below the standard expected. He did not take responsibility, as required of him, over his pre-registration Optometrist, and placed him and other junior colleagues in a vulnerable position. This also potentially placed patients at risk when pre-screening tests and sight tests were carried out in his absence and record cards retrospectively signed. Furthermore, the lack of good practice in sharing his OPS number again meant he was not taking responsibility within his role and placed his staff in vulnerable positions by informally authorising the use of such details. Overall, this placed his staff and patients at risk if errors had occurred.
21. The Registrant, in summary, submitted that not all misconduct meets the threshold of serious misconduct as contemplated in Section 13D of the Opticians Act 1989 ('the Act'), relied on the case of *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311 and argued that mere negligence would also not constitute misconduct, but would depend on the facts. He disputed that leaving the store during pre-

screening, retrospectively signing records cards and sharing the OPS number were of themselves misconduct and relied on the restricted functions in Part 4 Sections 24, 25 and 27 of the Act. He relied on the College of Optometrists guidance document titled Working with Colleagues, in particular paragraph C229 under the heading Supervision, to the effect that supervision of a trainee optometrist is only required when they are performing restricted functions. He submitted that the internal Boots supervision policy did not supersede the specific legal requirements in the Act as to pre-screening. He pointed out that there was no requirement to sign record cards at any particular time even if signed retrospectively, hence it did not amount to misconduct. He also pointed out that the sharing of the OPS login was for staff to apply discounts and that there had to be a degree of trust in staff for that purpose, hence it does not amount to misconduct.

22. The GOC replied. It emphasised that the primary concern of the GOC was the level of risk created by the overall approach adopted by the Registrant. It drew attention to the evidence in the witness statement of Ms A to the effect that the Registrant's OPS login details would enable further access to *'add managers discretion, change the price of something and also when we put children's dispense through, you have to have a clinical that has to sign it, his login would work for that as well whereas the rest of ours never did'*. The GOC maintained there was serious misconduct.
23. The Committee accepted the advice of the Legal Adviser that it should consider whether the alleged ground of impairment under Section 13D of the Act, specifically misconduct, was established and then to announce that fact and the reasons for it, that it could draw inferences from established facts but could not speculate in evaluating the submissions from the parties and that it could consider all written material provided by the parties. The parties agreed with the advice.
24. The Committee adjourned to consider whether misconduct had been made out.

Amended Allegation at particular 1

25. The Committee found that the admitted facts in the Amended Allegation at particular 1 amounted to misconduct in part, specifically that he left Boots for a period of time knowing or believing that his pre-registration Optometrist would be testing patients.
26. The Standards of Practice for Optometrists and Dispensing Opticians (April 2016) under the heading *'9. Ensure that supervision is undertaken appropriately and complies with the law'*, is particularly relevant and states as follows:
 - 9.2 *Only delegate to those who have appropriate qualifications, knowledge or skills to perform the delegated activity.*
 - 9.3 *Be on the premises, in a position to oversee the work undertaken and ready to intervene if necessary in order to protect patients.*
 - 9.4 *Retain clinical responsibility for the patient. When delegating you retain responsibility for the delegated task and for ensuring that it has been performed to the appropriate standard.*

9.5 Take all reasonable steps to prevent harm to patients arising from the actions of those being supervised.'

27. The Registrant was responsible for the supervision of the Pre-Registration Student ('pre-registration Optometrist') Mr B, yet Mr B tested a number of patients on different days in the Registrant's absence. During this period he attended a patient who presented with signs of papilledema. This is a serious condition that could potentially result in blindness. The Registrant was in his car at the time and so could not intervene. He agreed that it would have been about an hour that he had spent away but that he would have checked the photos and discussed the test afterwards. This amply demonstrates why supervision of a pre-registration Optometrist is so critical when there is a discovery of something seriously wrong with a patient's eye, not least that the Registrant could immediately intervene and which the public are entitled to expect.
28. As to pre-examinations, the Committee did not find that the admitted facts in the Amended Allegation at particular 1 amounted to misconduct.
29. It is not clear on the evidence what was involved in pre-examinations. For example, it may have included non-contact tonometry (i.e. puff of air test), which is generally not undertaken by an Optometrist but rather by ancillary staff like an Optical Consultant. Whilst Boots may have a different policy in relation to pre-examinations, the Committee must be guided by the Act, the Standards of Practice for Optometrists and Dispensing Opticians (April 2016) and the College of Optometrists guidance document.
30. As pre-examinations are not a restricted function under the Act, the Committee was not satisfied that this amounted to misconduct.

Amended Allegation at particular 3

31. As to retrospectively signing record cards after patients had left the practice, the Committee did not find that the admitted facts in the Amended Allegation of particular 3 amounted to misconduct.
32. The Committee considered that this allegation was vague in relation to what was signed for. In and of itself the retrospective signing of a record card without dishonesty would not generally amount to misconduct. More significantly, in relation to the Registrant, the Committee was not satisfied that it could be demonstrated that he signed record cards without carrying out appropriate checks. Further, the Committee was not shown any of the record cards and so it is not clear if the eye examinations relied on by the GOC related to the Registrant or the pre-registration Optometrist.
33. In light of the lack of clarity on the evidence in relation to the record cards, the Committee was not satisfied that misconduct was demonstrated.

Amended Allegation at particular 4

34. As to providing the Registrant's OPS number (referring to an Optical Professional Services login number at Boots) to colleagues, the Committee did not find that the admitted facts in the Amended Allegation at particular 4 amounted to misconduct.
35. The Registrant explained in his written evidence that the sharing of the OPS login was purely to allow for staff to apply discounts. There is no evidence that it was ever used by other staff for anything else, still less that it was misused in any way. There was very little evidence as to how precisely the OPS login worked and limited explanation was forthcoming during the hearing following questions from the Committee. Whilst it might be there was a possible risk of misuse in relation to children's dispensing, it was not clear on the evidence how that could have arisen. There was also no evidence of children's dispensing to demonstrate how the OPS login was used to illustrate any risk. The Registrant submitted that it was not unreasonable for him to share his OPS login with staff so they could apply discounts, when there was no longer an Assistant Manager. Further, that managers have to have a level of trust in staff. The Committee agrees with this submission.
36. In light of the lack of clarity on the evidence in relation to the OPS login, the Committee was not satisfied that the Registrant's conduct fell below any required standard to create an unacceptable risk, as argued by the GOC. Therefore, the Committee considered that this did not amount to misconduct.
37. The Chair of the Committee then invited the parties to address the next stage regarding impairment as to evidence and/or submissions. The Registrant sought further time as he wished to serve and rely on further evidence, which the GOC would need to consider. The Committee granted that time. A further bundle of material from the Registrant was received.

Findings regarding impairment

38. On 3 October 2023 (Day 4) the Committee heard submissions on behalf of the GOC and the Registrant. Both parties confirmed that there would be no oral evidence.
39. The GOC, in summary, indicated that it previously had concerns that the Registrant could not balance his professional obligations with his personal commitments and difficulties and, in particular, it had concerns that there was no real evidence of remediation. This was its position on the evidence in the bundles from both the GOC and the Registrant and consequently, it contended the Registrant's fitness to practise was impaired.
40. However, after a review of the further bundle from the Registrant the GOC re-considered its position in light of that material in relation to impairment. Relying on this new material, it considered that the Registrant took full responsibility for his actions, did not seek to minimise either what he did or the consequences of it, and that he recognised that his personal commitments and difficulties could not be allowed to compromise his professional responsibilities. The GOC also noted that

his references were positive, he had taken a step back from supervising students, he was better able to manage now and he had undertaken more training and learning to ensure that he was still up to date. As a result, the GOC no longer felt that there was a risk of repetition, hence his fitness to practise was not currently impaired.

41. The Committee sought clarification from the GOC specifically in relation to the public interest. The GOC indicated that it did not consider that the evidence revealed so serious an error that there would be concerns by the public if a finding of impairment of fitness to practise were not made.
42. The Registrant, in summary, pointed out that mistakes are a fact of life and that error is a potent source of learning and the events resulting in misconduct took place a few years ago. He emphasised that the Committee must look forward not backwards as to the Registrant's current fitness to practise and the facts that led to the misconduct, i.e. leaving a pre-registration Optometrist unsupervised, were not likely to be repeated. This was particularly demonstrated by the history of the Registrant's unblemished record prior to the events leading to the misconduct. It was submitted that there was no impairment of fitness to practise and that remedial steps had been taken.
43. The Registrant emphasised that the pressured circumstances that arose were unprecedented in his life, specifically **redacted**. He was also managing the effects of the lockdown as a single person at home during the pandemic, which took away support he otherwise may have had. **Redacted**. When Boots reopened the Assistant Manager was no longer in place and the Registrant was blocked from offering that role to anyone else, which created the circumstances of placing greater reliance on junior staff. However, the Registrant accepted responsibility and that he had let people down. He had also admitted he left the store during his disciplinary interview.
44. However, since then he had taken the time following his dismissal to gain perspective, has limited himself to locum work, had recognised what caused him to fall into error and has demonstrated a level of greater maturity. The latter being specifically illustrated by his positive references which demonstrated a high level rating for service and professionalism from patients, which puts in context that he had never acted like this previously or since. He submitted that he is now better prepared to deal with the pressures he was under and that the Committee could be sure that he would not act in the same way again and leave a pre-registration Optometrist unsupervised in any circumstances.
45. The Committee sought clarification from the Registrant specifically in relation to the public interest. The Registrant submitted that the events that led to the misconduct did not meet the increased level of seriousness to engage the public interest consideration.
46. The Committee considered advice from its Legal Adviser. The advice given highlighted that the Committee could have regard to all of the material before it when determining impairment. The Committee was also advised as to the relevant factors that the Committee needed to consider when determining impairment and

that the Committee must look forward not back when determining impairment. If its decision was that fitness to practise is not impaired then the Committee must make clear in its determination what remedial steps have been taken into account.

47. As to the public interest, the Legal Adviser referred to the case of *PSA v Nursing and Midwifery Council (Grant)* [2011] EWHC 927 in which the High Court said that, in deciding whether fitness to practise is impaired, the Committee should ask themselves:

"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."

48. The Legal Adviser also advised that the Committee must have regard to whether a practitioner is fit to practise unrestricted in their current state. Reference was made to *GOC v Clarke* [2018] EWCA Civ 1463 (referred to by the Registrant in submissions) in which the High Court said that, in the consideration of current impairment, the concept of fitness to practise is whether a practitioner is fit to practise currently, rather than a deliberation of whether there is any likelihood of a return to practice, and thereby any risk in the future.
49. The parties agreed with the Legal Adviser's advice, which the Committee accepted.
50. The Committee considered the submissions made and advice received and considered firstly, the future risk the Registrant poses and secondly, the public interest.

Future Risk

51. As to the future risk, the Committee considered the circumstances of the Registrant's failure to supervise his pre-registration Optometrist, the statements of the Registrant in particular his reflections and his references. The Committee also notes that he has undertaken further CPD training as required for his registration.
52. The Committee considered that the Registrant had always accepted what he had done was wrong and he had shown real remorse for his failings. In his reflective pieces he had shown substantial insight into why he had acted as he had, the impact of his actions and why he would not repeat them in the future. He had analysed how he had not only let himself and patients down, but also his colleagues and the wider profession. The Committee accepted that the misconduct had occurred at a time when a combination of factors put great stress on him in a way that was very unlikely to re-occur. The whole profession had had to cope with the Covid pandemic, but in addition the Registrant had to provide a service with reduced staff numbers, redacted. These circumstances directly led to the misconduct occurring.
53. He had also reflected that the burden of being an Optometrist at the same time as supervising a student and acting as store manager was too much. Since his

dismissal he had been practising as a locum without complaint and demonstrated real insight, maturity and reflection. The Committee concluded that the Registrant was unlikely to allow difficulties in his redacted to adversely affect his professional responsibilities in the future and that he had remediated his misconduct.

54. In these circumstances, the Committee considered that there was a very low risk of repetition bearing in mind that the Registrant is in a very different place redacted compared to when the misconduct occurred. Therefore, the Registrant's fitness to practise was not impaired in this regard.

Public Interest

55. As to the public interest the Committee noted that the Registrant knew at the time that what he was doing was wrong in leaving a pre-registration Optometrist unsupervised whilst testing patients, yet this was insufficient to deter him. This was not a one-off failure to supervise, rather it took place on a number of occasions where he put his own interests above those of his pre-registration Optometrist and patients. Thus, he deliberately did not do what was required of him as a supervisor, which put pressure on junior and other staff. The requirement for a supervisor to be in a position to intervene is clear and fundamental for the protection, health and well-being of patients. Patients have a right to expect this safeguard is met if they are being examined by a student.
56. In these circumstances, the Committee was satisfied that the Registrant's failure to supervise his pre-registration Optometrist on a number of occasions was a serious departure from proper professional standards, which damaged public confidence in the Registrant and the profession of Optometry.
57. Ultimately, the Committee was satisfied that the need to uphold proper professional standards and conduct, 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.
58. Accordingly, the Committee finds that the Registrant's fitness to practise is currently impaired.

Sanction

59. The Committee on 4 October 2023 (Day 5) heard submissions from the parties in relation to sanctions.
60. The GOC, in summary, submitted that the appropriate sanction based on the Committee's findings as to impairment was Conditional Registration for at least one year. In addressing the appropriate conditions, it placed reliance on the case of *Professional Standards Authority for Health and Social Care v Nursing and Midwifery Council, Mr D Wilson* [2015] EWHC 1887 (Admin) where Laing J reinforced the importance of the public interest and suggested that the effect of sanction on a Registrant was very much of secondary importance.

61. The GOC also placed reliance on the General Optical Council Hearings and Indicative Sanctions Guidance, in particular Part C Bank of Conditions as to general and specific conditions that could be imposed. As to general conditions, it was submitted these might include conditions that the Registrant inform parties that he was subject to conditions e.g. an employer, to inform the General Optical Council if he accepted or ceased employment and to identify a workplace supervisor who would monitor the Registrant's compliance. As to specific conditions, these included conditions to undertake management or supervisory training.
62. The Registrant, in summary, submitted that the appropriate sanction based on the Committee's findings as to impairment was No Order. He placed reliance on the General Optical Council Hearings and Indicative Sanctions Guidance as to when it may be appropriate to take No Order. Emphasis was placed on the Committee's finding that the Registrant was impaired essentially in the public interest as distinct from any future risk. He relied on the case of *Meadow v GMC* [2006] EWCA Civ 1390 which reviewed various earlier authorities and where Sir Anthony Clarke MR stated, "*the purpose of FTP proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise.*"
63. The Registrant also submitted that conditions would serve no useful purpose since they are designed to protect the public, but that in this case there is no significant future risk to the public so there is no rational basis for imposing conditions. He added that any conditions, as contended for by the GOC, would be purely punitive, which is not the purpose of conditions or the purpose of these proceedings. He also emphasised his previous unblemished record and the fact that no interim conditions had been imposed, which underscored the exceptional circumstances that led to the misconduct and showed that a restrictive sanction could not be justified now years after the events.
64. The Committee sought clarification as to the role and purpose of any review if Conditional Registration was the appropriate sanction. Both parties addressed the purpose of any review in relation to Conditional Registration, with the GOC emphasising review to ensure compliance and the Registrant emphasising that review would serve no purpose in the public interest.
65. The Committee considered advice from its Legal Adviser in relation to sanctions. In summary, it was advised that sanction was a matter of discretion based on its findings, the submissions it had heard and the material in the bundles that had been placed before it. Specific advice was given as to the various sanctions available with particular emphasis on No Order and Conditional Registration, and that the proper approach would be to start with the least restrictive sanction in the Hearings and Indicative Sanctions Guidance and consider the appropriateness of that sanction and then move up to consider the next sanction.
66. Both parties agreed with the advice given and the Committee accepted it.

67. The Committee considered the sanctions available to it from the least to the most severe (no sanction, financial penalty, conditional registration, suspension or erasure).
68. The Committee considered the various aggravating and mitigating factors from its findings. The aggravating factors were that the Registrant had been absent on a number of occasions, that he knew what he had done was wrong and that he had broken clear guidance to be on the premises to intervene when supervising his pre-registration Optometrist.
69. As to mitigating factors, it noted the redacted circumstances of the Registrant, the pressure of work during the pandemic in particular the lack of experienced staff, his previous unblemished career including earlier supervision of a student without incident, his clear insight and understanding as to what had gone wrong and why it was unacceptable and his clear remorse. In addition, he did put in place arrangements on at least one occasion for his pre-registration Optometrist to contact him to return, when contacted he did return before the relevant patient had left the practice and no harm to any patient was in fact caused.
70. The Committee considered that there were exceptional circumstances as contemplated by the Hearings and Indicative Sanctions Guidance Para 21.4, which justified taking No Order. Further, it had regard to the basis of its finding of impairment and considered that that finding was sufficient to mark the seriousness of the misconduct in the public interest and that a restrictive sanction could not be justified.
71. The exceptional circumstances were essentially that the Registrant was a competent Optometrist who experienced a highly unusual combination of redacted and the effects of the Covid-19 pandemic, the latter which resulted in far greater social isolation during lockdown and when returning to work having fewer experienced staff to attend to patients.
72. The Committee was also satisfied that the Registrant has shown considerable insight into the behaviour that led to the misconduct and would be fully aware that he could never leave a pre-registration Optometrist unsupervised again. The risk of that happening is in any event further mitigated by the fact that he has chosen not to undertake the responsibility of a pre-registration supervisor, for the time being, since his dismissal from Boots.
73. As to Conditional Registration, the Committee noted that the Registrant was not subject to any interim restrictions. As regards sanction it was not satisfied that there were any conditions that were appropriate or proportionate to protect patients, maintain public confidence in the profession and/or uphold proper standards of conduct and behaviour. The Committee's reasons were that it was clear that the Registrant had fully understood that he could not leave a pre-registration Optometrist unsupervised, there was a very low risk that he would do so again, his previous work as a supervisor (prior to the misconduct) was not suggested to be anything other than competent and he has practised competently after leaving Boots.

74. Accordingly, it would not be in the public interest to impose Conditional Registration now years after the critical events, which in the Committee's view would be purely punitive.
75. For the avoidance of doubt, the Committee considered all sanctions available and determined that none of the sanctions, save for No Order, were either appropriate or proportionate to meet the wider public interest.

Chair of the Committee: James Kellock

Signature ...  **...** **Date:** 4 October 2023

Registrant: Rupin Rach

Signature ... Present via MS Teams..... **Date:** 4 October 2023

FURTHER INFORMATION
Transcript
A full transcript of the hearing will be made available for purchase in due course.
Professional Standards Authority
<p>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.</p> <p>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).</p> <p>Further information about the PSA can be obtained from its website at www.professionalstandards.org.uk or by telephone on 020 7389 8030.</p>
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.